PROBLEM GAMBLING IS FUNNY

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“This is so silly—I started playing again!”

I. INTRODUCTION

At the outset, I must confess: I don’t actually think problem gambling is funny—at least, not categorically. But that title sure is attention grabbing, isn’t it? Just as casinos are designed with flashy lights and aesthetically pleasing interiors to attract customers and keep them playing, I fully admit my title is meant to hook the reader. Did it work?

With that confession out of the way, let’s get on to the important stuff. In 2013, the American Psychiatric Association (APA) released the fifth edition of its landmark Diagnostic and Statistical Manual (DSM-5). The DSM-5 features a major revision that affects the gaming law field: it reclassifies problem gambling from an “Impulse Control Disorder”—alongside pyromania and

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1 Family Guy: The Son Also Draws (Fox Television Broadcast May 9, 1999).

2 See generally NATASHA DOW SCHÜLL, ADDICTION BY DESIGN: MACHINE GAMBLING IN LAS VEGAS 37–51 (2012) (describing how important interior design is to casino developers).


4 “Officially changing the name [‘Pathological Gambling’] to ‘Gambling Disorder’ is a welcome revision for many researchers and clinicians who have expressed concern that the label ‘pathological’ is a pejorative term that only reinforces the social stigma of being a problem gambler.” CHRISTINE REILLY &
kleptomania—to a “Substance-Related and Addictive Disorder.”\footnote{DSM-5, supra note 3, at 585; Reilly & Smith, supra note 4, at 4; see also Kathleen V. Wade, Note, Challenging the Exclusion of Gambling Disorder as a Disability under the Americans with Disabilities Act, 64 Duke L.J. 947, 961–63 (2015) (differentiating impulse disorders from addictive disorders).}

The APA also changed the diagnostic criteria for gambling disorder, lowering the threshold for a diagnosis.\footnote{See Reilly & Smith, supra note 4, at 4.}

This is one of many signs that problem gambling is being taken seriously after years of being ignored or minimized.\footnote{For example, the American Gaming Association (AGA) seems to view problem gambling as relatively insignificant, because it refers to studies indicating that “the prevalence rate of pathological gambling [is] close to 1 percent of the U.S. adult population” and has stayed low even as gambling options have expanded in recent years. Gambling Disorders, AM. GAMING ASS’N, http://www.americangaming.org/industry-resources/research/fact-sheets/gambling-disorders (last visited June 19, 2015). But see Joy Wolfe, Comment, Casinos and the Compulsive Gambler: Is There a Duty to Monitor the Gambler’s Wagers?, 64 Miss. L.J. 687, 688 (1995) (referring, twenty years ago, to compulsive gambling as a disease).}

At least three states have debuted problem gambling courts that mirror drug courts or other similar treatment programs,\footnote{Guenaga, supra note 4, at 143–47 (describing programs available in New York, Louisiana, and Nevada).} other states have taken legislative steps to provide additional assistance for problem gamblers within their borders.\footnote{See, e.g., IND. CODE §§ 4-35-8.8-2, -3 (2014) (requiring licensees to pay an annual problem gambling fee that is used to prevent and treat problem gambling); KAN. STAT. ANN. § 79-4805(a)–(c) (2014) (establishing a grant fund used to provide problem gambling treatment and subsidize “research regarding the impact}
But pop culture hasn’t fully caught up. Gambling disorder or gambling addiction is often portrayed onscreen as just the setup to a joke, a method of creating hijinks from which characters must extract themselves, or even for purposely bucking traditional notions about gambling demographics. Often, problem gambling is merely a device for delivering a laugh—rather than a serious problem, it’s a “silly,” easily dismissed happenstance. Even in the real world, Iowa provides a recent example showing that, despite awareness and treatment efforts within the state, problem gambling remains an afterthought for many people. Perhaps one reason problem gambling remains a relatively niche disorder is because many people don’t even think about it—or if they do, they rarely consider it serious.

This article briefly defines problem gambling before exploring a few short examples of the generally flippant manner in which problem gambling is portrayed. It then evaluates possible ways to change the perception of problem gambling outside the industry itself, and discusses the benefits and shortfalls of each of them. Finally, it concludes that, while problem gambling is no joke, progress must be made measuredly to avoid turning resultant programs or litigation into a laughingstock.

II. DEFINING PROBLEM GAMBLING

“Any discussion of [gambling disorder] needs to begin by defining the problem and measuring its scope. What is meant by the term ‘gambling problem,’ or ‘gambling disorder?’” Professor Keith Miller provides a flexible, yet practicable definition:

of gambling on residents of Kansas”); MD. CODE ANN., STATE GOV’T § 9-1A-33(b) (LexisNexis 2014) (establishing a “Problem Gambling Fund” to be used to “develop and implement problem gambling treatment and prevention programs”); 4 PA. CONS. STAT. § 1509(b) (2014) (establishing a “Compulsive and Problem Gambling Treatment Fund”); WASH. REV. CODE § 43.20A.890 (2014) (establishing a treatment program); IOWA DEP’T OF PUB. HEALTH, OFFICE OF PROBLEM GAMBLING TREATMENT AND PREVENTION 2 (2014), available at https://www.legis.iowa.gov/docs/APPS/AR/E273A8C1-E91A-490E-914B-7C328801C3E1/IDPH%20Jan%202014%20Gambling%20Treat%20and%20Prevention%20Report.pdf (noting the Iowa Department of Public Health receives “an appropriation from the State General Fund for problem gambling services,” which totaled $3.1 million in the 2014 budget); NEB. REV. STAT. §§ 9-1001 to 9-1005 (creating the Nebraska Commission on Problem Gambling and tasking it with providing problem gambling treatment services, among other duties).

