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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2025-000696

Opinion No. 6098 (S.C. Ct. App. filed February 5, 2025)

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1 Dragon's Ascent Video Gaming Machine;
SC Games of Skill, LLC, ... Petitioners,

v.

South Carolina Law Enforcement Division, ... Respondent.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR EXPEDITED CONSIDERATION

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INTRODUCTION

"The owners of video game machines, as well as law enforcement officials charged with the responsibility of seizing and destroying illegal gambling devices, have a strong interest in knowing from week to week whether certain machines are legal. Neither the owners nor law enforcement benefit from judicial equivocation or vacillation on this issue." *State v. One Coin-Operated Video Game Mach.*, 321 S.C. 176, 181, 467 S.E.2d 443, 446 (1996). The Court of Appeals' decision, if allowed to stand, would create exactly the kind of destabilizing uncertainty this Court cautioned against in *One Coin-Operated*. It was error for the Court of Appeals to so broadly read the plurality opinion in *Town of Mount Pleasant v. Chimento*, 401 S.C. 522, 737 S.E.2d 830 (2012), as abandoning the long-held definition of "gaming" or "gambling" in South Carolina consists of three elements--consideration, ***chance***, and prize. The Court should grant certiorari so that clarity and certainty can be restored.

ARGUMENT

The question before this Court is whether a game of ***skill*** is "used for gambling," and thus is subject to forfeiture under S.C. Code Ann. § 12-21-2710, solely because a person who skillfully plays the game is rewarded with a cash prize. The Court's consideration of this question is governed by a long-established framework of rules for statutory construction, the "cardinal rule" of which "is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364,366 (1994). The primary source of legislative intent is the statutory text. A court must "look first to the language of the statute to discern legislative intent, because the language itself is the ***best guide*** to legislative intent." *Whitner v. State*, 328 S.C. 1, 9, 492 S.E.2d 777, 781 (1997) (emphasis added); *see also, e.g.*, *Connelly v. Main St. Am. Grp.*, 439 S.C. 81, 89, 886 S.E.2d 196, 200 (2023) ("[T]he language used in the statute is generally considered to be the best evidence of the

legislature's intent."); *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." (internal quotation marks omitted)).

Legislative inaction in response to interpretation of a statutory text is an important guide to legislative intent. Because "[t]he Legislature is presumed to be aware of this Court's interpretation of its statutes . . . its inaction is evidence the Legislature agrees with this Court's interpretation," especially when such inaction has persisted over a period of years. *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003); *see One Coin-Operated*, 321 S.C. at 181, 467 S.E.2d at 446 (noting that "the General Assembly is free to correct any misinterpretation" of a statute).

This matter is a civil *in rem* forfeiture action. *Gowdy v. Gibson*, 391 S.C. 374, 379, 706 S.E.2d 495, 497 (2011) ("An action for forfeiture of property is a civil action at law." (internal quotation marks omitted)). "As a general rule . . . forfeitures are not favored in the law or equity." *Ducworth v. Neely*, 319 S.C. 158, 162, 459 S.E.2d 896, 899 (Ct. App. 1995) (civil forfeiture action in drug related matter). Moreover, S.C. Code Ann. § 12-21-2710 is a penal statute and "when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant." *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

I. The Court Should Disregard SLED's Misleading "Statement of the Facts"

That Dragon's Ascent is a game of skill is the undisputable law of this case. SLED abandoned any argument to the contrary when it elected not to cross-appeal the magistrate court's ruling on this point. *See, e.g.*, *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct. App. 1999) (providing that a holding contested by a respondent is the law of the case where the respondent failed to cross-appeal that holding). An unappealed ruling, "right

or wrong, is the law of this case and requires affirmance." *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970). Thus, based on overwhelming evidence, the magistrate court's determination that Dragon's Ascent is a game of skill is ***not*** subject to review by this Court.

Even though this issue is not before this Court, SLED's "Statement of the Facts" (Return at 3-4) nevertheless attempts (but fails) to undermine the magistrate court's holding that Dragon's Ascent is a game of skill. For example, SLED claims that "the more [credits] the player commits to a shot, the more the player stands to win with that shot." (Return at 3.) To the extent SLED is claiming that betting a higher amount results in a proportionally greater reward, the evidence is to the contrary. First, the evidence demonstrates that the cost of each shot, as selected by the player, has no bearing on the number of shots needed to capture a dragon. (App. 577 (Farley Report at 21).) Second, the evidence at the post-seizure hearing established that the amount of the prize for capturing a dragon is always the "Color Match Value" multiplied by the cost of the shot used to capture the dragon. (*Id.*) Any difference in the amount of the prize for capturing a dragon results solely from the player's skill (resulting in a higher Color Match Value) and the player's choice of shot cost.

Similarly, SLED notes that the value of the "Rainbow Dragon" may vary over time, suggesting that such variation reflects an element of chance. (Return at 4.) But regardless of its value, any attempt to capture the Rainbow Dragon ***always*** requires the player to exercise skill in the form of dexterity, hand-eye coordination, and timing.

SLED also reiterates the magistrate court's irrelevant and wholly unsupported comment that because Dragon's Ascent "is . . . played predominantly in establishments that serve alcohol," it is unlikely that players "will exercise the dedication, patience, and deductive analysis [needed] to play the game successfully." (Return at 4.) The record contains no evidence whatsoever to support such speculation by the magistrate court.

Contrary to SLED's insinuations, the overwhelming evidence establishes that Dragon's Ascent is a game of skill, as explained in detail in the Circuit Court's order. (App. 268-271.)

II. SLED's Argument Based on the Title of Act 125 Is Both Unpreserved and Meritless

SLED argues that in enacting Act 125 in 1999, the General Assembly "sought to specifically and conclusively end cash payouts on gaming devices in South Carolina," even for games of skill like Dragon's Ascent. (Return at 5.) To support its contention, SLED does not point to the ***text*** of § 12-21-2710 (which says nothing whatsoever about "cash payouts") but instead relies on the ***title*** of Act 125—the act that amended the statute. This argument fails, however. First, it is not properly before the Court because it was raised by SLED for the very first time on reconsideration. Second, SLED's reliance on the legislative title contravenes established rules of statutory construction and decisions of the Court of Appeals and the Supreme Court.

A. This Argument Is Not Properly Before the Court

SLED's argument based on the title of Act 125 is not properly before the Court. SLED raised this argument for the very first time in its motion for reconsideration of the circuit court's order ruling that Dragon's Ascent is not prohibited by § 12-21-2710. "The purpose of [a motion under] Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (internal quotation marks omitted). A Rule 59(e) motion "allow[s] a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). However, a Rule 59(e) motion is ***not*** an opportunity for the losing party to raise ***new*** arguments in hopes of getting a better result. "An issue may not be raised for the first time in a motion to reconsider." *Johnson v. Sonoco Prod.*

Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009).

Because SLED's argument based on the title of Act 125 was asserted for the first time in its motion to alter or amend, it is not properly before the Court and should not be considered.

B. The Argument is Meritless

Apart from being procedurally improper, SLED's argument based on the title of Act 125 is wholly without merit. First, SLED's argument is contrary to established rules of statutory construction. The ***primary*** source of legislative intent is the statutory text. This Court has explained that it "will look ***first*** to the language of the statute to discern legislative intent, because ***the language itself is the best guide to legislative intent***." *Whitner v. State*, 328 S.C. 1, 9, 492 S.E.2d 777, 781 (1997) (emphasis added); *see also, e.g.*, *Connelly v. Main St. Am. Grp.*, 439 S.C. 81, 89, 886 S.E.2d 196, 200 (2023) ("[T]he language used in the statute is generally considered to be the best evidence of the legislature's intent."). The title of a statute is merely a secondary source of legislative intent. "[T]he title of a statute and heading of a section are of use only when they shed light on some ambiguous word or phrase and as tools available for resolution of doubt." *Garner v. Houck*, 312 S.C. 481, 486, 435 S.E.2d 847, 849 (1993). Under no circumstance can the title of a statute be used to limit or contradict the legislative intent as expressed in the statutory text. "Although the title and headings are part of the statute, they may not be construed to limit the plain meaning of the text … ***they cannot undo or limit what the text makes plain***." *Id.* (emphasis added).

