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Date: June 3, 2025

To: Chair Brian Stewart
Vice Chair Michael Dovilla
Ranking Member Bride Rose-Sweeney
House Finance Committee

From: David Mahan
Policy Director
Center for Christian Virtue

Re: Opposition to HB298

Chair Stewart, Vice Chair Dovilla, Ranking Member Sweeney, and esteemed members of the House Finance Committee, my name is David Mahan and I am testifying on behalf of the Center for Christian Virtue, Ohio's largest Christian public policy organization. I am testifying in opposition to HB298, which will expand predatory online gambling in Ohio.

In preparation for this opposition hearing, I've sat through several gambling expansion hearings lately, and I would like to address some of the claims made by gambling industry.

Most of the discussion has been centered around how much revenue would be generated, and the industry projects \$400-\$700 million per year. While those are certainly impressive figures, there was very little discussion about what it could **COST** Ohioans to produce those numbers. I don't think anyone would deny that there will be significant social costs to completely opening the floodgates to yet another addiction for profit industry, but how much? Before we simply throw a conciliatory 1% towards "prevention", shouldn't someone from the \$70 billion gambling industry provide this exploratory committee with some serious projections? Last year, The Guardian reported that New Jersey's gambling boom was detrimental to their economy. NERA Economic Consulting estimated that online casinos in New Jersey contributed \$385 million in net taxes in 2022. However, NERA projected that the state could face \$350 million in social costs- including healthcare, welfare, homelessness, and criminal justice related to issues linked to



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online gambling. The article also highlighted research commissioned by the Campaign for Fairer Gambling, that found that \$2.4 billion spent by people gambling online in New Jersey in 2022 “decreased New Jersey’s economic activity by about \$180m”¹.

And then there is the question of addiction. One industry representative stated that the addition of online casinos in Ohio would not increase problem gambling. Does anybody actually believe that increased access, convenience and anonymity will not lead to increased addiction? In fact, the industry relies upon it. According to a UK study by the House of Lords Gambling Select Committee, the gambling industry spent £1.5 billion a year on advertising, and **60% of its profits came from the 5% who were already problem gamblers, or are at risk of becoming so**². Just last week we were forwarded an email and slide deck that DegenX, an AI iGaming Company sent to potential investors. Their mission statement reads as follows, “Our Mission is to build games designed to hook, adapt, and dominate attention-machine-trained on real-time player data. **We weaponize data to make games addictive.**” They go on to boast about how their games are engineered to achieve “higher customer **Lifetime Value**” (LTV). I brought copies of the slide deck and the corresponding email for each member of the committee.

So, how many addicts and new young addicts will it take to hit the promised \$700 million jackpot? We know that of all addictions, gambling addicts have the highest rate of suicide, so how many suicides are we comfortable with in order to say “at least we didn’t raise taxes”? How many of the new addicts will be children? A new study from the Lancet, showed that nearly 1 in 5 teenagers gambled in the last year³. The following is an excerpt from an editorial from the Journal of Adolescent Health entitled, “Still Not on the Radar: Adolescent Risk and Gambling”:

“There is no doubt that adolescents gamble and that some adolescents experience difficulties related to their gambling involvement. Although rates vary from one jurisdiction to another, recent studies internationally show that up to 70% of youth aged 12–17 years have gambled in the past 12 months, and that problem gambling rates among youth are 3–4 times higher than among adults in the same jurisdiction.”⁴

¹

<https://www.theguardian.com/us-news/2024/jan/04/new-jersey-online-gambling-sport-betting-bad-economy-report-effect>

²

<https://publications.parliament.uk/pa/ld5801/ldselect/ldgamb/79/7903.htm>

³

[https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(24\)00126-9/fulltext#:~:text=Among%20adults%2C%208%C2%B77%25,were%20engaging%20in%20problematic%20gambling.](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(24)00126-9/fulltext#:~:text=Among%20adults%2C%208%C2%B77%25,were%20engaging%20in%20problematic%20gambling.)

