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INTRODUCTION

Ohio law regulates skill-based amusement machines in two related, but distinct, ways: It bans all machines that award prizes based on chance, and it separately limits the prizes that skill-based machines may award. Machines therefore must satisfy both requirements—the pure-skill rule and the prize limits—to remain legal as “skill-based amusement machines.” Plaintiffs-Appellees Pickaway County Skilled Gaming, LLC and Stephen S. Cline (together, “PCSG”), challenge one aspect of the prize limits: They argue that the ten-dollar cap on a prize’s wholesale value violates equal protection because it has no rational basis. But PCSG is wrong. As the Attorney General’s opening brief explained, the prize cap is rational both as an economic regulation of non-“gambling” transactions and as a prophylactic barrier to actual chance-based gambling. See Brief of Defendant-Appellant Richard Cordray (“AG Br.”) at 17-23.

PCSG’s response confirms, rather than negates, why the law is rational. PCSG acknowledges, as it must, that the prize limit renders illegal only *skill-based* games that award over-limit prizes, because games that are partly or wholly chance-based are already illegal under other provisions. Brief of Plaintiffs-Appellees (“PCSG Br.”) at 3. Meanwhile, PCSG ignores the State’s point that the prize limit, if passed as a standalone regulation of skill-based amusement machines, would easily be constitutional. *Id.* at 4; see AG Br. at 18-21. Instead, PCSG insists, curiously, that the prize limit “cannot act as a regulation of economic activity because it does nothing more than define a crime.” PCSG Br. at 13; see *id.* at 4, 10-11.

But economic regulations are routinely buttressed by criminal penalties. Liquor sales, for example, are heavily regulated as to price, locations, and hours—and many violations, such as sales to underage buyers, are crimes. Securities law, environmental law, consumer-protection and antitrust law, and other legal schemes define crimes as part of a regulatory scheme. In addition, the label attached to a crime does not matter; the issue is whether it is rational to limit

prizes, not whether it is rational to label violations as “gambling” or any other term. PCSG is thus sorely mistaken in assuming that criminal law and economic regulations are mutually exclusive, or in assuming that a law’s label, rather than its effect, matters. With those mistakes corrected, its remaining arguments quickly collapse, because all of its arguments build on its mistaken premises.

First, the ten-dollar prize limit is rational as an economic regulation of skill-based games, because it sets a reasonable cap on prize value as a way to ensure that skill-based games are played for amusement, not for the allure of valuable prizes. Second, the prize limit is also rational as a prophylactic barrier against chance-based gambling, because it guards against operators’ ability to evade prosecution if their machines violate both the prize limit and the skill-only rule, and that deters game operators from disguising chance-based gambling as skill-based. Finally, the Court should reject PCSG’s invitation to address its attack on the prize limit as void for vagueness, because the appeals court did not reach that argument. But even if the Court does reach the issue, it should reject it on the merits. The statute draws a precise line—ten dollars—and the vagueness doctrine applies to that legal standard, not to any alleged difficulty in ascertaining a particular prize’s value. Moreover, the law here applies only to a game’s operator, not to a game’s players, and an operator who buys the prizes should know their wholesale value.

For all these reasons, the Court should reverse the decision below, and it should uphold the General Assembly’s rational decision to regulate the prizes awarded by skill-based amusement machines.

ARGUMENT

The State’s opening brief explained that “the easiest way to resolve this case is to consider the law as a straightforward regulation of prize values within the skill-based game context, and to ask this question: Is there a constitutional right to play such games for unlimited prizes?” AG Br. at 21. PCSG studiously avoids answering that question. It repeatedly insists that the provision at issue cannot be considered such a standalone regulation, because it “defines criminal conduct,” PCSG Br. at 4, but PCSG appears to offer no backup argument to object to the law *if* it is assessed as a standalone regulation. That omission is notable because PCSG admits that the statutory limit applies, functionally, only to prizes within the skill-game context, since chance-based machines are illegal regardless of prize value. *Id.* at 3. PCSG’s entire argument boils down, then, to its claim that the law fails not for what it does functionally, but for *how* it does so—namely, by defining the prohibited conduct as the “crime” of “gambling.” As the State already explained, however, and as shown again below, that objection is mistaken.

