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TROUBLE IN SIN CITY: PROTECTING SEXY WORKERS' CIVIL RIGHTS

Ann C. McGinley*

INTRODUCTION

“What happens here, stays here,” is the familiar motto that Las Vegas promoters adopted in 2003 to encourage more visitors in search of adult entertainment.¹ While Las Vegas has always been known for its libertarian attitudes toward gambling and sexually provocative shows, after a short, failed attempt during the 1990's to characterize itself as a family destination,² the city has turned up the heat.³ Las Vegas, which relies increasingly on selling sex appeal to promote its value to the public, has become the number one adult entertainment destination in the United States.⁴

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1. Las Vegas Convention & Visitors Auth., *Only Vegas Stats & Facts*, ONLY VEGAS, <http://www.lvcva.com/press/statistics-facts/vegas-history.jsp> (follow “2000 - 2004” hyperlink) (last visited July 21, 2011); Abram Sauer, *Las Vegas Cashes In*, BRANDCHANNEL (July 10, 2006), http://www.brandchannel.com/features_profile.asp?pr_id=292 (explaining that when the tagline was first shown in Las Vegas, the room went silent, but that when it was tried in California, two-thirds of those seeing it responded favorably).

2. EUGENE P. MOEHRING, *RESORT CITY IN THE SUNBELT: LAS VEGAS, 1930-2000*, at 270-74 (2d ed. 2000); Bonnie Neely & Bill Neely, *Las Vegas, The Entertainment Capital of the World for Travel Adventures*, REAL TRAVEL ADVENTURES WEB MAGAZINE, http://www.realtraveladventures.com/favoritefinds/entertainment_capital_of_the_world_for_travel_adventures.htm (last visited July 21, 2011).

3. Joseph Lee, *Las Vegas Returns to Sinful Roots*, CNNMONEY (May 28, 2004, 7:12 PM), http://money.cnn.com/2004/05/28/news/midcaps/las_vegas/.

4. *Las Vegas Travel Tips*, U.S. NEWS TRAVEL, http://travel.usnews.com/Las_Vegas_NV/Travel_Tips/ (last visited Aug. 11, 2011); *Las Vegas VIP Services*, LAS-VEGAS-VIP-ENTERTAINMENT-GUIDE.COM, <http://www.las-vegas-vip-entertainment-guide.com/Las-Vegas-VIP-Services.html> (last visited Aug. 11, 2011); Neely & Neely, *supra* note 2.

Of course “Gentlemen’s Clubs” (strip clubs) thrive in Las Vegas, and prostitution, both illegal (in Clark and Washoe Counties, homes to Las Vegas and Reno) and legal (within a one hour’s drive of the Las Vegas Strip) is ever-present. However, the more surprising change in Las Vegas is the ever-increasing sexualization of the resorts and casinos on the Las Vegas Strip.⁵ Following the lead of the Hard Rock Hotel and Casino and the Palms, many casinos have sexualized the cocktail servers, pool attendants, and even in some places, the card dealers who are employed in their establishments.⁶ In the most successful resorts, the sexualization goes only one way: it is aimed at pleasing the heterosexual male.⁷ The place oozes with masculinity and female sexuality. Female, but not male, workers are highly sexualized. Casinos have added “pleasure pits” on casino floors where women either tend bar or serve drinks in even skimpier costumes than those worn on the casino floor.⁸

It is not only the casino floors, however, where hyper-sexualization appears and is used as a marketing tool. Casinos feature nightclubs, “European” (topless) pools, and ultra lounges that restrict access to adults and specialize in adult entertainment.⁹ All of this hyper-sexualization is designed to improve the casinos’ bottom line, and to some extent, it appears to have worked. At least until the recent economic downturn, the Las Vegas casinos demonstrated extraordinary growth early in the twenty-first century.¹⁰

There is, however, trouble in paradise. A number of these clubs (both day and night) have been sued;¹¹ others have closed due to illegal prostitution;¹² some have paid large fines to the Nevada Gaming Control Board because of

5. The Las Vegas Strip is the stretch along Las Vegas Boulevard where the mostly high-end casinos have their resorts.

6. Ann C. McGinley, *Babes and Beefcake: Exclusive Hiring Arrangements and Sexy Dress Codes*, 14 DUKE J. GENDER L. & POL’Y 257, 262-63 (2007) [hereinafter McGinley, *Babes and Beefcake*]; Ann C. McGinley, *Harassing “Girls” at the Hard Rock: Masculinities in Sexualized Environments*, 2007 U. ILL. L. REV. 1229, 1234-35 (2007) [hereinafter McGinley, *Hard Rock*]; Ann C. McGinley, *Harassment of Sex(y) Workers: Applying Title VII to Sexualized Industries*, 18 YALE J. L. & FEMINISM 65, 76-77 (2006) [hereinafter McGinley, *Harassment of Sex(y) Workers*].

7. See generally McGinley, *Babes and Beefcake*, *supra* note 6 (describing the hyper-sexual environments in the casinos aimed at heterosexual male clients); McGinley, *Hard Rock*, *supra* note 6.

8. Lark Ellen Gould, *Putting Some Go-Go Into Your Blackjack Game in Las Vegas*, TRAZZLER.COM, <http://www.trazzler.com/trips/gaming-in-the-pleasure-pit-at-planet-hollywood-las-vegas> (last visited Oct. 28, 2011) (explaining that “pleasure pit girls” at Planet Hollywood wear lingerie).

9. *Las Vegas Nightclubs*, VEGAS.COM, <http://www.vegas.com/nightclubs/> (last visited July 21, 2011).

10. See HAL ROTHMAN, *NEON METROPOLIS: HOW LAS VEGAS STARTED THE TWENTY-FIRST CENTURY* 124, 318 (2002) [hereinafter ROTHMAN, *NEON METROPOLIS*].

11. See *infra* Part III.B.

12. See *infra* Part III.A.

illegal activity;¹³ in others, police have arrested patrons for prostitution and illegal drugs.¹⁴ The most recent and perhaps most troubling case is a lawsuit brought by a young woman who worked at a nightclub operated by The Light Group,¹⁵ a management company that runs nightclubs and restaurants in Las Vegas. Allegations in the lawsuit included prostitution, illegal drugs, and the use of sex and drugs to groom an underage girl for employment as a VIP hostess in a nightclub located in a casino.¹⁶ These allegations do not stand alone. Other workers and the Gaming Control Board have made numerous allegations that raise serious issues concerning the safety and civil rights of women working in the casinos.

This Article examines the legal issues surrounding the hyper-sexualization of women workers in the casinos, with an emphasis on women workers' legal rights to be free of sex discrimination and sexual harassment on the casino floor, in the pleasure pits, in the pool clubs, and in the nightclubs. It will consider how federal, state, and county law can protect these women without unduly interfering with the economic benefits to the casinos, the community, and the individual workers. The Article gives special consideration to the role the state-licensing agency—the Nevada Gaming Commission—should play in regulating sexual and/or sexualizing behavior that may be harmful to women employees. The Article is relevant not only to Nevada casinos. Across the country, states are legalizing casino gambling and the casinos in other states are also attempting to offer highly-sexualized environments.¹⁷ Thus, this Article suggests a regulatory regime that would protect women in all states where casino gambling occurs in hyper-sexualized settings.

Part II analyzes the historical background leading to Las Vegas' position as the adult entertainment capital of the world, and discusses the important link between increased sexuality in the casinos and economic prosperity. Part III demonstrates how some of the casino properties have stepped over the line, leading to large fines and closures, complaints by the State Gaming Control Board, and settlements for heavy fines. Part IV analyzes how the behavior of customers and managers affects employees, particularly female employees. Part V examines potential legal remedies to assure the safety and well-being of female employees and proposes a combination of individual lawsuits and the attention of the Gaming Control Board to the condition of employees in the most vulnerable positions. Finally, the Article concludes that a strict regulatory re-

13. *See infra* Part III.A.

14. *See id.*

15. *See infra* Part III.B.

16. *See id.*

17. Erik Kriss, *Cuomo Bets on Bid to Legalize Casinos*, N.Y. POST, Aug. 10, 2011, at 2; John Mangels, *States Short on Oversight of Casino Operations*, PLAIN DEALER, May 17, 2011, at A1; Suzette Parmley, *Resorts Casino Unveils Provocative New Image*, PHILA. INQUIRER, May 28, 2011, at A13.

gime is necessary to protect the rights of all employees who work in sexualized casino environments in Nevada and across the country.

I. The Vegas Experience: A BOOM AND A RECESSION— LINKS TO SEXUALITY

Las Vegas is the center of adult entertainment and it intends to stay that way. In the 1990s the city experimented with marketing itself as a family destination,¹⁸ but the city soon learned that the family destination approach did not attract sufficient visitors.¹⁹ Mayor Oscar Goodman, who was first elected in 1999 and re-elected in landslides to two additional terms in office until he left because of term limits (his wife was elected to follow him),²⁰ emphasized the sexy aspect of Las Vegas by going everywhere with a couple of showgirls adorned with feather boas.²¹ He also linked fun with drinking alcohol, specifically, Bombay Sapphire Gin. In 2002, Southern Wine and Spirits paid Goodman \$100,000 to endorse Bombay Sapphire Gin (he donated the money to charities).²² Mayor Goodman, who has declared himself the “Happiest Mayor of the Greatest City in the World,”²³ is a living marketer for the party aspect of Las Vegas.²⁴

At the time of Goodman’s election, Las Vegas’ economy was booming. In 1989, the opening of the Mirage Hotel and Casino ushered in a new era in Las Vegas.²⁵ Between 1989 and 2000, eleven megaresorts were built on or near the Las Vegas Strip.²⁶ These resorts differed from earlier hotels that focused only on gaming; now the hotels were full-service resorts with many restaurants, en-

18. See MOEHRING, *supra* note 2, at 270-74; Lee, *supra* note 3.

19. See Lee, *supra* note 3.

20. Carolyn Goodman, Oscar Goodman’s wife, was sworn in to the position of mayor by her husband on July 6, 2011. Alan Choate, *Carolyn Goodman Takes the Helm as Mayor of Las Vegas*, LAS VEGAS REV.-J., July 7, 2011, at 1B.

