STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 1, 2020)

DANIEL S. HARROP, ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2019-5273**
THE RHODE ISLAND DIVISION OF LOTTERIES; by and through Gerry S. Aubin, in his official capacity as Director; THE RHODE ISLAND DEPARTMENT OF REVENUE, by and through Marc A. Furcolo, in his official capacity as Acting Director; UTGR, INC. d/b/a TWIN RIVER; TWIN RIVER-TIVERTON, LLC d/b/a TIVERTON CASINO HOTEL; IGT NV, PLC; THE TOWN OF LINCOLN, and THE TOWN OF TIVERTON ***Defendants*****.**	:	

DECISION

STERN, J. Daniel S. Harrop (Plaintiff) has moved for summary judgment on Count III of his Fourth Amended Complaint, which seeks a declaratory judgment that the implementation of sports betting and online sports betting violates article 6, section 22 of the Rhode Island Constitution, as well as injunctive relief and restitution. The Rhode Island Department of Revenue (DOR), the State Lottery Division of the State of Rhode Island Department of Revenue (State Lottery Division) (collectively, State Defendants), UTGR, Inc. d/b/a Twin River (Twin River-Lincoln), and Twin River-Tiverton, LLC d/b/a Tiverton Casino Hotel (Twin River-Tiverton) (collectively, Defendants), joined by IGT NV, PLC, have objected. Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

I

Facts and Travel

A

Constitutional Provisions

On November 8, 1994, Rhode Island voters approved a constitutional provision entitled "Restriction of gambling," which provided that:

> "No act expanding the types of gambling which are permitted within the state or within any city or town therein or expanding the municipalities in which a particular form of gambling is authorized shall take effect until it has been approved by the majority of those electors voting in a statewide referendum and by the majority of those electors voting in a referendum in the municipality in which the proposed gambling would be allowed.
>
> "The secretary of state shall certify the results of the statewide referendum and the local board of canvassers of the city or town where the gambling is to be allowed shall certify the results of the local referendum to the secretary of state." R.I. Const. art. VI, § 22 (amended 2014).

Thereafter, on November 4, 2014, Rhode Island voters approved an amendment to article 6, section 22 of the Rhode Island Constitution, which provided that "[n]o act expanding the types ***or locations*** of gambling" shall take effect without voter approval in statewide and local referenda,

> "and, having been so approved in said referendum in any city or town on or after November 4, 2014, the location where the gambling is permitted in any city or town shall not be changed within said city or town without approval of the majority of those electors voting on said proposed change in a referendum in said city or town." R.I. Const. art. VI, § 22 (amended 2014) (emphasis added).

B

Expansion of Gambling

1

2011-2012

In 2011, the General Assembly passed legislation (the 2011 Twin River-Lincoln Legislation) to authorize "[s]tate-operated casino gaming" at Twin River-Lincoln. *See* State Defs.' Obj. Summ. J. (State Defs.' Obj.) Ex. 1, G.L. 1956 §§ 42-61.2-1 *et seq.* The 2011 Twin River-Lincoln Legislation authorized Twin River-Lincoln to operate

> "any and all table and casino-style games played with cards, dice or equipment, for money, credit, or any representative of value; including, but not limited to roulette, blackjack, big six, craps, poker, baccarat, pai gow, any banking or percentage game, or any other game o[r][1] device included within the definition of Class III gaming as that term is defined in Section 2703(8) of Title 25 of the United States Code and which is approved by the state through the division of state lottery." *Id.* § 42-61.2-1(8).

The 2011 Twin River-Lincoln Legislation gave the State Lottery Division and the Rhode Island Department of Business Regulation (DBR) "full operational control" and "the authority to make all decisions about all aspects of the functioning of the" state-operated casino gaming. *Id.* §§ 42-61.2-2.1(b)(2); -(c). Among other powers, the State Lottery Division and DBR were given the authority to "[d]etermine the number, type, placement and arrangement of casino gaming games, tables and sites within [Twin River-Lincoln]." *Id.* § 42.61.2-2.1(c)(1).[2]

[1] As noted by the State Defendants, it appears that both the public law and the codified statute of the 2011 Twin River-Lincoln Legislation have typographical errors in the sections defining "casino gaming." However, the Court finds these typographical errors immaterial to the issues now before the Court.

[2] Similarly, in 2012 the General Assembly passed legislation to authorize "[s]tate-operated casino gaming" at Newport Grand (the 2012 Newport Grand Legislation). *Id.* at Ex. 2. The 2012 Newport Grand Legislation was approved by the majority of those electors voting

Pursuant to article 6, section 22 of the Rhode Island Constitution, the 2011 Twin River-Lincoln Legislation required voter approval via a statewide referendum and a local referendum in Lincoln. In preparation for the referenda, the Secretary of State published a Rhode Island Voter Information Handbook 2012 (the 2012 Voter Handbook), which "include[d] background on the ballot questions . . . ." *Id*. at Ex. 5 at 3. The 2012 Voter Handbook printed the referendum question for the 2011 Twin River-Lincoln Legislation as it would appear on the ballot: "Shall an act be approved which would authorize the facility known as 'Twin River' in the town of Lincoln to add state-operated casino gaming, such as table games, to the types of gambling it offers?" (2012 Question 1). *Id*. at 7. The 2012 Voter Handbook explained that approval of 2012 Question 1 would result in Twin River-Lincoln

> "being authorized to engage in state-operated casino gaming . . . in accordance with the legislation adopted by the General Assembly . . . [which] provides that the State of Rhode Island is authorized to operate, conduct and control casino gaming at Twin River[-Lincoln] . . . [and] shall have full operational control to operate the Twin River[-Lincoln] facility and the authority to make all decisions about all aspects of the functioning of the business enterprise . . . ." *Id*. at 7-8.

The 2012 Voter Handbook instructed a voter that "[a] vote to 'approve' [2012 Question 1] means you wish to approve the act authorizing Twin River[-Lincoln] to engage in state-operated casino gaming at its facility in the Town of Lincoln in accordance with the provisions of such act." *Id*. at 9.

In addition to this informational section, the 2012 Voter Handbook included a definitional section. *Id*. at 5. "Casino gaming" was defined in the 2012 Voter Handbook as

> "any and all table and casino-style games played with cards, dice or equipment, for money, credit, or any representative of value;

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statewide, but rejected by the majority of those electors voting in the City of Newport. *See id*. at Ex. 6. Accordingly, the 2012 Newport Grand Legislation never went into effect.

