



Senate Select Committee on Gaming

Testimony of Daniel Reinhard

March 10, 2021

Thank you Chairman Schuring and members of the Senate Select Committee on Gaming for allowing me to appear today to testify about gaming in Ohio. My name is Daniel Reinhard and I am Senior Vice President Government Affairs for JACK Entertainment, based in Cleveland. JACK Entertainment has a deep Ohio history as we are the only gaming operator headquartered in Ohio. Our gaming properties, JACK Cleveland and JACK Thistledown, attract over 5 million guests every year and our 1,400 team members are incredibly proud to contribute to the growth and success of our host communities. In just the last few years, JACK team members have dedicated over 1500 volunteer hours and donated more than \$4.6 million to local charitable organizations here in Ohio. JACK also contributes to Ohio's economy, not just through the taxes we pay, which totaled nearly \$330 million in the last two years alone, but also in the revenues that our partnerships with local restaurants and hotels generate, \$8.8 million and \$7.6 million respectively in the last five years. I appreciate the opportunity to provide you with our thoughts on expanding gaming in Ohio.

Core Fundamentals

You've heard from many of the existing operators in Ohio about what we collectively believe is necessary for a safe and robust gaming market. I won't belabor those points, but I will quickly recap those characteristics and affirm our support of them:

- All gaming offerings must be strongly, effectively and equally regulated to ensure the safety of patrons and the security of gaming operations.
- Any expansion of gaming should be limited to the current licensed gaming facilities.
- Mobile wagering is essential for a successful sports wagering market.
- Setting appropriate tax and fee rates is crucial for the success of all gaming options.
- The regulator for any expanded gaming operation should act as a regulator and not an operator.
- All gaming should be operated under equal standards.

Underlying all of those points is the understanding that legalizing sports wagering and electronic instant bingo is a monumental expansion of gaming in Ohio. Gaming has risk and you must carefully evaluate what type of entity is best able to address that risk – whether it is a casino/racino, a bar, a charity or the state, that operator should be able to ensure the integrity of gaming. As we consider these potential expansions, we must be mindful of how to best regulate and how to protect

the public and the integrity of gaming. None of these expansions are simple or easy, and we strongly encourage you to consider these longstanding policy positions as you debate any and all expansions of gaming.

Responses to Prior Testimony and Questions

I'd like to use my time with you today to address points and questions that have been raised in prior hearings to offer clarity and/or further explanation.

Tax Rates and Hold

It's important to remember that sports betting is a very low margin business. On an average \$100 wager (or "handle"), \$95 goes back to the bettors, with the operator receiving \$5 (or "hold"). From that remaining \$5 we must then pay a federal excise tax, state tax, and an array of operating expenses: technology, labor, marketing, etc., resulting in approximately \$1 in actual revenue.

Yes, you could mandate odd or returns, leaving more initial revenue with the operator to tax at higher rates. Despite what prior witnesses have claimed, this does impact customers. Though customers aren't directly paying the tax, lower payouts do impact customer behavior. Payouts have to be competitive within the market to attract customers. Set the hold too high, and your higher tax rate will mean nothing as less money will be legally bet in Ohio.

In addition, a mandated minimum hold would dramatically limit operators' ability to create, test and improve innovative and interesting sports wagering products for customers. Our state will be left behind, and our customers will seek products elsewhere. Product pricing is best left to the competitive marketplace that will exist in Ohio. The operators and the State of Ohio are aligned in our goal to maximize the revenue potential. We feel the best way to achieve that goal is to provide products that our customers find interesting at competitive prices. A mandated hold minimum will hinder our ability to achieve that goal.

Many have referenced the much higher rate in Pennsylvania and its "robust" market. I would argue, as many others have, that this rate is much too high. While there has been some initial success, perhaps in large part due to pent up demand, operators will not be able to thrive long with this tax rate. Whether this leads to consolidations in the market to operators whose bottom line can handle the losses and/or a campaign for a lower rate, only time will tell. But I do not believe the first year in Pennsylvania is indicative of the future there. When JACK studied the Pennsylvania market, we opted to avoid a race to the bottom as we would have no brick and mortar facility to subsidize the losses.

Additionally, an inflated tax rate also advantages black market operators. A tax rate that is too high ultimately impacts the product and pricing that can be offered to a customer, which by extension limits a legal operator's ability to compete with black market operators. Black market operators do not pay any taxes and have a significant economic advantage over legal operators. A high tax rate simply compounds that advantage.

To create a thriving market, we strongly suggest allowing our holds to be competitive with the market and a tax rate no higher than 10%. This will allow operators to strike the right balance between capital investment and profitability.

We believe the framework that was under consideration last session in Senate Bill 111 serves as a solid foundation for continuing discussion in 2021. Many elements from that piece of legislation would allow Ohio to compete effectively with neighboring states and the rampant illegal sports wagering marketplace that currently exists within our borders.