10 See The Son Also Draws, supra note 1.

11 See infra Part III.B.

[A] gambling problem may be characterized by gambling behavior that creates a disruption in a person's psychological, physical, social, or vocational life. Such actions as preoccupation with gambling, "chasing losses," loss of control over gambling in spite of serious negative consequences in a person's life, and lying about one's gambling are characteristics of a problem gambler. Perhaps in a sense, there is a "know it when you see it" quality to identifying a person whose gambling activity has created chaos in some aspect of his or her life.\textsuperscript{13}

Additionally, the DSM-5 contains diagnostic criteria that indicate problem gambling, including escalation in wagers and withdrawal symptoms when attempting to cut down.\textsuperscript{14} But perhaps most succinctly, problem gambling manifests itself when players enter a trancelike escapist state of affective calm—"the zone."\textsuperscript{15}

Prevalence is another matter. There is some debate about whether the AGA's one-percent number is accurate:

Lifetime prevalence rates are higher than annual rates, and are a better reflection of the fact that gambling problems may wax and wane over the years. But the bigger problem with the 1 percent number, some critics assert, is that it is expressed as a share of the adult population generally, not those adults who gamble regularly. It is misleading to say that 1 percent of adults have a gambling disorder when a large percentage of adults don't gamble at all, or gamble only rarely. The more relevant percentage for measurement is among those who gamble regularly, and that number is much higher than 1–3 percent, critics argue.\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{13} Id. (citations omitted); see also Guenaga, supra note 4, at 136 ("Financially, mortgage, rent, electricity and other bills may be late because of . . . problem gambling, and in some cases individuals lose their homes, cars and other personal belongings. Thus, problem gambling not only affects the gambler, but it can have devastating effects on the family as well.").
\item \textsuperscript{14} See Reilly & Smith, supra note 4, at 2–4 (listing the DSM-IV criteria and noting the changes made for the DSM-5).
\item \textsuperscript{15} Schüll, supra note 2, at 18–19; see also Charles Duhigg, The Power of Habit: Why We Do What We Do In Life And Business 250 (2012) (describing a problem gambler who, when gambling, felt "numb and excited, all at once, and her anxieties grew so faint she couldn't hear them anymore"); Grace, supra note 4, at 233 (noting that "identifying who might have a gambling problem is a difficult task," but suggesting one example is "the woman in the back corner of the casino playing a video poker machine for at least two hours straight without so much as turning her head").
\item \textsuperscript{16} Miller, supra note 13, at 68 (footnotes omitted); see also Schüll, supra note 3, at 14–15.
\end{itemize}
This debate need not be resolved here. It suffices to say that problem gambling is more than a specter because examples—often featuring eye-popping numbers or circumstances—keep recurring.17

III. PUNCHLINE AND AFTERTHought

“Gambling disorder is a relatively new—or newly understood—disorder.”18 But “although the scientific community changed its conception of gambling from ‘gambling as sin’ to ‘gambling as sick,’ . . . societal acceptance still lags behind.”19 That may be true in part because “[a]ddiction has been absorbed into the popular vernacular as a term meant to refer to nothing more than frequent use or enjoyable habits.”20 A few episodes of some popular TV shows—along with one real-life experience—provide some exemplary barometers illustrating this principle.

17 See, e.g., Wells v. SmithKline Beecham Corp., 601 F.3d 375, 377 (5th Cir. 2010) (“From September 2005 . . . until January 2006, Wells surrendered $10 million to the Nevada gaming tables—including $4 million in January alone.”); In re Briese, 196 B.R. 440, 452 (Bankr. W.D. Wis. 1996) (“After payment of income taxes, a few bills and a few small improvements to their house (a modest home undoubtedly bursting at the seams given the presence of two adults and five children), [Mrs. Briese] had $15,000.00 left. In the throes of her addiction, she returned to the casino looking to ride her ‘roll’ a little longer. Unfortunately, she only added to her losses, and ultimately found it necessary to file bankruptcy.”); Caesars Riverboat Casino, LLC v. Kephart, 934 N.E.2d 1120, 1122 (Ind. 2010) (“In a single night of gambling Kephart lost $125,000 . . . .”); NOLA 180 v. Harrah’s Operating Co., 94 So. 3d 886, 887 (La. Ct. App. 2012) (“Ms. Thompson, the school’s financial officer, embezzled approximately $667,000 from NOLA 180 . . . to support her gambling habit.”); SCHÜLL, supra note 3, at 226 (describing a woman who gambled away her son’s $45,000 life insurance policy); Alexandra Berzon, The Gambler Who Blew $127 Million, WALL ST. J. (Dec. 5, 2009), http://www.wsj.com/articles/SB125996714714577317 (“During a year-long gambling binge at the Caesars Palace and Rio casinos in 2007, Terrance Watanabe managed to lose nearly $127 million. The run is believed to be one of the biggest losing streaks by an individual in Las Vegas history.”); Elaine Meyer, Gambling with America’s Health: The Public Health Costs of Legal Gambling, PAC. STANDARD (Sept. 15, 2014), http://www.psmag.com/navigation/health-and-behavior/las-vegas-nevada-legal-gambling-with-americas-public-health-policy-90625/ (describing a man who “embezzled $7 million from his employer to gamble,” and when that sum was exhausted, continued to gamble with money “from his family’s savings, his 401(k), and his children’s college fund”).


19 Wade, supra note 6, at 978.

20 Id. at 979; see also Tovino, supra note 19, at 246 (“Gambling disorder was previously thought to be a social, not a medical problem.”).
A. Television Examples

The broad notion of popular legal culture examines the relationship between entertainment media “about law or lawyers . . . which are aimed at a general audience,” and its effect on what the average person thinks about prevalent legal issues. 21 This article, however, is concerned with a subset of entertainment media that includes satire and other comedy. Humor isn’t meant to be serious, of course, but satire can be more applicable to legal issues than one might think. 22 Indeed, satire can provide frequent commentary on legal issues and “forge a new way of thinking about the world in which we live.” 23


