

## THE FEMINIZING OF THE NEVADA GAMING INDUSTRY – CONDITIONS AND CONSEQUENCES

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### I. INTRODUCTION

Melinda Gates once said, “all women, everywhere, have the same hopes: we want to be self-sufficient and create better lives for ourselves and our loved ones.”<sup>1</sup> This quote resonates deeply with many women and is nowhere more prevalent than in historically male-dominated workforces, such as Nevada’s gaming industry. Women have undoubtedly influenced and contributed to Nevada’s gaming industry since its inception, but what is the historic role of women within that industry and how has that role transformed since the industry’s founding? Further, how has that role transformed the industry itself and how has the experience working within the gaming industry affected the women who dedicate their careers and lives to it?

Through related social catalysts such as the influx of working women in the 1980s, feminism and feminization, public controversies, and the Me-Too movement, women have transformed the gaming industry and have contributed to the creation of a national conversation about exploitation, gendered violence, and sexual harassment. Through this conversation, women continue to build on the transformation of the gaming industry at every turn and in meaningful ways. Nevada’s gaming industry is one of the largest, most profitable, and most controversial industries in the world. The feminization of the industry ultimately led to 2020, a year that is being called by some “the year of the woman in

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<sup>1</sup> Yitzi Weiner, “5 Things I Wish Someone Told Me Before I Became a CEO” with Andrea Loubier CEO of Mailbird, THRIVE GLOBAL (Aug. 14, 2019), <https://thriveglobal.com/stories/5-things-i-wish-someone-told-me-before-i-became-a-ceo-with-andrea-loubier-ceo-of-mailbird/>.

gaming.”<sup>2</sup> Throughout its foundation, maintenance, and operation women have experienced, and continue to face, many challenges throughout their role in the development of the gaming industry including rampant discrimination, exploitation, sexual abuse and harassment, hostile working environments, and low job security. Hypersexualized spaces, low consumer inhibitions, and little or no protection from management often exacerbate these vulnerable experiences. However, as the evolution of the gaming industry as well as history in general doubtlessly proves, women are incredibly resilient. A woman’s desire to be self-sufficient and to create a better life for herself and her loved ones remains unassailable and more outwardly expressed than ever.

### I. The History and Feminization of the Nevada Gaming Industry

To “feminize” an industry is to “give a feminine quality”<sup>3</sup> to that industry, but what exactly does that entail and what are its consequences for historically male-dominated industries such as gaming? To understand the process of feminization, and its consequences, there must first be an acknowledgement of what it means for an industry to be “gendered.” To say that an industry is gendered “means that advantage and disadvantage, exploitation and control, action and emotion, meaning and identity, are patterned through and in terms of a distinction between male and female, masculine and feminine.”<sup>4</sup> In other words, distinctions between genders are drawn, often from stereotypes, and used by industry managers to exploit or control the workforce. Gender, then, can and has been used as a measurement of distinction and a means to stratify or segregate individuals within an industry. The process of feminizing an industry, a task, or a job is therefore associated with the industry’s adoption of feminine qualities, feminine influences, or a primarily feminine workforce. Feminization is “frequently deployed in the interests of both male and managerial control”<sup>5</sup> because femininity has long been equated with submissiveness and service, creating the perception that it is easier to exercise control over a primarily female workforce. This is where many of the consequences arise, as managerial control often trumps employee autonomy and creates an atmosphere of oppression.

Gendered segregation of a workplace often results in inequality, the first example of which is that jobs and occupations held by women tend to be paid

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<sup>2</sup> Donika Rexhepi, *Why 2020 Will Be the Year of Women in Gaming - and Why Brands and Marketers Should Be Paying Attention*, EDELMAN (Apr. 4, 2019), <https://www.edelman.co.uk/insights/why-2020-will-be-year-women-gaming-and-why-brands-and-marketers-should-be-paying-attention>.

<sup>3</sup> *Feminize*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/feminize> (last visited Sept. 24, 2020).

<sup>4</sup> Elaine Enarson, *Emotion Workers on the Production Line: The Feminizing of Casino Card Dealing*, 5 NWSA J., Summer 1993, at 218 (quoting Joan Acher, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOCIETY, Jun. 1990, at 139, 146).

<sup>5</sup> *Id.* (footnote omitted).

less.<sup>6</sup> Women currently earn just 79 cents for every dollar men make.<sup>7</sup> Work segregation by sex also limits individual autonomy and contributes to stereotypes which limit both women and men's freedom of occupation – reinforcing the problems associated with gendered occupational segregation.<sup>8</sup> This is often more problematic “in blue-collar workplaces” where “masculinities are more visible and aggressively practiced.”<sup>9</sup> The result of such visible and aggressively practiced masculinities is the overt “creation of hostile working environments for women and gender nonconforming men.”<sup>10</sup> This phenomenon is profoundly evident in the context of male-dominated casinos where managers, both historically and currently, employ “gender strategies.”<sup>11</sup> These gender strategies essentially utilize “socially constructed gender relations,” including “dimensions of personality, and economic status to maintain male authority on the casino floor, retain customers in a competitive market, and increase control over the work force.”<sup>12</sup>

While women have always occupied peripheral roles within the gambling culture, the gaming industry has historically been a predominantly male-dominated field. There have been few exceptions to the solely peripheral role of women in the frontier gaming industry. Women such as “Poker Alice” and Lottie Deno took their respective places in early professional gambling history by asserting themselves as well respected players and entrepreneurs.<sup>13</sup> Despite these limited exceptions, however, the industry has long emphasized the “proudly all-male and masculinized atmosphere” of gaming establishments.<sup>14</sup>

Visions of the “wild west”, saloon and burlesque type atmospheres come to mind to most when they think of gambling in Nevada and they wouldn't necessarily be wrong. During western expansion, gold and silver miners and outlaws would gather at local saloons and play poker.<sup>15</sup> Women often held supporting roles of entertainment in that environment – primarily as prostitutes

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<sup>6</sup> David Hesmondhalgh & Sarah Baker, *Sex, Gender and Work Segregation in the Cultural Industries*, 63 SOC. REV. 23, 25 (2015).

<sup>7</sup> Kathleen Elkins, *Here's How Much Men and Women Earn at Every Age*, CNBC (Apr. 2, 2019, 11:20 AM), <https://www.cnbc.com/2019/04/02/heres-how-much-men-and-women-earn-at-every-age.html>.

<sup>8</sup> Hesmondhalgh & Baker, *supra* note 6, at 25.

<sup>9</sup> Ann C. McGinley, *Harassing “Girls” at the Hardrock: Masculinities in Sexualized Environments*, 2007 U. ILL. L. REV., 1229, 1231 (2007).

<sup>10</sup> *Id.*

<sup>11</sup> Enarson, *supra* note 4, at 218–19, 221–22, 230.

<sup>12</sup> *Id.* at 219.

<sup>13</sup> Nicholas G. Colon, *The Evolution of Women in Gaming*, GAMBLING INSIDER (Jun. 21, 2018), <http://www.gamblinginsider.com/in-depth/5447/the-evolution-of-women-in-gaming>.

<sup>14</sup> Enarson, *supra* note 4, at 220.

<sup>15</sup> Colon, *supra* note 13.

and madams.<sup>16</sup> Over the next decades, Las Vegas expanded significantly.<sup>17</sup> With that expansion, large casinos were built and “[b]ecause of the masculine nature of the Italians funding these projects, women again continued to be placed in strictly supporting and entertaining roles.”<sup>18</sup> Also at this time, “some new occupations were created ... , such as ... showgirls and topless dancers” reinforcing the entertainment-only perception of women in casinos.<sup>19</sup>

Men continued to dominate virtually every aspect of the gaming industry from senior executive positions to the day-to-day operations of casinos, to the tables and players themselves.<sup>20</sup> The first female dealers came onto the gaming scene in Reno, Nevada when “Harold’s Club” hired its first female blackjack dealer in 1937.<sup>21</sup> Harold Smith immediately noticed the success of that female dealer with the male players who occupied his casino.<sup>22</sup> Then, in the wake of World War II, there was a major shortage of available male employees and Harold Smith “began hiring women exclusively for his tables.”<sup>23</sup> Las Vegas casinos, in contrast, refused to hire women and wouldn’t follow suit until decades later when Fremont’s Silver Slipper finally hired its first female dealer in 1970.<sup>24</sup>

Women have also not been the main demographic to which the gaming industry has traditionally catered to. Employing women in casinos did, however, become a major avenue by which casino managers appeal to their historically male clientele.<sup>25</sup> Women have long held positions “at the lowest rungs of the gaming industry—as maids, janitors, change people, and hostesses.”<sup>26</sup> As previously illustrated, women have historically occupied entertainment positions in casinos as well. The first roles women began to occupy on the casino floor were those “that emphasized the sexuality of women” such as cocktail waitresses and exotic dancers.<sup>27</sup> Female sexuality was and arguably remains a key component and necessary aspect of female positions within the casino culture. This was a strategic technique used by the first casino operators to “create a desirable environment for the mostly male gambling clientele.”<sup>28</sup> It wasn’t long

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<sup>16</sup> *Id.*

<sup>17</sup> *See Las Vegas Timeline*, LAS VEGAS SUN, <https://lasvegassun.com/history/timeline/> (last visited Sep. 22, 2020).

