

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
 CIVIL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA by and through
 Lawrence S. Krasner, District Attorney of
 the County of Philadelphia,

Petitioner,

v.

AMERICA PAC and ELON MUSK

Respondents.

: **OCTOBER TERM, 2024**

: **NO. 3509**

: **CONTROL No. 24105617**

: FACTS-Commonwealth Of Pa. By District Attorney Lawrence S. Krasner



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FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 28, 2024, Petitioner the Commonwealth of Pennsylvania, by and through Lawrence S. Krasner, District Attorney of the County of Philadelphia, filed an Emergency Motion for Injunctive Relief that was scheduled before this Court for a hearing on October 30, 2024. On October 29, 2024, Respondents America PAC and Elon Musk filed a motion for removal in the United States District Court for the Eastern District of Pennsylvania divesting this Court of jurisdiction to hear the matter. Petitioners filed an Emergency Motion for Remand and on October 31, 2024, the Honorable Gerald J. Pappert remanded this case to the Philadelphia Court of Common Pleas. Accordingly, this Court held a hearing on November 4, 2024. At the hearing, this Court heard sworn testimony and received evidence from both Petitioner and Respondents. Following the hearing, this Court issued an Order denying District Attorney (“DA”) Krasner’s Emergency Petition for Injunctive Relief with its findings to follow. This Court now enters the following findings of fact and conclusions of law pursuant to Pa.R.C.P. 1531. Any conclusion of law that should be construed as a finding of fact is hereby adopted as such. Any finding of fact that should be construed as a conclusion of law is hereby adopted as such.

FINDINGS OF FACT

The following facts have been established by a preponderance of the evidence.

1. Petitioner is the Commonwealth of Pennsylvania, acting by and through Lawrence S. Krasner, the District Attorney of Philadelphia.
2. Respondent America PAC is a federal independent expenditure-only political action committee (a Super PAC), created on May 22, 2024, by Respondent Elon Musk to support Donald J. Trump for President of the United States of America. (Pet. Ex.1; Pet. Ex. 2).
3. Respondent Elon Musk has financially contributed to America PAC and is the owner of social media platform “X” (<https://www.X.com>) where he communicates his personal and political interests and shares information posted by others, including America PAC.
4. Chris Young testified on behalf of America PAC as its director and treasurer.¹
5. On October 7, 2024, America PAC offered an opportunity, referred to as a “program” by Respondents, on its website for registered voters in Pennsylvania, Georgia, Nevada, Arizona, Michigan, Wisconsin, and North Carolina, to earn forty-seven dollars for referring other registered voters in the seven aforementioned states to sign a political petition pledging support for the U.S. Constitution and the First and Second Amendments (“Petition to Support the U.S. Constitution”). (N.T. November 4, 2024, 47:13-25-48:1-15).
6. On October 17, 2024, America PAC offered an increase in payment (now, one hundred dollars) to any registered voter in *Pennsylvania* who referred other registered voters to sign the Petition to Support the U.S. Constitution and for the first time offered registered voters who signed the petition a fee, through October 28, 2024. (*Id.*, 53:3-18). On October 28,

¹ Chris Gober, Esq. was the treasurer of America PAC during a pertinent period of this program from its formation until October 21, 2024.

2024, America PAC decreased the offer back to forty-seven dollars and maintained the two different offered options to earn it. (*Id.*, 54:6-7).

7. On October 19, 2024, Elon Musk appeared at a political rally in Harrisburg, Pennsylvania and announced that he would be awarding one million dollars per day through November 5, 2024 (the date of the U.S. Presidential Election) to a registered voter who signed America PAC's Petition to Support the U.S. Constitution. (*Id.*, 45:1-20).
8. America PAC announced the million-dollar opportunity on "X" in a post stating: "Breaking: Elon Musk announces that he will be randomly awarding one-million dollars every day from now until election day, to registered Pennsylvania voters who sign America PAC's petition, and surprise a member of the audience as the first winner." (*Id.*, 14:10-16).
9. Petitioners state that the written post also contained an embedded video. (Pet. Ex. 7A; N.T. November 4, 2024, 45:5-20).
10. In this video of Mr. Musk's announcement that was played to the Court, (Pet. Ex. 7A), Mr. Musk stated that he and America PAC would be awarding one million dollars, *randomly*, to people who have signed the Petition... and who agree to be a spokesperson for the Petition to Support the U.S. Constitution.²

² "This Court's transcription of the video is as follows:

I have a surprise for you, which is that we are going to be awarding a million dollars, randomly, to people who have signed the petition, every day, from now until the election. So, one of the challenges we are having is, how do we get people to know about this petition, because the legacy media won't report on it. You know, not everyone is on "X" so, I figure, how do we get people to know about it? Well, this news I think is going to really fly. So, every day between now and the election, we'll be awarding a million dollars, starting tonight. Alright, so tonight's person is John Dreher. Alright, so by the way, John had no idea. So, anyway, you're welcome... and uh, yea! (applause). **So the only thing we ask for the million dollars is that you be a spokesperson for the petition, so that's it.**" [emphasis added].

