

Pursuant to S. Ct. Prac. R. X(5) and Civ.R. 12(C), Respondents—Governor Ted Strickland; the Director of the Ohio Lottery Commission, Kathleen Burke; the individual members of the Ohio Lottery Commission (Jonathan A. Allison, Jalada Aslam, Otto Beatty III, Paul M. Burens, Erskine E. Cade, Matt Cox, Allan C. Krulak, Patrick McDonald, and Rude M. Strakla) (collectively, the “Individual Members of the Ohio Lottery Commission”); and the Ohio Lottery Commission—move for judgment on the pleadings. A supporting memorandum follows.

Respectfully submitted,

RICHARD A. CORDRAY (0038034)
Attorney General of Ohio



BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)
Chief Deputy Solicitor General

RICHARD N. COGLIANESE (0066830)

MINDY WORLY (0037395)

ERICK D. GALE (0075723)

PEARL M. CHIN (0078810)

MICHAEL J. SCHULER (0082390)

Assistant Attorneys General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for Respondents

In the
Supreme Court of Ohio

STATE ex rel. OHIO POLICY : Case No. 2009-1590
ROUNDTABLE, et al., :
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Relators, :
 :
 :
vs. :
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TED STRICKLAND, et al. :
 :
 :
Respondents. :
 :

**MEMORANDUM IN SUPPORT OF RESPONDENTS'
MOTION FOR JUDGMENT ON THE PLEADINGS**

DAVID AXELROD (0024023)
**Counsel of Record*
Axelrod LLC
250 Civic Center Drive, Suite 500
Columbus, Ohio 43215
614-222-2032
david@axelrodohio.com

KARI B. HERTEL (0066074)
KBH Law Office
4607 Wuertz Court
Dublin, Ohio 43016
614-306-8638
KBHlaw@yahoo.com

Counsel for Relators
Ohio Policy Roundtable, David P. Zanotti,
John W. Edgar, and Sandra L. Walgate

RICHARD CORDRAY (0038034)
Attorney General of Ohio

BENJAMIN C. MIZER* (0083089)
Solicitor General
**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)
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RICHARD N. COGLIANESE (0066830)

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ERICK D. GALE (0075723)

PEARL M. CHIN (0078810)

MICHAEL J. SCHULER (0082390)

Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for Respondents

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INTRODUCTION

This case is the second to be filed in this Court in recent weeks challenging the provisions of the budget bill for fiscal years 2010-2011, Am. Sub. H.B. 1 (“Budget Bill”), that recognize the Lottery Commission’s authority to implement video lottery terminals (“VLTs”) at seven Ohio racetracks. As this Court knows from the first lawsuit—*LetOhioVote.org v. Brunner*, No. 2009-1310—the plan to operate VLTs under the Lottery Commission’s authority was the product of a bipartisan compromise to close a multi-billion dollar shortfall in the biennial budget.

Relators bring several claims regarding the constitutionality of the VLT Provisions that the Court can and should dismiss at the threshold because they are devoid of merit. Judgment on the pleadings is important and urgent because, if Relators succeed, an \$851.5 million piece of the appropriation to local schools will be terminated and the budget destabilized. The Governor and the General Assembly will be forced to find other ways to close the budget gap—in the form of further debilitating cuts to essential programs and services, tax increases, or increased revenue of another type. But such fiscal instability should not come to pass, for the Court can dismiss Relators’ claims at the outset.

Relators’ challenge to the constitutionality of the VLT Provisions faces two high hurdles. First, it is a facial attack, which this Court and the United States Supreme Court disfavor. As such, Relators must establish that the law is invalid in *all* of its applications—a showing they cannot make. Second, this Court presumes that legislative enactments are constitutional unless the challenger can show otherwise *beyond a reasonable doubt*. Relators cannot discharge that burden here.

None of Relators’ three claims has merit. First, VLTs constitute a valid exercise of the Lottery Commission’s constitutionally granted authority because they meet the traditional three-part definition of “lottery”: The player (1) pays a price for an opportunity to (2) win a prize (3)

that is determined by chance. Moreover, regardless of whether VLTs constitute a lottery, the Constitution allows the General Assembly to authorize broader forms of gambling, and thus the VLTs are constitutionally permissible. Second, the VLT Provisions properly allocate net VLT proceeds to the Lottery Profits Education Fund to benefit local schools. And third, the VLT Provisions satisfy the single-subject requirement because they relate to the core purpose of the Budget Bill: They deal with the operations of and appropriations for the state government, and they fund critical government operations.

Accordingly, the Court should enter judgment for Respondents on the pleadings, and should do so immediately in order to ensure the stability of the State's budget.

STATEMENT OF THE CASE AND FACTS

A. Lottery regulation has a long history in Ohio.

As explained by the Intervenor-Respondents in *LetOhioVote.org v. Brunner*, No. 2009-1310, the long history of lottery regulation in Ohio is marked by a clear trend. While private gambling initiatives have consistently been disfavored, Ohio's citizens and their elected representatives have generally supported state-sponsored lottery activities that generate revenue for public projects.

The first Constitution of Ohio, adopted in 1802, made no reference to lotteries or gambling. See *Mills-Jennings of Ohio, Inc. v. Dep't of Liquor Control* (1982), 70 Ohio St.2d 95, 99. These activities were regulated only by statute. In 1805, the General Assembly outlawed various forms of gambling and, in 1807, made it "an offense to conduct a lottery 'without a special act of the legislature.'" *Id.* (quoting 5 Ohio Laws 91).

Between 1807 and 1828, the General Assembly authorized lotteries to raise money for an array of public projects. *Id.* For instance, funds from lotteries went "to repair and secure the bank of the Scioto," "to build a bridge across the mouth of the Muskingum river," and "to

improve the navigation of the Cuyahoga and Muskingum rivers.” See 5 Ohio Laws (1806), 89, 105; 5 Ohio Laws (1806), 110; 5 Ohio Laws (1806), 74. The General Assembly also approved lotteries to benefit commercial enterprises that were important to the economic stability of certain regions. For instance, proceeds from an 1824 lottery were “to be used by one Oliver Ormsby to replace a steam mill destroyed by fire in the city of Cincinnati,” 22 Local Laws (1823), 27, and proceeds from an 1828 lottery were used “to rebuild a woolen factory in Lancaster, Fairfield county, for the benefit of one Elisha Barret.” 26 Local Laws (1827), 52. As shown by these legislative acts, the public policy of Ohio during this period included approval of lotteries for public purposes.

That changed in 1851, when the citizens of Ohio reined in the State’s power to conduct lotteries for a period of time. Section 6, Article XV of the Constitution of 1851 provided that “lotteries, and the sale of lottery tickets, for any purpose whatever shall forever be prohibited in this State.” This prohibition did not touch on other forms of gambling, which were addressed by statute rather than in the Constitution itself.

In 1973, however, the tide turned back in support of state-sponsored lottery activities for the benefit of the State. That year, the electorate approved an amendment to Section 6, Article XV of the Ohio Constitution authorizing the operation of a state lottery: “Lotteries, and the sale of lottery tickets for any purpose whatever, shall forever be prohibited in this State, except that the General Asscmbly may authorizc an agency of the State to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants, provided the entire net proceeds of any such lottery are paid into the general revenue fund of the state.”

In 1987, the electorate further amended Section 6, Article XV to require that all State lottery proceeds be directed to education. The amendment permitted the General Assembly to

“authorize an agency of the state to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants, provided that the entire net proceeds of any such lottery are paid into a fund of the state treasury that shall consist solely of such proceeds and shall be used solely for the support of elementary, secondary, vocational, and special education programs as determined in appropriations made by the General Assembly.”

Following these directives, the General Assembly enacted R.C. Chapter 3770, which created a state agency, the State Lottery Commission, to administer the lottery. Under R.C. 3770.03(A), the “commission shall promulgate rules under which a statewide lottery may be conducted.” The rules shall include “[t]he type of lottery to be conducted,” “[t]he prices of tickets in the lottery,” “[t]he number, nature, and value of prize awards,” “the manner and frequency of prize drawings,” and “the manner in which prizes shall be awarded.” R.C. 3770.03(A)(1)-(3). The legislature further instructed the Commission to draft rules pertaining to ticket sales locations, revenue collection, sales agent compensation, and licensing. R.C. 3770.03(B)(1)-(5). The Commission’s current rules are published in Chapters 3770 and 3770:1 of the Administrative Code.

The General Assembly has retained a prohibition on private gambling, subjecting violators to criminal penalties. See R.C. 2915.02; 2915.03; 2915.04. These provisions, however, do not touch on the State lottery, see R.C. 2915.02(C) (“This section does not prohibit conduct in connection with gambling expressly permitted by law.”); 2915.04(C) (same), or to games conducted by registered charitable organizations, see R.C. 2915.02(D).

B. Through recent referendum attempts, private gambling proponents and corporate gambling interests have sought—but failed—to expand private gambling activities in Ohio.

Through proposed amendments to the Ohio Constitution, and through efforts to enact statutory changes in legislation, gambling proponents and corporate gambling entities have

repeatedly tried, but failed, to expand private gambling activities in the State, beyond that offered by the State lottery and charitable organizations. In 1990, these interests sought approval of a casino resort in the City of Lorain. In 1996, they proposed to legalize riverboat gambling across the State. In 2006, they sought permission to install slot machines at various locations. And in 2008, they proposed to construct a casino near the City of Wilmington.¹ Consistent with Ohio's long history of disfavoring private gambling activities—and refusing to allow corporate interests to write generous deals for themselves into the Ohio Constitution—the electorate rejected all four proposed amendments.

Yet another constitutional amendment trumpeted by these interests will be on the ballot this November. See *State ex rel. Scioto Downs, Inc. v. Brunner*, No. 2009-1294, 2009-Ohio-3761. Through this latest proposal, these interests seek to authorize casinos in Cincinnati, Cleveland, Columbus, and Toledo.

These constitutional amendments were proposed not because a *constitutional* modification is necessary to implement casinos in Ohio; various statutory changes could authorize them (just as there have been statutory provisions authorizing charitable gaming and betting on horse races, and various efforts to authorize tribal gambling). Rather, these interests have proposed constitutional amendments so that financial arrangements that are exceedingly favorable to the

¹ For further information on these proposed amendments, see Ohio Issues Report: State Issue Ballot Information for the November 4, 2008 General Election, at 20-26, *available at* http://www.sos.state.oh.us/sos/upload/publications/election/Issues_08.pdf; Ohio Issues Report: State Issues Ballot Information for the November 7, 2006 General Election, at 25-29, *available at* http://www.sos.state.oh.us/sos/upload/elections/2006/gen/IssuesReport_2006.pdf; Secretary of State, Proposed Constitutional Amendments, Initiated Legislation, and Laws Challenged by Referendum, Submitted to the Electors (updated Jan. 23, 2007), *available at* <http://www.sos.state.oh.us/sos/upload/elections/historical/issuchist.pdf>

casinos can be locked into the Ohio Constitution and insulated from statutory modification. To date, Ohio's citizens have rejected these efforts.

C. On a bipartisan vote, the General Assembly passed, and the Governor signed, the Budget Bill for fiscal years 2010-2011, which seeks to raise and appropriate revenue through the installation of video lottery terminals at seven Ohio racetracks.