Section 12-21-2710 proscribes certain kinds of machines, describing them in terms of their function:

- A vending, slot, video game machine, or other device "for the play of poker" and other enumerated games;
- A "machine or device licensed pursuant to Section 12-21-2720 and used for gambling"; or

- "[A]ny punch board, pull board, or other device ***pertaining to games of chance*** of whatever name or kind, including" devices with described characteristics.

Id. (emphasis added). Although the General Assembly could have included language prohibiting machines or devices associated with cash payouts, it did not. Instead, it described the prohibited machines by naming specific games of chance (such as keno, lotto, and bingo) or devices (such as punch boards and pull boards) where chance plainly predominates over skill, concluding with the catch-all description of "games of chance of whatever name or kind." Thus, the statutory text does not support SLED's claim that § 12-21-2710, as amended by Act 125, categorically prohibits machines associated with cash payouts, even if based on a player's skill.

SLED urges this Court to disregard the text of § 12-21-2710 and instead glean legislative intent from a single phrase in the 975-word title of Act 125: "[A]ll of the above enacted for the purpose of prohibiting cash payouts for credits earned on video game machines on and after July 1, 2000." (Return at 5.) But bedrock rules of statutory construction prohibit using the title of Act 125 to change or limit the plain meaning of § 12-21-2710:

> For interpretative purposes, the title of a statute and heading of a section are of use only when they shed light on some ambiguous word or phrase and as tools available for resolution of doubt, but they cannot undo or limit what the text makes plain.

Garner v. Houck, 312 S.C. 481, 486, 435 S.E.2d 847, 849 (1993) (emphasis added). This Court has cited *Garner* for precisely this proposition. *See Perry v. Bullock*, 409 S.C. 137, 142, 761 S.E.2d 251, 253–54 (2014) (citing *Garner* as "holding the title of a statute and heading of a section can be used to clarify ambiguity or doubt in a statute provided the interpretation does not undo or limit the plain meaning of the text"); *Savannah Riverkeeper v. S.C. Dep't of Health & Envtl. Control*, 400 S.C. 196, 202–03, 733 S.E.2d 903, 906 (2012) (rejecting argument based on title of statute because the statute was not ambiguous; citing *Garner*); *Ashfort Corp. v. Palmetto Const. Grp., Inc.*, 318 S.C. 492,

494, 458 S.E.2d 533, 535 (1995) (citing *Garner* in support of holding that "the title of the Rule 43," SCRCP, "may not limit the plain meaning of Rule 43(k)," SCRCP).

SLED fails to identify any ambiguity in § 12-21-2710 that justifies looking beyond the statutory text to the title of Act 125 to discern the legislative purpose. *See Whitner*, 328 S.C. at 9, 492 S.E.2d at 781 (holding that the statutory language is the best guide to legislative intent). The text of § 12-21-2710 says nothing whatsoever about prohibiting cash payouts based on playing a game of skill. Because the statutory text is plain, there is no basis for this Court to look beyond it to the title of Act 125.

SLED's argument also cannot be squared with post-amendment decisions recognizing that a machine's legality under § 12-21-2710 turns on whether the game is one of skill or chance, not on whether there is a cash payout. One such case is *Allendale County Sheriff's Office v. Two Chess Challenge II*, 361 S.C. 581, 606 S.E.2d 471 (2004). The type of machine at issue in *Two Chess Challenge* was "a coin-operated game ***that has a payout feature***." *Id.* at 583, 606 S.E.2d at 472 (emphasis added). The magistrate ruled that the specific machines before him "and all those operating in an identical manner" were games of skill that were legal under § 12-21-2710. *Id.* at 583-84, 606 S.E.2d at 472 (emphasis omitted). The Court first held that the magistrate did not have jurisdiction to consider the legality of machines that were not before him. *See id.* at 586-87, 606 S.E.2d at 474. The Court then went on to discuss the magistrate court's ruling on the two machines that were before it:

> As to the two machines seized, examined, and deemed legal, there is nothing preventing the Sheriff's Office or other law enforcement officials from seizing the machines once again for the magistrate's examination. Because video machines may be manipulated *so as to change their nature from lawful to unlawful*, law enforcement may, based on probable cause, seize the machines in question once again. In other words, the effect of the magistrate's order is that it deems the machines lawful *at the time* they were seized and examined.

