

Testimony for Senate Bill 176 – Legalize and Regulate Sports Gaming

Ohio Senate Select Committee on Gaming

May 19, 2021

Submitted by Ali Bartlett, Bose McKinney & Evans, on behalf of The Vanguard Group, Inc.

Good afternoon Chairman Schuring and Members of the Committee. We appreciate the opportunity to offer testimony on Substitute Senate Bill 176.

My name is Ali Bartlett with Bose McKinney & Evans and Bose Public Affairs Group. I am here today with my colleague Phil Sicuso, and with Shawn Kasych in support. Our law firm serves as outside gaming regulatory counsel for The Vanguard Group, Inc. (“Vanguard”). We advise Vanguard on compliance with the variety of gaming regulatory requirements for investors who own shares of companies engaged in the gaming industry.

By way of background, and as many of you may already be familiar, Vanguard is a mutual fund company, founded over 45 years ago, that helps everyday people invest and achieve their financial goals. Many of these investors live in Ohio and trust Vanguard with their hard earned money. They benefit from Vanguard’s low cost approach and disciplined investment philosophy. Vanguard’s mission statement is “To take a stand for all investors, to treat them fairly, and to give them the best chance for investment success.”

In order to accomplish this mission, Vanguard Mutual Funds make investments in businesses across a wide range of industries. These Funds are passive in nature and their investments are never made to gain any sort of control or influence over the companies in which they invest. They are made for investment purposes only.

Like many other passive investors, Vanguard Funds purchase publicly traded stock issued by gaming companies that are licensed by state regulatory bodies.

The Vanguard Funds invest in several companies that do business in Ohio, one of the nation’s leading gaming states.

Vanguard takes its regulatory compliance obligations very seriously, and respects the important role that gaming laws and regulations play in ensuring the integrity of the businesses and people who operate them.

In all instances, Vanguard Funds invest in the gaming industry for passive purposes only and without the intent or ability to control a licensed gaming company in any capacity. In Ohio, as in other jurisdictions, this means that Vanguard falls under the definition of an “Institutional Investor.”

Investments made in companies by Institutional Investors are commonly viewed as a source of capital for companies to re-invest in their businesses and the communities where they operate, without needing to incur debt.

From a regulatory oversight perspective, since Institutional Investors do not exercise “control” over the affairs of a licensed gaming company, they are regularly considered exempt from licensing requirements that may otherwise apply to an investor who actively participates in management and/or control functions of a gaming company.

In Ohio, the Casino Control Act aligns with this general principle.

However, Ohio differs from many other gaming jurisdictions in two significant ways. First, it has a 15% ownership limit for Institutional Investors, which is lower than other leading gaming states. For example, New Jersey and Nevada, have limits to go up to 25% for Institutional Investors. Even applicable Federal regulation have a control threshold of 25% as well. This 15% ownership limit has been interpreted to apply to the Vanguard Mutual Funds’ ownership of licensed gaming companies in the aggregate rather than at the individual mutual fund. Second the limit is written into the statute, rather than into administrative rules or in a manner that would provide flexibility for the regulatory body to consider exceptions or other alternatives, where appropriate. This sort of flexibility exists in nearly every other state that is home to gaming companies.

Therefore, our request is that the definition of “Institutional Investor” be amended to raise the ownership limit to 25%. This change would be reflective of market-based principles that are beneficial to the state of Ohio, its citizens, and the companies that want to do business here.

This change would create a standard that:

- First, makes Ohio’s law comparable to other major gaming jurisdictions;
- Second, is consistent with certain federal regulations already applicable to Institutional Investors.
- Third, would bring certainty and predictability to the gaming industry and its sources of equity capital, which enable further growth and development.; and
- Finally, ensures that Ohio law does not inadvertently inhibit private sector investment in the companies that wish to do business in the state.

Thank you for the opportunity to testify this afternoon.