

IN THE CHANCERY COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT, AT MEMPHIS

Entered
JUL 14 2025

TORCH ELECTRONICS, LLC,

Plaintiff,

v.

STEVEN J. MULROY, in his official
capacity as District Attorney General for
Shelby County, Tennessee,

Defendant.

M.B. _____

No. CH-24-0985 - III

Chancellor JoeDae Jenkins
Judge Gary McKenzie
Judge Deborah Stevens

FINAL ORDER

THIS CAUSE came on for trial on May 27-28, 2025, before Part III of the Chancery Court of Tennessee for the Thirtieth Judicial District at Memphis, sitting as a duly appointed Three Judge Panel. The Plaintiff is Torch Electronics, LLC ("Torch"), and the Defendant is Steven J. Mulroy, in his official capacity as District Attorney General for Shelby County, Tennessee ("Defendant," or "DA Mulroy" and together with Torch, the "Parties").

This lawsuit concerns the legality of Plaintiff Torch Electronics, LLC's "No Chance Games" (NCGs) under Tennessee's criminal gambling statutes, Tenn. Code Ann. §§ 39-17-501, *et seq.* Torch seeks a declaratory judgment that its machines do not violate Tennessee's prohibition on "gambling devices," or, in the alternative, that the criminal gambling statutes are unconstitutionally vague. Based upon the testimony presented at trial, the exhibits, briefs together with the arguments of counsel and the entire file, this Court finds and concludes the NCGs constitute gambling devices under the law, and the criminal gambling statutes are not unconstitutionally vague. Therefore, the Court finds in favor of the Defendant and orders that

/s/

Torch's Amended Complaint is hereby **DISMISSED** with prejudice. The findings of fact and conclusions of law supporting this decision are stated below.

FACTUAL AND PROCEDURAL HISTORY

Torch Electronics, LLC, is a Tennessee limited liability company that owns and operates NCG machines throughout Shelby County. The machines themselves are created by a third party; Torch's parent company purchases the machines, and Torch in turn obtains the machines from its parent company and then places the machines in various gas stations, convenience stores, and restaurants. In exchange for providing the space to operate these machines, Torch splits all revenue from the machines evenly with the businesses.¹

On the surface, Torch's NCGs look and operate like slot machines. A player inserts money which grants them a certain number of "plays." Players can toggle between different games on the machines or different "levels of play" (i.e., how much money one play costs—Torch's NCGs offer plays at twenty-five cents, fifty cents, one dollar, and two dollars). The NCGs also advise that one "must be 21 or older" to play them.² Although the NCGs and slot machines appear similar, there are key differences between NCGs and the machines you will find in virtually every casino. First, while slot machines regularly contain random number generators³ or knockoff

¹ Torch's CEO, Steven Miltenberger, testified during trial that the machines at issue produced a nine percent profit. In other words, each loop of a given static script is guaranteed to return on average ninety-one cents on the dollar to the player, with the remainder split between the machine's host and Torch.

² Mr. Miltenberger testified that this was a business decision and in no way indicative of whether playing the machines constitutes gambling.

³ A random number generator is "an algorithm, or a computer program with a well-defined set of instructions, finite in number, that produces numbers that appear to be random." *Anthony Cabot & Robert Hannum, Advantage Play and Commercial Casinos*, 74 Miss. L.J. 681, 683 (2005).

features,⁴ NCGs instead run on a “static script”—that is, the outcomes on a given machine are fixed to run in a certain order that is not alterable. Once a player reaches the end of a script, the outcomes start over again at the beginning. The static script only restarts once it reaches the end of the sequence; if a player stops playing in the middle of a sequence, the next player will begin at the same point the previous player left off.⁵ Therefore, whether a player wins or loses on a given play of a given machine is predetermined before any play is made. Each NCG at issue in this case contains between 60,000 and 100,000 outcomes in a given static script. Likewise, each machine offers different scripts at each level of play, so at four levels of play each machine contains between 240,000 and 400,000 outcomes spread across four different scripts per game. Each machine also contains multiple different games that can be played, further multiplying the number of possible outcomes to, in some cases, over one million.

