

Frameworks for Gaming Regulation

to the House Committee on Gambling Regulation

James Acres - President, Acres Bonusing, Inc - Feb 28, 2023

Frameworks for Gaming Regulation

... major themes

- James Acres and his perspective
- Three categories of gaming (interstate, non-tribal Oregon, tribal)
- Discuss tribal gaming and IGRA, with a special attention to bingo
- Discuss pari-mutuel gaming
- Final thoughts

James Acres and his perspective

- Senator Gelser is my sister and she's shared some of the challenges this committee is facing.
- I've spent the last fifteen years selling gaming technology to tribal casinos.
- Gaming lacks common definitions across jurisdictions and this is a source of constant confusion for regulators, vendors, and casinos.
- This presentation is intended to cut through that confusion.

There are three categories of gaming:

- Interstate gaming
- Non-tribal intrastate gaming
- Tribal gaming

Interstate Gaming

Interstate Gaming

- Governed by the feds and the several states.
- “Unlawful Internet Gambling Enforcement Act of 2006” is an example of important federal legislation.
- If you are considering allowing internet gaming outside of Oregon, federal law and the law of impacted states will matter.

Non-tribal Oregon Gaming

Non-tribal Oregon Gaming

- Governed almost entirely by state law.
- There is a smattering of federal law, but it's (currently) unimportant.
- IGRA is irrelevant.

Non-tribal Oregon Gaming

Governed almost entirely by state law

- Oregon defines terms like “gaming device,” “video lottery terminal,” and “casino.”
- Oregon defines regulatory framework.
- Oregon decides who can do what, where and when.

Non-tribal Oregon Gaming

Smattering of federal law

- The Johnson Act, 15 USC 1171 - 1178 . . .
- . . . requires entities owning “gambling devices” to register annually with the Department of Justice.
- . . . requires “gambling devices” have serial numbers.
- . . . regulates the transportation of “gambling devices.”
- . . . defines “gambling devices” for the purposes of the Johnson Act. 15 USC 1171(a).

Non-tribal Oregon Gaming

IGRA is irrelevant

- IGRA definitions and regulations are irrelevant for the purposes of non-tribal gaming.
- Class I, Class II, and Class III definitions do not bind non-tribal Oregon gaming.
- You don't have to care about bingo.
- You can even make up your own definition of bingo! (but please, don't)
- Compact promises to tribal neighbors might still matter.
- Being a “good sovereign neighbor” might still matter.

Tribal Gaming

Tribal Gaming

- IGRA provides a regulatory framework for tribal gaming.
- IGRA divides tribal gaming into three separate classes for the purposes of apportioning regulatory authority.
- There is a controlling legal definition of bingo.
- IGRA-law is Indian Law. That means all ambiguities are resolved in favor of the tribes.

Tribal Gaming

Class I

- Class I are “social games of minimal value” and traditional tribal games.
- Tribes are sole regulators of Class I gaming.
- Many tribes engage in high-stakes traditional Class I gaming.
- But players in these games are always members of tribal communities.
- Class I gaming is truly an internal tribal affair.

Tribal Gaming

Class II

- Class II is defined by 25 USC 2703(7)(A)-(F).
- Class II gaming includes bingo, electronic aids to bingo, and a hodge-podge of other economically unimportant games.
- Bingo is defined by 25 USC 2703(7)(A). I'll come back to this.
- Tribes share regulation of Class II gaming with the NIGC.
- NIGC enacted standards for class II gaming which it actively enforces.
- States have no authority over Class II gaming.

Tribal Gaming

Class III

- Class III is everything not Class I or Class II. 25 USC 2703(8).
- States which allow gaming must negotiate with tribes to create compacts to regulate Class III gaming by tribes.
- States must negotiate in good-faith. It is bad-faith to link non-gaming topics. See *Chicken Ranch v. California*, Case No. 21-15751 (9th Cir. July 28, 2022.)
- Department of the Interior must approve gaming compacts. DoI reviews proposed compacts as a fiduciary for tribes.
- NIGC has no authority over Class III gaming.

