

A “HISTORIC WESTSIDE” STORY: LAS VEGAS BLACK HISTORY,
GAMING POLICY EFFECTS ON BLACK EMPLOYMENT, AND GAMING
COMPANIES LEAVING MONEY ON THE TABLE

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I. INTRODUCTION

Imagine yourself as a pop-cultural music icon, with generational talent propelling you into a social class in which many others from your background could not imagine themselves in. Your talent commands societal influence over entertainment, politics, and culture. Ultimately, your intangibles and hard work land you a contract performing on the Las Vegas Strip. While hanging on each of your words, your fans are simultaneously mesmerized by your dancing. Given your seeming acceptance into society, it becomes hard to imagine the time when you were not in this social class. On a hot day in the Las Vegas desert, you decide to take a dip in a pool before hitting the stage that night. Within minutes of diving, you are pulled out to your chagrin. Shortly after, at the behest of guests, the pool water is drained and re-filled. All because of your Black skin.

This illustration reflects an account told of Sammy Davis Jr., the “Rat Pack’s” lone Black member, as he jumped into a “whites-only” pool.¹ Although the practice of de facto segregation from the early to mid-1900s is no longer prevalent in the world’s “Gaming Capital,” Las Vegas has a “unique” history with Black Americans. From a macro perspective, the United States has a “unique” history with Black Americans regarding injustice and a lack of equity.

A cellphone recording that captured the murder of George Floyd by a police officer during the summer of 2020 caused the United States to critically

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¹ See Kevin Cook, *The Vegas Hotspot That Broke All the Rules*, SMITHSONIAN MAG. (Jan. 2013), <https://www.smithsonianmag.com/history/the-vegas-hotspot-that-broke-all-the-rules-165807434/>; ANNELESE ORLECK, *STORMING CAESARS PALACE: HOW BLACK MOTHERS FOUGHT THEIR OWN WAR ON POVERTY* 62 (2005).

address race relations concerning Black Americans; perhaps in a generational-defining manner.² What transpired, in part, was an analysis of how systemic racism has maintained its structures within corporate settings. This consideration applies to the Las Vegas gaming industry, as examples of homogenous hiring practices excluding Black Americans from “visible, upwardly mobile” roles have long been documented.³ Corporations are still exploring and publicizing their take on diversification solutions with annual reports such as Cultural Social Responsibility reports and Environmental Social Corporate Responsibility reports. However, some still wonder if these efforts produce any tangible effects.

This note aims to tell a story of concerted community civil rights activism and resilience that served as a proponent to the improvement of inclusive hiring opportunities for Black Americans and minorities in the Las Vegas hospitality and gaming industry. With inequitable policies in place, Black Las Vegas residents dealt with many impediments in gaining viable access to upward-fiscal mobility, including the lack of consideration for higher-paying roles in the gaming industry.⁴ Examining Las Vegas, as an example, suggests that social movements—such as the summer protests of 2020 throughout the United States—can factor into corporate hiring decisions that reflect a variety of different cultural perspectives.

This note describes the historical relationship between the Las Vegas hospitality industry and its cause-and-effect relationship with Black hospitality employees, in relation to the growth of the “Historic Westside” (“Westside”), a historically Black Las Vegas neighborhood.⁵ Later sections analyze corporate

² Meredith Deliso, *Timeline: The Impact of George Floyd's in Minneapolis and Beyond*, ABC NEWS (June 10, 2020, 12:27 PM), <https://abcnews.go.com/US/timeline-impact-george-floyds-death-minneapolis/story?id=70999322>; see generally Blair Johnson, *How the Black Lives Matter Movement Enhanced Corporate Governance in 2020*, 8 EMORY CORP. GOVERNANCE & ACCOUNTABILITY REV. 99 (2021) (discussing America's corporate response to racial injustice and police brutality, amid the 2020 deaths of Breonna Taylor, Ahmaud Arbery, and George Floyd).

³ Claytee White, *The March That Never Happened: Desegregating the Las Vegas Strip*, 5 NEV. L. J. 71, 83 (2004) [hereinafter *The March*].

⁴ Racially exclusive hiring kept the doors “tightly shut” for Black Las Vegans seeking racial-wage parity in the hotel-casino industry. EARNEST BRACEY, *THE MOULIN ROUGE AND BLACK RIGHTS IN LAS VEGAS: A HISTORY OF THE FIRST RACIALLY INTEGRATED HOTEL-CASINO* 89–90 (2008).

⁵ The cultural prominence for the “Historic Westside,” referred to as the “Westside” by some Las Vegas residents, is rooted in generations of Black families who lived in the area during times of segregation in the Las Vegas valley. As time has progressed, the Westside has been a hub for Las Vegas Black culture. See, e.g., Univ. of Nev. Las Vegas Coll. of Fine Arts, *Windsor Park: The Sinking Streets*, YouTube (Feb. 14, 2022), <https://www.youtube.com/watch?v=QwXAUGyTlc>; Doug Puppel, *Las Vegas' Westside Began as Townsite on Other Side of Tracks*, NEV. PUB. RADIO (Feb. 16, 2018), <https://knpr.org/knpr/2018-02/las-vegas-westside-began-townsite-other-side-tracks>.

responsibility messaging that various gaming entities publish to reassure investors of their diversity and inclusion efforts. Although this messaging may seem appealing to the investor, the premise of the message is questioned when considering the lack of Black representation in corporate roles. Perhaps most important to the investor is how the lack of representation has a negative impact on business.

Although progress is displayed in the diversification of Las Vegas casinos relative to the overall workforce demographics in Nevada casinos, there is a distinction in demographics pertaining to Black American employment as property directors, board of directors, and other corporate roles for Las Vegas gaming venues.⁶ Despite improvements, Las Vegas' gaming industry has missed out on opportunities to diversify top-level corporate positions during a time when calls for diversity are increasing. Opportunities for employment diversification have persisted throughout different Las Vegas eras, each with its own unique set of challenges, yet a contemporary look at racial representation suggests the proposed changes were never made a priority.

Contributions from Black Las Vegas residents to the gaming industry have impacted the Las Vegas gaming industry's entertainment decisions, empowered the culinary union to reach a prominent level of influence, and helped state government agencies function.⁷ Although there are numerous examples of significant contributions in various gaming industry sectors, opportunities in corporate leadership roles have not been as prevalent.

II. BACKGROUND: THE EMERGENCE OF SEGREGATION IN SOUTHERN NEVADA

A. *A Black Community Functioning as its Own Society*

Las Vegas was founded in 1905 and incorporated in 1911.⁸ Black migration to the West was predicated on factors that included escaping racism and disfranchisement, as well as to seek work opportunities not readily found in

⁶ See, e.g. SOCIAL IMPACT AND SUSTAINABILITY REPORT PLAN 22 (2019), MGM INT'L, <https://www.mgmresorts.com/content/dam/MGM/corporate/csr/annual-report/mgm-resorts-corporate-social-responsibility-annual-report-2018.pdf>.

⁷ See John Przybys, *Meet Seven African-Americans Who Helped Shape Southern Nevada*, LAS VEGAS REV. J. (Feb. 23, 2014, 6:56 AM), <https://www.reviewjournal.com/life/meet-seven-african-americans-who-helped-shape-southern-nevada/>; Sarah David Heydemann, *Black Women Built That: Labor and Workers' Rights*, NAT'L WOMEN'S L. CTR. (Feb. 28, 2018), <https://nwlc.org/blog/black-women-built-that-labor-and-workers-rights/>; see *Foreword*, NEV. GAMING LAWYER, Sept. 2020, at 3, <https://nvbar.org/wp-content/uploads/2-Foreword.pdf>.

⁸ *Timeline*, CITY OF LAS VEGAS, <https://www.lasvegasnevada.gov/Residents/History/Timeline> (last visited Feb. 14, 2021).

the South for Black Americans.⁹ Some of Las Vegas' initial Black residents helped build the railroad that linked San Pedro, Los Angeles, and Salt Lake City.¹⁰ The small group of minorities who came to work for the railroad during that time did not seem to prompt any civil unrest amongst the community.¹¹ Before Las Vegas drew the moniker "Mississippi of the West," the settler's community showed signs of suggested racial harmony in the 1920s, as Black people were able to purchase land *near* white people.¹² By 1930, there were approximately 144 Black residents in Las Vegas, many of whom lived in the downtown area known as "Fremont."¹³ However, Black residents were encouraged to live together in the far corner of "Block 17" of the Las Vegas townsite (known today as Casino Center Boulevard, between Ogden and Stewart Avenues), away from white residents.¹⁴ Although the town showed signs of suggested racial harmony during its initial days, Las Vegas would soon take a turn culturally.

Racist behavior and discriminatory policies became more common in the 1930s when construction of the Hoover Dam spurred nearly 20,000 white workers from around the country to relocate to Las Vegas for work.¹⁵ In conjunction with the influx of migrating dam workers, Nevada legalized gambling in 1931.¹⁶ In an effort to appease white tourists and the growing number of white migrants relocating to Southern Nevada to work on the dam, banning Black people from bars and gambling in Fremont Street venues became increasingly prevalent in the late 1930s.¹⁷ This stood in direct contrast to venues who had at one point considered Black patrons "regular customers."¹⁸

⁹ See Earnest N. Bracey, *The African Americans, in THE PEOPLES OF LAS VEGAS: ONE CITY, MANY FACES* 78, 78 (Jerry L. Simich & Thomas C. Wright 2005).

¹⁰ *Id.* at 79.

¹¹ KCLV Channel 2, *The City of Las Vegas: The Early Years*, YOUTUBE (45:28-46:00) (May 16, 2019), <https://www.youtube.com/watch?v=czyMm5DdqAY>.

¹² See Michael S. Green, *The Mississippi of the West?*, 5 NEV. L. J. 57, 62 (2004); see *The March*, *supra* note 3, at 73. *Contra* Bracey, *supra* note 9, at 79 ("But the white community evinced little interest in its black neighbors, and a Ku Klux Klan chapter's formation in the 1920s did nothing to make blacks feel welcome in Las Vegas.").

¹³ EUGENE P. MOEHRING, *RESORT CITY IN THE SUNBELT, SECOND EDITION: LAS VEGAS 1930-2000* 174, (Jerome E. Edwards ed., Univ. of Nev. Press, Reno, 2000) (1989); See *Table 29: Race and Hispanic Origin for Selected Large Cities and Other Places: Earliest Census to 2000 U.S. Census Bureau* (last visited Apr. 26, 2022), https://nsla.nv.gov/ld.php?content_id=38070977.

¹⁴ See Bracey, *supra* note 9, at 79; see Green, *supra* note 12, at 62; see *The March*, *supra* note 3, at 73.