Torch’s machines also differ from slot machines in that they feature a “prize viewer” that lets a player look ahead to see future outcomes in order to help decide whether they want to play. The prize viewer is limited based on the amount of money a player inputs into the machine. For example, if a player put five dollars in an NCG and played at a one-dollar level, the prize viewer would let the player see the next five outcomes. At some point following the deployment of Torch’s machines in Shelby County, and after customer complaints of people “hogging” multiple machines, the NCGs at issue were also fitted with a configurable timer that restricts when a player can see the next available outcome in the prize viewer after the first two previews. The machines were set at the default rate of 3000 seconds (fifty minutes) between views. Thus, in the previous

⁴ A knockoff feature is a design that allows a third party, such as a bartender, to “use a device . . . to reset the credits on the machine for each player.” *Veterans of Foreign Wars Post 6477 v. Missouri Gaming Comm’n*, 260 S.W.3d 388, 391 (Mo. Ct. App. 2008). /s/ Joe Dale Jenkins

⁵ Mr. Miltenberger demonstrated at trial that this holds true even if a machine is unplugged. Once turned back on, the static script will still be at the same point in the loop.

example, our five-dollar player could see the first two outcomes immediately, but they would need to wait fifty minutes for the third outcome, another fifty minutes for the fourth outcome, and so on. Mr. Miltenberger testified that 3000 seconds was the “upper limit,” and the timers could be adjusted or even outright eliminated. However, no such adjustments have been made to date.

Tennessee law, meanwhile, makes it illegal to own, sell, or operate a “gambling device” within the State. Tenn. Code Ann. § 39-17-505(a)(1). Gambling devices are any device that requires players to “risk[] anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.” *Id.* § 39-17-501(2). Neither party disputes that the NCGs require risking value for profit; rather, Torch argues that its static script and prize viewer features make the risk players assume by playing the machines in no way “contingent on chance.” Unlike the random number generator and knockoff features of classic slot machines, the outcomes of Torch’s machines are preset and unalterable.

When Torch decided to start placing its machines in Shelby County, it proactively reached out to Defendant Steven J. Mulroy, the District Attorney for the Thirtieth Judicial District⁶ to explain how its machines were compliant with Tennessee law. The parties met a handful of times throughout 2022, including at least two meetings where Torch representatives demonstrated the machines.⁷ On November 8, 2022, DA Mulroy, through Assistant District Attorney Dennis Johnson, issued a letter to Torch in which he determined that since, among other things, Torch’s

⁶ The Thirtieth Judicial District of Tennessee is comprised entirely of Shelby County. *See* Tenn. Code Ann. § 16-2-506(30)(A).

⁷ Testimony at trial showed that Torch first reached out to the District Attorney’s office under DA Mulroy’s predecessor, Amy Weirich. However, DA Mulroy was in office by the time Torch made its in-person presentations.

NCGs provided “the option for the player to scroll through the full script of future results if the player chooses to do so,” it was his opinion that the machines did not violate Tennessee law.⁸

By July of 2023, however, the situation on the ground had significantly changed. DA Mulroy testified that he had received several complaints about Torch’s NCGs, and Shelby County law enforcement had begun seizing different machines, leading to his office pursuing forfeiture actions. *See id.* § 39-17-505(b)(1). He also testified that he received advice from the Office of the Attorney General⁹ as well as performed further legal research on the issue. He also sent members of his office’s Criminal Investigation Division to observe the machines in the field. Based on a combination of these factors, DA Mulroy changed course and decided Torch’s NCGs were “not in conformity to the configuration” Torch had demonstrated during their meetings. There were two key differences between what DA Mulroy felt had been represented and how the machines actually operated: first, players could only use the prize viewer feature by first putting money into the machine, and even then only up to a number of outcomes limited by the amount of money they placed in the machine;¹⁰ and second, Torch had implemented the 3000 second timer since the 2022 meetings “in direct contravention” of the representations initially made. DA Mulroy conveyed his decision in a letter dated July 25, 2023, and gave Torch until August 10 to remove its machines. Instead of removing the machines, Torch followed up to see if the parties could reach an agreement that would allow the NCGs to remain in Shelby County. DA Mulroy later testified that, upon

⁸ DA Mulroy noted other changes made to the NCGs as well, but in his view the prize viewer feature was the “most pertinent.”