22 See, e.g., Kimberlianne Podlas, Funny or No Laughing Matter?: How Television Viewers Interpret Satires of Legal Themes, 21 SETON HALL J. SPORTS & ENT. L. 289, 290 (2011) [hereinafter Podlas, Funny or No Laughing Matter] (“[T]elevision plays a part in both cultivating public opinion about the law and constructing legal culture.”); Kimberlianne Podlas, Respect My Authority! South Park’s Expression of Legal Ideology and Contribution to Legal Culture, 11 VAND. J. ENT. & TECH. L. 491, 541 (2009) (“[E]ven ‘non-legal,’ ‘non-serious’ programs like South Park frame issues of legal regulation and advance ideologies of law. Indeed, South Park’s brilliant use of satire enables it to go straight to the heart of culture’s most contentious issues . . . .”); Steven Keslowitz, Note, The Simpsons, 24, and the Law: How Homer Simpson and Jack Bauer Influence Congressional Lawmaking and Judicial Reasoning, 29 CARDOZO L. REV. 2787, 2806 (2008) (“The fact that legal scholars have chosen to make use of [TV] references in law journals demonstrates that . . . these shows provide (or are least perceived to provide) serious and noteworthy commentary on specific legal ideas.”); David M. Ranscht, Note, Guidance from an Unlikely Source: Why a Hollywood Satire Can Help Resolve the Circuit Split over Whether Mandatory Graphic Cigarette Package Warning Labels Violate the First Amendment, 62 DRAKE L. REV. 267, 310–12 (2013) (suggesting the 2005 film Thank You For Smoking is, perhaps strangely, applicable to the more recent legal debate over cigarette package warning labels); cf. Friedman, supra note 21, at 1588 (“Popular culture is . . . involved with law; and some of the more obvious aspects of law are exceedingly prominent in popular culture.”). Of course, “traditional” media—as opposed to entertainment media—can also sculpt public perception on a particular issue. See generally Robert Bejesky, How Security Threat Discourse Can Precipitate a Press Clause Death Spiral, 63 DRAKE L. REV. 1, 3 (2015) (suggesting that when news media “abets the policy agenda of the government,” it makes “citizen preferences . . . more amenable to forthcoming policy actions”). But my focus here is on the less obvious influence.

23 Keslowitz, supra note 23, at 2790; see also Podlas, supra note 21, at 95
“can often make serious or incendiary issues more palatable,” and “provides viewers with a safe harbor of reaction.”

However, there is a potential drawback in embedding legal issues within a TV comedy because satire “cuts both ways: [it] can cut to the quick or help connect with audiences, but it can also enhance the wrong message, produce unintended consequences, or cause viewers to process peripherally and, thus, devote less attention and thought to the message conveyed.”

Problem gambling may have suffered exactly the unintended consequences Professor Podlas mentions because, until recently, comedies have often portrayed gambling disorder as trifling—a throwaway plot event compared to the real satirical commentary on family, race, or politics.

For example, the “lesson” of a 1999 Family Guy episode is ostensibly one of father-son bonding, or of supporting one’s family rather than attempting to relive childhood vicariously through one’s kids. Gambling addiction makes an appearance, but it functions chiefly as an afterthought. During a family road trip to get son, Chris Griffin, readmitted to the Youth Scouts, the family stops at a casino for a restroom break. In the short time this break takes, wife Lois begins to play video poker.

When her husband returns after a few minutes, Lois looks disheveled and responds to all conversation with a dismissive “yeah” while continuing to play the machine. Eventually she literally holds on to the machine to prevent herself from being dragged out of the casino. Once she leaves, she admits two things: First, she remarks how easy it was to get in “the zone,” saying “all those lights go off and you just feel so good inside!” Second, she confesses she ran (“As the media has increased its dominance in American society ... pop legal culture has emerged as a valid area of inquiry.”).

(24 Podlas, supra note 21, at 100.


26 See Podlas, Funny or No Laughing Matter, supra note 23, at 330; see also Keslowitz, supra note 23, at 2798–99 (exploring “cultivation theory,” which “hypothesizes that viewers’ perceptions of reality are cultivated in a manner consistent with the programming to which they are exposed”).

27 See generally Family Guy: The Son Also Draws, supra note 1.

28 Id.

29 Id.

30 Id.

31 Id.

32 Id. This is an even greater juxtaposition because right before playing, she had spoken to a slot attendant judgmentally and stated she does not “approve of gambling.” Id.
out of money so she wagered (and lost) the family car.33

Lois’s actions demonstrate classic signs of problem gambling—namely, the escalating wagers and the trancelike state she quickly enters. But in the episode, this isn’t a major issue, nor is it given any sort of serious treatment. Rather, it serves as hijinks that simply set up the rest of the episode’s plot—to get the car back from the Native American casino, Chris and his father go on a vision quest,34 and everything is neatly resolved in twenty-two minutes. Moreover, Lois becomes addicted very quickly and exhibits a rapid turnaround from disapproving of gambling to losing the car.35 The way Lois’s actions are portrayed, and then easily forgotten, could certainly give viewers the impression that problem gambling is fleeting and therefore not serious. In other words, the episode encourages viewers to process problem gambling peripherally—creating (or perhaps supporting) the notion that it’s only a peripheral problem.36

*South Park* provides an even more substantive example. A 2003 episode titled *Red Man’s Greed* provided commentary on indigenous relations, with a subplot involving the disease SARS.37 The two plots intertwine when a new Indian casino opens near the town of South Park, Colorado, but soon makes plans to expand its player base by building a superhighway extending from the casino to Denver.38 Visiting the new casino, many South Park residents are dazzled by its extravagance and gamble some modest sums.39 When the townspeople compare their experiences, however, Gerald Broflovski reveals he has already lost $26,000 in one night.40 He goes on to say, “I forgot to tell you—I have a gambling problem,” and urgently insists he needs to win back his losses.41 In pursuit of that goal, he convinces the casino to lend him credit and offers his house as collateral.42 Inevitably, he loses that sum too and subsequently begs the casino for another extension of credit.43

Again, some symptoms of problem gambling are there—principally,
escalating wagers and chasing losses, along with a general sense that Gerald lost all this money almost without consciousness that he was doing so. He played blackjack for a while and, poof, he lost $26,000—only realizing the amount once he emerged from the “zone.” But again, the gambling problem is brushed aside as a mere plot device. As it turns out, the casino nefariously plans to acquire title to every house in South Park so it can eventually raze the town to make way for the superhighway, and the residents must band together to save their “historic” hometown. Thus, Gerald’s gambling addiction quickly gives way to the real commentary on indigenous relations. Moreover, having a gambling problem is so insignificant and easy to forget that—oops—it just slips someone’s mind altogether.

