IN THE SUPREME COURT OF IOWA

No. 20–0450

RED LINE VENDING, INC.,

Appellant,

vs.

IOWA DEPARTMENT OF INSPECTIONS & APPEALS,

Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE DAVID PORTER, JUDGE

APPELLEE'S FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page No.

Cases

Statutes

Other Authorities

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. IS AN ELECTRONIC GAME MACHINE FEATURING TWO GAMES, WHERE GAME ONE IS A NUDGE GAME AND GAME TWO IS AN OPTIONAL, AUXILIARY MEMORY GAME, AN AMUSEMENT CONCESSION WITHIN THE MEANING OF IOWA CODE SECTION 99B.1(1)?

Authorities

Young v. Iowa City Cmty. Sch. Dist., 934 N.W.2d 595 (Iowa 2019)

Iowa Code § 17A.2(5)

First Iowa State Bank v. Iowa Dep't of Natural Res., 502 N.W.2d 164 (Iowa 1993)

Banilla Games, Inc. v. Iowa Department of Inspections & Appeals, 919 N.W.2d 6 (Iowa 2018)

Clay Cty. v. Pub. Emp't Relations Bd., 784 N.W.2d 1 (Iowa 2010)

SZ Enters., LLC v. Iowa Utils. Bd., 850 N.W.2d 441 (Iowa 2014)

Lowe's Home Ctrs., LLC v. Iowa Dep't of Revenue, 921 N.W.2d 38 (Iowa 2018)

Myria Holdings Inc. v. Iowa Dep't of Revenue, 892 N.W.2d 343 (Iowa 2017)

Iowa Code § 99B.1(1)

Iowa Code § 17A.19(10)(*m*)

Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839 (Iowa 2015)

Eaves v. Bd. of Med. Exam'rs, 467 N.W.2d 234 (Iowa 1991)

H & Z Vending v. Iowa Dep't of Inspections & Appeals (H & Z II), 593 N.W.2d 168 (Iowa Ct. App. 1999)

State v. Doe, 242 Iowa 458, 46 N.W.2d 541 (1951)

Iowa Code § 99B.1(1)

Iowa Code chapter 99B

Whitman v. Am. Trucking Ass'n, 531 U.S. 457, 121 S. Ct. 903 (2001)

Iowa Code § 99B.53

Iowa Code § 99B.1(19)

Iowa Code § 99B.1(18)

1973 Iowa Acts ch. 153, § 1

Iowa Code § 99B.1(2)

H&Z Vending v. Iowa Dep't of Inspections & Appeals (H & Z I), 511 N.W.2d 397 (Iowa 1994)

Iowa Code § 99B.53(1)

Iowa Code § 99B.52

Iowa Code § 10A.104(10)

State v. Matz, No. 11-1896, 2012 WL 6193970 (Iowa Ct. App. Dec. 12, 2012)

Iowa Code § 99B.10 (1975)

Rolfe State Bank v. Gunderson, 794 N.W.2d 561 (Iowa 2011)

In re Name Change of Reindl, 671 N.W.2d 466 (Iowa 2003)

Rohret v. State Farm Mut. Auto. Ins. Co., 276 N.W.2d 418 (Iowa 1979)

Keeney v. Iowa Power & Light Co., 250 Iowa 887, 890, 96 N.W.2d 918 (1959)

Sallee v. Stewart, 827 N.W.2d 128 (Iowa 2013)

State v. Pub. Emp't Relations Bd., 744 N.W.2d 357 (Iowa 2008)

Am. Legion v. Cedar Rapids Bd. of Review, 646 N.W.2d 433 (Iowa 2002)

J. Royce Fichtner, *Carnival Games: Walking the Line Between Illegal Gambling and Amusement*, 60 Drake L. Rev. 41, 42 (2011)

Iowa Code § 4.6(2)

Iowa Code § 4.6(4)

Iowa Code § 99B.53(1)(2)

Iowa Code § 99B.1(1)(18)

In re Prop. Seized from Brown, 501 N.W.2d 472 (Iowa 1993)

Iowa Code § 99B.1(16)

Iowa Admin. Code r. 481—104.1

Mayle Bingo Co. v. Ohio Dep't of Pub. Safety, 152 N.E.2d 1237 (Ohio Ct. App. 2020)

Op. No. 2018-002, 2018 WL 6718962, at *2-4

Iowa Admin. Code r. 481—104.1

Iowa Admin. Code r. 491—11.9(4)

Iowa Admin. Code r. 491—11.10(2)(*a*)

Iowa Code § 99B.1(2)

Ames 2304, LLC v. City of Ames, 924 N.W.2d 863 (Iowa 2019)

Iowa Ins. Inst. v. Core Grp., 867 N.W.2d 58 (Iowa 2015)

Brakke v. Iowa Dep't of Natural Res., 897 N.W.2d 522 (Iowa 2017)

Iowa Code § 4.6(5)

Iowa Code § 99B.53(6)

Iowa Code § 99B.53(2)-(3)

Iowa Code § 99B.57(1)

Llewellyn v. Iowa State Commerce Comm'n, 200 N.W.2d 881 (Iowa 1972)

Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n, 895 N.W.2d 446 (Iowa 2017)

Case v. Olson, 234 Iowa 869, 14 N.W.2d 717 (1944)

U.S. Bank v. Lamb, 874 N.W.2d 112 (Iowa 2016)

Porter v. Harden, 891 N.W.2d 420 (Iowa 2017)

State v. Doe, 242 Iowa 458, 463, 46 N.W.2d 541 (1951)

Porter v. Harden, 891 N.W.2d 420 (Iowa 2017)

Century 21 Shows, Inc. v. Iowa, 346 F. Supp. 1050 (S.D. Iowa 1972)

Kay-Decker v. Iowa State Bd. of Tax Review, 857 N.W.2d 216 (Iowa 2014)

Solberg v. Davenport, 232 N.W. 477 (Iowa 1930)

Harvie v. Heise, 148 S.E. 66 (S.C. 1929)

ROUTING STATEMENT

The Iowa Department of Inspections & Appeals ("DIA") recommends retention. This case asks whether a nudge game—similar to the game analyzed in *Banilla Games, Inc. v. Iowa Department of Inspections & Appeals*, 919 N.W.2d 6 (Iowa 2018), but with one newly added feature—can be licensed as an amusement *concession* rather than registered as an amusement *device*, as in *Banilla Games*. *See* Iowa Code § 99B.1(1)-(2) (2017) (defining "amusement concession" and "amusement device" separately); *cf. State ex rel. Manchester v. Marvin*, 233 N.W. 486, 487 (Iowa 1930) ("[C]ases on this subject have been a successive consideration of ingenious attachments by the inventor as a near approach to the prohibitive line."). The phrase "amusement concession" appears in only one of this Court's decisions, as merely a passing mention within a brief overview of chapter 99B. *See State v. Wilt*, 333 N.W.2d 457, 461 (Iowa 1983). Accordingly, this case presents a substantial issue of first impression. *See* Iowa R. App. P. 6.1101(2)(*c*); *In re Estate of Myers*, 825 N.W.2d 1, 3 (Iowa 2012) ("We retained the . . . appeal to resolve [a] question of first impression."). DIA, game manufacturers, and game distributors would all benefit from the Court's guidance in this relatively unexplored area.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

"In the law, as in life, in order to know where you are, you need to know where you have been." *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 65-66 (Iowa 2014). Historical understanding of the circumstances under which chapter 99B was enacted illuminates and places in context the issues involved in this case. *See* Iowa Code § 4.6(2), (4) (permitting courts interpreting statutes to consider both "[t]he circumstances under which the statute was enacted" and "common law or former statutory provisions, including laws upon . . . similar subjects"); *cf. Sanon v. City of Pella*, 865 N.W.2d 506, 512 (Iowa 2015) ("We begin our analysis by tracing the history of present day chapter 135.").