11. The next day, on October 20, 2024, at 7:39 PM, Elon Musk posted from his personal “X” account: “All you need to do is sign the America petition in support of the constitutional right to free speech and bear arms to have *a daily chance of winning* one-million dollars!” (Pet. Ex. 34).
12. On October 20, 2024 at 12:58 AM, America PAC posted text with an embedded video on “X.” The text of the post read “John received \$1 MILLION for signing America PAC’s petition to support Free Speech & Right to Bear Arms. Every day from now until Election Day, one registered swing state voter who signs the petition will be selected to earn \$1 MILLION. Within the video was a chyron image that read “John just WON \$1 million for signing this petition: [Petition.TheAmerica.org](https://petition.theamerica.org).”
13. On October 20, 2024, October 21, 2024, October 22, 2024 and October 26, 2024, a registered voter from Pennsylvania was selected to receive the million-dollar award.³
14. On October 28, 2024, Petitioner filed an Emergency Petition for Injunctive Relief and a Complaint, alleging that America PAC and Elon Musk violated Pennsylvania Nuisance Law (18 Pa. C.S. § 5512(a)) by violating the Pennsylvania State Lottery Law, 73. P.S. §§ 3761-101, et. seq., and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, (“UTPCPL”), 73 P.S. §§ 201-1 et. seq, by operating an illegal lottery when they offered registered voters who make a political pledge to support the U.S. Constitution and supply personally identifying information (“PII”) about themselves— their name, email address, cell phone number, and mailing address— the opportunity “to be randomly

³ On October 20, 2024, America PAC selected Kristine Fishell from Pittsburg, Pennsylvania; on October 21, 2024, America PAC selected Shannon Tomei from McKees Rocks, Pennsylvania and on October 26, 2024, America PAC selected Judey Kamora from Lancaster, Pennsylvania.

- selected to *win* one million dollars” when the selection is not random and therefore, Pennsylvanians did not have as many chances to win as Respondents led them to believe.
15. The Emergency Petition for Injunctive Relief asked this Court to prohibit “Defendants America PAC and Elon Musk from engaging in any unfair or deceptive acts or practices in connection with their lottery” and “other and further relief as the Court deems just and proper.” (Compl. ¶44).
 16. At this Court’s hearing on the matter on November 4, 2024, DA Krasner testified that observation of those selected made it obvious that the spokespeople were not selected randomly. (N.T. November 4, 2024, 48:20-25, 49:1-5).
 17. DA Krasner, referencing the first recipient John Dreher, stated: “He had no idea, He had no idea. Really? A man who just signed a contract to be a spokesperson had no idea? You know, frankly that's just a start. Because you may have noticed that the man randomly selected somehow is not only in one of the swing states, he's in the swing state where the rally is happening and he's in the auditorium where the rally is happening. This in no way resembles what the petition claimed. **This in no way resembles the clear offering of a lottery.**” [emphasis added]. (*Id.*).
 18. Mr. Young testified that the those selected to earn one million were not chosen by *random* chance but instead America PAC looked for people who signed the petition that they thought would be a good fit to represent the organization. (*Id.*, 57:11-25).
 19. Mr. Young testified that once a person was selected to be offered the opportunity to serve as a spokesperson, legal counsel for America PAC “was already drafting their consulting

agreement” which was not publicly available and were subject to a non-disclosure agreement.⁴ (*Id.*, 58:10-14; 65:25, 66:1-8).

20. The spokespeople received one million dollars for America PAC to utilize their name, image, likeness, and to create videos of them talking about the Super PAC. (*Id.*, 37:11-17).

21. America PAC announced those selected on their website (<https://www.theamericapac.org>) using the term “*earned.*” (Pet. Ex. 12; Res. Ex. 3 [*emphasis added*]).

22. Each person who was selected was advertised on “X” by America PAC as someone who was selected to earn one million dollars:

“John *received* \$1 Million for signing America PAC Petition to support Free Speech & Right to Bear Arms. Every day from now until Election Day, one registered swing state voter who signs the petition will be *selected to earn* \$1 Million;” “Kristine was today’s *recipient* of \$1 Million for signing our petition to support the Constitution. Every day from now until Election Day, one registered swing state voter who signs the petition will be *selected to earn* \$1 Million;” “Shannon from McKees Port, PA was today’s *recipient* of \$1 Million for signing our petition to support the Constitution. Every day from now until Election Day, one registered swing state voter who signs the petition will be *selected to earn* \$1 Million;” “Judey from Pennsylvania signed our petition in support of the constitution because she believes Free Speech is the bedrock of our nation. Every day until Election Day a person who signed will be *selected to earn* \$1 Million as a spokesperson for America PAC.” (Res. Ex. 3 [*emphasis added*]).