¹⁵ *The March*, *supra* note 3, at 75–76.

¹⁶ *History of Gaming in Nevada*, NEV. RESORT ASS'N, <https://www.nevadaresorts.org/about/history/> (last visited Nov. 4, 2020).

¹⁷ See MOEHRING, *supra* note 13, at 175.

¹⁸ *Id.* at 174.

Discriminatory business practices persisted, spurring local Black leaders to push for a public integration bill—known as the “Race and Color Bill”—that ended up dying in a Nevada Assembly committee over fear of integration negatively impacting the local economy.¹⁹ A distinct gaming industry “code” became explicit amongst Black residents in the Las Vegas valley, signifying exclusion from economic and employment participation in casinos.²⁰ For example, an operating permit application was denied for the first interracial downtown Las Vegas hotel after white residents in the community protested.²¹

Soon a stipulation was added for Black residents who were looking to start and run their own businesses in the late 1930s: business licenses were granted under the condition of operating the venture on the Westside.²² With this economic segregationist policy in place, Black residents began moving and settling west of the train tracks as well.²³ By 1940, the Black population in Las Vegas reached 175.²⁴ A city that was once characterized as having little racial segregation soon developed a Black community that functioned as a separate society.²⁵

For nearly twenty years, the majority of commercial and residential real estate was developed east of the train tracks separating the Westside from the Fremont Street area.²⁶ Housing segregation eventually funneled the city’s Black population to the Westside.²⁷ Due to the city’s refusal to appropriate funding to the Westside, the community went without paved streets, running water, or a functioning sewage system.²⁸ Segregation continued into the 1950s with the construction of the U.S. Interstate-15 Highway serving as a physical barrier,

¹⁹ *Id.* at 175–76; *see also* Essay from Fitzgerald Roosevelt, BLACK ENTERTAINERS IN LAS VEGAS: 1940–1960, 11 (1988), DOCUMENTING THE AFRICAN AMERICAN EXPERIENCE IN LAS VEGAS: UNLV DIGITAL COLLECTIONS, <http://n2t.net/ark:/62930/d1319vx1g>.

²⁰ Michael Lyle, *Black Community Pushed to End Racial Discrimination in Las Vegas*, LAS VEGAS REV. J. (Feb. 15, 2014, 9:36 PM), <https://www.reviewjournal.com/news/black-community-pushed-to-end-racial-discrimination-in-las-vegas/>.

²¹ *See* Rachel J. Anderson, *Timeline of African-American Legal History in Nevada (1861-2011)*, NEV. LAWYER, February 2012, at 10.

²² *Id.*

²³ Green, *supra* note 12, at 64.

²⁴ *Decennial 1940 Population*, U.S. CENSUS BUREAU, VOL. 2, 756, <https://www2.census.gov/library/publications/decennial/1940/population-volume-2/33973538v2p4ch6.pdf> (last visited, Apr. 26, 2022).

²⁵ Earnest N. Bracey, *Anatomy of Second Baptist Church: The First Black Baptist Church in Las Vegas, Nevada*, 43 NEV. HIST. SOC’Y Q. 201, 203 (2000).

²⁶ MOHRING, *supra* note 13, at 176.

²⁷ *See The March*, *supra* note 3, at 75.

²⁸ *See* MOHRING, *supra* note 13, at 179–80; *see also* *American Experience: Las Vegas: An Unconventional History*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/lasvegas-african-americans/> (last visited April 26, 2022).

which also functioned as a symbolic barrier referred to as the “concrete curtain” by some residents.²⁹

By 1950, the Black population in Las Vegas saw a steep increase, soaring to 2,725 residents³⁰ from 175 residents just one decade earlier.³¹ An eye-opening 1954 *Ebony Magazine* article titled “Negroes can’t win in Las Vegas” described the following living conditions of Black Americans:

The Negro finds little welcome anywhere. He is barred from practically every place whites go for entertainment or services. He cannot live outside a segregated, slum-like community. He is relegated to the most menial jobs. For the Negro, Vegas is as bad as towns come. . . . Negroes rate no better than second-class citizenship there.³²

The conditions detailed in the *Ebony Magazine* article were not necessarily applicable to other accounts of Black communities in the western United States. In the National Association for the Advancement of Colored People (“NAACP”) publication *The Crisis*, W.E.B Du Bois characterized Los Angeles for the Black American noting, “Nowhere in the United States is the Negro so well and beautifully housed. . . . Here is an aggressive, hopeful group—with some wealth, [and] large industrial opportunity.”³³ Although Du Bois’ words are subjective, job opportunities for Black Americans were present in other areas of the West.³⁴ For example, wartime labor production in the 1940s spurred work for Black workers who were normally excluded from job opportunities.³⁵

Another example of de facto segregation during the Black population boom in Las Vegas occurred in Clark County School District (“CCSD”), where

²⁹ See ORLECK, *supra* note 1, at 48.

³⁰ See *Decennial 1950 Population*, U.S. CENSUS BUREAU, VOL. 2, 28–28, <https://www2.census.gov/library/publications/decennial/1950/population-volume-2/37779524v2p28ch3.pdf> (last visited Apr. 26, 2022).

³¹ See *Decennial 1940 Population*, *supra* note 24.

³² ‘Mississippi of the West’ in 1954 Magazine’s Scathing Article Turned Heads in Las Vegas, LAS VEGAS SUN (Mar. 21, 1999, 9:27 AM), <https://lasvegassun.com/news/1999/mar/21/mississippi-of-the-west-in-1954-magazines-scathing/>.

³³ W.E.B Du Bois, Editorial, *California*, 6 THE CRISIS 106, 131 (1913). *Contra* Lynell George, *What It Is. (And What It Was.)*, L.A. TIMES (Oct. 8, 2006, 12:00AM), <https://www.latimes.com/archives/la-xpm-2006-oct-08-tm-southcentral41-story.html> (“Yet once they arrived, many found that Los Angeles simply offered a more complex version of racial inequity: discrimination that was hidden, chambered, difficult at first to discern and untangle.”).

³⁴ See John Valery White, *The Turner Thesis, Black Migration, and the (Misapplied) Immigrant Explanation of Black Inequality*, 5 NEV. L. J. 6, 17 (2004).

³⁵ “Black opportunity, along with that of other people of color, opened in a stratified way that permitted opportunity only as a last resort and, then, mostly in menial jobs.” *Id.*

ninety-seven percent of Westside elementary school students were Black in 1968.³⁶ Federal resources set aside to feed poor children, who overwhelmingly attended these schools, went to more affluent neighborhoods in the city.³⁷

Economically, impediments to upward fiscal mobility persisted throughout the Westside for decades. For example, according to an outline of a local bank’s practice in 1990, \$96 million in deposits were made, but only \$564,000 in home loans were invested in Las Vegas’ Black community; this disproportionate practice is known as “redlining.”³⁸ This reality in Las Vegas served as a consistent reminder of the inequity that Black residents faced on the Westside.

B. *The Westside’s Imprint on Gaming*

One result of segregation that favored Black residents was an opportunity for business development in the Black community, especially in gaming.³⁹ Gaming development started to take off on the Westside with Jackson Avenue serving as a business and social hub in the community.⁴⁰ Venues along Jackson Avenue—such as Carver House, Town Tavern, and Cotton Club—between G and D Streets, were just a few hospitality options in the Black community.⁴¹ Although these venues contributed to Las Vegas gaming history, perhaps none of these venues held the same historical reverence on the Westside as the Moulin Rouge.

On 900 West Bonanza Road—a few blocks south of Jackson Avenue—Las Vegas’ first “luxury interracial gaming establishment” opened in 1955: the

³⁶ See Sonya Horsford & Carrie Sampson, *The Sixth Grade Centers*, DOCUMENTING THE AFRICAN AMERICAN EXPERIENCE IN LAS VEGAS: UNLV DIGITAL COLLECTIONS, <http://digital.library.unlv.edu/aae/sixth-grade-centers> (last visited Apr. 26, 2022). The CCSD was eventually sued for “obligat[ing] the great majority of the Negro children to attend segregated schools in the area [of Las Vegas] known as the West Side.” *Kelly v. Guinn*, 456 F.2d 100, 103 (9th Cir. 1972).

³⁷ ORLECK, *supra* note 1, at 177.

³⁸ *Las Vegas Groups Charge Redlining by Banks*, AMERICAN BANKER (June 15, 1992, 1:00 AM), <https://www.americanbanker.com/news/las-vegas-groups-charge-redlining-by-banks>.

³⁹ Some clubs on the Westside included the El Rio, the Louisiana Club, and the Key Club. These Black-owned clubs provided the Westside with economic growth opportunities and the ability to develop hospitality-industry concepts. See TRISH GERAN, *BEYOND THE GLIMMERING LIGHTS: THE PRIDE AND PERSEVERANCE OF AFRICAN AMERICANS IN LAS VEGAS* 111 (Geoff Schumacher 2006).

⁴⁰ Pam Goertler, *A Westside Story: A Story of the Clubs and Casinos in Segregated Las Vegas*, CASINO CHIP & TOKEN NEWS, <http://www.ccgcc-ccn.com/Westside.pdf> (last visited Apr. 26, 2022).

⁴¹ *Id.* at 37.

Moulin Rouge.⁴² Although most Black Americans were never able to see the likes of Sammy Davis Jr. and other stars perform at segregated venues, they had an opportunity to run into these entertainers at the Moulin Rouge. Numerous entertainers flocked to the Moulin Rouge as their preferred after-hours hangout spot.⁴³ Black entertainers lending their talents to all-white venues on the Strip found themselves walking out of the same obscure backdoors they walked into.⁴⁴ At the Moulin Rouge, however, they were welcomed and accepted by the community.⁴⁵ This acceptance could very well be perceived as a positive gaming experience in a community with a record of being neglected by dominant corporate interests in the Las Vegas valley.

Despite catering to a group of people excluded from Fremont and Strip venues, the Moulin Rouge provided amenities comparable to its competitors that enforced segregation.⁴⁶ These amenities, which included a high-end clothing store, a gourmet restaurant, and a wood-finished bar, helped the venue retain staff from top hotels around the country.⁴⁷ The Moulin Rouge also housed the set for “Talk of the Town,” one of the first known television shows with an all-Black cast and crew.⁴⁸ Hosted by Alice Key, the show drew the likes of Duke Ellington, Nat King Cole, and Sammy Davis Jr.⁴⁹

The Moulin Rouge had a short run, closing just six months after opening due to bankruptcy.⁵⁰ What once served as a symbolic sign of Black empowerment through gaming participation now found itself as the symbolic setting behind a historical integration effort within the Las Vegas gaming industry.⁵¹

III. BLACK ACTIVISM CREATES OPPORTUNITY

⁴² Claytee White, *Iconic Moulin Rouge*, DOCUMENTING THE AFRICAN AMERICAN EXPERIENCE IN LAS VEGAS: UNLV DIGITAL COLLECTIONS, <http://digital.library.unlv.edu/aae/iconic-moulin-rouge> (last visited Nov. 6, 2020).