Class II Bingo Defined

Class II Bingo Defined

- IGRA defines bingo at 25 USC 2703(7)(A)(i)
- *U.S. v 103 Electronic Games* 223 F.3d 1091 (9th Cir. 2000) definitively answered the question “what is bingo?”
- DoJ challenged electronically aided Class II slot machines made by “Multimedia Games.”
- Judge Berzon found IGRA defines Class II bingo so broadly that she actually wrote “Multimedia scores bingo” at the end of her opinion.



Judge Marsha S. Berzon

IGRA's Three Laws of Bingo

1. Bingo is played for prizes on cards bearing numbers or symbols.
2. Bingo players cover numbers or symbols as they are drawn.
3. Players compete to cover the game ending pattern and win the game.



Judge Marsha S. Berzon

Bingo: The Physical Game

First Law: Bingo is played on multiple cards with symbols.



Bingo: The Physical Game

Second Law: Symbols are covered as they are drawn.

3, 74, 26, 19, 71, 68...



Bingo: The Physical Game

Third Law: Players compete to cover game ending pattern and win game.

“Cover all” pays \$5 and “wins” the game.

\$0

=



=

\$5

There are no other laws of bingo.*

1. “Bingo is not limited to our childhood memories of bingo.”
2. A bingo game that incorporates Class III elements is still a Class II bingo game as long as it obeys the three laws of bingo.
3. Electronic aids can be used in bingo.



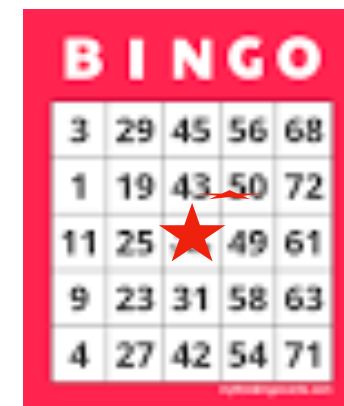
Judge Marsha S. Berzon

*** Except “house banked games” and “facsimiles of other games” are forbidden. But that’s not important today.**

Bingo: The Physical Game

Class II bingo games can pay interim prizes.

“Cover any” pays chance to reach in grab bag.



=



Bingo: The Physical Game

Grab Bags contain several different prizes.

B I N G O					
3	29	45	56	68	
1	19	43	50	72	
11	25	★	49	61	
9	23	31	58	63	
4	27	42	54	71	



\$10

\$5

\$0

Bingo: The physical game.

To make things more fun, players can choose from different bags with different prize distributions.



Let's look at electronic-aids.

Bingo: Electronically aided.

First Law: Bingo cards are assigned to slot machines.



Bingo: Electronically aided.

Second Law: Play on slot machine causes server to draw balls and mark cards.



3, 74, 26, 19, 71, 68...