⁹ This correspondence is not in the record, though the parties agree that DA Mulroy merely received informal advice and not a formal Attorney General Opinion.

¹⁰ The parties dispute whether this feature was adequately described during the 2022 meetings. They also disagree about the number of players that use the machines without accessing the prize viewer, though Mr. Miltenberger agreed that at least some players do so. These facts are immaterial to the Court’s decision.

further consideration, he was now of the opinion that Torch’s machines were and had always been illegal, and Torch could not effectively remedy the NCGs’ defects. He reiterated this conclusion to Torch in October 2023. After DA Mulroy declined to continue to meet with Torch again, Torch filed this action.

Torch filed an amended complaint on August 20, 2024, seeking detinue, damages, preliminary and permanent injunctive relief, and a declaration that its NCG machines are not “gambling devices” as defined under Tennessee law—or, alternatively, that Tennessee Code Annotated §§ 39-17-501 and -505 are unconstitutionally vague in violation of due process of law. The Tennessee Supreme Court appointed a Three-Judge Panel to hear this case pursuant to Tenn. Code Ann. § 20-18-101. Upon DA Mulroy’s motion to dismiss, and by order dated November 19, 2024, the Court dismissed Torch’s claims for detinue and damages, as well as most of its claims for injunctive relief.¹¹ The parties proceeded with discovery, and trial was held on May 27 and 28, 2025, in Memphis, Tennessee at the Shelby County Courthouse. The Court took the matter under advisement and now makes the following rulings based on its review of the parties’ briefs, the record, and applicable case law.

ANALYSIS

1. Are Torch’s NCGs “Gambling Devices”?

The central question in this case is one of statutory interpretation. “The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *State v. Curry*,

¹¹ For example, Torch sought injunctive relief requiring cessation of pending forfeiture actions in criminal courts and the return of seized property. The Court dismissed these claims on the ground that chancery courts generally do not have authority to enjoin the enforcement of criminal statutes. *See Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749, 753-54 (Tenn. 2006).

705 S.W.3d 176, 184 (Tenn. 2025) (quoting *State v. Howard*, 504 S.W.3d 260, 269 (Tenn. 2016)). Courts are to look to “the language of the statute, its subject matter, the object and reach of the statute, the wrong or evil which it seeks to remedy or prevent, and the purpose sought to be accomplished in its enactment.” *Id.* (quoting *Spires v. Simpson*, 539 S.W.3d 134, 143 (Tenn. 2017)). “The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.” *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 839 (Tenn. 2019) (*Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012)).

As noted above, Tennessee outlaws “gambling devices.” Tenn. Code Ann. § 39-17-505(a)(1). And gambling devices are ones where a player “risk[s] anything of value for a profit whose return is to any degree contingent on chance.” *Id.* § 39-17-502(2). Both parties center their dispute on whether Torch’s NCGs are “contingent on chance.” Notably, the criminal gambling statute does not define “chance,” so the Court must consult other sources in order to give effect to the legislature’s intent. The Tennessee Supreme Court has noted that when a statute leaves a term undefined, a court may consult “other sources,” including dictionaries, to aid in its interpretation. *See Davis v. Reilly*, 683 S.W.3d 739, 743 (Tenn. 2024) (per curiam); *see also State v. Edmonson*, 231 S.W.3d 925, 928 (Tenn. 2007) (noting a court may “look to . . . *Black’s Law Dictionary* for guidance” when confronted with undefined terms). Dictionaries define chance in this context as “the unforeseen, uncontrollable, or unintended consequences of an act”; “something that happens unpredictably without discernible human intention or observable cause.” Chance, *Black’s Law Dictionary* (12th ed. 2024); Chance, *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/chance> (last visited June 17, 2025);¹² *see also* Tenn. Op. Atty. Gen. No.

¹² Indeed, Torch and DA Mulroy use these same definitions in their briefing to the Court.

99-084, 1999 WL 239009, at *1 n.3 (“Absence of explainable or controllable causation; accident; fortuity; hazard; result or issue of uncertain and unknown conditions or forces; risk; unexpected, unforeseen, or unintended consequence of an act. The opposite of intention, design, or contrivance.”). Other courts have similarly defined chance in the gambling context. *See, e.g., Barber v. Jefferson Cnty. Racing Ass’n, Inc.*, 960 So. 2d 599, 609 (Ala. 2006) (“a lack of control over events or the absence of controllable causation—the opposite of intention”); *Westerhaus Co. v. City of Cincinnati*, 135 N.E.2d 318, 327 (Ohio 1956) (“happening of an uncertain event in which such parties have no interest except that arising from the possibility of such gain or loss”); *State v. Stroupe*, 76 S.E.2d 313, 315 (N.C. 1953) (“entirely or in part by lot or mere luck”); *Snizek v. Colorado Dep’t of Revenue*, 113 P.3d 1280, 1282 (Colo. App. 2005) (“randomly, without any input from the purchaser”); *see also State v. Pinball Machines*, 404 P.2d 923, 926 (Alaska 1965) (“While there is uncertainty, there is chance.”).

Tennessee case law further sheds light on what kinds of machines can be considered contingent on chance, particularly *State v. McTeer*, 167 S.W. 121 (Tenn. 1914), and *State v. Heartley*, 157 S.W.2d 1 (Tenn. 1941). As a preliminary matter, Torch objects to any reliance on these cases because both of them predate the current version of Tennessee’s criminal gambling statute, which was enacted in 1989. *See State v. Burkhardt*, 58 S.W.3d 694, 698 (Tenn. 2001). Under the previous version of the statute, gambling devices were defined as a device “for the enticement of any person to play or gamble at.” *See Heartley*, 157 S.W.2d at 1; Tenn. Code § 6812 (1896). Torch argues that this definition evinces a much broader, subjective statute that reflected a more “puritanical view of gambling.” As a result, the current criminal gambling statutes should be construed more narrowly than the Court did in *McTeer* and *Heartley*.

However, this argument cannot be squared with either the text of the statute or the accompanying legislative history. The previous version of the criminal gambling statute required enticement, but the current version does not retain this element. It is instead illegal to own or operate any device where the outcome is “to any degree contingent on chance,” Tenn. Code Ann. § 39-17-501(2), regardless of whether it additionally “entices” a player. Contrary to what Torch argues, it is actually the current version of the statute that is broader than its predecessor. That conclusion is only bolstered by relevant legislative history in the form of the Sentencing Commission Comments.¹³ The Commission Comments are an even more direct rebuff to Torch’s argument, stating that the definition of “gambling device” is now “*intentionally broader than those found in prior law.*” *Id.*, Sentencing Comm’n Cmts. (emphasis added). It is therefore entirely appropriate to look to previous cases as persuasive authority in order to aid the Court’s determination.

In *State v. McTeer*, the Court considered the legality of a slot machine with a preview feature. *See* 167 S.W. at 121. The machine in *McTeer* featured an indicator that showed the next play, which would result in the player receiving a packet of gum or a cash prize. *Id.* The defendant argued that the machine was not illegal because the preview feature eliminated any element of uncertainty. *Id.* The Court rejected this view because even though a player could see what they would win on the next play, the outcomes beyond that still presented players with “the prospect of obtaining very greatly disproportionate gains.” *Id.* Beyond the next immediate result, a player did not know “which number will appear, nor at what time, nor after how many plays.” *Id.* The Court reached the same conclusion twenty-seven years later in *Heartley v. State*, where a machine indicated a player would receive a pack of mints as well as a number of other possible prizes. *See*

¹³ Sentencing Commission Comments are formally approved by the General Assembly and are therefore reliable “evidence of legislative intent.” *Burkhart*, 58 S.W.3d at 698.

157 S.W.2d at 2. The Court held that even though a player was guaranteed to always receive something of value, the machine was still a gambling device because “the return to the player is [] dependent on an element of chance . . . even though the player is assured of his money’s worth of some commodity and, hence, cannot lose.” *Id.* Despite this guaranteed outcome, the Court found that a player would still play “not on the immediate return for the coin he deposits, but on the hope or chance that the indicator will show a profit on his next play.” *Id.* It was not the win/loss outcome that gave the machine its illegal character, but rather the “added inducement of receiving something for nothing that arouses the gambling instinct.” *Id.* at 3. Otherwise, but for that inducement that would produce a profit for the machine owner in the long run, “a mere vendor of mints would not [pay] for such a machine.” *Id.*

The upshot of the interpretation of Tennessee’s criminal gambling statutes is that a game is contingent on chance—and therefore illegal—when the outcome is unforeseen, uncontrollable, and rendered in a manner that cannot be predicted. Based on the statutory language and applicable case law, the Court finds that Torch’s NCGs are illegal “gambling devices.” Players insert money in order to play, and that money lets them see a finite number of future outcomes. Torch’s prize viewer feature may let a player see more future outcomes than those machines in *McTeer* and *Heartley*, but moving a player’s expectations some spins into the future does not alter the fundamental nature of these machines. As DA Mulroy notes, a player can see a finite number of previews, but they “have to pay again to see more of the upcoming outcomes.” The only way a player can see all the outcomes is to insert enough money. As was established at trial, a play can cost between twenty-five cents and two dollars, and each static script contains between 60,000 and 100,000 outcomes. That means in order to see every outcome before playing, a player must put at a minimum \$15,000 into the machine and possibly up to \$200,000. Throw on the 3000 second

timer, and a player will also have to push the button to see the next preview every fifty minutes for over five years.¹⁴ It stains all credulity to think this is how players use Torch's NCGs.

Moreover, the NCGs' key distinctions, the static script and prize viewer features, make no material difference to the machine's character. It does not matter whether someone is playing in the hope that one wins on the next spin or ten spins from now; a player is still playing with the same ultimate view—eventually returning a profit. *See McTeer*, 167 S.W. at 121; *Heartley*, 157 S.W.2d at 2. And nothing the player does can change what the next outcome in the script is or what the next preview will show. Said another way, the next outcomes and previews appear “unpredictably without discernible human intention or observable cause.” *Chance*, *Merriam-Webster, supra*. The sole time a future preview is not left up to chance is the unrealistic scenario where a player pumps thousands of dollars into a machine and manually views tens of thousands of results over an extended period before making a single play. Absent those far-fetched circumstances, a player will not know whether future outcomes beyond their present viewable range will win or lose. It is that future uncertainty that makes Torch's NCGs contingent on chance. We conclude that the NCG's contingency on chance qualifies them as illegal gambling devices under Tennessee law.

2. Are the Criminal Gambling Statutes Unconstitutionally Vague?

Torch further argues that, even if its NCGs could be considered gambling devices, Tennessee's criminal gambling statutes are unconstitutionally vague. In determining a statute's constitutionality, courts must “uphold the constitutionality of a statute wherever possible.” *Waters*

¹⁴ Torch stresses that the 3000 second timer can be configured or even outright removed. However, the legality of a machine under the criminal gambling statutes is based on “its condition and method of operation at the time it is seized.” *T & W Enters., Inc. v. Casey*, 715 S.W.2d 356, 359 (Tenn. Ct. App. 1986). And in any event, the presence of a timer is immaterial to the Court's conclusion, because it does not change the NCGs' random and unalterable future outcomes—it only delays the ability to potentially view them.

v. Farr, 291 S.W.3d 873, 882 (Tenn. 2009). Courts “begin with the presumption that an act of the General Assembly is constitutional” and “indulge every presumption and resolve every doubt in favor of the statute’s constitutionality.” *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn. 2007) (first quoting *Gallaher v. Elam*, 104 S.W.3d 455, 569 (Tenn. 2003), and then quoting *State v. Taylor*, 70 S.W.3d 717, 721 (Tenn. 2002)). “This presumption places a heavy burden on the person challenging the statute.” *Waters*, 291 S.W.3d at 917 (Koch, J., concurring in part and dissenting in part).

The Tennessee Supreme Court has held that a statute “is void for vagueness if its prohibitions are not clearly defined.” *State v. Crank*, 468 S.W.3d 15, 22 (Tenn. 2015) (quoting *Pickett*, 211 S.W.3d at 704). When a criminal statute is challenged for vagueness, courts are to determine if the statute “define[s] the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 532 (Tenn. 1993) (quoting *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)). Due process does not “demand that criminal statutes ‘meet the unattainable standard of absolute precision.’” *State v. Allison*, 618 S.W.3d 24, 45 (Tenn. 2021) (quoting *Crank*, 468 S.W.3d at 23). A statute is not vague “which by orderly processes of litigation can be rendered sufficiently definite and certain for purposes of judicial decision.” *Burkhart*, 58 S.W.3d at 697. Statutes that are “‘applicable in a wide variety of situations, must necessarily use words of general meaning, because greater precision is both impractical and difficult,’ and this does not render the statute unconstitutionally vague.” *Nunn v. Tenn. Dep’t of Corr.*, 547 S.W.3d 163, 200 (Tenn. Ct. App. 2017) (quoting *State v. Lyons*, 802 S.W.2d 590, 592 (Tenn. 1990)).

Plaintiff's constitutional vagueness challenge can be a facial challenge, or an "as applied" challenge, or both. Under a "facial" challenge, plaintiffs must allege "the statute is impermissibly vague in all its applications." *Burkhart*, 58 S.W.3d at 699. Here, Torch would be required to show "that no set of circumstances exist under which the Act would be valid." *Crank*, 468 S.W.3d at 24 (quoting *Davis-Kidd Booksellers*, 866 S.W.2d at 525). In contrast, an "as applied" vagueness challenge to a statute requires a less stringent showing "as construed and applied in actual practice against the plaintiff under the facts and circumstances of the particular case, not under some set of hypothetical circumstances." *Fisher v. Hargett*, 604 S.W.3d 381, 397 (Tenn. 2020). We cannot discern whether Torch brings a facial challenge;¹⁵ and if so, it is not sufficiently developed for our analysis. Torch has failed to overcome the presumption of constitutionality of the statute, *Waters v. Farr*, 291 S.W. 3d 873, 882 (Tenn.2009); see also *Lynch v. City of Jellico*, 205 S.W. 3d 384, 390 (Tenn. 2006). Moreover, there are applications of the statute in which the statute is unequivocally valid such as with slot machines. Torch does not dispute that it is illegal for individuals to sell slot machines in Tennessee.¹⁶ Torch failed to show that "no set of circumstances exists under which the statute, as written, would be valid." *Waters*, 291 S.W. 3d at 882. The Court concludes that any facial challenge fails on its own terms because the statute clearly has constitutional applications.

With respect to an "as applied" challenge, the Court concludes that "§§ 39-17-501 and 39-17-505 are not unconstitutionally vague as applied to [Torch] because [it] engaged in conduct that

¹⁵ In contrast, counsel for Torch specifically argued at trial that the statutes were vague "with respect to the NCGs."

¹⁶ During trial, Torch also offered several hypotheticals about other items, such as a deck of cards, being considered gambling devices in support of its vagueness argument. But "speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute." *Burkhart*, 58 S.W.3d at 700 (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)).

is clearly proscribed by the statutes.” *Burkhart*, 58 S.W.3d at 658. Instead of a disagreement about the interpretation of the statute, Torch is required to show that the law either “fails to establish reasonably clear guidelines for law enforcement officials and courts, which, in turn, invites arbitrary and discriminatory enforcement” or “fails to provide fair notice that certain activities are unlawful.” *Pickett*, 211 S.W.3d at 702-03.

