

IN THE SUPREME COURT OF PENNSYLVANIA

No. _____

**STADIUM CASINO RE, LLC, STADIUM CASINO WESTMORELAND RE,
LLC, GREENWOOD GAMING AND ENTERTAINMENT, INC.,
CHESTER DOWNS AND MARINA, LLC, MOUNTAINVIEW
THOROUGHBRED RACING ASSOCIATION, LLC, WASHINGTON
TROTTHING ASSOCIATION, LLC, HOLDINGS ACQUISITION CO., LP,
SUGARHOUSE HSP GAMING, LP, WIND CREEK BETHLEHEM, LLC,
and GW CUMBERLAND OP CO.,**

Petitioners,

v.

**PENNSYLVANIA DEPARTMENT OF REVENUE, PATRICK
M. BROWNE IN HIS OFFICIAL CAPACITY AS SECRETARY
OF THE PENNSYLVANIA DEPARTMENT OF REVENUE, and
THE PENNSYLVANIA GAMING CONTROL BOARD,**

Respondents.

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT
SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

Mark A. Aronchick (ID No. 20261)
John S. Summers (ID No. 41854)
Jason A. Levine (ID No. 306446)
Gianni M. Mascioli (ID No. 332372)
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Dated: July 29, 2024

Attorneys for the Petitioners

NOTICE TO PLEAD

TO:

Pennsylvania Department of Revenue
Fourth and Walnut Streets
First Floor, Strawberry Square
Harrisburg, PA 17128-1100

Stephen S. Cook, Esq.
Pennsylvania Gaming Control Board
303 Walnut Street
Commonwealth Tower, Fifth Floor
Harrisburg, PA 17101

Patrick M. Browne, in his official
capacity as Secretary of the
Pennsylvania Department of Revenue
Fourth and Walnut Streets
11th Floor, Strawberry Square
Harrisburg, PA 17128-1100

You are hereby notified to file a written response to the enclosed Petition in the Nature of a Complaint Seeking Declaratory and Injunctive Relief within thirty (30) days from service hereof or a judgment may be entered against you.



Mark A. Aronchick
Attorney for Petitioners

I. INTRODUCTION

1. This original jurisdiction action, brought by a majority of Pennsylvania’s licensed casinos, seeks declaratory and injunctive relief because taxes imposed on their slot machine revenue pursuant to the Pennsylvania Race Horse Development and Gaming Act (the “Gaming Act”), 4 Pa. C.S. § 1101, *et seq.*, violate the Uniformity Clause of the Pennsylvania Constitution.

2. The Uniformity Clause mandates that Pennsylvania taxes be “uniform, upon the same class of subjects.” Pa. Const. Art. VIII, § 1. This guarantee helps to ensure, among other things, that the government does not engage in preferential or punitive treatment among Pennsylvania taxpayers, and that taxes are borne equally within a particular class of taxpayers.

3. The Gaming Act imposes a number of taxes on slot machine operators, amounting to an approximately 50% tax on revenue earned from the operation of any slot machine, whether chance, skill, or a combination of both affects the outcome of the game. *See* 4 Pa. C.S. § 1103.¹ That is a very substantial tax. In 2023 alone, for example, Petitioners, who operate over 19,000 slot

¹ The Gaming Act contemplates two sub-categories of slot machines: (1) “skill” slot machines, in which “the skill of the player, rather than the element of chance, is the predominant factor in affecting the outcome of the game”; and (2) “hybrid” slot machines, in which “a combination of the skill of the player and elements of chance affect the outcome of the game.” 4 Pa. C.S. § 1103. The tax treatment of skill and hybrid slot machines within a facility is the same, and it does not differ from that of other slot machines that operate within the facility.

machines in the Commonwealth, paid almost \$1 billion in slot machine taxes to the Commonwealth and its counties and municipalities.

4. The Gaming Act's slot machine tax, as interpreted by the Commonwealth Court and Courts of Common Pleas, and as applied by Respondents, violates the Uniformity Clause in two fundamental ways.

5. First, there are numerous unlicensed entities in the Commonwealth operating devices that annually earn billions of dollars in revenue which, if earned by a licensed casino, would be taxed as slot machine revenue under the Gaming Act. Because the devices are operated by unlicensed entities, the revenue from those slot machines is not subject to the Gaming Act's slot machine tax. This violates the Uniformity Clause because it imposes two different taxes – either about 50% or 0% – on the same class of property, namely slot machines.

6. Second, the Gaming Act unlawfully imposes different taxes depending upon whether a slot machine operator is a casino licensee or not. Take, for example, a so-called “skill” slot machine. A licensee operator pays approximately 50% of revenue generated from that machine in taxes, yet an unlicensed operator pays no such tax. This violates the Uniformity Clause because it imposes two different taxes – again, about 50% or 0% – on the same class of taxpayer, namely slot machine operators.

7. The Uniformity Clause prohibits these kinds of disparate tax treatment, absent some “legitimate distinction between the classes that provides a non-arbitrary, reasonable, and just basis for the disparate treatment.” *Mount Airy # 1, LLC v. Pennsylvania Dep’t of Revenue*, 154 A.3d 268, 274 (Pa. 2016). As Petitioners will show, there is no such basis for the Gaming Act’s disparate treatment.

8. All slot machines – whether operated by licensed operators or unlicensed operators – are a single collective class for purposes of taxation, because they serve the same purposes (*i.e.*, allowing customers to play machines for entertainment and to potentially win money, and generating a profit for the operators), and therefore they must be taxed uniformly.

9. Whether a slot machine is operated at a licensed casino or at an unlicensed facility creates no legitimate distinction justifying non-uniform tax treatment of the revenue earned from that slot machine.

10. There is no basis for requiring licensed entities to pay about half of their slot machine revenue to the Commonwealth while allowing unlicensed entities to pay *no tax* on such revenue.

11. Accordingly, Count I seeks a declaration that the Gaming Act’s slot machine taxes are unconstitutional insofar as they apply to revenue generated from

all slot machines in licensed casinos but not revenue generated from slot machines operated elsewhere in the Commonwealth.