BINGO						
3	29	45	56	68		
1	19	43	★	72		
11	25	★	49	61		
9	23	★	58	63		
4	27	42	54	71		



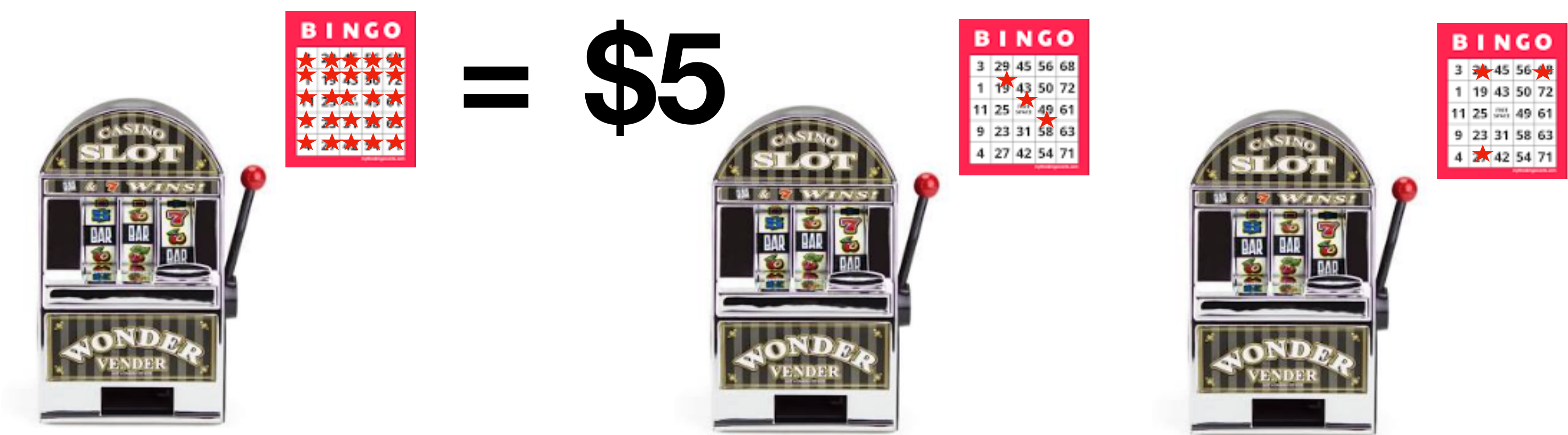
BINGO						
3	29	45	56	68		
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BINGO						
3	★	45	56	★		
1	19	43	50	72		
11	25	★	49	61		
9	23	31	★	63		
4	★	42	54	71		

Bingo: Electronically aided.

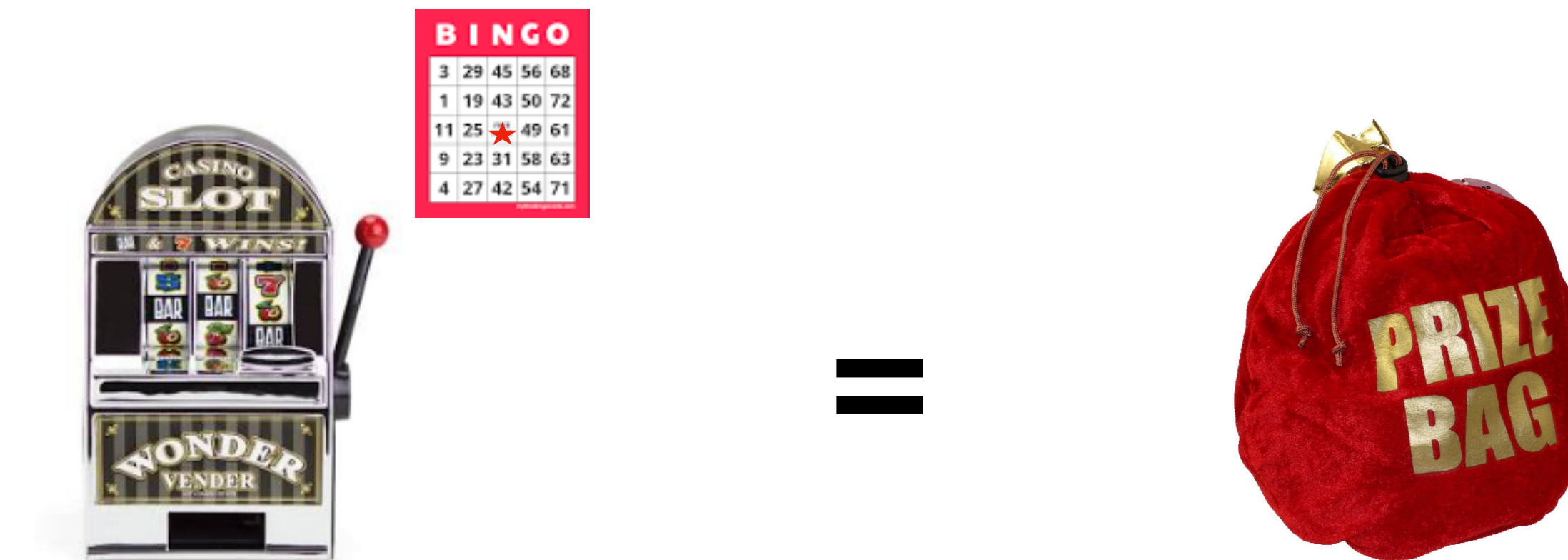
Third Law: Cover-all pays game ending prize.