A. The prize limit must be assessed in terms of its actual function of limiting prizes awarded by skill-based machines, and the assessment does not change merely because that functional effect is achieved by labeling violations as “gambling.”

PCSG agrees with the State that the prize-limit law, R.C. 2915.01(AAA)(1), applies only within the skill-game context, because chance-based game machines are illegal regardless of prize value under R.C. 2915.01(AAA)(2): “If R.C. 2915.01(AAA)(2) permits only games that are based upon skill, then the application of R.C. 2915.01(AAA)(1) to machines does not result in any further limitation on the elimination of chance-based machines.” PCSG Br. at 3. Thus, the parties agree that the *prize-limit* law does not render, or purport to render, chance-based machines illegal, because other provisions in the statutory scheme bar chance-based machines. The provision at issue therefore serves only to prohibit those who operate skill-based machines from awarding over-limit prizes.

Yet despite PCSG's proper description of the law's functioning, it confuses the issue in two ways that require correction. It refers to other classifications that are not relevant here, and it objects to the law's labeling rather than its function. Both errors are fatal to PCSG's claims.

1. The relevant classification applies to operators of skill-based game machines, based on the prize value that those operators wish to award.

The relevant classification, for purposes of applying equal protection analysis, is one that divides the class of *operators of skill-based game machines* into those who award over-limit prizes and those who stay within the prize limits. That proper classification contrasts with three alternative, but erroneous, ways of describing the classification at issue.

First, the classification applies, based on prize value, *within* the class of skill-based machine operators, and PCSG's discussion of the law's effect on chance-based machines is mistaken. PCSG's brief at one point seems to suggest that chance-based machines have a "safe harbor" from prosecution if they stay within the prize limit, or that such a safe harbor results from the State's position. PCSG Br. at 9. If PCSG asserts that such chance-based machines are actually legal if they award under-limit prizes, PCSG is simply mistaken.

Second, the classification here applies to machine operators, not players. The prize-limit provision is merely definitional, and the operative provision that employs the definition, R.C. 2915.02, imposes liability only on operators, not on game players.¹ And even if players' rights

¹ Specifically, R.C. 2915.02(A)(2) provides that no one shall "[e]stablish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance," and that prohibition does not include mere playing. The appeals court rejected, in the context of a separate count, this limitation of liability to operators and vendors, as opposed to individual players. See *Pickaway Cty. Skilled Gaming v. Cordray* (10th Dist.), 2009-Ohio-3483 ("App. Op.," attached to AG Br. as Ex. 2), ¶ 58. But even if the appeals court was right on that score, the criminal prohibition against "facilitating" illegal schemes of chance of games of chance, R.C. 2915.02(A)(2), applies only to those who do so "knowingly." Thus, a player who does not know he is playing an illegal machine is ultimately unaffected, even if he is "covered" by the statute in the abstract. In addition, the appeals court was wrong, because "facilitating" gambling cannot include merely playing the games or schemes, as that reading

were implicated by the statute (and they are not), all Plaintiffs are operators, not players. Plaintiffs therefore lack standing to raise players' rights.

Third, the classification applies to the machines' operators, not to the machines themselves, because it well-settled that only people, not machines, are entitled to equal protection. See *Burnett v. Motorists Mut. Ins. Cos.*, 118 Ohio St. 3d 493, 2008-Ohio-2751, ¶¶ 31, 37. The State does not urge *Burnett's* rule against machine-based "rights" as a reason to *reject* PCSG's claim. Rather, the State merely notes that *because* machines have no rights, the classification must be described in terms of those who operate the machines at issue. See AG Br. at 13. PCSG is therefore mistaken in claiming that the State seeks to revive the *Burnett*-based proposition of law that this Court declined to review. PCSG Br. at 1, 3, 7-8. To be sure, the State has referred by shorthand to a "prize-based classification within skill-based machines," *id.* at 12, but that phrase does not refer to machines as opposed to persons. Rather, it stresses the more important point that the prize-based classification applies to operators of *skill-based* machines, not to operators of already-illegal chance-based machines.