The issues presented by this case differ radically from the ballot issues described above. Whereas the failed ballot issue attempts were spearheaded by private and corporate interests to promote private gambling activities, the VLT operations at issue here were propounded by a bipartisan legislature and the Governor as a state-run lottery provision for a vital public purpose—namely, to help stanch the worst fiscal crisis in Ohio since the Great Depression.

It is now well-known that several weeks before the close of fiscal year 2009, the Director of the Office of Budget and Management—consistent with the OBM Director's ongoing duty to monitor the budget—informed the Governor and the General Assembly that, in light of declining tax revenues, they would need to compensate for an estimated \$3.2 billion shortfall in the 2010-2011 biennial budget. Given their constitutional mandate to enact a balanced budget, state legislators and the Governor were faced with difficult options—raise taxes on Ohioans, cut public services and benefits, or identify additional revenue.

The Governor and lawmakers made numerous painful cuts in public services and benefits and also resolved to raise more revenue. On July 13, 2009, the Governor issued a directive to the Lottery Director, instructing him to implement immediately a program to license the operation of VLTs at seven Ohio racetracks. See Directive to the Ohio Lottery, Implementing Video Lottery Terminals (July 13, 2009), at ¶ 4 (attached as Ex. A). The Governor estimated that VLTs would generate \$933 million in revenue and licensing fees for the State. *Id.* ¶ 2. This funding would then be directed to education. The Governor instructed that all net proceeds from VLTs “shall be deposited and utilized to benefit education programs in Ohio in the same manner as all other

lottery net proceeds.” *Id.* ¶ 4(f). He made the directive contingent upon an acknowledgment from the General Assembly that the Lottery Commission had the authority to implement VLTs. *Id.* ¶ 5.

That same day, the General Assembly, through bipartisan action, passed the 2010-2011 biennial budget bill, Am. Sub. No. H.B. 1. The Budget Bill acknowledged the Lottery Commission’s authority to implement VLTs. The General Assembly amended R.C. 3770.03(A) to provide that “[t]he state lottery commission shall promulgate rules under which a statewide lottery may be conducted, which includes, and since the original enactment of this section has included, the authority for the commission to operate video lottery terminal games.” Am. Sub. H.B. 1, at 1796 (attached as Ex. B). It also included additional language to that effect: “Any reference in this chapter to tickets shall not be construed to in any way limit the authority of the commission to operate video lottery terminal games.” *Id.*

The General Assembly also amended R.C. 3770.21 to define a VLT as an “electronic device approved by the state lottery commission that provides immediate prize determinations for participants on an electronic display.” *Id.* at 1801. The General Assembly further directed the Lottery Commission to include in any VLT rules the minimum level of investment required by licensees. *Id.* at 1801-02. The legislature also prohibited municipalities and other political subdivisions from assessing new license or excise taxes on the VLTs. *Id.* at 1802.

As explained above, Section 6, Article XV, of the Ohio Constitution mandates that the net proceeds of the Ohio Lottery must go entirely to education. The General Assembly has implemented that constitutional mandate by creating the Lottery Profits Education Fund. R.C. 3770.06(B). Gross proceeds of the Ohio Lottery are deposited into the State Lottery Gross Revenue Fund, which is used to pay certain expenses for lottery operations and prizes. After the

expenses have been paid, the remaining proceeds are deposited into the State Lottery Fund, R.C. 3770.06(A), from which other lottery operation expenses are paid. From there, all net profits from lottery activities—that is, all of the money that is not needed to meet the Ohio Lottery’s expenses and obligations—is transferred to the Lottery Profits Education Fund. R.C. 3770.06(B).

Consistent with these constitutional and statutory provisions, the Budget Bill appropriates all of the net proceeds from the Ohio Lottery, including an estimated \$851.5 million in net profits from VLTs, to elementary and secondary education. Specifically, the Budget Bill allocates \$990 million in fiscal year 2010 and \$1.27 billion in fiscal year 2010 for Ohio schools, for a total of almost \$2.3 billion over the biennium. See Am. Sub. H.B. 1, at 2797 (attached as Ex. C). All of that money is earmarked for Foundation Funding, which is distributed to local school districts based on the formula in Title 33 of the Revised Code. (The Governor and General Assembly substantially revised the Foundation Funding formula in their ongoing efforts to meet this Court’s mandate in *DeRolph v. State*, 78 Ohio St.3d 193, 1997-Ohio-84). The Budget Bill also appropriates \$50,000 per year over the biennium to the Inspector General for VLT oversight. Am. Sub. H.B. 1, § 305.10, at 2866 (attached as Ex. D). The \$2.3 billion in net lottery proceeds is a critical part of the State’s total contribution of \$13,037,282,060 toward education in the current biennium.

The Governor signed the Budget Bill into law on July 17, 2009.

D. LetOhioVote.org filed a petition for writ of mandamus to subject the VLT Provisions to referendum.

On July 20, 2009, a group of relators, including an organization styled LetOhioVote.org, petitioned this Court for a peremptory writ of mandamus against the Ohio Secretary of State. LetOhioVote.org argued that the VLT Provisions are subject to referendum under Section 1c,

Article II of the Ohio Constitution and requested, among other relief, that the Court order the Secretary to set forth in her journals that the VLT Provisions shall not be effective for 90 days. J. Pari Sabety, the Director of the Office of Budget and Management, and Kathleen Burke, the Director of the Ohio Lottery Commission, intervened in the lawsuit arguing that Section 1d, Article II, of the Ohio Constitution exempts from the referendum process the provisions of Am. Sub. H.B. 1 that address video lottery terminals, and that the Lottery Commission has the authority to implement video lottery terminals under the law that existed before the General Assembly enacted Am. Sub. H.B. 1. This Court heard oral argument on LetOhioVote.org's case on September 2, 2009.

E. Relators filed a complaint for declaratory judgment.

On September 3, 2009, Relators petitioned this Court seeking a declaration that: (1) the "General Assembly's insertion in the 2010-2011 biennium budget, Amended Substitute House Bill No. 1, of a plan to implement VLTs violates Ohio Constitution Art. XV § 6, in that the implementation and operation of VLTs does not constitute a lottery within the meaning of Art. XV § 6;" (2) the "Statutes and Rules violate Art. XV § 6 of the Ohio Constitution in that they fail to require that the Lottery Commission to place the entire net proceeds from the operation of VLTs 'into a fund of the state treasury which shall be used solely for the support of elementary, secondary, vocational and special education programs . . .', which is a constitutional condition on the General Assembly's authority to authorize an agency of the state to conduct lotteries"; and (3) the "inclusion in HB 1 of amendments to R.C. §§ 3770.03 and of R.C. §§ 3770.21 violates Article II, Sec. 15(D) because that causes HB 1 to unconstitutionally embrace more than one subject." (Compl., Prayer For Relief ¶¶ (a)-(c).)

STANDARD OF REVIEW

Where, as here, the issues before the Court are legal ones that can be resolved without factual development, judgment on the pleadings is both permitted and appropriate. *State ex rel. Pirman v. Money, Warden*, 69 Ohio St.3d 591, 593, 1994-Ohio-208; S. Ct. Prac. R. X(5). In this case, that course is desirable because an efficient resolution will ensure budgetary stability.

Dismissal is required when it appears beyond doubt, after presuming the truth of all material factual allegations in Relators' complaint and making all reasonable inferences in Relators' favor, that they are not entitled to the requested relief. *State ex rel. Sapp v. Franklin Cty. Ct. of Appeals*, 118 Ohio St.3d 368, 369-70, 2008-Ohio-2637; *Whaley v. Franklin Cty. Bd. Of Comm'rs*, 92 Ohio St.3d 574, 581, 2001-Ohio-1287 (when considering a motion for judgment on the pleadings, the court "is required to construe as true all the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party"). The Court may only consider the allegations in the pleadings and any material incorporated by reference or attached as exhibits to the pleadings. Civ.R. 10(C); *Peterson v. Teodosio* (1973), 34 Ohio St. 2d 161, 165; *Curtis v. Ohio Adult Parole Auth.* (10th Dist.), 2006-Ohio-15 ¶ 24.

Relators challenge the constitutionality of the VLT Provisions (Complaint, Prayer for Relief, ¶¶ (a)–(c), but this Court has repeatedly held that legislative enactments are entitled to a strong presumption of constitutionality. *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St.3d 568, 573, 2006-Ohio-5512 (citing *N. Ohio Patrolmen's Benevolent Assn. v. Parma* (1908), 61 Ohio St. 2d 375, 377); *State ex rel. Taft v. Franklin Cty. Court of Common Pleas*, 81 Ohio St.3d 480, 481, 1998-Ohio-333. "When the validity of a statute is challenged on constitutional grounds, the sole function of the court is to determine whether it transcends the limits of legislative power," not to judge the statute's "policy or

wisdom.” *Ohio Congress*, 111 Ohio St.3d at 573 (quoting *State ex rel. Bishop v. Mt. Orab Village School Dist. Bd. Of Edn.* (1942), 139 Ohio St. 427, 438) (internal quotations omitted).

Accordingly, a party challenging the constitutionality of a statute bears the burden of proving that it is unconstitutional beyond a reasonable doubt. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶ 12; *Ohio Congress*, 111 Ohio St.3d at 573 (“A statute should not be declared unconstitutional unless it appears beyond a reasonable doubt that the legislation and constitutional provision are clearly incompatible.”). In reviewing constitutional claims, the Court “must give due deference to the General Assembly,” *Ohio Congress*, 111 Ohio St.3d at 574, and “apply all presumptions and pertinent rules of construction so as to uphold, if at all possible, a statute or ordinance asserted as unconstitutional.” *State ex rel. Purdy v. Clermont County Bd. of Elections* (1996), 77 Ohio St.3d 338, 345 (citation omitted).

The presumption of constitutionality is all the stronger when, as here, a law is challenged on its face rather than as applied. Both the United States Supreme Court and this Court strongly disfavor facial challenges. See *Wash. State Grange v. Wash. State Republican Party* (2008), 128 S. Ct. 1184, 1190; *State v. Beckley* (1983), 5 Ohio St.3d 4, 8. To succeed, a facial challenge must establish “that the law is unconstitutional in *all* of its applications.” *Wash. State Grange*, 128 S. Ct. at 1190.

ARGUMENT

A. Ohio Constitution Article XV, Section 6 permits the operation of VLTs.

The Roundtable’s first claim is that “VLTs, as defined in R.C. 3770.21(A), were neither contemplated nor included in the definition of ‘lottery’ as used in the Ohio Const. Art. XV § 6,” and therefore “[t]he operation of such devices exceeds the Constitution’s authorization to conduct a lottery.” (Compl. ¶¶ 36, 37.) Article XV, § 6 of the Ohio Constitution provides in part:

Except as otherwise provided in this section, lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State.

The General Assembly may authorize an agency of the state to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants, provided that the entire net proceeds of any such lottery are paid into a fund of the state treasury that shall consist solely of such proceeds and shall be used solely for the support of elementary, secondary, vocational, and special education programs as determined in appropriations made by the General Assembly.

The Constitution therefore bars “lottery” activities unless authorized by the General Assembly. Therefore, the Constitution permits the Lottery Commission, as an authorized “agency of the state,” to operate VLTs if the VLTs qualify as a “lottery.” And as the relevant case law demonstrates, they do.