⁴

[https://www.jahonline.org/article/S1054-139X\(12\)00130-9/pdf](https://www.jahonline.org/article/S1054-139X(12)00130-9/pdf)



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Lastly, during one particular hearing a couple weeks ago, Senator Demora asked a very important question, “Is this even legal?” According to Attorney Ben Flowers, Former State Solicitor General, the clear answer is NO. In his expert opinion, such gambling activity would require the same exception that was necessary for the state lottery, charitable bingo, and the 4 brick and mortar casinos needed to be deemed constitutional. I encourage you all to read his full analysis that I submitted with this testimony.

As this committee proceeds with its exploration into the impacts that Online Gambling will have on our state, I humbly remind you that there are two sides to every P&L- Profit and Loss. As costly as this expansion would most assuredly be for Ohio children and families, it would be both irresponsible and immoral to gamble away the health and wellbeing of Ohio citizens, on the promise of a sure bet from an industry that can only profit when **WE LOSE**.

Thank you for allowing me to speak on behalf of this proposed legislation.

The Center for Christian Virtue (CCV) is a non-profit, non-partisan organization that endeavors to create an Ohio where God's blessings of life, family, and religious freedom are treasured, respected, and protected. www.ccv.org -- (513) 733-5775



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May 20, 2025

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Sent Via Email

Re: Analysis of Constitutionality of Bill Permitting Online Gaming

Dear Mr. Baer:

You retained my firm to prepare a memorandum assessing the constitutionality of S.B. 197—a recently introduced bill that would permit currently banned forms of online gambling. My analysis appears below. The gist is this: the proposed law would, in many of its applications, violate Article XV, Section 6 of the Ohio Constitution.

BACKGROUND

Gambling in Ohio. “Historically in Ohio the gambling instinct was considered as an evil in and of itself.”¹ Ohio’s earliest laws thus largely prohibited gambling of any sort.² Yet the “first Constitution of Ohio, adopted in 1802, made no direct reference to lottery or gambling”—the matter was left entirely to the legislature.³ That changed to some degree in 1851, when the People ratified a new constitution. Article XV, Section 6 provided that “lotteries, and the sale of lottery tickets, for any purpose whatever shall forever be prohibited in this state.”⁴ Although “nothing therein was said of gaming or gambling as such,” that was likely because the legislature was so consistently

¹ *Mills-Jennings of Ohio, Inc. v. Dep’t of Liquor Control*, 70 Ohio St. 2d 95, 99 (1982).

² *Id.*

³ *Id.*

⁴ *Id.* (quoting Ohio Const., art. XV, §6 (1851)).



opposed to gambling that it “was thought unnecessary to write any prohibition thereof into the Constitution.”⁵

Still, and perhaps owing to the State’s longstanding opposition to gambling, “courts in Ohio treated the Constitution as broadly prohibiting lotteries in the generic sense, thus extending the threat of unconstitutionality to other games and schemes of chance.”⁶ “Thus the general proposition was that just because the Constitution referred only to lotteries, this did not mean that other forms of gambling were allowed.”⁷

During the twentieth century, the legislature allowed a few additional forms of gambling. And in the 1970s, Ohioans adopted a constitutional amendment to permit “bingo conducted by a charitable organization for charitable purposes and a lottery operated by the state.”⁸ The State also permitted wagering on horse races.⁹ Still, the prohibition on “lotteries” remained, barring the creation of lotteries except to the extent permitted by the Constitution as amended.

What constitutes a “lottery” for constitutional purposes? The word does not include *all* gambling.¹⁰ But it includes quite a bit of gambling. Specifically, a “lottery is a scheme whereby a monetary consideration is paid and the winner of the prize is determined by lot or chance.”¹¹ That covers more than “lotteries” in the narrow modern sense of contests in which winners are chosen by numbered tickets or a lottery wheel. For example, “[p]olicy” (the “numbers game” popular through much of the twentieth century) “and similar gambling activities are in the nature of lotteries.”¹² Bingo also qualifies as a lottery.¹³

Ohioans have amended the Constitution to permit additional forms of gambling, but they have retained the default prohibition on lotteries. Specifically, Article XV, Section 6 of the Ohio Constitution says that, “[e]xcept as otherwise provided in this section, lotteries, and the sale of lottery tickets for any purpose whatever, shall forever be prohibited in the State.” It goes on to make three exceptions: a state-run-lottery exception; a bingo exception; and a casino-gaming exception. It is worth addressing each in turn.