⁴³ Buddy Frank, *Black Lives Matter, But They Didn't Matter Much in Early Casinos*, CDC GAMING REP. (Aug. 11, 2020, 10:45 AM), <https://www.cdcgamingreports.com/black-lives-matter-but-they-didnt-matter-that-much-in-early-casinos/>.

⁴⁴ Cook, *supra* note 1.

⁴⁵ *Id.*

⁴⁶ Claytee White, *Moulin Rouge*, BLACK PAST (Jan. 21, 2007), <https://www.blackpast.org/african-american-history/moulin-rouge/> [hereinafter *Moulin Rouge*].

⁴⁷ *Id.*

⁴⁸ See Lisa Sciortino, *Entertainer, Activist Bob Bailey Making a Difference*, LAS VEGAS SUN (Feb. 26, 1996, 11:59 AM), <https://lasvegassun.com/news/1996/feb/26/entertainer-activist-bob-bailey-making-a-differenc/>.

⁴⁹ *Id.*

⁵⁰ *Moulin Rouge*, *supra* note 46; see also Neb Solomon, *Hidden History: Moulin Rouge's History Short but Very Significant*, KLAS 8 NEWS NOW LAS VEGAS (Feb. 20, 2017, 1:11 PM), <https://www.8newsnow.com/news/hidden-history-moulin-rouges-history-short-but-very-significant/>.

⁵¹ *Moulin Rouge*, *supra* note 46.

The closure of the Moulin Rouge gave Black patrons one less venue to visit, further impeding the Black community's access to the Las Vegas gaming market. The local Las Vegas chapter of the NAACP took matters into its own hands when then-NAACP President James McMillan appeared on a local radio broadcast, announcing a peaceful civil rights march set to take place on the Strip.⁵² The ultimatum that the marchers demanded, while blocking traffic and entering venues to disrupt businesses, was equal access to all public accommodations.⁵³ Social pressure spurred trepidation amongst the white business owners, leading to a meeting with the NAACP on March 25, 1960.⁵⁴ A deal was reached by six p.m., that night, between the Desert Inn, Stardust, and Tropicana hotels. The venues vowed to end its segregation policy, thus allowing Black patrons to participate in the previously exclusive segment of the Las Vegas gaming industry.⁵⁵

Although the Moulin Rouge Agreement contributed to the brokerage of a desegregation deal, economics played a material role in desegregating the Las Vegas Strip. One major concern amongst Strip property owners was protecting business generated from hosting conventions, as there was apprehension about white patrons boycotting convention spaces if properties were not desegregated.⁵⁶ This concern was balanced against casino executives' interest in increasing the access to the gaming market. Allowing Black people to play would increase revenue and profit.⁵⁷

Despite the possibility of increased revenue from desegregation, casinos were still cautious about giving higher-profile jobs, such as being a bartender or waitress, to Black employees.⁵⁸ However, the industry showed signs of opportunity that may not have been available elsewhere in the country for African Americans by offering back-of-house jobs.⁵⁹ Though these roles were necessary for hotel operations, they required minimal contact with white guests.⁶⁰

⁵² Ed Koch, *Fighting Racism*, LAS VEGAS SUN (Mar. 25, 2005, 10:04 AM), <https://lasvegassun.com/news/2005/mar/25/fighting-racism/>.

⁵³ See ORLECK, *supra* note 1, at 64.

⁵⁴ Koch, *supra* note 52.

⁵⁵ *Id.*

⁵⁶ BRACEY, *supra* note 4, at 81; see also JAMES B. MCMILLAN, *FIGHTING BACK: A LIFE STRUGGLE FOR CIVIL RIGHTS* 98 (1998).

⁵⁷ BRACEY, *supra* note 4, at 81; see also MCMILLIAN, *supra* note 56.

⁵⁸ See BRACEY, *supra* note 4, at 82.

⁵⁹ *Las Vegas: An Unconventional History: African Americans in Las Vegas*, PUB. BROAD. SERV., <https://www.pbs.org/wgbh/americanexperience/features/lasvegas-african-americans/> (last visited Apr. 26, 2022) [hereinafter *Unconventional History*]; see White, *supra* note 35.

⁶⁰ *Unconventional History*, *supra* note 59. Cf. BRACEY, *supra* note 4, at 81 ("[T]he decision to integrate Las Vegas was supposedly pushed on whites without any legal

Lack of accessibility to high-profile jobs is notable when considering the lack of financial opportunities for Black Las Vegans. On March 6, 1971, Black Las Vegas activist Ruby Duncan helped lead people from around the country, including Jane Fonda, in a march on the Strip in an effort to disrupt gambling and to protest the lack of federal aid provided for the city's Black residents.⁶¹ The march was intended to pressure Nevada's welfare director, George Miller, to reinstate 3,000 people cut off from welfare for allegedly misrepresenting income.⁶² The march eventually made its way into Caesars Palace, disrupting the venue for the rest of the day.⁶³ According to Duncan, "The greatest thing was we even stopped the gambling across the street at the Flamingo."⁶⁴

The following week, another smaller protest targeting the Sands held up traffic and caused the Sands to barricade its doors.⁶⁵ Local Black activist Mary Wesley worked as a one of the venue's maids during the protest.⁶⁶ When Wesley was warned by her manager that she would lose her job if she walked out, she replied, "Lose my job? As a maid," and quit on the spot.⁶⁷ Wesley's account suggests what many people in her position may have thought: Black employees were capable of prominent roles, rather than the menial ones to which they were often relegated.⁶⁸

Although it was rare for Black Americans to acquire higher-level roles, there were exceptions who tried to forge a path toward upward career mobility. Jimmy Gay, a Black executive, became the Director of Communications for the Sands Hotel and Casino in 1952.⁶⁹ Gay, who also played a role in the Moulin Rouge Agreement that desegregated Las Vegas venues, tried to promote equitable hiring practices within the casino industry from his position.⁷⁰ However, his efforts could not resolve the disparity between the increased access

authority. There was certainly widespread criticism of the desegregation initiative by the white population.").

⁶¹ ORLECK, *supra* note 1, at 154–56.

⁶² *Welfare Recipients Hold Las Vegas Protest March*, N.Y. TIMES (Mar. 7, 1971), <https://www.nytimes.com/1971/03/07/archives/welfare-recipients-hold-las-vegas-protest-march.html>.

⁶³ ORLECK, *supra* note 1, at 157.

⁶⁴ *Id.* at 158.

⁶⁵ *Id.* at 159–60.

⁶⁶ *Id.* at 160.

⁶⁷ *Id.*

⁶⁸ *But see* GERAN, *supra* note 39, at 159. Despite the distinct job responsibilities held between a prominent executive and a housekeeper, an account suggests that casino management acknowledged the internal importance of maids. ("Aunt Mac said the maids in the hotels were often reminded that they were the backbone of the city.").

⁶⁹ *Pioneering Civic Leader, Hotel Executive Gay Dies at 83*, LAS VEGAS SUN (Sept. 13, 1999), <https://lasvegassun.com/news/1999/sep/13/pioneering-civic-leader-hotel-executive-gay-dies-a/>.

⁷⁰ *Id.*

to back-of-house jobs for Black people and the lack of Black executives at the time.⁷¹

Another example of Black activism creating opportunity came in the form of entertainment. While business owners argued that integration would impede financial success, they ironically turned to Black artists, such as Harry Belafonte and Nat King Cole, in drawing business to their venues.⁷² However, Black artists were not treated any better initially. For example, Cole performed at the Thunderbird Hotel in 1949, but was turned away when he tried to stay, leaving him to find an arrangement in the Westside.⁷³ Talent eventually prevailed in Cole’s case, as he found himself in a position to leverage his skills.

The El Rancho offered Cole and his band full access to the hotel’s facilities, unlike the Thunderbird, which had him stay in a trailer outside of the hotel.⁷⁴ The Sands eventually worked out a contract allowing Cole and his band to access the venue, but later denied the artist’s ensemble access to a dining room.⁷⁵ Infuriated, Cole threatened to leave, prompting hotel management to alert the dining staff that Cole and his crew were not subject to Jim Crow policies.⁷⁶ In 1957, Cole used an opportunity on national television to point out the Sands’ practices as a segregated club, a form of activism possible for Black entertainers of his caliber.⁷⁷

Cole’s stance shed light on the prevalence of segregation in Las Vegas, which was viewed by some to impact how other Black entertainers challenged social structures and segregation policies thereafter.⁷⁸ Although demonstrations from high-profile artists had an opportunity to reach the masses, a collective effort from entertainers, casino employees, and the Black community created pathways for increased opportunity within the Las Vegas gaming industry. However, these pathways to opportunity often worked in relation to government regulation and policy.

IV. “HIRING BLACKS TO DO EVERYTHING BUT DEAL”: NEVADA POLICY EFFICACY

A. *Nevada Gaming Control Standards and American Civil Rights Era Policies*

⁷¹ *Id.*

⁷² Rosemary Pearce, *Fear and Motels in Las Vegas: Segregation and Celebrity on the Strip*, U. S. STUD. ONLINE (Oct. 20, 2014), <https://usso.uk/fear-and-motels-in-las-vegas-segregation-and-celebrity-on-the-strip/>.

⁷³ Larry Gragg, “*Crusader in My Own Way*”: *Nat King Cole Exposes Segregation in Las Vegas*, WE’RE HISTORY (Sept. 24, 2019), <https://werhistory.org/crusader-in-my-own-way-nat-king-cole-exposes-segregation-in-las-vegas/>.

⁷⁴ Pearce, *supra* note 72.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Gragg, *supra* note 73.

⁷⁸ Pearce, *supra* note 72.