The definition of “lottery”—which derives from case law interpreting both the Constitution and similar statutory provisions—depends on the presence of three elements: (1) consideration, usually in the form of a price to play; (2) prize; and (3) chance. See *Troy Amusement Co. v. Attenweiler* (2d Dist. 1940), 64 Ohio App. 105, 117; *Wishing Well Club v. Akron* (C.P. Summit County 1951), 66 Ohio Law Abs. 406, 112 N.E.2d 41, syl. ¶ 1. As one court has put it: “Generally speaking a lottery is a scheme for the distribution of prizes by lot or chance. It is well established that to constitute a lottery three elements must be present. There must be consideration given, there must be a prize, and the winning of the prize must be determined by chance.” *Fisher v. State* (8th Dist. 1921), 14 Ohio App. 355, 357. This definition is consistent with case law directly interpreting Section 6 of Article XV. See, e.g., *Nadlin v. Starick* (C.P. Montgomery County 1963), 24 Ohio Op. 2d 272, 274; 1975 Op. Att’y Gen. No. 75-005 at 2-18. A lottery is a subset of gambling. See *State ex rel. Gabalac v. New Universal Congregation of Living Souls* (9th Dist. 1977), 55 Ohio App. 2d 96 (“A lottery is a species of gambling . . .”). That is to say, “[t]he term ‘gambling’ includes a lottery but is broader and may encompass more than the term ‘lottery.’” *Westerhaus v. Cincinnati* (1956), 165 Ohio St. 327, syl. ¶ 8.

VLTs carry each of the three required characteristics of a “lottery.” The VLT Provisions of the Budget Bill define a VLT as an “electronic device approved by the state lottery commission that provides immediate prize determinations for participants on an electronic display.” Budget Bill at 1801 (Ex. B). The Lottery Commission’s VLT regulations add that a VLT “is connected to a centralized computer system and generates the outcome of each play using a random number generator and communicates video lottery gaming information to a participant via an electronic display.” O.A.C. 3770:2-2-01(PP) (Rel. Ex. C). The regulations in turn define a “video lottery game” as “any game authorized by the director, commission or commissioners, as applicable, that provides immediate prize determinations, and that is played on a video lottery terminal.” *Id.* at 3770:2-2-01(JJ). The VLTs entail the issuance of a “video lottery ticket,” which “means an electronic or virtual instrument to enable a participant to play a video lottery game.” *Id.* at 3770:2-2-01(KK).

The games conducted on VLTs closely resemble the games that the Lottery Commission has long operated. The lottery includes the more traditional number-match games, such as Pick Three, Pick Four, Rolling Cash Five, Classic Lotto, and Mega Millions[®]. To take one example, in the “Classic Lotto” game, participants select six numbers, from one through 49, which are then entered into a lottery terminal. O.A.C. 3770:1-9-53(B)(2). Alternatively, participants can select the “auto pick” function, whereby the terminal generates six random numbers. *Id.* The terminal then produces a ticket reprinting those numbers, which the participant purchases for \$1. O.A.C. 3770:1-9-53(B),(C). The Lottery Commission conducts regular drawings, selecting a random assortment of numbers for each drawing. O.A.C. 3770:1-9-53(B)(3). If a participant’s ticket matches three or more numbers selected during the appropriate drawing, he is entitled to a prize. O.A.C. 3770:1-9-53(D).

The Commission also offers Keno, a more complex number-match game. A participant (or the “auto pick” function) chooses anywhere from one to 10 numbers out of a pool of 80, O.A.C. 3770:1-9-55(B)(2), and the player then wagers between \$1 and \$20. O.A.C. 3770:1-9-55(C). The Lottery Commission conducts a computer-assisted drawing every four minutes in which 20 of the 80 numbers are selected, O.A.C. 3770:1-9-55(B)(4), and it broadcasts the drawing on monitors at locations across the State. The quantity of numbers matched determines the participant’s prize. O.A.C. 3770:1-9-55(D).

The Lottery Commission also has used its constitutional and statutory authority to design games that differ from traditional number-match games. For instance, the Commission offers instant-win “scratch-off” games that resemble casino-type activities such as slots, blackjack, and poker. Unlike the traditional number-match games, no drawing occurs. Instead, the holder of an instant game knows immediately whether she has won a prize. For instance, in the \$1 “Slots of Luck” instant game, the participant has five “spins” on a printed slot machine. O.A.C. 3770:1-9-668(B); Evidence of Intervenor-Respondents, Ex. E, *LetOhioVote.org v. Brunner*, 2009-1310. If the ticket reveals three identical symbols on the same spin, or a “WIN” symbol, the player wins a prize of between \$1 and \$100. The Lottery Commission predetermines the number of prizes in a given sales cycle for each game and then authorizes the printing of a corresponding number of tickets using random techniques. See O.A.C. 3770:1-9-668(E).

The Commission also offers instant computer-based EZPLAY™ games. In one such game, the participant pays \$3 to the sales agent, and a computer terminal generates a ticket consisting of nine poker “hands” and 24 playing cards. O.A.C. 3770:1-9-634(B). The participant then attempts to create one of the nine “hands” from the group of cards. If the participant succeeds in putting together one of the hands, he wins a prize. O.A.C. 3770:1-9-

634(D); Evidence of Intervenor-Respondents, Ex. F, *LetOhioVote.org v. Brunner*, 2009-1310. Unlike the traditional instant scratch-off games, which use preprinted card stock, the EZPLAY™ games are instantaneously generated by a lottery computer at the time of purchase.

These instant games are far different from the traditional number-match lotteries, but the Lottery Commission has operated them since 1976 without challenge. That is so because the Commission has broad authority to operate any “type of lottery” and specify “the manner” in which lottery tickets are sold. R.C. 3770.03(A)(1), (B)(1). Specifically, R.C. 3770.03(A) states that “[t]he state lottery commission shall promulgate rules under which a statewide lottery may be conducted.” The General Assembly did not place any restraint on the Commission in the design of the lottery other than requiring the Commission to enact rules governing “[t]he type of lottery to be conducted,” “[t]he prices of the tickets in the lottery,” and “[t]he number, nature, and value of prize awards, the manner and frequency of prize drawings, and the manner in which prizes shall be awarded to holders of winning tickets.” *Id.* As long as the game qualifies as a lottery—“consideration given,” “a prize,” and “the winning of the prize . . . determined by chance,” *Fisher*, 14 Ohio App. at 357—the Lottery Commission can offer it.

VLTs operate in that vein. The participant may insert coins, currency, or tokens into the VLT, which then creates an electronic game ticket that allows the participant to play the video lottery game. The VLT then generates a game on an electronic display—for instance, a slots-like game. The participant interacts with the game by touching the VLT screen or instruments on the terminal. If a winning combination of cards, numbers, or symbols emerges, the VLT will assign a credit to the participant. The participant can then use the credits to purchase further games on the VLT, or he can redeem credits for cash or other prizes. And, as it does now, the Lottery

Commission would determine the price of each game, the prize structure, and the frequency of the payouts on the VLTs.

The VLT is functionally identical to an instant scratch-off or EZPLAY™ game. Take, for instance, the “Slots of Luck” instant game. A participant buys the ticket for \$1 from a sales agent; he scratches off his five hypothetical “spins” of the slot machine and learns immediately whether he has won a cash prize. Nothing the participant does after the point of sale will alter the outcome. Months before the sale, the Lottery Commission adopted rules determining how many prizes will be distributed in the game, see O.A.C. 3770:1-9-668(E), and it distributed the winning instant tickets randomly throughout the lottery system. The only question is whether the participant was lucky enough to purchase a winner.

The same holds true for VLTs. A participant could insert, say, \$1 into a VLT to generate a video-based slots-like game. See O.A.C. 3770:2-7-01(C). His electronic display then shows “spins” and the player learns whether he has won. As with the instant scratch-off games, this VLT game is predetermined. As soon as the participant inserts his money, the computer generates a game with a predetermined outcome. In other words, the computer issues the equivalent of a virtual or electronic instant scratch-off ticket, nothing more. The computer randomly generates the games and their accompanying prizes based on rules adopted by the Commission and programmed into the VLT system. *Id.* at 3770:2-2-01(HH) & (PP). The difference between a VLT and an instant scratch-off game is simply form, not substance. And this is precisely why the machines are called *video lottery* terminals.

VLTs are so similar to existing lottery games that the General Assembly, in enacting the Budget Bill, treated VLTs not as a new type of lottery activity, but rather as the type of lottery that the Commission was always authorized to conduct. Amended R.C. 3770.03(A) states that

“[t]he state lottery commission shall promulgate rules under which a statewide lottery may be conducted, which includes, and since the original enactment of this section has included, the authority for the commission to operate video lottery terminal games.” Am. Sub. H.B. 1, at 1796. This statement by the General Assembly—which confirms that VLTs are a traditional form of lottery activity—is entitled to a “presumption of constitutionality,” *State ex rel. Taft v. Franklin Cty. Court of Common Pleas*, 81 Ohio St.3d 480, 481, 1998-Ohio-333, and a party challenging the constitutionality of a statute bears the burden of proving that it is unconstitutional beyond a reasonable doubt, *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, ¶ 12. “[T]he court must apply all presumptions and pertinent rules of construction so as to uphold, if at all possible, a statute or ordinance asserted as unconstitutional.” *State ex rel. Purdy v. Clermont Cty. Bd. of Elections* (1996), 77 Ohio St.3d 338, 345 (citation omitted). That heavy burden is not met here.

Case law from other jurisdictions confirms that VLTs amount to a “lottery.” In *Dalton v. Pataki* (2005), 5 N.Y.3D 243, 255, the New York high court, after reciting the same presumption of constitutionality, concluded that VLTs constitute a “lottery” under a New York constitutional provision that is highly similar to Ohio’s Article XV, § 6. Likewise, the Supreme Court of West Virginia, using the same three-part definition of “lottery” as exists under the Ohio case law, held that VLTs constitute a “lottery” rather than “gambling.” *State of W. Va. ex rel. Cities of Charleston & Huntington v. W. Va. Econ. Dev. Auth.* (W.Va. 2003), 588 S.E.2d 655, 667-70. Moreover, to the extent that VLTs resemble slot machines, other courts have confirmed that such machines constitute a “lottery.” See *State ex rel. Evans v. Bhd. of Friends* (Wash. 1952), 247 P.2d 787, 796; *State v. Marck* (Mont. 1950), 220 P.2d 1017, 1018 (same).

All of this goes to show that VLTs constitute a “lottery” authorized by the General Assembly under Section 6 of Article XV. But if the Court does not wish to decide the “lottery” question, it need not do so. Put simply, the statutorily authorized implementation of VLTs is constitutionally permissible either way—regardless of whether VLTs are lottery games or not—because nothing in the constitution prohibits the General Assembly from authorizing VLTs. If they are lottery games, as the General Assembly asserts they are, then there are special constitutional requirements with respect to their administration and the use of net profits they generate. Ohio Const., art. XV, § 6. If they are not lottery games—a contention with which the State disagrees—then they are simply another statutorily authorized form of gambling, like charitable gaming or horse racing, assigned by the General Assembly to the Lottery Commission for administration. This Court has explained that “gambling” is a broader category than “lotteries,” *Westerhaus*, 165 Ohio St. 327 at syl. ¶ 8, and the Constitution does not prohibit “gambling” more generally—only “lotteries” not authorized by law. In other words, if VLTs do not constitute a “lottery,” then they necessarily fall within the broader category of “gambling,” and the Constitution does not prevent the General Assembly from authorizing “gambling” activities more generally. Thus, nothing in the Constitution prohibits the General Assembly from authorizing VLTs even if VLTs do not constitute a “lottery.” And to the extent that the Revised Code prohibits gambling, it exempts from that prohibition activities authorized by the General Assembly—as VLTs obviously are. R.C. 2915.02(C).