23. While DA Krasner alleges that America PAC and Elon Musk “scammed” people out of their PII for criminal purposes, Mr. Young testified that America PAC used the information

⁴ Respondents submitted consulting agreements for those selected as spokespersons in Pennsylvania: exhibit 4 (Dreher), exhibit 5 (Fishell), exhibit 6 (Tomei), and exhibit 7 (Kamora).

provided on the signed Petition to Support the U.S. Constitution “like a job application” and that he matched the information with the state voter registration log to ensure that those who signed were registered voters, verified the cell phone number provided, and checked the deliverability of an email to the supplied email address to confirm that it was not submitted by a bot or was not part of a scam. (N.T. November 4, 2024, 51:21-25, 57:16-17).

24. DA Krasner conceded that America PAC could use the personally identifying information of people who signed the Petition to Support the U.S. Constitution for the legitimate use of comparing it to the Pennsylvania State Voter Registration Roll. (*Id.*, 98:10-13).

25. Additionally, Mr. Young testified that America PAC had a privacy policy regarding registrant’s PII which was published on the America PAC website before the launch of the program offering chances to be selected to earn one million dollars. It stated: “America PAC values your privacy and trust. Personal identifying information collected via www.AMERICAPAC.org will only be used to support America PAC’s activity, and it will not be shared with advertisers, political organizations, or third party not directly affiliated with AMERICA.” (*Id.*, 59:1-12; Res. Ex. D. 10).

CONCLUSIONS OF LAW

To obtain a preliminary injunction, the moving party must establish: “(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party

seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.” *SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 502 (Pa. 2014).

1. The party seeking a preliminary injunction “bears a heavy burden of proof and must establish all” of the elements for injunctive relief. *Cutler v. Chapman*, 289 A.3d 139, 149 (Pa. Commw. Ct. 2023).
2. “Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if each [element] has been fully and completely established.” *Id.* (citation omitted).
3. An appellate court “reviews an order granting or denying a preliminary injunction for an abuse of discretion.” *SEIU Healthcare Pennsylvania*, 104 A.3d at 501.
4. Under this deferential standard of review, an appellate court “examines the record to determine if there were any apparently reasonable grounds for the action of the court below.” *Id.* (citations and internal quotations omitted).
5. The “violation of an express provision of a statute is *per se* irreparable harm for purposes of a preliminary injunction.” *Crowe ex rel. Crowe v. School District of Pittsburgh*, 805 A.2d 691, 694 (Pa. Commw. Ct. 2002) (citation omitted).
6. When a party establishes the violation of an express provision of a statute, the trial court need not balance the harms. *Pennsylvania Public Utility Commission v. Israel*, 52 A.2d 317, 321 (Pa. 1947); *Wolk v. School District of Lower Merion*, 228 A.3d 595, 611 (Pa. Commw. Ct. 2020).

7. “[A]n injunction must address the status quo as it existed between the parties before the event that gave rise to the lawsuit, not to the situation as it existed after the alleged wrongful act but before entry of the injunction.” *SEIU Healthcare Pennsylvania*, 104 A.3d at 509.
8. To establish a “clear right” to relief, the petitioning party is not required to “establish his or her claim absolutely[:]” rather, “an injunction may be properly granted where substantial legal questions must be resolved to determine the rights of the respective parties.” *Fischer v. Department of Public Welfare*, 439 A.2d 1172, 1174 (Pa. 1982).
9. An injunction is reasonably suited to abate the offending activity if it enjoins conduct that Pennsylvania’s statutes deem unlawful. *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Commw. Ct. 2014) (*en banc*).
10. “[W]hen the legislature declares certain conduct to be unlawful, it is tantamount in law to calling it injurious to the public.” *Id.*
11. Critically, Petitioner failed to establish that the preliminary injunction was necessary to prevent immediate and irreparable harm that could not be compensated by damages when Petitioner argued that there was no harm in entering a temporary restraining order even if the program was finished.
12. Respondents stated that the program “was finished” and Petitioners argued that “if it’s really true, Your Honor, that they’re not going to do this anymore, then no harm in entering an order, right, Judge? (N.T. November 4, 2024, 15:5-7).
13. This Court is not here to enter superfluous Orders.
14. Additionally, this Court found Petitioners unlikely to succeed on the merits of their claims, discussed hereinafter.

ANALYSIS

The State Lottery Law

15. Pennsylvania's criminal code provides: "All unlawful lotteries or numbers games are hereby declared to be common nuisances." 18 Pa.C.S. § 5512(a). "As used in this section[,] the term 'unlawful' means not specifically authorized by law." (*Id.* at § 5512(d)).
16. As interpreted by the Superior Court, "[t]he basic elements of a lottery are (1) a prize to be won; (2) a winner to be determined by chance; and (3) the payment of consideration by the player." *Commonwealth v. Lane*, 363 A.2d 1271, 1272 (Pa. Super. 1976).
17. In this case, Petitioner alleges that Respondents are conducting an illegal lottery "by lulling Philadelphia citizens—and others in the Commonwealth (and other swing states in the upcoming election)—to give up their personal identifying information and make a political pledge in exchange for the chance to win \$1 million." (Compl. ¶4).⁵
18. This Court finds that Petitioner failed to establish that any of the three required elements to establish what constitutes a lottery in Pennsylvania were met.
19. First, Petitioner failed to prove that there was a prize to be won when both the evidence submitted by the Petitioner and credible testimony offered at the hearing established that anyone selected *earned* their million-dollar compensation by and agreeing to be a paid spokesperson for America PAC. (Pet. Ex. 7A; N.T. November 4, 2024, 37:5-17).
20. Evidence submitted by the Petitioner (Pet. Ex. 7A) established that from the initial announcement of the program by Respondent Musk at a political rally in Harrisburg, Pennsylvania, he stated that to receive the million dollars, a person selected had to choose

