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# CIGARETTE DISPENSING PINBALL MACHINES AND THE GEORGIA LOTTERY\*

Preston Dunaway

A scandal broke out in August of 1933 in the humble town of Fitzgerald, Georgia, when police entered the local drugstore, owned by Dr. J.C. Register, and seized a machine alleged to be an illegal gambling device.<sup>1</sup>

Though Dr. Register escaped criminal charges, his close business associate, R.M. Sparks, was indicted by a grand jury for the gambling offense of “carry[ing] on a certain scheme and device for the hazarding of money.”<sup>2</sup>

The case of the gambling machine in Dr. Register’s drugstore was heard by the Georgia Court of Appeals in *Sparks v. State* in 1934. A recitation of the facts, holding, and reasoning of *Sparks* would be a complicated way of telling you what was actually going on in the town of Fitzgerald—and every other town in the United States—in the 1930s. Simply put, American kids had become hooked on a new game called a “pinball machine” that had just arrived at their local drug store.<sup>3</sup> As pinball machines gained popularity in the thirties, Americans began to think of them as addictive vices.<sup>4</sup>

For an American kid during the Great Depression, the summer was about the heat and about a hungry gut and about a bored mind.<sup>5</sup> The summer of ‘33 was all of those things, but most of all, it was about the

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1. See *Sparks v. State*, 173 S.E. 216, 216 (Ga. Ct. App. 1934) (MacIntyre, J., dissenting).

2. *Id.* at 216–17.

3. See *id.* at 218–20; see also *The History of Pinball Machines and Pintables*, BMI GAMES, <https://www.bmigaming.com/pinballhistory.htm> [<https://perma.cc/QT8E-L4M9>] (“In 1933, electricity was first introduced to pinball by adding a battery to the machine . . . . The popularity of the pinball machine rose dramatically during the mid to late 1930s in part due to the Depression and the need for low-cost entertainment for the masses.” (cleaned up)).

4. See, e.g., *Card Game Raided, Players Arrested*, TIMES-PICAYUNE, Sept. 30, 1934, at 4 (“Captain Edward J. Smith of the Fourth Precinct station led a raid upon a restaurant . . . and confiscated and destroyed a ‘pinball’ machine.”); *Oakland Police Confiscate Six Pinball Games*, S.F. CHRON. June 2, 1937, at 7.

5. See, e.g., *Heat Wave Grips Mid-West, Killing Seven in Chicago*, TIMES-PICAYUNE, June 24, 1930, at 27; *Drought May Cut World’s Wheat Crop*, S.F. CHRON., June 6, 1931, at 1.

heat. A few days before the '33 summer solstice, the heat cut across the country, killing people in Texas, Kansas, and Missouri.<sup>6</sup> When advertisements that touted pinball machines as “exciting, thrilling games of skill” began to appear in towns, kids set off towards their local air-conditioned drug store to play pinball and escape from the hot, boring summer.<sup>7</sup>

In Dr. Register’s drugstore, the pinball machine, which cost a nickel to play, rewarded the skilled players (those that scored 4,800 points) with a fifteen-cent pack of cigarettes.<sup>8</sup> Back then, kids talked about the best pinball players like rock stars. Even the adults in the town of Fitzgerald knew about “a boy in Vidalia who [could] go in with fifteen cents and come out with two packages of cigarettes every time.”<sup>9</sup> Maybe that boy from Vidalia was who Pete Townshend had in mind when he wrote *Pinball Wizard* in 1969.<sup>10</sup>

Today, pinball machines and other coin-operated amusement machines are regulated industries in states like Georgia, so you won’t find any cigarette dispensing pinball machines in the local drugstore.<sup>11</sup> The regulatory benefits go beyond keeping kids from smoking: the Georgia coin-operated amusement machine industry, which is regulated by the Georgia Lottery Corporation, provides almost \$70 million each year for Georgia education programs.<sup>12</sup> That money comes from the more than \$700 million in revenue that coin-operated

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6. *Heat Wave Leaves Dead in Its Wake*, AUGUSTA CHRON., June 7, 1933, at 1.

7. See *The History of Pinball Machines and Pintables*, *supra* note 3; see also, e.g., *Wind Up Your Christmas Shopping*, AUGUSTA CHRON., Dec. 23, 1935, at 10 (providing an example of a pinball advertisement).

8. *Sparks*, 173 S.E. at 217.

9. *Id.* at 216.