The Roundtable’s first claim therefore fails. The General Assembly has declared that VLTs are a lottery, and that statement not only deserves deference, but it is consistent with the history of the Lottery Commission’s authority and standard definitions of the term. But even if VLTs do not amount to a “lottery,” the Constitution permits the General Assembly to authorize VLTs.

B. The 50% commission payable to VLT agents is not derived from “net proceeds” and therefore does not violate Article XV, § 6 of the Ohio Constitution.

The Roundtable’s second claim is that the 50% commission payable to VLT agents according to O.A.C. 3770:2-3-08(A) “is an arbitrarily selected figure that in most or all cases will bear no relation to the actual expenses of VLT operations and will not result in such net proceeds being applied as required by Art. XV § 6.” (Compl. ¶ 41.) Article XV, § 6 requires all net proceeds from the lottery to be paid into a special fund to be used “solely for the support of elementary, secondary, vocational, and special education programs.”

Relators’ claim has no merit because it is founded on erroneous factual assumptions. The 50% commissions to VLT agents are not deducted from “net proceeds” that are constitutionally required to be dedicated exclusively to education. Rather, the commissions are legitimate expenses derived from *gross* proceeds. And Relators fail to account for the extensive expenses that the statute and regulations require the VLT licensees to undertake, all of which eat into the licensees’ share of the take.

The Ohio Constitution does not define “net proceeds” for purposes of Article XV, § 6. However, the General Assembly, through R.C. 3770.06, defines proper deductions from gross proceeds and methodically walks through how to arrive at net proceeds. The statute—which Relators do not challenge, and which has *never* been challenged—makes clear that commissions based on lottery sales, such as the one prescribed by O.A.C. 3770:2-3-08(A), are authorized expenses deducted from gross proceeds, and are therefore not part of the net proceeds that must be dedicated to the constitutionally mandated education fund, known as the Lottery Profits Education Fund. R.C. 3770.06(A) & (B).

The net proceeds calculation is as follows: First, “all gross revenues received from sales of lottery tickets, fines, fees, and related proceeds in connection with the statewide lottery” shall be

deposited into the Lottery Gross Revenue Fund. R.C. 3770.06(A). Next, all the revenues in the Lottery Gross Revenue Fund that remain after various payouts—specifically, the payment of prize money, payments “to lottery sales agents *in the form of bonuses, commissions, or reimbursements*,” payments to financial institutions to cover lottery agents’ insufficient funds, and payments for bonding services—“shall be transferred to the State Lottery Fund.” *Id.* (Emphasis added). Finally, when the amount in the State Lottery Fund exceeds the amount needed to meet the obligations and operational expenses of the Lottery Commission, those excess funds constitute the entire net proceeds of the lottery and “the director shall transfer” those excess funds to the Lottery Profits Education Fund, the constitutionally mandated special fund for lottery net proceeds. R.C. 3770.06(B).

In short, R.C. 3770.06(A) explicitly recognizes that commissions to lottery agents are a valid deduction from lottery gross proceeds and are therefore separate from the net proceeds that must be dedicated to the Lottery Profits Education Fund. In turn, R.C. 3770.03(B)(3), which defines the powers and duties of the Lottery Commission, explicitly grants the Lottery Commission authority to determine “[t]he amount of compensation to be paid licensed lottery sales agents.” Relators’ ancillary claim—that the new VLT rules exempt video lottery gaming from O.A.C. 3770:1-5-10, the rules governing disbursements to the Lottery Profits Education Fund—is plainly wrong and neglects to take note of a rule that says precisely the opposite. (Compl. ¶ 42.) That is, while the new rule O.A.C. 3770:2-1-01(C) exempts video lottery gaming from *some* pre-existing lottery regulations, it grants no exemption from those pre-existing rules “specifically incorporated by reference” in the new rules. As the new rule O.A.C. 3770:2-1-02 then makes clear, the disbursement rules in O.A.C. 3770:1-5-10 “*are incorporated and shall apply* to the provisions of division 3770:2.” (Emphasis added). Simply put, the new rules for

VLTs do not exempt VLT operations from the rules governing how net proceeds are dedicated. Rather, the new rules expressly incorporate and apply the pre-existing rules for directing lottery net proceeds to the Lottery Profits Education Fund.

This Court's analysis of Relators' second claim can end here. R.C. 3770.06 has long made clear that commissions to lottery agents are a valid lottery expense, properly deducted from lottery gross revenues, and therefore not included in the net proceeds that must be dedicated to education. And the General Assembly has explicitly authorized the Lottery Commission to determine the specific amount of compensation to be paid to lottery sales agents. R.C. 3770.03(B)(3). There has never been a constitutional challenge to R.C. 3770.06 or the distinction it draws between commissions and net proceeds, or to the General Assembly's delegation of authority to the Lottery Commission to determine compensation for lottery agents—nor do Relators mount such a challenge here. Accordingly, there is no basis for this Court to find O.A.C. 3770:2-3-08(A) facially unconstitutional.

A more searching analysis of the 50% commission—although unnecessary as a matter of law—simply confirms that there is no constitutional infirmity here. As just discussed, the General Assembly has long recognized through R.C. 3770.06 that “bonuses” and “commissions” paid to lottery agents are proper lottery expenses that are separate from net proceeds and, through R.C. 3770.03(B)(3), the General Assembly has authorized the Lottery Commission to determine the specific amount of commissions. Not only do these commissions leave intact the entire sum of net proceeds required to be dedicated to education, but their purpose, over time, is to increase the amount of net proceeds and thereby promote—not vitiate—the spirit and purpose of Article XV, § 6. As the General Assembly and the Lottery Commission understood, the VLTs and the racing tracks have a symbiotic relationship: To maximize lottery proceeds for education, both

the VLT enterprise and the race tracks must remain healthy, because the racetracks will be the only VLT vendors in the State. If the racetracks decline, the overall use of VLTs will likewise decline and the VLT lottery will generate less money for education.

In the absence of a definition of “net proceeds” in Article XV, § 6, the General Assembly’s decision to permit commissions to be deducted from gross revenues as expenses was a policy decision. It is well-settled that it is for the legislature, not the courts, to make these policy decisions. See *Ohio Congress*, 111 Ohio St.3d at 573. And it is reasonable to assume that offering commission-based incentives to VLT agents will elevate the level of horseracing in the State, thereby bringing more visitors to Ohio’s racetracks. And more visitors to the racetracks means more players of VLTs, which in turn means greater net proceeds to support education. Relators are doing nothing short of asking this Court to substitute its policy judgment for the judgment of the General Assembly in determining that commissions are not reasonable expenses relating to the operation of VLTs.

Relators also improperly attack the 50% commission to VLT agents as speculative, claiming that it “will bear no relation to the actual expense of VLT operations.” (Compl. ¶ 41.) As a preliminary matter, that contention finds no support on the face of the statute and therefore fails to overcome the strong presumption of constitutionality that attaches to every law. See *Ohio Congress*, 111 Ohio St.3d at 573. Relators also fail to demonstrate—or even plead—that there is no set of circumstances under which the commission would be valid, as they are required to do in a facial challenge. See *Wash. State Grange*, 128 S. Ct. at 1190. Accordingly, Relators cannot show that the 50% commission is facially unconstitutional.

In any event, commissions and bonuses—both authorized under R.C. 3770.06—by definition are not meant perfectly to reflect actual costs. Rather, commissions are offered both as

reimbursement and as an incentive for agents to promote lottery sales on their premises. As New York's highest court properly recognized in considering substantially the same question in a challenge to New York's VLT rules, these commissions are a "necessary administrative cost of operating the lottery, because if there is no one to sell tickets (or operate VLTs), there will be no lottery, and ultimately no money for education." *Dalton v. Pataki* (2005), 5 N.Y.3d 243, 269. Indeed, it has long been routine in Ohio for lottery agents to be paid commissions based on a percentage of sales. For example, every lottery ticket agent in the State receives a commission of 5.5% of total ticket sales and up to an additional 1.5% bonus based on their cashing ratio. See <http://www.ohiolottery.com/agents/becoming.html>. The same applies to Keno agents. See http://www.ohiolottery.com/games/keno/faq_new.html.

With the General Assembly, through R.C. 3770.06, having authorized commissions as legitimate expenses properly deducted from gross revenues and separate from net proceeds, and with Article XV, § 6 granting the General Assembly authority to delegate administrative responsibilities for the lottery to a State agency, the precise percentage of any commission for lottery agents—including VLT agents—is within the discretion of the Lottery Commission, and not for courts to second guess. See, *Northwestern Ohio Building & Construction Trades Council v. Conrad* (2001), 92 Ohio St.3d 282, 287 ("It is axiomatic that if a statute provides the authority for an administrative agency to perform a specific act, but does not provide the details by which the act should be performed, the agency is to perform the act in a reasonable manner based upon a reasonable construction of the statutory scheme."). Indeed, it is well settled that "[a] court must give due deference to the agency's reasonable interpretation of the legislative scheme." *Id.* Thus, once it is determined that VLT games fall within the definition of a lottery, and once the General Assembly has statutorily authorized commissions, prize payouts, and the like as

legitimate lottery expenses, it is for the Lottery Commission to determine what specific portion of lottery gross revenues to devote to prizes, costs, expenses, and other amounts related to the operation of the lottery, none of which are considered “net proceeds.”

Not only is Relators’ invitation for this Court to second-guess the percentage commission unwarranted as a matter of law and not within the purview of this Court, but it also finds no support from the face of the VLT rules. Indeed, a review of the VLT rules shows that the 50% commission is hardly the unreasonable windfall that Relators suggest.