Nevada lawmakers implemented a state-level casino license in 1945, enabling tax collection on gaming revenue through the Nevada Tax Commission.⁷⁹ The murder of Benjamin “Bugsy” Siegel, a casino owner known for his ties to the mafia, in 1947 led Nevada Attorney General Alan Bible to issue an opinion in favor of regulating Nevada casino operations.⁸⁰ Prior to the murder, the Tax Commission did not explicitly require character evaluation in issuing licenses.⁸¹ However, General Bible’s opinion stated that “[i]nquiry into the ‘antecedents, habits, and characters’” of gaming applicants would be suitable to uphold Nevada’s gambling laws.⁸² The Nevada Supreme Court established the theory of “privileged gaming licenses” in 1931: “[T]he carrying on of a business of a character regarded as tending to be injurious, such as dealing in intoxicating liquor, a wide discretion may be given to licensing officers to grant or withhold a license without prescribing definite and uniform rules of action.”⁸³

An early example of a Nevada court enforcing “character” requirements was the 1950 case *Dunn v. Nevada Tax Commission*, in which the Nevada Supreme Court stated, “pari-mutuel betting on Nevada race events to strict license and regulation by the Nevada tax commission, including the finger printing of the applicant, examination as to his antecedents, habits and character.”⁸⁴ Similarly, the Court in *Nevada Tax Commission v. Hicks* said, “not only must the operation of gambling be carefully controlled, but the character and background of those who would engage in gambling in this state must be carefully scrutinized.”⁸⁵ Although the court gave considerable discretion to licensing officers when looking at character, discriminatory practices persisted in Las Vegas’ gaming industry.⁸⁶ The disparity in employment opportunities for Black people and the subjectivity in character review suggested the Commission’s ability to perpetuate inequitable practices.⁸⁷

⁷⁹ Robert D. Faiss & Gregory R. Gemignani, *Nevada Gaming Licensing Qualifications, Standards, and Procedures* 127 (Univ. of Nev. Las Vegas, Ctr. for Gaming Research: Occasional Paper Series No. 11, 2011), <https://gamingpress.unlv.edu/pdfs/chap9.pdf>.

⁸⁰ Anthony N. Cabot & Louis V. Csoka, *The Games People Play: Is It Time for a New Legal Approach to Prize Games?*, 4 NEV. L. J. 197, 211 (2004).

⁸¹ *Id.*

⁸² *Gambling*, 1947 Nev. Op. Atty Gen. No. 1947-528 (Oct. 14, 1947).

⁸³ *State v. Bd. of Comm’rs of City of Las Vegas*, 53 Nev. 364, 372 (1931).

⁸⁴ *Dunn v. Nevada Tax Comm’n*, 67 Nev. 173, 194 (1950).

⁸⁵ *Nev. Tax Comm’n v. Hicks*, 73 Nev. 115, 119 (1957).

⁸⁶ See JEFF SALLAZ, *THE LABOR OF LUCK: CASINO CAPITALISM IN THE UNITED STATES AND SOUTH AFRICA* 175 (2009).

⁸⁷ In an account from former Nevada Gaming Control Board Chair Edward A. Olsen (1961–1966), the ability to deny a license was “so broad that you probably could deny a license, if you expressed the reason, because a guy had blue eyes.” *Edward A. Olsen: My Careers as a Journalist in Oregon, Idaho, and Nevada; in Nevada Gaming Control; and at the University of Nevada* 110, Univ. of Nev. Oral History Program (1972), <https://archive.org/details/OlsenEdward/page/n19/mode/2up> as quoted in SALLAZ, *supra* note 86, at 169.

With no Black people employed as card dealers—one of a casino’s most visible positions—the NAACP called on Nevada Governor Grant Sawyer to work on a solution similar to the Moulin Rouge’s method of operation, but this time for employment rather than just clientele.⁸⁸ Sawyer believed that the solution was to require casinos to enforce equitable hiring practices as a condition for licensure.⁸⁹ Although this may have seemed practical in theory, the top law enforcement official in the state believed that absent “express legislation,” it would be “legally impossible” for the Nevada Gaming Commission to determine civil rights enforcement under state statutes.⁹⁰

Through an opinion discussing the Nevada Gaming Commission’s ability to “attach a condition to all state gaming licenses providing for disciplinary action in the event said licensee discriminates against any patron because of race,” issued by the Nevada Attorney General’s Office, Attorney General Roger D. Foley reasoned that historical common law principles are required to analyze the distinction between private business and public accommodation.⁹¹ Foley used various civil rights cases to highlight a state’s ability to enforce Fourteenth Amendment action against a state actor that “excludes Negroes from the premises.”⁹² He used *Stoutmeyer v. Duffy*—an 1872 Nevada case establishing Black children’s entitlement to equal participation in Nevada schools—to demonstrate Nevada’s individual ability to enact statutes requiring equal rights.⁹³ However, Foley’s use of the New York case *Madden v. Queens County Jockey Club* served as a distinction for common law business applications. In that case, the jockey club claimed “unlimited power of exclusion” as a means of keeping a patron, whom they believed was a bookmaker, off the property.⁹⁴

The purpose of distinguishing public accommodations, such as education, from businesses was to further the notion that “common law power of exclusion continues until changed by legislative enactment.”⁹⁵ Although casinos were meant to serve the public with granted licenses, common law business principles did not place the licensee under “an obligation to serve the public and in the absence of statute [the licensee] was under no duty to admit everyone to the premises where a business was located.”⁹⁶ Ultimately, granting the Commission the ability to pronounce efficient civil rights policy, at the time, extended its “authority beyond the sphere of gaming.”⁹⁷

⁸⁸ *Id.* at 175.

⁸⁹ *Id.*

⁹⁰ See 1960 Nev. Op. Att’y Gen. No. 143, 557–58 (Mar. 8, 1960).

⁹¹ *Id.* at 554.

⁹² See *Id.* at 555.

⁹³ *Id.* See also *Stoutmeyer v. Duffy*, 7 Nev. 342, 347–48 (1872).

⁹⁴ 1960 Nev. Op. Att’y Gen. No. 143, at 556. See also *Madden v. Queens Cty. Jockey Club*, 72 N.E. 2d 697, 698 (N.Y. 1947).

⁹⁵ 1960 Nev. Op. Att’y Gen. No. 143, at 556.

⁹⁶ *Id.* at 554.

⁹⁷ *Id.* at 557.

Recognizing persisting signs of strain when it came time to enforce equitable polices, Sawyer created the Nevada Equal Rights Commission (NERC).⁹⁸ Black American civil rights leader William H. “Bob” Bailey was appointed as the first NERC chairman in 1962.⁹⁹ The office was tasked with figuring out why discriminatory hiring practices persisted in the casino industry.¹⁰⁰ Certain methods used to enforce desegregation, such as “subpoenaing casino owners and others to testify on charges of discriminatory practices,” garnered death threats, according to Bailey.¹⁰¹ Threats of physical violence accentuated the resistance to equal opportunity for Black patrons.

Despite the threats, Nevada Assembly Bill 404 was passed in 1965, prohibiting discriminatory employment practices based on race.¹⁰² A Gaming Control Board inspector provided perspective on the legislation’s effectiveness: “There were [black] waiters and there were even black cocktail waitresses. . . . [The casinos] were hiring blacks to do everything but deal.”¹⁰³ Eventually the first Black dealer was hired in 1966, and by 1971 Black dealers were still only at 4.9% of tables, with less than 1% assuming the role of floor manager.¹⁰⁴

Clarence Ray was a co-owner of one of the first Black-owned gambling venues in Las Vegas.¹⁰⁵ Ray used his experience to advocate for increased Black representation in industry jobs, as well as for ending casino segregation.¹⁰⁶ After serving a stint as a state gaming inspector under the appointment of Governor Sawyer, Ray was hired as table games supervisor to help fill the venue’s “quota for minority hiring—their ten percent.”¹⁰⁷ A distinct turn in Ray’s industry experience took place when he was fired in 1974 after a “misunderstanding” with Frank “Lefty” Rosenthal.¹⁰⁸ According to Ray, the misunderstanding arose from

⁹⁸ Ed Koch, *Bob Bailey Will be Remembered as Civil Rights Leader, a ‘True Community Servant’*, LAS VEGAS SUN (May 26, 2014, 3:17 PM), <https://lasvegassun.com/news/2014/may/26/bob-bailey-will-be-remembered-leading-civil-rights/>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Lisa Sciortino, *Entertainer, Activist Bob Bailey Making a Difference*, LAS VEGAS SUN (Feb. 26, 1996, 11:59 AM), <https://lasvegassun.com/news/1996/feb/26/entertainer-activist-bob-bailey-making-a-differenc/>.

¹⁰² A.B. 404, 53rd Sess. (Nev. 1965).

¹⁰³ SALLAZ, *supra* note 86, at 176.

¹⁰⁴ *Id.*; see Claytee White, *The Roles of African American Women in the Las Vegas Gaming Industry, 1940-1980*, UNLV Retrospective Theses & Dissertations 3353 (1997), at 54, 55 [hereinafter *Roles of African American Women*].

¹⁰⁵ *Clarence Ray Park*, CITY OF LAS VEGAS, <https://www.lasvegasnevada.gov/Residents/Parks-Facilities/Clarence-Ray-Park> (last visited Apr. 26, 2022).

¹⁰⁶ *Id.*

¹⁰⁷ *Clarence Ray: Black Politics and Gaming in Las Vegas, 1920s-1980s*, at 43, 45, Univ. of Nev. Oral History Program (1991), <https://archive.org/details/RayClarence/page/n59/mode/2up> [hereinafter *Black Politics and Gaming in Las Vegas*].

¹⁰⁸ *Id.* at 45.

Rosenthal’s request to change the odds on a particular player’s hand in a manner unfavorable to the casino’s margins.¹⁰⁹ Ray added, “Rosenthal said he didn’t want anyone working for him that knew more the gambling business than he did!”¹¹⁰

Rosenthal was a mob associate from Chicago tasked with running the Stardust Resort and Casino for organized midwestern crime families who skimmed untaxed gaming revenue.¹¹¹ Ray said that Rosenthal had to employ personnel who were favorable to the mob.¹¹² Ray’s account suggests that an opportunity for diversification was missed at the hands of nepotism, even at the cost of giving up qualified Black talent. The mob prevented Black people from ascending in roles in at least one venue.

Threats, discrimination, and nepotism led to NAACP attorney Charles Kellar filing a complaint with the National Labor Relations Board in 1967 against the Nevada Resort Association and seventeen of its hotels, as well as various labor unions, calling for new hiring guidelines.¹¹³ The result was the 1971 Consent Decree, requiring casinos to maintain at least a 12.5% Black employment rate for jobs in the casino industry.¹¹⁴ The Decree presented express instructions to the Nevada Resort Association:

[A casino] shall hire and assign applicants for employment, and shall promote, transfer, train, demote and dismiss employees without regard to race and without engaging in any act or practice which has the purpose or the effect of discriminating against any individual because of his race or color in regards to his employment opportunities, and shall promote and transfer employees in such a way as to provide employment opportunities to black persons which are equal to those provided to white persons.¹¹⁵

One result of the Consent Decree was the establishment of the Nevada Employment Security Department.¹¹⁶ A locally distinguished Black civil rights attorney by the name of Robert Archie played an impactful role in the decree. He was appointed to become the department’s director, which made Archie the

¹⁰⁹ *Id.* at 46.