⁵ DA Krasner conceded that Pennsylvania residents have the Constitutional right to sign a political petition, if they so choose. N.T. November 4, 2024, P. 77, L. 7-8.

to represent America PAC as a spokesperson in exchange. (*See* Pet. Ex. 7A; *See* FN1 (transcription of “announcement video” with Mr. Musk stating: “So the only thing we ask for the million dollars is that you be a spokesperson for the petition, so that’s it.”)).⁶

21. Next, Mr. Young testified credibly when he stated that those selected to earn the one million dollars were selected by the organization in a multi-step process that involved looking at their public posts on social media and meeting them in person before the town hall events to make sure their personality would be a good fit for the role.

22. Credible testimony also established that those selected were not determined by chance and Petitioner agreed that a lack of random selection is not a lottery.

23. Mr. Young testified credibly when he detailed the process America PAC used to select a potential spokesperson.

24. Finally, Petitioner failed to establish the payment of consideration by the person selected.

25. DA Krasner alleges that there were three forms of consideration given to participate in this “illegal lottery”— PII, a political pledge, and serving as a spokesperson. (N.T. November 4, 2024, 37:3-18).

26. When testifying to this Court what Petitioner believes served as consideration DA Krasner stated that “outside of the rulebook, and later, Elon Musk started talking about we only ask for one thing—well, it’s actually number three—and that is that you be a spokesperson.

⁶This video was embedded in two posts on “X” by America PAC with the following language:

“BREAKING: Elon Musk announces that he will be randomly awarding \$1 MILLION every day from now until Election Day to registered Pennsylvania voters who sign America PAC’s petition and surprised a member of the audience as the first winner. SIGN: petition.theamericapac.org” Posted Oct. 19, 2024.

“ELON MUSK: I have a surprise for you. We are going to be awarding \$1 MILLION to people who have signed the petition every day, from now until the election.’ SIGN America PAC’s petition in support of Free Speech & The Right to Bear Arms: petition.theamericapac.org.” Pet. Ex. 7. Posted Oct. 20, 2024.

That was never a part of the written offering that was made available to Mrs. Smith in Southwest Philadelphia or Mr. Jones in Northeast Philadelphia.” (N.T. November 4, 2024, 37:12-18).

27. Although Petitioner alleges that America PAC and Elon Musk “scammed” people by collecting consideration in the form of PII attached to political preferences, DA Krasner failed to provide any evidence of misuse beyond mere speculation.
28. This Court found this testimony unpersuasive because the terms of the offer were clearly expressed from the initial announcement of the program. In the video of Mr. Musk announcing the program in Harrisburg, PA available to view within the America PAC’s “X” posts starting on October 19, 2024, Mr. Musk stated that in exchange for becoming a spokesperson, the person selected had to accept an offer to represent America PAC. (*See* Pet. Ex. 7A).
29. Petitioner’s argument that selected spokespersons provided consideration to be considered further fails because every Pennsylvania appellate court to consider whether certain conduct was, or is not, an illegal lottery under § 5512 involved the payment of consideration in the form of money. *See, e.g., Commonwealth v. Freeman*, 458 A.2d 533, 535 n.2 (Pa. Super. Ct. 1983) (tally sheets containing, *inter alia*, amounts of money turned over to head of organization coordinating the operation); *Lane*, 363 A.2d at 1272 (defendant in possession of “numbers slips” and eighty-eight dollars and fifteen cents); *Commonwealth v. Fisher*, 161 A.2d 903 (Pa. Super. Ct. 1960) (paper bag containing fifty lottery tickets, fifteen of which were labelled as winners, and forty-six dollars); *Com. v. Polite*, 154 A.2d 287, 290 (Pa. Super. Ct. 1959) (numbers game evidenced by numbers slip and money found together); *Commonwealth v. Logan*, 94 A.2d 99, 100 (Pa. Super. Ct.

1953) (punch boards charging between five and ten cents per punch); *Commonwealth v. Mittleman*, 36 A.2d 860 (Pa. Super. Ct. 1944) (tickets purchased for fifty cents with eligibility to win up to one thousand dollars based where winner was determined by baseball statistics); *Commonwealth v. Lund*, 15 A.2d 839 (Pa. Super. Ct. 1940) (a “bank night” drawing at a theater wherein anyone could enter the drawing but to win the drawing, the winner had to be present in the theater, which required the *purchase* of a ticket, was a lottery under § 5512); *Commonwealth v. Banks*, 98 Pa. Super. 432, 435 (Pa. Super. Ct. 1930) (numbers game involving initial payment of any amount by player to individual backing the game).