First, in terms of percentages, the 50% commission is only a small fraction of revenues from VLT sales. That is, O.A.C. 3770:2-3-08(A) states that VLT agents shall receive a commission “in the amount of fifty percent of the video lottery terminal income.” In the definitions section of the new rules, “Video lottery terminal income” is defined as the “credit(s) played, less value credits, less video lottery gaming prize winnings.” See O.A.C. 3770:2-2-01(QQ). “Value credits” do not generate income and therefore have a value of zero for purposes of calculating video lottery terminal income, see O.A.C. 3770:2-2-01(FF), and therefore, “video lottery terminal income” is simply the amount players expend to play VLTs minus prize payouts. The new rules then provide that “each video lottery game shall provide an average minimum payout of eighty-five percent.” O.A.C. 3770:2-10-60. In other words, “video lottery terminal income” will be, at most, 15% of total VLT sales (since at least 85% of VLT sales must be paid out in prize money), and the VLT agents’ 50% commission comes from that 15%. ***Accordingly, the VLT agents’ commission will be, at most, 7.5% of total VLT sales.*** And it is critical to remember that VLT sales are, themselves, only a fraction of the gross revenue anticipated from VLTs. For instance, among other revenues, the States will earn \$65 to \$80 million in video lottery licensing fees from each agent. O.A.C. 3770-2:3-01(31), (32), & (33). Simply put, the

50% commission based on “video lottery terminal income” amounts to, at most, a 7.5% commission on VLT sales, which itself is only a fraction of VLT gross revenues. Accordingly, Relators’ have no basis for claiming that, on their face, the new rules unconstitutionally divert what should be “net proceeds” for education.²

Moreover, as discussed above, all other lottery agents (for instance ordinary ticket agents or Keno agents) can receive a commission of 5.5% on sales, an additional 1.5% based on their cashing ratio, and other bonuses (for instance, for selling winning tickets of a certain prize value). That VLT agents will be paid a 7.5% commission—that is, a commission at most half a percent higher than all other agents—is hardly excessive. In fact, the modestly more generous VLT agent commission is well-supported by the significant expenditures the new VLT rules require these agents to make in order to operate VLTs. For instance, among other expenditures:

- Prospective VLT agents must pay a nonrefundable application fee of at least \$100,000. (O.A.C. 3370:2-3-01(B)(2));
- Once approved, the VLT agents must pay a video lottery licensing fee of \$65 million or \$80 million, depending upon when they apply for the license. (O.A.C. 3770:2-3-01(B)(31)-(33)).
- Within five years following the commencement of VLT operations, each VLT agent must make at least \$80 million in facility improvements, with at least \$20 million of improvements in the first year alone. (O.A.C. 3770:2-3-01(B)(19)).
- VLT agents must secure performance and payment bonds, construction bonds, surety bonds (a minimum of \$2 million), and fidelity bonds, and must obtain casualty, workers’

² It is not only in the VLT arena that a 50% commission, once contextualized, amounts to much less. The horseracing industry is another example. For instance, R.C. 3769.08(B) and (F) provide thoroughbred and harness racing permit holders a 50% commission on pari-mutuel wagers once state taxes and expenses have been paid. Because the payout rate on the win, place, and show pools for pari-mutuel wagering is 82%, however, the 50% commission is only paid on whatever remains of the 18% once a graduated tax of up to 4% is paid to the State. O.A.C. 3769-3-01. Likewise, R.C. 3769.08(B) provides a 50% commission for exotic racing (daily double, quinella, perfecta, and trifecta), but because the prize payout for the exotic pool is 77.5%, the 50% commission for exotic pool racing agents is only applied to that portion of the 22.5% remaining after State taxes have been deducted. O.A.C. 3769-3-02.

compensation, property, and liability insurance for VLT operations. (O.A.C. 3770:2-3-01(B)(10)).

- VLT agents must furnish 24-hour security and surveillance for the VLT play areas, including security and surveillance personnel. (O.A.C. 3770:2-3-01(B)(7), 3770:2-6-03).
- VLT agents must have personnel available to facilitate the maintenance, repair, and service of VLTs and must agree to hire and compensate adequate personnel to ensure compliance with lottery laws and regulations, including but not limited to security, surveillance, financial, technical, and audit staff. (O.A.C. 3770:2-3-01(B)(24) & (27)).
- VLT agents must supply a sufficient amount of paper or other media for credit vouchers and are responsible for loading and replenishing the VLT paper supply. (O.A.C. 3770:2-3-01(B)(22)).
- VLT agents must establish a responsible gaming program for the benefit of problem gamblers. (O.A.C. 3770:2-8-01).

These expenditures far surpass the outlay required by ordinary lottery ticket agents and Keno agents, whose expenses are a one-time \$25 license fee, a \$12 per week communication/satellite fee, and a \$20,000 bond (which ranges in cost from \$150-\$400). And those agents receive up to a 7% commission/cashing-ratio bonus. Accordingly, the modestly more generous sales commission received by VLT agents—7.5% of sales minus prize payouts—is not facially unreasonable.

Finally, case law from the other jurisdiction to have considered this issue confirms that VLT agent commissions are within the discretion of policymakers, such as the General Assembly and the Lottery Commission, not the courts. In *Dalton v. Pataki* (2005), 5 N.Y.3D 243, 268, the New York high court determined that the legislature (which was the lottery rulemaking body in that state) “was entitled to determine . . . that a revitalized racing industry would attract more visitors to the racetracks—where VLTs were to be located—who would in turn participate in increased video lottery gaming, thus raising additional revenue for education.” The court concluded that a commission to VLT agents was “offered not only as reimbursement

but also as an incentive for the vendor to offer lottery tickets for sale on the vendors premises,” and that this commission “is a necessary administrative cost of operating the lottery.” *Id.* Moreover, plaintiffs in that case, like Relators here, challenged the specific percentage set for the commission. But the court properly recognized that “[i]t is generally not for the courts to determine whether a particular vendor’s fee. . . is reasonable.” *Id.* Indeed, the court pointed out that every other lottery agent in the state received a fee of 6% of total ticket sales, and that there was no basis for concluding that the VLT agent’s commission was, on its face, “inflated” by comparison—let alone unconstitutionally so. *Id.* at 269-70.

The Roundtable’s second claim therefore fails. The General Assembly has determined that lottery agent commissions are a valid lottery expense, properly deducted from lottery gross revenues, and therefore separate from the net proceeds that must be dedicated to education. That statutory provision has never been challenged, and is not challenged by Relators here. And as to the specific 50% commission set forth in O.A.C. 3770:2-3-08(A), it is entitled to deference by this Court and is only a small fraction of total VLT sales, which, in turn, are only a fraction of total gross revenues expected from VLT operations. In short, Relators have failed to plead and cannot demonstrate that O.A.C. 3770:2-3-08(A), on its face, unconstitutionally diverts net proceeds from education.

Finally, if the Court decides that VLTs are not a “lottery” within the meaning of the Constitution but are nonetheless constitutionally permissible (because the General Assembly can authorize gambling more generally, as argued in Part A above), then the constitutional mandate that lottery net proceeds go toward education drops away. In that case, Relators’ second claim is beside the point and should be dismissed.

C. The VLT Provisions satisfy the single-subject rule of the Ohio Constitution.

Relators' third claim is that the VLT Provisions violate the single-subject rule of the Ohio Constitution. Compl. ¶¶ 50-54. Article II, Section 15(D) of the Ohio Constitution provides that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." Relators' claim fails on its face, because the VLT Provisions comply with the one-subject requirement.

The single-subject rule as interpreted by this Court is not onerous. The Court has long recognized that "the mere fact that a bill embraces more than one topic is not fatal, as long as a common purpose or relationship exists between the topics." *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 229, 1994-Ohio-1 (citing *State ex rel. Dix v. Celeste* (1984), 11 Ohio St.3d 141). An enactment will be struck down as invalid only when it is so unrelated to other provisions as to constitute a "manifestly gross and fraudulent violation" of the single-subject rule. *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, ¶ 45; *Voinovich*, 69 Ohio St.3d at 229. Given the Court's acknowledgement of a strong presumption of constitutionality to legislative enactments, *Dix*, 11 Ohio St.3d at 142, the "manifestly gross and fraudulent" standard ensures that the single-subject rule will not be construed in a way that unnecessarily restricts the General Assembly's plenary powers to make laws or to multiply excessively the number of legislative enactments. *Id.* at 145.

The Court has also recognized the special nature of appropriation measures when it comes to the single-subject requirement. The Court has observed that "appropriations bills, of necessity, encompass many items, all bound by the thread of appropriations." *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 16, 1999-Ohio-77. Therefore, a plurality of subjects within a budget bill does not destroy unity so long as the provisions in question share the common thread of appropriations. For example, in *Comtech Systems, Inc. v. Limbach* (1991), 59 Ohio St.3d 96, 99,

the Court rejected a single-subject challenge to a tax provision, explaining that the law at issue was “an appropriations bill and deal[t] with the operations of state government,” and that the law could “contain a new object of taxation because the tax fund[ed] government operations described elsewhere in the Act.”

Other cases are even more squarely on point. In a case dealing with the authority of the Lottery Commission, the Tenth District Court of Appeals held that portions of a budget bill that authorized Ohio’s participation in the Multi-State Lottery Agreement (“Mega Millions”) did not violate the single-subject rule. See *State ex rel. Ohio Roundtable v. Taft* (10th Dist.), 2003-Ohio-3340, discretionary appeal denied by *State ex rel. Ohio Roundtable v. Taft*, 100 Ohio St.3d 1484, 2003-Ohio-5992. Like the Budget Bill at issue here, Am. Sub. H.B. 405 was enacted in 2002 to address the State’s worsening financial situation and to provide a stream of revenue through a budget correction bill. 2003-Ohio-3340, at ¶ 48. The legislation authorized the Lottery Commission to enter into the multi-state lottery “with the expectation that it would generate an estimated \$41 million per year in additional revenue to Ohio schools.” *Id.* at ¶ 49. Although Am. Sub. H.B. 405 affected a “multiplicity of Revised Code sections and other topics,” *id.* at ¶ 48, the appeals court found that Am. Sub. H.B. 405 did not violate the single-subject provision in Article II, Section 15(D) of the Ohio Constitution, because the lottery provisions and the remaining provisions of the bill “revolve around the ‘common thread of appropriation’ and revenue, particularly enhancements to revenue.” *Id.* at ¶ 48. The multi-state lottery provisions were “firmly related to the central appropriations core of the bill.” *Id.* at ¶ 49.

The same is true here. The VLT Provisions are a critical piece in the massive biennial Budget Bill. Indeed, as explained above in the Statement of Facts, the whole purpose of the VLT Provisions was to help close a \$3.2 billion budget shortfall. After making painful cuts in public

services and benefits, the Governor directed the Lottery Commission to implement immediately the program to license VLTs at seven Ohio racetracks. See Directive to the Ohio Lottery, Implementing Video Lottery Terminals (July 13, 2009), at ¶ 4 (Ex. A). The directive was followed by the General Assembly’s express acknowledgment in the Budget Bill that the Lottery Commission has, and always has had, the authority to implement VLTs. Am. Sub. H.B. 1, at 1796 (Ex. B).

To that end, all of the net proceeds from VLTs over the biennium—a projected \$933 million—will be deposited in the Lottery Profits Education Fund, R.C. 3770.06, and will go to local schools. Specifically, Section 265.10 of the Budget Bill sets forth the biennial appropriations for the Department of Education, and appropriation line item 200612 allocates nearly \$2.3 billion from the Lottery Profits Education Fund, including the VLT net proceeds, to local schools. (Ex. C.) The money is to be distributed according to the Foundation Funding formula set forth in Title 33 of the Revised Code.