12. Count II seeks a corresponding permanent injunction requiring Respondents to collect taxes from revenue generated from all slot machines in the Commonwealth, including those operated by unlicensed entities. Petitioners alternatively ask this Court to enjoin Respondents from collecting slot machine taxes altogether. To avoid any immediate and disruptive effects on the Commonwealth's tax revenue, Petitioners request that this Court stay such an injunction for 120 days to allow the General Assembly to correct the unconstitutionality of the slot machine taxes. To be clear, Petitioners do not seek to pay no taxes on revenue generated from slot machines; rather, they seek parity in the burden of slot machine taxes, as required by the Uniformity Clause.

13. Count III seeks a declaration that the Gaming Act's slot machine taxes are unconstitutional insofar as they apply to revenue generated from skill slot machines in licensed casinos but not revenue generated from those machines operating elsewhere in the Commonwealth.

14. Count IV (like Count II) seeks injunctive relief requiring Respondents to collect taxes from revenue generated from all skill and hybrid slot machines in the Commonwealth, including those operated by unlicensed entities. Alternatively, and only if necessary, Petitioners request that the Court enjoin Respondents from

collecting such taxes from the casinos' revenue generated from skill and hybrid slot machines, subject to the same kind of 120-day stay.

II. STATEMENT OF JURISDICTION

15. Section 1904 of the Gaming Act vests this Court with “exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of this part.” 4 Pa. C.S. § 1904.

16. This includes authority to “find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief,” and to take any other “such action as it deems appropriate.” *Id.*

17. Petitioners challenge the constitutionality of the taxes on gross slot machine revenue imposed by Sections 1403, 1405, and 1407 of the Gaming Act insofar as they are imposed only on slot machines operated in the casinos of licensed entities and not slot machines operated elsewhere in the Commonwealth.

III. PARTIES

18. Petitioner Stadium Casino RE, LLC (“Stadium Philadelphia”) is a limited liability company organized in Delaware, doing business as Live! Casino Philadelphia in the City of Philadelphia. Stadium Philadelphia holds a Category 2 slot machine license.

19. Petitioner Stadium Casino Westmoreland RE, LLC (“Stadium Pittsburgh”) is a limited liability company organized in Delaware, doing business

as Live! Casino Pittsburgh in the City of Greensburg, Westmoreland County.

Stadium Pittsburgh holds a Category 4 slot machine license.

20. Petitioner Greenwood Gaming and Entertainment, Inc.

(“Greenwood”) is a Pennsylvania corporation doing business as Parx Casino and Racing in Bensalem Township, Bucks County. Greenwood holds a Category 1 slot machine license.

21. Petitioner Chester Downs and Marina, LLC (“Chester Downs”) is a limited liability company organized in Pennsylvania, doing business as Harrah’s Philadelphia Casino and Racetrack in the City of Chester, Delaware County. Chester Downs holds a Category 1 slot machine license.

22. Petitioner Mountainview Thoroughbred Racing Association, LLC (“Mountainview”) is a limited liability company organized in Pennsylvania, doing business as Hollywood Casino at three different locations: East Hanover Township, Dauphin County; Caernarvon Township, Berks County; and the City of York, York County. Mountainview holds a Category 1 slot machine license at its Dauphin County location, and Category 4 slot machine licenses at its Berks County and York County locations.

23. Petitioner Washington Trotting Association, LLC (“Washington”) is a limited liability company organized in Delaware, doing business as Hollywood

Casino at the Meadows in North Strabane Township, Washington County.

Washington holds a Category 1 slot machine license.

24. Petitioner Holdings Acquisition Co., LP (“Rivers Pittsburgh”) is a Delaware limited partnership doing business as Rivers Casino in the City of Pittsburgh, Allegheny County. Rivers Pittsburgh holds a Category 2 slot machine license.

25. Petitioner Sugarhouse HSP Gaming, LP (“Rivers Philadelphia”) is a Delaware limited partnership doing business as Rivers Casino Philadelphia in the City of Philadelphia. Rivers Philadelphia holds a Category 2 slot machine license.

26. Petitioner Wind Creek Bethlehem, LLC (“Wind Creek”) is a limited liability company organized in Pennsylvania, doing business as Wind Creek Bethlehem in the City of Bethlehem, Northampton County. Wind Creek holds a Category 2 slot machine license.

27. Petitioner GW Cumberland Op Co. (“Parx Casino Shippensburg”) is a Delaware corporation doing business as Parx Casino Shippensburg in the Borough of Shippensburg, Cumberland County. Parx Casino Shippensburg holds a Category 4 slot machine license.

28. As slot machine licensees, Petitioners are subject to the Gaming Act’s taxes on “gross terminal revenue” from slot machines, under its Sections 1403, 1405, and 1407. 4 Pa. C.S. §§ 1403, 1405 and 1407.

29. Petitioners have a substantial, direct, and immediate interest in obtaining the relief sought in this Petition. Each Petitioner currently operates traditional, chance-based slot machines on their casino floors and pays taxes on its revenue from those machines.

30. In addition, following the Commonwealth Court's recent decisions and the 2017 amendments to the Gaming Act that changed the definition of a "slot machine" to include skill and hybrid slot machines (both of which incorporate elements of skill and chance), Petitioners may consider whether to add skill and hybrid slot machines to their respective casino floors.

31. Uncertainty as to whether the Pennsylvania Constitution permits Respondents to tax Petitioners' revenue from slot machines, and not the revenue that unlicensed operators earn, affects and inhibits Petitioners' decisions about whether to invest in skill and hybrid slot machines, including whether to spend the time and money necessary to complete the regulatory approval process. Furthermore, Petitioners are forced to make an untenable decision to either comply with the unconstitutional tax, defy it, or forgo the chance to operate skill and hybrid slot machines at a time when they are proliferating across the Commonwealth, which warrants immediate judicial relief.