> including, but not limited to roulette, blackjack, big six, craps, poker, baccarat, pai gow, any banking or percentage game, or any other game or device included within the definition of Class III gaming as that term is defined in Section 2703(8) of Title 25 of the United States Code and which is approved by the State of Rhode Island through the Lottery Division." *Id*. at 5.

"Table game or table gaming" was further defined as "that type of casino gaming in which games are played for cash or chips representing cash, using cards, dice or equipment and conducted by one or more live persons." *Id*. at 6.

On November 6, 2012, approximately 70% of the electors voting in the statewide referendum approved 2012 Question 1. *See id*. at Ex. 6 at 19. Moreover, a majority of the electors voting in the local referendum in Lincoln approved the authorization of state-operated casino gaming. *See id*. at Ex. 7. Accordingly, the 2011 Twin River-Lincoln Legislation went into effect, and Twin River-Lincoln began engaging in state-operated casino gaming.

2

2016

Nearly four years later, in 2016, the General Assembly passed legislation (the 2016 Twin River-Tiverton Legislation) to authorize Twin River-Tiverton "to be licensed as a pari-mutuel facility and offer state-operated video lottery games and state-operated casino gaming, such as table games . . . ." *Id*. at Ex. 8, G.L. 1956 § 41-7-3(d). The 2016 Twin River-Tiverton Legislation gave the State Lottery Division and DBR "full operational control" and "the authority to make all decisions about all aspects of the functioning of the business enterprise." *Id*. § 42-61.2-2.3(d). Among other powers, the State Lottery Division and DBR were given the authority to "[d]etermine the number, type, placement, and arrangement of casino gaming games, tables and sites within [Twin River-Tiverton]." *Id*. § 42.61.2-2.3(d)(1).

Pursuant to article 6, section 22 of the Rhode Island Constitution, the 2016 Twin River-Tiverton Legislation required voter approval via a statewide referendum and a local referendum in Tiverton. In preparation for the referenda, the Secretary of State published a 2016 Rhode Island Voter Information Handbook (the 2016 Voter Handbook), which "included short explanations of each of" the ballot questions. *Id*. at Ex. 10 at 3. The 2016 Voter Handbook printed the referendum question for the 2016 Twin River-Tiverton Legislation as it would appear on the ballot:

> "Shall an act be approved which would authorize a facility owned by Twin River-Tiverton, LLC, located in the Town of Tiverton at the intersection of William S. Canning Boulevard and Stafford Road, to be licensed as a pari-mutuel facility and offer state-operated video-lottery games and state-operated casino gaming, such as table games?" (2016 Question 1). *Id*. at 9.

The 2016 Voter Handbook explained that 2016 Question 1 was "asking voters to allow a new state-operated casino to be built in Tiverton . . . [which] would be owned by Twin River-Tiverton and would be licensed and regulated by the State." *Id*. at 10. The 2016 Voter Handbook instructed a voter that a "vote to 'Approve' [2016 Question 1] means you want to allow a new state-operated casino, including video-lottery games and table games, to be built in Tiverton . . . ." *Id*.

In addition to this informational section, the 2016 Voter Handbook included a definitional section. *Id*. at 21-22. "Casino gaming" was defined in the 2016 Voter Handbook as

> "any and all table and casino-style games played with cards, dice or equipment, for money, credit, or any representative of value; including, but not limited to roulette, blackjack, big six, craps, poker, baccarat, pai gow, any banking or percentage game, or any other game or device included within the definition of Class III gaming as that term is defined in Section 2703(8) of Title 25 of the United States Code and which is approved by the State of Rhode Island through the Lottery Division. *See question 1*." *Id*. at 21.

"Table game or table gaming" was further defined as "that type of casino activity in which games are played for cash or chips representing cash, using cards, dice or equipment and conducted by one or more live persons. *See question 1*." *Id*. at 22.[3]

On November 8, 2016, approximately 55% of the electors voting in the statewide referendum approved 2016 Question 1. *See id*. at Ex. 11 at 58. Moreover, a majority of the electors voting in the local referendum in Tiverton approved the authorization of a new state-operated casino being built in Tiverton. *See id*. at Ex. 12. Accordingly, the 2016 Twin River-Tiverton Legislation went into effect, and Twin River-Tiverton began engaging in state-operated video-lottery games and state-operated casino gaming.

3

Sports Wagering

In 2018, the General Assembly passed legislation (the 2018 Sports Wagering Legislation) to authorize the State Lottery Division and DBR to "implement, operate, conduct, and control sports wagering at the Twin River[-Lincoln] gaming facility and the Twin River-Tiverton gaming facility . . . ." *Id*. at Ex. 13 § 42-61.2-2.4(a). The 2018 Sports Wagering Legislation gave the State Lottery Division and DBR "full operational control to operate the sports wagering . . . ." *Id*.

Similarly, in 2019, the General Assembly passed legislation (the 2019 Online Sports Wagering Legislation) to amend § 42-61.2 to include provisions governing online sports wagering at Twin River-Lincoln and Twin River-Tiverton (collectively, the Twin River Facilities). *See id*. at Ex. 15. The 2019 Online Sports Wagering Legislation defined "Online sports wagering" as

[3] The definitions of "casino gaming" and "table game or gaming" were identical to the definitions included in the 2012 Voter Handbook.

> "engaging in the act of sports wagering by the placing of wagers on sporting events or a combination of sporting events, or on the individual performance statistics of athletes in a sporting event or a combination of sporting events, over the internet through computers, mobile applications on mobile devices or other interactive devices approved by the [State Lottery D]ivision. . ." *Id*. § 42-61.2-1(16).

The 2019 Online Sports Wagering Legislation provided that the wagers would be "accepted by a server-based gaming system located at" the Twin River Facilities, and that "all such wagers shall be deemed to be placed and accepted at the premises of" the Twin River Facilities. *Id*.; *see also id*. § 42-61.2-1(8) (defining "[h]osting facility" as Twin River-Lincoln and Tiverton).