The VLT Provisions are consistent with the single subject of the Budget Bill: They “deal[] with the operations of the state government” and “fund[] government operations described elsewhere in the Act.” *Comtech*, 59 Ohio St.3d at 99. This legislation is not an example of the kind of “logrolling” that the single-subject rule is designed to prevent, see *id.* at 99, because gross disunity in purpose and subject matter does not exist between the money raised by VLTs and the appropriations to local schools. For that reason, this case does not implicate the concerns raised in *Simmons-Harris*, 86 Ohio St.3d 1, where the Court ruled that the school voucher program introduced in the 1996-1997 biennial budget was a “rider” attached to an appropriations bill. There was no record in the *Simmons-Harris* case that the school voucher program was enacted to address a budget shortfall or to produce vital revenue for the State. Rather, the

substantive school voucher provisions were slipped into a budget bill with no relation to spending. *Id.* at 17. The VLT Provisions, by contrast, merely recognize the Lottery Commission's preexisting authority to operate VLTs. Moreover, they create a stream of revenue and are inextricably tied to appropriations, and they are a proper part of the Budget Bill.

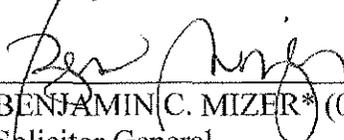
This Court's case law therefore establishes that the VLT Provisions are consistent with the one-subject requirement.

CONCLUSION

For the above reasons, the Court should grant Respondents' motion for judgment on the pleadings.

Respectfully submitted,

RICHARD A. CORDRAY (0038034)
Attorney General of Ohio


BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ALEXANDRA T. SCHIMMER (0075732)
Chief Deputy Solicitor General

RICHARD N. COGLIANESE (0066830)

MINDY WORLY (0037395)

ERICK D. GALE (0075723)

PEARL M. CHIN (0078810)

MICHAEL J. SCHULER (0082390)

Assistant Attorneys General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that a copy of the above Motion for Judgment on the Pleadings and Memorandum in Support was served by U.S. mail on this 11th day of September, 2009 upon the following counsel:

David Axelrod
Axelrod LLC
250 Civic Center Drive, Suite 500
Columbus, Ohio 43215
614-222-2032
david@axelrodohio.com

Kari B. Hertel
KBH Law Office
4607 Wuerz Court
Dublin, Ohio 43016
614-306-8638
KBHlaw@yahoo.com

Counsel for Relators
Ohio Policy Roundtable, David P. Zanotti,
John W. Edgar, and Sandra L. Walgate

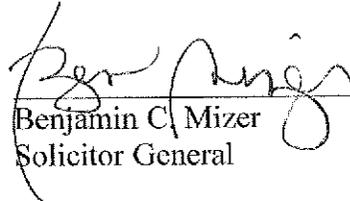

Benjamin C. Mizer
Solicitor General

EXHIBIT A

Directive to the Ohio Lottery

July 13, 2009

Implementing Video Lottery Terminals

1. **Ohio is Facing Significant Economic Challenges.** The national economic recession has caused many and substantial hardships for the people of Ohio. Many Ohioans rely on the health, safety and welfare services provided by the State. Declining employment and recessionary sales have led to declining tax revenues realized by the State, making it more and more challenging for the State to provide the educational, health and other services its people deserve. Without additional revenues, the State would be required to cut services even beyond the significant levels already undertaken and under consideration in current budget discussions.
2. **The Implementation of Video Lottery Terminals (VLTs) is an Important Part of Ohio's Balanced Budget Plan.** The immediate implementation of VLTs by the Ohio Lottery is projected to generate approximately \$933 million in net proceeds during the coming biennium. The dedication of that revenue to education programs is critical to our continued efforts to strengthen Ohio's education system. Increased lottery revenues allow the state to dedicate scarce general revenue funds to critical programs benefiting the health, safety and welfare of Ohio's citizens, avoiding devastating cuts to those programs.
3. **Implementation of VLTs Should Only Be Undertaken With Strong Legal Footing.** The Ohio Constitution authorizes the General Assembly to establish an agency of the State to manage lottery games to support education programs. The General Assembly has established the Ohio Lottery as that agency and has enacted various statutes authorizing the lottery to conduct and operate lottery games in accordance with the Constitution. The General Assembly has indicated to me its intent to pass legislation which would expressly acknowledge that the Ohio Lottery has the authority to implement VLTs under the existing laws of the State of Ohio and that the implementation of VLTs does not violate any provision of Ohio's separate prohibitions on gambling activity.
4. **The Lottery Director Should Immediately Take Steps to Implement VLTs.** With an express acknowledgement of the General Assembly that the Ohio Lottery has the authority to implement VLTs, I believe that the Ohio Lottery can, and I direct the Lottery Director to, adopt rules regarding the implementation of VLTs and immediately take steps to implement VLTs in accordance with the following requirements unless and until they are modified or rejected by the General Assembly:
 - a. **VLTs Should Only Operate At Licensed Racetrack Facilities.** So as to limit the proliferation of gambling activity to locations in which the local community has expressed its support for such activity, the Lottery Director should assure that

licenses to operate VLTs are issued only to those who will operate the VLTs at facilities operated by those already licensed to offer pari-mutuel betting.

- b. VLTs Should Operate at Only Seven Racetrack Facilities at Any One Time.** Again, in order to limit the proliferation of gambling in the state, the Lottery Director should assure that only seven licenses to operate VLTs are issued at any one time.
 - c. VLTs Licenses Shall Be Granted for a Minimum of Ten Years.** To assure effective regulatory oversight regarding those licensed to operate VLTs, licenses should be granted for a minimum of ten years and should be transferred only in accordance with strictly established guidelines.
 - d. Strict Background Checks of Prospective VLT Licensees Shall Be Undertaken.** Strict criminal and financial background checks of all prospective VLT licensees shall be undertaken prior to the issuance of any such licenses and only those meeting clearly articulated standards shall be granted such licenses.
 - e. VLTs Should Be Implemented Quickly, But Contracts Should Follow All Standard Bidding Requirements.** The Lottery should use any existing contracts it has which would permit the rapid implementation of VLTs, but any Lottery Commission contract for services associated with the implementation of VLTs must be awarded by competitive bidding unless competitive bidding requirements are waived by the Controlling Board.
 - f. All VLT Profits Should Benefit Education Programs in Ohio.** In order to comply with the constitutional requirement regarding the use of lottery net proceeds, all VLT net proceeds shall be deposited and utilized to benefit education programs in Ohio in the same manner as all other lottery net proceeds.
- 5. Absence of Implementing Legislation.** If the implementing legislation described in Paragraph 3 is not enacted into law as part of or prior to the FY10-11 biennial budget law and such law is not signed into law by me within five days of the issuance of this Directive, the Directive shall then be deemed immediately null and void.

Ted Strickland, Governor

EXHIBIT B

municipal corporation or township that has filed with the superintendent of insurance a certified copy of an adopted resolution, ordinance, or regulation authorizing the procedures described in divisions (C) and (D) of section 3929.86 of the Revised Code from receiving insurance proceeds under section 3929.86 of the Revised Code.

Sec. 3770.03. (A) The state lottery commission shall promulgate rules under which a statewide lottery may be conducted, which includes, and since the original enactment of this section has included, the authority for the commission to operate video lottery terminal games. Any reference in this chapter to tickets shall not be construed to in any way limit the authority of the commission to operate video lottery terminal games. Nothing in this chapter shall restrict the authority of the commission to promulgate rules related to the operation of games utilizing video lottery terminals as described in section 3770.21 of the Revised Code. The rules shall be promulgated pursuant to Chapter 119. of the Revised Code, except that instant game rules shall be promulgated pursuant to section 111.15 of the Revised Code but are not subject to division (D) of that section. Subjects covered in these rules shall include, but need not be limited to, the following:

- (1) The type of lottery to be conducted;
- (2) The prices of tickets in the lottery;
- (3) The number, nature, and value of prize awards, the manner and frequency of prize drawings, and the manner in which prizes shall be awarded to holders of winning tickets.

(B) The commission shall promulgate rules, in addition to those described in division (A) of this section, pursuant to Chapter 119. of the Revised Code under which a statewide lottery and statewide joint lottery games may be conducted. Subjects covered in these rules shall include, but not be limited to, the following:

- (1) The locations at which lottery tickets may be sold and the manner in which they are to be sold. These rules may authorize the sale of lottery tickets by commission personnel or other licensed individuals from traveling show wagons at the state fair, and at any other expositions the director of the commission considers acceptable. These rules shall prohibit commission personnel or other licensed individuals from soliciting from an exposition the right to sell lottery tickets at that exposition, but shall allow commission personnel or other licensed individuals to sell lottery tickets at an exposition if the exposition requests commission personnel or licensed individuals to do so. These rules may also address the accessibility of sales agent locations to commission products in accordance with the "Americans with Disabilities

Act of 1990," 104 Stat. 327, 42 U.S.C.A. 12101 et seq.

(2) The manner in which lottery sales revenues are to be collected, including authorization for the director to impose penalties for failure by lottery sales agents to transfer revenues to the commission in a timely manner;

(3) The amount of compensation to be paid licensed lottery sales agents;

(4) The substantive criteria for the licensing of lottery sales agents consistent with section 3770.05 of the Revised Code, and procedures for revoking or suspending their licenses consistent with Chapter 119. of the Revised Code. If circumstances, such as the nonpayment of funds owed by a lottery sales agent, or other circumstances related to the public safety, convenience, or trust, require immediate action, the director may suspend a license without affording an opportunity for a prior hearing under section 119.07 of the Revised Code.

(5) Special game rules to implement any agreements signed by the governor that the director enters into with other lottery jurisdictions under division (J) of section 3770.02 of the Revised Code to conduct statewide joint lottery games. The rules shall require that the entire net proceeds of those games that remain, after associated operating expenses, prize disbursements, lottery sales agent bonuses, commissions, and reimbursements, and any other expenses necessary to comply with the agreements or the rules are deducted from the gross proceeds of those games, be transferred to the lottery profits education fund under division (B) of section 3770.06 of the Revised Code.

(6) Any other subjects the commission determines are necessary for the operation of video lottery terminal games, including the establishment of any fees, fines, or payment schedules.

(C) Chapter 2915. of the Revised Code does not apply to, affect, or prohibit lotteries conducted pursuant to this chapter.

(D) The commission may promulgate rules, in addition to those described in divisions (A) and (B) of this section, that establish standards governing the display of advertising and celebrity images on lottery tickets and on other items that are used in the conduct of, or to promote, the statewide lottery and statewide joint lottery games. Any revenue derived from the sale of advertising displayed on lottery tickets and on those other items shall be considered, for purposes of section 3770.06 of the Revised Code, to be related proceeds in connection with the statewide lottery or gross proceeds from statewide joint lottery games, as applicable.

~~(D)~~(E)(1) The commission shall meet with the director at least once each month and shall convene other meetings at the request of the

chairperson or any five of the members. No action taken by the commission shall be binding unless at least five of the members present vote in favor of the action. A written record shall be made of the proceedings of each meeting and shall be transmitted forthwith to the governor, the president of the senate, the senate minority leader, the speaker of the house of representatives, and the house minority leader.

(2) The director shall present to the commission a report each month, showing the total revenues, prize disbursements, and operating expenses of the state lottery for the preceding month. As soon as practicable after the end of each fiscal year, the commission shall prepare and transmit to the governor and the general assembly a report of lottery revenues, prize disbursements, and operating expenses for the preceding fiscal year and any recommendations for legislation considered necessary by the commission.

Sec. 3770.05. (A) As used in this section, "person" means any person, association, corporation, partnership, club, trust, estate, society, receiver, trustee, person acting in a fiduciary or representative capacity, instrumentality of the state or any of its political subdivisions, or any other combination of individuals meeting the requirements set forth in this section or established by rule or order of the state lottery commission.