32. Respondent Pennsylvania Department of Revenue (the "Department") is an executive agency of the Commonwealth of Pennsylvania. The Department is

specifically responsible for determining, collecting, and distributing gross slot machine revenue taxes imposed by Sections 1403, 1405, and 1407 of the Gaming Act. *See* 4 Pa. C.S. § 1501. The Department’s principal office is in Harrisburg.

33. Respondent Patrick Browne is the Pennsylvania Secretary of Revenue. He is named as a defendant in this action in his official capacity.

34. Respondent Pennsylvania Gaming Control Board (the “Board”) is an independent agency of the Commonwealth of Pennsylvania, charged with “sole regulatory authority over every aspect of the authorization, operation and play of slot machines” in the Commonwealth. 4 Pa. C.S. § 1202(a)(1). The Board administers and enforces part of the slot machine taxing scheme imposed by the Gaming Act. The Board’s principal office is in Harrisburg.

IV. FACTUAL BACKGROUND

A. Pennsylvania’s Uniformity Clause Prohibits Disparate Tax Treatment Without a Legitimate, Non-Arbitrary Reason

35. The Uniformity Clause of the Pennsylvania Constitution requires that “[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.” Pa. Const. Art. VIII, § 1.

36. The Uniformity Clause was enacted in the early nineteenth century, as part of a constitutional convention “dedicated to constraining the power of the legislature to enact preferential local and special legislation.” *Nextel Commc’ns of*

Mid-Atl., Inc. v. Com., Dep't of Revenue, 171 A.3d 682, 695 (Pa. 2017). In particular, the Uniformity Clause was “a direct response to the legislative use of special tax laws applicable only to particular industries or individuals.” *Id.* at 694.

37. The “paramount tenet” of the Uniformity Clause is “that the tax burden should be borne equally by all those who are obligated to pay a tax.” *Id.* at 697. This means “that all tax laws [must] produce equality in the assignment of the tax burden within a particular class.” *Id.* at 696.

38. Therefore, “[w]hen the validity of a tax classification is challenged, the relevant inquiry is whether the classification is based upon some legitimate distinction between the classes that provides a non-arbitrary, reasonable, and just basis for the disparate treatment.” *Mount Airy # 1, LLC*, 154 A.3d at 274.

39. The Uniformity Clause’s unique purpose is to “eradicate inequitable fiscal policies that had resulted from parliamentary favoritism and class legislation.” *Id.* at 273.

40. The Supreme Court has held that, while property may vary in its characteristics, uses, and regulatory treatment (*e.g.*, single-family, commercial or industrial real property), the property may not be treated disparately for tax purposes, because the Uniformity Clause prohibits “sub-classifications” that are “drawn according to property type” when the property “forms a single collective

class.” *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 978 (Pa. 2017).

B. The Gaming Act Taxes Licensed Pennsylvania Casinos for Revenue Earned From All Slot Machines

41. In 2004, the General Assembly enacted the Gaming Act, which created a regulatory framework for legal gaming in the Commonwealth. Prior to its enactment, the operation of all gambling devices – including slot machines – was illegal. *See* 18 Pa. C.S. § 5513.

42. The Gaming Act’s “primary objective” is “to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful.” 4 Pa. C.S. § 1102(1). It also is intended to “provide a significant source of new revenue to the Commonwealth,” “provide broad economic opportunities to [Pennsylvania’s] citizens,” and “enhance the further development of [Pennsylvania’s] tourism market.” *Id.* § 1102(3), (5), (6).

43. When first enacted, the Gaming Act created three “categories” of licenses to operate slot machines in Pennsylvania. These categories vary depending on where the casino is located: at a racetrack (Category 1); in cities of the first or second class or in a revenue- or tourism-enhanced location (Category 2); or at a “well-established resort hotel” (Category 3). *Id.* §§ 1302, 1304, 1305.

44. In 2017, the Gaming Act was amended to create a fourth category of slot machine license for what are commonly known as mini-casinos. *Id.* § 1305.1.

45. Under the Gaming Act, each licensee pays a significant tax to the Commonwealth on revenue earned from gaming operations, including slot machines, table games, interactive gaming, sports betting, and video gaming.

46. Among the largest of these taxes imposed is a tax on slot machine revenue, *i.e.*, a licensee’s “daily gross terminal revenue from the slot machines in operation at its facility.” *See id.* § 1403(b), (b.1); *see also id.* §§ 1405, 1407. “Gross terminal revenue” is defined as the total of “cash or cash equivalent wagers received by a slot machine,” less payouts to players, plus “cash received as entry fees for slot machine contests or slot machine tournaments.” *Id.* § 1103.

47. Under the Gaming Act’s taxing framework, licensees are taxed at a rate between 48% and 54% of their slot machine revenue, or approximately 50%.

48. This framework has generated significant tax revenue for the Commonwealth. In 2023 alone, slot machine taxes generated over \$1.2 billion for the Commonwealth and its counties and municipalities. And since the Gaming Act was enacted twenty years ago, over \$20 billion in revenue has been collected from slot machine taxes alone. *See Revenue Reports*, Pa. Gaming Control Bd., <https://gamingcontrolboard.pa.gov/news-and-transparency/revenue> (last accessed July 22, 2024) (hereinafter “PGCB Revenue Reports”).

49. Pennsylvania’s casinos directly employ over 15,000 people. *See Annual Report 2022-2023*, Pa. Gaming Control Bd., Oct. 1, 2023, at 4, *available at*

<https://gamingcontrolboard.pa.gov/about/organization-reports/2022-2023-annual-report>. And indirectly, these casinos have an even greater impact on the Commonwealth. According to the American Gaming Association, Pennsylvania’s casinos generate almost \$15 billion in economic activity and \$3.6 billion in total tax revenues per year, and they support nearly 65,000 jobs. See State of Play 2024 – Pennsylvania, American Gaming Ass’n, <https://www.americangaming.org/state/pennsylvania/> (last updated Dec. 31, 2023).