C

Instant Litigation

Plaintiff filed the instant action on May 1, 2019, alleging that the enactment of the 2018 Sports Wagering Legislation and the 2019 Online Sports Wagering Legislation (collectively, the Sports Wagering Acts) violated article 6, section 22 of the Rhode Island Constitution. *See generally* Fourth Am. Compl. Counts I, II, and III. The Defendants filed a motion to dismiss for lack of standing, which this Court granted. However, Plaintiff sought leave to amend his Complaint, which this Court granted. Defendants filed another motion to dismiss the Fourth Amended Complaint for lack of standing. On December 5, 2019, this Court entered a decision denying Defendants' motion and found that Plaintiff had standing. *See Harrop v. The Rhode Island Division of Lotteries, et al.*, No. PC-2019-5273, 2019 WL 6768536 (R.I. Super. Dec. 5, 2019).

Now, Plaintiff moves for summary judgment and seeks a declaratory judgment that the implementation of sports wagering and online sports wagering violates article 6, section 22 of the Rhode Island Constitution because the Sports Wagering Acts never received voter approval.

Defendants timely objected to the motion for summary judgment.[4] On February 6, 2020, this Court heard from all parties. After considering the written and oral arguments, the Court now decides Plaintiff's motion for summary judgment.

II

Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that "'[s]ummary judgment is an extreme remedy that should be applied cautiously.'" *Albert J. Branch Revocable Trust v. Interstate Battery Center*, 160 A.3d 988, 993 (R.I. 2017) (quoting *Hall v. City of Newport*, 138 A.3d 814, 818 (R.I. 2016) (alteration in original)). "Thus, '[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.'" *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (quoting *Peloquin v. Haven Health Center of Greenville, LLC*, 61 A.3d 419, 424–25 (R.I. 2013)). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. *See Steinberg v. State*, 427 A.2d 338, 340 (R.I. 1981). During a summary judgment proceeding, the Court does not pass upon the weight or credibility of the evidence. *See DeMaio v. Ciccone*, 59 A.3d 125, 129–30 (R.I. 2013).

[4] Twin River Facilities also filed a cross motion on damages, which this Court declines to rule on at the present moment.

III

Analysis

Defendants object to summary judgment on two threshold issues: 1) that Plaintiff's claim is not justiciable; and 2) that Plaintiff is estopped from challenging the constitutionality of article 6, section 22 of the Rhode Island Constitution. Before reaching the merits of Plaintiff's claim, the Court must resolve these issues.

A

Justiciability

First, Defendants assert that Plaintiff's claim is not justiciable because Plaintiff cannot maintain a private cause of action for damages for an alleged violation of article 6, section 22 of the Rhode Island Constitution. Defendants argue that constitutional and statutory provisions do not give rise to a private cause of action for monetary damages in the absence of express language providing for such and article 6, section 22 of the Rhode Island Constitution contains no such express language. Accordingly, Defendants contend that this Court's previous holding that Plaintiff had standing rested on his allegation that he suffered monetary damages when he placed a sports wager and lost. In turn, Defendants now argue that because Plaintiff cannot maintain a claim for economic damages, his claim is no longer justiciable. Defendants explain that declaratory and/or injunctive relief will not redress his purported economic injury, and if the Court did proceed to the merits of Plaintiff's claim, it would essentially be rendering an advisory opinion.

Plaintiff objects, arguing that he can request a declaratory judgment on whether the Sports Wagering Acts are constitutional without being required to possess a separate cause of action for damages caused by his alleged economic injury. Specifically, Plaintiff contends that

once a claimant has established standing, there is no requirement that his or her economic injury-in-fact be recoverable. Rather, Plaintiff argues that a claimant's request for declaratory relief gives rise to redressability.

Our Supreme Court has articulated that a justiciable claim has two components. *See Key v. Brown University*, 163 A.3d 1162, 1168 (R.I. 2017). "First, a plaintiff needs the requisite standing to bring suit." *Id.* This Court has already found that Plaintiff has standing and will not revisit that issue.[5] The second component of justiciability is that "the plaintiff also must have 'some legal hypothesis which will entitle the plaintiff to real and articulable relief.'" *Id.* (quoting *N&M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1145 (R.I. 2009)). Defendants contend that Plaintiff fails on this second component of justiciability because he is not entitled to damages, and therefore, there is no legal hypothesis which will entitle him to relief.

It is well settled that "[w]hen a statute 'does not plainly provide for a private cause of action [for damages], such a right cannot be inferred.'" *Tarzia v. State*, 44 A.3d 1245, 1258 (R.I. 2012) (quoting *Bandoni v. State*, 715 A.2d 580, 584 (R.I. 1998)). Defendants rely heavily on our Supreme Court's holding in *Bandoni*, wherein a plaintiff could not maintain a cause of action for negligence or constitutional tort for violations of the Victim's Bill of Rights and victims' rights amendment.[6] 715 A.2d at 582. However, central to the *Bandoni* Court's holding was that the plaintiffs' action "ha[d] *always* been an action for monetary damages and ha[d] *never* been anything else." *Id.* at 596. Accordingly, because there was no existing common law duty to

[5] At oral argument, counsel for the DOR conceded that "[t]he State has no desire to relitigate the standing decision that this Court issued . . . ." Hr'g Tr. 68:18-19.

[6] The Victim's Bill of Rights was codified in 1983. *Id.* at 582. Three years later, the Constitutional Convention ratified article 1, section 23 of the Rhode Island Constitution as the victims' rights amendment. *Id.*

notify victims of their rights and neither the statutory nor constitutional provisions provided for civil liability for damages, the plaintiffs failed to state a claim upon which relief could be granted. *Id*. at 584–86.

Here, Plaintiff has requested both declaratory and injunctive relief from this Court. This request is in stark contrast to that sought by plaintiffs in *Bandoni,* who failed to plead declaratory or injunctive relief, and therefore were only left with a cause of action for monetary damages which could not be awarded by the Court. *See id*. at 597 (explicitly noting that upon a fair reading of the plaintiffs' complaint the Court was "simply unable to infer a claim for declaratory or injunctive relief within the four corners"). Instead, Plaintiff seeks relief under the Uniform Declaratory Judgments Act, which gives this Court the "power to declare rights, status, and other legal relations *whether or not further relief is or could be claimed*." Section 9-30-1 (emphasis added).