<sup>18</sup> Colon, *supra* note 13.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Saloon Gals: The First Female Dealers*, OFF THE STRIP, <http://www.offthestrip.com/blog/saloon-gals-the-first-female-dealers.html> (last visited Sep. 22, 2020).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *See* Colon, *supra* note 13.

<sup>26</sup> *See* Jill B. Jones & Susan Chandler, *Connecting Personal Biography and Social History: Women Casino Workers and the Global Economy*, 28 J. SOCIO. & SOC. WELFARE, Dec. 2001, at 173, 174.

<sup>27</sup> Colon, *supra* note 13.

<sup>28</sup> *Id.*

before women began to occupy roles as dealers in the games which male employees abandoned for more lucrative positions.<sup>29</sup> As the industry grew and the competition increased, this feminization expanded as employers sought female workers for a job “redefined as clerical and emotion work in a service industry.”<sup>30</sup> “Feminizing occupations typically exhibit this pattern, as male workers reorder job preferences and employers redefine tasks and jobs in gendered terms.”<sup>31</sup> In the Nevada gaming industry, men increasingly began to occupy roles as pit bosses and managers while women began to occupy positions in the lower rungs of the industry creating a gendered hierarchy.<sup>32</sup> It is partly because of these “structural changes in the social organization of work” and workplaces that women have made advancements into such hyper-masculine workplaces as casinos.<sup>33</sup> Increasingly, the casino owners realized that their clientele “would rather lose their money to a pretty face” and began to employ certain types of women to hold those positions.<sup>34</sup>

By the 1980s, as many as three-quarters of all Las Vegas 21 dealers were estimated to be female.<sup>35</sup> Women also began dominating fields such as cocktail service, dancing, and front of the house restaurant jobs. Women, therefore, became the front-line production workers in the enormously profitable and rapidly growing Nevada gaming industry.<sup>36</sup> A once males-only casino culture became rampant with young, beautiful women in a little over a decade. Although women were increasingly holding positions previously dominated by a male workforce, the nature of the positions changed from one of skill, expertise, and respect to one of personal service, submissiveness, and degradation.

The “personal service” transition of the casino culture is closely linked to the idea that women are more “caring, sympathetic and able to put others at ease.”<sup>37</sup> Casino operators and managers began to exploit these stereotypical “feminine” personality traits by requiring female employees to “service the customer” through “interaction, eye contact, smiles, and a generally friendly demeanor.”<sup>38</sup> Traditional and stereotypical roles of femininity were also highlighted in dress codes, makeup policies, and other appearance policies such as the requirement that female employees wear high heels and maintain a specific weight.<sup>39</sup> Because casinos literally operate on exploiting a lack of impulse

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<sup>29</sup> See Enarson, *supra* note 4, at 223.

<sup>30</sup> *Id.* at 219.

<sup>31</sup> *Id.* at 223.

<sup>32</sup> *Id.* at 219.

<sup>33</sup> *Id.* at 220.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 221.

<sup>37</sup> Hesmondhalgh & Baker, *supra* note 6, at 7.

<sup>38</sup> Enarson, *supra* note 4 at 225.

<sup>39</sup> See generally *id.* at 223.

control by selling high stakes and thrills, casino operators quickly learned they could further exploit that phenomenon using a pretty face in a skimpy outfit.<sup>40</sup>

To complement the restructuring of the perception of these positions, “declining wages and working conditions paralleled the feminizing of the casino [gaming industry].”<sup>41</sup> With women working these jobs, casino executives were able to pay them less and the environment became a more controlling one.<sup>42</sup> Additionally, women holding these types of positions started to experience “low job security, limited benefits, emotional and physical stress, and variable shifts.”<sup>43</sup> Women, therefore, became essential to Nevada’s tourist economy, but were “by and large locked into low-paid, low-benefit jobs.”<sup>44</sup>

It should come as no surprise that harassment of female employees has also been historically prevalent in casino environments. The notion that “what happens in Vegas, stays in Vegas” and the idea that Las Vegas and Nevada in general is a “playground” for various vices, including prostitution, creates an especially hostile work environment for women working in these spaces. Many women who hold these positions and occupations are often “young, smart, and strong but” they are particularly “vulnerable to sexual harassment.”<sup>45</sup>

## II. The Historical Exploitation of Femininity – Gender Roles in Society and in the Nevada Gaming Industry

Gender roles are largely culturally and historically contingent. They refer to “the set of social and behavioral norms that are considered to be socially appropriate for individuals of a specific sex.”<sup>46</sup> Gender roles in society can manifest through how we are “expected to act, speak, dress, groom, and conduct ourselves based on our assigned sex.”<sup>47</sup> One of the leading theories regarding the role of biology and gender is known as the gender role theory. This theory posits that boys and girls learn to perform one’s biologically assigned gender through particular behaviors and attitudes that society deems acceptable for men and women, boys and girls.<sup>48</sup> Social role theory, on the other hand, posits that the

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 221.

<sup>42</sup> *Id.* at 230.

<sup>43</sup> *Id.* at 221.

<sup>44</sup> Jones & Chandler, *supra* note 26, at 174.

<sup>45</sup> Ann C. McGinley, *Harassing “Girls” at the Hardrock: Masculinities in Sexualized Environments*, UNIV. ILL. L. REV., 1229, 1234 (2007).

<sup>46</sup> Lumen, *Gender Roles in the U.S.*, LUMEN LEARNING, <https://courses.lumenlearning.com/cochise-sociology-os/chapter/gender-roles-in-the-u-s/> (last visited Oct. 20, 2020).

<sup>47</sup> Planned Parenthood, *What are Gender Roles and Stereotypes?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/sexual-orientation-gender/gender-gender-identity/what-are-gender-roles-and-stereotypes> (last visited Oct. 20, 2020).

<sup>48</sup> Lumen, *supra* note 46.

social structure is the underlying force in distinguishing genders and that “sex-differentiated behavior” is driven by the “division of labor between two sexes within a society.”<sup>49</sup> This division of labor is said to further enforce gender roles, which in turn, lead to the furtherance of gendered social behavior.<sup>50</sup>

These gender roles often translate to gender stereotypes and they are reinforced in almost every aspect of our daily lives. There are four basic types of gender stereotypes: “personality traits, domestic behaviors, occupations, and physical appearance.”<sup>51</sup> For example, when it comes to personality traits, women are expected to be accommodating and emotional, while men are expected to be self-confident and aggressive.<sup>52</sup> When it comes to occupations, some people are quick to assert that teachers and nurses should be women, and that men should occupy roles as pilots, doctors, and engineers.<sup>53</sup> Physical appearance is probably the most obvious and pervasive form of gender stereotyping today.<sup>54</sup> For example, women are expected to be thin and graceful, and dress and groom in a way that emphasizes their femininity.<sup>55</sup> Men, on the other hand, are expected to be tall and muscular and wear clothing that is stereotypical to their gender.<sup>56</sup> These stereotypes, among others, are harmful to individuals because they can cause unequal and unfair treatment. In other words, gender stereotypes breed sexism.<sup>57</sup> While these gender roles and stereotypes are still prevalent in society at large, they become concentrated in spaces where the industry is thriving on exploiting the differences between male and female, masculine and feminine.