Locations

We believe it is critical that the operation of sports wagering be limited to licensed casino and racetrack/racino operators. Ohio's gaming operators have invested billions of dollars in their brick-and-mortar establishments in this state and are major drivers of job creation and economic activity in our host communities. We have well-established, rigorous compliance and responsible gaming protocols in place to ensure a safe wagering environment for consumers. Those protocols will also allow established operators to deploy mobile wagering safely and effectively, which will be available across the state. As many have already noted, we have programs in other states where we partner with local businesses that can drive business growth for everyone.

Skins

There has been a great deal of deliberation around who should be authorized to offer retail and online sports wagering in Ohio. Sports wagering is gaming. Our state, and many others, have a long track record of successfully regulating and managing gaming activities. We see no reason why betting on sports should be treated differently than other forms of gaming. As such, we continue to support legislative efforts that would restrict sports wagering to the eleven existing casino and racino operators and their skin partners.

A skin partner is simply an online sportsbook operator that is permitted to enter the market through a brick and mortar operator's license, usually because the casino operator does not intend to deploy a sportsbook product. We have examined sports wagering revenue information from surrounding states, and the data suggests more than 95% of the sports wagering revenue and the corresponding tax revenue are generated by just a handful of operators in each state regardless of the number of skins that are available. For instance, Indiana has the ability to deploy up to thirty-six sports betting skins, three per casino or racino operator. That state has ten operators live and twenty-six unused skins. Of the ten operating sportsbooks, five of them generate 97% of the revenue. We are seeing similar trends in Pennsylvania. (See Appendix) Even though its early innings in Michigan, it appears we will see a very similar market share distribution outcome there.

The data suggests that regardless of how many skins are available in a market, no meaningful growth is achieved with oversaturation. Simply put, the overall size of a market is not tied to the number of sports wagering operators, it's tied to the size of a state in terms of population, that population's interest in sports wagering and the operator's ability to provide products and promotions that customers find attractive. Based on what we're seeing in neighboring states, JACK believes that eleven mobile sportsbooks in Ohio, along with the eleven retail sportsbooks, will allow the state to maximize revenue while limiting the immense regulatory and administrative burden that would come along with licensing and regulating a larger number of operators. Eleven skins will create a robust and competitive environment where market leaders can participate and deliver best in class products for Ohioans. In fact, nearly all of the market share leaders from surrounding states have already announced market access deals for Ohio. We see no real

meaningful upside for the state or consumers to expand gaming beyond the eleven casinos and racinos, or their skin partners.

Modernization v. Transformation

Despite efforts to distinguish electronic instant bingo machines from traditional slot machines, these machines are virtually identical visually and are in fact designed to replicate the feel of a traditional slot experience. The proposed machines employ increasingly sophisticated technology designed to take advantage of archaic, often vague, criminal gambling statutes that never envisioned modern game designs. Quite simply, statutes cannot keep pace with technology. This allows for the creation of devices that present themselves as slot machines while allowing operators/manufacturers to argue the machines escape the definition of slot machine, and thus allowing their use outside of the legally authorized facilities.

While the current definition of “electronic instant bingo” proposes a series of qualifiers on how an electronic instant bingo machine can and cannot operate, note that none of those qualifiers actually distinguish electronic instant bingo from the definition of slot machine (see Appendix). Despite the attempt to insert qualifiers, electronic instant bingo would meet the simple and straightforward definition of slot machine, but for the proposed addition to R.C. 2915.01(QQ)(2) that says a slot machine does not include an electronic instant bingo. If the differentiators of proposed (CCC) were sufficient to create a new category of machine, the amendment to the definition of slot machine would not be necessary.

It is not accurate to say of electronic instant bingo machines that “they are not allowed to have any type of a spinning reel *or other type of device that is common among slot machines.*” The bill prohibits only spinning reels, while authorizing any other form of an entertaining “reveal.” A serious attempt at distinguishing electronic instant bingo machines from slot machines would, as a start, prohibit electronic instant bingo machines from including any of the following features: (i) spinning wheels, handle pulls, reveal all, autoplay, bonus games, jackpots, expanding reels, adjustable bets, third party trademarks, creative or thematic content or other features of either a slot machine authorized under Chapter 3772 of the Revised Code or a video lottery terminal authorized under Chapter 3770 of the Revised Code. Instead, this loophole permits electronic instant bingo machines to look and operate like modern slot machines, as long as they don’t use spinning reels.

Even if there is some sort of technical differentiation in the two types of machines, which we dispute, it certainly will not be apparent to consumers. In the appendix to this testimony, I’ve included pictures of electronic pull tab machine (i.e. electronic instant bingo machine) and electronic slot machine cabinets and screens, each taken from a manufacturer’s website. As you will see, there is nothing on the face of the cabinet or obvious from the screen that there is any difference between these machines. While technology will allow these machines to initially look much simpler, the manufacturers and distributors will undoubtedly seek to advance the machines over time.

