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Honorable Brandon Beach  
Senator, District 21  
[brandon.beach@senate.ga.gov](mailto:brandon.beach@senate.ga.gov)

Dear Senator Beach:

This letter is in response to your request for an opinion regarding whether or not a constitutional amendment is necessary to legalize sports betting in Georgia.<sup>1</sup> Owing to the wording of the Georgia Constitution, reasonable arguments could be made on both sides of the question, and the ultimate success of an attempt to legalize sports betting without a constitutional amendment could come down to a roll of the dice.

**I. Argument that a Constitutional Amendment is Not Necessary.**

**A. The Constitution Limits Only Specific Kinds of Betting and Gambling.**

The Georgia Constitution currently contains a provision that prohibits most lotteries and certain forms of betting and gambling. Article I, Section II, Paragraph VIII (hereinafter "Paragraph VIII"), Subparagraph (a) provides that except as specifically provided in Paragraph VIII, "all lotteries, and the sale of lottery tickets, and all forms of pari-mutuel betting and casino gambling are hereby prohibited; and this prohibition shall be enforced by penal laws." Paragraph VIII then goes on to authorize the General Assembly to legalize the

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<sup>1</sup>As an initial note, this letter only addresses the necessity of a constitutional amendment; it does not address the various statutory changes that may be necessary to legalize sports betting in Georgia.

operation of nonprofit bingo games, lotteries operated by the State for educational purposes, and raffles by nonprofit organizations.

In interpreting the State Constitution, the Georgia Supreme Court has held that courts must honor the "plain and unambiguous meaning" of constitutional provisions. *Georgia Department of Natural Resources v. Center for Sustainable Coast, Inc.*, 294 Ga. 593, 599 (2014), citing *Blum v. Schrader*, 281 Ga. 238 (2006). "Where the natural and reasonable meaning of a constitutional provision is clear and capable of a natural and reasonable construction, courts are not authorized to either read into or read out that which would add to or change its meaning." *Id.*

The plain and unambiguous terms of Paragraph VIII indicate that only lotteries not operated by the State, for-profit raffle or bingo games, pari-mutuel betting, and casino gambling are prohibited by the constitution. Interpreting the text plainly, by specifically limiting the constitutional prohibition to pari-mutuel betting and casino gambling, the regulation of other forms of betting and gambling rests with the General Assembly.

Moving beyond the plain text of Paragraph VIII, Georgia's legal history also shows that "lotteries" is probably not a catch-all term for all forms of gambling. Prior to the adoption of Paragraph VIII, the Georgia Constitution only prohibited lotteries and the sale of lottery tickets.<sup>2</sup> Additionally, lotteries were generally recognized under Georgia criminal and contract law as excluded from the general legal prohibitions against gambling and gaming. See *Hardin v. NBC Universal, Inc.*, 283 Ga. 477 (2008), *Boyd v. Piggly Wiggly S.*, 115 Ga. App. 628 (1967), *Lasseter v. O'Neill*, 162 Ga. 826 (1927), *Henderson v. State*, 95 Ga. 326 (1894), and *Cobb's Digest*, pp. 725-727. Instead lotteries were considered a particularly pernicious vice, and a "widespread pestilence" beyond the comparatively innocuous "common forms of gambling." *Boyd* at 642-643.

While not prohibited by the Constitution, historically, Georgia has had criminal statutes on the books prohibiting various aspects of gambling, gaming, wagering, and betting. See *Grant v. State*, 75 Ga. App. 784 (1974), *Osbourne v. State* 128 Ga. App. 81 (1973), *Gullatt v. State*, 169 Ga. 538 (1929), *Alexander v. Atlanta*, 13 Ga. App. 354 (1913), *Thrower v. State*, 117 Ga. 753 (1903), *Henderson v. State*, 95 Ga. 326 (1894), and *Dyer v. Benson*, 69 Ga. 609 (1882). Sports betting and bookmaking in particular have been considered crimes in Georgia for well over 130 years. See *Dyer* at 610-611. And in *Grant v. State*, 75 Ga. App. 784, 787 (1947), the Georgia Court of Appeals found that spectators wagering upon the outcome of the results of a particular batting result, or game, of baseball was illegal gaming. Furthermore, gaming and gambling contracts, including bets and wagers, have been found to be against the public policy of Georgia since colonial times and have been unenforceable

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<sup>2</sup>Art. I, Sec. II, Para. IV of the 1945 Constitution of the State of Georgia, and Art. I, Sec. II, Para. XI of the 1976 Constitution of the State of Georgia.

in Georgia courts. See *Hardin* at 480, *Martin v. Citizens' Bank of Marshallville*, 177 Ga. 871, 873-873 (1933), *Lasseter* at 829, and *Cobb's Digest*, pp. 725-727.