¹¹⁰ *Id.*

¹¹¹ Larry Henry, *Who Bombed Frank “Lefty” Rosenthal’ Car?*, THE MOB MUSEUM (Apr. 8, 2020), <https://themobmuseum.org/blog/who-bombed-frank-lefty-rosenthals-car/>.

¹¹² *Black Politics and Gaming in Las Vegas*, *supra* note 107, at 46.

¹¹³ *Roles of African American Women*, *supra* note 104, at 56–57.

¹¹⁴ Consent Decree: United States v. Nevada Resort Ass’n (No. LV 1645, D. Nev., June 4, 1971).

¹¹⁵ *Id.* at 4.

¹¹⁶ *Id.* at 14.

highest-ranking Black person in state government.¹¹⁷ Although Black attorneys were on the forefront of implementing impactful change, considerable time still passed before any marked progress was noticeable.

Despite the express provisions set out in the decree's call to enforcement, discriminatory practices were left to be unearthed. Although claims of an insufficient number of Black applicants to fill higher-level corporate roles persisted, Ivy League Professor Annelise Orleck wrote a book that details the experience of Las Vegas civil rights activist Ruby Duncan, which claims Duncan obtained a secret memo from casino owner Howard Hughes proving intent against hiring Black workers for management roles.¹¹⁸ Hughes, whose properties had been named in the Consent Decree, wrote:

I know there is tremendous pressure upon the Strip owners to adopt a more liberal attitude toward integration open housing, and employment to negroes . . . I can summarize my attitude about employing more negroes very simply—I think it is a wonderful idea for somebody else, somewhere else The negro has already made enough progress to last 100 years.¹¹⁹

Another issue complicating advancement for Black employees appeared in criminal enforcement guidelines set out by the Nevada Gaming Commission and Nevada Gaming Control Board: “Unsuitable persons” were (and still are) subject to regulatory discretion when it comes to working in the gaming industry.¹²⁰ Historically, felons have faced problems obtaining required authorization from the Nevada Gaming Control Board to work in the gaming industry.¹²¹ The share of Black people who were arrested for drug offenses has ranged from a disproportionate twenty-three percent in 1980 to forty-one percent in 1991, with “Blacks remain[ing] far more likely than whites to be arrested for selling drugs.”¹²² One “former cocaine dealer turned chef,” whose 1988 conviction cost him nearly a decade in federal prison, noted “many rejections” while looking for employment.¹²³ The Black chef went on to characterize his

¹¹⁷ Bill Gang, *Former Civil Leader Archie Dies of Cancer at Age 55*, LAS VEGAS SUN (Sept. 12, 1996, 11:59 AM), <https://lasvegassun.com/news/1996/sep/12/former-civil-leader-archie-dies-of-cancer-at-age-5/>.

¹¹⁸ ORLECK, *supra* note 1, at 247.

¹¹⁹ *Id.*

¹²⁰ See Nev. Gaming Comm'n Reg. 5.040 (2021).

¹²¹ Grace Leong, *Ex-felons Push for Clarity in Work Regulations*, LAS VEGAS SUN (Jan. 10, 2003, 11:18 AM), <https://lasvegassun.com/news/2003/jan/10/ex-felons-push-for-clarity-in-work-regulations/>.

¹²² Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

¹²³ Leong, *supra* note 121.

landing of a job as “more an exception than the rule.”¹²⁴ This illustration accentuates the disparate impact that the “War on Drugs” has had on Black social mobility within gaming employment.

Various gaming industry policy standards, nepotism, and disparate criminal sentencing patterns enabled missed opportunities for Black employees. One could rightfully reason that these barriers impeded Black employees from upward mobilization in the Las Vegas gaming industry.

B. A New “Theme”: Black Leadership As Las Vegas Develops International Platform

The global perception of Las Vegas and its tourism industry evolved with the 1989 opening of Steve Wynn’s Mirage Resort & Casino.¹²⁵ The \$630-million project also paved the way for the Culinary Workers Union Local 226 (“Culinary Union”) to have greater influence on employee rights, as Wynn agreed to pay higher workforce wages in return for an efficient workforce.¹²⁶ In an effort to increase revenue by expanding its visitor base, Las Vegas started enlarging its tourism reach by focusing on growing revenue through meetings and convention space.¹²⁷ Strategically, this move targeted convention attendees—staying extended periods of time in Las Vegas—who spent money on leisure activities such as retail and local business offerings.¹²⁸

Former Las Vegas Mayor Jan Jones Blackhurst recalled a conversation with Wynn: he “was interested in hiring employees from the ‘Historic Westside’ and asked me why they didn’t seem to apply. Upon investigation and outreach we discovered public transportation (or lack thereof) was a major barrier!”¹²⁹ It appears as if systemic barriers implemented during the practice of de facto segregation, beginning in the 1930s, continued its impact in the Black community during a transitional period for the gaming industry.

¹²⁴ *Id.*; see Jeff Henderson, *Jeff Henderson Bio*, FOOD NETWORK, <https://www.foodnetwork.com/profiles/talent/jeff-henderson/bio> (last visited Apr. 26, 2022).

¹²⁵ Khalon Richard, *After Sexual Misconduct Claims, Vegas Mogul Steve Wynn Fell Fast*, NEV. PUB. RADIO (March 15, 2018, 11:59 AM), <https://www.npr.org/2018/03/15/592318034/after-sexual-misconduct-claims-vegas-mogul-steve-wynn-fell-fast>.

¹²⁶ Christopher Johnson, *Organized Labor in the 21st Century: The Las Vegas Hotel and Culinary Workers Union Local 226*, BLACK PAST (Mar. 23, 2008), <https://www.blackpast.org/african-american-history/organized-labor-21st-century-las-vegas-hotel-and-culinary-workers-union-local-226/>.

¹²⁷ Glenn McCartney, *The Cat (Casino Tourism) and the MICE (Meetings, Incentives, Conventions, Exhibitions): Key Development Considerations for the Convention and Exhibition Industry in Macao*, 9 J. CONVENTION & EVENT TOURISM 293 (2008).

¹²⁸ *Id.* at 294.

¹²⁹ E-mail from Jan Jones Blackhurst, Bd. Member, Caesars Ent., to Sebastian Ross, Student, William S. Boyd Sch. of L. (Mar. 26, 2021, 08:02 PST) (on file with author).

This shift in working conditions for industry employees occurred right before a spike in Las Vegas' population growth that added a higher percentage of Latinx and Filipino members to the workforce.¹³⁰ This increased growth contributed to a smaller percentage of Black Americans making up the industry's culinary workforce. In 1997, Latinx representation grew to a forty-seven-percent share of representation, Black representation stood at twelve percent, Asian representation accounted eleven percent, and white representation accounted thirty percent.¹³¹ As of 2021, Latinx representation stood at fifty-four percent, Black representation remained at twelve percent, Asian representation accounted fifteen percent, and white representation accounted eighteen percent.¹³²

Despite the lack of growth regarding Black representation, the Culinary Union's first Black president, Hattie Canty, was elected in 1990.¹³³ Canty was instrumental in securing higher salaries for women and helping Black workers reach higher paying positions in the gaming industry.¹³⁴ Canty's effective leadership propelled her to back-to-back re-elections in 1993 and 1996, solidifying her legacy in an entity "generally seen as the most important constituency of the Democratic Party in Nevada."¹³⁵ Canty's leadership contribution came at a pivotal time, as the Las Vegas gaming industry began efforts to increase revenue by providing more convention and meeting resources for clients and visitors.¹³⁶

C. *Leaving Money on the Table? How Homogeneous Leadership Impedes Success*

Generations of economic exclusion, overt racism, and inequitable hiring practices targeting Black Las Vegas residents are reasons that should compel the

¹³⁰ See *Vegas' Growth Tops in Nation in '90s*, LAS VEGAS SUN (Dec. 17, 1999, 11:42 AM), <https://lasvegassun.com/news/1999/dec/17/vegas-growth-tops-in-nation-in-90s/>.

¹³¹ *Our Union/History*, CULINARY WORKERS UNION LOC. 226, <https://www.culinaryunion226.org/union/history> (last visited Apr. 26, 2022).

¹³² *Id.*

¹³³ John Pryzybys, *Meet Seven African-Americans Who Helped Shape Southern Nevada*, LAS VEGAS REV. J. (Feb. 23, 2014, 6:56 AM), <https://www.reviewjournal.com/life/meet-seven-african-americans-who-helped-shape-southern-nevada/>.

¹³⁴ *Id.*

¹³⁵ *Id.* Ruben J. Garcia, *Politically Engaged Unionism: The Culinary Workers Union in Las Vegas*, in UNLV SCHOLARLY COMMONS 373, 375 (2019), <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2125&context=facpub>.

¹³⁶ McCartney, *supra* note 127, at 293; Eden McCallister, *The Shifting of the Las Vegas Tourism Industry: A Historical Perspective on Management and Resort Revenues*, in UNLV THESES, DISSERTATIONS, PROFESSIONAL PAPERS, AND CAPSTONES 26 (Fall 2012), <https://digitalscholarship.unlv.edu/thesesdissertations/1472/>.

Las Vegas gaming industry to consider a more aggressive approach to retaining Black employees in its most integral roles. Decades of housing discrimination (which impacts generational wealth), inconsiderate city planning, a lack of access to quality education, and de-humanizing racism are reasons why Black Las Vegasans deserve to have effective hiring policies in place for leadership roles.¹³⁷ Only by actively addressing these issues can society find equitable solutions to the historical and unjust withholding of opportunities from Black people.

Between 1985 and 2014, businesses across the United States with 100 or more employees have seen Black men in management positions rise from 3% to 3.3%.¹³⁸ Job search website Zippia looked at 860 gaming manager resumes and found 6.3% of gaming managers were Black, compared to 73.6% of their white counterparts.¹³⁹ Although diversity training, hiring tests, and other methods to improve diversity have been used since the 1960s, these numbers indicate a flaw in the systems.¹⁴⁰

An analysis of top-level leadership amongst Las Vegas gaming entities today does not indicate much change. Las Vegas gaming institutions with an international reach listed on Fortune 500 include Caesars Entertainment ("Caesars"), MGM Resorts International ("MGM"), Wynn Resorts ("Wynn") and Las Vegas Sands ("LVS").¹⁴¹ Caesars senior management, at the executive level, is an ethnically homogenous group comprised of six individuals: five white men and one white woman.¹⁴² The Caesars Board of Directors has minimal diversity, as nine of its ten members are white and of the board's three women, only one is Black.¹⁴³ MGM and its "management team" comprise seven people, none of which are Black, while the board of directors has eleven individuals: seven white men, two white women, and two Black women.¹⁴⁴ LVS has four

¹³⁷ See Megan DeMatteo, *How This Entrepreneur is Working to Help Black Women Build Generational Wealth Through Homeownership*, CNBC (Jan. 26, 2022), <https://www.cnbc.com/select/what-is-generational-wealth/>.