But the problem gambling references in this episode don’t end there. Later, in a last-ditch effort to save the town, the South Park residents pool all their remaining money—only $10,000. But they need thirty times that amount, so they decide to wager the entire ten thousand on roulette—resembling a real-life bankruptcy debtor who gambled her last $15,000. Improbably, the wager on a particular number is successful, but the people wagering can’t simply take the win; they let it ride, and predictably lose everything. One kid who questions the decision to keep playing is admonished because he just doesn’t “understand the fine points of gambling.” At face value, this statement could indicate—to both the person in the episode, and to viewers—that a person’s gambling habits are not even worth thinking about or questioning.

Of course, I do not suggest that these shows’ characters should in fact be medically diagnosed with gambling addiction, or that the shows’ creators erred gravely in creating characters with problem gambling tendencies. I also do not suggest that showcasing gambling addiction as if it was a one-time ailment is, in and of itself, problematic. Part of the appeal these shows have is that everything is (or can be) reset for every episode, leaving the characters free to tackle new subjects or travails without continuity constraints. Further, I do not suggest that these comedies should consider problem gambling “off limits.”
recognize it makes sense that comedies treat problem gambling less seriously, because they treat every subject less seriously. What I do suggest is that by portraying problem gambling flippantly, these media examples are either cultivating or reflecting societal indifference toward the disease—and perhaps it’s a little of both.

B. A Real-World Example

A recent example from Iowa bears out this kind of community antipathy. In the state, before a new casino can submit a licensing application to the Iowa Racing and Gaming Commission (IRGC), residents of the county where the casino will be located must assent to the presence of gambling in that county through a referendum. If the referendum is successful, prospective licensees submit proposals to the IRGC. The IRGC evaluates numerous licensing criteria, but also holds a public meeting in the county and solicits public comment on the proposal.

After an August 2013 referendum in Greene County (a rural county in west central Iowa with a total population under 10,000) approved gambling by a three-to-one margin, the IRGC held its meeting and public comment session issues. No subject is immune from its scrutiny, and the law is no different.

See Keslowitz, supra note 22, at 2803 n.90 ("Inaccurate presentations of social realities ... are a given ... ").

See Emily Battersby & Wolfgang G. Robinson, Paradise Lost: Media in Injustice and Injustice in Media, 22 SETON HALL J. SPORTS & ENT. L. 29, 31 (2012) (acknowledging "the chicken-or-the-egg causality dilemma between media and law"); Keslowitz, supra note 22, at 2819 ("[T]elevision shows ... both reflect and influence social realities."); see also Kevin K. Ho, Comment, “The Simpsons” and the Law: Revealing Truth and Justice to the Masses, 10 UCLA ENT. L. REV. 275, 276 (2003) (noting The Simpsons has both “reflected and shaped American culture” since it debuted (emphasis added)).

IOWA CODE § 99F.7(11)(a) (2015) ("A license to conduct gambling games . . . in a county shall be issued only if the county electorate approves the conduct of the gambling games . . . "). Although the referendum requirement does not prevent prospective licensees from making preliminary plans, it can certainly scuttle those plans if the referendum is unsuccessful. See Gambling Games Referendums, IOWA RACING & GAMING COMM’N, http://iowa.gov/irgc/CommReferendum.htm (last visited June 19, 2015) (noting voters in Warren County, Iowa rejected the referendum in a May 2013 vote).

IOWA CODE §§ 99F.5 to .7; IOWA ADMIN. CODE r. 491-1.7 (2015); see also Sean McGuinness et al., Gaming Regulatory Jurisdiction: The Dual Criteria of Location Acceptability and Applicant Suitability, 62 DRAKE L. REV. DISCOURSE 34, 36–38 (2014), http://students.law.drake.edu/lawReview/docs/1rDiscourse201404-mguinness.pdf (providing an overview of Iowa’s licensing requirements).

See Douglas Burns, Greene County Casino Rolls 3 to 1 at Polls, DAILY TIMES HERALD (Aug. 7, 2013), available at http://carrollsparser.com/Content/Local
for the Greene County proposal in Jefferson, the county seat, in May 2014.\textsuperscript{58} Attendance was high; the auditorium was packed full, and so was an overflow room featuring a closed-circuit broadcast of the proceedings.\textsuperscript{59} At the meeting, at least sixty-five individuals or representatives of particular groups provided their comments on the proposed casino, including local business owners, law enforcement officials, current and former legislators, other in-state casino officials, journalists, and numerous citizens from the county.\textsuperscript{60} Supportive comments followed a major theme: a new casino would create a destination center in rural west central Iowa, thereby acting as a catalyst for additional economic development throughout the region.\textsuperscript{61} Further, it would bring additional revenue to the county, and some of that money would be distributed back to the community through the casino’s partnership with a nonprofit qualified sponsoring organization.\textsuperscript{62} Comments opposing the proposed casino


\textsuperscript{59} I attended the meeting and took notes, so my description of the atmosphere and proceedings is culled both from my memory and my notes. See generally Notes from May 29, 2014 Greene County Public Comment Session (on file with Author) [hereinafter Author Notes]. Of course, the IRGC’s official minutes of the meeting supplement my own account insofar as they reflect the comments made. See May 2014 IRGC Minutes, supra note 58.

\textsuperscript{60} Author Notes, supra note 59. One particularly interesting—and somewhat curious—citizen comment that was repeated multiple times involved parents supporting the casino project because it would provide event space they might be able to book for their child’s future wedding reception. See id. For example, one woman said she would jump at the chance to book the event space for her daughter’s wedding reception, but then divulged (while still at the microphone) that her daughter wasn’t yet engaged. Id.

\textsuperscript{61} Author Notes, supra note 59; see May 2014 IRGC Minutes, supra note 58, at 2. In particular, the Mayor of Jefferson envisioned the city becoming “a regional hub of entertainment.” May 2014 IRGC Minutes, supra note 58, at 1.