Therefore, it appears that, historically, lotteries have been considered a separate and distinct class of gambling that warranted particular prohibition in the Georgia Constitution while other forms of gambling, including sports betting, were vices subject only to statutory regulation.

The specific limitations on "pari-mutuel betting" and "casino gambling" in the current Constitution must be read as an intentional decision to split the aces and place those particular forms of gambling within the stricter constitutional prohibition, while all other forms of betting and gambling remained within the statutory purview of the General Assembly. The historical record establishes that the General Assembly and Georgia courts have used terms such as gaming,<sup>3</sup> gambling,<sup>4</sup> wagering,<sup>5</sup> hazarding of money,<sup>6</sup> betting,<sup>7</sup> and sports betting<sup>8</sup> when addressing prohibited gambling and betting activities. It does not appear that the specific terms "pari-mutuel betting" and "casino gambling" appeared in Georgia law before the adoption of Paragraph VIII. Therefore, historic, Georgia-specific, legal terminology existed in 1983 if the framers of Paragraph VIII desired to prohibit all gambling, or all sports betting more specifically, in the Constitution. The absence of such general terms establishes that "pari-mutuel betting" and "casino gambling" have limited and specific meanings.

#### Lottery Corporation's Authority to Authorize Sports Betting

Even if it is found that the current constitutional prohibitions in Subparagraph (a) of Paragraph VIII prohibit sports betting in general, it is also arguable that Subparagraph (c) authorizes sports betting under the purview of the lottery for educational purposes. Subparagraph (c) opens with "[t]he General Assembly may by law provide for the operation and regulation of a lottery or lotteries by or on behalf of the state and for any matters relating to the purpose or provisions of this subparagraph." The General Assembly has provided for the State lottery in Chapter 27 of Title 50 of the O.C.G.A. (hereinafter "the Lottery Code").

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<sup>3</sup>*Henderson v. State*, 95 Ga. 326 (1894).

<sup>4</sup>*Fleming v. State*, 125 Ga. 17 (1906).

<sup>5</sup>*Thrower v. State*, 117 Ga. 753 (1903).

<sup>6</sup>*Morrow v. State*, 62 Ga. App. 718 (1940).

<sup>7</sup>*Dyer v. Benson*, 69 Ga. 609 (1882).

<sup>8</sup>*Osbourne v. State* 128 Ga. App. 81 (1973).

In particular, O.C.G.A. § 50-27-3(13) defines lottery, lotteries, lottery game, and lottery games as "any game of chance approved by the [Georgia Lottery Corporation] and operated pursuant to this chapter, including, but not limited to, instant tickets, on-line games, and games using mechanical or electronic devices but excluding pari-mutuel betting and casino gambling as defined in this Code section."

The Lottery Code goes on to define both "pari-mutuel betting" and "casino gambling."  
Pari-mutuel betting means:

[A] method or system of wagering on actual races involving horses or dogs at tracks which involves the distribution of winnings by pools. Such term shall not mean lottery games which may be predicated on a horse racing or dog racing scheme that does not involve actual track events. Such term shall not mean traditional lottery games which may involve the distribution of winnings by pools. O.C.G.A. § 50-27-3(20)

"Casino gambling" means a "location or business for the purpose of conducting illegal gambling activities, but excluding the sale and purchase of lottery tickets or shares as authorized by this chapter." O.C.G.A. §50-27-3(7).