21. John Katsilometes, *A Mayor Who Loves and Lives His City But Won’t Leave It*, LAS VEGAS SUN, July 10, 2011, at A1. Goodman is no slouch. A graduate of Haverford College and the University of Pennsylvania Law School, he is known in Las Vegas as an excellent criminal defense lawyer who represented members of the mob early on in his career. He understands marketing intuitively. See generally JOHN L. SMITH, *OF RATS AND MEN: OSCAR GOODMAN’S LIFE FROM MOB MOUTHPIECE TO MAYOR OF LAS VEGAS* 9 (2003).

22. Las Vegas Weekly Staff, *That’s All Folks! A Look Back at Oscar Goodman*, LAS VEGAS WKLY. (July 7, 2011), <http://www.lasvegasweekly.com/news/2011/jul/07/oscar-g/>.

23. Juliab, *The ‘Happiest Mayor in the World’ Has the Best Business Card in the World*, VEGAS CHATTER (Oct. 26, 2009, 1:26 PM), http://www.vegaschatter.com/story/2009/10/26/121833/37/vegas-travel/The_Happiest_Mayor_in_the_World_Has_the_Best_Business_Card_in_the_World.

24. In fact, the Las Vegas Convention Authority has hired former mayor Goodman to sell the city. See *Weekend Update*, CLASSIC LAS VEGAS (Aug. 12, 2011, 8:57 PM), <http://classiclasvegas.squarespace.com/classic-las-vegas-blog/2011/8/12/weekend-updates.html>.

25. ROTHMAN, *NEON METROPOLIS*, *supra* note 10, at 25.

26. *Id.*

tainment options, shows, spas, retailing establishments, and gyms.²⁷ These resorts made Las Vegas the “most visited place on earth.”²⁸ In the 1990s alone, Las Vegas grew by 650,000 inhabitants, nearly doubling its population.²⁹ Henderson, a city adjacent to Las Vegas to the Southeast, surpassed the population of Reno in summer 1999 to become the second largest city in the state.³⁰ It appeared that the boom would never end.³¹ Within a year and a half of Goodman’s swearing in, however, the city hit an economic snag after the 9/11 attacks on the World Trade Center.³² Reports surfaced that the 9/11 terrorists had visited Las Vegas and had planned the World Trade attacks there.³³ These reports led to fear that Las Vegas, with its high profile “sin” atmosphere and airport adjacent to the Strip, would be a target for terrorist attacks. For the first time in many years, the number of tourists to Las Vegas declined.³⁴

Besides a fear of terrorist attacks, there were other threats to the Las Vegas economy: Indian gaming, an increase in legalized gambling in other states,³⁵ and the proliferation of online gambling.³⁶ Some doubted whether international tourists from the Middle and Far East who could go to new casinos in Dubai and Macau would continue to visit Nevada, especially given the new security restrictions on air travel. Travel from the Far East, in particular, declined drastically.³⁷

27. It was not only gambling, but also entertainment that the new megaresorts emphasized. *See id.* at 318.

28. *See id.* at xix.

29. *See id.* at 124.

30. *See* MOEHRING, *supra* note 2, at 279.

31. *See* ROTHMAN, NEON METROPOLIS, *supra* note 10, at 146 (explaining how Las Vegas enjoyed a growth of approximately 60,000 new residents a year for fifteen years, with Clark County opening a dozen new schools every year during this period).

32. *Id.* at 159-60.

33. *See* John Solomon, *Terrorism Threats: City Accused of Inaction*, LAS VEGAS REV.-J., Aug. 10, 2004, at 1A; Neal Horsley, *Leaving Las Vegas: How Las Vegas Fueled the 9/11 Terrorists*, CHRISTIAN GALLERY, (Sept. 9, 2004), <http://www.christiangallery.com/LeavingLasVegas.htm>; Christine Lagorio, *9/11's Las Vegas Connection*, CBS NEWS (Sept. 10, 2009, 1:34 PM), <http://www.cbsnews.com/stories/2006/09/10/eveningnews/main1992178.shtml>.

34. GEOFF SCHUMACHER, SUN, SIN & SUBURBIA: AN ESSENTIAL HISTORY OF MODERN LAS VEGAS 75, 83-84 (2004); Benjamin Spillman, *Visitor Talley Continues to Slide*, LAS VEGAS REV.-J., Dec. 11, 2008, at 1D; Mary Williams Walsh, *Urban Pain, From Sea to Sea*, N.Y. TIMES, Sept. 30, 2001, at A1.

35. ROTHMAN, NEON METROPOLIS, *supra* note 10, at 160. Rothman notes, however, that Indian gaming and its state counterparts actually may have contributed initially to growth in Las Vegas. *Id.* at 150. Nonetheless, as Indian gaming and other gaming permitted in states other than Nevada began to match the amenities offered in Las Vegas, they have become more competitive with Las Vegas. *Id.*

36. *See id.* at 34, 250-51; Liz Benston, *Legal Internet Gambling May Help Big Casino Firms, Hurt Small Ones*, LAS VEGAS SUN, Sept. 6, 2010, at A1.

37. Hubble Smith, *Casinos, Retailers Anticipate Comeback in Asian Tourism*, LAS VEGAS REV.-J., Feb. 7, 2002, available at http://www.reviewjournal.com/lvrj_home/2002/Feb-07-Thu-2002/business/18043835.html (last visited Apr. 22, 2012).

All of these concerns led to new strategies for attracting a younger customer base, particularly customers from California who would not have to fly to come to Las Vegas. If it was going to compete with Hollywood, Las Vegas had to become a hipper community, a town that was younger, sexier, and more attractive to VIPs like Tiger Woods, Paris Hilton, and George Clooney.³⁸ Years later, by 2008, when the deep economic recession hit Las Vegas hard, the city would continue to emphasize its sexual, partying “sin” side, but the groundwork solidifying this reputation had already been laid in the late 1990s and the early to mid- 2000s.

However, there is one problem that Las Vegas faces as a result of emphasizing sexuality. To achieve maximum effect and profit, Las Vegas must walk the fine line between a bit naughty and downright raunchy. While Las Vegas casinos may go up to the line, they cannot step over it; they cannot tolerate illegal behaviors that would harm the reputation of Las Vegas casinos or of those located elsewhere in the State. To be profitable, Las Vegas must be considered a safe place for visitors of all ages. The State takes this goal very seriously. The gaming industry is subject to extensive regulation over licensure of gaming.³⁹ Those properties with unrestricted gaming licenses—the resorts and casinos—must comply with the rigid regulations that emphasize the importance of Nevada’s image with the public. The regulations govern who can get a gaming license, how the licensee may operate, and the types of advertising in which the licensee may engage. Although in another context these regulations might be challenged as unconstitutional and unduly restrictive, Nevada gaming establishments seem to recognize the importance of these regulations. The extensive regulation grew from the presence in Las Vegas’ history of organized crime in ownership of the casino businesses.⁴⁰ Las Vegas is very proud today that the

38. Melissa Arseniuk, *Gwen Stefani, George Clooney and Diddy Among Stars in Town*, LAS VEGAS SUN (May 18, 2009, 6:46 AM), <http://www.lasvegassun.com/news/2009/may/18/gwen-stefani-george-clooney-and-diddy-among-stars-/>; Sheila Marikar, *Behind the Velvet Ropes: What Really Happened When Tiger Woods Hit Vegas Clubs*, ABC NEWS/ENTERTAINMENT (Dec. 14, 2009), <http://abcnews.go.com/Entertainment/tiger-woods-parties-las-vegas-clubs/story?id=9327894>; *Paris Hilton Parties in Las Vegas*, USMAGAZINE.COM (June 9, 2010, 4:01 PM), <http://www.usmagazine.com/celebritynews/news/vip-scene-paris-hilton-201096>; Charisse Van Horn, *Paris Hilton Takes Over Las Vegas in 'The World According to Paris'*, THE TV KING (June 13, 2011), <http://www.thetvking.com/news/213/paris-hilton-takes-over-las-vegas-in-the-world-according-to-paris-video/>.

39. LIONEL SAWYER & COLLINS, NEVADA GAMING LAW 29 (3d ed. 2000).

40. Hal Rothman explains that the mob was “ubiquitous” from the 1950s to the 1970s in Las Vegas, as “[m]ost hotels and consequently most of the jobs created in the town, were mobbed up.” ROTHMAN, NEON METROPOLIS, *supra* note 10, at 130. It was not only the regulation, however, that ousted the mob as owner of casinos in Las Vegas. Howard Hughes settled in Las Vegas in 1966. “The most successful legitimate businessman in the world,” Hughes began to buy casinos—from the Desert Inn to the Silver Slipper. His involvement in the casino industry did much to legitimize casinos. HAL K. ROTHMAN, THE MAKING OF MODERN NEVADA 125-30 (2010) [hereinafter ROTHMAN, MODERN NEVADA]. In 1967, Nevada amended the Corporate Gaming Act, which eased some of the earlier regulations and no longer required that each stockholder of a corporation owning a casino pass a Gaming Con-

mob no longer owns and runs the casinos. This change in ownership resulted in large part from the Corporate Gaming Act, which opened the door to hotel and casino ownership by legitimate corporations.⁴¹ Despite the move to corporate ownership and the new owners' acknowledgment of the significance attached to gaming regulations, Las Vegas seems to close its eyes to the potential problems that the increased sexualization, especially in the nightclubs, pools and ultra lounges, may bring.