2. The prize-limit law must be assessed by its actual effect, not the "gambling" label.

The State explained fully in its opening brief that the prize-based classification must be assessed for rationality in terms of the functional effect of the classification, and not by the labeling used in classifying what is legal or illegal. AG Br. at 14-15. That is, the prize-limit law bars skill-based machines from awarding over-limit prizes, and the words or labels used to achieve that effect are irrelevant. *Id.* PCSG's argument is built on the implicit, and mistaken,

would render superfluous R.C. 2915.02(A)(4), which prohibits "[e]ngag[ing] in betting or in playing any scheme or game of chance as a substantial source of income or livelihood." It makes no sense to prohibit playing "as a substantial source of income" in subdivision (A)(4) if even one act of playing could constitute "facilitating" under subdivision (A)(2).

premise that the law is invalid not for what it actually does, but for labeling the prohibited activity as “gambling”—as against PCSG’s belief that such labeling is irrational.

Although the precise contours of PCSG’s objection are unclear, PCSG at some points appears to suggest that *no* law defining a crime can be an economic regulation. See PCSG Br. at 3 (asserting that prize limit “does not regulate skill-based amusement machines; it defines criminal conduct”); 12-13 (“It does not and cannot act as a regulation of economic activity because it does nothing more than define a crime.”); 17 (“R.C. 2915.01(AAA)(1) is not a regulation of criminal activity; it is a definition used to determine whether a criminal act was committed.”).

But economic regulations are routinely supported by provisions that criminalize non-conforming transactions. Liquor law, for example, encompasses a detailed scheme of liquor permits, with different types of permits allowing sales at particular hours and locations, R.C. 4303.01 et seq., and prices are regulated as well, R.C. 4301.041. Yet selling liquor to an underage person is a crime. R.C. 4301.69. It is also a crime to sell alcoholic beverages without having paid taxes on them. R.C. 4301.50. In fact, all liquor sales (and other actions) that violate the rules are crimes, not just administrative violations, under catchall provisions that apply criminal penalties. See, e.g., R.C. 4301.58 (describing activities prohibited without permit); R.C. 4303.36 (prohibiting violations not otherwise specified in named chapters); R.C. 4307.99 (providing catchall penalties). This extensive scheme plainly regulates “economic transactions” and simultaneously defines violations as crimes. Likewise, many other license-based regulatory schemes define unlicensed activity in general as a crime. See, e.g., R.C. 4731.99(A) (penalizing, as a felony, the practice of medicine without a license); R.C. 4735.99 (criminalizing unlicensed real estate brokerage); R.C. 4517.02 (criminalizing unlicensed auto sales).

Similarly, securities law, environmental law, and many other areas combine civil regulations and criminal penalties. See, e.g., R.C. 1707.14 (prohibiting securities sale without license); R.C. 1707.99 (defining various securities violations as felonies); R.C. 3734.03 (barring open burning or open dumping without permit); R.C. 3734.99 (providing criminal fines and felony prison terms for violations of open-burning laws and several other pollution violations). Indeed, this system is so commonplace that the United States Supreme Court has developed a body of jurisprudence governing when civil and criminal penalties may both be imposed without violating the bar against double jeopardy. See, e.g., *Hudson v. United States* (1997), 522 U.S. 93, 103-05. Consequently, PCSG is wrong if it insists that economic regulations and criminal penalties are mutually exclusive.

PCSG's real objection appears to be that the crime at issue is labeled "gambling," because in PCSG's view, no skill-based game, regardless of prize value, can constitute gambling. In particular, PCSG complains that the rest of the gambling statute, other than the provisions defining "skill-based amusement machine" to incorporate a prize-value limit, continues to define violations in terms of "schemes of chance" or "games of chance." PCSG Br. at 15-16. Its objection, then, is apparently that it is irrational to group the prohibited skill-based games—those that award over-limit prizes—under the same umbrella as chance-based games or schemes. That is, it is irrational, in PCSG's view, to yoke dissimilar items together under a common label and then ban them, even if it would be perfectly rational to ban each item on its own.