10. THE WHO, *PINBALL WIZARD* (Morgan Studios 1969).

11. E.g., O.C.G.A. § 50-27-70 (2013 & Supp. 2020); see also *Coin Operated Amusement Machines (COAM)*, GA. LOTTERY, <https://www.galottery.com/en-us/coam.html> [<https://perma.cc/VEW8-FYY6>] (“In April of 2013, the Georgia Lottery Corporation (GLC) statutorily assumed the regulatory duties of compliance and enforcement of Class A and Class B Coin Operated Amusement Machines (COAMs) in Georgia.”).

12. Class A and Class B machines combine for a total of 22,500 coin-operated amusement machines (COAMs) throughout Georgia in more than 4,600 locations. Jorie Tash, *COAMs Have Come a Long Way – Regulator*, GA. AMUSEMENT J., Sept. 2019, at 1, 6 [hereinafter Tash, *COAMs Have Come a Long Way*]. Each machine generates an average of \$96 in revenue per day, which translates to \$788,400,000 per year. *Id.* In 2018, the COAM industry contributed over \$65 million to the Georgia Hope and Pre-Kindergarten Education fund. Jorie Tash, *Lottery Growing Education Programs*, GA. AMUSEMENT J., Apr. 2019, at 3 [hereinafter Tash, *Lottery Growing Education Programs*].

amusements machines generate each year in Georgia.<sup>13</sup> Let that sink in—seven hundred million dollars per year.

The Georgia Code divides coin-operated amusement machines into two classes.<sup>14</sup> Class A machines consist of games like pinball machines.<sup>15</sup> Class B machines are the games that you see in gas stations that look an awful lot like slot machines.<sup>16</sup> The record is not clear, but odds are that the majority of that \$700 million in revenue comes from Class B machines.<sup>17</sup>

The Georgia Constitution prohibits the following games of chance: (1) pari-mutuel betting, (2) lotteries (except those allowed by the legislature), and (3) casino gambling.<sup>18</sup> This raises an interesting legal question: how do Class B coin-operated amusement machines (the ones that look like slot machines) operate legally in Georgia—are they not a form of casino gambling? In short, Class B machines are legal in Georgia because they do not fit within the original meaning of casino gambling when it first appeared in the Georgia Constitution in 1992.

For starters, the Georgia legislature exempted coin-operated amusement machines from criminal gambling laws back in 1978.<sup>19</sup> The term “casino gambling” first appeared in the Georgia Constitution in 1992.<sup>20</sup> Thus, by 1992, lawmakers and the public knew that a ban on casino gambling did not include a ban on coin-operated amusement machines.

Next, coin-operated amusement machines may not pay cash rewards for successful plays.<sup>21</sup> Instead, Class B machines may reward a successful player with prizes like a store credit, but the player may not redeem this prize for “any firearms, alcohol or tobacco.”<sup>22</sup> Finally, coin-operated amusement machines must require the player to exercise

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13. Tash, *COAMs Have Come a Long Way*, *supra* note 12.

14. § 50-27-70.

15. § 50-27-70(b)(3).

16. *See* § 50-27-70(b)(4).

17. *See generally* Tash, *COAMs Have Come a Long Way*, *supra* note 12; Tash, *Lottery Growing Education Programs*, *supra* note 12.

18. GA. CONST. art. 1, § II, para. VIII(a).

19. *Total Vending Servs., Inc. v. Gwinnett Cnty.*, 276 S.E.2d 89, 90 (Ga. Ct. App. 1981).

20. GA. CONST. art. 1, § II, para. VIII(a) (amended 1992).

21. § 50-27-70(b)(4)(B); O.C.G.A. § 16-12-35(c)(2)(b) (2018 & Supp. 2020).

22. § 16-12-35(d)–(i).

some level of skill to play the game; in other words, winners are not determined entirely by chance.<sup>23</sup>

This series of articles (*Did Bobby Jones and Augusta National Block the Pari-Mutuel Gambling Bill of 1935?* and *Baseball Lotteries in Georgia*)<sup>24</sup> has focused on fixed-odds sports betting in Georgia—why has so much ink been spilled on the coin-operated amusement machine industry? Simply put, the history of the coin-operated amusement machine industry provides two lessons that the sports betting industry can learn from: (1) fixed-odds sports betting, at least in Georgia, likely amounts to a form of casino gambling, and (2) a market regulator like the Georgia Lottery Corporation can generate new revenue for programs like education.