Torch has shown neither here. First, it has not shown that the criminal gambling statutes do not provide reasonably clear guidelines. The statute defines gambling devices as well as lists explicit exceptions. *See* Tenn. Code Ann. § 39-17-501(2). Torch points to the fact that both DA Mulroy and Assistant District Attorney Dennis Johnson agreed in their testimony that reasonable minds could disagree as to the interpretation of the statute. They also argue that the fact that DA Mulroy changed his mind shows the statute is not clear. But that is not the standard courts use to determine vagueness as a constitutional matter. If it were, courts would never be able to engage in issues of statutory interpretation with undefined terms. As the Tennessee Supreme Court has oft noted, a vagueness challenge “does not invalidate every statute which a reviewing court believes could have been drafted with greater precision, especially in light of the inherent vagueness of many English words.” *Crank*, 468 S.W.3d at 23 (quoting *Lyons*, 802 S.W.2d at 592); *see also Rose v. Locke*, 423 U.S. 48, 49-50 (1975) (“Many statutes will have some inherent vagueness, for in most English words and phrases there lurk uncertainties.”).

Second, Torch was also on notice that its machines could run afoul of the criminal gambling statutes. As noted above, the NCGs look and operate very much like slot machines as well as the machines that were deemed illegal over a century ago in *McTeer* and nearly eighty-five years ago in *Heartley*. Indeed, the statute list examples of possible gambling devices as “slot machines, roulette wheels *and the like*.” Tenn. Code Ann. § 39-17-501(2) (emphasis added); *see also id.*,

Sentencing Comm'n Cmts. (gambling also includes "includes lotteries, chain or pyramid clubs, numbers, pinball, poker or *any as yet unnamed scheme* where value is risked for profit (emphasis added)). It is also worth noting that Torch proactively reached out to DA Mulroy's office, providing at least some evidence that it was aware there could be potential legal issues. As the Tennessee Supreme Court held over twenty years ago in a case concerning the criminal gambling statutes, "it is not 'unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line. A person who is aware of a possible application of the statute and nevertheless proceeds cannot complain of inadequate notice.'" *Burkhart*, 58 S.W.3d at 698 (quoting *Boyce Motor Lines v. United States*, 342 U.S. 337, 340 (1952)). The Court therefore finds that Tennessee Code Annotated §§ 39-17-501 and -505 are not unconstitutionally vague "as applied" to Torch and its NCGs.

CONCLUSION

Torch's NCGs reward players based on outcomes that are contingent on chance and are therefore illegal "gambling devices" under Tennessee law. Additionally, the criminal gambling statutes are not unconstitutionally vague, either facially or "as applied" in this case. The Court therefore finds in favor of the Defendant, District Attorney Steven J. Mulroy. The Court **ORDERS** that the case is **DISMISSED** with prejudice. Costs are taxed to the Plaintiff, Torch Electronics, LLC.

IT IS SO ORDERED.

/s/ JoeDae L. Jenkins

Hon. JoeDae Jenkins

Chancellor

14th, July 2025

/s/ Gary McKenzie

Hon. Gary McKenzie
Judge

/s/ Deborah Stevens

Hon. Deborah Stevens
Judge

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing order to all interested parties in this case to the addresses listed below on this 14th day of July 2025.

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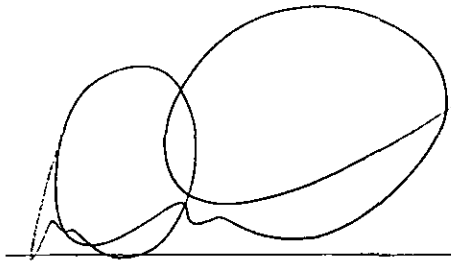
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A handwritten signature in black ink, consisting of two large, overlapping loops, positioned above a horizontal line.

Dorothy M. Duckett, Judicial Assistant
Marvin G. Williamson II, Three Judge Panel Paralegal