30. Here, Petitioner concedes that no money was exchanged by the individuals who signed the Petition to Support the Constitution (and subsequently who were selected to be offered a position as a spokesperson for America PAC) *See e.g. Emergency Petition for Preliminary Injunctive Relief* at ¶ 78 (alleging the signers provided consideration in the form of (a) providing personal information, and (b) binding their own future conduct through a pledge of support to specified positions).

31. In an attempt to overcome the fact that money was not provided by the person signing the Petition to Support the U.S. Constitution, *i.e.*, they did not “pay to play,” DA Krasner cites cases wherein courts considered whether there was adequate consideration to support the existence of a contract in a breach of contract action. *See Cobaugh v. Klick-Lewis, Inc.*, 561 A.2d 1248, 249-50 (Pa. Super. Ct. 1989) (adequate consideration to support the existence of a contract when a golf tournament participant shot a hole-in-one after seeing a sign offering a new car to anyone who aced the hole because the car dealership benefited from promotional advertising and the golfer performed an act that he was not under a legal

obligation to perform); *Dahar v. Grzandiel*, 599 A.2d 217, 218 (Pa. Super. Ct. 1991) (contract between a dentist and attorney supported by adequate consideration when the dentist provided treatment to the attorney's client and provided status reports to the attorney that were used for settlement purposes, in exchange for the attorney's promise to protect the dentist's fee in the settlement fund); *Gottlieb v. Tropicana Hotel & Casino*, 109 F.Supp.2d 324, 329 (E.D. Pa 2000) (gambler's act of using her casino card – which required her to provide personal information and permitted the casino to gather information about her gambling habits – was sufficient consideration to support the gambler's claim that the casino breached its contract by failing to pay one million dollar prize).

32. However, this allegation does not warrant a clear right to relief because there is not a uniform definition of “consideration” under Pennsylvania law. For example, the Unfair Trade Practices and Consumer Protection Law, under which Petitioner also moves, defines consideration as “the payment of cash or the purchase of goods, services or intangible property.” 73 P.S § 201-2(7).

33. Petitioner has not cited any cases applying the definition of “consideration” as used in contract cases to cases such as this one, where a party seeks an injunction for violation of a criminal statute.

34. Accordingly, under Pennsylvania law, Petitioner failed to establish payment of consideration by the player. *Lane*, 363 A.2d at 1272.⁷

⁷ In his testimony, Petitioner stated that this alleged lottery was different from a “church fundraiser” because such fundraisers operate under a permit from the Commonwealth. Petitioner further testified that this alleged lottery would not qualify for such a permit because the “church fundraisers” are subject to a \$2,000/day prize limit and cannot award more than \$150,000 in total prizes. Notably, neither Petitioner's testimony nor his moving papers provided a citation for such requirements. In the absence of such citation, this Court will not address Petitioner's statements. *See e.g. Gbur v. Golio*, 963 A.2d 443, 454 n.11 (Pa. 2009) (trial courts are not required to parse arguments that are not developed by the parties).

35. Because “the grant of a preliminary injunction is a harsh and extraordinary remedy,” and the party seeking a preliminary injunction “bears a heavy burden of proof” *see Cutler*, 289 A.3d at 149, this Court is constrained to conclude that Petitioner failed to meet its burden of proving that it has a clear right to relief on its claim that Respondents’ conduct violates the State Lottery Law.

Unfair Trade Practices and Consumer Protection Law

36. Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (UTPCPL) prohibits individuals and corporate entities from engaging in deceptive acts or practices. *See generally* 73 P.S. §§ 201-1 *et seq.*

37. The UTPCPL empowers the Attorney General or a District Attorney to bring an action in the name of the Commonwealth to enjoin any act that violates the UTPCPL. 73 P.S. § 201-4.

38. Specifically, the UTPCPL outlaws “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of [73 P.S. 201-2(4)].” 73 P.S. § 201-3(a).

39. As is relevant to this case, the UTPCPL defines “unfair or deceptive acts or practices” as “engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” 73 P.S. § 201-2(4)(xxi).

40. Petitioner claims Respondents’ conduct creates a likelihood of confusion or misunderstanding because the individuals who signed the Petition to Support the Constitution, and thereby gave their personal identifying information to Respondents, were led to believe that they were receiving “eighteen lottery tickets” for the chance to win one

- million dollars, when, in reality, the one million dollars was not a prize, but a payment for an employment contract that was awarded after America PAC hand-selected the recipient.
41. Respondents argued the one-million-dollar award has always been payment for an employment contract; therefore, their actions were not deceptive.
42. For the purposes of a preliminary injunction, Petitioner failed to make a clear showing of deceptive conduct by Respondents.
43. Petitioner cites various posts made by Respondents on the social media platform “X” to support his argument that the promise of a chance to win one million dollars is deceptive. (See *e.g.* Pet. Ex. 7, 7A, 9, 13, 13A, and 18).
44. A review of this evidence shows that the intentions behind Respondents’ posts are clear when taken in their entirety and not in excerpts. Respondents’ posts regarding their Petition to Support the U.S. Constitution and their subsequent program where they awarded one million dollars a day to someone selected from the pool of applicants do not rise to a level of deceptive conduct because there was never a point where the information that the fact that the one million dollars was being *earned* was completely left out of the information provided to the potential registered voters. For example, if you took a soundbite of Exhibit 7A where Respondent Elon Musk is seen on stage announcing the first winner of the program, he states that John Dreher was being “awarded” one million dollars for signing the Petition to Support the Constitution. See Ex. 7A. Petitioner used this to contend that *any* registered voter signing Respondents’ Petition to Support the U.S. Constitution believed that they had eighteen chances to “win” the one-million-dollar award.
45. However, seconds later within the same announcement and video, Exhibit 7A also depicts Respondent Musk stating, “the only thing we ask ... is that you continue to be a

spokesperson for the [Petition to Support the U.S. Constitution.]” *Id.* This supports this Court’s determination that Respondents were not deceptive and from the program’s initiation, Respondents were clear with applicants that being awarded one million dollars was payment for working as a spokesperson for America PAC. It would be illogical to think that Respondent Musk could possibly speak two sentences simultaneously.

46. Petitioner also testified that “Mrs. Smith from Southwest Philadelphia” or “Mr. Jones in [] Northeast [Philadelphia]” would view the “X” platform posts memorialized and produced as exhibits 7, 9, 12, 13, and 18 and believe that by signing the Petition to Support the U.S. Constitution, they would be given eighteen chances to *win* one million dollars.

47. However, “Mrs. Smith from Southwest Philadelphia” and “Mr. Jones from [] Northeast [Philadelphia]” did not testify at the hearing. Petitioner did not present the testimony of *any* person who signed the Petition to Support the U.S. Constitution concerning their understanding of those social media posts and what would happen if they signed the Petition.

48. Instead, Petitioner testified in a conclusory fashion that Respondents’ actions were similar to other fraud investigations that his office conducted without detailing the facts of those other investigations or how they were similar to the facts of this case.

49. The absence of testimony from individuals who signed the Petition to Support the U.S. Constitution regarding their understanding of Mr. Musk’s social media posts and what their expectations were by signing and referring other registered voters to sign the Petition to Support the U.S. Constitution prevents any conclusion that Respondents’ actions were likely to be misleading or confusing and, in turn, is fatal to Petitioner’s claim that Respondents engaged in deceptive conduct.

50. This Court concludes that Petitioner failed to meet its burden of proving that it has a clear right to relief on its claim that Respondents' conduct violates the UTPCPL.

51. Since Petitioner has not fully and completely established a clear right to relief and that he is likely to prevail on the merits of either his violation of the State Lottery Law or the UTPCPL claims, this Court denied his request for a preliminary injunction. *Cutler*, 289 A.3d at 149.

BY THE COURT:

ANGELO J. FOGLIETTA

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF	:	OCTOBER TERM, 2024
PENNSYLVANIA by and through	:	NO. 3509
Lawrence S. Krasner, District Attorney of	:	
the County of Philadelphia,	:	
<i>Petitioner,</i>	:	CONTROL No. 24105617
	:	
v.	:	
	:	
AMERICA PAC and ELON MUSK	:	
	:	
<i>Respondents.</i>	:	

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The following facts have been established by a preponderance of the evidence.

1. Petitioner is the Commonwealth of Pennsylvania, acting by and through Lawrence S. Krasner, the District Attorney of Philadelphia.
2. Respondent America PAC is a federal independent expenditure-only political action committee (a Super PAC), created on May 22, 2024, by Respondent Elon Musk to support Donald J. Trump for President of the United States of America. (Pet. Ex.1; Pet. Ex. 2).
3. Respondent Elon Musk has financially contributed to America PAC and is the owner of social media platform “X” (<https://www.X.com>) where he communicates his personal and political interests and shares information posted by others, including America PAC.
4. Chris Young testified on behalf of America PAC as its director and treasurer.¹
5. On October 7, 2024, America PAC offered an opportunity, referred to as a “program” by Respondents, on its website for registered voters in Pennsylvania, Georgia, Nevada, Arizona, Michigan, Wisconsin, and North Carolina, to earn forty-seven dollars for referring other registered voters in the seven aforementioned states to sign a political petition pledging support for the U.S. Constitution and the First and Second Amendments (“Petition to Support the U.S. Constitution”). (N.T. November 4, 2024, 47:13-25-48:1-15).
6. On October 17, 2024, America PAC offered an increase in payment (now, one hundred dollars) to any registered voter in *Pennsylvania* who referred other registered voters to sign the Petition to Support the U.S. Constitution and for the first time offered registered voters who signed the petition a fee, through October 28, 2024. (*Id.*, 53:3-18). On October 28,

¹ Chris Gober, Esq. was the treasurer of America PAC during a pertinent period of this program from its formation until October 21, 2024.

2024, America PAC decreased the offer back to forty-seven dollars and maintained the two different offered options to earn it. (*Id.*, 54:6-7).

7. On October 19, 2024, Elon Musk appeared at a political rally in Harrisburg, Pennsylvania and announced that he would be awarding one million dollars per day through November 5, 2024 (the date of the U.S. Presidential Election) to a registered voter who signed America PAC's Petition to Support the U.S. Constitution. (*Id.*, 45:1-20).
8. America PAC announced the million-dollar opportunity on "X" in a post stating: "Breaking: Elon Musk announces that he will be randomly awarding one-million dollars every day from now until election day, to registered Pennsylvania voters who sign America PAC's petition, and surprise a member of the audience as the first winner." (*Id.*, 14:10-16).
9. Petitioners state that the written post also contained an embedded video. (Pet. Ex. 7A; N.T. November 4, 2024, 45:5-20).
10. In this video of Mr. Musk's announcement that was played to the Court, (Pet. Ex. 7A), Mr. Musk stated that he and America PAC would be awarding one million dollars, *randomly*, to people who have signed the Petition... and who agree to be a spokesperson for the Petition to Support the U.S. Constitution.²

² "This Court's transcription of the video is as follows:

I have a surprise for you, which is that we are going to be awarding a million dollars, randomly, to people who have signed the petition, every day, from now until the election. So, one of the challenges we are having is, how do we get people to know about this petition, because the legacy media won't report on it. You know, not everyone is on "X" so, I figure, how do we get people to know about it? Well, this news I think is going to really fly. So, every day between now and the election, we'll be awarding a million dollars, starting tonight. Alright, so tonight's person is John Dreher. Alright, so by the way, John had no idea. So, anyway, you're welcome... and uh, yea! (applause). **So the only thing we ask for the million dollars is that you be a spokesperson for the petition, so that's it.**" [emphasis added].

11. The next day, on October 20, 2024, at 7:39 PM, Elon Musk posted from his personal “X” account: “All you need to do is sign the America petition in support of the constitutional right to free speech and bear arms to have *a daily chance of winning* one-million dollars!” (Pet. Ex. 34).
12. On October 20, 2024 at 12:58 AM, America PAC posted text with an embedded video on “X.” The text of the post read “John received \$1 MILLION for signing America PAC’s petition to support Free Speech & Right to Bear Arms. Every day from now until Election Day, one registered swing state voter who signs the petition will be selected to earn \$1 MILLION. Within the video was a chyron image that read “John just WON \$1 million for signing this petition: [Petition.TheAmerica.org](https://petition.theamerica.org).”
13. On October 20, 2024, October 21, 2024, October 22, 2024 and October 26, 2024, a registered voter from Pennsylvania was selected to receive the million-dollar award.³
14. On October 28, 2024, Petitioner filed an Emergency Petition for Injunctive Relief and a Complaint, alleging that America PAC and Elon Musk violated Pennsylvania Nuisance Law (18 Pa. C.S. § 5512(a)) by violating the Pennsylvania State Lottery Law, 73. P.S. §§ 3761-101, et. seq., and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, (“UTCPL”), 73 P.S. §§ 201-1 et. seq, by operating an illegal lottery when they offered registered voters who make a political pledge to support the U.S. Constitution and supply personally identifying information (“PII”) about themselves— their name, email address, cell phone number, and mailing address— the opportunity “to be randomly

³ On October 20, 2024, America PAC selected Kristine Fishell from Pittsburg, Pennsylvania; on October 21, 2024, America PAC selected Shannon Tomei from McKees Rocks, Pennsylvania and on October 26, 2024, America PAC selected Judey Kamora from Lancaster, Pennsylvania.

selected to *win* one million dollars” when the selection is not random and therefore, Pennsylvanians did not have as many chances to win as Respondents led them to believe.

15. The Emergency Petition for Injunctive Relief asked this Court to prohibit “Defendants America PAC and Elon Musk from engaging in any unfair or deceptive acts or practices in connection with their lottery” and “other and further relief as the Court deems just and proper.” (Compl. ¶44).
16. At this Court’s hearing on the matter on November 4, 2024, DA Krasner testified that observation of those selected made it obvious that the spokespeople were not selected randomly. (N.T. November 4, 2024, 48:20-25, 49:1-5).
17. DA Krasner, referencing the first recipient John Dreher, stated: “He had no idea, He had no idea. Really? A man who just signed a contract to be a spokesperson had no idea? You know, frankly that's just a start. Because you may have noticed that the man randomly selected somehow is not only in one of the swing states, he's in the swing state where the rally is happening and he's in the auditorium where the rally is happening. This in no way resembles what the petition claimed. **This in no way resembles the clear offering of a lottery.**” [emphasis added]. (*Id.*).
18. Mr. Young testified that the those selected to earn one million were not chosen by *random* chance but instead America PAC looked for people who signed the petition that they thought would be a good fit to represent the organization. (*Id.*, 57:11-25).
19. Mr. Young testified that once a person was selected to be offered the opportunity to serve as a spokesperson, legal counsel for America PAC “was already drafting their consulting

agreement” which was not publicly available and were subject to a non-disclosure agreement.⁴ (*Id.*, 58:10-14; 65:25, 66:1-8).