First, the original meaning of casino gambling included sports betting because, unlike coin operated amusement machines, Georgia law classified sports betting as an illegal form of gambling long before the General Assembly amended the constitution in 1992.<sup>25</sup> Arrest records provide perhaps the best illustration of why sports betting fits into the original meaning of casino gambling in the Georgia Constitution. In 1990, for example, when the state arrested a sports bookie, it charged him with “commercial gambling.”<sup>26</sup>

Additionally, the first sportsbook in an American casino appeared in 1975 at the Union Plaza casino in Las Vegas, Nevada, and throughout the eighties, resort casinos in Las Vegas continued to add

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23. § 16-12-35(a); *see also* *Ultra Telecom, Inc. v. State*, 701 S.E.2d 144, 149 (Ga. 2010) (“The skill level in the play of the games at issue is unquestionably low.”).

24. Preston Dunaway, *Did Bobby Jones & Augusta National Block the Pari-Mutuel Gambling Bill of 1935?*, GA. ST. U. L. REV.: BLOG (Apr. 9, 2021), <https://gsulawreview.org/post/924-did-bobby-jones-augusta-national-block-the-pari-mutuel-gambling-bill-of-1935> [<https://perma.cc/RNU6-LN2Y>]; Preston Dunaway, *Baseball Lotteries in Georgia: Braves Arrive in '66, so Did a Wave of Anti-Gambling Bills*, GA. ST. U. L. REV.: BLOG (Apr. 21, 2021), <https://gsulawreview.org/post/935-baseball-lotteries-in-georgia-braves-arrive-in-66-so-did-a-wave-of-anti-gambling-bills> [<https://perma.cc/P223-VYMS>].

25. O.C.G.A. § 16-12-21(a) (2018); *see also* *Bill Outlawing Gambling Passed by Legislature*, AUGUSTA CHRON., Mar. 14, 1947, at 10 (“The Georgia Senate passed the House’s anti-sports gambling bill today . . .”).

26. *Sports-Betting Bust*, MARIETTA DAILY J., Oct. 26, 1990, at 2 (“[Defendant] was charged with commercial gambling and communicating commercial gambling information . . . GBI officials called the operation a major sports gambling operation . . .”); O.C.G.A. § 16-12-22(a) (2018 & Supp. 2020) (“A person commits the offense of commercial gambling when he . . . [r]eceives, records, or forwards a bet or offer to bet . . .”).

sportsbooks to their casino operations.<sup>27</sup> When Georgia added the term casino gambling to its constitution, Nevada was the only state where sports betting was legal.<sup>28</sup>

Practically speaking, casino gambling differs from pari-mutuel betting and a lottery because, in casino gambling, the money you win off of a successful bet comes from the facility that accepts the bet. In pari-mutuel betting and lottery schemes, the money you win comes from the pool created by everyone that buys into the event. Thus, fixed-odds sports betting mirrors casino gambling because the facility that accepts the wager bears the risk of paying out the winnings.

To the second point, regulation provides an opportunity to generate new revenue streams for programs like education. For example, although gambling is illegal in Georgia, anyone can login to an offshore sportsbook like Bovada.com, create an account, and bet real money on live sports games.<sup>29</sup> Such ease of access to Bovada and other similar sportsbooks means that Georgia misses out on at least \$30 million per year in tax revenue.<sup>30</sup>

Offshore betting sites like Bovada have been linked to organized crime, and because they are located outside of the United States, they escape industry regulators.<sup>31</sup> Bovada does not report any data (or pay any taxes) to the U.S. government, despite providing services to the American people: “No, we don’t report your winnings to government

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27. *History of Sports Betting in Vegas*, GOLDEN GATE CASINO, <https://www.goldengatecasino.com/blog/circa-sports-betting-las-vegas/> [https://perma.cc/9R4B-RFA6].

28. *See Reds’ Sweep Stings Bookies*, AUGUSTA CHRON., Oct. 23, 1990, at 3 (“Nevada is the only state where sports betting is legal.”).

29. *Create an Account*, BOVADA, <https://www.bovada.lv/casino?overlay=join> [https://perma.cc/T5S5-BZYU]. Bovada and other similar sites do not require a new account holder to upload any form of government-issued identification to verify the customer’s age. *See Terms of Service*, BOVADA, <https://www.bovada.lv/terms-of-service> [https://perma.cc/7BE6-USU8]. Rather, these sites merely reserve the right to request such documentation. *Id.*

30. Nick Wojcik, *Georgia Sports Betting: Bill Dies in House, Supporters Now Look to 2022*, LINEUPS (Apr. 6, 2021), <https://www.lineups.com/betting/georgia-sports-betting/> [https://perma.cc/2V9P-8SZF].

