

IOWA RACING AND GAMING COMMISSION  
6200 PARK AVENUE, SUITE 100  
DES MOINES, IOWA 50321

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PETITION BY RIVERSIDE CASINO AND )  
GOLF RESORT, LLC, AND )  
WASHINGTON COUNTY RIVERBOAT )  
FOUNDATION, INC. )  
)  
FOR A DECLARATORY ORDER )  
)  
THAT THE IOWA RACING AND )  
GAMING COMMISSION LACKS )  
AUTHORITY TO ISSUE A GAMBLING )  
GAMES LICENSE IN LINN COUNTY )  
UNDER IOWA CODE § 99F.7(11) )

**PETITION FOR  
DECLARATORY ORDER**

**RECEIVED**

NOV 08 2024

IOWA RACING & GAMING  
COMMISSION

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Petitioners, Riverside Casino and Golf Resort, LLC, and Washington County Riverboat Foundation, Inc., by and through undersigned counsel, petition the Iowa Racing and Gaming Commission (“IRGC”) for a declaratory order that it lacks authority to issue a gambling games license in Linn County under Iowa Code § 99F.7(11). Petitioners further seek a stay of the consideration of any license application for Linn County during the consideration of this Petition.

**INTRODUCTION**

Under subsection 11 of Iowa Code § 99F.7, the IRGC may issue a license to conduct gambling games “*only if* the county electorate approves the conduct of gambling games as provided in this subsection.” Iowa Code § 99F.7(11) (emphasis added). Subsection 11 requires two rounds of approval referendums by the county electorate:

1. Subsection 11, paragraph “a”, requires first that “a majority of the county voters” approve of a proposition favoring “the conduct of gambling games.”
2. Upon that first round of approval, subsection 11, paragraphs “d” and “e”, require that the county board of supervisors “submit a [second] proposition requiring the approval

or defeat of gambling games to the county electorate,” but that referendum “shall not be held until the eighth calendar year thereafter.”

While the first round of approval referendums in Linn County complied with Iowa law, the second round did not. To be sure, Linn County did hold a second referendum in November 2021 generally having to do with gambling, but that referendum was defective under Iowa law. Specifically, in November 2021, the Linn County Board of Supervisors attempted to comply with paragraphs “d” and “e” of the statute by submitting Public Measure G to Linn County’s voters. The voters approved Public Measure G.

By its plain language, however, Public Measure G did not do what the statute required—that is, it did not require “the approval or defeat of gambling games” in the county, including the licensing of new gambling games. Iowa Code § 99F.7(11)(d). Rather, it unequivocally stated that “[i]f approved by a majority of the voters, operation of gambling games with no wager or loss limits *may continue*.” As the IRGC is aware, there have never been licensed gambling games in Linn County. Accordingly, there were no games that the voters could authorize to “continue.” A proposition requiring the approval or defeat of the *continuation* of gambling games is not a proposition that authorizes the *origination* of gambling games in the county.

Public Measure G was defective for another reason. Public Measure G was not, by its plain terms, “a proposition requiring the approval or defeat of *gambling games*.” *Id.* (emphasis added). Instead, Public Measure G only sought approval or defeat of a *subset* of “gambling games”—that is, it sought approval only of “gambling games *with no wager or loss limits*.” The term “gambling games” is defined by statute, Iowa Code § 99F.1(14), and by rule, Iowa Admin. Code 491-11.1, -11.5, and it includes gambling games *with and without* wager or loss limits.

The approval of the continuation of a subset of gambling games does not constitute approval of “gambling games” as paragraphs “d” and “e” require.

Despite the effort to comply with the second round of the county electorate voting requirements, the requirements of subsection 11, paragraphs “d” and “e”, and thus the overall Section 99F.7, have not been met in Linn County. And because there has not been compliance with Iowa Code § 99F.7, the IRGC is prohibited from issuing any license for gambling games in Linn County. *See* Iowa Code § 99F.7(1) (authorizing IRGC to issue a license “[i]f . . . this chapter [99F] and its rules adopted under this chapter have been or will be complied with”).