C. “Skill” and “Hybrid” Slot Machines are Slot Machines Subject to the Gaming Act’s Taxes

50. In addition to creating Category 4 slot machine licenses, the 2017 amendments to the Gaming Act also expanded legal gaming – and the taxation of it. Specifically, the amendments explicitly authorized and taxed the operation of “skill and hybrid slot machines.” Act of Oct. 30, 2017, P.L. 419, No. 42, § 3.

51. A “skill slot machine” is one “in which the skill of the player, rather than the element of chance, is the predominant factor in affecting the outcome of the game.” 4 Pa. C.S. § 1103. A “hybrid slot machine” is one “in which a combination of the skill of the player and elements of chance affect the outcome of the game.” *Id.*

52. To be sure, the original Gaming Act of 2004 defined slot machines to include games whereby payment of a wager entitles a player with an opportunity to win a payout of some size, “whether by reason of skill or application of the

element of chance or both.” Act of July 5, 2004, P.L. 572 No. 71, § 1. However, the Board interpreted this definition to only include machines where “a predominance of chance” controls the game’s outcome. *See* Transcript of Public Joint Hr’g, Pa. H.R. Gaming Oversight Comm. and Pa. S. Cmty., Economic & Recreational Development Comm., Mar. 7, 2017 (“3/7/2017 Joint Hr’g”), at 12:13-23, available at https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0032T.pdf. Thus, until the 2017 expansion to legal gaming, the necessary criteria to classify a game as a slot machine were: (a) a wager, (b) a potential payout, and (c) “chance” as the predominant factor in whether a payout is received.

53. Skill and hybrid slot machines are identical to these traditional slot machines in the first two respects – a player must make a wager to play and is entitled to a potential payout in return.

54. As to the third criterion, “chance” is also a factor in whether there is a payout. To qualify as a skill or hybrid machine, however, these machines also must incorporate at least some element of “skill” into their gameplay. This may include, for example, a side-game like a memory test or round of trivia that allows the player to win back their wagered funds. Transcript of Public Hr’g, Pa. H.R. Gaming Oversight Comm., June 10, 2019, at 14:7-17, available at https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2019_0075T.pdf. It may

also include add-ons like “skill stops” that provide a so-called “skill” element to whether the player receives a payout. *Id.* at 120:17-121:2, 124:11-125:4.

55. Whatever form the “skill” element takes in a skill or hybrid slot machine, they all present the player with a game that is controlled by chance. And sometimes – but not every time – these machines also present the user with the option to use “skill” in the game, or to play a skill side-game.

56. The upshot is that skill and hybrid slot machines look and function just like the slot machines in Petitioners’ casinos. Each has the same common core elements – symbols and digital spinning reels. *See, e.g.,* Our Skill Games, Pace-o-Matic, <https://www.paceomatic.com/skill-games> (last accessed July 22, 2024); *see also* Skyriser Lightning Edition, Banilla Games, <https://banillagames.com/product/superior-skill-deluxe-lightning-edition-4/> (last accessed July 22, 2024) (detailing and displaying the functions of some of the devices operated by two of the largest unlicensed skilled gaming developers in Pennsylvania and across the country). That skill and hybrid machines have varying themes, graphics, and symbols is immaterial. To spin the reels on such machines, a player needs to make a wager, just like on a traditional slot machine. And the size of the potential payout offered by those spinning reels is *still* based on chance, with a player only having the opportunity for a large payout if the symbols on the reels happen to line up in the right combination.

57. In addition, when playing a skill or hybrid slot machine, a user must make a wager on and play a game of chance. The user spins the reels every time he or she plays the game, and the maximum payout a user can win – whether by virtue of the chance game or the token “skill” add-on – depends entirely on whether the reels land in the right pattern, which is a matter of chance. To be clear, there is *no opting out* of wagering on a game of chance when playing a “skill” or “hybrid” slot machine. Furthermore, the chance-based game often determines whether the skill-based add-on is even available to the user for play.

58. In contrast to the mandatory game of chance, the “skill” component of a skill or hybrid slot machine is generally optional. In other words, a player can choose to forego the skill side-game in a skill slot machine entirely and play the machine just like a traditional, chance-based slot machine: making wagers, spinning the reels, and hoping for a lucky payout on each turn.

59. Take as an example Pace-O-Matic’s “Pirates” machine. See Our Skill Games, Pace-O-Matic Inc., <https://www.paceomatic.com/skill-games>; “Pirates” available at <https://share.vidyard.com/watch/xZg7SjareUbKfQYMtucQ9k?> (last accessed July 22, 2024). To play “Pirates,” the user must first make a wager and play a required game of chance, during which he or she can win (a) 105% of their wager, (b) less than 105% of their wager, or (c) no award. Then, and *only then*, a

player can sometimes play a second, *entirely optional* memory game called “Follow Me” in which the player can purportedly win back lost bets.

60. Notably, this “Follow Me” game is time-consuming and difficult. It requires that the player win twenty consecutive rounds of the memory game, and takes between 12 and 15 minutes to play to a win. After that, the player can win, *at most*, 105% of their original wager – in other words, what they would “win” on a successful play of the chance game, which takes seconds to play.

61. As another example, Banilla Games operates a game called “Diamond Skill 8.” Like “Pirates,” “Diamond Skill 8” begins with a user making a wager and playing a required game of chance. Only if the player loses the initial game of chance does the secondary “skill” game – a memory game called “Follow the Banana” – sometimes become available. See Banilla Games, Lightning Skill, YouTube (Sep. 12, 2018), <https://www.youtube.com/watch?v=Ev9lF7WxzY0>. That memory game repeatedly displays patterns of bananas, and the user must remember the increasingly difficult pattern. The game has 25 rounds with 12 intermissions, and it takes about 20 minutes to complete. If the player successfully completes the memory game, he or she can win, *at most*, 104% of his or her last wager on the initial game of chance.