\textsuperscript{62} See IOWA CODE § 99F.5 (stating prospective licensees may apply for licensure after entering an agreement with a qualified sponsoring organization); see also McGuinness et al., supra note 56, at 38 n.15 (“[O]rganizational sponsorship . . . is a prerequisite to filing a gaming license application in Iowa.”). Iowa’s dual licensure system is unique among states. See Victor J. Frankiewicz, Jr., Comment, States Ante Up: An Analysis of Casino Gaming Statutes, 38 LOY. L. REV. 1123, 1128 (1993) (“[T]he sponsoring organization serves as the owner of the gaming
project also followed one main strand: market studies indicated there was little to no remaining “uncaptured” gaming revenue in Iowa, and a new casino would simply cannibalize existing ones rather than increase overall gaming revenue in the state.  

But, most importantly, only one of the nearly seventy speakers even mentioned problem gambling. That speaker was a local pastor who considers gambling a menace to society. She stated she was concerned about how a casino would affect “the least among us,” and specifically noted pathological gamblers in that category. She urged the IRGC to deny the license application.  

Clearly, this pastor objected to the casino for moral and spiritual reasons in addition to the problem gambling concern she raised. Perhaps her objection was predominantly religious rather than pragmatic. But it is noteworthy that she was the only one to address problem gambling at all. Of course, a new casino, especially a smaller one in a rural county, likely would not singlehandedly cause problem gambling to rise exponentially. However, apart from the pastor, nobody else even mentioned it. Rather than acknowledging the potential costs of problem gambling as one factor to balance against the benefits of expanding gaming into a new geographic area, proponents and opponents alike seemingly preferred to consider the issue out of sight and therefore out of mind.

63 Author Notes, supra note 59; May 2014 IRGC Minutes, supra note 58, at 3; see MARQUETTE ADVISORS, IOWA GAMING MARKET ANALYSIS 54 (2014), available at http://iowa.gov/irgc/Study%202014-Marquette.pdf ("[W]e find that the Iowa casino supply is approaching maximum penetration within the existing market."); UNION GAMING ANALYTICS, IOWA RACING & GAMING COMMISSION GAMING MARKET STUDY 8 (2014), available at http://iowa.gov/irgc/Study%202014-Union.pdf.  

64 Author Notes, supra note 59; see May 2014 IRGC Minutes, supra note 58, at 3 (noting generally that this concern was raised at least once).  

65 Author Notes, supra note 59.  

66 Id.  

67 Id.  

68 One literature review notes the problem gambling rate "appears to be fairly stable across regions." STRATEGIC ECON. GRP. & SPECTRUM GAMING GRP., THE SOCIOECONOMIC IMPACT OF GAMBLING ON IOWANS 48 (2014) [hereinafter IOWA SOCIOECONOMIC REPORT], available at http://iowa.gov/irgc/StudySocioeconomicImpact2014.pdf. "However, there is some evidence to indicate that the rate might be higher in closer proximity to casinos." Id. For example, "in [fiscal year] 2013, residents in [Iowa’s] casino counties accounted for 40% of the state’s population yet they comprised 61% of the state’s . . . client-treatment count." Id. at 249.  

69 Tovino, supra note 18, at 245 ("Disordered gamblers produce significant economic costs that are borne by society.").
Moreover, the fact the pastor’s comments were isolated may have reinforced a latent societal impression that problem gambling is a peripheral issue only fervently religious people care about.

IV. CHANGING THE PERCEPTION

But as the DSM-5’s revisions make clear, despite these examples of problem gambling being trivialized, the disorder is not irretrievably confined to the periphery. Media is changing, governments are adapting, and lawyers and policymakers are thinking creatively about the next steps.

For example, despite South Park’s earlier treatment of problem gambling, a more recent episode truly portrayed gambling addiction as a debilitating, uncontrollable habit. In the episode, Stan Marsh downloads and becomes addicted to a game on his smartphone that asks him to make repeated purchases of in-game currency using real money. Despite the tangible price tag, Stan misses school to play the game all day, and even tells his friends the game is a “cool way to zone out”—demonstrating two key attributes of problem gambling: the state of affective calm and a disruption in daily life activities. To be sure, just as before, the habit creates the plot the rest of the episode follows—but this time, the addictive attributes are not simply forgotten as though they were a mere precursor.

Upon discovering the significant charges on the phone bill, Stan’s father Randy bemoans the fact that Stan is exhibiting traits the family has struggled with before. He likens Stan’s addiction to Randy’s own father, who “always had a gambling problem—he’s got total addiction tendencies.” In an attempt to show Stan why he should rein in his spending, Randy takes Stan to the local

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70 See supra notes 3–6; see also Friedman, supra note 21, at 1588 (recognizing that media is not always “an accurate mirror of the actual state of living law”); Guenaga, supra note 4, at 138 (“[T]he existence of problem gambling courts suggests that the perception of problem gambling . . . is changing.”); Tovino, supra note 18, at 196 (noting gambling disorder is “newly understood”).

71 See Friedman, supra note 21, at 1589–90 (exploring analogous historical changes in television portrayals of women and racial minorities that simply reflected evolving social norms).

72 South Park: Freemium Isn’t Free (Comedy Central television broadcast Nov. 5, 2014).

73 Id.

74 See supra Part II.

75 South Park: Freemium Isn’t Free, supra note 72. Randy’s concern is perhaps exaggerated to indicate his own hypocrisy—throughout the episode, he demonstrates a potential alcohol addiction but continues to insist the addictive tendencies skipped a generation from Randy’s father to Stan. Nonetheless, the episode’s treatment of the problem gambling issue remains noteworthy, in part because it is not subsumed within the other humor. Id.
casino.\textsuperscript{76} He points out that Stan’s grandfather—Randy’s father—spends most of his time there, flushing away money, and admonishes Stan that he doesn’t want him to end up doing the same.\textsuperscript{77} At first, Stan denies he has a problem at all.\textsuperscript{78} Eventually, however, he admits, “okay, I need help.”\textsuperscript{79} This marks one of the few times gambling addiction has been treated seriously despite a comedic background.