A. The State Fair Raid.

"[I]n the summer of 1972, the Iowa Attorney General concluded nine of the carnival games played on the midway of the Iowa State Fair had to be shut down because they constituted illegal gambling under the state's anti-gambling law." J. Royce Fichtner, *Carnival Games: Walking the Line Between Illegal Gambling and Amusement*, 60 Drake L. Rev. 41, 42 (2011) [hereinafter Fichtner]. Game operators sought emergency relief in both state and federal court declaring the games legal and enjoining future prosecutions. *See Century 21 Shows, Inc. v. Iowa*, 346 F. Supp. 1050, 1051 & n.1 (S.D. Iowa

1972). The relevant games for which the operators sought declaratory relief did not involve spinning reels: "hoop-la, balloon dart, bear pitch, basketball shoot, football throw, shooting galleries, six cat game and milk bottle game, fishpond game, block color group, tic-tac-toe, shooting waters, huff and puff, dragline, and fool the guesser." *Id.* at 1051.

Even though these balloon games, ball games, and other carnival games had "been operating at the State and county fairs for over fifty years," with no previous "attempt by State law enforcement officials to close them down as gambling houses," *id.* at 1057 (Hanson, C.J., dissenting), attempts to block the shutdown were unsuccessful. *See* Fichtner, 60 Drake L. Rev. at 62; *see also Century 21 Shows*, 346 F. Supp. at 1052-53 (majority opinion) (abstaining from granting federal relief while the state court litigation remained pending). However, "the decision to shut down the games prompted a major legislative overhaul of the state's gambling laws, with specific exemptions for carnival games." Fichtner, 60 Drake L. Rev. at 42; *see also* Op. No. 02-9-1, 2002 WL 31413789, at *2 n.1 (Iowa Att'y Gen. Sept. 10, 2002) (noting the impetus for changes in gambling regulation in the 1970s, including chapter 99B, "was the 'bingo raids' of 1971 and 1972, during which bingo at a Northeast Iowa Catholic Church and carnival games at the Iowa state fair were shut down"). The ensuing carnival-game exemptions, in their

present iteration, are what Appellant Red Line Vending, Inc. (“Red Line") now seeks to utilize.

B. 1973 Legislation and Later Amendments.

In 1973, the general assembly enacted chapter 99B. 1973 Iowa Acts, ch. 153, §§ 1-21. The new law authorized games of skill and games of chance to take place at fairs, provided they met certain conditions. *See id.* §§ 1, 3. The new law also authorized “amusement parks” where games of skill or games of chance could be played, subject to the same conditions. *Id.* § 5.

In 1975, the legislature added the definitions, with two categories of “amusement concession” and “amusement device,” that still exist today. *See* 1975 Iowa Acts ch. 99, § 3, *see also* Iowa Code § 99B.1(1)-(2). In 1975, “amusement concession” meant “any place where a single game of skill or game of chance is conducted by a person for profit,” including the area containing “the equipment, playing area and other personal property necessary for the conduct of the game.” 1975 Iowa Acts ch. 99, § 3. Possible amusement concession locations included fairs, amusement parks, carnivals, and bazaars. *Id.* § 6. Amusement concession games could not offer a cash prize, but could offer merchandise prizes worth $25 or less. *Id.* § 5.

“Amusement device,” by contrast, described something different: a machine that could not award a prize of cash or merchandise, but could award

free games or portions of games. *Id.* §§ 3, 12. The term contemplated that an "amusement device" would include a pinball machine and other similar games. *See* Iowa Code § 99B.10 (1975) (referring expressly to pinball machines as amusement devices); *see also* 1975 Acts ch. 99, § 12 (retaining the term "amusement device" but removing the express reference to pinball).[1] In short, it was easy to differentiate between the categories: amusement concessions offered a merchandise prize and were limited to certain locations; amusement devices could be located anywhere but couldn't offer a prize. Both categories reflected the legislature's apparent "recognition that 'penny ante' gambling activities should not be subject to criminal sanctions." Op. No. 80-3-12, 1980 WL 25949, at *2 (Iowa Att'y Gen. Mar. 14, 1980).

This framework was consistent with Iowa's policy that gambling is illegal unless specifically authorized. *See Hawkeye Commodity Promotions, Inc. v. Vilsack*, 486 F.3d 430, 438 (8th Cir. 2007) ("Gambling is illegal in

[1] The focus on pinball may have been intended to abrogate several Iowa Supreme Court decisions that held a pinball machine, with or without flippers, was an illegal gambling device if it awarded free games or extra balls. *See State ex rel. Harman v. Doe*, 255 Iowa 814, 815-16, 123 N.W.2d 400, 400-01 (1963) (machine with flippers); *State v. Wiley*, 232 Iowa 443, 449, 3 N.W.2d 620, 623 (1942) (machine that only allowed players "some mechanical control over the *original* direction or impetus of the object or ball" (emphasis added)); *see also State v. Merchandise Seized*, 225 N.W.2d 921, 923 (Iowa 1975) (concluding a pinball machine that awarded a free game, and that was seized in 1971 before the enactment of chapter 99B, was an illegal gambling device).

Iowa. Gambling in Iowa is permissible only if authorized by a specific statutory exception." (citation omitted)). Amusement concessions became a specific statutory exception. *See* Op. No. 84-5-3, 1984 WL 60021, at *1 (Iowa Att'y Gen. May 16, 1984) (answering a question about permissible locations for an amusement park by noting chapter 99B was a limited exception to the prohibition on gambling); Op. No. 80-3-12, 1980 WL 25949, at *5 ("[G]ambling is unlawful except as specifically permitted by a given section of chapter 99B."). And in addition to *defining* amusement devices as "not gambling," *see* Iowa Code § 99B.10(3) (1977), amusement devices also technically *weren't* gambling if they did not award a prize, because "prize" is an element of gambling. *See Idea Research & Dev. Co. v. Hultman*, 256 Iowa 1381, 1385, 131 N.W.2d 496, 499 (1964) (defining a "lottery" with a three-element test that requires prize, chance, and consideration); *State v. Mabrey*, 60 N.W.2d 889, 893 (Iowa 1953) ("A lottery is a species of gambling.").

