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**Aug 23 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Bentley D. Price, Circuit Court Judge

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Appellate Case No. 2023-000783

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1 Dragon’s Ascent Video Gaming Machine;  
SC Games of Skill, LLC..... Respondents,

v.

South Carolina Law Enforcement Division.....Appellant.

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**SOUTH CAROLINA LOTTERY COMMISSION’S MOTION FOR LEAVE  
TO FILE BRIEF AS *AMICUS CURIAE* SUPPORTING APPELLANT SLED**

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Pursuant to Rule 213, SCACR, the South Carolina Lottery Commission (the Lottery) respectfully moves for leave to file the attached *amicus curiae* brief in support of the South Carolina Law Enforcement Division (SLED).

#### **INTEREST OF *AMICUS CURIAE***

In 2001, the General Assembly passed the South Carolina Education Lottery Act that created the Lottery. *See* 2001 S.C. Act No. 59, §§ 1–13 (codified as amended at S.C. Code Ann. §§ 59-150-10 through -410).

Along with requiring that “net proceeds of lottery games . . . be used to support improvements and enhancements for educational purposes and programs,” the General Assembly found that “lottery games must be operated and managed in a manner which ensures that the lottery is operated with integrity and dignity and free of political influence, maximizes the use of revenues, and provides continuing entertainment to the public.” *Id.* at § 1; *see also* S.C. CONST. art. XVII, § 7 (“Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must be used first to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the “Education Lottery Account”, and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for educational purposes as the General Assembly provides by law.”).

To fulfill its mission, the Lottery works closely with SLED to obtain thorough background checks, ensure the security and integrity of its games, and investigate violations of the Act. *E.g.*, S.C. Code Ann. §§ 59-150-40(B), -60(14), -130(A), -165, -240(C)(5), & -280.

The Lottery is governed by a board of commissioners that, among other things, has a duty to “promulgate regulations relating to the categories of lottery games and the conduct of lottery

games.” S.C. Code Ann. § 59-150-50(4). It also has the power to “select and contract with lottery vendors and lottery retailers.” S.C. Code Ann. § 59-150-60(13); *see also* S.C. Code Ann. Regs. 44-30 (“The Executive Director shall enter into a contract for each approved lottery retail sales location. The contract shall set out the duties, responsibilities, and obligations pertaining to the parties to the contract.”). In doing so, the Lottery has developed an Individual Retailer Contract that a retailer must sign when applying for a new or renewed retail license. *See Individual Retailer Application*, S.C. EDUC. LOTTERY (last visited June 18, 2024), [https://www.sceducationlottery.com/documents/retailers/applications/Application\\_IndividualRetailer\\_NewCOO.pdf](https://www.sceducationlottery.com/documents/retailers/applications/Application_IndividualRetailer_NewCOO.pdf).

Providing guidance to retailers wishing to sign the agreement, the Lottery flags three especially important issues: (1) the effect of a change in ownership, (2) the prohibition on illegal gaming devices, and (3) the contours of validating prizes. As relevant here, the Lottery offers the following caution about gaming devices:

In 2014, more than thirty retail outlets were suspended after SCEL became aware of illegal gaming device(s) in the licensed location(s). It is the SCEL Retailer’s responsibility to ensure the legality of any amusement devices in their retail outlet. By signing the Retailer Contract, the Retailer agrees to an automatic, non-appealable six-month suspension if a magistrate determines an illegal device was present in your retail outlet.

*Id.* And the Agreement explains that “an illegal device at a location licensed by SCEL is inconsistent with the reputation, integrity, and public confidence SCEL must maintain.” *Id.* Notably, the paragraph on gaming devices specifically references the forfeiture process before a magistrate under sections 12-21-2710 and -2712 of the South Carolina Code. *See id.*

Although the Lottery is not directly involved in the forfeiture procedures that the General Assembly set forth for illegal gaming machines, *see* S.C. Code Ann. § 12-21-2712, the resulting determinations in those judicial proceedings directly affect the Lottery’s individual retailer

agreements with the offending establishments. What is more, the Lottery’s regulations expressly disallow “any lottery or lottery games prohibited by [s]ections 59-150-20(7), 12-21-2710, 16-19-40[,] and 16-19-50.” S.C. Code Ann. Regs. 44-140.

Heeding this proscription, the Lottery’s board of commissioners previously weighed in on the legality of the Dragon’s Ascent gaming machine:

While the General Assembly determines which types of lottery games may be lawfully offered for purchase in South Carolina, the Board of Commissioners of the South Carolina Lottery Commission has a responsibility to state its position pertaining to Dragon’s Ascent. The Board is steadfastly committed to promoting fair and responsible play and does not support or endorse offering *any* game that requires an exemption to, or the suspension of, the express prohibitions codified in the South Carolina Code of Laws Sections 12-21-2710, 16-19-40, 16-19-50 (making video poker and other games of chance and skill illegal). This non-traditional game is inconsistent with responsible play by motivating repetitive play that often leads to excessive or compulsive spending, jeopardizing the integrity of lottery operations, games, and potentially lottery proceeds for education (which have grown from \$400.3 million in FY2017 to \$492.8 million in FY20). In adopting the Lottery Act in 2001, the General Assembly made the wise policy decision to not allow the Lottery to offer this form of addictive gaming and this prohibition should remain.

*Meeting Minutes*, S.C. EDUC. LOTTERY BD. OF COMM’RS (Dec. 9, 2020), [https://www.sceducation.com/documents/lottery/MeetingMinutes/Full\\_Board\\_Minutes\\_2020-12-09.pdf](https://www.sceducation.com/documents/lottery/MeetingMinutes/Full_Board_Minutes_2020-12-09.pdf). Thus, the Lottery has an interest in the outcome of this appeal.

#### **DESIRABILITY OF AN *AMICUS CURIAE* BRIEF**

The Lottery submits this brief to explain that the General Assembly—together with the Supreme Court of South Carolina—have set forth the proper lens through which the Court must determine whether Dragon’s Ascent is an unlawful gaming machine subject to forfeiture and destruction under section 12-21-2712. In the Lottery’s view, it is. As the Lottery recognized over three years ago, “[s]oon after the end of video poker, the General Assembly chose not to allow

SCEL to offer addictive immediate gratification games. Dragon’s Ascent is inconsistent with SCEL’s culture and statutory mandate for encouraging socially responsible play as a traditional lottery.” *Id.* This brief directly addresses and counters Respondents’ arguments to show why playing the unscrupulous Dragon’s Ascent gaming machine to win money is a textbook example of gambling that contravenes South Carolina law.

As the body charged with regulating retailers whom the owners of Dragon’s Ascent are pursuing, the Lottery has a unique perspective to offer in this case. In sum, the Lottery believes it can provide a useful voice as the Court considers whether the circuit court erred in reversing the magistrate court’s determination that Dragon’s Ascent is an illegal gambling machine subject to forfeiture under section 12-21-2710.

#### CONCLUSION

The Court should grant the Lottery’s motion for leave to file an *amicus curiae* brief in support of SLED and accept its conditionally filed brief for filing.

Respectfully submitted,

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