For the regulations to be effective, enforcement must be swift and effective. To accomplish this there is a two-tiered regulatory system that governs gaming establishments. One tier consists of the Gaming Control Board, which is a full-time state agency that serves a number of roles.⁴² The Board has three members and a large contingent of full-time employees. It serves as investigator, tax collector, and prosecutor. It is responsible for investigating the qualifications of applicants for gaming licenses and for recommending either the approval or disapproval of the license.⁴³ Once there is a license, the Board investigates licensees for alleged violations and, in the event that the investigation reveals violations, the Board prosecutes complaints against licensees who violate gaming regulation by filing a complaint against the licensee.⁴⁴ The second tier of the regulatory system involves the Nevada Gaming Commission. The Gaming Commission is a part-time agency that has the ultimate power of granting or denying licenses; it also plays the role of judge and jury in disciplinary actions brought against licensees by the Gaming Control Board.⁴⁵ The Gaming Commission also has rulemaking authority.⁴⁶

trol Board investigation. This opened the door to ownership of the casinos by legitimate corporations. *Id.* at 128. Soon thereafter, Kirk Kekorian moved to Las Vegas and began to develop casinos. He bought the Flamingo and because of his success there and his reputation as a legitimate businessman with no mob ties, the Securities and Exchange Commission permitted him to make a public offering of seventeen percent of his company's stock. The public ownership of Kerkorian's company represented a "dramatic shift." *Id.* at 131. Before this, capital markets had not funded casino ownership, leaving a gap for illegal money to predominate in the funding of Nevada casinos. *Id.* Opening the casinos to public funding ushered in a new era of ownership. Major hotel and resort companies, such as the Hilton, moved in and eventually displaced the mob ownership. *Id.* at 131-32, 135-36. After the Hilton, other major hotel chains such as the Ramada and the Holiday Inn soon opened. These openings were responsible for huge changes in Las Vegas. By the end of the 1970s, the payroll of the Las Vegas Hilton alone represented \$35 million. *Id.* at 132. In the mid-1970s, Las Vegas' legitimacy was aided by the decision for Atlantic City to permit gambling. *Id.* at 139. In Nevada, the State Gaming Commission became much stricter in its role as gatekeeper, denying gaming licenses that it would have previously granted. *Id.* at 138-39.

41. See *supra* note 40 and accompanying text.

42. LIONEL SAWYER & COLLINS, *supra* note 39, at 29.

43. *Id.* at 29-35.

44. *Id.*

45. *Id.* at 30, 35-37.

46. *Id.* at 30. There is other regulation governing gaming licenses. Local governments—municipalities and counties—have regulatory authority over gaming. They may restrict gaming licenses, for example, beyond the restrictions under state law. *Id.* at 39.

Under Mayor Goodman's authority, as the Chair of the Las Vegas Convention and Visitors' Authority (LVCVA),⁴⁷ a quasi-governmental body that is responsible for promoting the city, Las Vegas established the motto, "What happens here, stays here" (or, as stated by those outside of Las Vegas, "What happens in Vegas, stays in Vegas"). In direct contrast to the family orientation previously advertised, this campaign boldly markets the "sin" part of "Sin City." And that marketing has been very successful.⁴⁸

It is not merely marketing, however. The city has turned up the heat.⁴⁹ While Las Vegas has long been known for pretty cocktail waitresses and show-girls, casino owners realized about a decade or more ago that they needed to attract a younger clientele. Beginning with the Hard Rock Resort and Casino and The Palms, casinos began to emphasize not only gaming but also partying—the fun aspect of Las Vegas—with a strong focus on women and sexuality (both customers' and employees').⁵⁰ Over the past decade, cocktail servers' costumes have become skimpier and sexier.

But it is not only the cocktail servers who are hyper-sexualized. In some of the casinos, the female blackjack dealers wear tight, revealing costumes.⁵¹ In other casinos, even if the ordinary blackjack dealers wear unisex costumes with dark long-sleeved shirts and slacks, some of the special pits have highly sexualized "pussycat" female dealers who wear very scanty bathing suit or lingerie-like uniforms that expose much of the breasts and buttocks.⁵² There is no male counterpart to any of the women who are scantily dressed on the casino floor. The only men who are at all exposed are the performers in the male revues who go shirtless and only occasionally walk through the casino.⁵³

The casino floor is just the tip of the iceberg when it comes to sexuality in the casinos.⁵⁴ In an effort to attract a younger, hipper crowd, the casinos have

47. *Mayor Carolyn G. Goodman Biography*, CITY OF LAS VEGAS (July 29, 2011), <http://www.lasvegasnevada.gov/Government/14959.htm>.

48. See Doug Elfman, *Ads Want to Make Sure "It" Stays in Las Vegas*, LAS VEGAS REV.-J., Aug. 16, 2011, at 3A (noting that Forbes has rated it the most effective tourism campaign in the past two generations); Benjamin Spillman, *LVCVA: What Works Here, Stays Here*, LAS VEGAS REV.-J., Apr. 15, 2009, at 1D (noting that, as of 2007, the campaign had made Las Vegas the second most recognized symbol, surpassed only by "Google").

49. See Lee, *supra* note 3.

50. See McGinley, *Hard Rock*, *supra* note 6, at 1231-32.

51. See *id.* at 1239.

52. See Gould, *supra* note 8.

53. The most notorious are the Chippendales, who perform at one of the casinos on the Las Vegas Strip. Others performing on the Strip include the Thunder from Down Under and the Men of X.

54. I am limiting the discussion here to sexualized experiences in the casinos themselves. Of course, there are other hyper-sexualized environments featuring women entertainers in Las Vegas and other parts of Nevada. Gentlemen's clubs exist primarily off of the Las Vegas Strip, where women strip and perform lap dances for their mostly male clients. Trucks drive up and down the Strip advertising "Girls to your room," indicating that they are selling prostitution services. Similar advertisements appear in the local phone books. This is curious

opened pools, “ultra lounges,” and nightclubs. Previously, casino owners eschewed any changes that drew customers away from the casino floor, distracting them from gambling. Revenue streams have changed significantly for the casinos, however, and where gambling used to represent the vast majority of casino profits, hotel room and other entertainment costs, including restaurants, shows, clubs, and lounges, now bring in a large portion of casino profits.⁵⁵

Pool clubs are “day clubs” that feature a hip atmosphere with music, food, and bikini-clad women servers. Many offer cabanas and separate spaces or beaches for European style bathing (topless) and some convert from day clubs to night lounges under the stars in the evening. In the large nightclubs located inside the casinos, women servers and patrons attract male patrons who pay exorbitant fees for the privilege of admission, tables, and bottle service. Nubile young women who work as bartenders and cocktail servers in the clubs and the scantily dressed young women patrons who are often admitted free of charge provide the entertainment. Ultra lounges are smaller than nightclubs; they are bars with lounges featuring a club-like atmosphere that includes music, drinking, and dancing, but are generally more intimate.⁵⁶ While the nightclubs and pool clubs are located inside the casinos, many are owned and operated by separate management companies that lease space from the casinos. Although many have argued in the past that the purpose behind having a separate corporation own the casinos is to shield the casinos from liability, the Nevada Gaming Control Board sees the arrangement differently.

II. TROUBLE IN PARADISE: UPSETTING THE BALANCE

A. *Injuries to Customers*

The pools and nightclubs have created serious trouble for the casinos that house them.⁵⁷ Undercover investigators of the Gaming Control Board and other state and local entities claim to have documented sex (both consensual and coerced), illegal drug traffic, prostitution, public nudity, extreme drunkenness,

because prostitution is illegal in Las Vegas and all of Clark County. It is legal, however, in highly regulated brothels in a number of other counties in Nevada. The closest legal brothel is in Pahrump, about a forty-five-minute drive from Las Vegas. For a discussion of the workers’ rights in these other environments see generally McGinley, *Harassment of Sex(y) Workers*, *supra* note 6.

55. Liz Benston, *Nongaming Revenue a Shaky Leg for Strip to Stand On*, LAS VEGAS SUN (Jan. 4, 2011, 2:00 AM), <http://www.lasvegassun.com/news/2011/jan/04/nongaming-revenue-shaky-leg-strip-stand/>.

56. *See, e.g., Tao Las Vegas*, CLUBPLANET <http://www.clubplanet.com/Venues/130688/Las-Vegas/Tao-Las-Vegas> (last visited Aug. 25, 2011) (describing Tao’s nightclub and ultra lounge in The Venetian).

57. Mike Weatherford, *Dance Club Regrets*, LAS VEGAS REV.-J., Oct. 1, 2000, at 1B.

abandonment of drunken individuals in the casinos, and overdoses of both the date rape drug and Ecstasy in these clubs.⁵⁸ Much of this behavior, according to the reports, occurred with the knowledge and encouragement of club employees. One of the earliest clubs of this type was C2K, opened in 1999 in The Venetian, an upscale hotel and casino. In early July 2000, a Las Vegas metropolitan police investigation revealed heavy drug use within the club, and paramedics had to rescue at least two club goers from overdoses on July 2, 2000.⁵⁹ Only days later, a twenty-one-year-old woman died as a result of consuming Ecstasy either at the club or before entering the club.⁶⁰ Her parents sued The Venetian, the club owner, and various other individuals in relation to her death.⁶¹ The lawsuit alleged that she became sick at C2K and that the club did nothing to help her. The suit alleged that her boyfriend at the time and another young man took her to one of their homes and left her there to die.⁶² The parties eventually reached a confidential settlement.⁶³ In response to information that the owner of C2K had a relationship with a notorious Arizona drug dealer who was connected to a mob leader, The Venetian closed down the club.⁶⁴ The club owners sued The Venetian and, in a settlement, The Venetian agreed to pay the club owners if the operators agreed that they would not return to manage the club if it ever reopened.⁶⁵ The Venetian was clearly concerned about its reputation given the behavior that had occurred at C2K and the allegations against its owners and operators.