Id. at 587, 606 S.E.2d at 474 (first emphasis added). This paragraph clearly recognizes that under § 12-21-2710 as amended by Act 125, the legality of a machine is determined by whether skill or chance predominates, ***not*** by whether there is a payout.[1]

In other decisions, this Court has pointed to the element of chance—***not*** the presence of a payout—as determining legality under § 12-21-2710. *See Ward v. West Oil Co.*, 387 S.C. 268, 278, 692 S.E.2d 516, 521-22 (2010) (holding that "pull-tab" games violate S.C. Code Ann. § 12-21-2710 because they "created an element of chance"); *Sun Light Prepaid Phonecard Co. v. State*, 360 S.C. 49, 54, 600 S.E.2d 61, 64 (2004) (holding that phone card dispensers violated § 12-21-2710 because they "present[ed] the element of chance"). The Court of Appeals has interpreted § 12-21-2710 the same way, *i.e.*, as prohibiting only games of chance. *See S.C. Dep't of Revenue v. Meenaxi, Inc.*, 417 S.C. 639, 658, 790 S.E.2d 792, 802 (Ct. App. 2016) (machines violated § 12-21-2710 because they "contained games of chance"); *S.C. Law Enf't Div. v. 1-Speedmaster S/N 00218*, 397 S.C. 94, 99-100, 723 S.E.2d 809, 812 (Ct. App. 2011) (holding that games of chance are illegal under § 12-21-2710, but games of skill are legal).[2]

According to SLED, the *Chimento* plurality opinion overruled all of these decisions, along with numerous decisions of lower courts and administrative tribunals (*see* Petition at 22-23),

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[1] SLED tries to bolster its position by attempting to rewrite the text of § 12-21-2710, so that it would read that it prohibits machines that "are capable of being 'used for gambling.'" (Return at 6.)

[2] SLED's argument that the General Assembly intended to prohibit any machine that provides a cash payout is inconsistent with its position in *Speedmaster* and other cases that legality under § 12-21-2710 turns on whether a game is one of skill or chance under the "dominant factor" test. *See, e.g.*, Final Brief of Appellant S.C. Law Enf't Div., *S.C. Law Enf't Div. v. 1-Speedmaster S/N 00218* filed May 20, 2009 (arguing that "[t]he proper test to use in determining whether a game is a game of skill or chance is the dominant factor test" and contending that the Speedmaster game was illegal because the outcome was not within the player's control).

without saying it was doing so and without citing § 12-21-2710.[3] In fact, the plurality opinion cites with approval the Court's decision in *Two Chess Challenge*, where the Court recognized the legality under § 12-21-2710 of a skill-based game that offered a payout for skillful play. *Chimento*, 401 S.C. at 533, 737 S.E.2d at 837-38 (citing *Two Chess Challenge* as holding that a "video game in which player's skill could alter [the] outcome [is] not a 'game of chance' within the meaning of that term in [§ 12-21-2710]."[4]

Further, it is notable that the same five justices who heard *Chimento* unanimously affirmed a magistrate court's "finding that two 'Chess Challenge II' devices before it were legal games of skill" several years later. *Richland County Sheriff's Department v. Awde*, No. 2014-MO-024, 2014 WL 3016205 (S.C. July 2, 2014) (per curiam). *Awde* squarely presented the question of whether a machine is "used for gambling" when a payout is made based on a player's performance in a game of skill.[5] That the Court summarily affirmed in *Awde* demonstrates that the *Chimento* plurality opinion should not be read as having abandoned the long-recognized skill vs. chance test for whether an activity is "gaming" or "gambling."

III. *Chimento* Is Limited to S.C. Code Ann. § 16-19-40

SLED insists that the *Chimento* plurality opinion redefined "gambling" and "gaming" for all purposes in South Carolina as involving only two elements--consideration (a payment to play)

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[3] As noted in the Petition, the Court of Appeals' reading of the *Chimento* plurality opinion is also contrary to numerous South Carolina statutes explicitly defining "gambling" using only the word ***chance***. (Petition at 22.)