Over time, however, whether due to inattention, innovation, ingenuity, or all three, the separate categories began to share some similarities. For example, in 1989, while maintaining the prohibition on cash prizes, amusement devices gained the ability to award merchandise prizes up to five dollars. *See* 1989 Iowa Acts ch. 231, § 24. With the addition of a prize, amusement devices now *were* gambling, but became another statutory

exception. Then, in 2003, the legislature created a tier of *registered* amusement devices, for amusement devices that award a prize where "the outcome is not primarily determined by the skill or knowledge of the operator." 2003 Iowa Acts ch. 147, § 1 (now codified at Iowa Code § 99B.53(1) (2017)).[2] It limited those registered amusement devices to players 21 or older, limited them to licensed liquor establishments, and capped the amount of them that could be placed in the state. *See* Iowa Code §§ 99B.53, 99B.57(1). Again, these steps were consistent with Iowa's policy of limiting gambling and carefully managing its proliferation. *Cf. Kopecky v. Iowa Racing & Gaming Comm'n*, 891 N.W.2d 439, 443 (Iowa 2017) (noting with respect to another form of gambling that while casinos are generally authorized, the State can decide the number and location of them).

Eventually, both amusement devices and games played at an amusement concession could award merchandise prizes that did not exceed a retail value of fifty dollars. *See* Iowa Code §§ 99B.3(1)(*h*), 99B.10(1)(*a*) (2015). Although an "amusement concession" was a place, DIA nonetheless licensed each individual game to be played or offered there. *See id.* § 99B.3(1)(*b*) (requiring an application and fee "for each game"). And

[2] The Court examined this distinction, between amusement devices that must be registered and amusement devices that do not require registration, in *Banilla Games*, 919 N.W.2d at 14-17.

although neither category really contemplated a game that involved spinning reels originally, the amusement device category conceivably included them. *See Banilla Games*, 919 N.W.2d at 10 (analyzing nudge games and hot swap games, both of which involve spinning reels, under the amusement device framework).

Then, in 2015, the legislature retooled the categories. It removed the locational focus of an amusement concession and redefined an amusement concession as an individual game of skill or game of chance that could be located anywhere. 2015 Iowa Acts ch. 99, §§ 1, 7. It also increased the allowable prize value for amusement concessions from $50 to $100. *Id.* § 7.[3] Importantly, however, the legislature placed limitations on amusement concessions. It defined amusement concessions and amusement devices as mutually exclusive categories; provided that an amusement concession also cannot be a casino-style game; and reiterated that a slot machine does not qualify as a "game of chance." *Id.* §§ 1-2.

[3] The allowable prize value for amusement concessions later increased again, from $100 to $950. 2018 Iowa Acts ch. 1072, § 1. (2/12/19 Hrg. Tr. at 69, App. 141.) The allowable prize value for amusement devices remains $50. Iowa Code § 99B.52(2) (2017).

C. Red Line's Application and Subsequent Proceedings.

Following the 2015 amendments, an amusement concession under Iowa Code chapter 99B is

> a game of skill or chance with an instant win possibility where, if the participant completes a task, the participant wins a prize. "*Amusement concession*" includes but is not limited to carnival-style games that are conducted by a person for profit. "*Amusement concession*" does not include casino-style games or amusement devices required to be registered pursuant to section 99B.53.

Iowa Code § 99B.1(1) (2017). Chapter 99B also defines games of skill and games of chance. *See id.* § 99B.1(18)-(19). Under these definitions, Red Line applied for three amusement concession licenses in August 2018. (Red Line License Application, Appendix [App.] at 6.) Red Line sought licenses for three games, entitled "Lightning Skill," "Gold Skill 1," and "Hawkeye Skill." (Red Line License Application, App. 6.) However, only Lightning Skill and Gold Skill 1 are at issue on appeal. (Red Line Br. at 10 n.1.)

Lightning Skill and Gold Skill 1 are both nudge games. Like the nudge games addressed in *Banilla Games*, Red Line's games

> consist of three electronic reels featuring different icons that spin when a player pushes the play button and stop automatically after a short time. . . . Players then determine whether a potential winning combination is present and choose one of the [r]eels to move up or down (*i.e.*, nudge) in order to complete the winning pattern.

Banilla Games, 919 N.W.2d at 10. (2/12/19 Hrg. Tr. at 27-28; App. 99-100.) Indeed, Lightning Skill is manufactured by the very same company, Banilla Games. (2/12/19 Hrg. Tr. at 31, App. 103.)

Although both Lightning Skill and Gold Skill 1 are nudge devices, there is one small difference between them, regarding how the machine determines which screen a player sees. Lightning Skill works the same way as the devices from *Banilla Games*; the machine

> randomly selects the first game outcome from a table of predefined starting indices. The game chooses all game outcomes after the first screen from a finite pool, and the player plays all [screens] thereafter until the game reaches the last game outcome. At that time, the game returns to the first game outcome and continues sequentially thereafter, repeating in the same manner.

Banilla Games, 919 N.W.2d at 10. (2/12/19 Hrg. Tr. at 24-26, App. 96-98.) In Gold Skill 1, however, there is no sequential presentation of screens from a pool; each screen is randomly generated. (2/12/19 Hrg. Tr. at 48, App. 120.)

Whether presented sequentially or randomly, not every screen or "spin" allows the player to create a winning symbol combination by nudging. (2/12/19 Hrg. Tr. at 24-26, 28-29, App. 96-98, 100-101.) *See* Op. No. 2018-002, 2018 WL 6718962, at *1 (Wyo. Att'y Gen. Dec. 11, 2018) (referring to screens or "game outcomes" in a nudge game as "spins" because "this is what the average player would consider them to be"). Even successful alignments

often do not return more than the credits wagered to play. (2/12/19 Hr. Tr. at 30, App. 102.) It is not possible to skip a particular symbol presentation or otherwise alter or change the order of spins the devices present to the player. Therefore, a player can never affect whether the device will display a possible winning combination of symbols. (2/12/19 Hrg. Tr. at 89-90, App. 161-162.) Consequently, the frequent appearance of these low- or no-value spins means each machine can be programmed to return a predetermined payout percentage over time to players who complete the nudge game. (Dist. Ct. Ruling at 3, App. 60.) *See Banilla Games*, 919 N.W.2d at 10 (describing another nudge game with a configurable payout percentage).

Lightning Skill and Gold Skill 1 involve some other differences from the devices analyzed in *Banilla Games*. First, they offer a second, auxiliary game that becomes available to the player if he or she either does not or cannot complete a winning combination by nudging. (2/12/19 Hrg. Tr. at 29-31, App. 101-103.) The auxiliary game is a memory test in which the player must memorize, and replicate in order, progressively longer sequences of flashing spots or symbols with accompanying sounds. (2/12/19 Hrg. Tr. at 31, App. 103.) *Cf. Simon Says Enters. v. Milton Bradley Co.*, 522 F. Supp. 986, 987 (S.D.N.Y. 1981) ("Milton Bradley markets an electronic game with the name 'Simon.' . . . The object of this game is for one or more players to press the

buttons which repeat the sequence of lights and sounds electronically produced by the game."). Successfully completing the memory game takes approximately twenty minutes, give or take a few, and nets the player between 104 and 108 percent of their wager; this means that, if a player wagered one dollar, they can play the memory game for twenty minutes to win their wager back, plus eight cents. (2/12/19 Hrg. Tr. at 111-112, App. 183-184.) Alternatively, the player can simply skip or decline the memory game and proceed to the next spin of the reels. (2/12/19 Hrg. Tr. at 31, 78, App. 103, 150.)