**Bingo with only one prize is
boring, so**

Bingo: Electronically aided.

Interim prizes: Cover-any pays grab bag prize.



Bingo: Electronically aided.

Interim prizes: Different bags can have different prizes.



Bingo: Electronically aided.

Interim prizes: The regular slot-machine game is an “electronically aided grab bag.”



Why are folks so confused about bingo?

- Players must compete against each other in bingo.
- In the 2000s linking player terminals together in real-time was not easy.
- The solutions to those problems involved things like “central servers.”
- People confused those technical solutions with Class II.

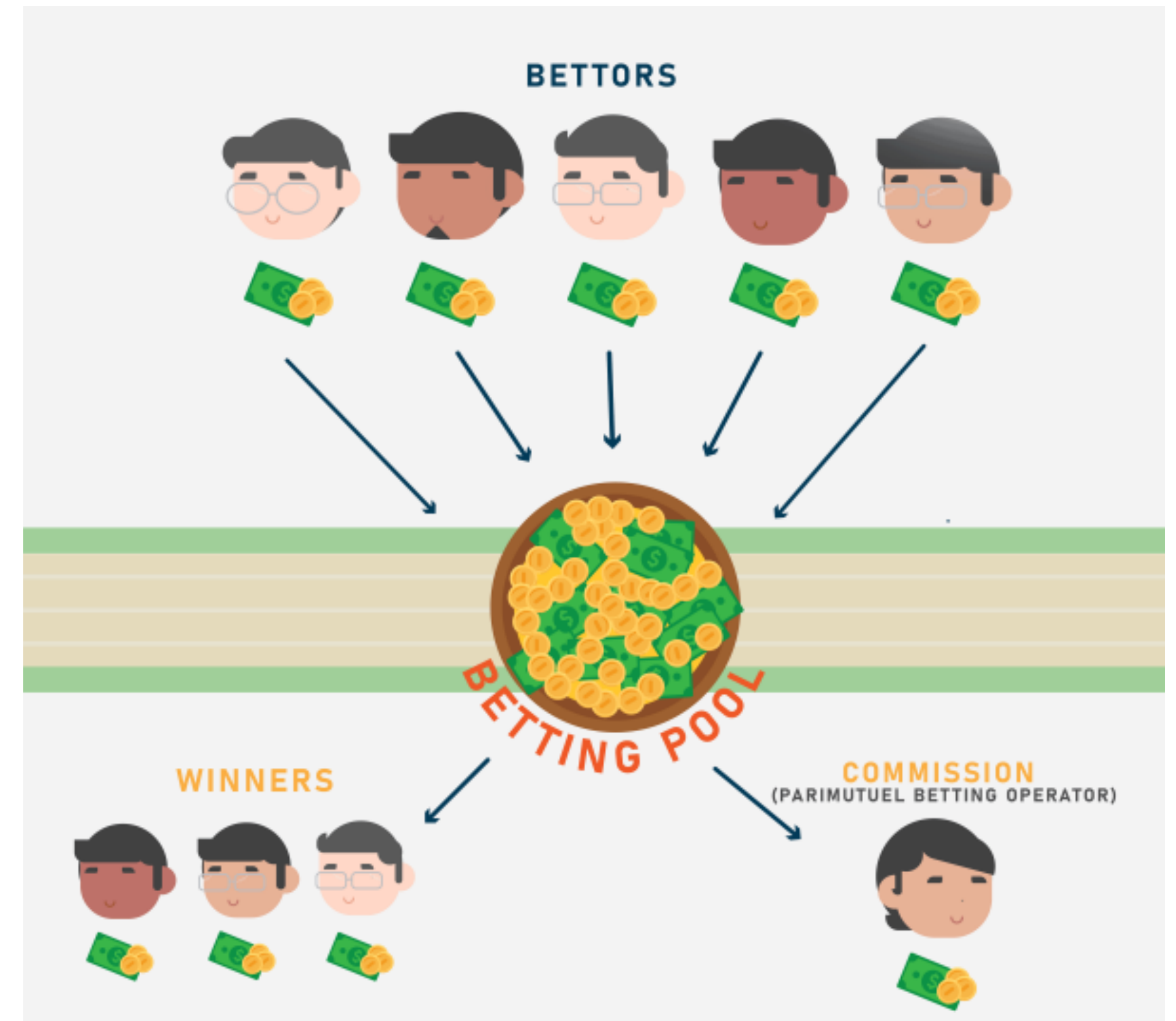
Side-track:

Quick review of pari-mutuel betting.

Pari-mutuel betting

Betting “between us.”

- Horrible business, I know little about it.
- Horses, dogs, jai-alai, prediction markets, etc.
- Key idea is that the bettors provide the pool of money which can be won.



Pari-mutuel betting

Winnings depend on wagers.

“I bet \$10 on Sparkle Pony!”



“I bet \$90 on Normie Pony!”



© 2017 by Mr. Racetrack Owner

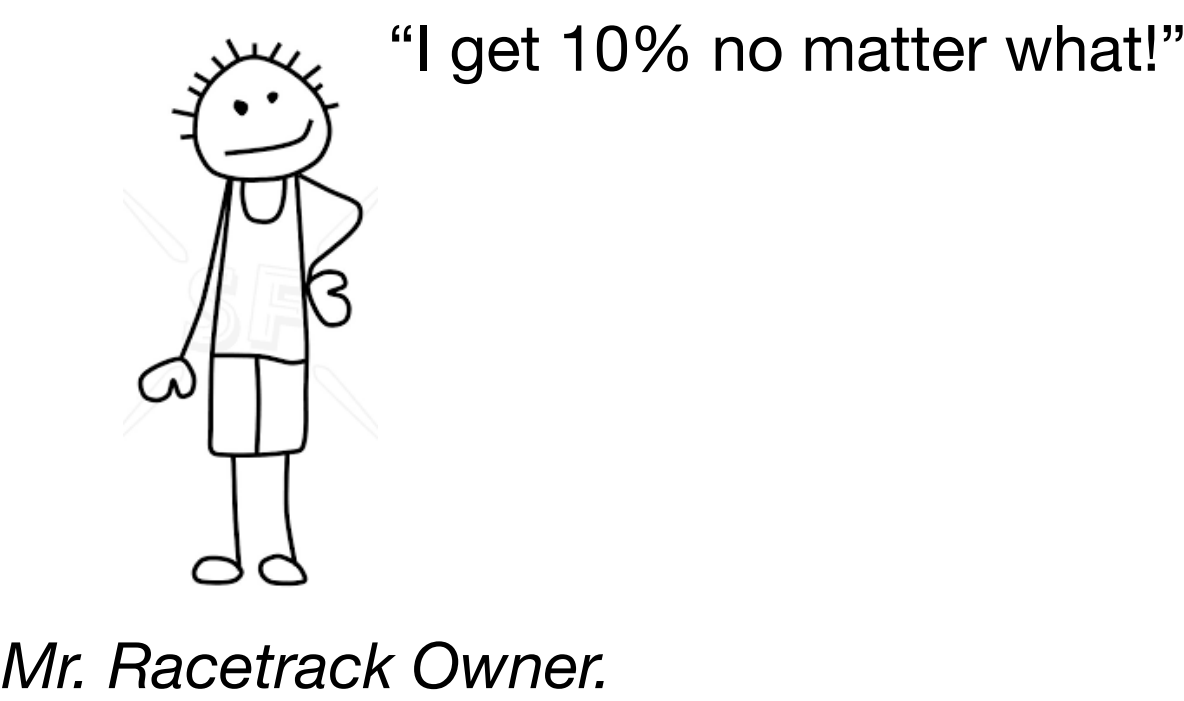
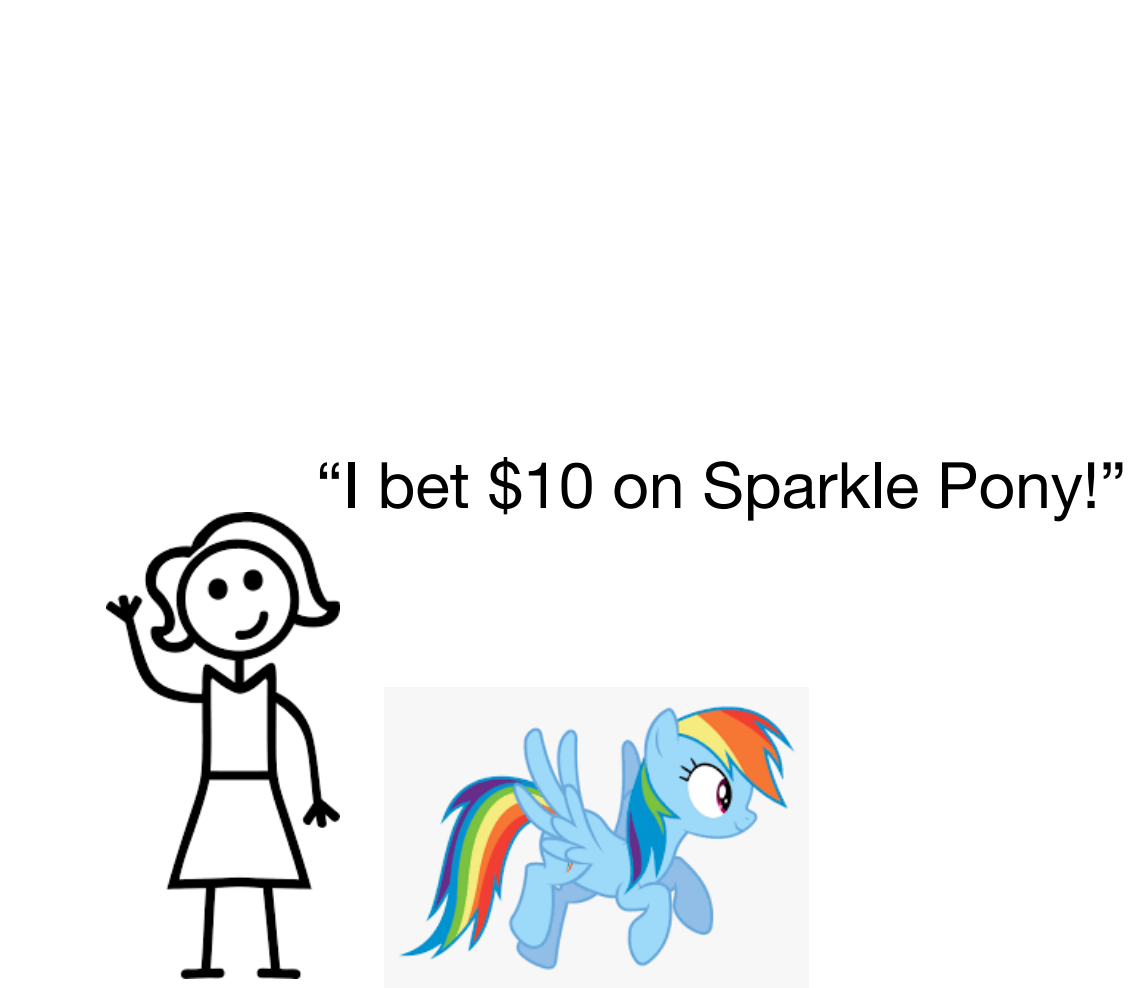
“I get 10% no matter what!”



Mr. Racetrack Owner.