[4] The parenthetical to *Two Chess Challenge* refers to § 12-21-2712, which does not contain the term "game of chance." However, § 12-21-2712 refers to § 12-21-2710, which does contain the term "game of chance."

[5] The briefs and other case materials are available through C-Track Public Access link on the main page of the website for the South Carolina Judicial Branch, https://www.sccourts.org/.

and prize (a reward for successful play), jettisoning the longstanding framework wherein an activity is "gambling" only if the outcome is determined predominantly by chance rather than skill. SLED contends that it would be "manifestly absurd" to understand *Chimento* as being limited to the specific context of § 16-19-40. (Return at 7.) Not so.

The core question in *Chimento* was whether a residence could "qualify as a 'house used as a place of gaming' under [S.C. Code Ann.] § 16-19-40." *Chimento*, 401 S.C. at 529, 737 S.E.2d at 835. The *Chimento* plurality ultimately ruled that the answer to this question did not turn on whether the games played involved skill or chance. Rather, as shown by the plurality opinion's lengthy review of the meaning of "house used as a place of gaming," guilt or innocence under § 16-19-40 turns on the nature of the location. *See id.* at 532, 737 S.E.2d at 837 ("Under the plain language of § 16-19-40, gambling on a game of skill is a violation ***if that gambling is being done in a prohibited location***." (emphasis added)); *see also id.* at 529, 737 S.E.2d at 835 (noting that § 16-19-40 was not intended to apply "to a casual game being played in a man's home" (internal quotation marks omitted)).

SLED fails to respond to several of Petitioners' arguments as to why the Court of Appeals erred in its interpretation of the *Chimento* plurality opinion. For example, Petitioners explained why the Court of Appeals' broad reading of the *Chimento* plurality opinion was not supported by either *State v. Red*, 47 S.C.L. (7 Rich.) 8 (1853), or *Berkbile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993). (Petition at 15-16.) Specifically, Petitioners pointed out that *Red* involved a defendant who "play[ed] falsely" by fraudulently claiming that the outcome of a "thimble and balls" game was controlled by chance, when in fact it was determined by the defendant's skill. (*Id.*) As to *Berkbile*, Petitioners noted that application of the statute at issue in that case, S.C. Code Ann. § 32-1-10, did not turn on a skill vs. chance analysis.

More critically, SLED completely ignores Petitioners' analysis of why interpreting § 12-

21-2710 as pertaining only to games of chance does not make the prohibition of licensed devices "used for gambling" superfluous. (Petition at 16-17.) For example, a game that is otherwise legal under § 12-21-2710—one played only for amusement—would be "used for gambling" if the owner began making cash payouts based on players' scores. This interpretation of "used for gambling" recognizes the possibility of illicit use of an otherwise lawful device, making § 12-21-2710 consistent with South Carolina forfeiture law. *See, e.g.*, S.C. Code Ann. § 39-15-1195 (providing for forfeiture of conveyances--aircraft, motor vehicles, watercraft, etc.--illegally used to transport counterfeit goods); *Myers v. Real Property at 1518 Holmes Street*, 306 S.C. 232, 411 S.E.2d 209 (1991) (recognizing that real property used for drug trafficking is subject to forfeiture); *cf. State v. Porter*, 251 S.C. 393, 399, 162 S.E.2d 843, 846-47 (1968) (holding telephones properly seized as evidence of illegal bookmaking). Likewise, a skill-based game would be "used for gambling" if ***non-players*** bet on the outcome. *See* Op. Atty. Gen., 2002 WL 31341812, at *3 (S.C.A.G. Aug. 28, 2002) ("Of course, placing a wager on the outcome of any skill-based activity is illegal (i.e. betting on the outcome of a sporting event)."). SLED makes no attempt to explain why Petitioners' reasoning is incorrect.

Petitioners further argue that the Court of Appeals' interpretation of "used for gambling" is unnecessary and violates canons of statutory construction. (Petition at 18.) The Court of Appeals construed "used for gambling" as applying whenever there is consideration (pay to play) and reward (a prize), regardless of whether the result is determined by skill or chance. At the very least, this interpretation is unnecessary to give effect to the statutory language "used for gambling," for the reasons explained in the previous paragraph. Additionally, the Court of Appeals' interpretation of "used for gambling" would arguably render superfluous the remaining prohibitions of § 12-21-2710.