The second distinction between Red Line's games and the ones from *Banilla Games* is not about the games' operation, but about the regulatory path Red Line chose. Instead of seeking registration as amusement devices, and despite product literature for Gold Skill 1 indicating it was specifically intended to be an amusement device where the outcome is primarily determined by skill or knowledge (2/12/19 Hrg. Tr. at 51-52, 70-71, App. 123-124, 142-143), Red Line instead applied for amusement *concession* licenses. (Red Line License Application, App. 6.) Red Line chose that path because in its president's opinion, amusement concession licenses would enable Red Line to place the devices "in different types of locations without some of the

limitations . . . that go along with registering [a]musement [d]evices." (2/12/19 Hrg. Tr. at 65-66, App. 137-138.).

While Red Line's application was pending, DIA viewed a partial demonstration of the games and hosted discussions with Red Line. (2/12/19 Hrg. Tr. at 34, App. 106.) Eventually, however, DIA issued a Notice of Intent to Deny the licenses. (Notice of Intent to Deny, App. 8.) DIA explained licensure as amusement concessions was not available for multiple reasons, including that the devices were properly characterized as amusement devices—which are mutually exclusive from amusement concessions. (Notice of Intent to Deny, App. 8.) *See* Iowa Code § 99B.1(1) (2017).

Red Line requested a hearing (Request for Hearing, App. 9), and an administrative law judge presided over evidentiary submissions. (Proposed Decision at 1, App. 25.) The administrative law judge then issued a proposed decision finding that Red Line's games "are properly classified" as amusement devices and are therefore not eligible for licensure as amusement concessions. (Proposed Decision at 9, App. 32.) DIA's director affirmed on intra-agency appeal, incorporating the Proposed Decision. (Final Order at 1-2, App. 33-34.) Red Line then sought judicial review in district court.

The district court likewise affirmed the license denial. (Dist. Ct. Ruling at 11-12, App. 68-69.) The district court found "no textual support . . . in

Chapter 99B" for Red Line's argument that the performance of any task is a distinguishing feature between amusement concessions and amusement devices. (Dist. Ct. Ruling at 9, App. 66.) The district court ultimately agreed with DIA's determination that Red Line's games are actually amusement devices that cannot, as a matter of law, be licensed as amusement concessions. (Dist. Ct. Ruling at 6, 8-10; App. 63, 65-67.) Red Line now appeals.

ARGUMENT

I. LIGHTNING SKILL AND GOLD SKILL 1 ARE NOT AMUSEMENT CONCESSIONS.

Error Preservation: Red Line's contentions were both raised and decided below. (Dist. Ct. Ruling at 8-10, App. 65-67.) Red Line preserved error. *See Young v. Iowa City Cmty. Sch. Dist.*, 934 N.W.2d 595, 602 (Iowa 2019) (finding error preserved when a litigant raised their contentions in briefs below and the district court "explicitly ruled upon" them).

Standard of Review: This appeal arises from a contested case because DIA determined Red Line's "legal rights, duties or privileges . . . after an opportunity for an evidentiary hearing." Iowa Code § 17A.2(5). Accordingly, the Court's review "is limited to the correction of errors at law." *First Iowa State Bank v. Iowa Dep't of Natural Res.*, 502 N.W.2d 164, 166 (Iowa 1993).

In *Banilla Games*, the Court stated DIA was not entitled to deference when interpreting the amusement device statutes. *Banilla Games*, 919

N.W.2d at 14. The deference inquiry requires analysis of "the specific statutory provision at issue," *Clay Cty. v. Pub. Emp't Relations Bd.*, 784 N.W.2d 1, 5 (Iowa 2010), and not of an entire code chapter. *See SZ Enters., LLC v. Iowa Utils. Bd.*, 850 N.W.2d 441, 452 (Iowa 2014) (concluding the Iowa Utilities Board should receive deference in interpreting "some highly complex and technical terms under Iowa Code chapter 476," but should not receive deference in interpreting other terms in the chapter). And, of course, the amusement concession statutes are different from the amusement device statutes despite their location in the same code chapter. Further, *Banilla Games*'s deference discussion is dicta because it was not necessary to the disposition of the case; the Court ultimately "agree[d] with the Department's interpretation" of the relevant statutory terms regardless of deference. *Banilla Games*, 919 N.W.2d at 17; *see also Lowe's Home Ctrs., LLC v. Iowa Dep't of Revenue*, 921 N.W.2d 38, 45 (Iowa 2018) (declining to address deference because the Court agreed "with the Department's interpretation of the governing statutes"); *Myria Holdings Inc. v. Iowa Dep't of Revenue*, 892 N.W.2d 343, 347 (Iowa 2017) (declining to reach the deference question because the agency's interpretation of a statute was correct).

The Court should take a similar path here and reach the deference question only if it first concludes DIA's interpretation of section 99B.1(1) is

erroneous. *See Myria Holdings*, 892 N.W.2d at 347. Nonetheless, should the Court reach the question of deference, the logic of *Banilla Games*—which examined the words "primarily," "outcome," and "knowledge" in Iowa Code section 99B.53 and stated they were basic terms "clearly within the competency" of the Court, *see Banilla Games*, 919 N.W.2d at 13-14—likely applies here to the relevant terms from section 99B.1(1) such as "completes a task." *See* Iowa Code § 99B.1(1).

With respect to Red Line's other challenges, the Court can reverse DIA's application of law to fact only if it was so "irrational, illogical, or wholly unjustifiable," *id.* § 17A.19(10)(*m*), that it effectively "calls every rectangle a square." *Des Moines Area Reg'l Transit Auth. v. Young*, 867 N.W.2d 839, 850 (Iowa 2015) (Hecht, J., dissenting). And in determining whether substantial evidence supports DIA's decision, "[t]he question is not whether evidence might support a different finding but whether there is substantial evidence to support the finding actually made." *Eaves v. Bd. of Med. Exam'rs*, 467 N.W.2d 234, 237 (Iowa 1991); *accord H & Z Vending v. Iowa Dep't of Inspections & Appeals (H & Z II)*, 593 N.W.2d 168, 170 (Iowa Ct. App. 1999).

Argument: Although Iowa now carefully regulates gambling more than suppressing it, the Court's observation approximately seventy years ago remains applicable:

> Various decisions have referred to the ingenuity exercised in the invention of devices designed to circumvent laws for the suppression of gambling and have pointed out that the courts have not allowed such fruits of inventive genius to accomplish their design. The courts generally look behind the name and style of the device and examine the substance of the game, under whatever guise it is conducted. It is well known machines of the general type of the one at bar may be found in various places of business to which the public is invited, that their purpose is profit and that some of them have been gambling devices.

State v. Doe, 242 Iowa 458, 463, 46 N.W.2d 541, 544 (1951). After all, "[t]he object and purpose of chapter 99B is to regulate social and charitable *gambling*," not merely games and entertainment in general. *Banilla Games*, 919 N.W.2d at 16 (emphasis added).