American values such as family and the home have also influenced how gender roles have evolved in the United States. Before the rise of feminism in the 1960s and 70s, women were largely responsible for dealing with matters of the home, while men worked and earned income outside the home.<sup>58</sup> Because of the domestic role women have traditionally held, occupying roles as wife and mother, women were largely excluded from the workforce until the influx of women into the workforce in the 1980s.<sup>59</sup> To illustrate, from 1890 to 1985, the participation of women in the workforce between the ages of twenty-five and forty-four “soared from 15 to 71 percent, with the pace of change tripling after 1950.”<sup>60</sup> Women began to crowd sectors of the workforce traditionally occupied

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Planned Parenthood, *supra* note 47.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Lumen, *supra* note 46.

<sup>59</sup> *Id.*

<sup>60</sup> George Guilder, *Women in the Work Force*, ATLANTIC (Sept. 1986), <https://www.theatlantic.com/magazine/archive/1986/09/women-in-the-work-force/304924/>.

by men in both white-collar and blue-collar spaces,<sup>61</sup> including the casino and gaming industries.

As previously mentioned, women have historically occupied mostly supporting roles that emphasized femininity and sexuality in the Nevada casino environment. Nevertheless, women have played key roles working in and marketing the industry even if they were mostly providing men with intimacy and companionship.<sup>62</sup> During the 20<sup>th</sup> century, women were both proprietors and prostitutes in many of the first restaurants, saloons, hotels, brothels, and casinos.<sup>63</sup> In the 1930s, however, Nevada officials began capitalizing on the growing market for sex.<sup>64</sup> Nevada legalized gambling, began officiating “quickie” marriages, and permitted red light districts to flourish.<sup>65</sup> Things changed drastically in the 1950s, when the Las Vegas transformed its “look” from a grungy underground culture to a new, upscale, and “fabulous” Las Vegas, “featuring images of chic, scantily clad women lounging around pools.”<sup>66</sup> It is during this time period that casino and hotel operators began to capitalize primarily on fantasy, rather than sex by incorporating more white, “classy” women as their sole marketing strategy.<sup>67</sup> During this same era, sex work went underground and women were still unable to work as dealers in Las Vegas.<sup>68</sup>

When women began to occupy roles in casinos as card dealers, the nature of the job transformed. Casinos began to offer a “cordial atmosphere” in “contrast to the attitude of old-line dealers in earlier times when even a smile was forbidden.”<sup>69</sup> The transformation of the casino industry from an underground, male-dominated workforce to a highly lucrative and female dominated workforce led to changes in the way consumers interacted with casino staff. The dress code and makeup policies also influenced how consumers interacted with casino staff. Because women occupy sexualized roles, such as cocktail waitresses and dancers, they are required to look a certain way. Many casinos require female employees to wear short skirts and dresses, high heels, stockings, colored nail polish, specific hair styles, and do their makeup in a particular way.<sup>70</sup> Courts, including the Ninth Circuit, have upheld these dress code policies as non-discriminatory because they further legitimate business interests and do not

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<sup>61</sup> *Id.*

<sup>62</sup> Barbara G. Brents, *Sex Work in Sin City*, CONTEXTS: LEARNING FROM LAS VEGAS (Feb. 2012), <https://contexts.org/articles/learning-from-las-vegas/>.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Enarson, *supra* note 4, at 220.

<sup>70</sup> John G. Stretton & Jennifer Chiampou, *Appearance Policies and Sex Discrimination: More than Meets the Eye?*, LOCKE LORD LLP (Aug. 19, 2009), <https://www.lexology.com/r.ashx?l=972KTKA>.



impose unequal burdens for men and women.<sup>71</sup> For example, in *Jespersen v. Harrah's Operating Co.*, the Ninth Circuit held that a "good-grooming rule" issued by Harrah's Casino which required female bartenders to wear makeup did not violate Title VII's prohibition on sex discrimination.<sup>72</sup> In *Jespersen*, the court ruled that employers are permitted to adopt different appearance standards based on sex as long as the policies do not create "unequal burdens" for men and women.<sup>73</sup> In this case, the court found that the plaintiff failed to show that a makeup requirement for women imposed a burden in excess of that associated with normal grooming standards.<sup>74</sup> In the casino environment, these "legitimate business interests" often include "customer expectations that casino employees will project an image of glamour and style."<sup>75</sup> The requirement that female employees use cosmetics is based on societal norms, including gender stereotypes,<sup>76</sup> and is reaffirmed in the courts, as illustrated by *Jespersen*. These hypersexualized, fantasy-based, appearance and consumer-driven spaces led to women being the subject of more harassment, exploitation and abuse from patrons and management alike. For example, in *Jane Doe v. Light Group*, a nineteen year old plaintiff sued her former employer alleging egregious abuse including severe sexual harassment claims, exploitation including encouraging her to dress more provocatively, to drink excessively and ingest cocaine, and to lose weight.<sup>77</sup> Additionally, these managers encouraged the nineteen year old to sit on the laps of VIP guests, to kiss and touch them inappropriately, and to allow them to touch her.<sup>78</sup> Perhaps most shocking, this particular plaintiff had a drug and alcohol overdose while at work.<sup>79</sup> Instead of calling emergency first responders, her supervisors called her a taxi.<sup>80</sup> She was found face down in a park, unconscious, three hours later.<sup>81</sup> Ultimately, this case settled confidentially<sup>82</sup> allowing Light Group to evade any meaningful public repercussions. While this may be an example of the most deplorable behavior of management in Las Vegas clubs and casinos, it suggests that managers and VIP patrons often enjoy free reign in these spaces with little regard for the well-being of the women occupying them.

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<sup>71</sup> *Id.*

<sup>72</sup> *Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104, 1106 (9th Cir. 2006).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> John G. Stretton & Jennifer Chiampou, *Appearance Policies and Sex Discrimination: More than Meets the Eye*, LOCKE LORD LLP (Aug. 19, 2009), <https://www.lexology.com/r.ashx?l=972KTKA>.

<sup>76</sup> *Id.*

<sup>77</sup> Ann C. McGinley, *Trouble in Sin City: Protecting Sexy Workers' Civil Rights*, 23 STAN. L. & POL'Y REV. 253, 267 (2012).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 268.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

Additionally, casinos often employ bureaucratic hiring strategies, requiring women to “audition” for certain jobs and sometimes even to sign “model” contracts instead of traditional employee contracts.<sup>83</sup> These model contracts allow employers to dictate virtually every aspect of how the female employees look and dress because they are being hired to “model” to promote a product or space.<sup>84</sup> They also allow casino operators to be extremely selective, almost to the point of rampant exclusion of certain women. Women who attempt to challenge these hiring practices are often met with what is called the BFOQ defense.<sup>85</sup> The BFOQ defense essentially allows for an employer to discriminate on the basis of sex if it is a “bona fide occupational qualification necessary to the normal operation of that particular business.”<sup>86</sup>

These hiring strategies further stratify the female workforce according to race, gender identity, and age. Older women specifically worry about their futures and often report feeling fortunate to still be employed in an industry that thrives on the “young, sexy image,” particularly in the most profitable clubs.<sup>87</sup> This phenomenon is also prevalent in other industries that tend to compliment the gaming industry in cities like Las Vegas. These include the day clubs, pools, lounges and night clubs. This also presents a problem for women who want to start families. For example, in 2010, Leslie Culler sued her employer alleging sexual harassment, gender discrimination, and assault and battery.<sup>88</sup> Culler’s complaint alleges that over an eight year period, the defendants sexually harassed her over 200 times.<sup>89</sup> It further alleges that she was fired for her failure to allow this sexual harassment to continue and because she got married, was trying to have a baby, and wore more conservative clothing.<sup>90</sup> Although casinos may not technically fire an employee outright for being pregnant, they are required to rapidly reclaim their pre-pregnant form if they want to continue working for their employers in a similar capacity.<sup>91</sup> These overtly selective and appearance-based hiring strategies are further exploited with the rise of the “dancing dealers” at

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<sup>83</sup> Dianne Avery & Marion Crain, *Branded: Corporate Image, Sexual Stereotyping, and the New Face of Capitalism*, 14 DUKE J. GENDER L. & POL’Y 13, 84 (2007); see Kyla Walters, *Mall Models: How Abercrombie & Fitch Sexualizes its Retail Workers*, SEXUALIZATION, MEDIA, & SOCIETY 1, 2 (2016).

<sup>84</sup> *Id.* at 16.

<sup>85</sup> *Id.* at 43.