Plaintiff's request—that this Court declare the Sports Wagering Acts unconstitutional and enter injunctive relief preventing sports wagering and online sports wagering unless and until voter approval is obtained—represents a justiciable controversy because there is a concrete issue as to whether the Sports Wagering Acts are constitutional. The Plaintiff has asserted that the Rhode Island voters have the constitutional right to approve or disapprove the Sports Wagering Acts, and the Defendants deny that right. *See N&M Properties, LLC*, 964 A.2d at 1145 (finding that in a declaratory judgment action a justiciable controversy is present "'[w]here a concrete issue is present and there is a definite assertion of legal rights coupled with a claim of a positive legal duty with respect thereto which shall be denied by adverse party'" (quoting 1 Anderson, *Actions for Declaratory Judgment* § 14 at 62 (2d ed. 1951)); *see also Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 27, 317 A.2d 124, 130 (1974) (stressing that

once a plaintiff has established standing because of his or her injury in fact "[he or she] may present the broader claims of the public at large"). This Court's decision would not be an advisory opinion because the Defendants disagree with Plaintiff's position and assert that the Sports Wagering Acts are constitutional and no public referendum was required. *Cf. Providence Teachers Union v. Napolitano*, 690 A.2d 855 (R.I. 1997) (finding trial court rendered an advisory opinion where there was no present, actual controversy because both plaintiff and defendant agreed that the charter's residency requirements did not apply to the individual plaintiffs). As such, the Court finds that Plaintiff's claim is justiciable.

B

Estoppel

Next, Defendants continue to press their assertion that Plaintiff is estopped from challenging the constitutionality of the Sports Wagering Acts because he voluntarily used and benefitted from them by placing a sports wager.[7] The Court finds this argument of no moment.

Our Supreme Court has found that "[i]t is a well-settled principle of *administrative law* that one who seeks or has acquired rights before an administrative agency may not, in the same proceeding, attack the validity of the statute that has created the agency." *Easton's Point Association v. Coastal Resources Management Council*, 522 A.2d 199, 201 (R.I. 1987) (emphasis added). The principle of estoppel may also be applied in zoning matters. *Id.*; *see also Russell v. Zoning Board of Review of Town of Tiverton*, 100 R.I. 728, 729, 219 A.2d 475, 476 (1966) (holding that one who applies to a zoning board for relief under a zoning ordinance may not subsequently question the validity of the ordinance because, by seeking relief under the

[7] This Court previously reserved decision on the estoppel issue because it was not properly before the Court. *See Harrop*, No. PC-2019-5273, 2019 WL 6768536, at *2. However, the Court did note that Plaintiff was not estopped because he was not within the class of persons benefitted or protected by the statute. *See id.* at n.2.

ordinance, the person has necessarily admitted to the validity of the ordinance). The Court can find no instance, nor has one been brought to its attention, when our Supreme Court has applied this form of estoppel outside administrative law or zoning matters. *See, e.g., Almond v. Rhode Island Lottery Commission*, 756 A.2d 186, 200 n.5 (R.I. 2000) (holding that the governor was not estopped from challenging the Lottery Commission's actions or enabling legislation even though the governor testified before the Commission because the governor did not seek to acquire any rights before an administrative agency); *Town of East Greenwich v. O'Neil*, 617 A.2d 104, 107 (R.I. 1992) (finding that a public utility was not estopped from asserting a counterclaim in a challenge to the constitutionality of an ordinance even though the utility had filed a petition for review of the ordinance with the Public Utilities Commission); *Wellington Hotel Associates v. Miner*, 543 A.2d 656, 659 (R.I. 1988) (finding that litigant unquestionably acquired a right in proceedings before the Coastal Resources Management Council because it issued him a permit to erect a floating-dock system).[8] Thus, because our Supreme Court has not been willing to apply this estoppel doctrine to any context other than administrative and zoning matters, the Court finds that Plaintiff is not estopped from challenging the constitutionality of the Sports Wagering Acts simply because he placed a sports wager. *See Bellevue Shopping Center Associates v. Chase*, 574 A.2d 760, 764 (R.I. 1990) (finding that plaintiff was not estopped from

[8] Moreover, the Court finds Defendants' reliance on *Griffin v. Bendick*, 463 A.2d 1340 (R.I. 1983) for the proposition that our Supreme Court has applied the estoppel doctrine to a declaratory judgment action outside the administrative or zoning law context misplaced. First, the language in *Griffin* that Defendants rely on is dicta, as the Court was "[p]arenthetically . . . not[ing] that Griffin is questioning the constitutionality of the very statute that she previously invoked to exact her remedy," which would normally serve as a bar to the action. *Id*. at 1345. Second, the plaintiff in *Griffin* had previously brought suit under the taking statute that her declaratory judgment action sought to question the constitutionality of, and, in the previous lawsuit, plaintiff had obtained payment for her land pursuant to the statute. *Id*. at 1342. Here, Plaintiff has not previously asserted any rights in a separate proceeding or obtained a judgment pursuant to § 42-61.2-2.4.

challenging the historic zoning enabling legislation despite applying to the Newport Historic District Commission for a certificate of approval because "it neither applied for nor acquired a substantive right from the commission").

C

Constitutionality

Having concluded that Plaintiff's claim is justiciable and that Plaintiff is not estopped from asserting his claim, the Court now turns to whether the Sports Wagering Acts are constitutional. This analysis involves a two-step approach: 1) whether sports wagering is a type of casino gaming and 2) whether the 2012 and 2016 referenda gave Rhode Island voters "fair notice" that they were authorizing sports wagering. Moreover, the Court must determine whether the 2019 Online Sports Wagering Legislation impermissibly expanded the locations of gambling within the State.

1

Standard of Review

As a starting point, this Court notes "'legislative enactments of the General Assembly are presumed to be valid and constitutional.'" *Moreau v. Flanders*, 15 A.3d 565, 573 (R.I. 2011) (quoting *Newport Court Club Associates v. Town Council of Middletown*, 800 A.2d 405, 409 (R.I. 2002)). Accordingly, when reviewing the constitutionality of statutes, "the Court exercises its power to do so 'with the greatest possible caution,'" *Cherenzia v. Lynch*, 847 A.2d 818, 822 (R.I. 2004) (quoting *Gorham v. Robinson*, 57 R.I. 1, 7, 186 A. 832, 837 (1936)), and will "not declare a statute void unless [it is found] to be constitutionally defective beyond a reasonable doubt." *Moreau*, 15 A.3d at 573. This Court must "attach to the enactment every reasonable intendment in favor of constitutionality." *Id.* at 574.