More recently, on February 7, 2006, because of concerns regarding illegal behavior occurring in the nightclubs, the Nevada Gaming Control Board sent a notice to all hotel resorts and casinos that have unrestricted gaming licenses. The memorandum noted that the hotels would be held responsible by the Gaming Control Board for behavior occurring in nightclubs located in the casinos, regardless of the ownership or leasing relationships between the casinos and the

58. Jane Ann Morrison, *Lumped Together, Problems Associated with Nightclubs Seem Pretty Ugly*, LAS VEGAS REV.-J., Apr. 25, 2009, at 1B; Jane Ann Morrison, *Resorts Suddenly Find that Benign Neglect Affects Their Bottom Lines*, LAS VEGAS REV.-J., July 18, 2009, at 1B.

59. Jeff Simpson, *Officer: Ecstasy Use at C2K Was Rampant*, LAS VEGAS REV.-J., Sept. 16, 2000, at 1B.

60. Joelle Babula, *Ecstasy Blamed for Death*, LAS VEGAS REV.-J., Aug. 31, 2000, at 1B.

61. Ryan Oliver, *Lawsuit Filed in Ecstasy Overdose Death*, LAS VEGAS REV.-J., Nov. 16, 2000, at 1B; John L. Smith, *Ecstasy Lawsuit Could Visit New Concerns Upon Casinos*, LAS VEGAS REV.-J., Aug. 15, 2001, at 1B.

62. Glenn Puit, *Attorney Finds New Witness in Ecstasy Overdose Lawsuit*, LAS VEGAS REV.-J., May 15, 2002, at 1B; Glenn Puit, *Secret Settlement Reached in Fatal Ecstasy Overdose*, LAS VEGAS REV.-J., Feb. 13, 2003, at 1B [hereinafter Puit, *Secret Settlement*].

63. See Puit, *Secret Settlement*, *supra* note 62.

64. Peter O'Connell, *Club C2K Sues to Block Closing*, LAS VEGAS REV.-J., Sept. 1, 2000, at 1B.

65. Jeff Simpson, *Settlement to Forbid C2K Nightclub Operators' Return*, LAS VEGAS REV.-J., Sept. 22, 2000, at 1B.

clubs.⁶⁶ An additional notice signed by member Randall Sayre of the Nevada Gaming Control Board, dated April 9, 2009, dealt with nightclubs, ultra lounges, European pools, and similar venues. The notice warned that the Gaming Control Board would hold the casino with the gaming license responsible for behavior occurring in the clubs, lounges or pools operating on casino property, regardless of the legal relationship between the casino and the operator of the club, pool or ultra lounge. The notice stated that the following had occurred:

[E]xcessive inebriation; drug distribution and abuse; violence; overt sexual acts in public areas; acts deemed lewd, indecent or obscene; presence of minors; mishandling of incapacitated individuals (“dumping”); date rape, extortion/misquoting of service charges; restricted access by law enforcement; lack of coordination with licensee security; and prostitution.

The notice concluded:

No matter what the ownership and operational circumstances are, business and criminal conduct as described above reflect poorly on Nevada gaming licensees and the State in general. In conclusion, indifference to illegal acts or unsuitable business practices within your properties’ nightclubs or similar establishments will not be tolerated and may be considered an unsuitable method of operation. Please be proactive and take the appropriate steps to ensure the well being of your patrons, avoid damaging the reputation of the State and its gaming industry and steer clear of potential disciplinary measures.⁶⁷

After the notice, the Gaming Control Board filed complaints against a number of casinos for behavior in clubs on casino property. A complaint filed with the Nevada Gaming Commission against Planet Hollywood alleged illegal behavior occurring at Privé Nightclub in Planet Hollywood. The complaint alleged that: 1) drunk customers of Privé were “dumped” into the casino; 2) patrons were excessively inebriated, and many went to the hospital for overconsumption; 3) patrons used controlled substances; 4) Privé employees assaulted patrons both physically and sexually; 5) patrons assaulted other patrons; 6) topless and lewd activities occurred; 7) Privé admitted and served alcohol to minors; and 8) there was a sharp increase in calls to emergency medical services since Privé opened. The complaint also alleged that Planet Hollywood knew or should have known about the behavior and failed to control it, and that Planet Hollywood failed to make itself aware of the criminal records of Privé employees and to investigate whether they were suitable in a gaming establishment.

66. Memorandum from the Nev. Gaming Control Bd. to All Nonrestricted Licensees and Interested Persons Regarding Nightclub Activities and Entertainment Selection (Feb. 7, 2006), available at http://gaming.nv.gov/industry_ltrs/industry_ltr_109.pdf.

67. Industry Letter from the Nev. Gaming Control Bd. to All Nonrestricted Licensees and Interested Parties Regarding Nightclubs, Ultra Lounges, European Pools and Similar Venues (Apr. 9, 2009), available at http://gaming.nv.gov/industry_ltrs/industry_ltr_208.pdf.

The complaint resulted in a potential \$750,000 fine against the casino.⁶⁸ The Gaming Control Board also joined with local law enforcement officers who arrested six employees at Planet Hollywood for illegal behavior.⁶⁹ Casino representatives announced that they worked with the local police to aid in investigations that led to the arrests of employees and the expulsion of more than a thousand patrons over a few months' period. These investigations, according to the resort, were designed to protect the safety of the casino's customers.⁷⁰ Furthermore, Clark County rescinded the liquor license at Privé and it closed temporarily.⁷¹

In July 2009, Las Vegas police arrested ten persons, one man and nine women, for prostitution at the Sapphire Pool at the Rio Resort and Casino.⁷² The Sapphire Pool was a "European" style pool (topless); the casino had invited the local Strip Club, Sapphire, to send strippers over to the pool.⁷³ When Harrah's, which owns the Rio, became aware that there might have been problems with the pool, it asked the police for an "integrity check" to assure that there was no illegal activity occurring at the pool.⁷⁴ As a result of the investigation and arrests, the Rio closed its Sapphire Pool.⁷⁵ Soon thereafter, Las Vegas police arrested eight persons at the Rehab Pool at the Hard Rock Resort & Casino for illegal drugs and prostitution.⁷⁶

Subsequently, Gaming Control Board member Randall Sayre held training sessions for Las Vegas casinos and their lawyers, giving them tips about how to avoid a complaint from the Gaming Control Board.⁷⁷ He made it clear that the

68. Stipulation and Order, State Gaming Control Bd. v. Opbiz, LLC, No. NGC 08-18 (Nev. Gaming Comm'n July 23, 2009), available at http://gaming.nv.gov/documents/pdf/complaint_0818_stip.pdf; Complaint, State Gaming Control Bd. v. Opbiz, LLC, No. NGC 08-18 (Nev. Gaming Comm'n July 9, 2009), available at http://gaming.nv.gov/documents/pdf/complaint_0818.pdf. The casino agreed to pay \$500,000 up front and an additional \$250,000 if the illegal behaviors were not remedied.

69. Arnold M. Knightly, *Busts Called Part of Safety Push*, LAS VEGAS REV.-J., Sept. 29, 2009, at 1D.

70. *Id.*

71. Jane Ann Morrison, *\$500,000 Fines Make Bigger Impressions on Casinos than Polite Letters*, LAS VEGAS REV.-J., July 30, 2009, at 1B. The Privé Nightclub eventually closed as a result of financial difficulties stemming from the fines levied for violations. The Planet Hollywood website does not mention Privé. See *FAME After Dark*, PLANET HOLLYWOOD RESORT & CASINO, <http://www.planethollywoodresort.com/casinos/planet-hollywood/casino-misc/nightlife-detail.html> (last visited Aug. 11, 2011).

72. Lawrence Mower, *Police Arrest Eight at Casino Pool*, LAS VEGAS REV.-J., Sept. 9, 2009, at 3B.

73. Richard Abowitz, *Rio Kicks the Strippers Out of the Pool*, L.A. TIMES: THE MOVABLE BUFFET (July 29, 2009, 8:43 AM), <http://vegasblog.latimes.com/vegas/2009/07/rio-kicks-the-strippers-out-of-the-pool.html>.