62. All “skill” and “hybrid” games function like this. It is not at all surprising then that, in public surveys, the vast majority of those familiar with

these “skill” and “hybrid” slot machines state that they “are no different from slot machines where wins are based on random chance, and that even a skilled player cannot reliably influence the outcome.” The Dangers of “Skill” Machines, American Gaming Ass’n, Aug. 23, 2023, *available at* <https://www.americangaming.org/wp-content/uploads/2023/08/2023-Skills-Machine-Survey-Results.pdf>.

63. It is also not surprising that, in 2023, Pennsylvania’s 1-800-GAMBLER hotline received 121 calls from individuals who identified “Skill Machines” as their “most problematic gambling” or “the gambling activity that the caller/subject has the most difficult time controlling,” and received another 68 calls from individuals who identified “Non Casino – Slots” (defined as unregulated slots) as their most problematic gambling. *See Helpline Data 2023 Annual Report*, Council on Compulsive Gambling of Pa., Inc., Feb. 19, 2024, at 7, *available at* <https://www.pacouncil.com/wp-content/uploads/2023-CCGP-Annual-Report.pdf>. These 189 calls comprise approximately 8% of all calls received by the 1-800-GAMBLER hotline in 2023 in which the caller specified their form of most problematic gambling. *Id.* This is remarkable because, unlike licensed slot machine operators, the unlicensed operators of skill slot machines are not required to advertise and/or promote the 1-800-GAMBLER hotline to their players.

64. Public reporting also recognizes that skill gaming machines are slot machines. By way of example:
- a. *Penn Live* published an article in March 2024 about armed robbers stealing \$400,000 from “a gambling machine collection van” that was transporting skill gaming machines. See Jonathan Bermueller, Armed robbers nab \$400K from Pa. gambling machines in brazen heist, *Penn Live* (Mar. 22, 2024), <https://www.pennlive.com/crime/2024/03/armed-robbers-nab-400k-from-pa-gambling-machines-in-brazen-heist.html>;
 - b. *The Daily Item*, a publication covering Pennsylvania’s Central Susquehanna region, published an article in late 2023 about a new “gambling” facility – called “Little Vegas” in Shamokin. See Francis Scarcella, Little Vegas opens in Shamokin, *The Daily Item* (Sept. 28, 2023), https://www.dailyitem.com/news/little-vegas-opens-in-shamokin/article_d2d078a8-5e24-11ee-8a00-ebf46b5e6ee5.html; see also Facebook, Little Vegas Shamokin, available at <https://www.facebook.com/p/Little-Vegas-Shamokin-61551483861424> (last visited July 23, 2024); and
 - c. Pittsburgh’s television station WTAE published an article late last year about “gambling machines” appearing in local grocery stores in Pittsburgh. See Marcie Cipriani, Gambling and groceries all in one spot, *WTAE* (Nov. 22, 2023, 7:12 p.m.), <https://www.wtae.com/article/pittsburgh-grocery-stores-gambling-machines-games-of-skill/45922435>.

65. By the 2017 amendments to the Gaming Act, skill and hybrid slot machines were already operating in Pennsylvania and other states. Legislators considering the proposed amendments were aware that such machines were generating significant revenue outside of Pennsylvania casinos. And they understood that, if left untaxed, skill and hybrid slot machines could jeopardize the substantial tax revenues generated from Pennsylvania casinos.

66. The General Assembly therefore expressly added “skill” and “hybrid” slot machines to the definition of “slot machine” under the Gaming Act, making revenue from those machines subject to its slot machine taxes. This change furthered the General Assembly’s stated intent to “ensure the sustainability and competitiveness of the commercial gaming industry,” noting that its “continued growth and success” was “dependent upon a regulatory environment which promotes and fosters technological advances and encourages the development and delivery of innovative gaming products,” including, without limitation, “skill and hybrid slot machines.” 4 Pa. C.S. §§ 1102 (12.1), (12.2).

D. Unlicensed Entities Operate “Skill” and “Hybrid” Slot Machines Without Paying the Taxes That Licensed Entities Pay to Operate Slot Machines

67. Since the 2017 amendments to the Gaming Act, the operation of slot machines by unlicensed entities outside the framework of the Gaming Act has expanded significantly.²

68. Recent estimates suggest that approximately 67,000 skill and hybrid slot machines are operating in the Commonwealth. See Sizing the Illegal and

² This Petition describes skill gaming machines as “slot machines” consistent with how that phrase is defined in the Gaming Act as amended in 2017, 4 Pa. C.S. § 1103. The “skill” and “hybrid” machines referenced throughout this Petition “fit within th[at] definition.” *POM of Pennsylvania, LLC v. Dep’t of Revenue*, 221 A.3d 717, 725 (Pa. Commw. Ct. 2019) (en banc) (“[I]f the Gaming Act applies to unlicensed games then the [skill game at issue] would fit within the definition of ‘Skill slot machine’ under the [Gaming] Act.”), *appeal pending*, 2 EAP 2024. As this Petition demonstrates, regardless of how these machines are characterized, they are all

Unregulated Gaming Market in the U.S., American Gaming Ass’n, Nov. 30, 2022, at 12, available at <https://www.americangaming.org/wp-content/uploads/2022/11/Sizing-the-Illegal-and-Unregulated-Gaming-Markets-in-the-US.pdf>. According to the American Gaming Association, these machines generate an estimated \$1.9 billion in revenue for unlicensed operators annually – close to the \$2.5 billion that Pennsylvania casinos earned from slot machines in 2023. See Policy Committee Hearing: Skill Games in PA, Pa. S. Democrats (Aug. 23, 2023), at 1:07:24-40, <https://pasenate.com/policy-committee-hearing-skill-games-in-pa/?wvideo=ee5ey52x4h>; see also PGCB Revenue Reports.

69. Unlicensed operators of skill and hybrid slot machines include bars, taverns, convenience stores, gas stations, pizza shops, laundromats, and other venues that are widely accessible to the public – unlike Pennsylvania casinos, which are age-restricted venues and can only be opened in locations approved by the Board and allowed under law.