Pari-mutuel betting

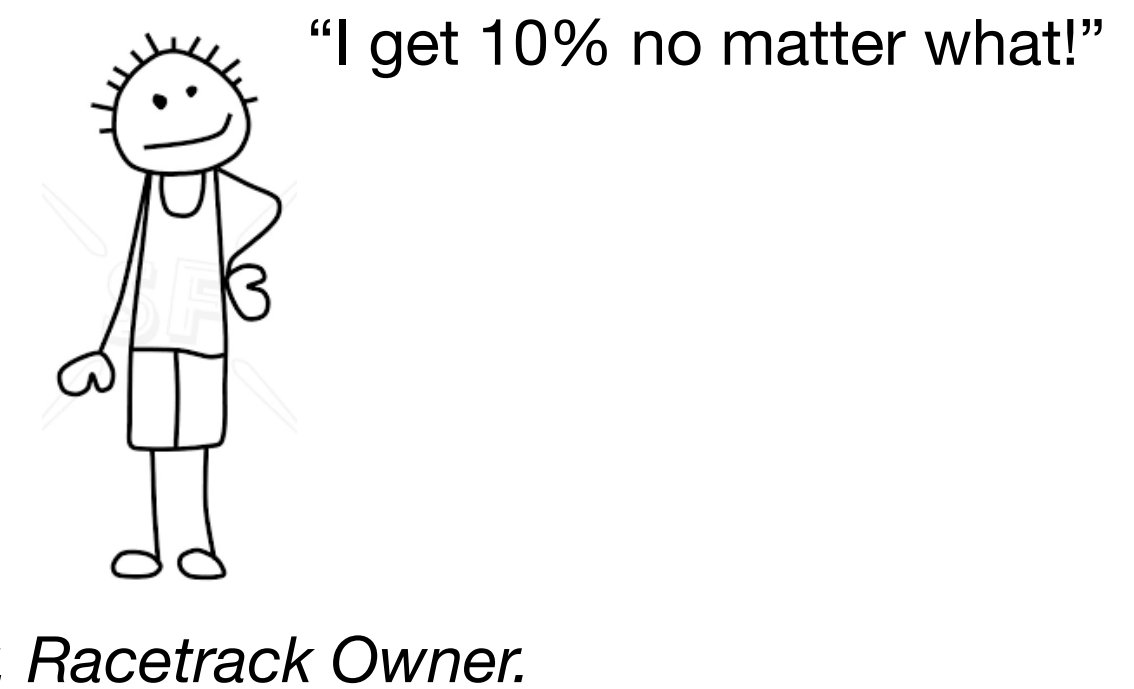
Winnings depend on wagers.



The prize bag has \$100.

Pari-mutuel betting

Sparkle Pony wins!



- Prize bag has \$100.
- Racetrack owner gets \$10.
- Sparkle Pony wins \$90 on a \$10 bet!

Pari-mutuel betting

Normie Pony wins!

“I bet \$10 on Sparkle Pony!”



“I bet \$90 on Normie Pony!”



“I get 10% no matter what!”

Mr. Racetrack Owner.



- Prize bag has \$100.
- Racetrack owner gets \$10.
- Normie Pony wins \$90 on a \$90 bet!

Final thought:

**Don't confuse games with regulatory regimes
or technological implementations.**

Pull-tabs in IGRA

Pull-tabs in IGRA

These are pull tabs.



Pull-tabs in IGRA

- Pull-tabs are basically scratch tickets.
- IGRA defines pull-tabs as Class II if played where bingo is played.
- Imagine a tribe with two casinos - one with bingo and one without.
- At the first casino, a box filled with pull-tabs is a Class II box.
- That same box at the other casino is a Class III box!
- The game is the same . . . but the classification changes with context!

Pull-tabs in IGRA

- IGRA specifically states that “electronically aided” bingo games are Class II games.
- IGRA makes no such allowance for pull-tabs.
- Electronically aided pull-tabs are Class III games! Even if you play them at a casino with bingo!
- Not every Class II game is treated like bingo!

Final Thought

- You are confused because there is such a confusion of definitions across regulatory regimes.
- The good news is you get to define how things should work in non-tribal Oregon gaming!
- Remember you have the power to make things clear, and Oregon can lead the world in sensible gaming regulation! :-)

Questions?

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