First, under the state-run-lottery exception, the “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.”¹⁴ But it may do so only if “the entire net proceeds of any such lottery are paid

⁵ *Id.* at 100.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *State ex rel. Gabalac v. New Universal Congregation of Living Souls*, 55 Ohio App. 2d 96, 97 (9th Dist. 1977).

¹¹ *Id.*

¹² *State v. Lisbon Sales Book Co.*, 176 Ohio St. 482, 486 (1964).

¹³ Ohio Attorney General Opinion 75-005 at 2-18, <https://perma.cc/P7A8-3GEN>.

¹⁴ Ohio Const., art. XV, §6(A).



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into a fund of the state treasury that shall consist solely of such proceeds and shall be used solely for the support of” education.

Second, the bingo exception empowers the General Assembly to “authorize and regulate the operation of bingo to be conducted by charitable organizations for charitable purposes.”¹⁵

Finally, the casino-gaming exception permits certain forms of gambling “at four casino facilities” operated from four, constitutionally identified locations.¹⁶

This last provision, at least arguably, expands the traditional definition of “lottery” to include casino-based gambling. After all, the casino-gaming exception creates a carveout from the default prohibition on “lotteries.” That exception is superfluous unless the gambling activities allowed under the casino-gaming exception qualify as prohibited “lotteries.” And the Constitution should not be read in a way that renders any of its terms superfluous.¹⁷

All told, the Ohio Constitution today prohibits the General Assembly from allowing for the creation of “lotteries,” which broadly includes *at least* all schemes “whereby a monetary consideration is paid and the winner of the prize is determined by lot or chance.”¹⁸ And, arguably, the prohibition on “lotteries” captures casino gaming except for that occurring at the four locations provided for in the casino-gaming exception.

S.B. 197. A recently introduced bill, S.B. 197, would expand access to online gambling. The bill works by empowering the Ohio Casino Commission to license and regulate “internet gambling.” The phrase “internet gambling” includes any “form of gambling in which a wager on an *internet gambling game* is made and accepted through an internet gaming system.”¹⁹ The italicized phrase proves critical. An internet gambling game is any “game, event, happening, or other matter used to display the outcome of a wager placed in the course of internet gambling,”²⁰ The bill identifies two types of games that fall within the bill’s inclusive definition:

¹⁵ *Id.*, §6(B).

¹⁶ *Id.*, §6(C).

¹⁷ *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 2022-Ohio-65, ¶94.

¹⁸ *Gabalac*, 55 Ohio App. 2d at 97.

¹⁹ S.B. 197, p.367, ll. 10762–65 (proposing amendment to R.C. 3117.01(D)) (emphasis added).

²⁰ *Id.* at 368, ll. 10788–90 (proposing amendment to R.C. 3771.01(F)).

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(1) “A game involving a virtual representation of spinning reels or wheels, with the outcome of the game being randomly generated by a theoretical random-number-generating program”; and

(2) “A game involving a virtual representation of cards, dice, tiles, or other physical equipment that provides a random outcome with the outcome of the game being determined by that equipment or determined by a theoretical random-number-generating computer program.”²¹

The bill also excludes various forms of gambling from the definition of “internet gambling.” Of most relevance here, “[c]asino gaming authorized under division (C) of Section 6 of Article XV, Ohio Constitution” does not qualify as “internet gaming.” Thus, no gaming allowed by the casino-gaming exception qualifies as “internet gaming” for purposes of S.B. 197—S.B. 197 relates *exclusively* to online gambling *not* permitted by the casino-gaming exception.

The bill does not specifically dictate what forms of games are available. Instead, it punts that issue to the Ohio Casino Commission, which the bill empowers to determine the “types of internet games to be offered by internet gambling operators.”²²

All told, the bill would empower the Commission to grant licenses allowing entities to host online games, including those in which game outcomes are determined by random-number generators and similar devices.

ANALYSIS

S.B. 197 is unconstitutional in many applications.