70. These unlicensed operators now also include skilled gaming “parlors,” which are effectively game rooms dedicated to operating skill or hybrid slot machines. At least two such parlors are already operational in the Commonwealth,

part of the same class of property under the Uniformity Clause (slot machines), and therefore must be taxed at the same rate.

and more are expected to open this year.³ These venues have also opened without any state regulation as to who can access them or where they can be located.

71. To date, the Commonwealth Court, as well as Courts of Common Pleas, have held that unlicensed entities are not prohibited from operating these skill and hybrid slot machines because the machines do not constitute “gambling devices” or “slot machines” under Section 5513 of the Crimes Code. *Pinnacle Amusement, LLC v. Bureau of Liquor Control Enf’t*, 298 A.3d 447, 452-55 (Pa. Commw. Ct. 2023), *as corrected* (July 24, 2023), *reargument denied* (Aug. 21, 2023), *appeal denied*, No. 479 MAL 2023, 315 A.3d 22 (Table) (Pa. Mar. 19, 2024); *see also In re Three Pennsylvania Skill Amusement Devices*, 306 A.3d 432, 445 (Pa. Commw. Ct. Nov. 30, 2023), *appeal granted*, 7 MAL 2024, 2024 WL 3036821 (Pa. June 18, 2024); *In re Pace-O-Matic, Inc. Equip.*, No. M.D. 965-2013, 2014 WL 12999182 (Beaver Cnty. Pa. Com. Pl., Dec. 23, 2014).

72. In addition, the Commonwealth Court has held that the unlicensed operation of skill and hybrid slot machines is not subject to the Gaming Act’s regulatory framework. *POM of Pennsylvania*, 221 A.3d at 733 (the Gaming Act “only applies to licensed slot machines in licensed entities/facilities and does not

³ *See, e.g.*, Locations, The Keystone Club, <https://thekeystoneclub.com/locations/> (last accessed July 22, 2024); Shamokin's first dedicated skilled gaming facility, Little Vegas, opens, *WOLF-TV* (Sep. 28, 2023), <https://fox56.com/news/local/shamokins-first-dedicated-skilled-gaming-facility-little-vegas-brings-247-entertainment-to-town>.

apply to unlicensed and illegal devices”); *see also Pinnacle*, 298 A.3d at 451 n.3 (citing *POM of Pennsylvania*). As a practical matter, these decisions effectively conclude that unlicensed operators of skill and hybrid slot machines are also not subject to the Gaming Act’s slot machine tax.

73. Petitioners vigorously disagree with those decisions, and several have filed an *amicus curiae* brief supporting the Office of Attorney General’s Petition for Allowance of Appeal to this Court. *See In re Three Pennsylvania Skill Amusement Devices*, docketed at Case No. 7 MAL 2024 (filed Jan. 2, 2024). This Court granted that Petition in an Order dated June 18, 2024, and the Petitioner’s opening brief is currently due on September 30, 2024. *See* 50 MAP 2024.⁴

74. Right now, however, and unless and until this Court reverses those decisions, the upshot is that billions of dollars in estimated revenue that unlicensed entities generate from operating skill and hybrid slot machines is subject to no tax from the Commonwealth – even as licensed entities would pay an approximate 50% tax on revenue from those same machines if they were operated in a casino.

⁴ Petitioners disagree with the lower courts’ decisions because, among other reasons, the optional “skill” components of the skill games proliferating across the Commonwealth do not predominate over the initial, mandatory “chance” components of the games. Petitioners will address that issue further in their amicus brief to the Supreme Court. But regardless of whether skill or chance predominates, Respondents’ failure to tax unlicensed skill games violates the Uniformity Clause because these machines are part of the same class of property as licensed “slot machines” under the Gaming Act and are operated by the same class of operators.

75. The Uniformity Clause prohibits such disparate treatment. No “legitimate distinction” justifies different tax treatment between two classes of taxpayers engaged in similar conduct for a similar purpose. Here, casinos and unlicensed entities operate slot machines for the same purpose (*i.e.*, to generate a profit), and their customers are engaged in the same conduct (*i.e.*, playing these machines for entertainment and to win money). That a slot machine is being played in a licensed casino as opposed to elsewhere creates no “just, reasonable, or non-arbitrary reason” to impose disparate taxes.

76. The Keystone Klub, one of the skill game “parlors” that has recently opened in the Commonwealth, exemplifies why disparate imposition of the slot machine tax is unjustified. The facility’s website advertises its “game room to play skilled games,” where customers “don’t have to sit at the back of a gas station or a loud smoke-filled bar *or casino*.”⁵ Instead, they can play in the “game room,” complete with complimentary “beverages and snacks” and the “best payouts.” Its website advertises “recent winners” of “jackpot[s]” and “grand prize[s]” showing thousands of dollars of winnings, including the following pictures:

⁵ Welcome Page, The Keystone Klub, <https://thekeystoneklub.com/> (last accessed July 22, 2024) (emphasis added).



These machines look just like the slot machines in Petitioners’ casinos. Indeed, Keystone Klub’s website expressly compares itself to casinos, adding that it has “the latest software with the best payouts, the best graphics, and the best bonus features.”⁶ In other words, Keystone Klub admits that its machines operate in the same way as slot machines in casinos, and it targets the same customers.

COUNT I

DECLARATORY JUDGMENT AS TO TAXES IMPOSED ON ALL PENNSYLVANIA SLOT MACHINES (UNIFORMITY CLAUSE)

77. Petitioners incorporate the preceding paragraphs into this Count.

78. The Gaming Act imposes a tax on revenue earned from the operation of any slot machine, whether chance, skill, or a combination of both affect the outcome of the game. *See* 4 Pa. C.S. §§ 1103, 1403.

⁶ *See supra* note 5.

79. Unlicensed entities currently operate machines that are slot machines as defined under the Gaming Act, including both skill and hybrid slot machines. These machines generate significant revenue, and customers play these machines for entertainment and to make money, just like the slot machines in casinos.

80. However, Respondents are currently collecting no tax from these operators, even though the Gaming Act imposes about a 50% tax rate on all slot machine revenue – including skill and hybrid slot machine revenue.