Moreover, "the party challenging the constitutional validity of an act carries the burden of persuading the court that the act violates an identifiable aspect of the Rhode Island . . . Constitution." *Id* (internal quotation omitted). The challenging party must prove beyond a reasonable doubt that the statute violates a provision of the Rhode Island Constitution, or this Court will hold the act constitutional. *See id*. (citing *Mackie v. State*, 936 A.2d 588, 595 (R.I. 2007)).

2

Definition

Through approval of 2012 Question 1 and 2016 Question 1 (collectively, the Referenda Questions), the Rhode Island voters approved the Twin River Facilities to operate casino gaming, further defined as:

> "any and all table and casino-style games played with cards, dice or equipment, for money, credit, or any representative of value; including, but not limited to roulette, blackjack, big six, craps, poker, baccarat, pai gow, any banking or percentage game, or any other game o[r] device included within the definition of Class III gaming as that term is defined in Section 2703(8) of Title 25 of the United States Code and which is approved by the state through the division of state lottery." State Defs.' Obj. Ex. 1 § 42-61.2-1(8); *see also id*. § 42-61.2-2.1 (authorizing Twin River-Lincoln to engage in state-operated casino gaming); *id*. at Ex. 8 § 41-7-3(d) (authorizing Twin River-Tiverton to engage in state-operated casino gaming).

Accordingly, the Court must determine whether sports wagering falls within the definition of casino gaming.

This Court employs the canons of statutory construction in interpreting the referenda questions, any relevant statutory language, and publications relating to the referenda. *See* 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction*, § 48:19 (7th ed. 2007) ("The rules of construction apply as equally to the interpretation of

approved initiative and referendum measures as they do to the interpretation of statutory enactments, and any pre-enactment publications relating to an initiative or referendum vote are relevant legislative history."). "'[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" *Planned Environments Management Corp. v. Robert*, 966 A.2d 117, 121 (R.I. 2009) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)).

Here, the Court finds that sports wagering falls within the definition of casino gaming for two reasons. First, sports wagering is a "casino-style game[] played with . . . equipment, for money." State Defs.' Obj. Ex. 1 § 42-61.2-1(8). The 2018 Sports Wagering Legislation provides for the Director of the State Lottery Division to promulgate rules and regulations relating to sports wagering equipment, including the physical characteristics of any devices or equipment related to sports wagering, *see id*. at Ex. 13 § 42-61.2-3.3(a)(1)(iii), and the inspection, repair, and storage of sports wagering equipment. *See id*. § 42-61.2-3.3(a)(5)(vii). Furthermore, the 2018 Sports Wagering Legislation provides that the Director of the State Lottery Division shall have the authority to establish the minimum and maximum wagers for each sports wagering game, *id*. § 42-61.2-2.4(a)(5) and regulate "[t]he manner in which sports-wagering bets are received [and] payoffs are remitted . . . ." *Id*. § 42-61.2-3.3(a)(1)(ii); *see also id*. § 42-61.2-1(16) (defining "[p]ayoff" as "cash or cash equivalents paid to a player as a result of the player's winning a sports wager"). Therefore, pursuant to the plain language of the 2011 Twin River-Lincoln Legislation and 2016 Twin River-Tiverton Legislation (collectively, the Casino Gaming Acts), it is clear that sports wagering is included within the definition of casino gaming because it is played with equipment and for money.

Second, sports wagering falls within the definition of casino gaming—as defined in the Casino Gaming Acts—because sports wagering is a game "included within the definition of Class III gaming as that term is defined in Section 2703(8) of Title 25 of the United States Code . . . ." *Id.* § 42-61.2-1(1). Section 2703(8) of Title 25 of the United States Code is the Indian Gaming Regulatory Act (IGRA), which "divides Indian gaming into three classes." *Cohen's Handbook of Federal Indian Law* § 12.03, at 882 (Nell Jessup Newton ed., 2012). Under IGRA, class I gaming "includes social and traditional games played for prizes of minimal value." *Id*. Class II gaming "includes bingo, bingo-like games, and certain nonbanking card games." *Id*. Class III gaming "means all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C.A. § 2703(8).

As our Supreme Court has recognized, "Class III gaming is a catchall phrase," *In re Advisory Opinion to Governor*, 856 A.2d 320, 329 n.4 (R.I. 2004), and "includes all gaming that is not Class I or Class II gaming." *Narragansett Indian Tribe of Rhode Island v. State*, 667 A.2d 280, 280 (R.I. 1995). Accordingly, because sports wagering is not a social or traditional game played for minimal value or a bingo-like game, it necessarily falls within the definition of Class III gaming. *See* Singer & Singer, *supra* § 53:1 (recognizing that statutes are enacted against a system of extensive written law and that construing statutes by reference to other statutes advances the values of harmony and consistence in the legal system). Moreover, the federal regulations promulgated pursuant to IGRA explicitly provide that "[a]ny sports betting" is included within Class III gaming. 25 C.F.R. § 502.4. Based on the foregoing, the Court finds that sports wagering is a type of Class III gaming, Class III gaming is a form of casino gaming, and through the Casino Gaming Acts, the voters approved casino gaming.

3

"Fair Notice"

Having determined that "sports wagering" falls within the definition of "casino gaming," the Court now turns to whether the 2012 and 2016 referenda gave voters "fair notice." First, the referenda questions must meet statutory requirements concerning publication of the question and the language contained on the ballot. Second, the referendum must give voters "fair notice" of what is being approved. The Court will address each requirement, *in seriatim*.

a

Statutory Requirements of Statewide Referenda Elections

Prior to a public referendum, a voter information handbook must be sent to each residential unit in Rhode Island. G.L. 1956 § 17-5-3. The voter information handbook must contain the full text of the act to be voted upon or a description of the text of the act to be voted upon, "together with the following information:

> "(1) The designated number of the question;
> "(2) A brief caption of the question;
> "(3) A brief explanation of the measure that is the subject matter of the question; and
> "(4) A notice that voter fraud is a felony and the penalty for voter fraud. This notice shall be in conspicuous lettering and shall contain the following language: 'You must be registered to vote from your actual place of residence.'" *Id.*

"Brief" is characterized as being concise and short in duration, extent, or length. *See* Merriam-Webster Online Dictionary (retrieved March 16, 2020 from https://www.merriam-webster.com/dictionary/brief); *see also Mutual Development Corp. v. Ward Fisher & Co., LLP*, 47 A.3d 319, 328–29 (R.I. 2012) (recognizing that when a statute does not define a word, our Supreme Court will employ the common meaning of words as provided by recognized dictionaries).