(B) The director of the state lottery commission may license any person as a lottery sales agent. No license shall be issued to any person or group of persons to engage in the sale of lottery tickets as the person's or group's sole occupation or business.

Before issuing any license to a lottery sales agent, the director shall consider all of the following:

(1) The financial responsibility and security of the applicant and the applicant's business or activity;

(2) The accessibility of the applicant's place of business or activity to the public;

(3) The sufficiency of existing licensed agents to serve the public interest;

(4) The volume of expected sales by the applicant;

(5) Any other factors pertaining to the public interest, convenience, or trust.

(C) Except as otherwise provided in division (F) of this section, the director of the state lottery commission shall refuse to grant, or shall suspend or revoke, a license if the applicant or licensee:

(1) Has been convicted of a felony or has been convicted of a crime involving moral turpitude;

(2) Has been convicted of an offense that involves illegal gambling;

(3) Has been found guilty of fraud or misrepresentation in any connection;

(4) Has been found to have violated any rule or order of the commission; or

(5) Has been convicted of illegal trafficking in ~~food stamps~~ supplemental nutrition assistance program benefits.

(D) Except as otherwise provided in division (F) of this section, the director of the state lottery commission shall refuse to grant, or shall suspend or revoke, a license if the applicant or licensee is a corporation and any of the following applies:

(1) Any of the corporation's directors, officers, or controlling shareholders has been found guilty of any of the activities specified in divisions (C)(1) to (5) of this section;

(2) It appears to the director of the state lottery commission that, due to the experience, character, or general fitness of any director, officer, or controlling shareholder of the corporation, the granting of a license as a lottery sales agent would be inconsistent with the public interest, convenience, or trust;

(3) The corporation is not the owner or lessee of the business at which it would conduct a lottery sales agency pursuant to the license applied for;

(4) Any person, firm, association, or corporation other than the applicant or licensee shares or will share in the profits of the applicant or licensee, other than receiving dividends or distributions as a shareholder, or participates or will participate in the management of the affairs of the applicant or licensee.

(E)(1) The director of the state lottery commission shall refuse to grant a license to an applicant for a lottery sales agent license and shall revoke a lottery sales agent license if the applicant or licensee is or has been convicted of a violation of division (A) or (C)(1) of section 2913.46 of the Revised Code.

(2) The director shall refuse to grant a license to an applicant for a lottery sales agent license that is a corporation and shall revoke the lottery sales agent license of a corporation if the corporation is or has been convicted of a violation of division (A) or (C)(1) of section 2913.46 of the Revised Code.

(F) The director of the state lottery commission shall request the bureau of criminal identification and investigation, the department of public safety, or any other state, local, or federal agency to supply the director with the criminal records of any applicant for a lottery sales agent license, and may periodically request the criminal records of any person to whom a lottery

sales agent license has been issued. At or prior to the time of making such a request, the director shall require an applicant or licensee to obtain fingerprint impressions on fingerprint cards prescribed by the superintendent of the bureau of criminal identification and investigation at a qualified law enforcement agency, and the director shall cause those fingerprint cards to be forwarded to the bureau of criminal identification and investigation, to the federal bureau of investigation, or to both bureaus. The commission shall assume the cost of obtaining the fingerprint cards.

The director shall pay to each agency supplying criminal records for each investigation a reasonable fee, as determined by the agency.

The commission may adopt uniform rules specifying time periods after which the persons described in divisions (C)(1) to (5) and (D)(1) to (4) of this section may be issued a license and establishing requirements for those persons to seek a court order to have records sealed in accordance with law.

(G)(1) Each applicant for a lottery sales agent license shall do both of the following:

(a) Pay to the state lottery commission, at the time the application is submitted, a fee in an amount that the director of the state lottery commission determines by rule adopted under Chapter 119. of the Revised Code and that the controlling board approves;

(b) Prior to approval of the application, obtain a surety bond in an amount the director determines by rule adopted under Chapter 119. of the Revised Code or, alternatively, with the director's approval, deposit the same amount into a dedicated account for the benefit of the state lottery. The director also may approve the obtaining of a surety bond to cover part of the amount required, together with a dedicated account deposit to cover the remainder of the amount required.

A surety bond may be with any company that complies with the bonding and surety laws of this state and the requirements established by rules of the commission pursuant to this chapter. A dedicated account deposit shall be conducted in accordance with policies and procedures the director establishes.

A surety bond, dedicated account, or both, as applicable, may be used to pay for the lottery sales agent's failure to make prompt and accurate payments for lottery ticket sales, for missing or stolen lottery tickets, or for damage to equipment or materials issued to the lottery sales agent, or to pay for expenses the commission incurs in connection with the lottery sales agent's license.

(2) A lottery sales agent license is effective for one year.

A licensed lottery sales agent, on or before the date established by the

director, shall renew the agent's license and provide at that time evidence to the director that the surety bond, dedicated account deposit, or both, required under division (G)(1)(b) of this section has been renewed or is active, whichever applies.

Before the commission renews a lottery sales agent license, the lottery sales agent shall submit a renewal fee to the commission in an amount that the director determines by rule adopted under Chapter 119. of the Revised Code and that the controlling board approves. The renewal fee shall not exceed the actual cost of administering the license renewal and processing changes reflected in the renewal application. The renewal of the license is effective for up to one year.

(3) A lottery sales agent license shall be complete, accurate, and current at all times during the term of the license. Any changes to an original license application or a renewal application may subject the applicant or lottery sales agent, as applicable, to paying an administrative fee that shall be in an amount that the director determines by rule adopted under Chapter 119. of the Revised Code, that the controlling board approves, and that shall not exceed the actual cost of administering and processing the changes to an application.

(4) The relationship between the commission and a lottery sales agent is one of trust. A lottery sales agent collects funds on behalf of the commission through the sale of lottery tickets for which the agent receives a compensation.

(H) Pending a final resolution of any question arising under this section, the director of the state lottery commission may issue a temporary lottery sales agent license, subject to the terms and conditions the director considers appropriate.

(I) If a lottery sales agent's rental payments for the lottery sales agent's premises are determined, in whole or in part, by the amount of retail sales the lottery sales agent makes, and if the rental agreement does not expressly provide that the amount of those retail sales includes the amounts the lottery sales agent receives from lottery ticket sales, only the amounts the lottery sales agent receives as compensation from the state lottery commission for selling lottery tickets shall be considered to be amounts the lottery sales agent receives from the retail sales the lottery sales agent makes, for the purpose of computing the lottery sales agent's rental payments.

Sec. 3770.21. (A) "Video lottery terminal" means any electronic device approved by the state lottery commission that provides immediate prize determinations for participants on an electronic display.

(B) The state lottery commission shall include, in any rules adopted

concerning video lottery terminals, the level of minimum investments that must be made by video lottery terminal licensees in the buildings and grounds at the facilities, including temporary facilities, in which the terminals will be located, along with any standards and timetables for such investments.

(C) No license or excise tax or fee not in effect on the effective date of this section shall be assessed upon or collected from a video lottery terminal licensee by any county, township, municipal corporation, school district, or other political subdivision of the state that has authority to assess or collect a tax or fee by reason of the video lottery terminal related conduct authorized by section 3770.03 of the Revised Code. This division does not prohibit the imposition of taxes under Chapter 718, or 3769, of the Revised Code.

(D) The supreme court shall have exclusive, original jurisdiction over any claim asserting that this section or section 3770.03 of the Revised Code or any portion of those sections or any rule adopted under those sections violates any provision of the Ohio Constitution, any claim asserting that any action taken by the governor or the lottery commission pursuant to those sections violates any provision of the Ohio Constitution or any provision of the Revised Code, or any claim asserting that any portion of this section violates any provision of the Ohio Constitution. If any claim over which the supreme court is granted exclusive, original jurisdiction by this division is filed in any lower court, the claim shall be dismissed by the court on the ground that the court lacks jurisdiction to review it.

(E) Should any portion of this section or of section 3770.03 of the Revised Code be found to be unenforceable or invalid, it shall be severed and the remaining portions remain in full force and effect.

Sec. 3773.35. Any person who wishes to conduct a public or private competition that involves boxing or, wrestling match or exhibition, mixed martial arts, kick boxing, tough man contests, tough guy contests, or any other form of boxing or martial arts shall apply to the Ohio athletic commission for a promoter's license. Each application shall be filed with the commission on forms provided by the commission, and shall be accompanied by an application fee as prescribed in section 3773.43 of the Revised Code and, with the exception of wrestling events, by a ~~cash bond, certified check, bank draft, or~~ surety bond of not less than ~~five~~ twenty thousand dollars conditioned for compliance with sections 3773.31 to 3773.57 of the Revised Code and the rules of the commission. ~~The applicant shall verify the application under oath.~~

The commission shall prescribe the form of the application for the promoter's license. The application shall include the name of the applicant,

EXHIBIT C

2795

Group	\$	311,067	\$	311,067
TOTAL ALL BUDGET FUND GROUPS	\$	311,067	\$	311,067

SECTION 263.10. CDR COMMISSION ON DISPUTE RESOLUTION
AND CONFLICT MANAGEMENT

General Revenue Fund

GRF 145401 Commission Operations	\$	250,000	\$	0
TOTAL GRF General Revenue Fund	\$	250,000	\$	0
TOTAL ALL BUDGET FUND GROUPS	\$	250,000	\$	0

SECTION 265.10. EDU DEPARTMENT OF EDUCATION

General Revenue Fund

GRF 200100 Personal Services	\$	10,490,789	\$	10,723,972
GRF 200320 Maintenance and Equipment	\$	3,110,071	\$	3,144,897
GRF 200408 Early Childhood Education	\$	23,268,341	\$	23,268,341
GRF 200416 Career-Technical Education	\$	2,233,195	\$	2,233,195
GRF 200420 Computer/Application/ Network Development	\$	4,880,871	\$	4,880,871
GRF 200421 Alternative Education Programs	\$	7,814,479	\$	7,918,749
GRF 200422 School Management Assistance	\$	1,950,521	\$	3,230,469
GRF 200424 Policy Analysis	\$	356,311	\$	361,065
GRF 200425 Tech Prep Consortia Support	\$	1,243,943	\$	1,260,542
GRF 200426 Ohio Educational Computer Network	\$	20,156,602	\$	20,425,556
GRF 200427 Academic Standards	\$	5,300,074	\$	5,300,074
GRF 200431 School Improvement Initiatives	\$	7,294,175	\$	7,391,503
GRF 200437 Student Assessment	\$	55,954,648	\$	56,703,265
GRF 200439 Accountability/Report Cards	\$	3,804,673	\$	3,804,673
GRF 200442 Child Care Licensing	\$	865,590	\$	877,140
GRF 200446 Education Management Information System	\$	13,199,152	\$	11,934,284
GRF 200447 GED Testing	\$	975,536	\$	988,553
GRF 200448 Educator Preparation	\$	1,310,750	\$	1,328,240
GRF 200455 Community Schools	\$	1,000,000	\$	1,000,000
GRF 200457 STEM Initiatives	\$	5,000,000	\$	5,000,000
GRF 200458 School Employees Health Care Board	\$	800,000	\$	800,000
GRF 200502 Pupil Transportation	\$	448,022,619	\$	462,822,619
GRF 200505 School Lunch Match	\$	9,100,000	\$	9,100,000
GRF 200511 Auxiliary Services	\$	111,979,388	\$	111,979,388
GRF 200532 Nonpublic Administrative Cost Reimbursement	\$	50,838,939	\$	50,838,939
GRF 200540 Special Education Enhancements	\$	134,150,233	\$	135,820,668
GRF 200545 Career-Technical Education Enhancements	\$	7,752,662	\$	7,802,699