81. This creates two subclassifications among slot machine operators for tax purposes – one, which includes Petitioners, that pays half of their revenue from slot machines to the Commonwealth in taxes, and another that pays no tax on that same revenue.

82. There is no legitimate distinction supporting this Gaming Act tax scheme. Licensed and unlicensed entities both consist of private businesses that operate these machines to make a profit, and their customers are engaged in the same conduct – playing for entertainment and to make money – at times on effectively the same machines.

83. Nor does non-uniform taxation of slot machine operators follow from the regulatory scheme established by the Gaming Act. The Act was intended to regulate “all activities involving gaming” in the Commonwealth. There is no basis

for imposing either a ~50% tax or no tax at all depending on the operator of the facility, where the machines are located, or the type of the machine itself.

84. Additionally, disparate treatment has the practical effect of causing an untaxed gaming market to proliferate in Pennsylvania and disincentivizing continued investment in the taxed market created by the Gaming Act.

85. There is no “legitimate distinction between the classes that provides a non-arbitrary, reasonable, and just basis for the disparate treatment,” and the tax violates the Uniformity Clause. *Mount Airy # 1, LLC*, 154 A.3d at 274.

86. Petitioners have a substantial, direct, and immediate interest in obtaining the relief sought as the members of the sub-class that currently pay taxes on their gross slot machine revenue that is directly and immediately harmed by the ongoing disparate collection of the tax. *Yocum v. Commonwealth*, 161 A.3d 228, 235-37 (Pa. 2017).

87. This Court has the authority to sever tax provisions of the Gaming Act that violate the Uniformity Clause and provide declaratory and injunctive relief to that effect. *See Sands Bethworks Gaming, LLC v. Pa. Dep’t of Revenue*, 207 A.3d 315, 325 (Pa. 2019); *see also* 4 Pa. C.S. § 1902(a).

WHEREFORE, Petitioners seek a declaration that the taxing provisions of Sections 1403, 1405, and 1407 of the Gaming Act are unconstitutional insofar as

they apply exclusively to revenue generated from slot machines operated by licensed Pennsylvania casinos.

COUNT II

PERMANENT INJUNCTION RESTRAINING COLLECTION OF TAXES IMPOSED ON ALL PENNSYLVANIA SLOT MACHINES (UNIFORMITY CLAUSE)

88. Petitioners incorporate the preceding paragraphs into this Count.

89. A permanent injunction may be issued where petitioners have established their clear right to relief and that an adequate remedy for their harm does not exist at law. *See Bd. Of Revision of Taxes v. City of Philadelphia*, 4 A.3d 610, 627 (Pa. 2010).

90. For the reasons stated in Count I, Petitioners have established a clear right to relief from the unconstitutional application of the Gaming Act's taxing provisions.

91. Furthermore, unconstitutionally imposing these taxes only on Petitioners and other licensed casinos, and not other operators of slot machines outside of casinos, imposes *per se* immediate and irreparable harm on Petitioners.

92. Petitioners also face ongoing harm from the Gaming Act's requirements that they (a) hold all slot machine taxes "in trust" for the Commonwealth and its municipalities, and (b) segregate all slot machine revenue into a "separate account" until taxes are collected, absent agreement otherwise

from the Board. 4 Pa. C.S. § 1403(b). This imposes immediate and irreparable harm on Petitioners, who, to the extent the Board has not permitted otherwise, lose market advantages and impending business opportunities as against unlicensed slot machine operators because their earned slot machine revenue is continuously withheld from them under the Gaming Act's unconstitutional taxing provisions, while unlicensed operators' revenue is not.

WHEREFORE, Petitioners seek an injunction either (i) requiring Respondents to collect slot machine taxes from revenue generated from all slot machines operated in Pennsylvania; or alternatively, (ii) prohibiting Respondents from collecting such taxes from licensed casinos beginning 120 days from the disposition of this matter.

COUNT III

DECLARATORY JUDGMENT AS TO TAXES IMPOSED ON PENNSYLVANIA SKILL AND HYBRID SLOT MACHINES (UNIFORMITY CLAUSE)

93. Petitioners incorporate the preceding paragraphs into this Count.

94. The Gaming Act imposes taxes on revenue generated from the operation of all "slot machines," including skill and hybrid slot machines. 4 Pa. C.S. § 1103.

95. Unlicensed entities currently operate such skill and hybrid slot machines. Such entities are paying no tax on revenue earned from those skill and

hybrid slot machines, even though the Gaming Act imposes an approximate 50% tax rate on skill and hybrid slot machine revenue.

96. This creates two subclassifications for tax purposes: one, which includes the Petitioners, that will pay more than half of their revenue earned from skill and hybrid slot machine revenue to the Commonwealth, and another that pays no tax on that revenue.

97. There is no legitimate distinction supporting this Gaming Act tax scheme. This is true for all the same reasons detailed in Count I – namely, that licensed and unlicensed entities are operating the same equipment for the same purpose, *i.e.*, to make a profit; that their customers are engaged in the same conduct, *i.e.*, playing slot machines for entertainment and to make money; and that the comprehensive regulatory scheme established by the Gaming Act affords no basis for imposing either a ~50% tax or no tax depending on where the machines are located and who operates that facility.

98. Petitioners have a substantial, direct, and immediate interest in obtaining the relief sought, because they may consider whether to add skill and/or hybrid slot machines to their respective casino floors. *See Yocum*, 161 A.3d at 235-37.

99. If this approximately 50% aggregate tax is valid as currently applied, Respondents will be obligated to collect slot machine taxes on any revenue that

Petitioners earn from operating skill and/or hybrid slot machines. And until Respondents do so, Petitioners will be obligated to hold those taxes “in trust” for the Commonwealth and its municipalities, from the moment those machines are operational. *See* 4 Pa. C.S. § 1403(b).

100. The law puts Petitioners in the untenable position of choosing between complying with the law and withholding those taxes, defying the law and refusing to withhold or pay those taxes, or forgoing the chance to operate skill and hybrid slot machines to avoid the taxing scheme entirely.