As an initial matter, none of the three exceptions to Ohio’s default prohibition on “lotteries”²³ applies to the conduct S.B. 197 permits. *First*, the online gambling that S.B. 197 allows is not a state-run lottery, making the state-run-lottery exception inapplicable. *Second*, the bill does not provide for charity-based bingo, meaning the bingo exception cannot save S.B. 197 if the bill otherwise violates Article XV, Section 6. *Finally*, the bill expressly *does not* empower anyone to engage in conduct otherwise permitted by the casino-gaming exception; regardless, the exception is inapplicable because the internet gambling would occur on the web, not in person at any of the four locations at which the casino-gaming exception applies.

Because none of the exceptions applies, S.B. 197 is unconstitutional insofar as it permits gaming that qualifies as a “lottery” under Article XV, Section 6 of Ohio’s constitution. And much of the gaming it envisions would qualify. Remember, a “lottery is a scheme whereby a monetary consideration is paid and the winner of the prize is determined by lot or chance.”²⁴ That definition

²¹ *Id.* at ll.10793–801 (proposing amendments to R.C. 3771.01(F)(1)–(2)).

²² *Id.* at ll.10855–56 (proposing amendment to R.C. 3771.02(B)(2)).

²³ Ohio Const., art. XV, §6.

²⁴ *Gabalac*, 55 Ohio App. 2d at 97.



encompasses “internet gambling games” that S.B. 197 allows, including those featuring “a virtual representation of spinning reels or wheels” or “cards, dice, tiles, or other physical equipment” in which “the outcome of the game” is determined by a “randomly generated ... theoretical random-number-generating program.”²⁵ The capacious definition of “lotteries” would similarly capture other forms of “internet gambling game[s],” as that latter phrase is broadly defined to include *any* “game, event, happening, or other matter used to display the outcome of internet gambling.”²⁶

It is no response to say that the Ohio Casino Commission, exercising its power to determine the “types of internet games to be offered by internet gambling operators,” can simply decline to approve any games that qualify as “lotteries” under Article XV, Section 6. For one thing, while that move might *delay* the constitutional problem, it does not cure it: as soon as the Commission approves a game coming within the broad definition of “lottery,” as it inevitably will, its approval would trigger the same constitutional issues. Second, and more materially, the bill is unconstitutional because it *empowers* the Commission to approve “lotteries” the Constitution prohibits—S.B. 197 permits, and thus allows the Commission to approve, games whereby monetary consideration is paid and the winner is determined by lot or chance. In constitutional terms, the bill unconstitutionally empowers the Commission to approve lotteries that the Constitution prohibits.

As an aside, vesting the Commission with such open-ended discretion to decide what games to allow presents serious non-delegation concerns. By broadly empowering the Commission to determine what games are legal, S.B. 197 effectively empowers the Commission to legislate. The Ohio Constitution vests legislative power in the legislature and in the People acting by initiative or referendum, not in the executive branch.²⁷ Because S.B. 197 neither establishes any “intelligible principle to which the [Commission] must conform” nor “establishes a procedure whereby exercise of the discretion can be reviewed effectively,” the bill’s delegation to the Commission, at least arguably, amounts to an unconstitutional delegation of legislative authority.²⁸ Especially given the current composition of the Supreme Court of Ohio, this broad delegation is independently vulnerable to constitutional attack.

Returning to the question whether S.B. 197 permits unconstitutional “lotteries,” there is admittedly no directly on-point caselaw—a bill like S.B. 197 has never been tried. But the longstanding definition of “lottery” under Article XV, Section 6 captures at least a good chunk of what S.B. 197 purports to allow. And if courts were to accept the argument that the current version of the constitutional prohibition on lotteries expands the definition of “lotteries” to include casino gaming, then even larger swathes of the bill will be vulnerable to constitutional challenge.

²⁵ S.B. 197, p. 368, ll.10793–801 (proposing amendments to R.C. 3771.01(F)(1)–(2)).

²⁶ *Id.*, at ll.10788–90 (proposing amendment to R.C. 3771.01(F)).

²⁷ Ohio Const., art. II, §1.

²⁸ *Redman v. Ohio Dep’t of Indus. Rels.*, 75 Ohio St. 3d 399, 406 (1996) (quotation omitted).



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CONCLUSION

S.B. 197 would, in many of its applications, violate the Ohio Constitution.

Sincerely,

Ben Flowers

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