2796

GRF 200550	Foundation Funding	\$	5,130,669,418	\$	4,746,289,372
GRF 200551	Foundation Funding -- Federal Stimulus	\$	387,583,913	\$	457,449,362
GRF 200578	Violence Prevention and School Safety	\$	200,000	\$	200,000
GRF 200901	Property Tax Allocation - Education	\$	1,053,262,363	\$	1,020,655,157
TOTAL GRF General Revenue Fund		\$	7,504,569,256	\$	7,175,533,593
General Services Fund Group					
1380 200606	Computer Services-Operational Support	\$	7,600,091	\$	7,600,091
4520 200638	Miscellaneous Educational Services	\$	275,000	\$	275,000
4L20 200681	Teacher Certification and Licensure	\$	8,013,206	\$	8,147,756
5960 200656	Ohio Career Information System	\$	529,761	\$	529,761
5H30 200687	School District Solvency Assistance	\$	18,000,000	\$	18,000,000
TOTAL GSF General Services Fund Group		\$	34,418,058	\$	34,552,608
Federal Special Revenue Fund Group					
3090 200601	Educationally Disadvantaged Programs	\$	8,405,512	\$	8,405,512
3670 200607	School Food Services	\$	6,324,707	\$	6,577,695
3680 200614	Veterans' Training	\$	778,349	\$	793,846
3690 200616	Career-Technical Education Federal Enhancement	\$	5,000,000	\$	5,000,000
3700 200624	Education of Exceptional Children	\$	2,664,000	\$	2,755,000
3740 200647	Troops to Teachers	\$	100,000	\$	100,000
3780 200660	Learn and Serve	\$	619,211	\$	619,211
3AF0 200603	Schools Medicaid Administrative Claims	\$	639,000	\$	639,000
3AN0 200671	School Improvement Grants	\$	17,909,676	\$	17,936,675
3AX0 200698	Improving Health and Educational Outcomes of Young People	\$	630,954	\$	630,954
3BK0 200628	Longitudinal Data Systems	\$	100,000	\$	0
3BV0 200636	Character Education	\$	700,000	\$	0
3C50 200661	Early Childhood Education	\$	14,189,711	\$	14,554,749
3CF0 200644	Foreign Language Assistance	\$	25,000	\$	0
3CG0 200646	Teacher Incentive Fund	\$	3,007,975	\$	1,157,834
3D10 200664	Drug Free Schools	\$	13,347,966	\$	13,347,966
3D20 200667	Honors Scholarship Program	\$	6,990,000	\$	6,985,000
3D30 200699	IDEA Part B - Federal Stimulus	\$	218,868,026	\$	218,868,026
3DK0 200642	Title 1A - Federal Stimulus	\$	186,336,737	\$	186,336,737
3DL0 200650	IDEA Preschool - Federal Stimulus	\$	6,679,679	\$	6,679,679
3DM0 200651	Title IID Technology - Federal Stimulus	\$	11,951,000	\$	11,951,000
3DP0 200652	Title I School Improvement -	\$	54,221,000	\$	54,221,000

		Federal Stimulus			
3H90	200605	Head Start Collaboration Project	\$	225,000	\$ 225,000
3L60	200617	Federal School Lunch	\$	295,421,000	\$ 310,150,675
3L70	200618	Federal School Breakfast	\$	80,850,000	\$ 84,892,500
3L80	200619	Child/Adult Food Programs	\$	89,250,000	\$ 93,712,500
3L90	200621	Career-Technical Education Basic Grant	\$	48,029,701	\$ 48,029,701
3M00	200623	ESEA Title 1A	\$	530,000,000	\$ 530,010,000
3M10	200678	Innovative Education	\$	1,000,000	\$ 0
3M20	200680	Individuals with Disabilities Education Act	\$	413,391,594	\$ 421,241,163
3S20	200641	Education Technology	\$	9,487,397	\$ 9,487,397
3T40	200613	Public Charter Schools	\$	14,275,618	\$ 14,291,353
3Y20	200688	21st Century Community Learning Centers	\$	36,000,000	\$ 36,000,000
3Y40	200632	Reading First	\$	27,366,373	\$ 24,455,172
3Y60	200635	Improving Teacher Quality	\$	101,778,397	\$ 101,778,400
3Y70	200689	English Language Acquisition	\$	8,142,299	\$ 8,142,299
3Y80	200639	Rural and Low Income Technical Assistance	\$	1,500,000	\$ 1,500,000
3Z20	200690	State Assessments	\$	12,923,799	\$ 12,923,799
3Z30	200645	Consolidated Federal Grant Administration	\$	8,499,279	\$ 8,499,280
3Z70	200697	General Supervisory Enhancement Grant	\$	887,319	\$ 0
TOTAL FED Federal Special Revenue Fund Group			\$	2,238,516,279	\$ 2,262,899,123
State Special Revenue Fund Group					
4540	200610	Guidance and Testing	\$	450,000	\$ 450,000
4550	200608	Commodity Foods	\$	24,000,000	\$ 24,000,000
4R70	200695	Indirect Operational Support	\$	6,050,000	\$ 6,250,000
4V70	200633	Interagency Operational Support	\$	1,111,838	\$ 1,117,725
5980	200659	Auxiliary Services Reimbursement	\$	1,328,910	\$ 1,328,910
5BB0	200696	State Action for Education Leadership	\$	1,250,000	\$ 600,000
5BJ0	200626	Half-Mill Maintenance Equalization	\$	16,100,000	\$ 16,600,000
5U20	200685	National Education Statistics	\$	300,000	\$ 300,000
5W20	200663	Early Learning Initiative	\$	2,200,000	\$ 2,200,000
5X90	200911	NGA STEM	\$	100,000	\$ 0
6200	200615	Educational Improvement Grants	\$	3,000,000	\$ 3,000,000
TOTAL SSR State Special Revenue Fund Group			\$	55,890,748	\$ 55,846,635
Lottery Profits Education Fund Group					
7017	200612	Foundation Funding	\$	990,236,905	\$ 1,277,271,428
TOTAL LPE Lottery Profits Education Fund Group			\$	990,236,905	\$ 1,277,271,428
Revenue Distribution Fund Group					

EXHIBIT D

National Park Service, chooses to take over the operations or maintenance of the Hayes Presidential Center, in whole or in part, the Ohio Historical Society shall make arrangements with the National Park Service or other United States government agency for the efficient transfer of operations or maintenance.

SECTION 301.10. REP OHIO HOUSE OF REPRESENTATIVES

General Revenue Fund

GRF 025321	Operating Expenses	\$	18,517,093	\$	18,517,093
TOTAL GRF General Revenue Fund		\$	18,517,093	\$	18,517,093

General Services Fund Group

1030 025601	House Reimbursement	\$	1,433,664	\$	1,433,664
4A40 025602	Miscellaneous Sales	\$	37,849	\$	37,849
TOTAL GSF General Services Fund Group		\$	1,471,513	\$	1,471,513
TOTAL ALL BUDGET FUND GROUPS		\$	19,988,606	\$	19,988,606

OPERATING EXPENSES

On July 1, 2009, or as soon as possible thereafter, the Clerk of the House of Representatives may certify to the Director of Budget and Management the amount of the unexpended, unencumbered balance of the foregoing appropriation item 025321, Operating Expenses, at the end of fiscal year 2009 to be reappropriated to fiscal year 2010. The amount certified is hereby reappropriated to the same appropriation item for fiscal year 2010.

On July 1, 2010, or as soon as possible thereafter, the Clerk of the House of Representatives may certify to the Director of Budget and Management the amount of the unexpended, unencumbered balance of the foregoing appropriation item 025321, Operating Expenses, at the end of fiscal year 2010 to be reappropriated to fiscal year 2011. The amount certified is hereby reappropriated to the same appropriation item for fiscal year 2011.

SECTION 303.10. HFA OHIO HOUSING FINANCE AGENCY

Agency Fund Group

5AZ0997601	Housing Finance Agency	\$	8,614,627	\$	8,614,627
	Personal Services				
TOTAL AGY Agency Fund Group		\$	8,614,627	\$	8,614,627
TOTAL ALL BUDGET FUND GROUPS		\$	8,614,627	\$	8,614,627

SECTION 305.10. IGO OFFICE OF THE INSPECTOR GENERAL

General Revenue Fund

GRF 965321	Operating Expenses	\$	1,214,218	\$	1,214,218
TOTAL GRF	General Revenue Fund	\$	1,214,218	\$	1,214,218
General Services Fund Group					
5FA0 965603	Deputy Inspector General for ODOT	\$	400,000	\$	400,000
5FT0 965604	Deputy Inspector General for BWC/OIC	\$	425,000	\$	425,000
TOTAL GSF	General Services Fund Group	\$	825,000	\$	825,000
TOTAL ALL BUDGET FUND GROUPS		\$	2,039,218	\$	2,039,218

VIDEO LOTTERY TERMINAL OVERSIGHT

Of the foregoing GRF appropriation item 965321, Operating Expenses, \$50,000 in each fiscal year may be used to defray any expenses associated with the review of the operation of video lottery terminal operations as specified in Chapter 3770. of the Revised Code.

SECTION 307.10. INS DEPARTMENT OF INSURANCE**Federal Special Revenue Fund Group**

3CX0 820608	State Coverage Initiative - Federal	\$	50,000,000	\$	100,000,000
3U50 820602	OSHIIP Operating Grant	\$	1,770,000	\$	1,790,000
TOTAL FED	Federal Special Revenue Fund Group	\$	51,770,000	\$	101,790,000

State Special Revenue Fund Group

5540 820601	Operating Expenses - OSHIIP	\$	200,000	\$	200,000
5540 820606	Operating Expenses	\$	22,884,736	\$	22,884,736
5540 820609	State Coverage Initiative Administration	\$	479,575	\$	479,575
5550 820605	Examination	\$	9,275,768	\$	9,294,668
5AG0 820603	Health Information Technology and Health Care Coverage and Quality Council	\$	10,116,272	\$	0
TOTAL SSR	State Special Revenue Fund Group	\$	42,956,351	\$	32,858,979
TOTAL ALL BUDGET FUND GROUPS		\$	94,726,351	\$	134,648,979

**HEALTH INFORMATION TECHNOLOGY AND HEALTH CARE
COVERAGE AND QUALITY COUNCIL**

Notwithstanding section 3929.682 of the Revised Code, up to \$8,000,000 of the foregoing appropriation item 820603, Health Information Technology and Health Care Coverage and Quality Council, shall be used for health information technology initiatives: to provide the central tools and support the electronic exchange of health information, to work with industry associations to encourage and support providers in using electronic medical records, and to establish a loan program to help health care providers with the financial burden of buying and implementing electronic medical records.

Notwithstanding section 3929.682 of the Revised Code, up to