101. Furthermore, Petitioners are already suffering harm from uncertainty in how these taxes may permissibly be collected, because it “may well affect whether,” and how, they decide to (a) operate skilled gaming in their casinos and/or (b) invest further in legalized gaming in the Commonwealth, “which may occur well before” any skill or hybrid slot machine taxes are assessed. *See Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 924 (Pa. 2013). The regulatory approval process for these skill and hybrid slot machines will take substantial time, effort and money, and Petitioners need to know whether they will be required to pay the substantial slot machine tax on revenue generated from these machines, as it will affect whether and how they proceed with this investment.

102. That Petitioners are confronted with these untenable options shows that “their interest in the outcome of the constitutionality and preemption of the

challenged ordinances is substantial, immediate, and direct.” *See Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 487 (Pa. 2021).

WHEREFORE, Petitioners seek a declaration that the taxing provisions of Sections 1403, 1405, and 1407 of the Gaming Act are unconstitutional insofar as they apply exclusively to revenue generated from skill and hybrid slot machines operated by licensed casinos.

COUNT IV

PERMANENT INJUNCTION RESTRAINING COLLECTION OF TAXES IMPOSED ON PENNSYLVANIA SKILL AND HYBRID SLOT MACHINES (UNIFORMITY CLAUSE)

103. Petitioners incorporate the preceding paragraphs into this Count.

104. A permanent injunction may be issued where petitioners have established their clear right to relief and that an adequate remedy for their harm does not exist at law.

105. For the reasons stated in Count III, Petitioners have established a clear right to relief from the taxing provisions of the Gaming Act, and there is no adequate remedy at law.

106. As noted above, unconstitutional imposition of a tax constitutes *per se* irreparable harm.

107. Furthermore, Petitioners will be required to (a) hold all skill and hybrid slot machine taxes “in trust” for the Commonwealth and its municipalities,

or (b) segregate all skill and hybrid slot machine revenue into a “separate account” until taxes are collected, from the moment those machines are operational. 4 Pa. C.S. § 1403(b). This will impose immediate and irreparable harm on Petitioners, who will lose market advantages and impending business opportunities as against unlicensed slot machine operators insofar as only their annual skill and hybrid slot machine revenue will be withheld from them by the Gaming Act’s taxing provisions, while unlicensed operators’ revenue will not.

WHEREFORE, Petitioners seek an injunction either (i) requiring Respondents to collect such taxes from revenue generated from all skill and hybrid slot machines operated in Pennsylvania; or alternatively, (ii) prohibiting Respondents from collecting such taxes from licensed casinos beginning 120 days from the disposition of this matter.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: July 29, 2024

By: 

Mark A. Aronchick (I.D. No. 20261)

John S. Summers (I.D. No. 41584)

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(215) 568-6200

Counsel for Petitioners

VERIFICATION

I verify that the statements made in the foregoing Petition for Review are true and correct based upon my personal knowledge or information and belief. I understand that false statements therein are subject to penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to authorities.

Dated: July 28, 2024



Petitioners: Stadium Casino RE, LLC and
Stadium Casino Westmoreland RE, LLC
By: Joe Billhimer
Its: Chief Operating Officer

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: July 29, 2024



Mark A. Aronchick

CERTIFICATE OF SERVICE

The undersigned certifies that, on this day, July 29, 2024, a true and correct copy of the foregoing Petition for Review was served in the manner described below pursuant to Pa. R.A.P. 121:

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Pennsylvania Department of Revenue
Fourth and Walnut Streets
First Floor, Strawberry Square
Harrisburg, PA 17128-1100

Patrick M. Browne
Secretary of the Pennsylvania Department of Revenue
Fourth and Walnut Streets
11th Floor, Strawberry Square
Harrisburg, PA 17128-1100

Stephen S. Cook, Esq.
The Pennsylvania Gaming Control Board
303 Walnut Street
Commonwealth Tower, Fifth Floor
Harrisburg, PA 17101

Michelle A. Henry, Esq.
Attorney General of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120

Dated: July 29, 2024



Mark A. Aronchick

IN THE SUPREME COURT OF PENNSYLVANIA

: New Case
:
:

PROOF OF SERVICE

I hereby certify that this 29th day of July, 2024, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Browne in His Official Capacity as Secretary of the Pennsylvania Department Of Revenue, Patrick M.
Service Method: First Class Mail
Service Date: 7/29/2024
Address: Fourth and Walnut Streets
First Floor
Strawberry Square
Harrisburg, PA 171281100
Representing: Respondent Browne in His Official Capacity as Secretary of the Pennsylvania Department Of Revenue

Served: Pennsylvania Department of Revenue
Service Method: First Class Mail
Service Date: 7/29/2024
Address: Fourth and Walnut Streets
First Floor
Strawberry Square
Harrisburg, PA 171281100
Representing: Respondent Pennsylvania Department of Revenue

Served: Pennsylvania Gaming Control Board
Service Method: First Class Mail
Service Date: 7/29/2024
Address: 303 Walnut Street
Commonwealth Tower, Fifth Floor
Harrisburg, PA 17101
Representing: Respondent Pennsylvania Gaming Control Board

IN THE SUPREME COURT OF PENNSYLVANIA

/s/ Mark Alan Aronchick

(Signature of Person Serving)

Person Serving: Aronchick, Mark Alan
Attorney Registration No: 020261
Law Firm:
Address: Hangley Aronchick Et Al
1 Logan Sq Fl 27
Philadelphia, PA 191036995
Representing: Petitioner Chester Downs And Marina, LLC
Petitioner Greenwood Gaming and Entertainment, Inc.
Petitioner GW Cumberland Op Co.
Petitioner Holdings Acquisition Co., LP
Petitioner Mountainview Thoroughbred Racing Association, LLC
Petitioner Stadium Casino RE, LLC
Petitioner Stadium Casino Westmoreland RE, LLC
Petitioner Sugarhouse HSP Gaming, LP
Petitioner Washington Trotting Association, LLC
Petitioner Wind Creek Bethlehem, LLC