### **ARGUMENT FOR A DECLARATORY ORDER**

Consistent with Iowa Admin. Code 491-2.20(17A), Petitioners submit the following information:

**1. Statement of Relevant Facts on which the Declaratory Order Is Requested.**

On March 5, 2013, voters in Linn County voted on Public Measure A at a special election. Public Measure A stated:

Public Measure A
Shall the following Public Measure be adopted?
Gambling games at a casino to be developed in Linn County are approved.
<input type="radio"/> YES
<input type="radio"/> NO

(Exhibit A, Linn County Ballot (Sample), March 5, 2013, available at <https://www.linncountyiowa.gov/DocumentCenter/View/1145/03052013-Casino-Special-Election-Sample-Ballot?bidId=>).<sup>1</sup>

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<sup>1</sup> Exhibits in support of this Petition are appended hereto in the attached Appendix.

Linn County voters approved of Public Measure A. (*See* Official Results Summary, Linn County, Iowa, March 5, 2013, at <https://www.linncountyiowa.gov/DocumentCenter/View/1146/03052013-Casino-Special-Election-Official-Summary-Results?bidId=>).

Following Public Measure A's passage, applications for licenses for gambling games were denied by the IRGC, first in 2014 and second in 2017. First, in September 2013, the Cedar Rapids Development Group applied for a gambling games license for a proposed casino across the Cedar River from downtown Cedar Rapids called Cedar Crossing Casino. In April 2014, the IRGC voted to deny the license application for the Cedar Crossing Casino. Second, in 2017, the Cedar Rapids Development Group submitted two applications for gambling games licenses: (1) for a casino called Cedar Crossing Casino on the River (similar to its 2014 proposal) and (2) for a smaller Cedar Crossing Central in downtown Cedar Rapids. Also, another group of investors applied for a gambling games license for a smaller boutique casino in downtown Cedar Rapids. In November 2017, the IRGC voted to reject all three applications.

In 2021, the eighth calendar year after the 2013 vote on Public Measure A, the Linn County Board of Supervisors recognized that Iowa Code § 99F.7(11)(d) and (e) required it to "again submit to the registered voters of the County a proposition to approve or defeat gambling games in the County." (Exhibit B, Linn County Board of Supervisors, Resolution No. 2021-7-114, July 14, 2021, available at <https://www.linncountyiowa.gov/DocumentCenter/View/16907/Resolution-2021-7-114-Establishing-a-Date-and-Ballot-Language-for-a-Linn-County-Gambling-Referendum>).

Accordingly, the Linn County Board of Supervisors, itself or through its agent, crafted language for consideration for a proposed ballot measure. In crafting that language, however, they made a vital mistake. Consulting Rule 721-21.820 of the Iowa Administrative Code, which

proposes five different versions of a proposed ballot measure related to gambling games, they settled on outdated language in subsection 3 of Rule 721-21.820. Subsection 3 of Rule 721-21.820 contains the following language: “If approved by a majority of voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2010.”<sup>2</sup> On its face, subsection 3 is an anachronism. It was drafted for a foregone time when, more than thirty years ago, Chapter 99F contained language related to wager and loss limits.<sup>3</sup> Also, it was drafted for a time before the 2011 amendments to Iowa Code § 99F.7(11), which among other things made 2010 the last year that counties were required to have votes on gambling games every eight years.<sup>4</sup>

Using this outdated and inapplicable language in subsection 3 of Rule 721-21.820, the Linn County Board of Supervisors struck the phrase from subsection 3 about a general election for 2010, but kept the phrase “gambling games with no wager or loss limits may continue.” On July 14, 2021, the Linn County Board of Supervisors adopted Resolution No. 2021-7-114, which

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<sup>2</sup> In full, subsection 3 of Rule 721-21.820 states: “Gambling games, with no wager or loss limits, on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2010. If disapproved by a majority of the voters, the operation of gambling games on an excursion gambling boat or at a gambling structure will end within 60 days of this election.”