<sup>86</sup> Bona Fide Occupation Qualification, Legal Information Institute, Cornell Law School.

<sup>87</sup> Elaine Enarson, *Emotion Workers on the Production Line: The Feminizing of Casino Card Dealing*, Vol. 5, No. 2 NWSA J. 218, 222–23, <https://www.jstor.org/stable/4316261>.

<sup>88</sup> Ann C. McGinley, *Scholarly Works, Trouble in Sin City: Protecting Sexy Workers’ Civil Rights*, 253, 265 (2012) <https://scholars.law.unlv.edu/facpub/645>.

<sup>89</sup> *Id.* at 266.

<sup>90</sup> *Id.*

<sup>91</sup> Ann C. McGinley, *Harassing “Girls” at the Hardrock: Masculinities in Sexualized Environments*, U. ILL. L. REV., 1229, 1240 (2007).

some downtown Las Vegas venues.<sup>92</sup> To illustrate the emphasis on appearance, the D currently advertises these employment opportunities like this – “Now while gaming, you can look up and see a Dancing Dealer.”<sup>93</sup> Akin to looking up and viewing a work of art, this type of language objectifies women and makes their appearance the sole purpose of their presence there. The D also utilizes words like “sexy, fun, and energetic” to attract new employees.<sup>94</sup> “Party pits” are also on the rise in downtown Las Vegas.<sup>95</sup> These party pits have a rock n’ roll vibe and cater mostly to casual gamblers.<sup>96</sup> The concept of dancing dealers and party pits is taking Vegas by storm now, but it is not a new idea.<sup>97</sup> The idea has actually been developing since the 1980s.<sup>98</sup>

Dealers have traditionally dressed in black and white skirts or pants, “designed to emphasize social distance and control over the game rather than sexuality.”<sup>99</sup> More recently, however, managers reportedly ask their young and attractive dealers to “entertain” visiting high rollers.<sup>100</sup> This is made easier for management when there are dancing dealers because a dancing dealer’s primary job requirement is to entertain and solicit money from people who might not care to sit down for a full game of poker. The longer the dealer gets the patron to sit, the more money he spends.

One woman described her experience with her employers’ dress-code policies in this way:

The dealers are sexualized there. They pick very young women to deal. There is a certain stereotype that they go after... I would say they have the most beautiful women in town working there, some women who have modeled for years. And we’re encouraged to keep up appearances. We get in trouble if we don’t curl our hair, if we don’t wear make up. They [the casino managers] would actually talk to dealers, pull them off tables and say, “you’re gaining weight.”<sup>101</sup>

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<sup>92</sup> *Dancing Dealers*, THE D LAS VEGAS, <https://www.thed.com/casino/dancing-dealers/> (last visited Jan 3, 2021).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Michael Kaplan, *Inside the Scantily-Clad Casino “Party Pits” of Las Vegas*, MAXIM (Dec. 18, 2015), <https://www.maxim.com/entertainment/inside-scantily-clad-party-pits-las-vegas-2015-12>.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Elaine Enarson, *Emotion Workers on the Production Line: The Feminizing of Casino Card Dealing*, Vol. 5, No. 2 NWSA J. 218, 223 <https://www.jstor.org/stable/4316261>.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

This sentiment is reinforced by managers and pit bosses who create and employ female “charm” through enforcing dress code policies that reinforce women’s subservient role in this hyper-sexualized environment. One female dealer described how managers exploit the sexuality of their female employees to attract patrons in this way:

They feel they can whore their services out – that’s exactly how I feel about it. You know, get the big buck – they draw the big buck over to the table. You know, they can pay you \$34 a day and they can sit there and whore your services out to this guy making the money.<sup>102</sup>

Many pro-business critics advocate for business autonomy and contend that casino owners should be able to define their businesses freely, allowing businesses to draw customers by carefully crafting images that may include explicit or implicit sexual messages.<sup>103</sup> One author’s research shows, however, that when these messages encourage harassment of employees by customers and the business owners do not control the patrons’ behavior, employees may suffer serious harm.<sup>104</sup>

While these appearance policies and dress code policies influence how female employees are seen and treated, the hyper-sexualization of casino environments also cause women to be vulnerable to a wide range of harassment and abuse – both from management and from patrons. Research demonstrates that “in workplaces and positions that have been historically male, sex- and gender-based harassment occurs more readily.”<sup>105</sup> One woman describes her experiences in card dealing this way:

The player on third base is drunk and has already exhausted his limited vocabulary insulting you and your entire lineage. He starts over again when he sees the ace. The cigar he’s smoking smells like raw sewage – when you get a whiff of it over his wife’s perfume. Now a guy walks up to the game, slams 2 bucks on the table (the minimum bet is five dollars) and yells: “You better be nice to me! Hey, SMILE! Don’t you dealers ever smile?”<sup>106</sup>

Casinos market to mostly young patrons, predominantly men, through depictions of fantasy and access to women – some players “still assume Nevada dealers moonlight as prostitutes.”<sup>107</sup> One author describes “sin city” as “capitalist

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<sup>102</sup> *Id.*

<sup>103</sup> Ann C. McGinley, *Harassing “Girls” at the Hardrock: Masculinities in Sexualized Environments*, U. ILL. L. REV., 1229, 1233 (2007).

<sup>104</sup> *Id.*

<sup>105</sup> Anne C. McGinley, *Sex- and Gender-Based Harassment in the Gaming Industry*, 9 UNLV GAMING L.J. 147, 154–55 (2019) (discussing causes of harassment).

<sup>106</sup> Enarson, *supra* note 4, at 221 (citing Janne Hanrahan, *A Friendly Little Game*, RENO GAZETTE J., Aug. 8, 1989, at 1D.).

<sup>107</sup> *Id.* at 227.

patriarchy run amok.”<sup>108</sup> Las Vegas, then, can often be perceived as the perfect combination of “sexism, exploitation, and consumerism.”<sup>109</sup> Many vacationers, bachelors, and out-of-towners trying to party flock to Las Vegas for its reputation as the “Wild West” and as an adult “Disneyland.” This perception of the “no rules,” anything goes atmosphere breeds exploitation of the women who work in casino environments.

It is commonplace for “patrons high on drugs and/or alcohol” to make egregious comments to female employees and dealers.<sup>110</sup> Women who work in these environments are subject to name calling, threats, and sometimes even physical battery.<sup>111</sup> This “hostile behavior [often] occurs in full view of management, but little is done to stop the abuse.”<sup>112</sup> Players’ horrifying behavior is further endorsed by management silence often leaving employees powerless and defenseless. While “male dealers also experience verbal abuse from players and pit bosses; the sexualized . . . slurs women experience further disempower female” employees exclusively.<sup>113</sup> The harassment is exacerbated by “a sexually charged atmosphere on the casino floor, readily available alcohol, and the anonymity of the card table.”<sup>114</sup> Casinos operate on a high degree of customer and employee interaction, and casino employees often work long, irregular hours, many of which take place at night. Working odd hours through the night lowers patrons’ self-control and invites less inhibited interactions between employees and patrons. While the conditions described in this analysis have become commonplace in the Nevada casino environment, the political atmosphere also plays a role in the exacerbation of exploitation of female employees and women in general.

### III. The Impact of American Politics and the Rise of the “Me Too” Movement on the Nevada Gaming Industry

“Human behavior is affected both by genetic inheritance and by experience,”<sup>115</sup> nature and nurture. Each individual “is born into a social and cultural setting.” “Family, community, social class, language, and religion” are some examples of cultural settings human beings are born into.<sup>116</sup> “The characteristics of a child’s social setting affect how he or she learns to think and

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<sup>108</sup> Brents, *supra* note 62.

<sup>109</sup> *Id.*

<sup>110</sup> McGinley, *supra* note 9, at 1235.

<sup>111</sup> Enarson, *supra* note 4, at 227.

<sup>112</sup> McGinley, *supra* note 9, at 1236.

<sup>113</sup> Enarson, *supra* note 4, at 227.

<sup>114</sup> *Id.*

<sup>115</sup> F. JAMES RUTHERFORD & ANDREW AHLGREN, SCI. FOR ALL AMS., 87-106 (1990), <http://www.project2061.org/publications/sfaa/online/chap7.htm> (last visited Sept. 25, 2020).