74. *Id.*

75. *Id.*

76. Mower, *supra* note 72.

77. Arnold M. Knightly, *Gaming Board Official Offers 'Preventive' Tips*, LAS VEGAS REV.-J., Sept. 17, 2009, at 1D.

Gaming Control Board would pursue the licensee (the casino) for unseemly behaviors occurring in the nightclubs or at the pools.⁷⁸ He noted that only the Clark County Business License Department has the power to rescind a club's liquor license. However, the Gaming Control Board, he noted, controls the gaming license of the host casino. He explained that his purpose is consistent with the goal underlying Nevada Gaming Regulations: to protect and preserve Nevada's reputation.⁷⁹

Recently, the Gaming Control Board conducted an investigation of the Hard Rock Hotel's nightclubs in conjunction with Las Vegas Metropolitan Police Department. The Gaming Control Board filed a complaint in 2010 against the Hard Rock for behavior occurring in its nightclubs, Body English and Vanity.⁸⁰ The behavior alleged included: 1) involvement of Hard Rock employees or agents in sale of controlled substances to narcotics police and Board investigators; and 2) the provision of private restrooms by agents or employees of the Hard Rock so that the users may engage in the use of controlled substances and/or engage in sexual activities. That complaint settled for a fine of \$500,000, plus \$75,000 to the Las Vegas Metropolitan Police Department to reimburse the Department for the cost of the investigation.⁸¹

B. *Injuries to Employees*

A number of lawsuits have alleged injuries to female employees working at nightclubs or at companies managing nightclubs in the casinos. In December 2010, Leslie Culler, a former employee of N-M Ventures LLC, sued her employer and a number of other related management corporations and individuals affiliated with these corporations for sexual harassment, gender discrimination, assault, and battery.⁸² The complaint alleges that the defendants "are one and

78. *Id.*

79. *Id.*

80. Stipulation and Order, State Gaming Control Bd. v. HRHH Gaming, LLC, No. NGC 10-09 (Nev. Gaming Comm'n Jan. 27, 2011), available at http://gaming.nv.gov/documents/pdf/complaint_1009_stip.pdf; Complaint, State Gaming Control Bd. v. HRHH Gaming, LLC, No. NGC 10-09 (Nev. Gaming Comm'n Dec. 29, 2010), available at http://gaming.nv.gov/documents/pdf/complaint_1009.pdf; Steve Green & Cy Ryan, *Hard Rock Hotel to Pay \$650,000 in Settlement over Drugs*, LAS VEGAS SUN (Dec. 30, 2010, 11:47 AM), <http://www.lasvegassun.com/news/2010/dec/30/hard-rock-hotel-hit-500000-fine-over-drugs/>.

81. Stipulation and Order, *HRHH Gaming*, *supra* note 80. The Hard Rock has had myriad regulatory problems. In 2002, it was fined \$100,000 by the Gaming Commission for alleged sex acts occurring in its nightclub, Baby's. Jeff Simpson, *Casino Facing Fine of \$100,000*, LAS VEGAS REV.-J., July 19, 2002, at 1D. In 2004, it was fined for inappropriate advertising. See Benston, *supra* note 55.

82. The description that follows in the text comes from allegations in the complaint. Complaint and Jury Demand, Culler v. N-M Ventures LLC, No. 10-cv-02158 (D. Nev. Dec. 13, 2010).

the same to a sufficient degree to allow the corporate fiction to be set aside.”⁸³ The complaint groups the organizations together, referring to them as the “Nine Group Entities.” These entities own and operate nightclubs in the Palms.⁸⁴ The complaint also names as defendants a number of individual managers and corporate officers. The complaint alleges that over an eight-year period as a graphic designer for the defendants, the plaintiff was sexually harassed over two hundred times. It also alleges that she was fired because of her failure to accede to sexual harassment, because she had gotten married and was trying to get pregnant, and, finally, because she wore clothing that was too conservative. The harassing behavior alleged in the complaint includes, but is not limited to, the following:

Plaintiff was repeatedly the object of unwelcome sexually harassing remarks, groping, and spanking by fellow employees and supervisors; One defendant told the plaintiff that she should play tennis with him and she should wear a skirt and no panties; The same defendant touched plaintiff’s breasts in the Ghost Bar, and told her that he would like to snort cocaine off of her naked breasts; Another defendant twice grabbed the plaintiff and told her he would like to know what it would be like to “fuck her.” At an office Christmas party, he grabbed the plaintiff and bent her over the side of the sofa and spanked her so hard that she had welts on her buttocks. On another occasion, in the casino, a friend of this defendant held plaintiff’s wrists behind her back while the defendant grabbed her breasts. On another occasion, in the N9NE Steak House, this defendant forced plaintiff to sit on his lap; A third defendant on many occasions offered plaintiff money, alone and in front of other employees, to pull down her pants and to spread the cheeks of her buttocks (she did not comply); Plaintiff’s supervisor threw water on plaintiff’s blouse so that he could see her nipples through her shirt.⁸⁵

The case settled on February 24, 2011.⁸⁶ Because the settlement is confidential, it is not possible to verify all of the allegations in the complaint. Nonetheless, even if some of these allegations are true, the plaintiff would likely have a good sexual harassment case against the defendants. She alleged that she let the defendants know that the behavior was unwelcome, that it was severe and/or pervasive, and that the behavior occurred because of her sex or gender. Such allegations, if proven, would be sufficient for employer liability.

83. *Id.*

84. Steve Green, *Palms, N9NE Group Investors Seek Ouster of Restaurant, Club Manager*, LAS VEGAS SUN (Oct. 22, 2010, 2:05 AM), <http://www.lasvegassun.com/news/2010/oct/22/palms-n9ne-group/>.

85. Stipulation and Order for Dismissal, *Culler v. N-M Ventures LLC*, No. 10-cv-02158 (D. Nev. April 21, 2011).

86. Minute Order, *Culler v. N-M Ventures LLC*, No. 10-cv-02158 (D. Nev. Feb. 24, 2011) (stating that the parties had met and settled the case and ordering the parties to submit a stipulation of settlement order for the judge to sign).

Also in February 2011, another lawsuit was filed alleging similar or more egregious behavior by nightclub management employees. This time, the defendant was The Light Group, which owns, operates, and manages eight casino nightclubs in Las Vegas, as well as a number of restaurants, and its employees. The suit, *Jane Doe v. Light Group*,⁸⁷ which was filed anonymously by the plaintiff, alleges that at the age of nineteen, the plaintiff began working at the Fix Restaurant at the Bellagio Hotel and Casino, which the defendant managed.⁸⁸ The suit alleged that the defendants groomed the plaintiff to work in a nightclub, encouraging her to dress more provocatively and to lose weight. The defendants also took her to various nightclubs and served her alcohol illegally. Defendants told the plaintiff that they wanted to hire her as a hostess in one of the nightclubs they managed when she turned twenty-one. Between May 2008 and July 2009 plaintiff worked for Bare and Jet nightclubs. She was promoted to the position of VIP cocktail server at Jet Nightclub.

The complaint alleges egregious behavior by the plaintiff's employers. According to the complaint, during the course of her employment, the defendants inappropriately grabbed plaintiff's breasts and slapped her buttocks, grabbed and touched her waist, made lascivious remarks regarding her and her coworkers, forced the plaintiff to sit on the laps of VIP guests, to kiss and touch them in an inappropriate manner, and to allow herself to be touched. The defendants encouraged the plaintiff to drink excessive amounts of alcohol and provided her with cocaine so that she could mingle with the guests. The plaintiff was never drug tested, allegedly because the defendants knew that they had given her cocaine to ingest. Moreover, the defendants trained her in The Light Group "marketing program," in which they taught her provocative techniques to encourage patrons at the nightclub to drink, take drugs, and engage in sexual contact with the plaintiff and her female coworkers. Management encouraged the plaintiff and other female hostesses to spend time with the VIP guests, especially hotel guests, Hollywood celebrities, and sports figures. She was expected to "date" the VIPs. The dates included drinking, drugs, unwanted sexual conduct, and "hanging out" at the club and outside on the girls' days off.

The complaint also alleged that the Customer Development Manager asked the plaintiff to go with him to Los Angeles to meet with the Arab Light Group VIP patrons. The plaintiff was told that the trip was a test to see if she would sleep with the customer. If so, she would be a "Company Girl," and would be eligible for preferable treatment at work. The plaintiff alleged that she was afraid to complain about the "marketing techniques" because management had treated poorly other hostesses who complained. Moreover, the defendants told her repeatedly that there were fifty other girls waiting for her job and that she was expendable. Plaintiff also alleges that she observed a coworker who went

87. The following description comes from the Second Amended Complaint, *Doe v. Light Group, LLC*, No. 11-cv-00286 (D. Nev. Mar. 29, 2011).

88. The following are facts alleged in the complaint, not proven.

through similar degrading treatment, and that plaintiff believes that defendants' abusive treatment caused her coworker's overdose and death in May 2009. Plaintiff alleges that after her coworker's death, the plaintiff asked for help with her alcohol and drug dependency but her employer ignored her request. Instead, on July 21, 2009, the plaintiff had a drug and alcohol overdose at work. Rather than calling an ambulance, her supervisors put her in a taxi. She was found face down in a park, unconscious, three hours later. The complaint was filed in February 2011⁸⁹ and the parties filed a stipulation and order for dismissal at the end of March 2011. The court granted the order of dismissal on May 4, 2011.⁹⁰ The case was settled confidentially.⁹¹

III. EMPLOYMENT ISSUES: DISCRIMINATION AGAINST FEMALE (AND MALE) EMPLOYEES

In an environment that emphasizes sexuality and fun partying—which often includes excessive alcohol and illegal drugs—it is not surprising that patrons and other employees tend to believe that the women who work in the casinos are available for the male patrons' and employees' sexual pleasures. First of all, customers tend not to understand that women who work in the industry do so because casino jobs afford them significant income in tips. Customer attitudes that female employees are available to them sexually result from a number of variables, including marketing, costuming of women employees on the casino floor, the ability of male customers to sexually harass women employees without retribution,⁹² and the free reign of VIPs and other customers in the nightclubs.⁹³

These factors, combined with the encouragement by casino and/or club managers of many of these behaviors, place female employees in peril at work. We need to reconsider how the law and policy of Nevada, and of other markets

89. Complaint, *Doe v. Light Group, LLC*, No. 11-cv-00286 (D. Nev. Feb. 22, 2011).

90. Order Dismissing the Case with Prejudice, *Doe v. Light Group, LLC*, No. 11-cv-00286 (D. Nev. May 4, 2011); Stipulation and Order for Dismissal, *Doe v. Light Group, LLC*, No. 11-cv-00286 (D. Nev. March 30, 2011).