<sup>3</sup> Pursuant to the 1989 Act Relating to Gambling and the Regulation of Gambling Devices and Systems, licensees were only permitted to allow a maximum wager of \$5 per hand or play and a maximum loss of \$200 per person during each gambling excursion. *See* 1989 Iowa Legis. Serv. 73 G.A., S.F. 124, Ch. 67, § 9 (former Iowa Code §§ 99F.4(4) and 99F.9(2)). In 1994, the Iowa Legislature amended Chapter 99F to strike the wager and loss limits language. Act Relating to Gambling and the Regulation of Gambling, 1994 Iowa Legis. Serv. 1021, H.F. 2179, §§ 10, 13, 19 (Mar. 31, 1994) (amending Iowa Code § 99F.4(4) and § 99F.9(2)).

<sup>4</sup> Act Relating to Certain Forms of Gambling, Iowa Legis. Serv. Ch. 111, S.F. 526, § 11 (May 26, 2011).

instructed the Linn County Commissioner of Elections to place the following ballot measure on the ballot for the vote set for November 2, 2021:

Exhibit A

Public Measure \_\_\_\_

Shall the following public measure be adopted?

☐ Yes

☐ No

Summary: Gambling games on an excursion gambling boat or at a gambling structure in Linn County are approved.

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Gambling games with no wager or loss limits, on an excursion gambling boat or at a gambling structure in Linn County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue. If disapproved by a majority of the voters, the operation of gambling games on an excursion gambling boat or at a gambling structure will end within 60 days of this election.

(Exhibit B).

Pursuant to the directive in Resolution 2021-7-114, the Linn County Commissioner of Elections submitted Public Measure G to Linn County's voters in the ballot for the election on November 2, 2021. Consistent with the Resolution, Public Measure G stated:

Public Measures
<p><b>Public Measure G</b></p> <p><b>Shall the following public measure be adopted?</b></p> <p><b>Summary: Gambling games on an excursion gambling boat or at a gambling structure in Linn County are approved.</b></p> <p>Gambling games with no wager or loss limits, on an excursion gambling boat or at a gambling structure in Linn County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue. If disapproved by a majority of the voters, the operation of gambling games on an excursion gambling boat or at a gambling structure will end within 60 days of this election.</p> <p><input type="radio"/> Yes</p> <p><input type="radio"/> No</p>

(Exhibit C, Linn County Ballot (Sample), Nov. 2, 2021, available at <https://www.linncountyiowa.gov/DocumentCenter/View/17906/11022021-CitySchool-Election--Sample-Ballots?bidId=>).

On November 2, 2021, voters in Linn County approved Public Measure G by approximately 55 percent to 45 percent. (See Official Results, Linn County, Iowa, Nov. 2, 2021, at <https://www.linncountyiowa.gov/DocumentCenter/View/17890/11022021-CitySchool-Election-Election-Summary>).

Thereafter, at the end of July 2024, the Cedar Rapids Development Group and Linn County Gaming Association applied to the IRGC for a license to construct and operate the Cedar Crossing Casino in Linn County. The IRGC has announced that it will decide on this application on February 6, 2025. (Linn County Application Process, Iowa Racing and Gaming Commission, at <https://irgc.iowa.gov/linn-county-application-process> (last visited Nov. 8, 2024)).

**2. Citation and Relevant Language of Specific Statutes, Rules, Policies, Decisions, or Orders, and Any Other Relevant Law, Whose Applicability Is Questioned.**

Iowa Code § 99F.7 is the governing statute. Subsection 11, paragraph “a”, of Iowa Code § 99F.7 states that the IRGC may issue a gambling games license “only if the county electorate approves the conduct of gambling games as provided in this subsection.” Because it is conditioned on the phrase “only if,” the county electorate approval requirements are a mandatory condition precedent to issuance of a gambling games license. Strict compliance with subsection 11 is required, without which the IRGC lacks authority to issue a license.

**Chapter 99F’s Referendum Requirements**

In relevant part, subsection 11’s county electorate approval requirements are two-fold.

*First*, under Iowa Code § 99F.7(11)(a), upon submission of a valid petition to the board of supervisors that meets the requirements of Iowa Code § 331.306, the board of supervisors

must direct the commissioner of elections in the county “to submit to the registered voters of the county a proposition to approve or disapprove the conduct of gambling games in the county.” Then, “[i]f a majority of the county voters voting on the proposition favor the conduct of gambling games, the commission may issue one or more licenses as provided in this chapter.” Iowa Code § 99F.7(11)(a).

Linn County complied with this first requirement in 2013. As described above, through approval of 2013’s Public Measure A, Linn County voters approved of “gambling games at a casino to be developed.” Thereafter, the IRGC properly considered applications for gambling games licenses in Linn County in 2014 and 2017. While it denied those applications, the IRGC had the authority to issue licenses at that time. It chose not to.

Second, under Iowa Code § 99F.7(11)(d) and (11)(e), in or after the “eighth calendar year” after a proposition approving of a proposal to conduct gambling games, “the board of supervisors shall submit a proposition requiring the approval or defeat of gambling games to the county electorate voting on the proposition . . . unless the operation of gambling games is terminated earlier as provided in this chapter or chapter 99D.” The requirement that the board of supervisors “shall” submit a proposition places a mandatory duty on the board of supervisors in the county. The board of supervisors must cause a ballot measure to be placed on the ballot for the county electorate’s approval or disapproval.

That ballot measure must require the approval or defeat of “gambling games.” “Gambling games” is a term defined by Iowa Code § 99F.1(14) as “any game of chance authorized by the commission.” In turn, the IRGC has defined “gambling games” to mean “games of chance approved by the commission for wagering, including, but not limited to, gambling games authorized by this chapter.” Iowa Admin. Code 491-11.1, -11.5.

If approved, this successive election under Iowa Code § 99F.7(11)(d), in or after the “eighth calendar year” consistent with § 99F.7(11)(e), can render further successive elections unnecessary. Subsection 11, paragraph “d”, states that “if a proposition to operate gambling games is approved by a majority of the county electorate voting on the proposition in two successive elections, a subsequent submission and approval of a proposition under this subsection shall not thereafter be required to authorize the conduct of gambling games pursuant to this chapter.” However, under subsection 11, paragraph “b”, if the successive election is defeated by a vote of the county electorate, then any license issued previously by the IRGC shall be deemed invalid upon the later of nine years from the date of the original issuance of the license or one year after the referendum disapproving of the conduct of gambling games.

In Linn County, the second referendum round, Public Measure G, suffered from two fatal defects. First, Public Measure G did not seek approval of a new gambling facility in Linn County. It only asked voters to approve of the continuation of existing gambling activity in that county. The resulting referendum thus only approved of the continuation of existing gambling operations but not the approval of new gambling operations. Second, Public Measure G did not seek approval of all gambling games, but instead sought approval of a subset of them—gambling games “with no wager or loss limits.” That does not mesh with the statutory language, which required voters to approve of “gambling games” without any voter-imposed limits.

### **Continuing Gaming Is Not the Same as Approving New Gaming**

The plain language of Public Measure G informed voters, confusingly, that “[i]f approved by a majority of the voters, operation of gambling games with no wager or loss limits *may continue.*” (Exhibit C (emphasis added)). The remainder of Public Measure G exacerbated this confusion by informing voters that “[i]f disapproved by a majority of the voters, *the operation of*

*gambling games* on an excursion gambling boat or at a gambling structure *will end* within 60 days of this election.”<sup>5</sup> (*Id.* (emphasis added)). The plain language of Public Measure G told voters that they were voting only on the continuation of the ongoing operation of gambling games. Public Measure G did not seek, as required by statute, the approval or defeat of gambling games generally, and it patently did not authorize the licensing of new gambling operations.

### **Approving of a Subset of Gambling Games is Insufficient**

While Iowa Code § 99F.7(11)(d) and (e) require a second vote on the approval or defeat of “gambling games,” Public Measure G’s plain language sought approval of only a subset of gambling games. Public Measure G sought approval of the following: “Gambling games *with no wager or loss limits*, on an excursion gambling boat or at a gambling structure in Linn County are approved.” (Exhibit C (emphasis added)). Public Measure G did not seek approval or defeat of “gambling games,” which as defined by statute are “*any* game of chance authorized by the commission.” Iowa Code § 99F.1(14) (emphasis added). As defined, “any game of chance authorized by the commission” includes gambling games with wager and loss limits, and those without. Approval of a subset of gambling games is not approval of “gambling games.”

A product of Public Measure G’s defect is that it purported to give to Linn County’s voters the authority to specify the type of gambling games that would be authorized by the IRGC. The choice over what “gambling games” could be licensed, however, is not a choice the voters of Linn County were authorized to make. Instead, if *the IRGC decides* to issue a license, “[t]he commission shall decide which of the gambling games authorized under this chapter the

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<sup>5</sup> Public Measure G’s language that, if disapproved, the operation of gambling games would end within 60 days is also contrary to the plain prescription in Iowa Code § 99F.7(11)(b), which provides that any license that had existed could not be invalidated by a public measure until at least a year after that measure’s disapproval of gambling games.

commission will permit.” Iowa Code § 99F.7(1) (emphasis added). Similarly, among the powers granted to the IRGC by the legislature, it is for the IRGC to “determine the payouts from the gambling games authorized under this chapter” by “consider[ing] factors that provide gambling and entertainment opportunities which are beneficial to the gambling licensees and the general public.” Iowa Code § 99F.4(15). The Iowa Legislature has given the IRGC, not voters, the authority to define the scope of approved gambling games and to impose wager or loss limits.

Paragraphs “d” and “e” of section 99F.7(11) required submission of “a proposition requiring the approval or defeat of gambling games to the county electorate.” Those paragraphs were not met by a proposition that approved of (1) a subset of gambling games, not “gambling games,” and (2) only their continuation, not new licenses. Accordingly, the requisite voter approval requirements of Iowa Code § 99F.7(11) have not been met in Linn County, and the IRGC lacks authority to issue a license for gambling games in Linn County.

**3. Question Petitioner Wants Answered.**

Does the IRGC lack authority under Iowa Code § 99F.7(11) to issue a license to conduct gambling games in Linn County?

**4. Answer to the Questions Desired by Petitioner and Summary of Reasons for this Answer.**

Yes. The IRGC lacks authority to issue a license to conduct gambling games in Linn County. Iowa Code § 99F.7(11) permits the IRGC to issue a license to conduct gambling games “only if the county electorate approves the conduct of gambling games as provided in this subsection.” The Linn County electorate has not approved of the conduct of gambling games as required by Iowa Code § 99F.7(11)(d) and (e). Because issuance of a license would violate Iowa Code § 99F.7(11), the IRGC lacks authority to issue a license to conduct gambling games in Linn County.

**5. Reason for Requesting the Declaratory Order and Disclosure of Petitioner's Interest in the Outcome.**

Iowa law is clear. The IRGC cannot issue a license to conduct gambling games in a county unless there is strict compliance with the voter approval requirements of Iowa Code § 99F.7(11). If the IRGC were to issue a license in Linn County, it would do so in contravention of the voter approval requirements mandated by statute. A declaratory order is requested to uphold the voter approval requirements of Iowa law.

Those voter approval requirements exist for good reason. The Iowa Legislature has given control over whether gambling games are authorized in a county to the county's voters. Under Iowa Code § 99F.7(11)(a), the county's voters must approve of a license to conduct gambling games in the first instance. Then, under Iowa Code § 99F.7(11)(b), (d), and (e), voters maintain the ability to recall approval for gambling in successive elections, spaced out at least every eight years. Under Iowa Code § 99F.7(11)(d), a successive ballot measure must be presented to voters. And under Iowa Code § 99F.7(11)(e), the first successive ballot measure must be presented to voters in or after the eighth calendar year. Moreover, Iowa law expressly provides what issue must be presented to voters in a successive ballot measure. Under Iowa Code § 99F.7(11)(d), a successive ballot measure must be a "proposition requiring the approval or defeat of gambling games." The statute does not permit a proposition requiring the approval or defeat of *continuation* of what exists. The statute does not permit a proposition requiring the approval or defeat of *some* gambling games. But rather, simply, the statute requires a "Yes" or "No" vote on "gambling games" as that term is defined. Public Measure G was not such a measure.

On its face, Public Measure G was a confusing, incorrectly drafted measure that requested that voters approve of the continuation of a subset of gambling that was not actually occurring at all. Reading Public Measure G, one could see how voters would be confused by its

language—how could voters approve of continuation of something that did not exist? At least some Linn County voters likely read Public Measure G and inferred that legal gambling already existed in Linn County. At least some of those people likely voted “yes” in the mistaken belief that their “no” vote would close an existing local business. This potential for voter confusion underscores the more fundamental issue here: Public Measure G did not seek to do what Iowa Code § 99F.7(11)(d) and (e) required.

Petitioners recognize that an application for a license to conduct gambling games in Linn County at the proposed Cedar Crossing Casino is currently pending before the IRGC. Petitioners also recognize that the Cedar Crossing Casino applicants are likely relying on their good faith belief that all the requirements of Iowa Code § 99F.7(11) have been met, and on the efforts of the Linn County Board of Supervisors to comply with Iowa Code § 99F.7(11). However, despite their efforts and beliefs, the applicants are simply wrong. Subsection 11’s requirements are clear. Because there has not been compliance with subsection 11 in Linn County, the IRGC has no authority to grant a license in Linn County. Petitioners seek a declaratory order from the IRGC that recognizes that the application for the Cedar Crossing Casino is premature and that a license to conduct gambling games cannot be issued in Linn County unless and until a legally compliant referendum passes in conformity with section 99F.7(11).

Petitioners are directly interested in the outcome of the petition for declaratory order because a gambling games operation in Linn County would be to the detriment of the Riverside Casino and Golf Resort. Petitioner Riverside Casino and Golf Resort, LLC is the organization licensed to operate gambling games at the Riverside Casino and Golf Resort. Petitioner Washington County Riverboat Foundation, Inc. is the qualified sponsoring organization licensed to conduct gambling games at the Riverside Casino and Golf Resort. If a gambling games

license were issued in Linn County, either for the proposed Cedar Crossing Casino or otherwise, that licensed operation would cannibalize the operations and gaming revenue of the Riverside Casino and Golf Resort. The loss in gambling revenue would result in a loss of jobs, a reduction in the contributions to the Washington County Riverboat Foundation, and a reduction in the Foundation's charitable activities. Moreover, Petitioners, as licensees under Chapter 99F, have an interest in ensuring that all new gambling games licenses are issued consistent with the strict provisions of Chapter 99F, which are designed to ensure voter participation and strict limitations on the gaming market in Iowa.

**6. Statement Indicating Whether the Petitioner is Currently a Party to Another Proceeding Involving the Questions at Issue and whether, to the Petitioner's Knowledge, those Questions have been Decided by, are Pending Determination by, or are Under Investigation by, Any Governmental Entity.**

Petitioners are not aware of, or currently a party to, another proceeding involving the questions at issue. To Petitioners' knowledge, the questions presented by this petition are not pending determination by or under investigation by any governmental entity and have not been decided by any governmental entity or a court of competent jurisdiction.

**7. Names and Addresses of Affected Persons or Class of Persons**

1. Linn County Gaming Association, Inc.  
108 Cemar Ct., Marion, IA 52302
2. Cedar Rapids Development Group, LLC  
29271 Centerville Road, LaMotte, IA 52054

**8. Request by Petitioner for a Meeting Provided by Iowa Admin. Code 491-2.26(17A).**

Petitioner requests a meeting with the IRGC as provided for by Iowa Admin. Code 491-2.26(17A).

### **CONCLUSION**

For the reasons stated, Petitioners request that the IRGC issue a declaratory order that the IRGC lacks current authority under Iowa Code § 99F.7(11) to issue a gambling games license in Linn County.

In addition, Petitioners request that the IRGC stay consideration of any applications for gambling games licenses in Linn County until the IRGC has had an opportunity to consider this petition for a declaratory order.

### **STATEMENT CONTAINING PERSON TO WHOM COMMUNICATIONS CONCERNING THIS PETITION SHOULD BE DIRECTED**

Consistent with Iowa Admin. Code 491-2.20, all future communications concerning the petition should be directed to undersigned counsel, as Petitioners' representatives, at The Weinhardt Law Firm, 2600 Grand Avenue, Suite 450, Des Moines, Iowa 50312, telephone: 515-244-3100.

### **PETITIONERS:**

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Respectfully submitted,

THE WEINHARDT LAW FIRM

Date: November 8, 2024

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