Here, the district court correctly affirmed DIA's denial of Red Line's application to license Lightning Skill and Gold Skill 1 as amusement concessions. Red Line's focus on the phrase "completes a task" in section 99B.1(1) as the dividing line between amusement concessions and amusement devices is superficial and ultimately illusory. DIA did not err in deciding that Lightning Skill and Gold Skill 1 are amusement devices—or alternatively slot machines—excluded from the definition of amusement concession. Further, Lightning Skill and Gold Skill 1 do not fit the definition in any event, because

completing the task—nudging to create a winning symbol combination—doesn't *necessarily* mean the participant wins a prize. The presentation of a winnable screen has more to do with winning a prize than the task does. The separate task in the separate memory game does not change the result; placing two games in succession does not make them one continuous game.

More importantly, however, licensing Red Line's games as amusement concessions would obliterate the difference between amusement concessions and amusement devices. It would enable a game manufacturer or distributor whose game is subject to age, location, and numerosity limits as an amusement device to avoid all those requirements simply by relabeling it an amusement concession. Despite Red Line's insistence otherwise (Red Line Br. at 27), the absurdity doctrine is a very traditional canon of statutory construction. *See Brakke v. Iowa Dep't of Natural Res.*, 897 N.W.2d 522, 534 (Iowa 2017). Further, avoiding absurd results is an important aspect of interpreting Iowa Code chapter 99B. *See Banilla Games*, 919 N.W.2d at 15, 17. Congress does not "hide elephants in mouseholes," *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468, 121 S. Ct. 903, 910 (2001), and neither does the Iowa General Assembly. The Court should affirm.

A. Lightning Skill and Gold Skill 1 are amusement devices and therefore cannot be amusement concessions.

DIA, the administrative law judge, and the district court all concluded Lightning Skill and Gold Skill 1 are "amusement devices required to be registered pursuant to section 99B.53," and therefore cannot be amusement concessions. Iowa Code § 99B.1(1). (Dist. Ct. Ruling at 5-6, 9; App. 62-63, 66.) That determination was correct. The conclusion that an amusement device cannot be an amusement concession is not some principle DIA invented (Red Line Br. at 27), but a distinction the legislature expressly made. *See* Iowa Code § 99B.1(1).

An "amusement concession" is "a game of skill or game of chance with an instant win possibility where, if the participant completes a task, the participant wins a prize." *Id.* Casino-style games and amusement devices required to be registered under Iowa Code section 99B.53 are expressly excluded by definition from qualifying as an amusement concession. *Id.* A "game of skill" means a game where "the result is determined by the player's ability to do a task, such as directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle." *Id.* § 99B.1(19). A "game of chance" contemplates a game where "the result is determined by chance and the player in order to win

completes activities, such as aligning objects or balls in a prescribed pattern or order or makes certain color patterns appear." *Id.* § 99B.1(18). Games of chance specifically include bingo, but expressly exclude slot machines and all types of amusement devices (both the kind that require registration and the kind that don't). *Id.* The elements of what constitute games of skill or chance have not materially changed since the State of Iowa first authorized carnival style games in 1973. *See* 1973 Iowa Acts ch. 153, § 1 (definitions).

For comparison, an "amusement device" is "an electrical or mechanical device possessed and used in accordance with [chapter 99B]." Iowa Code § 99B.1(2). When so possessed and used, an amusement device *is not* considered a game of skill, a game of chance, or a gambling device, regardless of its actual gameplay. *See id.* § 99B.1(2); *see also H & Z Vending v. Iowa Dep't of Inspections & Appeals (H & Z I)*, 511 N.W.2d 397, 398 (Iowa 1994) (holding that compliant amusement devices were not gambling devices).

Thus, an amusement device cannot be an amusement concession. Because an amusement concession must be either a game of skill or a game of chance, a machine that is neither—even if only because of legislative definitions—doesn't qualify. And, for good measure, the definition of amusement concession also expressly excludes amusement devices that require DIA registration. *See id.* § 99B.1(1).

Whether a game is an amusement device is not *wholly* dependent on the presence or absence of skill or knowledge—and Red Line's contention otherwise is legally incorrect. (Red Line Br. at 10-11.) Skill based games that award prizes or free games, such as pinball, can constitute amusement devices under Iowa law. *See* Iowa Code §§ 99B.1(2), 99B.52, 99B.53. Rather, only the registration requirement turns on the measurement of skill versus chance. *See* Iowa Code § 99B.53(1); *Banilla Games*, 919 N.W.2d at 15 ("If chance dominates the outcome, the device must be registered."). Whether a game is an amusement device in the first place, however, turns on other criteria, set forth in Iowa Code section 99B.52, as well as whether the game is "an electrical or mechanical device." Iowa Code § 99B.1(2).

DIA is tasked with administering chapter 99B. *Id.* § 10A.104(10). In fulfilling that statutory duty, DIA validly concluded that Lightning Skill and Gold Skill 1 are amusement devices under sections 99B.1(2) and 99B.52 because they are electrical or mechanical devices that meet all criteria in section 99B.52. DIA also validly concluded that the devices must be registered (under section 99B.53) because the outcome of playing the game is not primarily determined by skill or knowledge. Those conclusions were consistent with *Banilla Games*'s determination about similar—if not identical—nudge games. *Banilla Games*, 919 N.W.2d at 18. That similarity

is important; a machine regulated under chapter 99B does not "spontaneously transform" into an entirely different category of machine just by tweaking a few details. *State v. Matz*, No. 11-1896, 2012 WL 6193970, at *2 (Iowa Ct. App. Dec. 12, 2012). The record developed at hearing did not establish any reasonable basis for DIA to deviate in this case from the *Banilla* analysis.

B. Completing a task is not the sole criterion by which to differentiate amusement devices and amusement concessions.

An amusement concession offers "an instant win possibility where, if the participant completes a task, the participant wins a prize." Iowa Code § 99B.1(1). Red Line's president testified that this phrase means any game or machine requiring any modicum of player interaction is therefore an amusement concession, and that in contrast, an amusement device is purely passive with no player interaction beyond pressing a "spin" button. (2/12/19 Hrg. Tr. at 16-17, App. 88-89.) This interpretation is wrong. Chapter 99B does not support such a dichotomy. (Dist. Ct. Ruling at 9, App. 66.) Further, many amusement devices involve player interaction; again, one example is a pinball machine, which was expressly referenced in the first iteration of the amusement device statute, *see* Iowa Code § 99B.10 (1975), and which commonly invites players to complete the task of using flippers to direct the ball at various targets, ramps, bumpers, and other scoring areas.