But labels are beside the point, as the State's opening brief explained. AG Br. at 14-15. What matters is the law's actual application. And again, PCSG makes no argument, let alone a persuasive one, that a prize limit on skill-based games is itself irrational.

B. The prize-value limit is rationally based on the State's interest in regulating skill-based games independent of any connection to chance-based gambling.

The prize-value limit is rationally related to the State's valid interest in regulating the amount of money involved in skill-based amusement games. AG Br. at 18-21. Therefore, PCSG has not met its "burden to negative every conceivable basis which might support" a challenged law. *FCC v. Beach Commc'ns* (1993), 508 U.S. 307, 315; see also *Vance v. Bradley* (1979), 440 U.S. 93, 97 (requiring consideration of "any combination of legitimate purposes").

The State's interest in regulating economic transactions is broad, and in this particular context, regulating the payoffs from skill-based games is rational because such games, even when based purely on skill, share with gambling the common concern that the lure of the big prize will induce over-spending. See *Kraus v. Cleveland* (1937), 135 Ohio St. 43, 47 (describing how prizes drive the "gambling instinct"). PCSG does not, and cannot, deny that this incentive problem exists, other than to object that skill-based games should not be called gambling.

Notably, PCSG's amicus, the Ohio Coin Machine Association ("OCMA"), supports the State's assessment of this danger in the context of skill-based games that offer high-value prizes. OCMA says that "children and young people, the demographic most likely to play games of chance, are, paradoxically, the population least capable of both (1) accurately estimating a particular prize's wholesale value; and (2) resisting the draw of an enjoyable game where they know that the wholesale value of the prizes awarded by that game exceeds the ten-dollar cap." See Brief of Amicus Curiae OCMA at 6 n.2. OCMA's description of the problem, and how youth are especially unlikely to "resist[] the draw" of high prizes, is accurate, except its characterization of this point as "paradoxical" is mistaken. See *id.* It is no paradox, but is instead common sense, that those worst at assessing value and resisting their impulses will play the most if prizes are unlimited. OCMA decries the limit as "irrational" "discriminate[ion]"

against this young demographic, see *id.*, apparently on the idea that it is “discriminatory” for the prize limit to have its greatest effect on those who, absent the limit, would play the most. But OCMA’s objection demonstrates that the law is reaching its target. Indeed, it might be said of any law with a good means-end fit that it most affects its target; rational basis is lacking when a law misses its target entirely, not when it hits it too squarely.

And to the extent that OCMA (or PCSG) complains that it is unfair to deprive it of the revenue it might earn from the weak-willed youth that OCMA mentions, OCMA Br. at 6 n.2, that is a policy objection, not an equal protection claim. Legislative line-drawing “inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line,” and often, “any line will produce some harsh and apparently arbitrary consequences.” *Mathews v. Diaz* (1976), 426 U.S. 67, 83; see *Mass. Bd. of Retirement v. Murgia* (1976), 427 U.S. 307, 314 (“Perfection in making the necessary classifications is neither possible nor necessary.”).

None of the cases cited by PCSG or OCMA support the claim that the prize-value limit is irrational. Aside from citing cases for the definition of rational basis, PCSG Br. at 10, PCSG cites only one case in which this Court invalidated a statute for lack of rational basis. See *id.* at 13-14 (citing *Roseman v. Firemen & Policemen’s Death Benefit Fund* (1993), 66 Ohio St. 3d 443). In *Roseman*, the Court invalidated a law governing survivors’ pension benefits because it treated differently, without justification, widows (or widowers) who ended up in identical situations. *Id.* at 451. Specifically, if a surviving spouse was a decedent’s sole survivor or beneficiary when benefits began, the spouse received one amount. *Id.* at 446. By contrast, if a decedent left behind a spouse and other survivors or beneficiaries (such as the decedent’s children), the benefits were divided, and the spouse received a lower amount than a sole survivor

did. That initial difference was unquestionably valid. *Id.* at 448. The problem was that the lower amount was not adjusted when the co-beneficiaries stopped receiving benefits, such as when minors turned eighteen. *Id.* at 448-49. That left a spouse who was *now* a sole beneficiary with a lower amount than a spouse who had been a sole beneficiary all along. *Id.*

Thus, the irrationality in *Roseman* was that not that the challenged distinction was initially irrational, but that it was irrational to continue disparate treatment even when the two comparative classes became identical. *Id.* That disparity does not compare to the case here. Prizes above and below the prize limit are not identical; they are different. The underlying similarity of two skill-based machines, if they offer different prizes, does not eliminate the real difference that exists as to the regulated characteristic—prize value.