SLED does respond to Petitioners' argument (Petition at 19-20) regarding the far-reaching

consequences of the Court of Appeals' misreading of the *Chimento* plurality opinion, but its response is unpersuasive. As explained in the Petition, if "gambling" includes "games of skill where something of value is wagered on the outcome" by the person playing the game, as the Court of Appeals held, then ***all*** skill-based contests that require an entry fee and award a prize are "gambling." (Petition at 19-20.) The Petition enumerated several examples, including golf tournaments, auto-racing, skill-based promotional games, and many others. (*Id.*)

SLED responds to this argument with sarcasm, observing that "this action did not initiate with SLED" arresting famous golfers at the Heritage Classic or barging into a spelling bee. (Return at 3.) More substantively, SLED contends that there is no "conceivable way" that § 12-21-2710 or the Court of Appeals' decision could be read as applying to prizes awarded in skill-based competitions, because § 12-21-2710 "deals solely with gaming machines and gaming devices" and the Court of Appeals "specifically noted" that the only issue before it was the proper interpretation of § 12-21-2710. (Return at 2, 11.) However, this attempt to limit the reach of the Court of Appeals' decision runs headlong into SLED's ***own argument*** that "the word 'gambling' ***throughout South Carolina law*** should have the same definition, to wit: . . . 'betting money on the outcome of any "game" whatsoever, regardless of the amount of skill involved in the game.'" (Return at 8 (quoting *Chimento*, 401 S.C. at 532-33, 737 S.E.2d at 837)[6] (emphasis added).)

SLED cannot have it both ways: the *Chimento* plurality opinion either redefined "gambling" in South Carolina as any activity involving only consideration and prize, or it did not. If—as the Court of Appeals held and SLED contends—the *Chimento* plurality opinion did

[6] This quotation is from the plurality opinion's discussion of S.C. Code Ann. § 32-1-10 and *Berkbile*. Section 32-1-10 is a remedial statute that allows for recovery of gambling losses. In *Berkbile*, this Court held that § 32-1-10 permitted recovery of losses from legal, as well as illegal, gaming. However, at that time all video poker games were legal, so nothing turned on the skill vs. chance analysis.

redefine "gambling" ***for all purposes*** in South Carolina, then the consequences of that decision cannot possibly be limited to § 12-21-2710.[7] On the other hand, if the *Chimento* plurality opinion did not redefine "gambling," then nothing in the plurality opinion supports its application to the context of § 12-21-2710 (which the plurality opinion never cites).

CONCLUSION

Certiorari is warranted here because the Court of Appeals' incorrect interpretation of the *Chimento* plurality opinion undermines the long-settled and widely recognized rule that gambling in South Carolina requires consideration, ***chance***, and prize. The decision threatens to destabilize the long settled understanding not only of law enforcement and owners/operators of skill-based games like Dragon's Ascent, but also of the organizers and participants in a vast array of skill-based contests where competitors "pay to play" for a prize based on their own performance. This instability is not countered by any meaningful benefit. The inherent lure of gambling is ***chance***—the possibility of getting an outsize reward for minimal effort. This is precisely the opposite of the commitment required to develop the degree of skill required to prevail in any skill-based game or competition, whether it is Dragon's Ascent, golfing, or any other skill-based activity. Accordingly, the Court should grant certiorari and reverse the decision of the Court of Appeals.

[7] Moreover, such a redefinition would surely be a surprise to the General Assembly, which has previously passed legislation defining "gaming" or "gambling" as involving an element of ***chance***. *See, e.g.*, S.C. Code Ann. § 3-11-100(2) ("'Gambling' or 'gambling device' means any ***game of chance*** . . ."); S.C. Code Ann. § 37-21-20(5)(a) ("'Prize promotion' means: (a) a sweepstakes or other ***game of chance*** . . ."); S.C. Code Ann. § 59-150-20(7) ("'Lottery' . . . [or] 'lottery game' . . . means a ***game of chance*** . . .").

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