And if pop culture and satire are beginning to catch up, perhaps they are reflecting the efforts made elsewhere.\textsuperscript{80} For example, some states have problem gambling courts, reflecting “a recognition that problem gamblers who engage[] in illegal activity in order to fund their gambling need[] treatment for their underlying disorder, not just punishment in the form of jail time.”\textsuperscript{81} In other words, these programs provide “evidence of the shift in perception of problem gambling from a character flaw which must be punished to an illness or addiction which should be treated.”\textsuperscript{82} Notwithstanding the benefits these courts provide, however, they are not a complete solution because they only target problem gamblers who commit crimes in furtherance of their addiction.\textsuperscript{83} The courts do not encompass gamblers whose lives are adversely affected yet resort only to legally permissible means—such as additional credit card applications or cashing out insurance policies—to maintain their bankroll. While “disordered gamblers are more likely than the rest of the population to engage in criminal behavior,”\textsuperscript{84} not all disordered gamblers in fact do so\textsuperscript{85}—but they

\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
\textsuperscript{81} Guenaga, supra note 4, at 144; see also Ronald J. Rychlak & Corey D. Hinshaw, From the Classroom to the Courtroom: Therapeutic Justice and the Gaming Industry’s Impact on Law, 74 Miss. L.J. 827, 830–31 (2005) (explaining the idea behind problem gambling court is “that it is better to seek real solutions to the problems facing compulsive gamblers than merely to mete out punishment”).
\textsuperscript{82} Guenaga, supra note 4, at 147.
\textsuperscript{83} See id. at 144 (noting New York’s problem gambling court program is only available to criminal defendants charged with “misdemeanors of $1,000 or less, or felonies in which charges have been reduced through plea bargains”).
\textsuperscript{84} Iowa Socioeconomic Report, supra note 68, at 48.
\textsuperscript{85} See Tovino, supra note 19, at 201–02 (explaining that the DSM-5 revision removed a criterion for diagnosis “relating to the commission of illegal acts,”
need treatment too. Thus, problem gambling courts must be only the beginning of innovation and progress in this area.

Perhaps one way to fill the void and provide assistance to individuals ineligible for problem gambling courts is simply for states to continue making problem gambling a focus of their public health funding and resources. As noted above, some states are doing this. For example, several different organizations in Iowa offer problem gambling treatment services and receive at least partial funding from the Iowa Department of Public Health. “However, there is no research [in Iowa]... that tests the efficacy of government or industry sponsored funding for the treatment of gambling disorders.” Further, “only 678 people received treatment through the [Iowa]-funded program in [fiscal year] 2013.”

Perhaps these statements are related; if the treatment is ineffective, then it seems logical few people would take advantage of it. But perhaps not; maybe the treatment actually is effective, and low participation is simply due to the low awareness discussed throughout this article. And, of course, low participation in state-funded programs does not foreclose problem gamblers from receiving treatment privately. Perhaps when dealing with addiction disorders, an “every little bit helps” mentality is appropriate—and as awareness increases, participation is likely to follow. No solution can be immediately and totally successful or eliminate problem gambling altogether, but increasing use of treatment programs like this is a good start.

Further, regulatory agencies have been taking notice of problem gambling violations. Again using Iowa as an example, the IRGC has fined casinos several times because there is a “lack of empirical evidence showing that assessing criminal behavior helps diagnose individuals with gambling disorder”).

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86 See supra note 10 and accompanying text.
88 IOWA SOCIOECONOMIC REPORT, supra note 68, at 51 (emphasis added).

89 IOWA SOCIOECONOMIC REPORT, supra note 68, at 205.
90 See id. at 210.
91 See id. at 253–54 (reproducing comments from several treatment providers who indicated they would perform better if funding increased and if they could have a greater presence in their respective geographic areas).
times over the past few years for not following patron exclusion protocols. Depending on how egregious the violation is, the IRGC can impose any monetary penalty within a preset range and can consider as an aggravating factor whether the casino has committed any other violations of the same type in the recent past. Similarly, other states, like Mississippi, require all casinos to “[e]nsure that self-excluded persons do not receive... targeted mailings, telemarketing promotions, player club materials or other promotional materials.” Continued fines and other affirmative requirements imposed on casinos reflect a focus on addressing problem gambling issues, and can certainly prompt changes in casino marketing practices.

Perhaps the most high-profile and headline-grabbing method of raising public awareness about problem gambling—and ideally, of reducing the problem—is litigation, usually sounding in tort. Several lawsuits have been initiated, and have been almost uniformly unsuccessful. For example, a

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92 See, e.g., Dar Danielson, Osceola, Waterloo Casinos Fined for Violations Involving Self-Banned Players, RADIOIOWA (Oct. 10, 2014), http://www.radioiowa.com/2014/10/10/osceola-waterloo-casinos-fined-for-violations-involving-self-banned-players/ (describing two violations, one involving promotional mailings and one involving a casino paying out a jackpot without cross-checking the exclusion list); Dar Danielson, Two Casinos in Eastern Iowa Pay Penalties for Gambling Violations, RADIOIOWA (July 31, 2014), http://www.radioiowa.com/2014/07/31/two-casinos-in-eastern-iowa-pay-penalties-for-gambling-violations/ (noting that a casino self-reported when it discovered “a man who had excluded himself from gambling entered the casino and tried to redeem a promotional coupon” that had been mistakenly mailed to him); Dar Danielson, Lakeside Casino Fined $5,000 by Regulators, RADIOIOWA (Nov. 16, 2012), http://www.radioiowa.com/2012/11/16/lakeside-casino-fined-5000-by-regulators/ (noting a casino received an elevated fine after its second instance of sending promotional material to an excluded patron in the previous 365 days).


94 13-3 MISS. CODE R. § 10.4(c)(4) (LexisNexis 2015). Mississippi also requires casinos to implement employee training programs that provide information about problem gambling. 13-3 MISS. CODE R. § 10.6 (LexisNexis 2015). However, the rule specifically provides that the requirement “shall not be construed to impose a duty upon employees of casinos to identify problem gamblers nor to impose any liability for failure to do so.” Id. See also N.J. ADMIN. CODE § 13:69G-2.4(a)(4) (2015) (detailing the duties of casino licensees to self-excluded persons); 58 PA. CODE § 503a.4(a)(4) (2015) (stating that slot machine licensees cannot send advertising materials to persons on the self-excluded list).