91. George Knapp, *I-Team: Nightclub Operator Lawsuit Focusing on Drugs and Sex Settled*, 8NEWSNOW.COM (May 17, 2011, 2:52 PM), <http://www.8newsnow.com/story/14664127/i-team>.

92. See McGinley, *Hard Rock*, *supra* note 6.

93. At Body English and Vanity Nightclubs at the Hard Rock, for example, the Gaming Control Board alleges that employees, including a security officer and hosts, arranged for undercover investigators to buy illegal drugs. The complaint also alleges that restrooms were reserved and locked for customers who wanted to engage in illicit sexual behavior and in drug-related behavior. While these are merely allegations, the parties entered into a settlement the very same day that the complaint was filed. Moreover, while the stipulation and order does not constitute an admission of the facts, the stipulation states that the Hard Rock "admits that the BOARD could meet its burden of proof if this matter were to proceed to an evidentiary hearing before the Nevada Gaming Commission." Complaint, *supra* note 80; Stipulation and Order, *supra* note 80, at 1.

that cater to sexy and fun entertainment, should protect not only the reputation of the industry and the safety of consumers, but also the security and well-being of employees who work in the industry. In fact, the safety and well-being of employees, both women and men, are crucial to the reputation and economic health of the state. Citizens of the state need to feel secure that their mothers, wives, and daughters will be treated in a dignified and respectful way when they are serving the state's interests by working in the industry.

Because the gaming and nightclub industries as configured in Las Vegas are particularly male-oriented, the state must make a greater effort to assure that the law and policy of the state protects female employees. Assumption of the risk is not a defense to Title VII sex discrimination or sexual harassment cases. Merely working in the casinos or nightclubs does not signify that women employees welcome sexual harassment, assault, battery, or lewd comments or behaviors.⁹⁴ A variety of federal, state, and county laws can accomplish the task of protecting women employees. This Part discusses the various problems of women working in the casinos and some of the legal issues these problems raise. Part V will then discuss the potential remedies to these problems.

A. *Cocktail Servers and Dealers: Sexy Costumes on the Casino Floor*

Potential sex discrimination lawsuits exist almost everywhere in the casinos. The casinos dress their cocktail servers and even some of their dealers in sexy costumes that stereotype women as sex objects. One problem with this increased sexualization in costuming and appearance requirements is that women cocktail servers tend to age, and to gain weight as they do, just like other employees. There are serious questions under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA) as to whether it is legal to limit hiring to younger women with a particular body type.⁹⁵ It is likely that requiring women to wear these costumes constitutes illegal sex discrimination after *Jespersen v. Harrah's Operating Co.*,⁹⁶ a Ninth Circuit case that states in dicta that it is sex discrimination under Title VII to require women to adhere to dress and appearance codes that either impose an unequal burden on women or that impermissibly sex-stereotype women.⁹⁷ The *Jespersen* court gives examples of the type of sexual stereotyping that could support a cause of action under Title VII: it focuses on appearance policies that unduly sexualize the claimant and, as a result, either subject employees to higher risk of sexual harassment or lead to unequal treatment of employees based on sex.⁹⁸ There is

94. See McGinley, *Harassment of Sex(y) Workers*, *supra* note 6.

95. See *Gerdom v. Cont'l Airlines, Inc.*, 692 F.2d 602 (9th Cir. 1982); McGinley, *Babes and Beefcake*, *supra* note 6.

96. 444 F.3d 1104 (9th Cir. 2006) (en banc).

97. *Id.* at 1112.

98. See McGinley, *Babes and Beefcake*, *supra* note 6, at 270-82 (concluding that hiring exclusively women cocktail servers and dressing them in sexually explicit costumes likely

no question that the cocktail server costumes worn on the casino floors are designed to sex-stereotype women and that male employees with similar jobs are not sexualized in the same manner.

My research at the Hard Rock also demonstrates that the sexy costumes expose the women to sexual harassment, especially from customers.⁹⁹ The only defense to a lawsuit alleging that the dress code sexually stereotypes the women working in the casinos would be for the employer to prove that being a particular type of woman and wearing the sexy uniform is a bona fide occupational qualification (BFOQ) for the job. Because this is a very narrow defense, it is likely that the courts would conclude that casino employers cannot prevail using this defense.¹⁰⁰ As I have explained in *Babes and Beefcake: Exclusive Hiring Arrangements and Sexy Dress Codes*,¹⁰¹ the BFOQ defense requires a showing that “sex or [the] sex-differentiated job qualification relates to the essence or the central mission of the employer’s business and is objectively and verifiably necessary to the employee’s performance of job tasks and responsibilities.”¹⁰² Kate Bartlett has interpreted this defense as applicable to jobs where sex is the commodity being sold.¹⁰³ For example, a club that sells itself as a strip club geared to heterosexual men will likely have a defense to a Title VII suit by a male dancer whom the club refuses to hire or to a female applicant who does not meet the norms associated with attractiveness in this type of business. But, the courts have made clear that using sex appeal to sell another commodity is insufficient to raise the defense.¹⁰⁴ Moreover, while the BFOQ defense may permit an employer to hire and/or dress women in a strip club in a particularly sexy way, it is never a defense to sexual harassment that occurs in those environments.¹⁰⁵ In essence, there is no assumption of the risk defense against a woman working in the sex industry. Of course, the woman has to prove that the behavior altered the terms or conditions of her working environ-

violates Title VII after *Jespersen*); see also, e.g., Jennifer C. Pizer, *Facial Discrimination: Darlene Jespersen’s Fight Against Barbie-fication of Bartenders*, 14 DUKE J. GENDER L. & POL’Y 285, 308-13 (2007) (stating that the majority presented an evidentiary roadmap for future challenges to gender-based dress codes and concluding that female cocktail servers may have a good cause of action for discrimination under Title VII after *Jespersen*). But see DEBORAH L. RHODE, *THE BEAUTY BIAS: THE INJUSTICE OF APPEARANCE IN LIFE AND LAW* 120-22 (2010) (focusing instead on the unequal burdens portion of the opinion rather than the sex stereotyping portion).

99. See McGinley, *Hard Rock*, *supra* note 6.

100. See, e.g., McGinley, *Babes and Beefcake*, *supra* note 6, at 279-80 (concluding that casino cocktail waitress uniforms would not meet required bona fide occupational qualification standards).

101. *Id.* at 265.

102. *Id.*

103. Katharine T. Bartlett, *Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality*, 92 MICH. L. REV. 2541 (1994).

104. *Wilson v. S.W. Airlines Co.*, 517 F. Supp. 292, 301 (N.D. Tex. 1981).

105. See McGinley, *Harassment of Sex(y) Workers*, *supra* note 6.

ment to prove that sexual harassment occurred;¹⁰⁶ therefore, behavior that constitutes sexual harassment in a strip club will differ from that in an office. The context matters.¹⁰⁷

The only other recognized BFOQ defenses have been ‘authenticity in a theatrical setting’ or privacy-related.¹⁰⁸ The Equal Employment Opportunity Commission sanctions hiring of a person of a particular sex in order to attain authenticity in a theatrical production.¹⁰⁹ Also, courts will ordinarily accept the defense when employers require bathroom attendants and home health care assistants to be of the same sex.¹¹⁰ It is possible to argue that the casinos create a “fantasy” world that is akin to a theatrical production. A number of years ago, the Playboy Club cases held that there was a BFOQ to hire only women as playboy bunnies and to require them to wear bunny costumes.¹¹² While these cases could be used to justify the casino cocktail servers’ uniforms, it is more likely that a court would not permit the BFOQ defense. On the casino floor, gambling is the main focus; the cocktail servers are there to serve drinks. They are not the main entertainment of the casino floor. Moreover, anyone, male or female, can serve drinks. It would be particularly hard for casinos to make the argument that the cocktail servers are adult entertainment because children are not banned from the casino floors (if they keep moving with their adult supervisors). Requiring these costumes not only discriminates against the women; it also discriminates against men who cannot compete for these positions.

Ironically, casino owners do not seem to be terribly concerned about the possibility of lawsuits resulting from the dress and appearance codes imposed on the cocktail servers. In a recent empirical study, Professors Tracey George, Mitu Gulati, and I found that employers had not responded to *Jespersen* by changing the casino costumes or by hiring more men to serve drinks.¹¹³ Even though casinos have not changed the dress codes of cocktail servers as a result of *Jespersen*, there seems not to have been a surge of cases alleging discrimination either based on the sexy dress codes or by men alleging that they were discriminatorily denied positions as cocktail servers. Professors George, Gulati, and I concluded that there were many local factors that accounted for this failure. Nonetheless, the possibility of lawsuits against the casinos challenging sexy dress codes looms. In Atlantic City, for example, cocktail servers have sued the casinos for imposing a sexier dress code on the servers, and then sub-

106. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 67 (1986).

107. See McGinley, *Harassment of Sex(y) Workers*, *supra* note 6.

108. See McGinley, *Babes and Beefcake*, *supra* note 6, at 266-70.

109. 29 C.F.R. § 1604.2(a)(2) (1972).

110. See, e.g., *Hernandez v. Univ. of St. Thomas*, 793 F. Supp. 214, 215 (D. Minn. 1992); *Norwood v. Dale Maint. System, Inc.*, 590 F. Supp. 1410 (N.D. Ill. 1984); *Spragg v. Shore Care*, 679 A.2d 685 (N.J. Super. Ct. App. Div. 1996).

112. See McGinley, *Babes and Beefcake*, *supra* note 6, at 270.

113. See Tracey E. George, et al., *The New Old Legal Realism*, 105 Nw. U. L. Rev. 689 (2011).

sequently firing those who in their view did not look attractive in the new costumes.¹¹⁴ This behavior by the casino may violate not only Title VII's prohibition against sex discrimination, but also the Age Discrimination in Employment Act's prohibition against age discrimination.¹¹⁵

B. *Sexual Harassment by Customers and Employees*

Even if the courts would uphold the sexy uniforms for women as BFOQs, casino employers would still be liable for unwelcome sexual harassment by customers, co-workers, or supervisors of women employees of which the casinos have notice or constructive notice. In *Harassing "Girls" at the Hard Rock*,¹¹⁶ I found that sexual harassment by customers was rampant. It is likely that similar behavior by customers exists in other casinos on the Strip. When illegal drugs, excessive amounts of alcohol, and sexy dressing combine, the chances are great that sexual harassment will occur. Because this is the environment, casino employers should be even more vigilant to assure that sexual harassment by customers or employees does not take place in the casino. Under Title VII law, an employer is liable for sexual harassment of its employees by customers that it knows about or should know about.¹¹⁷ The creation of a sexualized environment that focuses on the woman's body as the object of sexual desire through marketing and sexy costuming is sufficient to put a casino employer on notice that sexually harassing behavior will likely occur on the casino floor unless the employer makes significant efforts to prevent and/or correct the behavior. This notice, combined with the prevalence of security personnel and cameras, should make it relatively easy to detect and correct harassment.¹¹⁸ Moreover, because of the prevalence of security and cameras, it would be difficult for the employer to argue that it had no notice, actual or constructive, of harassment taking place.

114. Donald Wittowski, *Celebrity Attorney Gloria Allred Represents Resorts Cocktail Servers Who Lost Jobs in Flap Over Skimpy Costumes*, PRESSOFATLANTICCITY (June 1, 2011, 7:32 AM), http://www.pressofatlanticcity.com/communities/atlantic-city_pleasantville_brigantine/resorts-faces-discrimination-lawsuit-by-middle-aged-ex-cocktail-servers/article_6d11b766-8baf-11e0-844d-001cc4c002e0.html.

115. Moreover, as a practical matter, where a union is present, it is difficult to fire those cocktail servers who do not meet the new appearance standards. It is not unusual, however, to see the older (and some would say "less attractive") cocktail servers working in the less populated areas of the casinos. Where there is no union, hiring only nubile young women seems slightly easier. Casinos have engaged in strategies that they apparently believe permit them legally to hire younger, sexier cocktail servers. See George, et al., *supra* note 113, at 720, 723.

116. See McGinley, *Hard Rock*, *supra* note 6.

117. See *Burlington Indus. Inc. v. Ellerth*, 524 U.S. 742, 759 (1998) (noting that negligence sets a minimum liability for employer liability under Title VII); *Lockard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1067, 1072-75 (10th Cir. 1998) (upholding employer's liability for its negligence in not preventing or correcting harassment of an employee by a customer).

118. See McGinley, *Hard Rock*, *supra* note 6, at 1269-70.

An employer will be liable for sexual harassment if the behavior is unwelcome, severe, or pervasive and occurs because of the victim's sex.¹¹⁹ A woman working in the casino industry does not welcome a hostile working environment merely by working in the casino or wearing the sexy costume she is required to wear. Harassing behavior, if it is severe or pervasive and if the employer has constructive notice, will create liability on the employer's behalf.¹²⁰

C. *Nightclubs, Pools, and Ultra Lounges*

The lawsuits discussed in Part III above alleged egregious employment conditions, which, if proven, would create employer liability for sexual harassment and other potential causes of action. Although these two cases never reached a fact finder, but were settled confidentially and early, and we cannot assume that all of the allegations are true, many of the allegations, if true, would likely create liability for the defendant. First, the city of Las Vegas markets itself as "Sin City," a haven for those visitors who come to Las Vegas to indulge in sexual conduct, alcohol, and drugs. Second, casino employers dress their cocktail servers in increasingly skimpy costumes in order to attract visitors. Third, the environment of the town, including the casinos, the trucks that drive along Las Vegas Boulevard to advertise "girls to your room," and the nearby "Gentlemen's clubs" convey the marked impression that women are sexual objects to be purchased and/or enjoyed. Fourth, previous research into the Hard Rock revealed sexual harassment of female blackjack dealers that coincided with marketing of the casino as a place that attracts sexually active adults.¹²¹ Fifth, the Las Vegas police and Nevada Gaming Control Board who investigated European pools and nightclubs in the Strip casinos found prostitution, sex, both voluntary and coerced, and illegal drugs.¹²² They also reported excessive inebriation of guests, dumping of drunken guests into the casinos, and the serving of underage children in the clubs.¹²³ These conditions, and the behavior that the investigators alleged that they found in the pools and the nightclubs, give credence to the stories told by the women employees in the casinos. There appears to be no question that many of the behaviors alleged by the Gaming Control Board occurred and that, although the Board did not focus on the details of the treatment or behavior of the women employees, women likely played a key role in attracting male patrons, encouraging them to drink, and, perhaps, in encouraging them to engage in sexual or drug related behavior. Under Title VII, even if Jane Doe voluntarily engaged in the behavior she alleges, she may have been the victim of an illegal hostile working environ-

119. See *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75 (1998); *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).

120. See McGinley, *Harassment of Sex(y) Workers*, *supra* note 6.

121. *Id.* at 1240-48.

122. See *supra* Part III.A.

123. See *id.*

ment.¹²⁴ Even if she consented to the behavior, if the behavior was severe or pervasive because of her sex and unwelcome to her, an illegal hostile working environment existed.¹²⁵ Jane Doe's lawsuit alleged that the defendants encouraged her to engage in sexual conduct with customers and to encourage them to drink.¹²⁶ It also alleged that she was afraid to complain because engaging in such "marketing techniques" was a means to improve her job conditions.¹²⁷ She alleged that she had observed bad treatment of women who complained.¹²⁸ If true, these working conditions likely violated the sex discrimination provision of Title VII.

Leslie Culler was an art director, not a hostess, but according to her complaint, her supervisors subjected her to humiliating sex-based harassment repeatedly throughout her employment. The treatment she endured by her supervisors, if true, would most likely impose liability under Title VII on the defendant company that employed the harassers.

If the allegations are true,¹²⁹ both Jane Doe and Leslie Culler worked in environments that disrespected the dignity of women and viewed them as inferior to men and useful for one purpose: to increase the pleasure of male customers, employees, or supervisors. Title VII and tort law likely create a remedy for women who are harmed in these situations. Interestingly, though, both of these cases settled before they went to discovery. While this is good news for the plaintiffs, it is also potentially good for the defendants and possibly harmful for society and women workers: it shields defendants' actions from the light imposed by prodding inquiry and deprives the public of information that would have been important for the public to know. It is likely, but we do not know for sure, that the plaintiffs collected significant sums of money. And, if so, we hope that the lawsuits remedied the plaintiffs' injuries to the extent that is possible; we also hope that the suits will deter the defendants and other owners and operators of night clubs from engaging in sexually harassing behaviors in the future.

Given the extreme nature of the environments in which these women worked, however, there is a serious question as to whether the suits sufficiently will deter similar behavior in the future. After the Jane Doe complaint was filed, there were numerous blogs with comments on them about the lawsuit. These blogs and commentaries exhibited many misogynistic comments, basically assuming that Jane Doe assumed the risk of the behaviors she endured when she went to work for the defendants.¹³⁰ Clearly, these lawsuits are im-

124. See *Meritor Sav. Bank*, 477 U.S. at 68.

125. *Id.*; see also McGinley, *Harassment of Sex(y) Workers*, *supra* note 6.

126. See *supra* Part III.B.

127. See *id.*

128. See *id.*

129. I accept them for purposes of this argument.

130. See, e.g., Erin Hilburn, Comment to *Nevada Lawsuit Sheds Light on Inner Workings of VIP Nightclubs*, BROWARD/PALM BEACH NEW TIMES BLOG (Feb. 24, 2011, 4:01 PM),

portant, but in an industry that so openly markets and sells women's sexuality, there is a question whether Title VII is adequate to the task of protecting female employees. The next Part discusses this issue with reference to women working in sexy jobs in the casinos.

IV. PROTECTING SEXY WOMEN EMPLOYEES

The above discussion demonstrates that much behavior occurring on the casino floors and in pools and nightclubs in Las Vegas is probably illegal under Title VII. Questionable dress codes of cocktail servers and sexual harassment of women employees on the casino floor and in the night clubs all appear to violate Title VII's prohibitions against sex discrimination. Some of this behavior, such as assault and battery, may violate state criminal laws as well. The question is how best effectively to protect women workers while at the same time promoting their economic interests and those of the casino industry, a vital industry for the state of Nevada. A large percentage of people who live in Las Vegas and its surroundings work in the industry, and casino jobs often provide good tips and allow for a middle class lifestyle. For the industry and its workers to thrive it is necessary to attract visitors and good employees. The increased sexualization of the marketing and of the industry itself has resulted, it appears, in attracting visitors, but the state needs to assure that visitors and employees consider the Las Vegas Strip a safe place to visit and work. To the extent that Las Vegas becomes raunchy and out-of-control, many visitors may be unwilling to visit, and key employees may be unwilling to work on the Strip. To date, female workers have borne the brunt of the increasingly sexualized and raunchy atmosphere. The problem is not the sexualization per se, but the nearly exclusive marketing to heterosexual men, and the often out-of-control atmosphere in clubs, and, at times, on the casino floors. The message is that women exist to please the sexual needs of men and that Las Vegas will do nothing to protect female employees from men who sexually harass or overreach.

http://blogs.browardpalmbeach.com/cleanplatecharlie/2011/02/nevada_lawsuit_jet_nightclub_bare_light_group.php#Comments ("No one held a gun to her head and said 'Do the coke or I'll shoot.' Vegas is the nightlife capital of the world, if she was afraid of losing her job, there are plenty of other positions doing the same thing all over the city."); Insmot, Comment to *I-Team: Las Vegas Nightclub Lawsuit Focuses on Drugs and Sex*, 8NEWSNOW.COM (Feb. 23, 2011, 3:28 PM), <http://www.8newsnow.com/story/14087643/las-vegas-nightclub-lawsuit-focuses-on-drugs-and-sex> ("What is this world coming to that personal responsibility counts for nothing anymore? 'They supplied us with drugs . . .', 'steering female employees into having sex . . .' If these women were being drugged against their will and raped then sure, that's [sic] bad. But if you are being paid for a job and you let your employer talk you into having sex with a client, that makes you a prostitute, not a victim.").