¹³⁸ Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail and What Works Better*, HARV. BUS. REV. (July–Aug. 2016), <https://hbr.org/2016/07/why-diversity-programs-fail>.

¹³⁹ *Gaming Manager Demographics in the US*, ZIPPPIA, <https://www.zippia.com/gaming-manager-jobs/demographics/> (last visited Feb. 23, 2021).

¹⁴⁰ Dobbin & Kalev, *supra* note 138.

¹⁴¹ Devin O'Connor, *Las Vegas Sands Top Integrated Resorts Company in US, Four Casino Operators Land on Fortune 500*, CASINO.ORG (May 18, 2020), <https://www.casino.org/news/las-vegas-sands-top-integrated-resorts-company-in-us/>.

¹⁴² *Leadership*, CAESARS ENTERTAINMENT, <https://www.caesars.com/corporate/leadership> (last visited Apr. 26, 2022) [hereinafter *Caesars Leadership*].

¹⁴³ *Board of Directors*, CAESARS ENTERTAINMENT, <https://investor.caesars.com/corporate-governance/board-of-directors> (last visited Apr. 24, 2022) [hereinafter *Caesars Board of Directors*].

¹⁴⁴ *Management Team*, MGM RESORTS INT'L, <https://investors.mgmresorts.com/investors/governance/management-team/default.aspx> (last visited Apr. 24, 2022);

white men listed as its “executive management,” and the board of directors has eight white men, two Asian women, and one white woman.¹⁴⁵ Wynn and its senior management comprises six white men, three white women, and one woman of Asian descent; the “Board Members” comprise five white men, four white women, and one Black man.¹⁴⁶

With significant representation in the Las Vegas market, regional domestic gaming venues follow the international trend. Boyd Gaming’s senior management is currently comprised of eight individuals: six white men, one Black man, and one white woman; its board of directors has ten individuals: six white men, three white women, and one Black man.¹⁴⁷ Red Rock Resorts Group (RRR), the parent company of Stations Casinos LLC, is an entity with venues solely in the Las Vegas market.¹⁴⁸ Its senior management is comprised of four white males and its board of directors comprises five white men.¹⁴⁹

Out of *thirty-nine* senior management roles among the six aforementioned gaming companies, *only one* is held by a Black gaming professional. *Five board* seats out of the *fifty-seven board* seats between the six gaming companies are occupied by two Black men and three Black women. Although these numbers signify a clear contrast regarding representation, this

Board of Directors, MGM RESORTS INT’L, <https://investors.mgmresorts.com/investors/governance/board-of-directors/default.aspx> (last visited Apr. 24, 2022) [hereinafter *MGM Board of Directors*].

¹⁴⁵ *Management*, LAS VEGAS SANDS CORPORATION: INVESTORS, <https://investor.sands.com/Company/Management/default.aspx> (last visited Apr. 24, 2022) [hereinafter *LVS Management*]; *Board of Directors*, LAS VEGAS SANDS CORPORATION: INVESTORS, <https://investor.sands.com/Company/Board-of-Directors/default.aspx> (last visited Apr. 24, 2022).

¹⁴⁶ *Senior Management*, WYNN RESORTS, <https://wynnresortslimited.gcs-web.com/corporate-governance/management> (last visited Apr. 24, 2022) [hereinafter *Wynn Senior Management*]; *Board Members*, WYNN RESORTS, <https://wynnresortslimited.gcs-web.com/corporate-governance/board-of-directors> (last visited Apr. 24, 2022).

¹⁴⁷ *Executive Bios*, BOYD GAMING, <https://www.boydgaming.com/about-boydgaming/executive-bios> (last visited Apr. 24, 2022); *Board of Directors*, BOYD GAMING: INVESTORS, <https://investors.boydgaming.com/governance/board-of-directors/default.aspx> (last visited Apr. 26, 2022).

¹⁴⁸ Bailey Schulz, *Red Rock Resorts Reports Record Margins, and 24% Revenue Drop*, LAS VEGAS. REV. J. (Oct. 27, 2020, 1:38 PM) <https://www.reviewjournal.com/business/casinos-gaming/red-rock-resorts-reports-record-margins-and-24-revenue-drop-2163398/>; *Station Casinos Property Map*, STATION CASINOS, <https://www.stationcasinos.com/property-map/> (last visited Apr. 26, 2022).

¹⁴⁹ *Leadership*, RED ROCK RESORTS: INVESTOR RELATIONS, <http://redrockresorts.investorroom.com/leadership> (last visited Apr. 24, 2022); *Board of Directors*, RED ROCK RESORTS: INVESTOR RELATIONS, <http://redrockresorts.investorroom.com/board-of-directors> (last visited Apr. 24, 2022) [hereinafter *Red Rock Board of Directors*].

does not necessarily mean that these entities are failing to implement diversity initiatives. However, these diversity initiatives could produce better results.

The gaming industry has turned to Corporate Social Responsibility (“CSR”) reports—also referred to as Environmental, Social, and Governance (“ESG”) reports by some entities—in an effort to work with cross-sector organizations, shareholders, members of the community, and employers to deal with societal challenges.¹⁵⁰ Gaming companies use these reports as quantitative measurements of business success and for long and short-term planning, giving shareholders an opportunity to track diversity progress for themselves.¹⁵¹

Despite the lack of Black representation in senior management and corporate board roles amongst the six gaming entities, they all participate in CSR reporting, suggesting, at the least, that they have an interest in this particular social issue. The question remains: how well does that interest translate?

Under its “Values” section, Caesars lists “diversity & inclusion” among five other value components in its 2019-2020 CSR report.¹⁵² When speaking on the entity’s priorities as a whole, Caesars says, “We drive diversity, equity and inclusion in our workforce.”¹⁵³ The report goes on to detail how women of color comprised seventeen percent of managerial roles in 2019 and employees of color comprised thirty-five percent of managerial roles in 2019.¹⁵⁴ Citing the “Black Lives Matter movement,” Caesars claims a commitment to “remaining an active player in creating a just, equal and inclusive society.”¹⁵⁵ Caesars has an opportunity to actively foster an “equal and inclusive society” by recruiting and considering Black senior management and board representation, but only one Black representative sits on the company’s board, while no Black representation is accounted for in its senior executive management.¹⁵⁶

MGM listed in its 2019 Social Impact and Sustainability Report its “2025 goal” to “[e]nsure that all employees—including . . . people with ethnic backgrounds . . . have equal access to leadership opportunities throughout MGM Resorts . . .” and characterized itself as “on track.”¹⁵⁷ No explicit marker is provided regarding the tracking of this goal in that report.¹⁵⁸ In its “Social Impact

¹⁵⁰ CORPORATE SOCIAL RESPONSIBILITY IN THE GAMING INDUSTRY 2 (2019), U.S. CHAMBER OF COMMERCE FOUND., https://www.americangaming.org/wp-content/uploads/2019/02/CSR_Gaming_Industry_Report-1.pdf.

¹⁵¹ *Id.* at 7–8.

¹⁵² CAESARS ENTERTAINMENT 2019-2020 CSR REPORT 3 (2020), CAESARS ENTERTAINMENT, https://drive.google.com/file/d/1WPPeU-SfHluUhCZ8W_cAyDiOauvib8-H/view (last visited Apr. 26, 2022).

¹⁵³ *Id.* at 8.

¹⁵⁴ *Id.* at 9.

¹⁵⁵ *Id.* at 10.

¹⁵⁶ *Caesars Leadership*, *supra* note 142; *Caesars Board of Directors*, *supra* note 143.

¹⁵⁷ 2019 SOCIAL IMPACT AND SUSTAINABILITY REPORT 6 (2020), MGM RESORTS INT’L, <https://www.mgmresorts.com/content/dam/MGM/corporate/csr/annual-report/mgm-resorts-social-impact-and-sustainability-annual-report-2019.pdf>.

¹⁵⁸ *Id.*

and Sustainability Goal Metrics” report for 2019, MGM lists its “racially and ethnically diverse talent in management” at 47.8% and “racially and ethnically diverse leadership opportunity” at 20%.¹⁵⁹ These numbers are vague, in relation to Black employees, given the report’s lack of a specific ethnic breakdown.¹⁶⁰ Nonetheless, MGM has the opportunity to “ensure . . . equal access to leadership opportunities” by recruiting and considering Black representatives to sit on its board, and represent senior management. Currently, there are no Black representatives on MGM’s senior management team and two Black women on its eleven-member board.¹⁶¹

In its 2019 ESG report, LVS wrote, “our aspirational goal remains to help remove systemic barriers and to find permanent solutions to causes of inequity.”¹⁶² In regard to corporate governance, LVS considers a “wide range of factors in determining the composition of [the] Board, including professional experience, skills, education, diversity.”¹⁶³ Although there is no explicit reference to ethnic makeup of its management staff, eight percent of Black staff represent LVS and its United States operations.¹⁶⁴ LVS claims its goal is to “remove systemic barriers,” and although appointing Black staff to higher-level roles can help the company bring its goal to fruition, there are zero Black representatives on its senior executive management team and its board of directors.¹⁶⁵

Although Wynn fails to make a distinction regarding ethnic representation in leadership and manager positions in its ESG for North American properties, former CEO Matthew Maddox signed on to the “CEO Action for Diversity and Inclusion Pledge” in 2019.¹⁶⁶ In this pledge, signed by more than 800 CEOs, Wynn committed to “prioritizing diversity and inclusion as an imperative of our workplace culture.”¹⁶⁷ Also in 2019, the board’s “Nominating and Corporate Governance Committee” established a policy to consider new candidates with “diverse backgrounds.”¹⁶⁸ Since the policy’s establishment, Wynn appointed Darnell Storm, a Black representative, to its

¹⁵⁹ SOCIAL IMPACT AND SUSTAINABILITY GOALS AND METRICS 4 (2020), MGM RESORTS INT’L, <https://www.mgmresorts.com/content/dam/MGM/corporate/csr/annual-report/mgm-resorts-social-impact-and-sustainability-goals-and-metrics.pdf>.

¹⁶⁰ *Id.*

¹⁶¹ *MGM Board of Directors*, *supra* note 144.

¹⁶² 2019 ENVIRONMENTAL, SOCIAL AND GOVERNANCE REPORT 12 (2021), LAS VEGAS SANDS, https://s21.q4cdn.com/635845646/files/doc_downloads/2020/12/2019-Sands-ESG-Report.pdf.

¹⁶³ *Id.* at 25.

¹⁶⁴ *Id.* at 48.

¹⁶⁵ *LVS Management*, *supra* note 145.

¹⁶⁶ 2019 ENVIRONMENTAL, SOCIAL, AND GOVERNANCE REPORT 13, 17 (2020), WYNNRESORTS, https://www.visitwynn.com/documents/2019_ESG_Report_Wynn_Resorts.pdf [hereinafter *Wynn 2019 ESG*].

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 61.

board of directors in October 2020.¹⁶⁹ The board has one person of color and nine white members.¹⁷⁰

In its 2018 CSR report, Boyd Gaming set an explicit target goal, aiming for a five-percent increase of minority representation in mid-level management positions.¹⁷¹ Out of the six mentioned gaming entities, Boyd is the only one with a numerical goal regarding diverse representation at any management level position. The report also notes that “more than one-quarter of [Boyd’s] management positions – and “one of [its] Board seats – are currently held by people of color.”¹⁷²

At the time this note was written, Red Rock Resorts (“RRR”) did not have a visible CSR report available to the public. In its annual Form 10-K filing, required by the Securities Exchange Act of 1934, RRR notes that its “success depends on key executive officers and personnel.”¹⁷³ Although this may be true in theory, the current makeup of its executive team goes against data suggesting success and its correlation to diversity: only white males make up the RRR board and senior management roles.¹⁷⁴

In a report from the American Gaming Association, surveying 600 anonymous employees, seventy-five percent of minority employees surveyed reported that their workplace “[p]rovides opportunities for advancement for members of its workforce at all levels.”¹⁷⁵ Although seventy-five percent of minority respondents believing in upward mobility appears conspicuous, the disproportionately low numbers of Black applicants advancing to senior management and corporate board positions could diminish optimism.

Some might cite experience as a factor impacting corporate diversity. Director performance can influence a board to make risk-adverse choices, such as picking retired chief executives—an inordinately white pool.¹⁷⁶ Some recruiters believe that boards are taking a significant number of new members

¹⁶⁹ Wynn Resorts Announces New Appointment to Board of Directors, CISION U.S., INC. (Oct. 19, 2020, 7:05 PM), <https://www.prnewswire.com/news-releases/wynn-resorts-announces-new-appointment-to-board-of-directors-301155258.html>.

¹⁷⁰ Wynn Senior Management, *supra* note 146.

¹⁷¹ 2018 CORPORATE SOCIAL RESPONSIBILITY REPORT 13 (2018), BOYD GAMING, <https://static.boydgaming.net/boydgaming/media/downloads/BoydGaming-CorporateSocialResponsibility-2018.pdf> [hereinafter BOYD GAMING 2018 CSR REPORT].

¹⁷² *Id.* at 12.

¹⁷³ ANNUAL REPORT (FORM 10-K), RED ROCK RESORTS (Apr. 24, 2022), <https://sec.report/Document/0001653653-21-000005/>.

¹⁷⁴ Red Rock Board of Directors, *supra* note 149.

¹⁷⁵ CASINO EMPLOYEE SURVEY: HOW THE MEN AND WOMEN OF GAMING VIEW THEIR JOBS AND THE INDUSTRY 4 (2017), AM. GAMING ASS’N, https://www.americangaming.org/wp-content/uploads/2019/01/AGA_Casino_Industry_Employee_Survey_FINAL.pdf.

¹⁷⁶ Phred Dvorak, *Some Things Don’t Change*, WALL ST. J. (Jan. 14, 2008, 11:59 PM), <https://www.wsj.com/articles/SB119998932208381439>.

without experience, especially if they come from a governance-friendly finance background.¹⁷⁷

“Lack of experience” working as a factor against a potential Black applicant in consideration for corporate level positions might prove to be a weak argument, based on noted industry hiring patterns. Former MGM CEO Jim Murrin said, “There’s certainly more nepotism and more incestuous behavior in the gaming industry than I’ve seen in other industries.”¹⁷⁸ Historically, a formal education was not a requirement for casino managers, who generally received their positions as beneficiaries of nepotism.¹⁷⁹

Although one may question whether this apparent underrepresentation is “fair,” questioning how this impacts business may be more of a concern for executives. One Black executive in favor of greater diversity noted his duty to put shareholder interests first: “[M]y fiduciary responsibility is to the shareholders of that company—not to social engineering.”¹⁸⁰ Corporations may very well have a genuine interest in diversification, but shareholder concerns are premised on capital return.

An economic observation highlighting the trend of globalization in the gaming industry gives rise to the argument that having a more diverse set of leaders can boost an organization’s global economic efficiency. Digitization, especially as mobile gaming becomes more accessible, has further enabled gaming’s growth at a global scale.¹⁸¹ Global gaming leaders, such as China, are starting to invest more in international markets that include numerous African countries in a movement that some refer to as “economic colonialism.”¹⁸² Research and studies point to a correlation between diversity and increased business productivity. When studying the economic trends in venture capital, researchers from Harvard found that diversification “significantly improves financial performance” when it comes to profitable investments at the individual portfolio-company level and overall fund returns.¹⁸³ The technology industry

¹⁷⁷ *Id.*

¹⁷⁸ Steve Friess, *New Titans Reinvent Old Formula*, N.Y. TIMES (May 6, 2008), <https://www.nytimes.com/2008/05/06/business/06youngvegas.html>.

¹⁷⁹ DAVID SCHWARTZ, *TALES FROM THE PIT: CASINO TABLE GAMES MANAGERS IN THEIR OWN WORDS 5* (UNLV Gaming Press Books 2016).

¹⁸⁰ Dvorak, *supra* note 176.

¹⁸¹ See *Global Online Gambling Market to Reign in Huge Profits Till 2025 with Registering a CAGR of 13.2%*, GLOBENEWSWIRE (Feb. 4, 2021, 9:19 AM), <https://www.globenewswire.com/news-release/2021/02/04/2170066/0/en/Global-Online-Gambling-Market-to-Reign-in-Huge-Profits-till-2025-with-Registering-a-CAGR-of-13-2.html>.

¹⁸² *One-Armed Bandits Hit the Savanna: Inside the Chinese-led Gambling Epidemic in Rural Ghana*, L.A. TIMES (Aug. 8, 2017, 3:00 AM), <https://www.latimes.com/world/asia/la-fg-china-africa-ghana-20170808-htmllstory.html>.

¹⁸³ Paul Gompers & Silpa Kovvali, *The Other Diversity Dividend*, HARV. BUS. REV. (July-Aug. 2018), <https://hbr.org/2018/07/the-other-diversity-dividend>.

benefits, too, with stock prices rising amongst tech companies with higher levels of diversity.¹⁸⁴

Research conducted by McKinsey, a worldwide management consulting firm, shows companies within the top quartile of executive diversity had a thirty-five-percent improvement in likelihood of increased financial performance above the national industry median in 2014.¹⁸⁵ The same report shows a thirty-three-percent improvement for 2017.¹⁸⁶ A 2019 McKinsey report found that companies in the top quartile of ethnically diverse boards outperformed companies in the lower quartile by thirty-six percent.¹⁸⁷ The report also shows an increased likelihood of outperformance for ethnically diverse boards compared to gender-only diversified boards.¹⁸⁸ According to the private equity firm Carlyle Group, companies within the firm's portfolio with two or more diverse board members have seen annual revenue growth at nearly twelve percent over a three-year period.¹⁸⁹

The finding of these reports emphasizes an important business principle: revenue growth. Diversity correlates to the likelihood of increased revenue growth and performance. So, why are gaming companies positioning themselves to leave potential money on the table? Further, it is fair to ask if gaming executives are satisfying their fiduciary duties if they are not fully exhausting means of revenue return.

Diversity can also help a company be more efficient when it comes to dealing with complex matters.¹⁹⁰ A wide range of perspectives can lead to creative solution-based thinking due to a deeper range of insight.¹⁹¹ Diverse boards are not limited to just coming up with solutions; having that broader range of brainpower can enhance company monitoring, as well.¹⁹² An empirical study conducted by Stanford found that one Black participant in a group generally

¹⁸⁴ Katia Savchuk, *Do Investors Really Care About Gender Diversity?*, STAN. GRADUATE SCH. BUS. (Sept. 17, 2019), <https://www.gsb.stanford.edu/insights/do-investors-really-care-about-gender-diversity>.

¹⁸⁵ Vivian Hunt et al., *Delivering Through Diversity*, MCKINSEY & CO. (Jan. 18, 2018), <https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity>.

¹⁸⁶ *Id.*

¹⁸⁷ Sundiatu Dixon-Fyle et al., *Diversity Wins: How Inclusion Matters*, MCKINSEY & CO. (May 19, 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters#>.

¹⁸⁸ *Id.*

¹⁸⁹ *2020 Impact Report*, CARLYLE, <https://www.carlyle.com/impact/diverse-teams> (last visited Apr. 26, 2022).

¹⁹⁰ See Steven A. Ramirez, *A Flaw in the Sarbanes-Oxley Reform: Can Diversity in the Boardroom Quell Corporate Corruption?*, 77 ST. JOHN'S L. REV. 837, 848 (2003).

¹⁹¹ *Id.*

¹⁹² *Id.* at 849.

leads to a higher level of “integrative complexity under certain conditions,” which improves the clarity of communication.¹⁹³

A moderate approach toward increasing diversity in corporate gaming may suggest that sufficient employment opportunity is met if representation for corporate roles reflect population demographics, e.g., the 12.5% directive set out in the 1971 Consent Decree. According to the United States Census Bureau, Black people represent 13.4% of the population.¹⁹⁴ So, the moderate approach would be supported with a hiring rate of about thirteen percent for Black people.

The fallacy in that reasoning lies in the assumption that the ceiling for qualified Black representation is fixed at thirteen percent, or any number representative of the population. Who is to say that there are not Black candidates who could occupy these roles at a demographic threshold above thirteen percent? Minimum percentage thresholds do not have to serve as a ceiling; they can be a floor, if a company’s genuine goal is diversification.

Although fiscal considerations are paramount to the capitalism-oriented bottom-line principle, implementing inclusive and effective policies for top corporate positions acknowledge generations of stripped opportunities for Black Americans in the gaming industry seeking to reach their full professional potential. Further, diversification in these roles potentially provides a gaming company with an opportunity to better understand new markets as gaming’s global reach continues to grow. However, perhaps the most compelling reason for a gaming business to commit to diversity may indeed lie in the business’ potential to increase revenue.