But more importantly, "courts should be circumspect regarding narrow claims of plain meaning" like the one Red Line makes here. *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011). Part of interpreting statutes with circumspection is striving "to make sense of [the] law as a whole." *Id.*; *see also Matz*, 2012 WL 6193970, at *2 (concluding an answer about the meaning of chapter 99B was "supported by a *complete* reading" of the chapter (emphasis added)). When considering chapter 99B as a whole, the performance of a task cannot be the sole distinguishing criterion between amusement devices and amusement concessions. Concluding it is would read an entire chunk of chapter 99B out of the Code. *See, e.g.*, *In re Name Change of Reindl*, 671 N.W.2d 466, 469 (Iowa 2003) (rejecting a litigant's contention because it "would be tantamount to reading" a particular phrase "out of the statute" entirely); *Rohret v. State Farm Mut. Auto. Ins. Co.*, 276 N.W.2d 418, 421 (Iowa 1979) (similar); *Keeney v. Iowa Power & Light Co.*, 250 Iowa 887, 890, 96 N.W.2d 918, 921 (1959) (concluding "[t]he effect of appellant's argument" was to ask the Court to read a provision out of a statute, and further concluding that was "a change in the statute [the Court] may not make"). If the completion of any task removes a machine from the amusement device category and places it in the amusement concession category, there would be no need for the statutory distinction between amusement devices that are and

are not "primarily determined by skill or knowledge of the operator." Iowa Code § 99B.53(1) (2017). Any machine in which the player's skill predominates would simply be an amusement concession. Iowa courts repeatedly decline to engage in that method of statutory interpretation. *See, e.g.*, *Sallee v. Stewart*, 827 N.W.2d 128, 153 (Iowa 2013) (rejecting a proffered interpretation when other phrases "in the statute would become meaningless" and "be swallowed up by the new expansive phrase"); *State v. Pub. Emp't Relations Bd.*, 744 N.W.2d 357, 361-62 (Iowa 2008) (rejecting a proffered interpretation of a statute because it would render another statute superfluous); *Am. Legion v. Cedar Rapids Bd. of Review*, 646 N.W.2d 433, 439 (Iowa 2002) (rejecting "an expansive interpretation of [a] statutory term" because that interpretation would "effectively nullify" another section of the statute and collapse "virtually all" relevant events into one section); *Matz*, 2012 WL 6193970, at *2 (rejecting a particular interpretation of chapter 99B because it would make some parts of chapter 99B meaningless).

Instead, DIA correctly considered other factors, such as the actual gameplay, in determining Red Line's games are amusement devices and therefore cannot be amusement concessions. *See* Iowa Code § 99B.1(1) (excluding "amusement devices required to be registered" from the definition of amusement concession).

C. Even if a "task" is the linchpin, Red Line's games are unlike other amusement concessions because a player who completes the task does not necessarily win a prize.

One important gameplay factor is the frequent appearance of unwinnable spins. (2/12/19 Hrg. Tr. at 24-26, 28-29, App. 96-98, 100-101.) This aspect of Red Line's games means that the games cannot be amusement concessions because they do not satisfy the definition. The word "where" in section 99B.1(1) indicates that if an amusement concession player completes a task, they instantly win a prize. *See* Iowa Code § 99B.1(1). But in Red Line's games, a player may complete the nudge task on a given spin and not win *any* prize, because no possible winning symbol combination appears.

This understanding of section 99B.1(1) indicates why Red Line's games are not "simply modern day, digital versions of conventional carnival games." (Red Line Br. at 26 n.1.) Red Line asserts the relevant "tasks" are identifying a solution and nudging the appropriate reel. (Red Line Br. at 26 n.1.) But on many screens, there is no solution to identify and no prize to be won even by nudging a reel. By contrast, in conventional carnival games, "the *quality* of the prize" may vary depending on the layout presented to the player, Fichtner, 60 Drake L. Rev. at 58 (emphasis added), but not the availability of a prize in the first place. The balloon dart operator never gets to make the player throw their dart at an empty board, and the ring-a-bottle

operator never gets to make the player toss their ring at an empty table—but Red Line's games frequently make the "task" irrelevant by presenting an unwinnable spin.[4] Because that means a player who completes the task does not necessarily win a prize, Red Line's games simply do not meet the definition of amusement concession. They are far removed from the carnival games chapter 99B was enacted to accommodate. *See* Iowa Code § 4.6(2), (4) (permitting courts interpreting statutes to consider both "[t]he circumstances under which the statute was enacted" and "common law or former statutory provisions, including laws upon . . . similar subjects").

The auxiliary memory task awards a prize every time it is completed, but because the memory task is both optional and wholly separate from the nudge game, it cannot bootstrap the entire machine into the amusement concession arena. *Cf. Banilla Games*, 919 N.W.2d at 17 (concluding that adding a "prize viewer" feature to a nudge game did not successfully transform the entire game into one determined by the player's knowledge).

[4] Of course, sometimes carnival players throw the dart at the balloons too softly, or throw the ring at the soft drink bottles at the wrong angle, and thereby lose out on a prize. Similarly, Lightning Skill or Gold Skill 1 players presented with a winnable screen might nudge the wrong reel, or nudge the right reel in the wrong direction. But these examples of performing a task *poorly* are different from, and do not stand in for, the question whether performing the task successfully might nonetheless leave the player without a prize.

DIA correctly determined that Lightning Skill and Gold Skill 1 are amusement devices, not amusement concessions, because even completing the task does not necessarily mean the player wins a prize. Instead, this aspect of gameplay means that Lightning Skill and Gold Skill 1 are devices that produce outcomes not primarily determined by skill or knowledge—and accordingly, they (1) must be registered as amusement devices, *see* Iowa Code § 99B.53(1) ; and (2) cannot be amusement concessions, *see id.* § 99B.1(1).

D. Alternatively, Lightning Skill and Gold Skill 1 cannot be amusement concessions because they are slot machines.

An amusement concession, even if it is a game of chance, cannot be a slot machine. *Id.* § 99B.1(1), (18). Of course, these games' physical appearance alone does not necessarily make them slot machines. *See H & Z I*, 511 N.W.2d at 398. But these games do more than just look like slot machines; they function similarly too.

"The term 'slot machine' is not defined in [chapter 99B]." *In re Prop. Seized from Brown*, 501 N.W.2d 472, 473 (Iowa 1993) (per curiam). But the phrase encompasses "any coin-operated amusement device designed to facilitate gambling." *Id.* Gambling means "any activity where a person risks something of value or other consideration for a chance to win a prize." Iowa Code § 99B.1(16). DIA has also defined a slot machine by rule, as

> a mechanical, electronic, or video gambling device into which a player deposits coins, tokens or currency and from which certain credits, tokens or coins are paid out when a particular, random configuration of symbols appears on the reels, simulated reels, or screen of the device.

Iowa Admin. Code r. 481—104.1. However, "[t]he definition of a slot machine that has been adopted by the Iowa Supreme Court . . . is much broader than that in the Iowa Administrative Code." *H & Z II*, 593 N.W.2d at 171.

Red Line's games are slot machines under both broad definitions of the term. Lightning Skill and Gold Skill 1 are designed to facilitate gambling within the meaning of *Brown* because, regardless of their appearance, they are an activity where players risk something of value—cash—for a chance to win a prize through playing the nudge game. *See Banilla Games*, 919 N.W.2d at 18 (concluding a nudge game relies primarily on chance); *see also Mayle Bingo Co. v. Ohio Dep't of Pub. Safety*, 152 N.E.2d 1237, 1242 (Ohio Ct. App. 2020) (concluding games similar to Lightning Skill and Gold Skill 1 were slot machines under Ohio law because players give something of value in the hope of gain); Op. No. 2018-002, 2018 WL 6718962, at *2-4 (concluding nudge games are gambling under Wyoming law because players risk property for contingent gain based on chance). Lightning Skill and Gold Skill 1 also fit the narrower, administrative definition of a slot machine; they are video gambling devices into which a player deposits currency and from

which credits are paid out when a particular configuration of symbols appears on the reels, simulated reels, or screen of the device. *See* Iowa Admin. Code r. 481—104.1. That makes them slot machines, which in turn means they cannot be amusement concessions. *See* Iowa Code § 99B.1(1), (18).

Additionally, both games feature a programmable payout percentage. (Dist. Ct. Ruling at 3, App. 60.) This payout percentage means that, over time, the aggregate universe of nudge game players will always expend more credits to play than they will redeem in prizes, no matter how well or how many times they complete the nudging task. *Cf. Banilla Games*, 919 N.W.2d at 18 (finding chance predominated over skill in a nudge game because of the payout percentage). The payout percentage also means that, despite the added nudge feature, Lightning Skill and Gold Skill 1 are functionally closer—not just visually similar—to slot machines typically seen in Iowa casinos. *See* Iowa Admin. Code r. 491—11.9(4) (requiring Iowa casinos to calculate and post slot machine payout percentages for "all slot machine games in operation during the preceding three calendar months").

Finally, with specific respect to Gold Skill 1, the machine "operates with a pure random number generation system" to determine which screen is presented to the player. (2/12/19 Hrg. Tr. at 57, App. 129). Casino slot machines work the same way. *See* Iowa Admin. Code r. 491—11.10(2)(*a*)

(providing that each slot machine in Iowa casinos "must have a random number generator to determine the . . . game symbol selections or production of game outcomes"). *Banilla Games* recognized that allowing devices with random number generators outside of Iowa casinos would frustrate chapter 99B's purpose. *Banilla Games*, 919 N.W.2d at 17. And while *Banilla Games* may not have substantively discussed amusement concessions, it nonetheless contains a "background principle" (Red Line Br. at 33) that real-world consequences are an important consideration. *Id.* at 16-17.

Lightning Skill and Gold Skill 1 contain several features that are functionally similar or even identical to slot machines. While a slot machine can legally be characterized as an amusement device, that same slot machine can never qualify as an amusement concession. *See* Iowa Code §§ 99B.1(1), 99B.1(2), 99B.1(18). Chapter 99B deems amusement devices that comply with the chapter not to be "games of chance" at all. Iowa Code § 99B.1(2). The amusement concession framework does not contain a similar escape valve. *See id.* § 99B.1(1), (18). So while Red Line acknowledges its games "may very well be" slot machines (Red Line Br. at 28), its invocation of *H & Z I* does not help, because the safe harbor Red Line seeks to utilize simply isn't available for amusement concessions the way it is for amusement devices (and the way it was in *H & Z I*, which addressed amusement devices). Slot

machines in general, and Red Line's games in particular, may only be legally offered for use in Iowa—if at all—as registered amusement devices.[5]

E. Interpreting chapter 99B to require licensure of Lightning Skill and Gold Skill 1 as amusement concessions would create absurd results.

The ultimate goal of statutory interpretation and application is to give effect to legislative intent. *See Banilla Games*, 919 N.W.2d at 14. Part of giving effect to legislative intent is avoiding absurd results. *See id.* at 15; *see also Ames 2304, LLC v. City of Ames*, 924 N.W.2d 863, 871 (Iowa 2019) (finding a litigant's proffered interpretation of a zoning code "would create absurd results, as it would lead to virtually no regulation" of the relevant subject); *Iowa Ins. Inst. v. Core Grp.*, 867 N.W.2d 58, 75-76 (Iowa 2015) (concluding a proffered interpretation was problematic because it would waive all applicable privileges or protections and thereby create "an absurd result that could not have been intended"). Chapter 99B reflects the legislature's intent to expand gambling only incrementally, and includes controls on where it may take place and who may partake. Licensing Lightning Skill and Gold Skill 1 as amusement concessions, however, would

[5] Because Red Line is already a licensed amusement device distributor, it can presently distribute the proposed games as registered amusement devices in Iowa, should it so choose. There is room for an additional 1,000 registered amusement devices to be placed in Iowa before the statutory cap is met. (2/12/19 Hrg. Tr. at 65-66, 68-69, App. 137-138, 140-141.)

expand gambling exponentially and without those controls. That is an absurd result.

"The doctrine of absurdity has a good pedigree." *Brakke*, 897 N.W.2d at 534. And whether the Court views this case as "interpreting ambiguous statutes to avoid absurd results," or as "declining to enforce the literal terms of a statute to avoid absurdity," the doctrine applies here. *Id.* DIA does not have a mere policy disagreement (Red Line Br. at 29-30), but a good faith belief that the "consequences of a particular construction," Iowa Code § 4.6(5), would be to upend, and perhaps even defeat, the purpose of chapter 99B: "to regulate gambling devices." *Banilla Games*, 919 N.W.2d at 15; *see also* Op. No. 84-5-3, 1984 WL 60021, at *2 (concluding it "would be a strained, impractical and absurd result" to construe the amusement concession provisions in chapter 99B to allow unrestricted proliferation).

The legislature limited the number of allowable amusement devices statewide, Iowa Code § 99B.53(6); the locations where they can be placed, *id.* § 99B.53(2)-(3); and who can play them, *id.* § 99B.57(1). These provisions confirm the legislature intended to restrict unfettered growth of gambling devices in the state. Amusement concessions are not subject to similar limitations. Red Line contends this means the legislature intended a free-for-all (Red Line Br. at 29 n.6), but it makes little sense that the legislature would

enact a comprehensive regulatory scheme only to undermine it completely—without repealing the comprehensive provisions. *See Llewellyn v. Iowa State Commerce Comm'n*, 200 N.W.2d 881, 884 (Iowa 1972) ("Repeal by implication is not favored and [a statute] will not be so interpreted unless absolutely necessary or clearly mandated."). The lack of similar restrictions for amusement concessions also reflects the possibility that the legislature concluded the two categories of amusement machines were distinct, and that overlap between amusement concessions and amusement devices would be either nonexistent or minimal.

By contrast, rather than treating the categories separately, Red Line's position merges them. In Red Line's view, almost any registered amusement device subject to prize, location, and age limitations—which apply when skill or knowledge do not predominate, or in other words, when the machine *most* resembles and functions like gambling—can simply be relabeled an amusement concession. With that simple change in label, according to Red Line, the machine's proximity to gambling doesn't matter; it's just a game of chance, distributed more widely, and made more lucrative by increasing the available prize value. Chapter 99B is the mousehole, and Red Line wants to be the elephant. *Cf. Whitman*, 531 U.S. at 468, 121 S. Ct. at 910; *Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446,

464 (Iowa 2017) (declining to open a "loophole" in a code chapter given the intent of the statutory provision at issue).