Final Thoughts

As I said earlier, Ohio is contemplating is a monumental expansion of gaming. Many have talked about fairness and an open market.

If we are going to truly have a fair and open market, here are the safeguards that must be in place for any expansion of gaming – whether for operators of sports wagering or for charities or other businesses seeking to operate slot machines or electronic instant bingo or any other gaming equipment:

- All gaming operations should be equally highly regulated, by an experienced gaming regulator, to ensure the security and integrity of the gaming market and the protection of customers.
- All gaming derived revenue is taxed by the state at an appropriate level – the people of Ohio should derive a benefit from allowing gaming.
- All operators, key employees, gaming employees and vendors are subject to the same level of scrutiny and regulation in order to be issued a license.
- All operators/gaming facilities be required to make capital investments in Ohio that reflect the initial levels required of current licensed operators.
- All gaming facilities should be required to have the level of security oversight, including gaming agents on premises, as current licensed operators.
- All gaming facilities should be required to participate in and promote problem gaming programming, such as promoting state resources, the voluntary exclusion program, etc.

As a state, we've put these safeguards in place because we have long recognized that customers and employees deserve appropriate protections. As operators, we support these measures and have consistently supported ensuring sports wagering adheres to them.

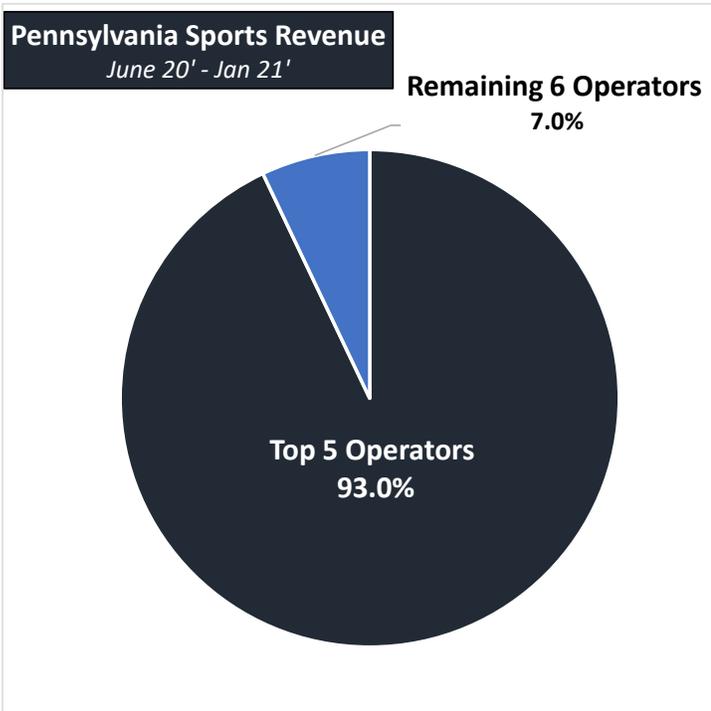
Thank you again for the opportunity to appear and I'm happy to answer any questions the committee may have.

Appendix

Indiana Online Sports Betting Revenue:



Pennsylvania Online Sports Betting Revenue:



Appendix

(QQ)(1) "Slot machine" means either of the following:

(a) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain;

(b) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.

(2) "Slot machine" does not include a skill-based amusement machine ~~or~~ an instant bingo ticket dispenser, or an electronic instant bingo system.

(CCC) "Electronic instant bingo" means a form of bingo that consists of an electronic or digital representation of instant bingo in which a participant wins a prize if the participant's electronic instant bingo ticket contains a combination of numbers or symbols that was designated in advance as a winning combination, and to which all of the following apply:

(1) Each deal has a predetermined, finite number of winning and losing tickets and a predetermined prize amount and deal structure, provided that there may be multiple winning combinations in each deal and multiple winning tickets.

(2) Each electronic instant bingo ticket within a deal has a unique serial number that is not regenerated.

(3) Each electronic instant bingo ticket within a deal is sold for the same price.

(4) After a participant purchases an electronic instant bingo ticket, the combination of numbers or symbols on the ticket is revealed to the participant.

(5) The reveal of numbers or symbols on the ticket may incorporate an entertainment or bonus theme, provided that the reveal does not include spinning reels that resemble a slot machine.

(6) The reveal theme, if any, does not require additional consideration or award any prize other than any predetermined prize associated with the electronic instant bingo ticket.

Appendix



Images of electronic pull tab machines (i.e. electronic instant bingo) are on the left.¹

¹ <https://equipment.arrowinternational.com/electronic-pull-tabs-hardware>; <https://www.sggaming.com/>