D. Contemporary Analysis and Potential Solution Implementation

Former Mayor Jones Blackhurst said, “If you want the highest and best performing companies, you need diverse viewpoints; you simply do.”¹⁹⁵ Although studies have linked increased financial performance with board diversity, only thirty-four percent of United States board members surveyed in 2020 by PricewaterhouseCoopers said it is very important to have diversity on a board.¹⁹⁶

On December 1, 2020, the Nasdaq Stock Market filed a proposal with the United States Security and Exchange Commission (“SEC”) requiring all

¹⁹³ Anthony Lising Antonio et al., *Effects of Racial Diversity on Complex Thinking in College Students*, STANFORD UNIV. SCH. OF EDUC., https://web.stanford.edu/group/siher/documents/pdfs/racial_diversity.pdf (last visited Apr. 26, 2022).

¹⁹⁴ *Race and Hispanic Origin*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US#> (last visited Apr. 26, 2022).

¹⁹⁵ Marjorie Preston, *Diversity and Inclusion: A Little Less Talk, A Little More Action*, GLOB. GAMING BUS. MAG. (Aug. 24, 2020), <https://ggbmagazine.com/article/diversity-inclusion-a-little-less-talk-a-little-more-action/>.

¹⁹⁶ Joann Lublin, *How to Increase the Number of Black Board Members*, WALL ST. J. (Feb. 20, 2021, 9:00 AM), <https://www.wsj.com/articles/how-to-increase-the-number-of-black-board-members-11613829602>.

companies trading on the United States Exchange to be transparent in disclosing the racial demographics of its board of directors, as well as requiring most Nasdaq-listed companies without at least two diverse directors to explain the omission.¹⁹⁷ Nasdaq claims that this move supports over twenty studies finding an association between an increase in business productivity and corporate governance when boards are more diverse.¹⁹⁸

This comes at a time when investment companies are starting to prioritize diversity. The world’s largest asset investment corporation, BlackRock, said that it will inquire about racial demographics within companies with which it does business.¹⁹⁹ While overseeing nearly \$7.8 trillion in assets, the money management company said it will act by voting against directors who fail to diversify corporate boards and their workforce.²⁰⁰ This serves as an indicator that major portfolio managers are focusing on diversity.

Another way to expand opportunities is through legal mandates, which Las Vegas exercised in its 1971 Consent Decree. Massachusetts enforces a gaming law requiring casino developers to implement diversity hiring goals and design strategic plans for minority inclusion for all phases of casino development.²⁰¹ Massachusetts Gaming Commission requires gaming licensees to produce detailed monthly reports including data and statistics about workforce and vendor diversity.²⁰²

In Illinois, gaming license holders are required to submit an annual plan showing a “good faith affirmative action plan” in the recruitment and training of minorities.²⁰³ These good-faith efforts have materialized in various ways. In a state report filed by Argosy Casino in Alton, Illinois, the venue detailed its minority demographic breakdown in the context of its county minority population.²⁰⁴ Rivers Casino in Des Plaines, Illinois actively recruits from local workforce agencies and provides the total number of Black employees for the

¹⁹⁷ *Nasdaq to Advance Diversity Through New Proposed Listing Requirements*, NASDAQ INC. (Dec. 1, 2020, 7:15 AM), <https://www.nasdaq.com/press-release/nasdaq-to-advance-diversity-through-new-proposed-listing-requirements-2020-12-01>.

¹⁹⁸ *Id.*

¹⁹⁹ Saijel Kishan, *BlackRock to Push Companies on Diversity in 2021*, BLOOMBERG (Dec. 10, 2020, 7:06 AM), <https://www.bloomberg.com/news/articles/2020-12-10/blackrock-plans-to-push-companies-on-racial-diversity-in-2021>.

²⁰⁰ *Id.*

²⁰¹ Jill Griffin, *Building a Diverse Casino Industry*, BOSTON GLOBE (June 19, 2019, 11:26 AM), <https://www.bostonglobe.com/opinion/2019/06/19/building-diverse-casino-industry/OC8DQalIEQroxZIZDDdCWM/story.html>.

²⁰² *Id.*

²⁰³ 230 Ill. Comp. Stat. Ann. 10/7.11.

²⁰⁴ Letter from Ill. Gaming Bd. to Members of the Ill. Gen. Assembly on 230 ILCS 10/7.11, (Feb. 1, 2020), <https://www.ilga.gov/reports/ReportsSubmitted/792RSGAEmail1689RSGAAttach2019%20Casino%20Diversity%20Report.pdf>.

venue.²⁰⁵ Nevada legislators and gaming regulators have the same autonomy, as other jurisdictions, to explore equitable gaming measures.

California enacted legislation requiring diversity on corporate boards, targeting both gender and ethnicity.²⁰⁶ California Senate Bill 826 requires publicly held corporations that have its principal executive office in the state to have at least one female director on its corporate board if there are four or fewer members, two female directors for five members, or three female directors for six or more members by the end of 2021.²⁰⁷ AB 979 requires publicly held corporations with its principal executive office located in California and five-to-nine board members to have at least two members come from “an underrepresented community,” and three members for boards consisting of nine members or more by the end of 2022.²⁰⁸

Concern may arise around setting legal mandates requiring companies to enforce diversity because of the assumption that it may lead to unqualified people getting jobs. That reasoning could hold sound, assuming that people currently in contested positions were the most qualified to begin with. However, this may very well be a false presumption.²⁰⁹ Nepotism and bias are potential factors that have perpetuated homogeneity in hiring. A study done by researchers at the University of Chicago and the Massachusetts Institute of Technology found resumes with names that *sounded* “white” received fifty percent more callbacks for interviews.²¹⁰

As detailed above, Nevada’s gaming industry is no stranger to this type of nepotism and systemic discrimination when it comes to hiring. Rose Mckinney-James, a Black woman sitting as a Board member for MGM, serves as chairwoman of the group’s Corporate Social Responsibility Committee.²¹¹

²⁰⁵ *Id.*

²⁰⁶ James Patton & Tracie Childs, *New California Law Requires Diversity on Corporate Boards of Directors*, NAT’L. L. REV. (Oct. 15, 2020), <https://www.natlawreview.com/article/new-california-law-requires-diversity-corporate-boards-directors>.

²⁰⁷ S.B. 826, 2017–2018 Leg. Sess. (Ca. 2018).

²⁰⁸ Assemb. B. 979, 2019–2020 Leg. Sess. (Ca. 2020).

²⁰⁹ See generally JHACOVA WILLIAMS & VALERIE WILSON, BLACK WORKERS ENDURE PERSISTENT RACIAL DISPARITIES IN EMPLOYMENT OUTCOMES 1 (2019) ECON. POL’Y INST., <https://files.epi.org/pdf/173265.pdf> (“black workers with a college or advanced degree are more likely than their white counterparts to be underemployed when it comes to their skill level—almost 40% are in a job that typically does not require a college degree, compared with 31% of white college grads.”).

²¹⁰ Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, AM. ECON. REV. 991, 991 (Sept. 2004), <https://uh.edu/~adkugler/Bertrand&Mullainathan.pdf>.

²¹¹ Marjorie Preston, *Diversity and Inclusion: A Little Less Talk, A Little More Action*, GLOB. GAMING BUS. MAG. (Aug. 24, 2020), <https://ggbmagazine.com/article/diversity-inclusion-a-little-less-talk-a-little-more-action/>.

McKinney-James believes that finding and growing talent in the local community was a key to success for the diversity programs she worked on.²¹²

The Culinary Academy of Las Vegas is a nonprofit hospitality skills training program that educates the community on skills related to the city’s food and beverage industry.²¹³ Located in the Westside, almost one-third of the program is represented by students from some of the most underserved Clark County zip codes, with a number of those students going on to work on the Strip.²¹⁴ Perhaps a similar program can be implemented within the Nevada Higher System of Education, focusing on training diverse recruits for corporate leadership roles.

The University of Nevada-Las Vegas International Gaming Institute launched its “Expanding the Leaderverse” program, focusing on promoting diversity in the hospitality and gaming industry.²¹⁵ The program has a K-12 initiative through a partnership with CCSD, as well as university and community-themed programs.²¹⁶ Although this initiative aims to narrow the gender gap in the gaming industry, its application can address racial inequity.²¹⁷

Boyd Gaming said it employs recruitment methods such as taking out advertisement space in ethnic-catered news publications and visiting minority-dominant colleges for job fairs.²¹⁸ As mentioned, Boyd Gaming’s CSR report set a target of a five-percent increase of minority representation in mid-level management positions, thus setting an objective target.²¹⁹ Meanwhile, Wynn has turned to its “We Strive” training program, focused on providing a course for “high-potential, line-level” workers that have an interest in management.²²⁰ In 2022, Wynn announced a recruitment plan focused on targeting graduates of historically Black colleges and universities for programs that include management training.²²¹

V. CONCLUSION

²¹² *Id.*

²¹³ *About*, CULINARY ACAD. L.V., <https://www.theculinaryacademy.org/about/> (last visited Apr. 26, 2022).

²¹⁴ *History*, CULINARY WORKERS UNION LOCAL 226, <https://www.culinaryunion226.org/union/history> (last visited Apr. 26, 2022).

²¹⁵ *See Expanding the Leaderverse*, UNIV. NEV. LAS VEGAS: INT’L GAMING INST., <https://www.unlv.edu/igi/leaderverse> (last visited Apr. 26, 2022).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Workforce Diversity*, BOYD GAMING, <https://www.boydcareers.com/diversity/workforce-diversity> (last visited Apr. 26, 2022).

²¹⁹ BOYD GAMING 2018 CSR REPORT, *supra* note 171, at 13.

²²⁰ *Wynn 2019 ESG*, *supra* note 166, at 23.

²²¹ Craig Billings, LINKEDIN (Feb. 2022), https://www.linkedin.com/posts/craig-billings-20973b1_im-proud-to-introduce-two-new-initiatives-activity-6903070210811592704-GSBa?utm_source=linkedin_share&utm_medium=member_desktop_web.

In 2021, diversity in the Las Vegas gaming industry stands in contrast to Black entertainers—at the height of their career—being shunned from venues unless they were performing. However, one can point to objective numbers and challenge the effectiveness of diversity initiatives relating to C-suite positions. Even under adverse circumstances, Black Las Vegas residents made numerous historic contributions that had a positive impact on the gaming industry. These contributions indicate potential for Black residents (and employees) to have an even greater impact on the future of Las Vegas’ gaming industry. So why not give Black candidates a chance?

Perhaps the most efficient manner for gaming companies to diversify their boards and high-level positions is a simple one: exercise gumption by making a deliberate decision to hire Black applicants. Deliberate action from gaming companies would not only position an entity to increase financial success, in an ever-growing globalized gaming economy, but it can also serve to counterbalance decades of inequitable Las Vegas policies that furthered systematic and systemic racism. And if it does not counterbalance decades of inequity, it at least serves as an effort to acknowledge the stacked odds impeding Black Las Vegas residents.