Here, the 2012 Voter Handbook and 2016 Voter Handbook (collectively, the Handbooks) met the requirements of § 17-5-3 because they each contained a description of the respective Casino Gaming Acts, designated the number of the question, and contained a brief caption of the question and explanation of the measure. *See Pebble Limited Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1073 (Alaska 2009) (applying a deferential standard of review "to the adequacy of a petition summary"). Specifically, the 2012 Voter Handbook explained that the 2011 Twin River-Lincoln Legislation would authorize Twin River-Lincoln "to engage in state-operated casino gaming . . . in accordance with the legislation adopted by the General Assembly." State Defs.' Obj. Ex. 5 at 7. The 2012 Voter Handbook also included the definition of "casino gaming" as set forth in the 2011 Twin River-Lincoln Legislation. *Id*. at 5. Similarly, the 2016 Voter Handbook explained that the 2016 Twin River-Tiverton Legislation would "allow a new state-operated casino, including video-lottery games and table games, to be built in Tiverton . . . ." *Id*. at Ex. 10 at 10. The 2016 Voter Handbook also included the definition of "casino gaming" as previously codified in § 42-61.2-1(8).

In addition to the voter information handbook, there are statutory requirements regarding the language that must be contained on the ballot. *See* § 17-5-5. The ballot must contain "a clear and concise statement of the nature of each question presented without the necessity of repeating the full text of the question as adopted by the general assembly . . . ." *Id*. "Concise" is "marked by brevity of expression or statement [and] free from all elaboration and superfluous detail." Merriam-Webster Online Dictionary (retrieved March 16, 2020 from https://www.merriam-webster.com/dictionary/concise). A "clear" statement is "free from obscurity or ambiguity [and] easily understood." Merriam-Webster Online Dictionary (retrieved March 16, 2020 from https://www.merriam-webster.com/dictionary/clear).

Here, the 2012 Ballot characterized 2012 Question 1 as "APPROVAL OF AN ACT AUTHORIZING STATE-OPERATED CASINO GAMING AT TWIN RIVER IN THE TOWN OF LINCOLN," and reprinted, verbatim, the full text of the question as adopted by the General Assembly. *See* State Defs.' Obj. Ex. 4; *see also id*. at Ex. 1 § 42-61.2-2.1(1)(c). Similarly, the 2016 Ballot characterized 2016 Question 1 as "Approval of an act authorizing state-operated casino gaming at 'Twin River-Tiverton' in the Town of Tiverton," and reprinted, verbatim, the full text of the question as adopted by the General Assembly. *See id*. at Ex. 9; *see also id*. at Ex. 8 § 42-61.2-2.3(a)(1). The Court finds that the 2012 Ballot and the 2016 Ballot (collectively, the Ballots) adequately presented the nature of the Referenda Questions because the Ballots contained both the full text of the question as adopted by the General Assembly, in addition to a clear and concise statement of the nature of the questions presented. *See Cyclone Drilling, Inc. v. Kelley*, 769 F.2d 662, 664 (10th Cir. 1985) (finding that "clear and concise" notice to the Internal Revenue Service of taxpayer's change in address may be implicit or explicit, and that taxpayer's subsequent tax return bearing a new address was "clear and concise" notice).

b

"Fair Notice" of Authorizing Sports Wagering

Having determined that the statutory requirements for the 2012 and 2016 referenda were met, the Court now turns to whether the voters were given "fair notice" that, through approval of the Casino Gaming Acts, they were authorizing sports wagering. Both the Handbooks and the Referenda Questions are relevant to this inquiry. *See City and County of Honolulu v. State*, 431 P.3d 1228, 1238 (Haw. 2018) (finding that ballot questions for proposed constitutional amendments should be presented in form and language so as not to deceive the public: "this requirement can be met in part by the provision of supplemental voter

information regarding the context and implications of a proposed amendment"); *see also Oberlies v. Attorney General*, 99 N.E.3d 763, 777 (Mass. 2018) (finding that the state officer's summary of a proposed law is relevant to whether an initiative gives fair notice).

Plaintiff argues that the Casino Gaming Acts did not inform voters that sports wagering was being authorized because sports wagering was not explicitly mentioned in the Referenda Questions or the Handbooks. Plaintiff also contends that Class III gaming was not defined in the Referenda Questions or the Handbooks and that even the section of the federal law referenced in the Handbooks—IGRA—does not mention sports wagering. Rather, Plaintiff contends that the only reference to sports wagering is in a regulation promulgated by the National Indian Gaming Commission (NIGC), which is insufficient to disclose to the ordinary voter that Class III gaming includes sports wagering. Moreover, Plaintiff argues that sports wagering was illegal at the time the Referenda Questions were approved and therefore could not be approved by the voters. Accordingly, Plaintiff maintains that voters only gave express consent to the addition of table games at Twin River-Lincoln via the 2011 Twin River-Lincoln Legislation and to the addition of table games and video lottery games at Twin River-Tiverton via the 2016 Twin River-Tiverton Legislation, but never consented to the addition of sports wagering at the Twin River Facilities.

Defendants object, arguing that the voters were clearly apprised of the nature and extent of what the Referenda Questions were approving; namely, casino gaming, Class III gaming, and, included therein, sports wagering. Defendants argue that the broad and all-inclusive language used throughout the Casino Gaming Acts, the Handbooks, and the Referenda Questions informed voters that casino gaming was a wide-ranging category of gambling. Defendants further assert that pursuant to the Casino Gaming Acts, the State

Lottery Division and DBR were vested with the authority to make future decisions about the specific casino gaming games allowed at the Twin River Facilities, including the authority to offer games which become legalized, as sports wagering did.

Article 6, section 22 of the Rhode Island Constitution mandates voter approval via referendum for legislation which expands the forms, types, and locations of gambling in the state. *See In re Advisory Opinion to Governor*, 856 A.2d at 333 (concluding that "the expansion of all forms of gambling in this state may be undertaken only after receiving approval in accordance with art. 6, sec. 22"). Generally, a referendum "must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent, and informed decision by the average citizen affected." 42 Am. Jur. 2d *Initiative and Referendum* § 19. However, voters—and with them the legislature—are presumed to know the law. *See State v. DelBonis*, 862 A.2d 760, 768 (R.I. 2004) (holding that when the legislature enacts or amends a statute, they are presumed to know the state of existing law); *Professional Engineers in California Government v. Kempton*, 155 P.3d 226, 246 (Cal. 2007) (deeming that voters are considered to be aware of existing laws at the time of an initiative).