PCSG's other cited cases concern the need to apply all words in a statute, but those cases support the State, not PCSG. See PCSG Br. at 15 (citing *Hyle v. Porter*, 11 Ohio St. 3d 165, 174, 2008-Ohio-542, ¶ 33, and *E. Ohio Gas Co. v. Pub. Util. Comm'n* (1988), 30 Ohio St. 3d 295, 299). Here, the entire statute includes the challenged provision, which limits prize value, along with the nearby provisions that require skill-based games to be purely skill-based, with no reliance on chance or other non-skill factors. The State's view gives meaning to all parts of the statute, applying both the skill-based requirement and the prize limit. PCSG accuses the State of seeking to ignore the "skill" part of the statute, but the State seeks to apply *both* parts. PCSG, by contrast, asks the Court to strike the prize limit, and to allow only the skill/chance distinction to apply. It is hard to see how PCSG's view effectuates all parts of the statute.

OCMA cites many more rational-basis cases, but none support its cause, either. Several involve statutes that, as in *Roseman*, created distinctions that were obviously irrational and/or did not serve the government's stated interests. See OCMA Br. at 8-16 (citing, e.g., *State v. Peoples*,

102 Ohio St. 3d 460, 2004-Ohio-3923, ¶ 10 (invalidating statute that barred prisoners from applying for judicial release if they were sentenced to a term of exactly five years, while prisoners could apply if their terms were less than five years or between five and ten years). Here, however, OCMA implicitly admits, as explained above, that the prize-limit law will work to reduce children's vulnerability to the allure of big prizes. See OCMA Br. at 6 n2. OCMA disputes whether that is a valid purpose to begin with, not whether the law serves that purpose. But the rational-basis test addresses the latter issue, unless the State's interest is not even "legitimate." See *USDA v. Moreno* (1973), 413 U.S. 528, 534. Here, the interest in controlling skill-based games is legitimate.

OCMA claims that a Hawaii case is similar to this one, merely because that case struck down a skill-game law as irrational, but that case involves a fundamentally different issue. See OCMA Br. at 14-15 (citing *State v. Bloss* (Haw. 1980), 613 P.2d 354). In *Bloss*, a state law prohibited youth from "loitering" near pinball machines *only*, singling out "pinball" by name, but it did not apply to video games or other coin-operated games. The *Bloss* court, not surprisingly, found it irrational to distinguish between two types of games that had no relevant distinction; both were skill-based games, and neither awarded any prizes, let alone ones of differing value. In particular, the *Bloss* court noted that the decades-old law at issue had been written when the earliest pinball machines *were* games of chance, not skill, as they had no flippers to allow player control. *Id.* at 155. Thus, the statute had singled out "pinball" by name when a distinction did exist, and once it did not, the law was irrational. *Id.* *Bloss* thus says nothing about Ohio's prize-value limit, for prize value is, as OCMA admits, related to the amount of money spent.

Nor are the California or Arkansas cases relevant merely because they involve coin-operated skill games. See OCMA Br. at 15-16 (citing *Cossack v. Los Angeles* (Cal. 1974), 523

P.2d 260, and *Ragland v. Forsythe* (Ark. 1984), 666 S.W.2d 680). In *Cossack*, as in *Bloss*, the challenged law arbitrarily discriminated between some skill-based games and others, based not on any identifiable feature that remained relevant, but simply by naming certain types of games in the law, including games that had changed over time from chance-based to skill-based. *Cossack*, 523 P.2d at 729, 733. Ohio's law, by contrast, applies to all skill-based game machines, and draws a line based on the rational characteristic of prize value. In *Ragland*, the law at issue had nothing to do with regulating what games were allowed or not: the law allowed only Arkansas residents to own or operate coin-operated amusement devices, and that discriminated irrationally against out-of-state residents. 666 S.W.2d at 682.