Since Georgia has historically considered betting on sporting events a "game of chance," *Dyer* at 610-611, it appears that the General Assembly has given the Lottery Corporation the authority, if the Corporation so chooses, to allow sports betting as an official lottery game. Such sports betting cannot be pari-mutuel or fall under the definition of casino gambling, and the proceeds of such sports betting must be used for educational purposes pursuant to the remaining requirements of Paragraph VIII but arguably, sports betting in Georgia could already take place with the Lottery Corporation acting as the bookmaker.

## **II. Argument that a Constitutional Amendment is Necessary.**

While it can be argued that a constitutional amendment is not necessary to legalize sports betting in Georgia, there are certain aspects of Georgia law which indicate that an amendment updating Paragraph VIII so as to explicitly authorize wagering on sporting events is the safer bet.

Absent amendment to Paragraph VIII, significant legal questions could arise as to what is legal sports betting and what is unconstitutional pari-mutuel betting. Code Section 50-27-3(20), quoted above, is the only place where pari-mutuel betting is defined in Georgia law. *Black's Law Dictionary* defines "pari mutuel" as: "[a] mutual stake or wage; a betting pool" and "[a] form of betting on horses or dogs in which those who bet on winner share total stakes less a small percent to the management." *Black's Law Dictionary* 1270 (4th ed. 1968). *Funk & Wagnalls Standard College Dictionary* defines "pari-mutuel" as: "[a] system of

betting at races in which those who have bet on the winners share in the total amount wagered." *Funk & Wagnalls Standard College Dictionary* 980 (12th ed. 1977). As such, if the sports betting format relies upon a betting pool, particularly if wagers are placed on the outcome of races, such practice could reasonably be deemed by a court as a form of pari-mutuel betting.

Additionally, other than the above quoted provisions of the Lottery Code, "casino gambling" is not defined in Georgia law. In some states, sports betting can only take place in or through licensed casinos. See New Jersey P.L. 2018, Chapter 33, approved June 11, 2018. A challenger could argue that sports betting is by its nature "casino gambling." Because the only definitions in Georgia law for both pari-mutuel betting and casino gambling arise from the Lottery Code, and the Lottery Code was enacted after pari-mutuel betting and casino gambling were prohibited by Paragraph VIII, it could be argued that the definitions in the Lottery Code are not indicative of what is or is not prohibited by the Constitution. Such a finding could allow a court to give the terms a more expansive constitutional meaning.

Furthermore, while the majority of Georgia cases appear to establish that lotteries have long been considered a separate form of gambling than other forms, including wagering and betting on sports, there is at least one case wherein the Georgia Court of Appeals found that use of the term "lottery," in criminal statutes, was a generic term, "there being an unlimited variety of games of chance which fall under this general heading." *President v. State*, 83 Ga. App. 731 (1951).

Finally, as outlined above, gambling, wagering, and betting on sports have long been illegal in Georgia and against the well-defined public policy of the State. A move to further allow gambling in Georgia, through the legalization of sports betting, will very likely be controversial and challenged in the courts. And while arguments can be made that the Constitution already allows for the legalization of sports betting, there are probably sufficient grounds for parties opposed to its legalization to raise good faith objections. Absent a constitutional amendment clearly authorizing the legalization of sports betting, a court may turn to the closing lines of one of the seminal cases regarding the illegality of lotteries in Georgia and merely replace the term "lottery" with "sports betting":

It may be that public opinion has changed regarding this matter. The innate disposition to gamble may have brought the people of this State to an acceptance of the lottery as a part of life. The operation of so many schemes of the type here involved may be strong evidence of that. But if it be true, we should follow New Hampshire, New York, Nevada and perhaps others of the States in legitimating the lottery. It is a matter of public policy and should be determined appropriately by constitutional amendment and statutory change. Until that is done we cannot

permit respect for law to dip further by giving our sanction to an unlawful operation, whether ingenious, ingenuous or both. *Boyd* at 644.

Because there are even odds on whether or not the Georgia Constitution currently prohibits sports betting, the only surefire way to avoid years of protracted litigation over the matter would be a constitutional amendment that explicitly authorizes the legalization of sports betting in one or more forms.

I hope that this information is of assistance to you. If I can be of any further help, please let me know.

Sincerely,



D. Stuart Morelli  
Deputy Legislative Counsel

Approved for release:

