

No. 124472

In the
Supreme Court of Illinois

COLIN DEW-BECKER

Plaintiff/Appellant,

v.

ANDREW WU

Defendant/Appellee.

From the Appellate Court of Illinois, First Judicial District, No. 1-17-1675
There heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Municipal Division, Case No. 2016 M1 011598
The Honorable Judge Leon Wool, Presiding

APPELLANT'S OPENING BRIEF

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II. NATURE OF THE ACTION

Plaintiff Colin Dew-Becker, (“Plaintiff”) made a \$100 bet with Defendant, Andrew Wu (“defendant”) on the outcome of a Daily Fantasy Sports (“DFS”) contest operated by a website called “FanDuel.” Plaintiff lost. Within six months, Plaintiff filed a *pro se* complaint seeking to recover his wager from Defendant under 720 ILCS 5/28-8-1, *et seq.* commonly referred to in opinions as the Illinois Loss Recovery Act which first passed in the Illinois legislature in 1819. After a second bench trial, the court entered judgment in favor of Defendant. No question is raised regarding the legal sufficiency of the complaint.

The lower court ruled that the loser of a bet Plaintiff made on FanDuel did not afford him the rights under that statute. The legislature has not repealed or modified the statute to exclude fantasy sport betting.

III. ISSUE TO BE REVIEWED

Whether the Illinois Loss Recovery Act applies in an instance where the gambling in question is facilitated by DFS intermediaries such as FanDuel.

IV. STATEMENT OF JURISDICTION

This Court has jurisdiction under 705 ILCS 25/8.1 and Illinois Supreme Court Rules 301, 303 and 315. A final appealable order on all issues was entered in this cause on June 26, 2017 and a Notice of Appeal was filed later that day on June 26, 2017. On December 14, 2018, the Appellate Court of

Illinois, First District, issued its Opinion, 2018 IL App (1st) 171675, affirming the June 26, 2017 order of the Circuit Court of Cook County, finding in favor of Defendant and against Plaintiff that no violation existed under the Loss Recovery Act. Plaintiff did not file any petition for rehearing. On March 20, 2019, the Illinois Supreme Court granted the plaintiff's leave to appeal. On April 2, 2019 Plaintiff filed its notice of election pursuant to Rule 315 (h).

V. STATUTE AT ISSUE

720 ILCS 5/28

The entirety is contained in the Appendix. A25-33.

VI. STANDARD OF REVIEW

Ordinarily, the standard of review for consideration of a trial court's ruling on the merits of a claim is whether it was contrary to the manifest weight of the evidence. *Best v. Best*, 223 Ill.2d 342 (2006). However, because Judge Wool based his determination solely on his interpretation of 720 ILCS 5/28-8, this Court's review is *de novo*. *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231 (2009).

VII. STATEMENT OF FACTS

Plaintiff filed a *pro se* statutory complaint on April 16, 2016 containing 44 paragraphs and 14 pages. Plaintiff cited Section 28 of the Criminal Code, 720 ILCS 5/28. Plaintiff's claim was a single statutory claim under Section 28-8 for the \$100 plus costs. C. 4-19. Plaintiff alleged that on April 1, 2016, he and Defendant

entered into a head-to-head DFS contest operated by a sports betting website, FanDuel, which involved prediction of the performance of certain NBA athletes in games to be played on that day. Plaintiff and defendant each paid FanDuel \$109. C 5-6. Plaintiff cited the Defendant's players performed better than plaintiff's chosen players, making defendant the winner of the contest. FanDuel paid Defendant \$200 by depositing it into his mobile application account, retaining \$18 for managing the contest. C 10. Defendant did not file an answer to the complaint.

Originally, the case came up for trial on May 4, 2016 and the parties filed a stipulated Bystander's Report C 24-26. The Court thereupon entered judgment for defendant ruling that plaintiff should have sued FanDuel. Plaintiff timely appealed. The Appellate Court reversed and remanded, holding that the trial court did not conduct a trial with due process *Dew-Becker v. Wu*, 2017 IL App (1st) 161383-U.

On remand, the case came up for trial for the second time on June 26, 2017. R4. Plaintiff testified that he put a team together that he thought would score more points than the defendant's team of players. R 11, 12. He testified that FanDuel assigns points to players based on their performances in games that night and that there are elements that are completely out of a wager's control, such as injuries, coaches decisions, weather issues and other factors that would impact whether or not a player scores any points in that game. R 13, 14. After trial, the same trial court Judge Leon Wool found for Defendant on the sole basis that FanDuel's role

as an intermediary between Plaintiff and Defendant precluded Plaintiff's recovery, stating on the record that "[t]he plain meaning of the Statute does not allow recovery when the gambling is not connected -- conducted between one person and another person[.]" R22-23, C96-97. Plaintiff timely appealed and the Illinois Appellate Court affirmed the ruling on December 14, 2018. 2018 IL App (1st) 171675.

VIII. ARGUMENT

A. STATUTORY BACKGROUND

The Illinois Loss Recovery Act (the "Act") is found in the Criminal Code of 2012 in the Illinois Compiled Statutes. 720 ILCS 5/28-8. The Illinois Criminal Code is divided into five titles; **I-** General Provisions, **II-** Principles of Criminal Liability, **III-** Specific Offenses, **IV-** Construction, Effective Date and Repeal, and **V-** Added Articles. Those titles consist of parts. Those parts consist of Articles. Those Articles consist of subdivisions. The Act is contained in Title III entitled "Specific Offenses". Part D is entitled "Offenses Affecting Public Health, Safety and Decency." Article 28 is entitled "Gambling and Related Offenses." Similarly, other Articles in the Criminal code contain civil penalties or victims' specific rights to sue for compensation such as in Article 17, Fraud and Deception and other Articles in Part D such as the Bribery offenses.

The relevant portion of the General Provisions in Title 1 in 720 ILCS 5/1-2 are:

The Provisions of this Code shall be construed in accordance with the General Purposes here, to:

- (a) Forbid and prevent the commission of offenses;
- (c) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offender;
- (d) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

It's clear that the Loss Recovery Act along with the general provision of the criminal code is to ensure that gambling is prevented as it is found in the Public decency article.

720 ILCS 5/5-1 of the Criminal Code is of interest as well:

Accountability for conduct of another. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided in Section 5-2 or both.

With that background in mind we turn our attention to the Loss Recovery Act itself. Forcing the winner to pay the loser of those wagers should eliminate or certainly

prevent gambling such as what is at stake here. The Act confers upon a losing gambler or any other person the right to file a civil action against the winner to recover those losses. If the loser does not bring an action within six months, “any person” may bring the action and recover triple damages. The General Provisions of the Criminal Code defines “any person.” So, there is in fact an added incentive for other persons to sue the winners in an effort to prevent gambling.

Here, Plaintiff timely filed an action to recover the \$100 he lost to Defendant playing a DFS contest facilitated by FanDuel. The court below held that the very existence of FanDuel as a facilitator of the game precluded Plaintiff from recovery. R22-23, C 96-97. This interpretation of the Act finds no support in the statutory text.

Neither does the accountability Section of the Criminal Code or the Act itself support this interpretation. There is no other requirement defined in 720 ILCS 5/28-8 for the loser to recover monies from the winner or for that matter “any person.” This statute created no other obstacles or impediments, whereas for example, lien statutes or statutory possession claims create pre-suit notice requirements. No such obstacles are contained in the Loss Recovery Act.

“The cardinal principle of statutory interpretation is that the court must effectuate legislative intent. The best indicator of legislative intent is statutory language. If the statutory language is plain, the court cannot read limitations or conditions into the statute.” *People ex rel. Ryan v. Agpro, Inc.*, 345 Ill. App. 3d

1011, 1019, (2004). “When the statute's language is clear, it will be given effect without resort to other aids of statutory construction.” *Zurek v. Franklin Park Officers Electoral Board*, 2014 IL App (1st) 142618, ¶ 64,

The plain language of the Act contains no reference to a limitation or exclusion in cases where the gambling game is facilitated by a third party such as FanDuel. To read such a limitation or exclusion into the statute would be contrary to the statute’s plain language, and thus contrary to the long-standing rules of construction promulgated by this Court. “Where a statute is clear and unambiguous, as this one is, the court should not look to extrinsic aids for construction. The statute must be enforced as written, and a court may not depart from its plain language by reading into it exceptions, limitations, or conditions not expressed by the legislature.” *Lawrence v. Regent Realty Group*, 197 Ill. 2d 1, 10 (2001). Words in a statute must be given their plain and ordinary meaning. *Lulay v. Lulay*, 193 Ill.2d 455,466 (2000).

Section 28-8 contains other exclusions, such as ¶(a) for securities and stock trading. Similarly, ¶(c) excludes video gaming terminals.” Section 28-1(b) lists 14 exemptions, including insurance contracts, horse racing, church bingo, the Illinois Lottery and riverboat gambling the legislature even defined “internet” in the definitions section in A-5 of 28-2. Had the legislature wanted to exclude games managed or made available by third parties, such as DFS contests, from being considered gambling, or from being recoverable under the Loss Recovery Act, it

plainly could have done so. That the legislature chose *not* to do so is plain evidence that it intended for sites such as FanDuel to be included, or at least not *excluded*.

In fact, on December 23, 2015 the Illinois Attorney General in Opinion #15-006 opined that “[i]n Illinois, the legality of daily fantasy sports is a matter of first impression. It is my opinion that the daily fantasy sports contests offered by FanDuel and DraftKings clearly constitute gambling under Section 28-1(a) of the Criminal Code of 2012. And it is my opinion that daily fantasy sports contests constitute illegal gambling under Illinois Law”. See appendix. A 22-24. That opinion detailed their analysis to reach their conclusion.

Courts are not in a position to deviate from the words contained in the Statute. Consider for instance, when the trial court deviated from the 15% statutory amount in a garnishment because it was too harsh. The Illinois Appellate Court reversed by holding the court has no authority to deviate from the exact percentage contained in the statute even though extreme or undue hardship may result to the garnishee. *National Collegiate Student Loan Trust 2004-1 v. Ogunbiyi*, 2018 IL App (1st) 170861. ¶ 16

B. THE STATUTE MUST BE ENFORCED TO ACHIEVE ITS PURPOSE

As early as 1888, in *Cothran v. Ellis*, 125 Ill 496, 500. (1888) this Illinois Supreme Court held in a wager case that “the tendency however of modern decision is to enlarge the exceptions to the general rule which permits a recovery upon a wager and some of the courts have gone so far as to deny the rule altogether.”

Later the Illinois Supreme Court heard a case concerning the Loss Recovery Act. In *Zellers v. White*, 208 Ill 518 (1904) the court afforded the loser his right against the winner of his chips in the poker room. Although *Zellers* is more than 115 years old, these same facts take place even today in our society. There, *White* bought chips from the “gaming house keeper” to gamble with, and then would redeem them at the end of the night for cash if he still had any left. *White* bought \$80 worth of chips throughout the night but lost them all while playing poker. Despite the use of two different third parties in *Zellers*- players acting on behalf of *Zellers* and the gaming house operator acting as a financial intermediary- the Illinois Supreme Court still found *Zellers* to be liable to *White*, because they were the actual participants in the wagers. In effect, the participation of the third parties did nothing to break the direct connection between *Zeller* and *White*. The Illinois Supreme Court affirmed *White’s* claim under the same statute that is subject here.

Here, FanDuel acted in a similar manner to the gaming house keeper in *Zellers*; converting cash paid by plaintiff and defendant into a digital currency which they could use to wager on the outcome of a DFS contest. Defendant collected his digital monies the same way a poker player collects his chips when winning a hand at poker. Defendant then converted his digital currency into cash, like when a poker player turns in his chips at the end of the evening for cash. In *Zellers*, the intermediary issue did not matter and neither should it matter here.

Because the Act defines persons from whom the monies are recoverable, the fact that players play by alias names or screen names is inconsequential.

On the contrary, there is a well-established and easily employable method for a plaintiff to ascertain the name and address of an unknown defendant: Illinois Supreme Court Rule 224. This rule enables a claimant to subpoena an internet service provider and require it to reveal the identity of a user known only by screen name and IP address. The Committee Comments to Rule 224 succinctly explain it: “This rule provides a tool by which a person or entity may, with leave of court, compel limited discovery before filing a lawsuit in the effort to determine the identity of one who may be liable in damages.”

Several recent cases have approved the use of Rule 224 to ascertain the identity of the authors of allegedly defamatory web postings on newspaper opinion forums. *Hadley v. Doe*, 2015 IL 118000 ¶ 25; *Maxon v. Ottawa Publishing Co.*, 402 Ill.App.3d 704,716 (2010); *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386 ¶ 18. In each of these cases, the publication, and, in turn, the internet service provider was subpoenaed and forced to disclose the identity of the potential defendant, subject only to the requirement that the defendant receive notice of the subpoena and have the opportunity to quash it.

The Illinois Appellate Court has held the Act to be “remedial in character in so far as it gives the loser the right to recover back the money lost at gaming.” *Salzman v. Boeing*, 304 Ill. App. 405, 411 (1940). Thus, the statute must be

afforded a liberal construction to achieve its purpose- to deter gambling and to promote public decency. As a result, the trial court's determination is not supported by a narrow penal construction of the Act either, as Illinois adheres to the rule enunciated in *Peyton v. Rowe*, 391 U.S. 54,65 (1968), that remedial statutes are to be liberally construed in favor of achieving their purpose. *People ex rel. Devine V. 30,700 Unites States Currency* 199 Ill 2d 142,154 (2002) Because the purpose of the Act is to provide a vehicle for gamblers and other persons to recover their losses and deter gambling, it would be contrary to *Peyton* and its progeny – and contrary to the plain language of the statute – to construe the statute so narrowly as to remove from its ambit an entire group of gamblers which the legislature clearly did not intend.

Other courts interpreting the Act have reached the same or similar conclusions. In *Sonnenberg v. Amaya Group Holdings (Iom) Ltd.*, 810 F.3d 509,511 (7th Cir. 2016), the Seventh Circuit Court of Appeals in an opinion authored by Justice Posner in a DFS case held that FanDuel was a gambling facilitator, and that plaintiffs who wanted to recover their monies could (and should) sue the people they gambled against, not FanDuel. (“Illinois courts are reluctant to imply a private right of action in one section of a statute if other sections expressly create a mechanism”) And in *Langone v. Patrick Kaiser & FanDuel, Inc.*, No. 12 C 2073, 2013 U.S. Dist. LEXIS 145941 (N.D. Ill. Oct. 9, 2013), the United

States District Court for the Northern District of Illinois analogized FanDuel to “the house” at a casino:

FanDuel functions as "the house," charging an entry fee to participate in the fantasy sports games it hosts. Illinois courts have held that "the winner and not the keeper of the house is liable to the loser," unless the keeper of the house also risks money in the gambling activity.

2013 U.S. Dist. LEXIS 145941, at 19-21 (internal quotation marks and citations omitted; collecting cases). The trial court’s reading of the Act would mean that all gambling conducted through a “house,” such as a game room or casino, must also be exempted from the Act *by virtue of the mere presence of the house*. But no such exception exists in the statute. *Zellers* ruled in opposite.

In *Holmes v. Brickey*, 335 Ill. App. 390,395-396 (1948), shows that gambling where a “house” facilitates the game this is still covered by the Act.

[T]he winner and not the keeper of the house is liable to the loser. There can be no question that such is the law in Illinois. In *Ranney v. Flinn, supra*, the plaintiff played cards in a room over the defendant's saloon. The defendant received compensation for the use of the room in "chips" representing money, whenever a hand of a certain type was dealt, and only on rare occasions did the defendant play at the game with the plaintiff, and there was no proof that at such time the plaintiff's losses amounted to as much as \$ 10.

We do not believe that the decision in *Ranney v. Flinn, supra*, intended any comfort for operators of gambling houses, but rather imposes the burden on the plaintiff to allege and prove who did win his

money or thing of value, be he the owner of a gambling house or just a fellow gambler.

335 Ill. App. 390 at 395-96.

More recently in *Philips v. Double Down Interactive LLC*, 2016 U.S. Dis. Lexis 39189 ¶ 11 (N. D. Ill 2016) in another Loss Recovery Act case, the court in ruling that there are no claims allowed against the intermediary held “Both the statutory language and the case law interpreting the statute make clear that a plaintiff may only recover what he or she ‘lost’ from the person who ‘won’ it and that what was lost (and correspondingly won) must be money or some other thing of value.” at 11.

C. THE LOSS RECOVERY ACT IS ALIVE AND WELL

The constitutionality of the Loss Recovery Act was considered in *Moushon v. AAA Amusement*, 267 Ill.App.3d 187,192 (1994). In that case, plaintiff sued the owners of a tavern for losses incurred by playing slot machines on the defendants’ premises. The defendants objected that the Loss Recovery Act violated the federal equal protection clause and the special legislation clause of the 1970 Illinois Constitution.

Noting that Sec. 28-8 was part of a complex statutory strategy which made some forms of gambling legal and others illegal, the *Moushon* court held that legislature was empowered to make the “relatively slight distinctions” involved and

need show only a rational basis for doing so. 267 Ill.App.3d, at p. 192. The court concluded, *Moushon, supra*, at p. 192:

“ . . . [S]ections 28-1(b) and 28-8 of the Code , taken together, properly provide for a cause of action for a loser at gambling prohibited by section 28-1, but not for the loser at gambling under section 28-1(b). Every aspect of the scheme of article 28 of the Code involved here meets constitutional muster.”

Sec. 28-8 was last amended on June 24, 2013, by adding subsection (c), which makes losses sustained by playing at a licensed video game terminal non-recoverable. When the legislature amends a statute, there is a presumption that it acts rationally with full knowledge of its previous enactments. *DeGrand v. Motors Ins. Corp.*, 146 Ill.2d 521, 531 (1992); *Ready v. United/Goedecke Servs.*, 232 Ill.2d 369,380 (2008). Or, put in another way: “We must presume that the legislature enacts laws with full knowledge of existing laws and the construction given those laws by the courts which have considered them. *In re Marriage of Murphy*, 327 Ill.App.3d 845,852 (2002).

**D. IT’S THE LEGISLATIVE’S FUNCTION TO REPEAL
OR AMEND THE LAW NOT THE COURTS**

If the Illinois legislature deemed the Loss Recovery Act a hopeless relic of a bygone age, it could simply have repealed it. Instead, it amended it. There is a presumption that an amendment effects a change in the law and leaves the preexisting law intact. *Kelsay v. Motorola, Inc.*, 74 Ill.2d 172, 193

(1978)(Underwood, dissenting). But Illinois is one of 32 states that allow recovery on gambling losses. See Appendix 11-12.

To announce a construction of a remedial law which severely limits its scope, as the Appellate Court has done in this case, is an arrogation of authority which flies in the face of the doctrine of separation of powers. Justice Underwood put the matter most eloquently, *Kelsay v. Motorola, Inc., supra*, at p. 190-191:

“It is only stating the obvious to say that it is fundamental in our system of government that the law-making function is vested in the legislative branch. The majority’s intrusion into the legislative field in this case typifies the lack of judicial restraint which has been a source of concern and comment throughout our history. Mr. Chief Justice Marshall spoke to it as follows: ‘[T]he judicial department has no will in any case . . . judicial power is never exercised for the purpose of giving effect to the will of judge; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law.’ *Osborne v. Bank of the United States*, 22 U.S. 738 (9 Wheat.)(1824). It is essential to the preservation of the separation of powers that those of us who serve in the judicial branch subordinate our desires and preferences to the action of the legislative and executive branches so long as those are expressed in constitutional terms.”

More recently, the Illinois Supreme Court commented in *People ex rel. Hansen v. Phelan*, 158 Ill.2d 445, 451 (1994) “Violation of separation of powers

principles would severely damage the public interest and would establish bad judicial policy.”

Gambling has been illegal in Illinois for over two hundred years and remains so , except insofar as the legislature has seen fit in the exercise of its police powers to make finely tuned exceptions to the general rule. The citizens of Illinois have retained their right to recover their gambling losses during that entire time period. The province of public policy belongs to the Illinois legislature. It is not the job of the courts to change it.

It would be naïve to think that no such poker games or “underground” casinos exist in Illinois as they did more than 100 years ago as in *Zellers*. However, if the loser elected to sue the winners under this statute, there is no doubt that the other players or the intermediary, here FanDuel would not invite that player back. So, there is really no “floodgates of litigation” parade of horrors warned by the Illinois Appellate Court in their opinion. Justice Posner in *Sonnenberg* noted that as well “a gambler would be reluctant to sue the winner if it were a friendly game” *Sonnenberg* at 511.

CONCLUSION

The amount in controversy in this case is small, but the principle is large. The Supreme Court must be vigilant to see that lower courts in its jurisdiction, however well-intentioned, do not overstep their bounds and enforce the statutes as written.

Accordingly, Plaintiff prays that the lower court and the Appellate Court orders be reversed, and Judgment entered in favor of the plaintiff for \$100 plus costs against the defendant.

Respectfully submitted,
COLIN DEW-BECKER

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RULE 341(C) CERTIFICATION

I certify under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure that this Appellant brief conforms to the requirements of Rules 315(d), 341(a) and (b). The length of this, excluding the Appendix, is 15 pages.

BY:

/s/ Berton N. Ring
Berton N. Ring, P.C

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Lawyer

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (1st) 171675

FIRST DISTRICT
SIXTH DIVISION
December 14, 2018

No. 1-17-1675

COLIN DEW-BECKER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 16 M1 011598
)	
ANDREW WU,)	Honorable
)	Leon Wool,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court, with opinion.
Justices Cunningham and Harris concurred in the judgment and opinion.

OPINION

¶1 Plaintiff, Colin Dew-Becker, appeals the trial court's decision in favor of defendant, Andrew Wu, after a bench trial. Plaintiff argues that in reaching its decision, the trial court erroneously interpreted section 28-8 of the Criminal Code of 2012 (hereinafter the Illinois Loss Recovery Act¹ or Act), (720 ILCS 5/28-8 (West 2014)), which provides a cause of action for damages to the loser of certain illegal bets against the winner of the bets. The trial court determined that this section of the Act does not allow recovery when the gambling is conducted through a third-party website, such as FanDuel, rather than a wager directly between one person and another. We agree with the trial court's interpretation of the Act and affirm its decision.

¹We note that section 28-8 of the Criminal Code of 2012 does not carry a short title. Additionally, no Illinois state court case has ever referred to this section as the "Illinois Loss Recovery Act." However, we opt to refer to this section as the "Illinois Loss Recovery Act" to remain consistent with the federal cases that have examined this statute. See, e.g., *Sonnenberg v. Amaya Group Holdings (IOM) Ltd.*, 810 F.3d 509, 510 (7th Cir. 2016); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731, 737 (N.D. Ill. 2016); *Langone v. Kaiser*, No. 12 C 2073, 2013 WL 5567587, at *3 (N.D. Ill. Oct. 9, 2013).

A1

No. 1-17-1675

¶ 2

BACKGROUND

¶ 3 This case stems from a bet placed between plaintiff and defendant through the fantasy sports website FanDuel. On April 4, 2016, plaintiff brought a small claims action against defendant after plaintiff lost \$100 as a result of a wager with defendant that was placed three days earlier on April 1, 2016. Plaintiff's complaint alleged that he and defendant engaged in a head-to-head daily fantasy sports (DFS) contest through FanDuel's website, with plaintiff and defendant each wagering \$100 on the outcome of their contest for the opportunity to win \$100 from the other. Plaintiff further alleged that the wager was an act of gambling and that he and defendant each paid \$109 to FanDuel, for a total of \$218. FanDuel received \$18 as a fee and the total prize for the DFS contest was \$200. Plaintiff and defendant selected their DFS roster by each choosing nine National Basketball Association (NBA) players. At the conclusion of the contest, plaintiff, who played under the name "dewbeckc," scored 96.3 points, and defendant, who played under the name "questionablylegal," scored 221.1. Six of the nine players selected by plaintiff scored a "0" for that day's contest. As a result of scoring the highest total points, defendant won the \$200 prize. Plaintiff's complaint sought relief pursuant to the Illinois Loss Recovery Act, which allows "[a]ny person who by gambling shall lose to any other person, any sum of money or thing of value, amounting to the sum of \$50 or more" to "sue for and recover the money or other thing of value *** in a civil action against the winner thereof, with costs, in the circuit court." *Id.* § 28-8(a).

¶ 4 On May 4, 2016, the matter proceeded to trial, where judgment was entered in favor of defendant. Plaintiff appealed. On appeal, we reversed and remanded for a new trial, finding that plaintiff was never provided an opportunity to be heard because he was "not afforded the chance to present testimony or argument." *Dew-Becker v. Wu*, 2017 IL App (1st) 161383-U, ¶ 14.

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¶ 5 On June 26, 2017, after remand, this matter proceeded to trial, at which both sides were able to present testimony and evidence. Plaintiff was represented by counsel and defendant proceeded *pro se*. A transcript of the trial is included in the record on appeal.

¶ 6 Plaintiff testified that on April 1, 2016, he entered a head-to-head DFS contest with defendant. Plaintiff testified that he chose the NBA players for his team “hoping that they would score the most possible points for my team.” Plaintiff stated that he did not win the contest with defendant because his team scored 96.3 points and defendant’s team scored 221.1 points. Plaintiff had wagered \$100, with the hope of winning \$200. Plaintiff noted that FanDuel collected a \$9 fee from each player. Additionally, plaintiff testified that there were elements of the game that were completely out of one’s control, such as player injury or weather, and analogized a DFS contest to betting on a horse in a horse race.

¶ 7 On cross-examination, when plaintiff was asked whether he considered FanDuel a contest of skill, he responded, “I certainly think there’s skill involved. I think both skill and luck are components of this for sure.”

¶ 8 Defendant testified that although plaintiff sued him directly in this case, FanDuel was actually the mediator of their wager, and thus it was impossible to truly participate in a head-to-head wager. Defendant stated that because two strangers could wager with one another through FanDuel, he did not believe the Act applied. Defendant testified that the contest at issue was “not an illegal gambling situation” and that the Act was not meant to apply.

¶ 9 In closing arguments, counsel for plaintiff asserted that he had established that the contest at issue was a wager within the meaning of the Act because there was no exemption for DFS or fantasy sports of any kind. Counsel concluded by stating, “This is the age of the Internet. If the legislature had intended to draft carve-outs, they could have done so at any time, particularly

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given how recently the Criminal Code has been amended.” In his closing, defendant argued that the idea that one can be sued for using a website that millions of people use “appears to be an overreach of the intention of this law.” Defendant stated that to find that each wager on a site like FanDuel is an illegal wager that can be brought to court is “too broad an interpretation” that would cause a lot of problems.

¶ 10 After trial, the court below found in favor of defendant and delivered the following ruling:

“Plaintiff brings a civil action against the [d]efendant under 720 ILCS 5/28-8[.] [U]nder section 28-8(a), ‘A person who by gambling loses any sum of money totaling \$50 or more to any other person may initiate a civil action to recover damages from the winner.’

The plain meaning of the [s]tatute does not allow recovery when the gambling is not connected—conducted between one person and another person, in this case, because of FanDuel[.] [T]herefore it’s the opinion of the [c]ourt the verdict will be in favor of the [d]efendant.”

¶ 11 Also on June 26, 2017, plaintiff filed his notice of appeal. On November 13, 2017, plaintiff filed a motion with this court requesting that this appeal be deemed ready. On December 1, 2017, after receiving no response from defendant, we ordered that this appeal proceed on appellant’s brief and the record only.

¶ 12 ANALYSIS

¶ 13 On appeal, plaintiff argues that the trial court erroneously interpreted the Act when it determined that FanDuel’s facilitation of the wager precluded recovery. Plaintiff contends that the Illinois Loss Recovery Act does not include an exclusion or limitation for cases where the

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gambling at issue is facilitated by a third party, such as FanDuel. For the reasons that follow, we affirm the trial court's decision.

¶ 14 Although we typically determine whether a trial court's decision after a bench trial was against the manifest weight of the evidence (*Garden View, LLC v. Fletcher*, 394 Ill. App. 3d 577, 583 (2009)), we apply a *de novo* standard where, as here, we are faced with a question of statutory interpretation. *Goldfine v. Barack, Ferrazzano, Kirschbaum & Perlman*, 2014 IL 116362, ¶ 20.

¶ 15 The Illinois Loss Recovery Act provides as follows:

“Gambling losses recoverable:

(a) Any person who by gambling shall lose to any other person, any sum of money or thing of value, amounting to the sum of \$50 or more and shall pay or deliver the same or any part thereof, may sue for and recover the money or other thing of value, so lost and paid or delivered, in a civil action against the winner thereof, with costs, in the circuit court. ***.

(b) If within 6 months, such person who under the terms of Subsection 28-8(a) is entitled to initiate action to recover his losses does not in fact pursue his remedy, any person may initiate a civil action against the winner. The court or the jury, as the case may be, shall determine the amount of the loss. After such determination, the court shall enter a judgment of triple the amount so determined.

(c) Gambling losses as a result of gambling conducted on a video gaming terminal licensed under the Video Gaming Act are not recoverable under this Section.” 720 ILCS 5/28-8 (West 2014).

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¶ 16 Here, plaintiff sued defendant pursuant to the Act. Thus, the first question that we must answer is whether the DFS contest in which plaintiff and defendant participated amounted to “gambling.” In Illinois, “[a] person commits gambling when he or she *** knowingly plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section.” *Id.* § 28-1(a)(1).

¶ 17 We find that the DFS contest at issue was a game of chance, a game of skill, or some combination thereof and that none of the exceptions enumerated in section 28-1(b) apply. See *id.* § 28-1(b). Therefore, we assume *arguendo* that plaintiff’s and defendant’s participation in the head-to-head DFS contest at issue qualified as gambling. The question next becomes whether the Act allows plaintiff to recover the gambling loss he incurred as a result of a DFS contest facilitated by a third-party website, such as FanDuel. The trial court determined that the Act does not apply to the instant case, and thus plaintiff cannot recover. We agree.

¶ 18 Plaintiff argues that the Act does not contain an express limitation or exclusion for cases where gambling is facilitated through a third-party website, such as FanDuel. “This court’s primary objective in interpreting a statute is to ascertain and give effect to the intent of the legislature. [Citation.] The most reliable indication of the legislature’s intent is the language of the statute, given its plain and ordinary meaning.” *Goldfine*, 2014 IL 116362, ¶ 21. Further, it is well-settled that when interpreting a statute, “we will avoid a construction that would defeat the statute’s purpose or yield absurd or unjust results.” *Bowman v. Ottney*, 2015 IL 119000, ¶ 17.

¶ 19 The trial court determined that the Act was not intended to apply here because the gambling at issue was not conducted directly between one person and another person and instead was conducted through FanDuel, a third-party intermediary. We find support for the trial court’s ruling in the plain, unambiguous language of the statute. Section 28-8(a) references “[a]ny

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person who by gambling shall lose to any other person.” 720 ILCS 5/28-8(a) (West 2014). We find that this language requires a direct connection between the two persons involved in the wager. The statute specifically refers to “[a]ny person” who loses “to any other person.” *Id.* There is no indication that gambling committed between two persons through the use of a third-party website, such as FanDuel, was intended to be covered by the Act.

¶ 20 Additionally, allowing DFS contests on FanDuel to be covered by the Act would be problematic because people who do not necessarily know one another can compete head-to-head on the site. In this case, plaintiff and defendant presumably knew one another prior to entering into the DFS contest. We presume such a fact because there is no evidence in the record that their DFS contest was based on a random opponent assignment. Plaintiff made no allegation in his complaint regarding how he ascertained defendant’s identity, and there is no indication that plaintiff and defendant were strangers. Although plaintiff and defendant knew one another in this case, FanDuel does not require all contestants in head-to-head DFS contests to know one another. A head-to-head DFS contest can be conducted between two strangers. In fact, plaintiff recognized this in his complaint and alleged, “The individual who initiates the head-to-head contest chooses (and pays) the size of the entrance fee for the contest, and can then either invite a friend to enter the contest, or can allow the contest to be entered by any other individual on the site.”

¶ 21 In this case, plaintiff competed under the screen name “dewbeckc” and defendant competed under the screen name “questionablylegal.” If plaintiff and defendant did not know one another prior to entering the DFS contest, then it would have been difficult, if not impossible, for plaintiff to discern defendant’s identity beyond his screen name, which would have impeded the filing of an action in circuit court, *i.e.*, the crux of recovery under the Act.

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Certainly, the loser of a wager cannot sue the winner to recover under the Act when the winner's identity is known only through a screen name. As a result, we find that the Act was not intended to apply to gambling facilitated by a third-party website, such as FanDuel, which allows a person to engage in head-to-head DFS contests with a stranger. Instead, the Act was intended to apply to allow recovery when two people who know one another (or at least are familiar with one another's identity) engage in illegal gambling.

¶ 22 Further, to construe the Act in a manner that would allow plaintiff to recover would frustrate the statute's purpose and yield absurd results. Simply put, the floodgates of litigation would be opened to the thousands of Illinois residents who engage in DFS contests. If we adopted plaintiff's interpretation of the Act, then any person who lost more than \$50 on a DFS website such as FanDuel would be able to bring a small claims action in circuit court. It is absurd to believe that the Act's drafters intended to inundate the court system with such a high volume of claims.

¶ 23 Plaintiff cites numerous federal court decisions as support for his contention that he should be allowed to recover under the Act. For example, plaintiff cites *Langone*, 2013 WL 5567587, at *6, wherein the court determined that FanDuel was not a "winner" within the meaning of the Illinois Loss Recovery Act and could not be sued under the Act because FanDuel "risks nothing when it takes entry fees from participants in its fantasy sports games." Here, plaintiff has not sued FanDuel, and thus *Langone* is not instructive. Additionally, this case involves the interpretation of an Illinois statute, and federal case law is not binding. *Combs v. Insurance Co. of Illinois*, 146 Ill. App. 3d 957, 962 (1986) (recognizing that "decisions by the [f]ederal courts, other than the United States Supreme Court, as to the law of Illinois are not binding on state courts").

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¶ 24 Plaintiff has not cited, and we have not found, any Illinois case that allowed the loser of a DFS contest conducted through FanDuel (or a similar third-party website) to recover from the winner pursuant to the Illinois Loss Recovery Act. In fact, there are very few cases decided by Illinois courts in which the Illinois Loss Recovery Act has been examined. Since 1950, only two Illinois state court cases have addressed the Act. See *Reuter v. MasterCard International, Inc.*, 397 Ill. App. 3d 915 (2010) (holding that plaintiff could not recover from the defendant credit card companies because although the plaintiff's credit card was used to gamble on Internet casinos, credit card companies were not "winners" under the Act); *Moushon v. AAA Amusement, Inc.*, 267 Ill. App. 3d 187 (1994) (determining that the Act's distinction between different types of gambling did not violate the defendants' equal protection rights). Neither of these cases addressed a factual scenario similar to the one at bar or include analysis relevant here.

¶ 25 We believe that the dearth of decisions within the past six decades that analyze the Act indicate that its relevance and applicability have dwindled since its inception in the late 1800s. Likely, this is due to the expansion of legalized forms of gambling and, specifically, sports gambling. The general expansion of legalized gambling is reflected in section 28-1(b) of the Criminal Code of 2012, which provides that participants in activities such as bingo, lotteries, raffles, pull tabs and jar games, gambling conducted on riverboats, and video gaming terminal games, "shall not be convicted of gambling." 720 ILCS 5/28-1(b) (West 2014). Further evidence of the trend toward limiting who may recover under the Illinois Loss Recovery Act is included in section 28-8(c) of the Act, which was added in connection with the enactment of the Video Gaming Act (230 ILCS 40/1 *et seq.* (West 2014)), and provides, "Gambling losses as a result of gambling conducted on a video gaming terminal licensed under the Video Gaming Act are not recoverable under this Section." 720 ILCS 5/28-8(c) (West 2014).

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¶ 26 As a final matter, we note that the catalyst for the expansion of legalized sports gambling was the United States Supreme Court's recent holding in *Murphy v. National Collegiate Athletic Ass'n*, 584 U.S. ___, 138 S. Ct. 1461 (2018), that a federal statute, that included a provision that made it illegal for any state to authorize sports gambling, violated the anticommandeering doctrine. However, even prior to that decision, the Seventh Circuit Court of Appeals specifically recognized that the Illinois Loss Recovery Act "dates from an era of strong opposition in Illinois to gambling" but recognized "[t]hat era has ended, and the laws are gradually being relaxed." *Sonnenberg v. Amaya Group Holdings (IOM) Ltd.*, 810 F.3d 509, 510 (7th Cir. 2016). At this time, there are a number of bills before the Illinois legislature that propose the legalization and regulation of sports gambling. It is, therefore, apparent that the trend in Illinois is toward more relaxed gambling laws, not stricter ones. As such, we decline to interpret the Illinois Loss Recovery Act in a manner that would frustrate its purpose and yield an absurd result, and affirm the trial court's decision in favor of defendant.

¶ 27

CONCLUSION

¶ 28 Based on the foregoing, we find that the trial court properly found in defendant's favor and affirm its decision.

¶ 29 Affirmed.

<p>Gambling-Law-US .com Gambling Law US Homepage</p>	<h2 style="margin: 0;">Gambling Loss Recovery Laws</h2> <h3 style="margin: 0;">State Laws on Ability to Recover Gambling Losses</h3> <p style="margin: 0;">by Chuck Humphrey</p>
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- US Federal Gambling Laws
- State Gambling Laws
- State Charitable Gaming Laws
- State Law Summary
- Gambling Law Articles
- Useful Sites
- State Gambling Agencies
- Search-Site Map
- Contact
- Gambling Related Websites
- Poker Vibe
- Gambling Directories on the Web
- Internet Library
- Georgetown Law Library
- Gambling Links
- Joeant Gambling Directory

The basic starting point for the research leading to the information in the table below is drawn from 162 American Law Reports 1224, which contains the annotation: *Gambler's right to recover money lost by him as including money belonging to others*. The annotation is very much out of date, having been written over 50 years ago. I have read all the statutes that are summarized in the table below and have attempted to discover any similar laws in other states

I would appreciate advice from any reader who may know of laws in other states that have the same effect as those summarized in the table, or of changes in the laws that are summarized.

The following table presents information about laws in those states that in which I have been able to find specific statutes authorizing the recovery of gambling losses.

The table contains the following columns:

- State:** Shows the name of the particular state.
- Statute Section:** Gives the applicable section of that state's statutes.
- Recover:** Indicates if a gambling loss is recoverable. If the table has blank rows after the name of a state, then I have not been able to find a specific gambling loss recovery loss statute.
- By 3d Party:** Indicates whether a third party may seek to recover a gambling loss if the actual loser does not do so. In some cases only the state's law enforcement authorities are authorized third parties.
- Treble:** Indicates whether the statute allows for treble recovery in certain circumstances.
- Statute of Limitation:** Sets forth my best guess as to the time frame within which a suit may be brought by the loser and/or a third party to recover gambling losses.

State	Statute Reference	Recover	By 3d Party	Treble	Statute of Limitations
Alabama	8-1-150	Yes	No	No	12 months
Alaska					
Arizona					
Arkansas	16-118-103	Yes	No	No	90 days
California					
Colorado					
Connecticut	52-553 & 52-554	Yes	No	No	3 months
Delaware					
District of Columbia	16-705	Yes	Yes	Yes	3 months + normal civil action?
Florida	849.12, 849.26 & 849.29	Yes	No	No	Normal civil action?
Georgia	13-8-3(b)	Yes	Yes	No	4 years
Hawaii					
Idaho					
Illinois	5/28.8	Yes	Yes	Yes	6 months
Indiana	34-16-1	Yes	Yes	No	6 months
Iowa					
Kansas					
Kentucky	372.020 & 372.040	Yes	Yes	Yes	5 years.
Louisiana					
Maine					
Maryland	12-110	Yes	No	No	Normal Statute of Limitations
Massachusetts	Chapter 137, Sec. 1	Yes	Yes	Yes	3 months + normal civil action?
Michigan	730.315 (1) [see also 600.2939 (1)]	Yes	No	No	3 months (1)
State	Statute Reference	Recover	By 3d Party	Treble	Statute of Limitations
Minnesota	541.20	Yes	No	No	Normal Statute of Limitations
Mississippi	87-1-5	Yes	No	No	Normal Statute of Limitations
Missouri	434.030 et seq.	Yes	No	No	3 months
Montana	23-4-131	Yes	No	No	1 year

Gambling-Law-US .com Gambling Law US Homepage		Gambling Loss Recovery Laws State Laws on Ability to Recover Gambling Losses by Chuck Humphrey				
Nebraska						
Nevada						
New Hampshire	338:3	Yes	No	No	Normal Statute of Limitations	
New Jersey	2A:40-5 & -6 (2)	Yes	Yes	No	1 year	
New Mexico	44-5-1	Yes	No	No	1 Year	
New York	5-419 & 5-421	Yes	No	No	3 months or longer	
North Carolina						
North Dakota						
Ohio	3763.02	Yes	Yes	No	6 months + Normal Statute of Limitations?	
Oklahoma						
Oregon	30.74	Yes	No	Double	Normal Statute of Limitations	
Pennsylvania						
Rhode Island						
South Carolina	32-1-10	Yes	Yes	Quadruple	3 months + normal Statute of Limitations?	
South Dakota	21-6-1	Yes	(3)	No	6 months	
Tennessee	28-3-106	Yes	No, except for benefit of spouse or children	No	90 days to 27 months	
Texas						
Utah						
Vermont	11-51 & 3981	Yes	No	No	1 month or longer	
Virginia	11-15	Yes	No	No	3 months	
Washington	4.24.070	Yes	No	No	Normal Statute of Limitations	
West Virginia	55-9-2	Yes	No	No	3 months	
Wisconsin	945-10 (4)	Yrs	No	No	Normal Statute of Limitations?	
Wyoming						
State	Statute Reference	Recover	By 3d Party	Treble	Statute of Limitations	
<p>(1) 750.315 Losing at gambling. Losing at gambling—Any person who shall lose any sum of money, or any goods, article or thing of value, by playing or betting on cards, dice or by any other device in the nature of such playing or betting, and shall pay or deliver the same or any part thereof to the winner, and shall not, within 3 months after such loss, without covin or collusion, prosecute with effect for such money or goods, the winner to whom such money or goods shall have been so paid or delivered, shall be guilty of a misdemeanor, punishable by a fine not exceeding 3 times the value of such money or goods. Such loser may sue for and recover such money in an action for money had and received to the use of the plaintiff; and such goods, article or valuable thing in an action of replevin, or the value thereof in an action on the case. Also, 600.2939 Gaming; action by loser; oath of parties; prosecution according to common law; forfeiture; limitation; securities; lands enuring of benefit.</p> <p>(1) In any suit brought by the person losing any money or goods, against the person receiving the same, when it appears from the complaint that the money or goods came to the hands of the defendant by gaming, if the plaintiff makes oath before the court in which such suit is pending, that the money or goods were lost by gaming with the defendant as alleged in the complaint, judgment shall be rendered that the plaintiff recovered damages to the amount of the said money or goods, unless the defendant makes oath that he did not obtain the same, or any part thereof by gaming with the plaintiff, and if he so discharges himself, he shall recover of the plaintiff his costs; but the plaintiff may at his election, maintain and prosecute his action according to the usual course of proceedings in such actions at common law.</p> <p>(2) Every person who wins or loses, at any time or sitting, by gaming or betting on the hands or sides of such as are gaming, any money or goods, to the value of \$5.00 or more, whether the same is paid over or delivered, or not, shall forfeit and pay 3 times the value of such money or goods if the action therefor is commenced within 6 months after the committing of the offense.</p>						

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1/15/2019



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 23, 2015

FILE NO. 15-006

SPORTS AND GAMING:
Daily Fantasy Sports
Contests as Gambling

The Honorable ~~Elgie R. Sims, Jr.~~
Chairperson, Judiciary - Criminal Committee
State Representative, 34th District
8658 South Cottage Grove, Suite 404B
Chicago, Illinois 60619

~~Honorable Scott R. Drury~~
~~Chairperson, Judiciary - Criminal Committee~~
~~State Representative, 58th District~~
~~Highwood, Illinois 60040~~

~~State Representative Sims and Representative Drury:~~

Honorable Scott R. Drury
Vice-Chairperson
State Representative
425 Sheridan

Dear Representative Sim

You have inquired whether daily fantasy sports contests offered by FanDuel and DraftKings (collectively Contest Organizers) constitute "gambling" under Illinois law. For the

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The

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reasons stated below, it is my opinion that the contests in question constitute illegal gambling under subsection 28-1 (a) of the Criminal Code of 2012 (the Criminal Code) (720 ILCS 5/28-1 (a))

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100 West Randolph Street, Chicago, Illinois 60601 • (312) 814-3000 • TTY: (312) 814-3374 • Fax: (312) 814-3806
1001 East Main, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (618) 529-6403 • Fax: (618) 529-6416
(West 2014)), and the exemption set forth in subsection 28-1 (b)(2) of the Criminal Code (720 ILCS 5/28-1 (West 2014)) does not apply.

BACKGROUND

The Contest Organizers are currently two of the most prominent companies offering online daily fantasy sports contests. The term "fantasy sports contests" commonly refers to contests involving virtual teams in which participants choose current athletes in a given professional or college sport to create a fantasy sports team and then compete against other fantasy sports participants, with the winner or winners determined based on how those athletes individually perform in their actual professional or college sports game. See generally *Langone v. Kaiser*, No. 12-C-2073, 2013 WL 5567587 (N.D. Ill. October 9, 2013).

Unlike traditional fantasy sports contests, which operate on a season-long timetable, daily fantasy sports contests are conducted over short-term periods, such as a week or single day of competition. Participants who have created accounts with the Contest Organizers pay an entry fee to participate in one or more of a Contest Organizer's fantasy sports contests¹ and select a team of athletes in a certain sport under an imaginary "salary cap," a maximum budget to

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¹The Contest Organizers offer a number of different contest formats including leagues, tournaments, head-to-heads, and multipliers. Leagues have a set number of entries allowed, while tournaments do not have a cap on the number of entries. Most tournaments have guaranteed prize pools, where a prize is guaranteed no matter the total number of entrants. In head-to-head contests, two participants compete against each other directly. In multiplier contests, those in a certain top percentage of the total number of participants will win the same amount. FanDuel Website, available at <https://www.fanduel.com/how-it-works>; DraftKings Website, available at <https://www.draftkings.com/help/faq>.
spend on athletes for the creation of a fantasy sports team.¹ The prizes are known in advance of the playing of the actual games, and the prize values do not change based on the number of entries in a particular contest. Participants earn fantasy points based on the statistical performance of the athletes in the actual games. Depending on the athletes' overall performance, participants may win a share of the predetermined prize. Entry fees help fund prizes, with a portion of the fees also going to the appropriate Contest Organizer. Complaint for Declaratory and Injunctive Relief at 5-6, *FanDuel, Inc. v. Schneiderman*, No. 161691/2015 (N.Y. Sup. Ct., New York County); Verified Petition at 7-8, *DraftKings, Inc. v. Schneiderman*, No. 102014/2015 (N.Y. sup. ct., New York County).

ANALYSIS

The Contest Organizers have suggested that their daily fantasy sports contests are authorized under Federal law. The Professional and Amateur Sports Protection Act (PASPA) (28 U.S.C. 53701 et seq. (2012)), which was enacted in 1992, makes it unlawful for "a person to sponsor, operate, advertise, or promote * * * a lottery, sweepstakes, or other betting, gambling, or wagering scheme based * * * on one or more competitive games in which amateur or professional athletes participate[.]" 28 U.S.C. 53702 (2012). However, the Unlawful Internet

¹ See FanDuel Website, available at <https://www.fanduel.com/how-it-works>; DraftKings Website, available at <https://draftkings.com/help/how-to-play>. Both FanDuel and DraftKings offer free "contests." However,

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Gambling Enforcement Act of 2006 (UIGEA) (31 U.S.C. 55361 et seq. (2012)) was enacted after PASPA's passage and prohibits any person engaged in the business of "betting" from knowingly accepting credit, electronic fund transfers, checks, or any other payment involving a financial institution to settle unlawful internet gambling debts. 31 U.S.C. 55363 (2012). The UIGEA excludes from the definition of "bet or wager" the participation in any fantasy sports game where: (1) all prize amounts are made known before the contest begins; (2) all winning outcomes are based on the relative skill and knowledge of the participants; and (3) no winning outcome is based on the scores or performance of a single, real world event or the performance of any real world team. 31 U.S.C. §5362(1)(E)(ix) (2012). The UIGEA specifically provides, however, that "[n]o provision of this subchapter shall be construed as * * * limiting * * * law * * * or regulating gambling within the United States." 31 U.S.C. 55361 (b) (2012). The UIGEA thus leaves to each state the authority to determine whether daily fantasy sports contests which fall under the UIGEA's requirements constitute illegal gambling.

In that regard, the online Terms of Use for FanDuel provide that individuals who are physically located in Arizona, Iowa, Louisiana, Montana, Nevada, New York, or Washington are not eligible to participate in contests. FanDuel Website, available at <https://www.fanduel.com/terms>. Similarly, the online Terms of Use for DraftKings provide that legal residents physically located in the foregoing states, with the exception of New York, are ineligible to participate in contests. DraftKings Website, available at <https://www.draftkings.com/help/terms>. It appears that the excluded states have gambling statutes that either expressly prohibit fantasy sports gambling (Mont. Code Ann. 523-5-802 (2015), available at <http://leg.mt.gov/bills/mca/23/5/23-5-802.htm>) or internet gambling (La. Rev. Stat. S 14:90.3 (2015), available at <http://www.legis.la.gov/legis/LawSearch.aspx>; Wash. Rev. Code 59.46.240 (2015), available at

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<http://apps.leg.wa.gov/RCW/default.aspx?cite=9.46.240>) or have been construed by State enforcement authorities to prohibit fantasy sports contests (see Ariz. Att'y Gen. Op. No. 198-002, issued January 21, 1998 (concluding that fantasy football constitutes gambling under Arizona law); Memorandum from J. Brin Gibson, Bureau Chief of Gaming and Government Affairs and Ketan D. Bhirud, Head of Complex Litigation, Office of the Nevada Attorney General, to A.G. Burnett, Chairman, Nevada Gaming Control Board, Terry Johnson, Member, Nevada Gaming Control Board, and Shawn Reid, Member, Nevada Gaming Control Board (October 16, 2015) (concluding that daily fantasy sports constitute sports pools and gambling games under Nevada law and therefore cannot be offered in Nevada without first obtaining a gaming license)).² See also 86th Iowa Gen. Assem., Senate File 166, 2015 Sess. (pending legislation proposing to add "Fantasy or Simulation Sports Contests" to the list of lawful bona fide contests).

In Illinois, the legality of daily fantasy sports is a matter of first impression.⁴ The Criminal Code prohibits the playing of both "games of chance or skill for money[.]" Specifically, subsection 28-1 (a) of the Criminal Code (720 ILCS 5/28-1(a) (West 2014)) defines the offense of gambling and provides, in pertinent part:

⁴There is one decision from a Federal district court in Illinois addressing daily fantasy sports contests. In *Langone v. Kaiser*, the plaintiff brought a claim under section 28-8 of the Illinois Loss Recovery Act (720 ILCS 5/28-8 (West 2012)) seeking, in part, to recover money from FanDuel and from an Illinois resident that a third party allegedly lost to in a daily fantasy sports contest hosted by FanDuel. The court determined that "[t]he relevant question for the purposes of the Loss Recovery Act is not whether FanDuel's activity is illegal; the question is whether FanDuel is 'the winner' with respect to any particular 'loser.'" *Langone*, 2013 WL 5567587, at

² Additionally, on November 10, 2015, the New York Attorney General's Office issued cease and desist letters to FanDuel and DraftKings, asserting that their operations constitute illegal gambling under New York law. See Letter from Kathleen McGee, Chief, Internet Bureau, Office of the New York Attorney General, to Jason Robins, Chief Executive Officer, DraftKings, Inc. (November 10, 2015); Letter from Kathleen McGee, Chief, Internet Bureau, Office of the New York Attorney General, to Nigel Eccles, Chief Executive Officer, FanDuel Inc.

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*7. The court held that because FanDuel does not risk its own money on the contests, it cannot be a winner or a loser under the Loss Recovery Act. Because the court specifically declined to address whether daily fantasy sports contests constitute illegal gambling under Illinois law, the case has no bearing on the instant inquiry.

We are also aware of four lawsuits pending in the Federal courts in Illinois involving DraftKings and/or FanDuel. *Izsak v. DraftKings, Inc.*, No. 14-cv-7952 (N.D. Ill. (2014)) (A class action alleging that DraftKings violated the Federal Telephone Consumer Protection Act (47 U.S.C. 5227 et seq. (2012)) by sending unsolicited text messages to the cell phones of the plaintiff and the class members.); *Hemrich v. DraftKings, Inc.*, No. 3: 15-cv-445 (S.D. Ill. (2015)) (A class action alleging that DraftKings violated the Illinois consumer fraud statute (815 ILCS 505/1 et seq. (West 2014)) and Missouri law by misleading consumers into believing that their initial deposit would be doubled through a "100% First-Time Deposit Bonus" and seeking money damages in the amounts of the doubled first-time deposits that the plaintiffs did not receive. The complaint specifically alleges that "DraftKings' business is a legal one under United States law[,]"; citing the Unlawful Internet Gambling Enforcement Act of 2006 (31 U.S.C. §5362(1)(E)(ix) (2012). *Hemrich Complaint at 4*, *Guarino v. DraftKings, Inc. and FanDuel, Inc.*, No. 3: 15-cv-1 123 (S.D. Ill. (2015)) (A class action alleging that DraftKings and FanDuel fraudulently induced plaintiff and the class members into paying money to participate by claiming the games were fair games of skill without the potential for insiders to use non-public information to compete against them when, in fact, the defendants willfully failed to disclose that employees of DraftKings and FanDuel had valuable, non-public data and would use this information to compete against plaintiff and the class members. The complaint seeks a full refund for all of the money paid to the defendants by the class members, damages and restitution, or other equitable relief. As part of the allegations, the complaint states that daily fantasy sports contests are "not gambling because of the skill involved in picking a winning team." *Guarino Complaint at 6, 29.*); *Stoddart v. DraftKings, Inc.*, No. 3: 15-cv1307 (S.D. Ill. (2015)) (A class action brought on behalf of a plaintiff who participated in DraftKings' contests and lost money and others similarly situated. The complaint alleges that DraftKings' daily fantasy sports contests are illegal gambling under Illinois law and seeks an order requiring DraftKings to disgorge all of the money wagered and lost by the plaintiff and the class members.). Only the Stoddart case raises the question of whether daily fantasy sports contests violate Illinois criminal law. The court has not reached that issue, however. The case is currently subject to an Order to Stay proceedings, pending the resolution of a Multidistrict Litigation transfer motion. *Order, Stoddart v. DraftKings, Inc.*, No. 3: 15-cv-1307 (S.D. Ill. December 16, 2015).

(a) A person commits gambling when he or she:

(1) knowingly plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section;

(12) knowingly establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet or to make a wager upon the result of any game, contest, political nomination, appointment, or election by means of the Internet. This item (12) does not apply to activities referenced in items (6) and (6.1) of subsection (b) of this Section.^{3]}

³ Subsections 28-1 and 28-1 of the Criminal Code (720 ILCS 5/28-1 b)(6), b)(6.1) (West 2014)) respectively exempt from the illegal gambling prohibitions lotteries conducted by the State of Illinois in accordance

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Subsection 28-1 (b) of the Criminal Code (720 ILCS 5/28-1 (b) (West 2014)) exempts certain activities from the general prohibition on gambling. The Contest Organizers contend that the following exception applies to the daily fantasy sports contests they offer:

(b) Participants in any of the following activities shall not be convicted of gambling:

(2) Offers of prizes, award or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest.

The offense of gambling is a Class A misdemeanor under Illinois law. A second or subsequent conviction under subsections 28-1 (a)(3) through (a)(12) of the Criminal Code is a Class 4 felony.

720 ILCS 5/28-1 (c) (West 2014).

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Illinois Department of Healthcare and Family Services v. Warner*, 227 Ill. 2d 223, 229 (2008). Legislative intent is best evidenced by the language used in the statute, and where statutory language is clear and unambiguous, it must be given effect as written. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). One must view all of the provisions of the statute as a whole. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 422 (2002). Words and phrases should not be construed in isolation, but interpreted in light of other relevant portions of the statute. *Land*, 202 Ill. 2d at 422. Illinois criminal statutes must be narrowly construed in favor of the accused. *People v. Williams*, 239 Ill. 2d 119, 127 (2010); *People v. Christensen*, 102 Ill. 2d 321, 328 (1984).

lottery conducted by the State of Illinois under the program established in section 7.12 of the Illinois Lottery Law

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Subsection 28-1 (a)(1) of the Criminal Code provides that a person commits the offense of gambling when he or she "knowingly plays a game of chance or skill for money[.]" unless excepted in subsection 28-1 (b). The statutory language is straightforward and unequivocal. It clearly declares that all games of chance or skill, when played for money, are illegal gambling in Illinois, unless excepted. While the Contest Organizers assert that daily fantasy sports contests are games of skill⁶ rather than games of chance, that argument is immaterial because subsection 28-1 expressly encompasses both. Moreover, participants must pay an entry fee or buy-in amount in order to win a prize. Consequently, the act of playing daily fantasy sports contests in Illinois constitutes illegal gambling under subsection 28-1 (a)(1) of the Criminal Code, unless otherwise excepted.

Pursuant to subsection 28-1 of the Criminal Code, a person also commits gambling when he or she "knowingly establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet or to make a wager upon the result of any game[.]" The Contest Organizers operate websites that allow individuals to play games of chance or skill for money. Accordingly, entities which operate such contests commit the offense of gambling under Illinois law, unless otherwise excepted. See *Cie v. Comdata Network, Inc.*, 275 Ill. App. 3d 759, 764-65 (1995), appeal denied, 165 Ill. 2d 548 (1996) (subsection 28-1 (b) exceptions apply to all gambling prohibitions in subsection 28-1 (a)).

Subsection 28-1 (b) of the Criminal Code sets out the only exceptions to activities that otherwise would constitute gambling under subsection 28-1 (a). The Contest Organizers assert that their contests are excepted under subsection 28-1 (b)(2). This subsection was included in the original enactment of article 28 of the Criminal Code of 1961 (see 1961 Ill. Laws 1983,

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⁶See FanDuel Website, available at <https://fanduel.zendesk.com/hc/en-us/articles/210202858-1s-FanDuel-legal>; DraftKings Website, available at <https://www.draftkings.com/help/why-is-it-legal.2033-37>; Ill. Rev. Stat. 1961, ch. 38, par. 28-1 et seq.) and exempts "[olffers of prizes, award or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest. "⁷ (Emphasis added.)

Reading the statute as a whole, it is clear that subsection 28-1 (b)(2) applies only to the "actual contestants" in the actual sporting event. ⁸ In the context of daily fantasy sports, the "actual contestant" upon whose performance success or failure is based is the athlete or athletes whose "skill, speed, strength or endurance" determine the outcome. Thus, subsection 28-1 (b)(2) exempts only those who actually engage in a bona fide contest for the determination of skill, speed, strength, or endurance, and not a daily fantasy sports contest participant who pays a fee to build a "team" and who may win a prize based on the statistical performance of particular athletes. In this regard, persons whose wagers depend upon how particular, selected athletes perform in actual sporting events stand in no different stead than persons who wager on the outcome of any sporting event in which they are not participants. None of these persons are the

⁷There is only one Illinois case which cites to this exception. In *People v. Mitchell*, 11 I Ill. App. 3d 1026, 1028 (1983), the court upheld a jury's conclusion that "Hold 'em" poker was not a "bona fide contest for the determination of skill" under subsection 28-1. The court held that the evidence supported the jury's conclusion that "the games, in fact, required a combination of skill and chance, and that they were definitely not the type of 'bonafide contests' excepted from subsection [28-1](a)(1)." (Emphasis in original.) *Mitchell*, 11 I Ill. App. 3d at 1028.

⁸The Contest Organizers have not suggested that daily fantasy sports contests involve determining the speed, strength, or endurance of the fantasy sports participants who enter the contests, nor could such a suggestion be made in good faith.

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actual contestants in a bonafide contest for the determination of skill, speed, strength, or endurance.

This interpretation is consistent with a 1994 opinion of the Texas Attorney General's Office construing substantially similar statutory language to that found in subsection 28-1(b)(2) of the Criminal Code. Tex. Att'y Gen. Op. No. LO-94-051, issued June 9, 1994. In that opinion, the Texas Attorney General's office addressed whether a contest which requires an entry fee, pays prizes to winners, and is based on forecasting the outcomes of a number of sporting events constitute illegal gambling under Texas law.⁴ The Texas Attorney General's Office concluded that the contest at issue did not fall within the gambling exception and therefore constituted illegal gambling:

We cannot think of any distinction the words "actual contestants" could be intended to make other than that between those actually participating in a contest and able by their performance to affect its outcome, and those merely betting on it. Thus, while the subsection (1) exclusion may embrace athletes actually competing in the sporting events you refer to, it does not embrace those who

⁴ See Texas Penal Code 547.01 (2015), available at <http://www.statutes.legis.state.tx.us/docs/PE/pdfPE.47.pdf>, which provides, in pertinent part:

(1) "Bet" means an agreement to win or lose something of value solely or partially by chance. A bet does not include:

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest[.]

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pay entry fees for a chance to win a prize from forecasting the outcome of the events. (Emphasis in original.) Tex. Atty Gen. op. No. L094-051 at 2.¹⁰

Although daily fantasy sports contests may involve some degree of skill, such as selecting an athlete for a participant's team based on knowledge of the athlete's historical

¹⁰The New York Supreme Court recently made this same distinction when granting the New York Attorney General's motions to enjoin the Contest Organizers from accepting entry fees from New York State consumers for any daily fantasy sports contests which they operate, pending a final determination. See Decision and Order for Injunctive Relief, *People ex rel. Schneiderman v. DraftKings, Inc.*, No. 453054/2015 (N.Y. Sup. Ct., New York County, December 11, 2015); Decision and Order for Injunctive Relief, *People ex rel. Schneiderman v. FanDuel, Inc.*, No. 453056/2015 (N.Y. Sup. Ct., New York County, December 11, 2015) (Decisions and Orders). New York law defines "gambling" as follows:

A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome. (Emphasis added.) N.Y. Penal Law 5225.00(2) (2015), available at <http://public.leginfo.state.ny.us/lawsrch.cgi?NVLWO:>.

The New York Attorney General argued that the participants paid entry fees "on events they cannot control or influence, relying on the real-game performance of professional athletes, to win a prize, which amounts to gambling" under New York law. Decisions and Orders, at 5. The New York Attorney General further argued that daily fantasy sports contests are "contests of chance" because the outcome depends substantially on chance and factors not within the participant's control, and that once a team is chosen for a contest, there is no means of altering the outcome. Decisions and Orders, at 6. The court concluded that the language of the statute "is broadly worded and as currently written sufficient for finding that DFS [daily fantasy sports] involves illegal gambling." Decisions and Orders, at 7. The Contest Organizers immediately appealed the court's decision. Notice of Appeal, *People ex rel. Schneiderman v. DraftKings, Inc.*, No. 453054/2015 (N.Y. Sup. Ct., New York County, December 11, 2015); Notice of Appeal, *People ex rel. Schneiderman v. FanDuel, Inc.*, No. 453056/2015 (N.Y. Sup. Ct., New York County, December 11, 2015). The New York Supreme Court, Appellate Division granted an interim stay of the enforcement of the injunction against FanDuel pending a determination by a full panel. Notice of Entry of Appellate Division Interim Stay Order, *People ex rel. Schneiderman v. FanDuel, Inc.*, No. 453056/2015 (N.Y. Sup. Ct., New York County, December 11, 2015).

Additionally, the Kansas Legislature recently amended its gambling statute, which contains a substantially similar exclusion for "offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such a contest[.]" to also exclude "a fantasy sports league as defined in this section[.]" Kan. Stat. Ann.

03(a)(2), (a)(9) (2014), as amended by 2015 Kan. Sess. Laws 835-38, available at http://www.sos.ks.gov/pubs/sessionlaws/2015/2015_Session_Laws_Volume_1.pdf.

performance, match-up against a particular opponent, performance in a particular venue, and/or performance in particular weather conditions, the phrase "actual contestants" as used in

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subsection 28-1 (b)(2) does not apply to those persons who pay entry fees for a chance to win a prize for forecasting the performance of professional or college athletes over whom they have no control or influence. Accordingly, it is my opinion that subsection 28-1 (b)(2) does not exempt daily fantasy sports contests from the Illinois gambling provisions.

CONCLUSION

It is my opinion that the daily fantasy sports contests offered by FanDuel and DraftKings clearly constitute gambling under subsection 28-1 (a) of the Criminal Code of 2012 and that the exemption set forth in subsection 28-1 (b)(2) of the Criminal Code does not apply.

In closing, I note that there is legislation currently pending in each chamber of the Illinois General Assembly which proposes, in part, to create a new Act — the Fantasy Contests Act — and to exempt "fantasy contests as defined under the Fantasy Contests Act" from the general prohibition against gambling. See 99th Ill. Gen. Assem., House Bill 4323, Senate Bill 2193, 2015 Sess.⁵ Thus, it appears that a number of General Assembly members have reached this same conclusion, as they have agreed to sponsor the foregoing legislation. Absent legislation specifically exempting daily fantasy sports contests from the gambling provisions, it is my opinion that daily fantasy sports contests constitute illegal gambling under Illinois law.

Very truly yours,



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ATTORNEY GENERAL

⁵ House Bill 4323 was referred to the House Rules Committee on November 9, 2015. Senate Bill 2193 was referred to the Senate Assignments Committee on November 3, 2015. Previously-filed legislation proposing to create the Daily Fantasy Sports Regulation Act contained only a short title provision and was referred to the House Rules Committee on April 14, 2015. See 99th Ill. Gen. Assem., House Bill 4200, 2015 Sess.

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ARTICLE 28. GAMBLING AND RELATED OFFENSES

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(720 ILCS 5/28-1) (from Ch. 38, par. 28-1)
Sec. 28-1. Gambling.



(a) A person commits gambling when he or she:

(1) knowingly plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section;

(2) knowingly makes a wager upon the result of any game, contest, or any political nomination, appointment or election;

(3) knowingly operates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or distributes any gambling device;

(4) contracts to have or give himself or herself or another the option to buy or sell, or contracts to buy or sell, at a future time, any grain or other commodity whatsoever, or any stock or security of any company, where it is at the time of making such contract intended by both parties thereto that the contract to buy or sell, or the option, whenever exercised, or the contract resulting therefrom, shall be settled, not by the receipt or delivery of such property, but by the payment only of differences in prices thereof; however, the issuance, purchase, sale, exercise, endorsement or guarantee, by or through a person registered with the Secretary of State pursuant to Section 8 of the Illinois Securities Law of 1953, or by or through a person exempt from such registration under said Section 8, of a put, call, or other option to buy or sell securities which have been registered with the Secretary of State or which are exempt from such registration under Section 3 of the Illinois Securities Law of 1953 is not gambling within the meaning of this paragraph (4);

(5) knowingly owns or possesses any book, instrument or apparatus by means of which bets or wagers have been, or



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are, recorded or registered, or knowingly possesses any money which he has received in the course of a bet or wager;

(6) knowingly sells pools upon the result of any game or contest of skill or chance, political nomination, appointment or election;

(7) knowingly sets up or promotes any lottery or sells, offers to sell or transfers any ticket or share for any lottery;

(8) knowingly sets up or promotes any policy game or sells, offers to sell or knowingly possesses or transfers any policy ticket, slip, record, document or other similar device;

(9) knowingly drafts, prints or publishes any lottery ticket or share, or any policy ticket, slip, record, document or similar device, except for such activity related to lotteries, bingo games and raffles authorized by and conducted in accordance with the laws of Illinois or any other state or foreign government;

(10) knowingly advertises any lottery or policy game, except for such activity related to lotteries, bingo games and raffles authorized by and conducted in accordance with the laws of Illinois or any other state;

(11) knowingly transmits information as to wagers, betting odds, or changes in betting odds by telephone, telegraph, radio, semaphore or similar means; or knowingly installs or maintains equipment for the transmission or receipt of such information; except that nothing in this subdivision (11) prohibits transmission or receipt of such information for use in news reporting of sporting events or contests; or

(12) knowingly establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet or to make a wager upon the result of any game, contest, political nomination, appointment, or election by means of the Internet. This item (12) does not apply to activities referenced in items (6) and (6.1) of subsection (b) of this Section.

(b) Participants in any of the following activities shall not be convicted of gambling:

(1) Agreements to compensate for loss caused by the happening of chance including without limitation contracts of indemnity or guaranty and life or health or accident insurance.

(2) Offers of prizes, award or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest.

(3) Pari-mutuel betting as authorized by the law of this State.

(4) Manufacture of gambling devices, including the acquisition of essential parts therefor and the assembly thereof, for transportation in interstate or foreign commerce to any place outside this State when such transportation is not prohibited by any applicable Federal law; or the manufacture, distribution, or possession of video gaming terminals, as defined in the Video Gaming Act, by manufacturers, distributors, and terminal operators licensed to do so under the Video Gaming Act.

(5) The game commonly known as "bingo", when conducted in accordance with the Bingo License and Tax Act.

(6) Lotteries when conducted by the State of Illinois in accordance with the Illinois Lottery Law. This exemption

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includes any activity conducted by the Department of Revenue to sell lottery tickets pursuant to the provisions of the Illinois Lottery Law and its rules.

(6.1) The purchase of lottery tickets through the Internet for a lottery conducted by the State of Illinois under the program established in Section 7.12 of the Illinois Lottery Law.

(7) Possession of an antique slot machine that is neither used nor intended to be used in the operation or promotion of any unlawful gambling activity or enterprise. For the purpose of this subparagraph (b)(7), an antique slot machine is one manufactured 25 years ago or earlier.

(8) Raffles and poker runs when conducted in accordance with the Raffles and Poker Runs Act.

(9) Charitable games when conducted in accordance with the Charitable Games Act.

(10) Pull tabs and jar games when conducted under the Illinois Pull Tabs and Jar Games Act.

(11) Gambling games conducted on riverboats when authorized by the Riverboat Gambling Act.

(12) Video gaming terminal games at a licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment when conducted in accordance with the Video Gaming Act.

(13) Games of skill or chance where money or other things of value can be won but no payment or purchase is required to participate.

(14) Savings promotion raffles authorized under Section 5g of the Illinois Banking Act, Section 7008 of the Savings Bank Act, Section 42.7 of the Illinois Credit Union Act, Section 5136B of the National Bank Act (12 U.S.C. 25a), or Section 4 of the Home Owners' Loan Act (12 U.S.C. 1463).

(c) Sentence.

Gambling is a Class A misdemeanor. A second or subsequent conviction under subsections (a)(3) through (a)(12), is a Class 4 felony.

(d) Circumstantial evidence.

In prosecutions under this Section circumstantial evidence shall have the same validity and weight as in any criminal prosecution.

(Source: P.A. 98-644, eff. 6-10-14; 99-149, eff. 1-1-16.)

(720 ILCS 5/28-1.1) (from Ch. 38, par. 28-1.1)
Sec. 28-1.1. Syndicated gambling.

(a) Declaration of Purpose. Recognizing the close relationship between professional gambling and other organized crime, it is declared to be the policy of the legislature to restrain persons from engaging in the business of gambling for profit in this State. This Section shall be liberally construed and administered with a view to carrying out this policy.

(b) A person commits syndicated gambling when he or she operates a "policy game" or engages in the business of bookmaking.

(c) A person "operates a policy game" when he or she knowingly uses any premises or property for the purpose of receiving or knowingly does receive from what is commonly called "policy":

- (1) money from a person other than the bettor or player whose bets or plays are represented by the money; or
- (2) written "policy game" records, made or used over any period of time, from a person other than the bettor or player whose bets or plays are represented by the written record.

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(d) A person engages in bookmaking when he or she knowingly receives or accepts more than five bets or wagers upon the result of any trials or contests of skill, speed or power of endurance or upon any lot, chance, casualty, unknown or contingent event whatsoever, which bets or wagers shall be of such size that the total of the amounts of money paid or promised to be paid to the bookmaker on account thereof shall exceed \$2,000. Bookmaking is the receiving or accepting of bets or wagers regardless of the form or manner in which the bookmaker records them.

(e) Participants in any of the following activities shall not be convicted of syndicated gambling:

(1) Agreements to compensate for loss caused by the happening of chance including without limitation contracts of indemnity or guaranty and life or health or accident insurance;

(2) Offers of prizes, award or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in the contest;

(3) Pari-mutuel betting as authorized by law of this State;

(4) Manufacture of gambling devices, including the acquisition of essential parts therefor and the assembly thereof, for transportation in interstate or foreign commerce to any place outside this State when the transportation is not prohibited by any applicable Federal law;

(5) Raffles and poker runs when conducted in accordance with the Raffles and Poker Runs Act;

(6) Gambling games conducted on riverboats when authorized by the Riverboat Gambling Act;

(7) Video gaming terminal games at a licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment when conducted in accordance with the Video Gaming Act; and

(8) Savings promotion raffles authorized under Section 5g of the Illinois Banking Act, Section 7008 of the Savings Bank Act, Section 42.7 of the Illinois Credit Union Act, Section 5136B of the National Bank Act (12 U.S.C. 25a), or Section 4 of the Home Owners' Loan Act (12 U.S.C. 1463).

(f) Sentence. Syndicated gambling is a Class 3 felony. (Source: P.A. 98-644, eff. 6-10-14; 99-149, eff. 1-1-16.)

(720 ILCS 5/28-2) (from Ch. 38, par. 28-2)
Sec. 28-2. Definitions.

(a) A "gambling device" is any clock, tape machine, slot machine or other machines or device for the reception of money or other thing of value on chance or skill or upon the action of which money or other thing of value is staked, hazarded, bet, won or lost; or any mechanism, furniture, fixture, equipment or other device designed primarily for use in a gambling place. A "gambling device" does not include:

(1) A coin-in-the-slot operated mechanical device played for amusement which rewards the player with the right to replay such mechanical device, which device is so constructed or devised as to make such result of the operation thereof depend in part upon the skill of the player and which returns to the player thereof no money, property or right to receive money or property.

(2) Vending machines by which full and adequate return is made for the money invested and in which there is no element of chance or hazard.

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(3) A crane game. For the purposes of this paragraph (3), a "crane game" is an amusement device involving skill, if it rewards the player exclusively with merchandise contained within the amusement device proper and limited to toys, novelties and prizes other than currency, each having a wholesale value which is not more than \$25.

(4) A redemption machine. For the purposes of this paragraph (4), a "redemption machine" is a single-player or multi-player amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, or propelling a ball or other object that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights, provided that all of the following conditions are met:

(A) The outcome of the game is predominantly determined by the skill of the player.

(B) The award of the prize is based solely upon the player's achieving the object of the game or otherwise upon the player's score.

(C) Only merchandise prizes are awarded.

(D) The wholesale value of prizes awarded in lieu of tickets or tokens for single play of the device does not exceed \$25.

(E) The redemption value of tickets, tokens, and other representations of value, which may be accumulated by players to redeem prizes of greater value, for a single play of the device does not exceed \$25.

(5) Video gaming terminals at a licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment licensed in accordance with the Video Gaming Act.

(a-5) "Internet" means an interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online service.

(a-6) "Access" and "computer" have the meanings ascribed to them in Section 16D-2 of this Code.

(b) A "lottery" is any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prizes, whether such scheme or procedure is called a lottery, raffle, gift, sale or some other name, excluding savings promotion raffles authorized under Section 5g of the Illinois Banking Act, Section 7008 of the Savings Bank Act, Section 42.7 of the Illinois Credit Union Act, Section 5136B of the National Bank Act (12 U.S.C. 25a), or Section 4 of the Home Owners' Loan Act (12 U.S.C. 1463).

(c) A "policy game" is any scheme or procedure whereby a person promises or guarantees by any instrument, bill, certificate, writing, token or other device that any particular number, character, ticket or certificate shall in the event of any contingency in the nature of a lottery entitle the purchaser

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or holder to receive money, property or evidence of debt.
(Source: P.A. 98-31, eff. 6-24-13; 99-149, eff. 1-1-16.)