95 See MO. CODE REGS. ANN. tit. 11, § 45-17.010(4)(A) (2012) (allowing the Missouri Gaming Commission to discipline casino licensees if the licensee knows an excluded person is present yet allows them to gamble).

96 See Wolfe, supra note 7, at 695 (“[C]ourts which have addressed the issue have uniformly held that the gambler cannot recover under tort law due to the
gambler in Indiana argued that a casino “owed her a common law duty to protect her from its enticements to gamble because it knew she was a pathological gambler.”97 The Indiana Supreme Court disagreed, noting that because the state had a statutorily authorized voluntary exclusion program, “the legislature intended pathological gamblers to take personal responsibility to prevent and protect themselves against compulsive gambling.”98 Therefore, the casino owed no duty of care to potential problem gamblers, and the gambler could not state any negligence-based claim.99 Additionally, Nevada provides by statute that gambling disorder is no defense to an action to collect a gambling debt, nor can gambling disorder constitute grounds to make a counterclaim against a casino.100 There are also several cases indicating that casinos owe no duty of care to third parties who are harmed when a person embezzles money from the third party to fund a gambling bankroll.101

But other potential causes of action remain and have occasionally been pursued. For example, a Nebraska company whose employee embezzled over

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97 Caesars Riverboat Casino, LLC v. Kephart, 934 N.E.2d 1120, 1122 (Ind. 2010).
98 Id. at 1124.
99 See id.; see also Williams v. Aztar Ind. Gaming Corp., 351 F.3d 294, 300 (7th Cir. 2003) (rejecting a RICO claim and also noting the district court had granted summary judgment to the casino on related state-law tort claims); Merrill v. Trump Ind., Inc., 320 F.3d 729, 733 (7th Cir. 2003) (“Indiana law does not protect a drunk driver from the effects of his own conduct, and we assume that the Indiana Supreme Court would take a similar approach with compulsive gamblers.”); Taveras v. Resorts Int’l Hotel, Inc., No. 07-4555 (RMB), 2008 WL 4372791, at *6 (D.N.J. Sept. 19, 2008) (concluding all claims sounding in tort failed to state a claim for relief, because “[i]n allowing, even encouraging, Plaintiff to continue gambling, [the casino] acted well within the bounds of the community norms reflected in state law”).
100 NEV. REV. STAT § 463.368(6) (2014); see also 13-3 MISS. CODE R. § 10.6 (LexisNexis 2015) (stating licensees have no duty to identify problem gamblers).
$4 million she used to gamble alleged the casino was the recipient of a fraudulent transfer and had also been unjustly enriched—both these allegations survived a motion to dismiss. Further, at least one commentator has suggested that in light of the DSM-5 revisions, Congress should amend the Americans with Disabilities Act (ADA) and bring gambling disorder within the Act’s coverage. While such a change would not provide problem gamblers with an avenue for recovery against a casino, it would reflect the changing understanding of problem gambling as a disease and prevent employers from discriminating against a problem gambler based on their addiction.

102 See Todd Cooper, $4.1 Million Embezzlement: Big Theft Brings Big Prison Term for Ex-Accountant from Gretna, OMAHA WORLD-HERALD, Mar. 18, 2014, at C4, available at http://www.omaha.com/news/m-embezzlement-big-theft-brings-big-prison-term-for-ex/article_0e2dc8e3-d747-5f52-83fc-d564a08429cf.html (noting the employee in question was criminally charged, convicted, and sentenced to a prison term of fourteen to twenty years).


104 Wade, supra note 5, at 988–89; see 42 U.S.C. § 12211(b)(2) (2012) (providing that compulsive gambling is not a disability, but listing compulsive gambling alongside kleptomania and pyromania); Trammell v. Raytheon Missile Sys., 721 F. Supp. 2d 876, 882–83 (D. Ariz. 2010) (applying the statutory exclusion to a claim that an employer discriminated on the basis of depression manifesting as compulsive gambling).

105 Wade’s proposal is appealing because the three disorders are no longer classified together, and “good interpretation seeks to construe . . . words as connected, not unrelated.” Mall Real Estate, L.L.C. v. City of Hamburg, 818 N.W.2d 190, 202 (Iowa 2012). See BLACK’S LAW DICTIONARY 1224 (10th ed. 2014) (explaining the canon of noscitur a sociis, which holds that the meaning of a word or phrase in a list “should be determined by the words immediately surrounding it”). However, even a legislative change would not necessarily provoke a stark change in the way courts decide ADA cases, because the ADA still allows employers to identify a legitimate nondiscriminatory reason for taking adverse action against an employee under the McDonnell Douglas burden-shifting framework. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802–04 (1973) (establishing the burden-shifting framework applicable to discrimination claims when there is no direct evidence of discrimination); see also, e.g., Carter v. Pathfinder Energy Servs., 662 F.3d 1134, 1141 (10th Cir. 2011) (applying the McDonnell Douglas burden-shifting approach to an ADA discrimination claim); Matczak v. Frankford Candy & Chocolate Co., 136 F.3d 933, 938 (3d Cir. 1997) (same). “[U]nreliability and absenteeism caused by gambling binges and the potential of theft or embezzlement to pay off gambling debts” certainly seem like legitimate nondiscriminatory reasons to take action against an employee. Wade, supra note 5, at 983–84. Nonetheless, an amended ADA would serve as yet another reflection of the changing understanding of problem gambling.
importantly, however, in 2010, the lottery commission in Quebec reached a multimillion-dollar settlement to resolve a class action lawsuit filed by thousands of Canadian compulsive gamblers. While a settlement—especially one from another country—does not create legal precedent in the United States, a spokesman involved in the Quebec case believed “other jurisdictions have had their eyes on the Quebec case.” He may have been right.

Recently, some other ideas have emerged. First, a torts project at the Harvard Law School released a White Paper recommending that states begin to enact laws creating strict liability or negligence liability for casinos that fail to prevent self-excluded patrons from entering the premises and gambling. Like problem gambling courts, however, this solution has its own inherent limitation—it would only apply to gamblers who have placed themselves on an exclusion list. Thus far, “no American court has yet ruled in favor of... plaintiffs” alleging a casino’s failure to prevent them from gambling breached a self-exclusion contract.