A. *A New Marketing Strategy Geared to All*

How then, should Las Vegas support equality for women at the same time that it markets itself as Sin City? As a matter of policy, it appears that the “free” aspect of Las Vegas should also encompass marketing of male sexuality to both heterosexual women and to gay men. Perhaps, marketing of female sexuality could be addressed to lesbians as well. Making these changes would encourage the city to place less emphasis on women as sexual objects and more emphasis on the city as a place where adults can relax and enjoy themselves, whatever their sexual interests may be. It may also take the pressure off of women as the exclusive playthings of men who are perceived as superior to women. A marketing strategy that assumes that all visitors are heterosexual men misses key opportunities in selling the city. It also identifies women as inferior handmaidens whose purpose is to serve the men. And, it encourages the raunchy behavior described in this article.

This new marketing strategy should also lead to improved dress codes and hiring of both men and women in positions such as cocktail servers, hosts, etc. To the extent that women are asked to dress in sexy costuming, the men who are hired to the same positions should also wear similarly sexy costumes.¹³¹

B. *Title VII: Interpreted with the Environment and Marketing in Mind*

If Las Vegas continues to market itself with a focus on women as sex objects and the casinos and clubs continue to dress women as sex objects, the courts should consider this marketing and the dress codes and attitudes conveyed to the guests in determining whether an employer had notice or constructive notice of sexual harassment by customers. Sexy marketing should create a responsibility on the casinos’ part to work to prevent sexual harassment even before it happens. And, once it does happen, to assure that it does not happen again. Customers, even the high rollers, should not be given more than one chance. If they sexually harass an employee either verbally or physically, the casino should remove the abusive customer or be found liable for failing to do so.

If the city changes its marketing, as I suggest above, to focus on both male and female sexuality, the marketing and dress codes should be taken into account in determining whether men and women are objects of illegal sexual harassment by customers or other employees.

C. *Using Gaming Control to Protect Women*

Title VII grants a remedy for sex discrimination in dress codes, hiring and sexual harassment. But, it appears that casino employers are not terribly de-

131. See McGinley, *Babes and Beefcake*, *supra* note 6, at 281.

tered by Title VII suits. And, where the behavior occurs in a club that is not owned or operated by the casino, there may be a defense that the casino is not responsible.

In Las Vegas, however, the worst thing that can happen to a casino is to put its gaming license in danger. That is why Randall Sayre and the Gaming Control Board's approach to its investigation of the casino nightclubs was bold and successful. The Gaming Control Board warned casinos in advance that it would hold them responsible for behaviors occurring in the nightclubs no matter what ownership relationship existed. Because the nightclubs are on casino property, and the gaming regulations are very broad in order to protect the integrity of the games and the reputation of the State, the Gaming Control Board artfully used its power to assure that it could influence the casinos to take responsibility for the behavior in the nightclubs.

The Gaming Control Board should use the same leverage to assure that women employees have better working conditions in the casinos and nightclubs. While the Gaming Control Board might overstep its authority if it attempts to require that the casinos employ dress codes that do not stereotype based on sex, the Board could use its power to assure that casinos take care to prevent and correct any sexually harassing behavior toward casino employees. The Gaming Control Board states that its regulatory purpose is to protect the integrity of the games and the reputation of the state.¹³² Assuring that women can work in the casinos free of discrimination and assault and battery is a goal that would further the state's reputation. Moreover, assuring safety of employees in the workplace would benefit the industry by guaranteeing a constant stream of qualified, healthy, loyal and safe employees. This is true for those working on the casino floors. It is even truer for employees of the nightclubs located in the casinos that are owned by different corporations. While many employees working as cocktail servers in the casinos are represented by the Culinary Workers' Union, and would therefore have some bargaining power concerning their dress codes and treatment, the employees who work for the management companies operating night clubs are not ordinarily members of the union. These very young individuals lack bargaining power with their employers. The Gaming Control Board should be aware of the importance of protecting the rights of these employees, protection that can be assured by conducting investigations, in combination with the Metropolitan Police Department, to assure that no criminal behaviors are directed at employees. Although Jane Doe's case may or may not deter night club owners and management from engaging in the behavior alleged in the case, attention from the Gaming Control Board that investigates and files a complaint against the casino where the night club is located should create an even stronger incentive to assure the safety of female workers in the night clubs. A casino should not and will not tolerate this behav-

132. See Knightly, *supra* note 77; McGinley, *Hard Rock*, *supra* note 6, at 1243-44.

ior if it knows that the behavior will cost more than one-half a million dollars and, if repeated, will jeopardize its gaming license.

CONCLUSION

Over the past decade the atmosphere in the casinos on the Las Vegas Strip has become even more sexualized than in the past. Young women employees are primarily the focus of this type of hyper-sexualization. In a number of jobs on the casino floors, in the lounges and in the nightclubs, young women are required to dress and act in an increasingly sexy fashion. The sexy dress codes as well as the expectations of sexy behavior in clubs and casinos have led to sexual harassment by customers and employees and, if we are to believe the allegations of complaints against some of the nightclubs, to illegal drugs, prostitution, and perhaps even death. No concomitant pressure to act or dress in sexy fashion is placed on male employees, although they are increasingly losing jobs to women as clubs hire only women bartenders.¹³³ Thus, the atmosphere is harmful to both male and female employees, and violations of both criminal and civil law seem rampant. While sexualization itself may not be harmful, a focus on fulfilling the fantasies of male heterosexual patrons harms women employees who are subject to extreme dress code requirements, illegal sexual harassment, exposure to illegal drugs, and demands for prostitution. Las Vegas could decide to tone down the hyper-sexualized environment in an effort to protect its female employees (and those male employees who lose jobs to sexy women competitors). Or, it could decide to offer a sexualized atmosphere based on both male and female sexuality, which may disrupt the current focus on women as objects of men's sexual pleasure.

If the casinos either continue to hyper-sexualize women or decide to hyper-sexualize both men and women, they knowingly place their employees at risk of harassment and other illegal behaviors. Such knowledge should be sufficient to create liability under Title VII's actual or constructive knowledge standard for employer responsibility for customer behavior.

Besides protection from Title VII liability which may compensate victims but may not act as an effective deterrent, the Nevada Gaming Control Board should use its power to protect employees who are harmed by the hyper-

133. Liz Benston, *'I Couldn't Believe That Someone With My Experience Couldn't Even Get a Job as a Busboy,'* LAS VEGAS SUN, Feb. 8, 2011, at 1; Liz Benston, *Not Hip Enough? Older Workers are Digging in Their Heels as Casino Nightclubs and Lounges Turn to 'Beautiful People' to Keep Up With Competition,* LAS VEGAS SUN, Mar. 23, 2007, at A1 ("The complaint [by a group of Mirage bartenders] comes amid aggressive efforts by casinos to court younger customers with nightclubs and lounges staffed by 'beautiful people.' Like cocktail services before them, bartenders are becoming front-line sex symbols representative of a resort's brand."); Dan Bliss, *How to Hire Attractive People Legally,* PERFECT BUSINESS, <http://www.perfectbusiness.com/articles/newsarticles.cfm?newsID=2057> (last visited Oct. 19, 2011).

sexualization in the casinos, particularly in the clubs, the ultra lounges, and the pools. Even though these entities may be owned by a third party, the Gaming Control Board has in the past used its power to grant and rescind gaming licenses effectively to penalize casinos that permit illegal activity to occur on the premises.¹³⁴ This tactic has been successful because of the very large fines and the threat that the casino's license will be rescinded. The casinos cannot survive without their licenses. While in the past, the Gaming Control Board's focus has been on protecting customers in order to assure the legitimacy of the state casino brand, it should also use its authority to protect employees. Without loyal employees who feel safe coming to work, the state's reputation and the casinos will deteriorate, which may have devastating effects on the industry. Thus, the authority of the Gaming Control Board can legitimately be exercised to protect employees as a means of protecting the industry and the State.

But Las Vegas is not the only city and Nevada is not the only state with legalized gambling that has recently focused on hyper-sexualized women employees. In Atlantic City, for example, the casinos have begun to focus on sexualizing their cocktail servers in an effort to improve their brand.¹³⁵ The example of how the Nevada Control Board handled the Privé, Planet Hollywood, and Hard Rock situations should serve as a model for other jurisdictions with casino gambling in sexualized atmospheres. It is important, even necessary, that the states opening casino gambling have strong regulatory bodies whose role is to protect the industry, and that the agencies in those states consider the protection of employees a key component of furthering the state industry.

134. *See supra* Part III.A.

135. Suzette Parmley, *Resorts Casino Unveils Provocative New Image*, PHILA. INQUIRER, May 28, 2011, at A13.