<sup>116</sup> *Id.*

behave.”<sup>117</sup> “What is considered to be acceptable . . . behavior varies from culture to culture” and changes over time.<sup>118</sup> “Every social group has generally accepted ranges of behavior” and “social consequences . . . for unacceptable behavior . . . vary widely between, and even within, different societies.”<sup>119</sup>

“In addition to belonging to the social and cultural settings into which they are born, people voluntarily join groups based on shared . . . beliefs or interests.” A part of how human beings function in society is by organizing themselves “into various kinds of social groupings.”<sup>120</sup> Historically, human beings formed these social groupings because social bonds helped ensure their survival.<sup>121</sup> These social bonds evolved as humans formed communities and alliances that enriched their lives and enabled people to collaborate and innovate, slowly forming what became modern human societies.<sup>122</sup> Modern humans are part of many social groups that encourage sharing and cooperation.<sup>123</sup> Many of these groups act as a system of meaning and shared beliefs and work together to form a person’s worldview. A worldview represents a person’s “most fundamental beliefs and assumptions about the universe.”<sup>124</sup> Worldviews also “shape and inform our experiences of the world around us” and impact how individuals interact within that universe.<sup>125</sup> Each worldview “has profound implications for how people think about themselves, what behaviors they consider right or wrong, and how they orient their lives.”<sup>126</sup>

“Affiliation with any social group, whether one joins it voluntarily or is born into it, brings advantages of” belonging such as group resources, “concerted efforts” toward common goals, “and identity and recognition.”<sup>127</sup> People define themselves in terms of these social groups and are often quick to denigrate others who don’t fit into those groups.<sup>128</sup> In sociology, this phenomenon is often termed in-groups and out-groups.<sup>129</sup> These in-groups and out-groups have a powerful

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Smithsonian National Museum of History, *What Does It Mean To Be Human?*, SMITHSONIAN, <http://humanorigins.si.edu/human-characteristics/social-life> (last visited Sept. 25, 2020).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> James Anderson, *What is a Worldview?*, LIGONIER MINISTRIES BLOG (June 21, 2017), <https://www.ligonier.org/blog/what-worldview/>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> RUTHERFORD & AHLGREN *supra* note 115, at 87–106.

<sup>128</sup> Susan Krauss Whitbourne, *In-Groups, Out-Groups, and the Psychology of Crowds*, PSYCH. TODAY BLOG (Dec. 7, 2010), <https://www.psychologytoday.com/us/blog/fulfillment-any-age/201012/in-groups-out-groups-and-the-psychology-crowds>.

<sup>129</sup> *See generally id.*

polarization component and could form the basis for discrimination, and even violence against one another.<sup>130</sup>

Political party is an example of one of these social groupings and is often described as “the way a group of people make decisions together” about topics that impact individual and community life.<sup>131</sup> Politics can have a profound influence on the daily lives of individuals and groups, affecting constitutional rights, health, employment, taxes, the global economy, and much more. American political parties often act as in-groups and out-groups with “Republicans and Democrats . . . divided along ideological lines.”<sup>132</sup> “Partisan animosity has increased substantially” in recent years with more people than ever holding a negative view of the people part of the opposing party in general.<sup>133</sup> This general animosity is a major element in the polarization that has become broader and deeper in recent years and often results in the dehumanization of human beings who belong to other groups.<sup>134</sup>

The media plays a critical role in people’s perceptions of the relevant “out-group,” often creating embellished narratives that work to shape political events and delegitimize opposing viewpoints.<sup>135</sup> Media also serves to set the public agenda informing Americans about social issues, emphasizing scandals and high-interest issues.<sup>136</sup> One such issue was the highly publicized confirmation hearings of Clarence Thomas to the Supreme Court in 1991. During the hearings, which were televised for three days, Anita Hill, a professor at the University of Oklahoma’s law school, accused Judge Thomas of workplace sexual harassment.<sup>137</sup> “Judge Thomas forcefully denied the accusations” and the dismissive all-male Senate Judiciary Committee subjected Anita Hill to brash questioning and a distasteful lack of respect.<sup>138</sup> Judge Clarence Thomas was confirmed to the highest court in this nation despite these allegations and Anita

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<sup>130</sup> *Id.*

<sup>131</sup> *Politics as a Social Institution Sociology Essay*, UK ESSAYS (Nov. 2018), <https://www.ukessays.com/essays/sociology/politics-as-a-social-institution-sociology-essay.php>.

<sup>132</sup> *Political Polarization in the American Public: How Increasing Ideological Uniformity and Partisan Antipathy Affect Politics, Compromise and Everyday Life*, PEW RSCH. CTR., (June 12, 2014), <https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/>.

<sup>133</sup> *Id.*

<sup>134</sup> Brian Resnick, *7 Psychological Concepts that Explain the Trump Era of Politics*, VOX (May 6, 2017, 11:14AM), <https://www.vox.com/science-and-health/2017/3/20/14915076/7-psychological-concepts-explain-trump-politics>.

<sup>135</sup> Richard C. Reuban, *The Impact of News Coverage on Conflict: Toward Greater Understanding*, 93 MARQ. L. REV. 45, 46-47 (2009).

<sup>136</sup> American Government, *5d. The Media*, USHISTORY.ORG <http://www.ushistory.org/gov/5d.asp> (last visited Nov. 17, 2020).

<sup>137</sup> Julia Jacobs, *Anita Hill’s Testimony and Other Key Moments from Clarence Thomas Hearings*, N.Y. TIMES (Sept. 20, 2018), <https://www.nytimes.com/2018/09/20/us/politics/anita-hill-testimony-clarence-thomas.html>.

<sup>138</sup> *Id.*

Hill experienced severe backlash for her choice to come forward.<sup>139</sup> Unfortunately, this trend continued throughout the 1990s and is still happening today.

Another example of such a scandal is the highly publicized affair and resulting impeachment of former president Bill Clinton in the late 1990s. Bill Clinton's affair with Monica Lewinsky quickly took the media and the nation by storm and resulted in a variety of societal responses. On the one hand, some people, including politicians, found the former president's behavior morally repugnant and found his impeachment justified on both grounds of perjury and obstruction of justice.<sup>140</sup> On the other hand, the affair and the political whirlwind that followed seemed to generate more lewd jokes on late night talk shows rather than generating a much-needed national conversation about gendered violence and abuse of power.<sup>141</sup> While Bill Clinton was impeached by the House of Representatives, the whole affair had little effect on Clinton's popularity, and he remained in office for the rest of his term.<sup>142</sup> Bill Clinton remains a very popular president and public figure, even today. Many people actually blamed 21-year-old White House Intern Monica Lewinsky and genuinely believed Clinton when he asserted that he "did not have sexual relations" with her until he recanted his statements during his impeachment trial.<sup>143</sup> While Bill Clinton suffered little reputational harm, Monica Lewinsky suffered through an incredible amount of backlash and negative attention that significantly altered the course of her life.<sup>144</sup> The relationship between Bill Clinton and Monica Lewinsky was clearly about more than sex between two people. It was about power and reaffirmed a strong message – speak out against power and you will suffer the consequences.

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<sup>139</sup> *Id.* at 2, 4.

<sup>140</sup> Lesley Kennedy, *Why Clinton Survived Impeachment While Nixon Resigned After Watergate*, HISTORY (updated Feb. 11, 2018), <https://www.history.com/news/clinton-impeachment-lewinsky-scandal-nixon-resigned-watergate>.

<sup>141</sup> Calvin Woodward, *Clinton Jokes Are All the Rage*, AP NEWS (Sept. 25, 1998), <https://apnews.com/3caae479995b568523804c105360895d>.

<sup>142</sup> Kennedy, *supra* note 140, at 3.

<sup>143</sup> Jenee Desmond-Harris, *We Still Judge Monica Lewinsky More Harshly Than Bill Clinton, and It's Not Okay*, VOX (Oct. 24, 2014, 2:50 PM), <https://www.vox.com/2014/10/24/7053611/we-still-judge-monica-lewinsky-more-harshly-than-bill-clinton-and-it>; Maya Yagoda, *Bill Clinton: The Infamous Moment US President Denied Affair with White House Intern Monica Lewinsky*, INDEPENDENT (Dec. 19, 2018 1:00 PM), <https://www.independent.co.uk/news/world/americas/bill-clinton-monica-lewinsky-speech-affair-relationship-sexual-relations-impeachment-a8689511.html>.