Second, some advocates have proposed that products liability lawsuits, along the lines of decades-old litigation against tobacco and cigarette companies, may be viable. These claims would assert that, like tobacco companies, gaming companies depend on revenue from addicted patrons to survive, run ads glamorizing their offerings, and even target youth. But most

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107 Id.

108 HARVARD WHITE PAPER, supra note 80, at 32-33.

109 Slavina, supra note 4, at 370.

110 See, e.g., John Warren Kindt, The Costs of Addicted Gamblers: Should the States Initiate Mega-Lawsuits Similar to the Tobacco Cases?, 22 MANAGERIAL & DECISION ECON. 17, 18 (2001) (“[This article] predicts that in the future the gambling industry will be held financially liable by the states for the social and economic impact gambling has on US [sic] society.”); Meyer, supra note 17 (noting these types of lawsuits are “part of a growing movement of activists, academics, lawyers, and former gambling addicts who are trying to spotlight the health, economic, and social costs of gambling”). See also Harry Esteve, Oregon Lottery: Games, Like Tobacco Earlier, Could Face Liability Lawsuits, OREGONLIVE (Nov. 22, 2013, 9:15AM), http://www.oregonlive.com/politics/index.ssf/2013/11/oregon_lottery_games_like_toba.html; Sue Zeidler, U.S. Lawyers Plot Gambling Addiction Suits as Casinos Go Online, REUTERS, May 2, 2013, available at http://www.reuters.com/article/2013/05/02/casinos-litigation-idUSL2N0DC0M920130502.

111 See Meyer, supra note 17; Zeidler, supra note 110. Regarding the “addiction-dependent” portion, compare South Park: Freemium Isn’t Free, supra
importantly, these lawsuits would draw as many parallels as possible between the addictive qualities of cigarettes and slot machines.⁷¹² In particular, neuroscience research indicates a possible connection between certain aspects of slot machines and reward center activity in the brain—perhaps a scientifically testable analog to the demonstrable chemical effects of nicotine in cigarettes.⁷¹³ Further, material rewards such as room and meal comps may also condition the brain.⁷¹⁴ There is one major obstacle, however: these types of "claims have never been tried before."⁷¹⁵

But the law doesn't progress without innovation, so the fact that these types of lawsuits are new does not necessarily mean they are destined to fail.⁷¹⁶ We will know soon how the first effort is resolved; a widow in Ohio has already filed a lawsuit against slot manufacturer IGT and a West Virginia casino alleging their products and advertising enticed her gambling-addicted husband to wager (and lose) millions of dollars—and that the significant losses eventually drove him to commit suicide.⁷¹⁷ The suit asserts that slot machines are "designed to cause and foster the loss of will power and rational decision-
making capacities." No matter the eventual result, the proceedings will assuredly be watched closely—and rightly so.

Whether these lawsuits can succeed is contingent on myriad questions. I pose several non-exhaustive ones here in hopes they will stimulate further discussion and research, but I express no opinion as to the answers. First, are the chemical effects of nicotine and the neurological effects of slot machine lights and sounds truly analogous? The subject may require expert testimony to explain the comparison. Second, will the proper defendants always be twofold? In other words, will a pleading always have to assert the slot machine manufacturer created the addiction with its device and the casino’s advertising or conduct exacerbated the addiction? If so, could a casino operator successfully argue their own conduct did not legally cause the plaintiff’s addiction—or at the very least, successfully assert that under any sort of comparative fault regime, they should be apportioned a lower percentage of fault because they did not design the machine? And third, should plaintiffs prevail only when they were known problem gamblers? In other words, would liability any more expansive than that foster an untenable or paternalistic notion that all consumers need to be shielded from potentially tempting advertising?

Ultimately, to avoid this paternalism concern, the best option—at least for now—seems to be states continuing to devote funding, resources, and attention to problem gambling. Slowly but surely, the tide is turning. This

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119 See Dowd, supra note 96, at 464 (suggesting any duty or liability imposed on a casino “should not only require knowledge that a gambler is exhibiting pathological tendencies toward gambling, but also some sort of malice” on the casino’s part).

120 See Thompson et al., supra note 115, at 1241 (recognizing that although “artificial factors . . . probably do cause people to game more than they planned or wished to,” so does the layout of a grocery store or the ambient music played at a shopping mall).

121 I leave room for the possibility that products liability lawsuits might someday be successful. Given the “no duty” rulings on most negligence claims thus far, new lawsuits face an uphill battle, but of course each case must be judged on its individual merits, on a well-developed record. As the Iowa Supreme Court has stated, “[o]ur law is constantly evolving and hopefully improving because talented attorneys are willing to fight uphill battles.” Barnhill v. Iowa Dist. Court, 765 N.W.2d 267, 279 (Iowa 2009).

122 See Thompson et al., supra note 115, at 1239–40 (proposing increased awareness campaigns and “societal education about the signs of troubled gaming”);
type of measured progress, while incremental, will prevent problem gambling from reverting to being an issue that makes society laugh.

V. CONCLUSION

The public has tended to view problem gambling as a peripheral issue, perhaps due in part to its trivial treatment in the media. But that may no longer be true, because there are significant efforts underway to change how problem gambling is diagnosed, treated, and avoided. Whether these efforts are successful or not, the legal landscape is likely to change in the coming years—and as it has already begun to do, the media is likely to follow. Perhaps in the future we’ll wonder why it took so long for the change to occur. We might look back and laugh—indicating, at least in that respect, that problem gambling is funny.

see also Grace, supra note 4, at 253 ("[G]ambling awareness curriculum would be appropriate for health and wellness courses."). Of course, even with heightened awareness of the problem, no solution that devotes additional resources to problem gambling treatment will work without problem gamblers who are willing to participate. See Wolfe, supra note 7, at 690 ("[I]mplementation of a full-scale treatment program will not [necessarily] eliminate the problem, since many compulsive gamblers will not avail themselves of treatment.").