The Court finds that based on the plain language of the Referenda Questions and the definition of casino gaming in the Handbooks, voters had "fair notice" that they were broadly approving all casino gaming and any other game included within the definition of Class III gaming. "Fair notice" does not require that every detail or ramification of the measure be explained. *See Citizens Right to Recall v. State ex rel. McGrath*, 142 P.3d 764, 767 (Mont. 2006) (holding that the ballot title and statement of purpose "'need not contain a complete catalog or index of all provisions within the initiative'" (quoting *People v. Flores*, 223 Cal. Rptr. 465, 470 (Ct. App. 1986))). Rather, voters receive "fair notice" where they are given

notice of the contents of the proposed measure so that they will not be misled as to its purpose and can cast an intelligent and informed ballot. *Advisory Opinion to the Attorney General re: Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So.2d 1186, 1190 (Fla. 2006) (holding that a ballot title which authorized legislature to "use some Tobacco Settlement money annually for a comprehensive statewide tobacco education and prevention program" which follows CDC best practices and includes advertising was clear, unambiguous, and informed voters of the chief purpose of the initiative).

Here, the Referenda Questions and the Handbooks sought, in pertinent part, approval for "state-operated casino gaming, such as table games." *See* State Defs.' Obj. Exs. 4, 5, 9, 10. It is well settled that use of the term "such as" is descriptive rather than exclusive. *See Abenante v. Fulflex, Inc.*, 701 F. Supp. 296, 301 (D.R.I. 1988) (analyzing the language of the Age Discrimination in Employment Act); *Oklahoma Public Employees Association v. State ex rel. Oklahoma Office of Personnel Management*, 267 P.3d 838, 845 (Okla. 2011) (finding that the legislature's use of the term "such as" is not a term of strict limitation, but rather "is utilized to indicate that there are other matters intended to be included within the statutory limits which are not specifically enumerated by the legislative language"); *Matter of Barker-Fowler Electric Co.*, 141 B.R. 929, 937 (Bankr. W.D. Mich. 1992) (holding that where the Bankruptcy Code enumerates instances the court shall grant relief from stay, "use of the term 'such as' means the court is authorized to grant forms of relief from stay other than those expressly articulated"). Accordingly, voter approval of the Referenda Questions was not strictly limited to table games simply because table games were explicitly listed. Rather, voter approval encompassed all state-operated casino gaming.

Casino gaming was defined in the Handbooks as

> "any and all table and casino-style games played with cards, dice or equipment, for money, credit, or any representative of value; including, but not limited to roulette, blackjack, big six, craps, poker, baccarat, pai gow, any banking or percentage game, or any other game or device included within the definition of Class III gaming as that term is defined in Section 2703(8) of Title 25 of the United States Code and which is approved by the State of Rhode Island through the Lottery Division." State Defs. Obj. Ex. 5 at 5; Ex. 10 at 21.

Use of the words "any and all" is expansive and indicates the voters approved any gambling that qualifies as a table or casino-style game played with cards, dice or equipment, for money, credit, or any representative of value, or any other game included within the definition of Class III gaming, without limitation. *See* Merriam-Webster Online Dictionary (retrieved March 16, 2020 from https://www.merriam-webster.com/dictionary/all) (defining "all" as the whole extent of); *National Council on Compensation Insurance v. Superintendent of Insurance*, 481 A.2d 775, 779 (Me. 1984) (finding that the common meaning of "any" is all or every, no matter which one). Accordingly, the Court finds the Referenda Questions and the Handbooks gave voters "fair notice" of the contents of the Casino Gaming Acts. *Cf. Christian Civic Action Committee v. McCuen*, 884 S.W.2d 605 (Ark. 1994) (finding ballot title misleading where it used a definition of highly technical terms to avoid using the term "casino-style gambling" because the specialized terminology obscured the meaning of the question which was to establish a wholly new and expanded category of gambling associated with casinos).

Moreover, Plaintiff's contention that sports wagering must have been expressly identified in the Referenda Questions to give voters "fair notice" is misplaced. Plaintiff relies heavily on a series of advisory opinions issued by our Supreme Court interpreting article 6,

section 16 of the Rhode Island Constitution to support his position that sports wagering must have been clearly disclosed and explicitly identified through the Referenda Questions. However, unlike article 6, section 22 of the Rhode Island Constitution—which requires voter approval prior to the expansion of the type or location of gambling—article 6, section 16 of the Rhode Island Constitution "requires the 'express consent of the people, to incur state debts to an amount exceeding fifty thousand dollars.'" *In re Advisory Opinion to House of Representatives*, 599 A.2d 1354, 1355 (R.I. 1991) (quoting R.I. Const. art. VI, § 16). This express consent requirement is unique to article 6, section 16 of the Rhode Island Constitution and is reinforced by a 1993 amendment to § 17-5-3, which added further notice requirements for the voter information handbook "[i]f the [referendum] question involves the issuance of bonds or other evidence of indebtedness." Section 17-5-3(b).[9] Because article 6, section 22 of the Rhode Island Constitution does not contain an express consent requirement, the Referenda Questions did not need to explicitly reference sports wagering in order to give the voters "fair notice" that they were approving any and all casino-style games, including sports wagering.

Overarching the Court's finding that voters were given "fair notice" that the Casino Gaming Acts approved sports wagering is the presumption that voters know the law. *See Cox v. Daniels*, 288 S.W.3d 591, 597 (Ark. 2008). As such,

> "[f]air notice to voters is evaluated presuming that 'the voter [will] acquaint him [or her] self with the details of a proposed [measure] on a referendum . . . If he [or she] does not, it is not the function of

[9] Information that must be included is

> "(1) The estimated total cost of the project or program, including financing (using a reasonable assumed rate of interest), legal, and other costs.
> "(2) The estimated useful life of the project, and the term of the bonds, other indebtedness, or other obligation.
> "(3) A reasonably detailed description of the project or program, its purposes, and a project timetable." *Id*. at (b)(1)-(3).