In sum, none of the cited cases invalidated a law drawing a rational line based on prize value or any other similar feature. PCSG has not shown that such a dollar-value line is irrational.

C. The prize-value limit is rationally related to the State's interests in prosecuting and deterring gambling.

While the rational basis described above is enough to support the law, the law is also valid as a prophylactic measure to prosecute and deter chance-based gambling. The State's interest in controlling and regulating of gambling is undisputed. *Kraus*, 135 Ohio St. at 47; *Ah Sin v. Wittman* (1905), 198 U.S. 500, 505-506; *Joseph Bros. Co. v. Brown* (6th Dist. 1979), 65 Ohio App. 2d 43, 48. The sole issue, then, is whether the prize limit advances any anti-gambling interest, and it does.

PCSG seems to assert that if an operator violates both laws at once—that is, by awarding over-limit prizes on a chance-based game—the operator will more easily be charged for the prize violation than for illegal chance-based gambling. PCSG Br. at 9. Specifically, PCSG objects that “an individual may be charged with a crime solely on the basis of the value of the prize,” and “whether the machine is skill-based or chance-based will never be considered.” *Id.* But

PCSG fails to appreciate that this possibility is a virtue, not a vice. There is nothing wrong with a law making it easier to detect offenders. Nor is there anything wrong with charging a doubly-illegal operator for the prize-value violation.

Moreover, the scenario that PCSG seems to posit as problematic—namely, that operators of illegal chance-based machines might avoid prosecution by keeping their prizes under the limit—is made less likely by the prize limit’s existence. Bigger prizes lure more players and more revenue—otherwise, no one would fight the prize limit or violate it—but smaller prizes reduce the incentive to cheat and disguise a chance-based machine as skill-based. Thus, the law not only eases prosecution of “double violators,” who break both laws, but it also deters operators who comply with the prize limits from crossing the skill/chance line by programming the games to include factors other than player skill. *Kraus*, 135 Ohio St. at 47 (“Even if the slot machine involved in this case is manufactured and intended for lawful operation, its potentiality and design is such that it may be easily put to unlawful use. The regulation or prohibition of such a mechanism need not be postponed until such event occurs.”). Consequently, the prize-limit law is rationally related to the State’s anti-gambling interest, even though the law is limited in its formal operation to non-chance-based game machines.

D. The Court should not reach PCSG’s claim that the law is void for vagueness, but if it does, it should reject the claim.

Finally, as an alternative to the grounds that the appeals court reached, PCSG asks the Court to address its argument that the prize-limit law is void for vagueness. The Court should, as it routinely does, decline to reach that issue because the appeals court did not address it. *Hodesh v. Korelitz*, 123 Ohio St. 3d 72, 2009-Ohio-4220, ¶ 18; *Prouse, Dash & Crouch, L.L.P. v. Dimarco*, 116 Ohio St. 3d 167, 2007-Ohio-5753, ¶ 15. Lower courts should generally be the first

to address new arguments unless a good reason exists, and PCSG advances no such reason here. Even if the Court were to reach the vagueness issue, however, the argument fails on the merits.

Under the void-for-vagueness doctrine, a law is vague, and thus violates due process, when it does not set a standard for behavior that is clear enough for citizens to follow and for officials to enforce. The settled test for vagueness challenges asks first whether a law “provides sufficient notice of its proscriptions to facilitate compliance by persons of ordinary intelligence,” and second whether it is “specific enough to prevent official arbitrariness or discrimination in its enforcement.” *Norwood v. Horney*, 110 Ohio St. 3d 353, 2006-Ohio-3799, ¶ 84; *Akron v. Rowland* (1993), 67 Ohio St. 3d 374, 387; *Grayned v. Rockford* (1972), 408 U.S. 104, 108-09. PCSG says that the ten-dollar prize limit raises such problems because an operator or player might not know a prize’s market value.

First, PCSG’s claim misunderstands the nature of the vagueness doctrine, as it applies only when a *statute* is vague, not when a clearly written statute applies to facts that are arguably difficult to ascertain. *United States v. Williams* (2008), 553 U.S. 285, 305-06; *United States v. Paull* (6th Cir. 2009), 551 F.3d 516, 525. In both *Williams* and *Paull*, defendants claimed that child pornography laws were vague because it was hard to ascertain whether the material they had possessed and passed on was truly child pornography. In both cases, the vagueness claims failed, not just because the statute was clear, but because the vagueness attack was aimed at the facts rather than the statute: “[w]hat renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact” exists or has been proven, but whether the law does not set a standard. *Williams*, 553 U.S. at 285. If a defendant claims that he might find it hard to discover the relevant facts, that is a problem resolved by trial and the need to prove the act beyond a reasonable doubt; it is not a vagueness problem. *Paull*, 551 F.3d

at 526. PCSG's claim suffers the same flaw, as PCSG cannot say that the ten-dollar prize limit is vague; instead, it says it is hard to know whether a given prize has a value over ten dollars.

Moreover, Ohio law is replete with criminal prohibitions that depend on dollar values, and none have been found vague. See, e.g., R.C. 2909.03(B)(2)(b) (level of arson offense based on property value); R.C. 2909.05(E) (level of vandalism offense based on property value); R.C. 2909.07(C)(3) (level of criminal mischief offense based on property value); R.C. 2913.02(B)(2) (theft offenses based on value of stolen property); R.C. 2913.04(E) (unauthorized use of property offense based on value of services); R.C. 2913.42(B)(3) (tampering with records offense based on value of loss to the victim); R.C. 2913.51(C) (level of receiving stolen property offense based on value of the property); see also 18 U.S.C. § 2314 (transportation of stolen goods worth over \$5,000). In addition, PCSG and other operators *know* the wholesale price they paid; they have receipts. To the extent that they insist they might be prosecuted anyway, the law's intent requirements and the reasonable doubt standard provide all the protection they need.

Finally, PCSG's vagueness claim cannot be salvaged by claiming that *players* of skill-based machines face a vagueness problem. First, PCSG has no standing to raise players' claims. It has not shown that its relationship with its potential customers is the rare type that justifies third-party standing, and players face no hindrance to bringing their own claims. See *Util. Serv. Partners v. Pub. Util. Comm'n*, 124 Ohio St. 3d 284, 2009-Ohio-6764, ¶ 49. In any event, the law does not even apply to players, as explained above (at 4-5 n.1), so players need not worry if they are unsure of a prize's value. A player cannot violate the statute by playing a game with over-limit prizes, and thus a player cannot have a vagueness claim against the prize-value limit.

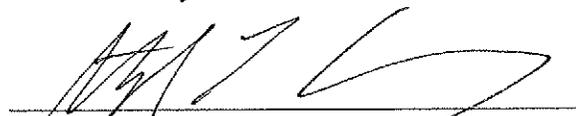
Consequently, the Court should reject PCSG's vagueness claim if it reaches the issue.

CONCLUSION

The Court should reverse the portion of the appeals court's decision invalidating R.C. 2915.01(AAA)(1) as to the \$10 prize limit, and it should reinstate the trial court's grant of summary judgment in the Attorney General's favor. In the alternative, even if the Court affirms the appeals court's denial of summary judgment to the Attorney General, the Court should reverse the appeals court's order of summary judgment in PCSG's favor.

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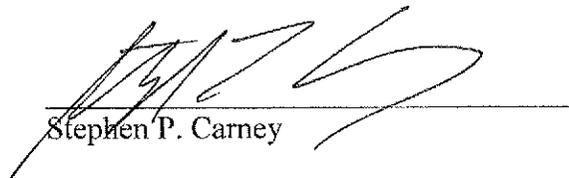
I certify that a copy of the foregoing Reply Brief of Defendant-Appellant Richard Cordray, Ohio Attorney General was served by U.S. mail this 24th day of May, 2010, upon the following counsel:

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