31. *See* Walt Bogdanich et al., *Cash Drops and Keystrokes: The Dark Reality of Sports Betting and Daily Fantasy Games*, N.Y. TIMES (Oct. 15, 2015), <https://www.nytimes.com/interactive/2015/10/15/us/sports-betting-daily-fantasy-games-fanduel-draftkings.html> [https://perma.cc/Z8BJ-947Q]; Michael Graw, *Bovada: What Is It, Is It Legal, and Can You Use It for Sports Betting and Online Poker?*, TECHRADAR, <https://www.techradar.com/news/what-is-bovada> [https://perma.cc/3QX3-M8KR].

taxation authorities. We consider it the player's responsibility to determine which tax implications apply within their jurisdiction."<sup>32</sup>

On the other hand, American businesses like DraftKings, FanDuel, and Penn National operate sports betting companies in jurisdictions that have legalized and regulated the sports betting industry.<sup>33</sup> These companies play by state and federal regulations, pay state and federal taxes, and employ folks who pay American income taxes.

If lawmakers want to get serious about regulating and generating revenue from sports betting, they should target the major credit card companies that enable sites like Bovada to operate illegally in states across the country.<sup>34</sup> As such, legislators should impose hefty penalties on credit card companies that continue to service offshore sites like Bovada that refuse to pay taxes on the gambling services that they provide to customers in the United States.<sup>35</sup>

To move forward, lawmakers should allow the citizens of Georgia to decide whether to legalize and regulate the sports betting industry by constitutional amendment. Although sports betting does not fit within the original meaning of a lottery that the current Georgia Constitution may regulate, Georgia citizens could vote to include fixed-odds sports betting as a lottery game.<sup>36</sup> In fact, Georgia has taken steps to regulate the online sports betting industry through the Georgia Lottery Corporation.<sup>37</sup> Importantly, this legislation would have only

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32. *Do You Report My Winnings to Government Taxation Authorities*, BOVADA, <https://www.bovada.lv/help/financial-faq/claim-winnings> [<https://perma.cc/6FB9-KKDT>].

33. *See, e.g., Investor Relations*, PENN NAT'L GAMING INC., <https://pennnationalgaming.gcs-web.com/> [<https://perma.cc/DKX4-C2JF>].

34. *What Deposit Methods Are Available?*, BOVADA, <https://www.bovada.lv/help/financial-faq/deposit-methods> [<https://perma.cc/YH5L-N68M>] ("You have options to deposit through . . . most major credit card [companies] . . .").

35. One credit card company stated: "We require our financial institution partners to monitor for and prevent card acceptance at merchants that allow illegal or any other prohibited activities that violate our operating standards . . . . When [the company] determines merchants are offering prohibited activity, we promptly terminate card acceptance through the offending merchant's financial institution." *Major Credit Card Companies Sever Agreements with Pornhub*, DECISION MAG. (Dec. 15, 2020), <https://decisionmagazine.com/major-credit-card-companies-sever-agreements-with-pornhub/> [<https://perma.cc/TE9A-HZUH>].

36. Such an amendment must originate as a resolution in either the Georgia Senate or the Georgia House of Representatives, and if it is approved by a two-thirds majority in each house of the legislature, Georgia citizens would vote on whether to ratify the amendment. GA. CONST. art. X, § I, para. II.

37. S.B. 142, 156th Gen. Assemb., Reg. Sess. (Ga. 2021); *see also* S.R. 135, 156th Gen. Assemb., Reg. Sess. (Ga. 2021).

provided for mobile sports betting; in other words, brick-and-mortar facilities that accept cash for sports bets would have been prohibited.<sup>38</sup>

Further, one bill sought to impose identification and age verification restrictions as well as cap limits for how much money an individual may deposit each month.<sup>39</sup> Additionally, the bill would have generated approximately \$60 million per year for Georgia education programs.<sup>40</sup> However, more is needed at the federal level—much more. Congress should act now to impose taxes and penalties upon offshore betting sites, and the credit card companies that service them, to stop the exciting, thrilling online sports betting industry from getting out of hand.

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38. S.B. 142, 156th Gen. Assemb., Reg. Sess. (Ga. 2021); *see also* S.R. 135, 156th Gen. Assemb., Reg. Sess. (Ga. 2021).

39. S.B. 142, 156th Gen. Assemb., Reg. Sess. (Ga. 2021).

40. Wojcik, *supra* note 30.