Two recent decisions applying the absurdity doctrine illustrate that the "court should give effect to the spirit of the law rather than the letter, especially so where adherence to the letter would result in absurdity . . . or would defeat the plain purpose of the act." *Case v. Olson*, 234 Iowa 869, 873, 14 N.W.2d 717, 719 (1944). First, in *U.S. Bank v. Lamb*, a mortgagor contended that a statute extinguishing "all liens" meant "that, despite not making any loan payments on the property for more than six years," the bank's failure to sell the mortgagor's house within two years after obtaining a foreclosure decree gave her title "free and clear." 874 N.W.2d 112, 115 (Iowa 2016). In other words, the mortgagor contended the expiration of a procedural deadline caused the bank to lose all rights in the house and eliminated any debt the homeowner owed. The Court "certainly underst[oo]d the argument that all liens means all liens," *id.* at 117, but concluded the statute could not support and could not have intended that facially preposterous result. *See id.* at 119.

Second, in *Porter v. Harden*, a couple contended that because the relevant statute defined "livestock" as a singular animal, keeping one elderly horse on their property made it a "farm tenancy" and allowed them to invoke

procedural protections against eviction that are available to farm tenants. 891 N.W.2d 420, 422-23 (Iowa 2017). The Court rejected this contention, found that result would be unreasonable, and concluded it would "undermine th[e] statutory objective, rather than serve it." *Id.* at 426. The Court further found that interpreting the statute in the way the couple contended would "introduce possibilities for gamesmanship" and allow the statute to cover both people and situations it was never intended to cover. *Id.* at 427.

The same principles apply here. If licensed as amusement concessions, Lightning Skill and Gold Skill 1 would "undermine th[e] statutory objective, rather than serve it," *id.* at 426, by rendering the amusement device category superfluous and by inviting gambling expansion far beyond the limitations the legislature set forth. It would also "introduce possibilities for gamesmanship," *id.* at 427, by inviting devices closer and closer to casino slot machines to be placed in the field as amusement concessions—perhaps on the theory that merely pushing a "spin" button is completing a task within the meaning of section 99B.1(1), or that even if it isn't, a mandatory (rather than optional) memory test constitutes a task. These hypothetical machines may seem contrived, but given the "ingenuity in the invention of devices designed to circumvent" relevant laws, *Doe*, 242 Iowa at 463, 46 N.W.2d at 544, their appearance wouldn't necessarily be surprising.

Perhaps most importantly, however, licensing Lightning Skill and Gold Skill 1 as amusement concessions would unduly expand chapter 99B to authorize widespread availability of games it was not intended to authorize. *See Porter*, 891 N.W.2d at 427. Chapter 99B and the amusement concession provisions were enacted to allow " 'penny ante' gambling activities," Op. No. 80-3-12 , 1980 WL 25949, at *2, and classic carnival games like "balloon dart, bear pitch, basketball shoot, [and] football throw," *Century 21 Shows*, 346 F. Supp. at 1051, to be conducted without fear of criminal prosecution. Undoubtedly, technology has advanced in the last several decades, and chapter 99B can "encompass technologies not in existence at the time of its promulgation." *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014). But even so, Lightning Skill and Gold Skill 1 do not fit. They are much more like slot machines than like trying to win a giant stuffed teddy bear by shooting a few three-pointers. They should be treated—and regulated—accordingly.

Allowing games that must otherwise be limited in location, prize amount, and player demographic to shed all those restrictions through the amusement concession category would eviscerate chapter 99B. That would be an absurd result, and the Court should avoid it, just as in *Banilla Games*. *See Banilla Games*, 919 N.W.2d at 15.

F. Substantial evidence supports DIA's decision.

Lastly, substantial evidence supports DIA's determination that the secondary memory game is a de minimis feature of both Lightning Skill and Gold Skill 1. The record is undisputed that the memory game can be disabled (Red Line Br. at 35), can be skipped (2/12/19 Hrg. Tr. at 31, 78-79, App. 103, 150-151), takes approximately twenty minutes to complete, and offers a maximum "win" of eight cents on a one-dollar wager. (2/12/19 Hrg. Tr. at 76-77, App. 148-149.) In addition, the memory game is only available to a player if they cannot or do not create a winning symbol combination by nudging. (2/12/19 Hrg. Tr. at 30-31, App. 102-103.) The memory game was consistently described as both secondary and optional.[6]

Given those facts, it was reasonable for the administrative law judge to infer that if a player was faced with winning eight cents after twenty minutes, or the possibility of winning much more, much faster, on the next spin of the reels, at least some players would forego the eight cents. Red Line's president even acknowledged that skipping the memory game meant a player "can spin the reels more often." (2/12/19 Hrg. Tr. at 79, App. 151.) It was also reasonable for the administrative law judge to infer that some players who

[6] Additionally, Red Line did not offer any statistics at hearing as to what percentage of players engage with, and successfully complete, the memory game. (2/12/19 Hrg. Tr. at 78-79, App. 150-151.)

started the memory game might become bored and decide not to finish it. Judges are "not dumb, and ha[ve] a right to consider that which everyone knows." *Solberg v. Davenport*, 232 N.W. 477, 481 (Iowa 1930). Further, *Banilla Games* instructs that focusing solely on the intangible sense of fun or enjoyment to be gained from playing a nudge machine (Red Line Br. at 36) ignores its real character. *See Banilla Games*, 919 N.W.2d at 15-16 (rejecting the assertion that a game "outcome" includes "the amusement of game play itself without regard to prize"); *Harvie v. Heise*, 148 S.E. 66, 68 (S.C. 1929) ("It is contrary to reason that players would continue to idle away their time and waste their money operating the machine merely for the so-called amusement . . . ."); Fichtner, 60 Drake L. Rev. at 44 ("[C]ustomers would not play if their only goal was entertainment."). Most importantly, however, as the district court noted, DIA's decision did not depend on whether the memory game *was* disabled or skipped, but only whether it could be. (Dist. Ct. Ruling at 10, App. 67.)

The administrative law judge's inferences in this case were both logical and reasonable. Substantial evidence supports DIA's decision.

CONCLUSION

The district court correctly determined that Lightning Skill and Gold Skill 1 are not amusement concessions. This Court should affirm.

REQUEST FOR ORAL ARGUMENT

DIA requests oral argument. Allowing the parties to present their positions orally may aid the Court both in navigating the intricacies of chapter 99B and in understanding how these particular devices work.

CERTIFICATE OF COMPLIANCE

This Final Brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this Final Brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 8,903 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ David M. Ranscht
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PROOF OF SERVICE

I, David M. Ranscht, or a person acting on my behalf, hereby certify that on December 15, 2020, we served Defendants-Appellants' Final Brief on all other parties to this appeal via EDMS.

/s/ David M. Ranscht
DAVID M. RANSCHT
Assistant Attorney General

CERTIFICATE OF FILING

I, David M. Ranscht, or a person acting on my behalf, hereby certify that on December 15, 2020, we filed Defendants'-Appellants' Final Brief with the Clerk of the Iowa Supreme Court via EDMS.

/s/ David M. Ranscht
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