(720 ILCS 5/28-3) (from Ch. 38, par. 28-3)

Sec. 28-3. Keeping a Gambling Place. A "gambling place" is any real estate, vehicle, boat or any other property whatsoever used for the purposes of gambling other than gambling conducted in the manner authorized by the Riverboat Gambling Act or the Video Gaming Act. Any person who knowingly permits any premises or property owned or occupied by him or under his control to be used as a gambling place commits a Class A misdemeanor. Each subsequent offense is a Class 4 felony. When any premises is determined by the circuit court to be a gambling place:

(a) Such premises is a public nuisance and may be proceeded against as such, and

(b) All licenses, permits or certificates issued by the State of Illinois or any subdivision or public agency thereof authorizing the serving of food or liquor on such premises shall be void; and no license, permit or certificate so cancelled shall be reissued for such premises for a period of 60 days thereafter; nor shall any person convicted of keeping a gambling place be reissued such license for one year from his conviction and, after a second conviction of keeping a gambling place, any such person shall not be reissued such license, and

(c) Such premises of any person who knowingly permits thereon a violation of any Section of this Article shall be held liable for, and may be sold to pay any unsatisfied judgment that may be recovered and any unsatisfied fine that may be levied under any Section of this Article.

(Source: P.A. 96-34, eff. 7-13-09.)

(720 ILCS 5/28-4) (from Ch. 38, par. 28-4)

Sec. 28-4. Registration of Federal Gambling Stamps.

(a) Every person who has purchased a Federal Wagering Occupational Tax Stamp, as required by the United States under the applicable provisions of the Internal Revenue Code, or a Federal Gaming Device Tax Stamp, as required by the United States under the applicable provisions of the Internal Revenue Code, shall register forthwith such stamp or stamps with the county clerk's office in which he resides and the county clerk's office of each and every county in which he conducts any business. A violation of this Section is a Class B misdemeanor. A subsequent violation is a Class A misdemeanor.

(b) To register a stamp as required by this Section, each individual stamp purchaser and each member of a firm or association which is a stamp purchaser and, if such purchaser is corporate, the registered agent of the purchasing corporation shall deliver the stamp to the county clerk for inspection and shall under oath or affirmation complete and sign a registration form which shall state the full name and residence and business address of each purchaser and of each member of a purchasing firm or association and of each person employed or engaged in gambling on behalf of such purchaser, shall state the registered agent and registered address of a corporate purchaser, shall state each place where gambling is to be performed by or on behalf of the purchaser, and shall state the duration of validity of the stamp and the federal registration number and tax return number thereof. Any false statement in the registration form is material and is evidence of perjury.

(c) Within 3 days after such registration the county clerk shall by registered mail forward notice of such registration and a duplicate copy of each registration form to the Attorney General of this State, to the Chairman of the Illinois Liquor Control Commission, to the State's Attorney and Sheriff of each

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county wherein the stamp is registered, and to the principal official of the department of police of each city, village and incorporated town in this State wherein the stamp is registered or wherein the registrant maintains a business address.
(Source: P.A. 77-2638.)

(720 ILCS 5/28-5) (from Ch. 38, par. 28-5)

Sec. 28-5. Seizure of gambling devices and gambling funds.

(a) Every device designed for gambling which is incapable of lawful use or every device used unlawfully for gambling shall be considered a "gambling device", and shall be subject to seizure, confiscation and destruction by the Department of State Police or by any municipal, or other local authority, within whose jurisdiction the same may be found. As used in this Section, a "gambling device" includes any slot machine, and includes any machine or device constructed for the reception of money or other thing of value and so constructed as to return, or to cause someone to return, on chance to the player thereof money, property or a right to receive money or property. With the exception of any device designed for gambling which is incapable of lawful use, no gambling device shall be forfeited or destroyed unless an individual with a property interest in said device knows of the unlawful use of the device.

(b) Every gambling device shall be seized and forfeited to the county wherein such seizure occurs. Any money or other thing of value integrally related to acts of gambling shall be seized and forfeited to the county wherein such seizure occurs.

(c) If, within 60 days after any seizure pursuant to subparagraph (b) of this Section, a person having any property interest in the seized property is charged with an offense, the court which renders judgment upon such charge shall, within 30 days after such judgment, conduct a forfeiture hearing to determine whether such property was a gambling device at the time of seizure. Such hearing shall be commenced by a written petition by the State, including material allegations of fact, the name and address of every person determined by the State to have any property interest in the seized property, a representation that written notice of the date, time and place of such hearing has been mailed to every such person by certified mail at least 10 days before such date, and a request for forfeiture. Every such person may appear as a party and present evidence at such hearing. The quantum of proof required shall be a preponderance of the evidence, and the burden of proof shall be on the State. If the court determines that the seized property was a gambling device at the time of seizure, an order of forfeiture and disposition of the seized property shall be entered: a gambling device shall be received by the State's Attorney, who shall effect its destruction, except that valuable parts thereof may be liquidated and the resultant money shall be deposited in the general fund of the county wherein such seizure occurred; money and other things of value shall be received by the State's Attorney and, upon liquidation, shall be deposited in the general fund of the county wherein such seizure occurred. However, in the event that a defendant raises the defense that the seized slot machine is an antique slot machine described in subparagraph (b) (7) of Section 28-1 of this Code and therefore he is exempt from the charge of a gambling activity participant, the seized antique slot machine shall not be destroyed or otherwise altered until a final determination is made by the Court as to whether it is such an antique slot machine. Upon a final determination by the Court of this question in favor of the defendant, such slot machine shall be immediately returned to the defendant. Such order of forfeiture and disposition shall, for the purposes of appeal, be a final order and judgment

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in a civil proceeding.

(d) If a seizure pursuant to subparagraph (b) of this Section is not followed by a charge pursuant to subparagraph (c) of this Section, or if the prosecution of such charge is permanently terminated or indefinitely discontinued without any judgment of conviction or acquittal (1) the State's Attorney shall commence an in rem proceeding for the forfeiture and destruction of a gambling device, or for the forfeiture and deposit in the general fund of the county of any seized money or other things of value, or both, in the circuit court and (2) any person having any property interest in such seized gambling device, money or other thing of value may commence separate civil proceedings in the manner provided by law.

(e) Any gambling device displayed for sale to a riverboat gambling operation or used to train occupational licensees of a riverboat gambling operation as authorized under the Riverboat Gambling Act is exempt from seizure under this Section.

(f) Any gambling equipment, devices and supplies provided by a licensed supplier in accordance with the Riverboat Gambling Act which are removed from the riverboat for repair are exempt from seizure under this Section.

(g) The following video gaming terminals are exempt from seizure under this Section:

(1) Video gaming terminals for sale to a licensed distributor or operator under the Video Gaming Act.

(2) Video gaming terminals used to train licensed technicians or licensed terminal handlers.

(3) Video gaming terminals that are removed from a licensed establishment, licensed truck stop establishment, licensed fraternal establishment, or licensed veterans establishment for repair.

(h) Property seized or forfeited under this Section is subject to reporting under the Seizure and Forfeiture Reporting Act.

(Source: P.A. 100-512, eff. 7-1-18.)

(720 ILCS 5/28-7) (from Ch. 38, par. 28-7)
Sec. 28-7. Gambling contracts void.

(a) All promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, drawn, or entered into, or executed by any person whatsoever, where the whole or any part of the consideration thereof is for any money or thing of value, won or obtained in violation of any Section of this Article are null and void.

(b) Any obligation void under this Section may be set aside and vacated by any court of competent jurisdiction, upon a complaint filed for that purpose, by the person so granting, giving, entering into, or executing the same, or by his executors or administrators, or by any creditor, heir, legatee, purchaser or other person interested therein; or if a judgment, the same may be set aside on motion of any person stated above, on due notice thereof given.

(c) No assignment of any obligation void under this Section may in any manner affect the defense of the person giving, granting, drawing, entering into or executing such obligation, or the remedies of any person interested therein.

(d) This Section shall not prevent a licensed owner of a riverboat gambling operation from instituting a cause of action to collect any amount due and owing under an extension of credit to a riverboat gambling patron as authorized under the Riverboat Gambling Act.

(Source: P.A. 87-826.)

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(720 ILCS 5/28-8) (from Ch. 38, par. 28-8)
Sec. 28-8. Gambling losses recoverable.

(a) Any person who by gambling shall lose to any other person, any sum of money or thing of value, amounting to the sum of \$50 or more and shall pay or deliver the same or any part thereof, may sue for and recover the money or other thing of value, so lost and paid or delivered, in a civil action against the winner thereof, with costs, in the circuit court. No person who accepts from another person for transmission, and transmits, either in his own name or in the name of such other person, any order for any transaction to be made upon, or who executes any order given to him by another person, or who executes any transaction for his own account on, any regular board of trade or commercial, commodity or stock exchange, shall, under any circumstances, be deemed a "winner" of any moneys lost by such other person in or through any such transactions.

(b) If within 6 months, such person who under the terms of Subsection 28-8(a) is entitled to initiate action to recover his losses does not in fact pursue his remedy, any person may initiate a civil action against the winner. The court or the jury, as the case may be, shall determine the amount of the loss. After such determination, the court shall enter a judgment of triple the amount so determined.

(c) Gambling losses as a result of gambling conducted on a video gaming terminal licensed under the Video Gaming Act are not recoverable under this Section.
(Source: P.A. 98-31, eff. 6-24-13.)

(720 ILCS 5/28-9) (from Ch. 38, par. 28-9)
Sec. 28-9.

At the option of the prosecuting attorney any prosecution under this Article may be commenced by an information as defined in Section 102-12 of the Code of Criminal Procedure of 1963.
(Source: P.A. 76-1131.)

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

COLIN DEW-BECKER

Plaintiff/Petitioner

Appellate Court No: 1-17-1675Circuit Court No: 2016M1011598Trial Judge: LEON WOOL

v.

ANDREW WU

Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
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COOK COUNTY, ILLINOIS

COLIN DEW-BECKER

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No. 124472

IN THE SUPREME COURT OF ILLINOIS

COLIN DEW-BECKER,

Petitioner,

v.

ANDREW WU,

Respondent.

NOTICE OF FILING

To: See attached Certificate of Service

PLEASE TAKE NOTICE THAT on the 24th day of April 2019, the undersigned caused to be electronically filed with the Clerk of the Supreme Court, the Appellants Opening Brief, a copy of which is attached and hereby served upon you.

/s/ Berton N. Ring,
By one of Petitioner's Attorneys,
BERTON N. RING, P.C

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CERTIFICATE OF SERVICE

I, Berton N. Ring, attorney, certify that the statements set forth in this instrument are true under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

He further certifies that on April 24th, 2019 he cause the above-named filing to be served electronically via email on the following parties as indicated below:

Dentons US, LLP

William M. Gantz; Bill.gantz@denton.com

Leah R. Bruno; Leave.bruno@dentons.com

Eitan Kagedan; Eitan.kagedan@dentons.com

/s/ Berton N. Ring _____
BERTON N. RING