<sup>144</sup> Drew Desilver, *Clinton's Impeachment Barely Dented His Public Support, and It Turned Off Many Americans*, PEW RSCH. CTR: FACTTANK (Oct. 3, 2019), <https://www.pewresearch.org/fact-tank/2019/10/03/clintons-impeachment-barely-dented-his-public-support-and-it-turned-off-many-americans/>; Alexandra Schwartz, *Monica Lewinsky and the Shame Game*, NEW YORKER (Mar. 16, 2015), <https://www.newyorker.com/culture/cultural-comment/monica-lewinsky-and-the-shame-game>.



A more recent example of a scandal involving high profile male figures and sexual misconduct occurred in the Access Hollywood video which appeared in the news during the 2016 presidential election. In the video, then-candidate for President, Donald Trump, can be heard talking about grabbing women's genitals.<sup>145</sup> While many were outraged at the video, Donald Trump declined to drop out of the race and also declined to offer much of an explanation or apology for his comments. He did, however, provide an initial written statement in which he accused President Bill Clinton of "behaving worse."<sup>146</sup> This pivot away from responsibility and projection of blame by comparison is an example of how the perception of wrongdoing can change according to who committed the wrong. Some of Trump's base surely thought former President Clinton's behavior was deplorable yet changed their views when the candidate they supported became the center of a similar controversy. By shifting the narrative, President Trump transformed his personal wrongdoing into a matter of Democrat versus Republican, in-group versus out-group. The morning after the tape appeared in the media, President Trump held a rally in which he did not face angry chants but, instead supportive cheers and high-fives.<sup>147</sup> This scandal and others involving public figures being accused of sexual harassment and assault helped publicize the historic "Me Too" movement.

The "Me Too" movement was founded in 2006 to help survivors of sexual violence and to build a community of advocates, driven by survivors, who aim to create solutions that interrupt sexual violence.<sup>148</sup> Because of the viral #MeToo hashtag, a vital conversation about sexual violence was thrust into the national dialogue. Since April 2017, more than 250 powerful people including celebrities, politicians, and CEOs have been the subject of sexual harassment, assault, or other misconduct allegations.<sup>149</sup> More survivors are coming forward nearly every day, many of them inspired and emboldened by those who have gone before.<sup>150</sup>

The #MeToo movement took the Nevada gaming industry by storm when the billionaire casino mogul, Steve Wynn, was accused of rape and sexual misconduct.<sup>151</sup> There were many lawsuits filed in relation to the scandal,

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<sup>145</sup> Philip Bump, *How the 'Access Hollywood' Incident Gave Us the Trump We Recognize Today*, WASH. POST (July 10, 2019, 11:07AM), <https://www.washingtonpost.com/politics/2019/07/10/how-access-hollywood-incident-gave-us-trump-we-recognize-today/>.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Tarana Burke, *History & Inception, ME TOO*, <https://metoomvmt.org/get-to-know-us/history-inception/>.

<sup>149</sup> Anna North et al., *262 Celebrities, Politicians, CEOs, and Others Have Been Accused of Sexual Misconduct Since April 2017*, VOX (updated Jan. 9, 2019), <https://www.vox.com/a/sexual-harassment-assault-allegations-list>.

<sup>150</sup> *Id.*

<sup>151</sup> Contessa Brewer, *Wynn Resorts to Face Massachusetts Regulators in Bid to Save Gaming License After Last Year's #MeToo Scandal*, CNBC (Apr. 1, 2019, 2:50 PM),

including a class action which alleged that the Wynn casino was “a hostile work environment.”<sup>152</sup> Shortly after the accusations against Steve Wynn first emerged, the company hosted a mandatory meeting for staff at the Wynn Country Club, where Steve Wynn asked the group of more than forty employees to “raise their hands if they ever felt assaulted or abused by him.”<sup>153</sup> The employees, not surprisingly, said they felt pressured to “out” themselves, and feared humiliation and retaliation.<sup>154</sup> Steve Wynn later joked about the accusations. Wynn Resorts has admitted to many charges, laid out in the complaint by the Nevada Gaming Control Board, including allegations detailing how more than half-a-dozen casino executives learned of serious allegations against Steve Wynn but failed to follow the company’s own policies in response.<sup>155</sup> This is an unfortunate, but not surprising, trend in many high-profile sexual misconduct scandals as powerful executives tend to want to stay in power, often at the expense of seemingly powerless employee-victims. In February, the Nevada Gaming Commission levied a historic \$20 million fine against Wynn Resorts.<sup>156</sup> Steve Wynn stepped down as chairman and sold his entire stake in the company he’d founded, yet he continues to deny all allegations of sexual misconduct.<sup>157</sup> Most recently, Steve Wynn has filed a lawsuit against the Nevada Gaming Control Board claiming a lack of jurisdiction after state regulators said he should face personal consequences for allegations that he sexually harassed his former employees.<sup>158</sup>

Despite the growing momentum of the “Me Too” movement in the last couple of years, not every public official accused of sexual misconduct suffers consequences and many remain in positions of power. This is evident in the popularity of Bill Clinton, Clarence Thomas on the Supreme Court, the Presidency of Donald Trump and, more recently, the confirmation of Brett Kavanaugh to the United States Supreme Court. Many protestors took to the streets to protest Brett Kavanaugh’s confirmation, their signs displaying two

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<https://www.cnn.com/2019/04/01/wynn-resorts-to-face-regulators-after-last-years-metoo-scandal.html>.

<sup>152</sup> Bailey Schulz, *9 Female Employees File New Lawsuit Against Wynn Resorts*, LAS VEGAS REV. J. (Oct. 1, 2019, 12:56 PM), <https://www.reviewjournal.com/business/casinos-gaming/9-female-employees-file-new-lawsuit-against-wynn-resorts-1861049/>.

<sup>153</sup> *Id.* at 3.

<sup>154</sup> *Id.*

<sup>155</sup> Brewer, *supra* note 151.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Vanessa Murphy, *I-Team Exclusive: Steve Wynn Responds to Nevada Gaming Control Board Complaint*, 8 NEWSNOW (Nov. 14, 2019, 6:36 PM), <https://www.8newsnow.com/i-team/i-team-exclusive-steve-wynn-responds-to-nevada-gaming-control-board-complaint/>.

words: “me too.”<sup>159</sup> The words expressed solidarity with Christine Blasey Ford, who said that Kavanaugh sexually assaulted her when they were in high school. Despite Christine Blasey Ford’s powerful testimony and the national support that her story inspired, Brett Kavanaugh was confirmed to the highest court in America and yet another survivor, Christine Blasey Ford, has experienced severe backlash for her testimony, including death threats.

The Kavanaugh confirmation suggests that there is a wide partisan gap in support for the “Me Too” movement. One 2018 poll reveals that while eighty-one percent of Democrats said they backed the movement, only fifty-four percent of Republicans shared the same sentiment.<sup>160</sup> Some of what drove this may have been related to Kavanaugh’s confirmation hearing itself because prominent Republicans waged an anti-#MeToo campaign, drawing attention to the possible negative consequences of the movement for men, and public opinion on Kavanaugh’s confirmation was largely split along party lines.<sup>161</sup> For many, Kavanaugh’s confirmation revealed how little has changed since #MeToo rose to prominence.<sup>162</sup> In addition, data from The Democracy Fund Voter Study Group, which polls large segments of the U.S. electorate to track changes in attitudes and beliefs, suggests that since 2016, Republicans have grown more skeptical of women who report harassment and the motivation behind their claims.<sup>163</sup>

The sentiment of being skeptical about women who report harassment is advocated by President Trump who gave advice to a friend similarly accused of inappropriate behavior with women – “You’ve got to deny, deny, deny and push back on these women,” Trump reportedly told his friend.<sup>164</sup> He continued:

If you admit to anything and any culpability, then you’re dead ... You’ve got to be strong. You’ve got to be aggressive. You’ve got to push back hard. You’ve got to deny anything that’s said about you. Never admit.<sup>165</sup>

President Trump has taken his own advice, which has become more of a political strategy in which he manipulates his own narrative, especially around the many claims of sexual harassment that have surfaced since his election.

The rise of the “Me Too” movement and the anti- “Me Too” movements are presenting conflicting concerns, especially in hypersexualized spaces like casinos. Some men are changing the narrative in which they create a scenario in which they have been wronged by a “hysterical culture,” and in which their

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<sup>159</sup> Anna North, *The #MeToo Movement and Its Evolution, Explained*, VOX (Oct. 11, 2018, 3:15 PM), <https://www.vox.com/identities/2018/10/9/17933746/me-too-movement-metoo-brett-kavanaugh-weinstein>.

<sup>160</sup> Meredith Conroy, *Are Americans More Divided on #MeToo Issues?*, FIFTYTHREE (Apr. 16, 2019, 6:01 AM), <https://fivethirtyeight.com/features/are-americans-more-divided-on-metoo-issues/>.

<sup>161</sup> *Id.*

<sup>162</sup> North, *supra* note 159.

<sup>163</sup> Conroy, *supra* note 160.

<sup>164</sup> Bump, *supra* note 145.

<sup>165</sup> *Id.*

accusers are either “malicious or hopelessly befuddled.”<sup>166</sup> These men are using Kavanaugh as the posterchild for all the privileged men who are sick and tired of #MeToo.<sup>167</sup> This #MeToo backlash is showing up in many industries with research suggesting that men might be becoming more reluctant to engage with women at work.<sup>168</sup> For example, one survey suggests that men might be more reluctant to hire attractive women and more reluctant to hire women for jobs that require close interpersonal interactions with men.<sup>169</sup> This trend bears a conflict for the Nevada Gaming Industry, which thrives on a female-dominated, service-oriented atmosphere. Because of the recent Wynn scandal, the #MeToo movement, and the rise in sexual harassment claims by employees, many casino operators, managers, and executives are cracking down on sexual harassment and reconsidering their policies in an attempt to either protect their employees or protect themselves – in a perfect world, these changes might do both.

#### IV. Prospects for Change

In the post-Me-Too era, many casino executives, supervisors, and CEOs as well as members of Congress and the employees themselves have decided that enough is enough when it comes to sexual harassment in workplaces. Congress passed the Civil Rights Act in 1964, which banned employment discrimination on the basis of “race, color, religion, sex, or national origin.”<sup>170</sup> However, it wasn’t until 55 years later, in May of 2019, that the House of Representatives passed the Equality Act, which specifically “prohibit[s] discrimination on the basis of sex, gender identity, and sexual orientation.”<sup>171</sup> In section four of the Equality Act, it states “women also have faced discrimination in many establishments such as...” and goes on to list several businesses in which women have experienced discrimination.<sup>172</sup> Section five of the act acknowledges that many employers “already and continue to take proactive steps ... to ensure they are fostering positive and respectful cultures for all employees.”<sup>173</sup>

Even the Nevada Gaming Control Board has begun a steadfast pursuit toward a safer and more equitable working environment in casinos, free from discrimination, abuse, and sexual harassment. While it is unfortunate that Nevada had to hit a sort of “rock bottom” to inspire and begin to implement these

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<sup>166</sup> Ephrat Livni, *There’s a Problem at the Heart of #MeToo – Here’s How to Solve it*, QUARTZ (Oct. 14, 2018), <https://qz.com/1422215/metoo-backlash-will-2019-be-the-year-of-men/>.

<sup>167</sup> *Id.*

<sup>168</sup> Tim Bower, *The #MeToo Backlash*, HARVARD BUS. REV. (Oct. 2019), <https://hbr.org/2019/09/the-metoo-backlash>.

<sup>169</sup> *Id.*

<sup>170</sup> Civil Rights Act, 42 U.S.C. § 2000e-2(a)(1) (1964).

<sup>171</sup> H.R. 5, 116th Cong. (1st Sess. 2019).

<sup>172</sup> *Id.* § 4.

<sup>173</sup> *Id.* § 5.

changes, hope can be found within a newfound determination to pursue policies that empower female employees while keeping them safe from abusive high-rollers and higher-ups alike. As more women occupy positions of power in the gaming industry, sexual harassment has come to the forefront of the conversation concerning the reform of Nevada casinos. Further, more women are pursuing careers as executives in gaming than ever before, crashing through the metaphorical glass ceiling of the once male-dominated industry.

In 2018, after the demise of Nevada casino mogul Steve Wynn, former Board Chairwoman Becky Harris began a thoughtful review of the drafting and revision of new regulations regarding sexual harassment in casinos.<sup>174</sup> In 2019, the Nevada Gaming Control Board led by current Chairwoman Sandra Morgan unanimously approved amendments to state gaming regulations to add and enhance sexual harassment and discrimination policies.<sup>175</sup> These expanded regulations prohibit workplace discrimination based on protected classes such as a person's "race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, or national origin."<sup>176</sup> The new rules will not only apply to casinos, but also to any other entity that is required to comply with state gaming regulations, including suppliers, vendors, and contractors.<sup>177</sup> Any entity bound by state gaming regulations must produce a compliance plan in accordance with the recommended proposals set forth by the Gaming Control Board.<sup>178</sup> Some of the proposed compliance procedures include: "an unequivocal statement that sexual harassment will not be tolerated," "an easy-to-understand description of prohibited conduct, with examples given," a detailed description of the reporting procedures, and an assurance that corrective measures will be promptly pursued in the event of an employee's report of sexual harassment."<sup>179</sup> The Gaming Control Board is now able to ask to see and review these plans.<sup>180</sup>

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<sup>174</sup> Scott Sonner, *Nevada Nears New Sexual Harassment Policies at Casinos*, AP NEWS (Aug. 8, 2018), <https://apnews.com/47a2cd603a8d4d6d962c350843eb0bac/Nevada-nears-new-sexual-harassment-policies-at-casinos>.

<sup>175</sup> Steve Schult, *Nevada Gaming Commission Enacts New State Regulations to Further Protect Against Discrimination and Harassment*, CARDPLAYER (Nov. 25, 2019), <https://www.cardplayer.com/poker-news/24480-nevada-gaming-commission-enacts-new-sexual-harassment-new-sexual-harassment-regulations>.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Richard N. Velotta, *#MeToo-Related Policy Changes Coming to Las Vegas Casinos*, LAS VEGAS REV. J. (Nov. 21, 2019), <https://www.reviewjournal.com/business/casinos-gaming/metoo-related-policy-changes-coming-to-las-vegas-casinos-1897685/>.

<sup>179</sup> *Possible Criteria for Sexual Harassment Policy for Consideration at Public Workshop*, NEV. GAMING CONTROL BD., <https://gaming.nv.gov/modules/showdocument.aspx?documentid=12961> (last visited Sept. 24, 2020).

<sup>180</sup> Schult, *supra* note 175.

The questions remain, however, of who will enforce these policies and how strictly will they be enforced?

The Gaming Control Board has received support for its action on sexual harassment from female casino executives and directors, as well as non-profits, charitable organizations, and employees alike. One such supporter is Jan Jones Blackhurst, a former Caesars Entertainment Corporate executive who now serves on that company's board of directors.<sup>181</sup> Blackhurst expressed that she was happy something has *finally* been done regarding sexual harassment in Nevada casinos.<sup>182</sup> Steve Wynn's ex-wife, Elaine Wynn, made sure to be on the right side of the fight when she began reforming the Wynn Casino's male-dominated executive board in the wake of her ex-husband's departure.<sup>183</sup> Elaine Wynn balanced the gender disparity and sought to reform the scandalized company's corporate culture.<sup>184</sup> Entities such as Global Gaming Women, a female-owned and operated charitable organization also rose to prominence in 2016.<sup>185</sup> Global Gaming Women was created by the American Gaming Association and "seeks to support, inspire, and influence the development of women in the gaming industry."<sup>186</sup> With female executives, directors, game designers, and gamers becoming more prominent, the year 2020 has been coined "the year of the woman in gaming" and many are waiting and watching carefully to see how casino executives and CEOs respond to this transition.

Female employees and activists have always been at the forefront of the movement and continue to actively seek protection in a variety of ways, including seeking the creation of and membership in unions. Even though support for unions is common among Nevada casino employees, these groups are facing backlash from the anti-union opposition who continuously appeal union elections and stall contract negotiations.<sup>187</sup> Unions such as UNITE HERE Culinary Workers Union 226 and Bartenders Union Local 165 remain steadfast in their pursuit, coordinating union-organizing drives at Station Casinos since 2011.<sup>188</sup> As a result, workers have successfully voted to form unions at six Station Casino properties in Nevada.<sup>189</sup> According to female casino employees,

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<sup>181</sup> Velotta, *supra* note 178.

<sup>182</sup> *Id.*

<sup>183</sup> John L. Smith, *In a Post-Steve Wynn Casino Industry, an Emphasis on Empowering Women*, CDC GAMING REPS. (Oct. 8, 2018, 10:13 PM), <https://www.cdcgamingreports.com/commentaries/in-a-post-steve-wynn-casino-industry-an-emphasis-on-empowering-women/>.

<sup>184</sup> *Id.*

<sup>185</sup> *Our Mission*, GLOBAL GAMING WOMEN, <https://www.globalgamingwomen.org/our-mission> (last visited Oct. 5, 2020).

<sup>186</sup> *Id.*

<sup>187</sup> Michael Sainato, *Nevada Casino Workers Fight an Uphill Battle to Get – and Keep – Their Unions*, GUARDIAN (Aug. 20, 2019), <https://www.theguardian.com/us-news/2019/aug/19/nevada-casino-workers-unions-owners>.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

membership in a union “means higher wages, better benefits, job security; dignity on the job, a reduction in discriminatory practices, the creation of a leadership cadre within the casino, and better service for the customers.”<sup>190</sup>

Quasi-union organizations such as the Casino Dealers Association (CDA) was formed in 1980 and remains a prominent force in the fight against discrimination and unfair labor practices.<sup>191</sup> The CDA has continuously lobbied state legislators for a variety of workplace reforms.<sup>192</sup> As of September of 2019, the CDA represents over 2,500 of Nevada’s 25,000 dealers.<sup>193</sup> Among the reforms sought by the CDA are a dealer’s bill of rights, including an end to Nevada’s tradition of at-will termination.<sup>194</sup> The CDA has also worked to build on female workers’ informal culture, gender politics, and family interests.<sup>195</sup>

Non-profits such as Workplace Response to Domestic and Sexual Violence is a national resource center that provides resources to businesses and victims of sexual violence. The organization also created what they call FUTURES which established two “learning labs.”<sup>196</sup> These “learning labs focus[] on improving the safety and economic security of janitorial workers and hotel room cleaners.”<sup>197</sup> FUTURES collaborate with unions, anti-violence advocates, worker rights advocates, and stakeholders to create industry specific “responses to sexual harassment and violence and its impact on workers and the workplace.”<sup>198</sup> Resource centers as well as an established reporting protocol for employees and victims can be a powerful tool in overcoming and preventing sexual violence and harassment in hyper-sexualized workplaces such as casinos.

While unions and quasi-unions without a doubt create a more stable, respectful, and supportive work environment for female employees, it is not without complicating factors. These complications arise in the context of what it means to be a woman, an employee, a mother, a spouse, and an activist seeking structural change in one of the world’s most profitable industries. Some of these difficulties stem from the time commitment it takes to rally support for a union. Women often express concerns regarding childcare, time away from their families for union activities, and the potential hardship of undergoing a strike to

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<sup>190</sup> Susan Chandler & Jill Jones, *Because a Better World Is Possible: Women Casino Workers, Union Activism and the Creation of a Just Workplace*, 30 J. SOC. & SOC. WELFARE, 57, 65 (2003).

<sup>191</sup> Elaine Enarson, *Emotion Workers on the Production Line: The Feminizing of Casino Card Dealing*, 5 NWSA J. 218, 229 (1993).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 229–30.

<sup>196</sup> *Workplaces Respond to Domestic and Sexual Violence*, WORKPLACES RESPOND, <https://www.workplacesrespond.org/workplace-initiatives/union-worker-center/> (last visited Oc. 5, 2020).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

negotiate terms of union contracts.<sup>199</sup> Despite these challenges, female casino employees believe a better, more just world is possible and are fixated on improving workplace conditions, improving wages and benefits, and creating a respectful working environment that reinforces the importance of cooperative co-worker relationships and fosters a community of strong individuals and families.

## V. Conclusion

The road to a more equitable and respectful working environment has been a long and difficult one for the women of the Nevada gaming industry and for women working in male dominated professions across the nation. Despite the courage of many women to speak out, to stand up, and to shatter glass ceilings, dismally, much of the work still lies ahead. In order to understand how to move forward, however, there must first be an acknowledgement, immersed understanding, and compassionate comprehension of the history that provides the base for the prevalence and continuation of the exploitation of women both in society in general and in the casino industry specifically. An understanding of history is necessary for progress. A society must reckon with its past before it can enable its future. As illustrated, the history of the exploitation of women is far-reaching and wide-ranging. The history of the Nevada gaming industry specifically is checkered with notions of male dominance and control in almost every aspect of its foundation, development, and operation. Unfortunately, the exploitation of women has also been central to the foundation, development, and operation of the Nevada gaming industry. The exploitation of women, however, is not isolated to the gaming industry nor is it unique to Nevada. This is a problem that transcends vocational, state, and national boundaries. This is a problem that is so prevalent that people have become accustomed to it and have accepted it as the norm for decades, even centuries. It is a problem that permeates and is reinforced in societal institutions and through mundane personal interactions. Whether the sexual harassment takes an explicit form or a more subtle form, it is pervasive, nevertheless. A supervisor suggesting an employee should sleep with him or a client to keep her job or make more money, a sexually explicit comment or a sexist joke, demeaning and demoralizing comments to co-workers, or a CEO making unwanted sexual advances toward an employee are just a few of instances in which exploitation often occurs in the casino industry and elsewhere. The stories are copious and constant. And while the Me-Too movement has elevated voices of survivors and brought many of those stories to light, many more lurk in the depths of society, in souls that are not yet ready to share. Many women are forced to remain silent due to nondisclosure agreements and hush money, bound by legal contracts that allow powerful men to remain in positions

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<sup>199</sup> Chandler, *supra* note 190, at 64, 66, 69–70.



of power and serve to silence women long after the abuse occurs. Some women never even realize they have been victimized because it is a phenomenon so engrained in culture at large and some don't realize that they have been victimized until much later when they feel as though it's too late. When dealing with a problem so societally engrained, Nevada must think outside the box. Nevada must think deep and create innovative solutions so that it can expose and remedy the root of the problem rather than scratch the surface. Nevada must untangle decades of reinforcement and empower women and girls in every stage of their lives. Nevada must remedy the harm that has already been done while preventing future Me-Too's. But how does Nevada embark on such a feat?

Many scholars, practitioners, and professionals have thought deeply about how to prevent sexual harassment and exploitation and offered valid and viable solutions to the problem. Many others have written the problem off as too big to tackle, or too ingrained to unwind. Some of those prevention strategies center around awareness campaigns. Awareness and acknowledgement of the problem, after all, is the first step to resolving any large problem. If employers and employees are made explicitly aware of the prevalence of sexual harassment, will that disincentivize the people inclined to harass? In some cases, maybe. In others, maybe not. After awareness might come education. If employers educate employees on the harmful effects of exploitation and harassment, including the history, how to recognize it, and how to combat it, will that disincentivize or prevent the behavior? In some cases, maybe. In others, maybe not. After education might come enforcement. If we enforce strict sexual harassment policies and hold even the richest and most powerful offenders accountable, will that disincentivize the inclination to use that power to exploit vulnerable individuals? In some cases, maybe. In others, maybe not. If we believe victims and provide them with survivor-centered support, will that alleviate the pain of being victimized? For some, maybe. For others, perhaps not. If we form a broad coalition to inspire a cultural movement centered around dismantling patriarchy and sexism, will that disincentivize the person who thinks it's funny to make their coworker feel uncomfortable? Maybe, but maybe not.

Notably disheartening, this is not by any means a certain, easy, or single solution fix. I do not purport to know the answer to these problems, nor do I wish to sermonize you, the reader, about my personal desire to make the world a more equitable place. I will say, however, that in order to have equal rights, we must have equal access to spaces. We must invite more women, non-conforming individuals, and minorities to decision-making spaces so that they can use their experiences to inform the reformation. We must trust women when they come forward with a sexual harassment claim and protect women from rampant exploitation and abuse. We must implement procedures to process complaints and when the complaints come, we must provide survivor-centered support. We must hold the individuals perpetuating this violence accountable, every time. The responsibility to end gendered violence is on all of us. In closing, I challenge you, the reader, to think about how you show up in the spaces you occupy. How do you confront explicit and implicit biases in your everyday life and when you

hear someone share their story about sexual violence, exploitation, or harassment, do you believe them? If so, how do you respond? If not, why?