> the ballot question to provide him [or her] with that needed education.'" *Andrews v. City of Jacksonville*, 250 So.3d 172, 175 (Fla. Dist. Ct. App. 2018) (quoting *Miami Heat Limited Partnership v. Leahy*, 682 So.2d 198, 203 (Fla. Dist. Ct. App. 1996)).

Accordingly, the Court must assume that the voters acquainted themselves with the Casino Gaming Acts and the information contained within the Handbooks. Assuming as such, the Casino Gaming Acts and the Handbooks provide ample details and definitions to give the voters "fair notice" that any and all casino-gaming games were being approved, including all games classified as Class III gaming, which includes sports wagering.

The assumption that voters know the law also vitiates Plaintiff's argument that the voters could not have approved sports wagering because sports wagering was illegal at the time the Referenda Questions were voted upon. If voters are presumed to know the law, they must necessarily also be assumed to know the law can change. *See, e.g., State ex rel. Webb v. Cianci*, 591 A.2d 1193, 1202–03 (R.I. 1991) (concluding that the legislature repealed a law that permanently barred from voting and from election to public office all persons sentenced to more than one-year imprisonment). As such, once the United States Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA)—a federal law which made it unlawful for a state to authorize sports wagering—the General Assembly was free to enact legislation authorizing sports wagering, as voters had already approved all casino gaming and Class III gaming via the Referenda Questions. *See Murphy v. National Collegiate Athletic Association*, 138 S.Ct. 1461, 1484-85 (2018) (striking down PASPA because it violated the anticommandeering rule and finding that "each State is free to act on its own" in legalizing sports gambling). In essence, voter approval of sports wagering given via the Referenda Questions was inoperative—but not void—until PASPA was repealed. *See* Singer & Singer, s*upra* § 23:22

(noting that when a state statute is preempted by federal law, the state act is merely rendered inoperative and suspended until the federal law is repealed, but once the federal law is repealed the state statute comes into full operation without reenactment by the legislature).

c

Location

Plaintiff further argues that the 2019 Online Sports Wagering Legislation is unconstitutional because it expands the locations of gambling which are permitted in the state. Specifically, Plaintiff argues that the 2019 Online Sports Wagering Legislation creates a "virtual casino," which allows sports wagering from any phone or device located in Rhode Island. Defendants object, arguing that the 2019 Online Sports Wagering Legislation specifically mandates that any sports wagers placed pursuant thereto are deemed to be placed on and accepted by a server at the Twin River Facilities.

The 2019 Online Sports Wagering Legislation provides that online sports wagers are "accepted by a server-based gaming system located at" the Twin River Facilities, and that "all such wagers shall be deemed to be placed and accepted at the premises of" the Twin River Facilities. State Defs.' Obj. Ex. 15 § 42-61.2-1(16); *see also id*. § 42-61.2-1(8) (defining "[h]osting facility" as Twin River-Lincoln and Tiverton). The "server-based gaming systems, software, and hardware utilized for online sports wagering," *id*. § 42-61.2-3.3 (a)(1)(xi), are all located at the Twin River Facilities in Lincoln and Tiverton, and the wager is placed on and accepted at those servers. Therefore, "[n]o activity other than the transmission of information . . . along common carriage lines takes place outside of" the Twin River Facilities. N.J. Stat. Ann. § 5:12-95.17(k) (recognizing that New Jersey is constitutionally prohibited from

allowing gambling activities outside of Atlantic City, but that internet gambling is authorized because "all hardware, software, and other equipment . . . will be located in casino facilities in Atlantic City"). *Id*. Accordingly, the Court finds that the 2019 Online Sports Wagering Legislation does not expand the locations of gambling which are permitted within the state and thus did not require voter approval pursuant to article 6, section 22 of the Rhode Island Constitution.

Therefore, the Court finds that the voters approved sports wagering at the Twin River Facilities, and the Sports Wagering Acts do not expand the locations of gambling which are permitted within the state; thus, the Sports Wagering Acts are constitutional. Article 6, section 22 of the Rhode Island Constitution reserved to the voters the power to approve or reject the expansion of the types or locations of gambling in the state. Through the Referenda Questions, the voters expansively approved casino gaming—which includes sports wagering—and gave authority to the State Lottery Division to determine which games are specifically offered at the Twin River Facilities. While it may seem as though the exception has now swallowed the rule,[10] this Court must give effect to what the voters approved through the Referenda Questions and cannot speculate about how voters may have felt about sports wagering specifically. *See Ross v. RagingWire Telecommunications, Inc.*, 174 P.3d 200, 207 (Cal. 2008) (finding the initiative power is strongest when the voters' formally expressed intent is given effect). Moreover, the

[10] The 1994 and 2004 amendment to article 6, section 22 of the Rhode Island Constitution was clear that changes in the type, location, and/or form of gambling must be approved through a referendum. The citizens of this state—by a majority vote—implicitly repealed this constitutional provision by allowing and approving any type of casino gaming, without the requirement to return to voters for approval. It is questionable whether this action eviscerates the original intent of article 6, section 22 of the Rhode Island Constitution, or whether the exception has now swallowed the rule. Some would argue that the Casino Gaming Acts have done exactly that. However, the recourse to address that issue is not through the Courts, but through the political process. Just as article 6, section 22 of the Rhode Island Constitution has been amended before, it may be amended again.

voters retain the ability to amend the constitution and hold further referenda to enforce their will. *See* R.I. Const. art. I, § 1; § 17-5-1 (mandating that any proposed amendment to the constitution or any public question of statewide impact must be submitted to the electors of the state via referendum).

IV

Conclusion

Based on the foregoing, Plaintiff's motion for summary judgment on Count III of his Fourth Amended Complaint is denied. Counsel for the Defendants shall prepare and submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Daniel S. Harrop v. The Rhode Island Division of Lotteries, et al.**
CASE NO:	**PC-2019-5273**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**June 1, 2020**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Joseph S. Larisa, Jr., Esq.; Brandon S. Bell, Esq.**
For Defendant:	**Robert Corrente, Esq.; Michael W. Field, Esq.; John Tarantino, Esq.; Nicole J. Benjamin, Esq.; Anthony Desisto, Esq.; Michael J. Marcello, Esq.; Gerald J. Petros, Esq.; Mitchell Edwards, Esq.**