20. The spokespeople received one million dollars for America PAC to utilize their name, image, likeness, and to create videos of them talking about the Super PAC. (*Id.*, 37:11-17).

21. America PAC announced those selected on their website (<https://www.theamericapac.org>) using the term “*earned*.” (Pet. Ex. 12; Res. Ex. 3 [*emphasis added*]).

22. Each person who was selected was advertised on “X” by America PAC as someone who was selected to earn one million dollars:

“John *received* \$1 Million for signing America PAC Petition to support Free Speech & Right to Bear Arms. Every day from now until Election Day, one registered swing state voter who signs the petition will be *selected to earn* \$1 Million;” “Kristine was today’s *recipient* of \$1 Million for signing our petition to support the Constitution. Every day from now until Election Day, one registered swing state voter who signs the petition will be *selected to earn* \$1 Million;” “Shannon from McKees Port, PA was today’s *recipient* of \$1 Million for signing our petition to support the Constitution. Every day from now until Election Day, one registered swing state voter who signs the petition will be *selected to earn* \$1 Million;” “Judey from Pennsylvania signed our petition in support of the constitution because she believes Free Speech is the bedrock of our nation. Every day until Election Day a person who signed will be *selected to earn* \$1 Million as a spokesperson for America PAC.” (Res. Ex. 3 [*emphasis added*]).

23. While DA Krasner alleges that America PAC and Elon Musk “scammed” people out of their PII for criminal purposes, Mr. Young testified that America PAC used the information

⁴ Respondents submitted consulting agreements for those selected as spokespersons in Pennsylvania: exhibit 4 (Dreher), exhibit 5 (Fishell), exhibit 6 (Tomei), and exhibit 7 (Kamora).

provided on the signed Petition to Support the U.S. Constitution “like a job application” and that he matched the information with the state voter registration log to ensure that those who signed were registered voters, verified the cell phone number provided, and checked the deliverability of an email to the supplied email address to confirm that it was not submitted by a bot or was not part of a scam. (N.T. November 4, 2024, 51:21-25, 57:16-17).

24. DA Krasner conceded that America PAC could use the personally identifying information of people who signed the Petition to Support the U.S. Constitution for the legitimate use of comparing it to the Pennsylvania State Voter Registration Roll. (*Id.*, 98:10-13).

25. Additionally, Mr. Young testified that America PAC had a privacy policy regarding registrant’s PII which was published on the America PAC website before the launch of the program offering chances to be selected to earn one million dollars. It stated: “America PAC values your privacy and trust. Personal identifying information collected via www.AMERICAPAC.org will only be used to support America PAC’s activity, and it will not be shared with advertisers, political organizations, or third party not directly affiliated with AMERICA.” (*Id.*, 59:1-12; Res. Ex. D. 10).

CONCLUSIONS OF LAW

To obtain a preliminary injunction, the moving party must establish: “(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party

seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.” *SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 502 (Pa. 2014).

1. The party seeking a preliminary injunction “bears a heavy burden of proof and must establish all” of the elements for injunctive relief. *Cutler v. Chapman*, 289 A.3d 139, 149 (Pa. Commw. Ct. 2023).
2. “Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if each [element] has been fully and completely established.” *Id.* (citation omitted).
3. An appellate court “reviews an order granting or denying a preliminary injunction for an abuse of discretion.” *SEIU Healthcare Pennsylvania*, 104 A.3d at 501.
4. Under this deferential standard of review, an appellate court “examines the record to determine if there were any apparently reasonable grounds for the action of the court below.” *Id.* (citations and internal quotations omitted).
5. The “violation of an express provision of a statute is *per se* irreparable harm for purposes of a preliminary injunction.” *Crowe ex rel. Crowe v. School District of Pittsburgh*, 805 A.2d 691, 694 (Pa. Commw. Ct. 2002) (citation omitted).
6. When a party establishes the violation of an express provision of a statute, the trial court need not balance the harms. *Pennsylvania Public Utility Commission v. Israel*, 52 A.2d 317, 321 (Pa. 1947); *Wolk v. School District of Lower Merion*, 228 A.3d 595, 611 (Pa. Commw. Ct. 2020).

7. “[A]n injunction must address the status quo as it existed between the parties before the event that gave rise to the lawsuit, not to the situation as it existed after the alleged wrongful act but before entry of the injunction.” *SEIU Healthcare Pennsylvania*, 104 A.3d at 509.
8. To establish a “clear right” to relief, the petitioning party is not required to “establish his or her claim absolutely[;]” rather, “an injunction may be properly granted where substantial legal questions must be resolved to determine the rights of the respective parties.” *Fischer v. Department of Public Welfare*, 439 A.2d 1172, 1174 (Pa. 1982).
9. An injunction is reasonably suited to abate the offending activity if it enjoins conduct that Pennsylvania’s statutes deem unlawful. *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Commw. Ct. 2014) (*en banc*).
10. “[W]hen the legislature declares certain conduct to be unlawful, it is tantamount in law to calling it injurious to the public.” *Id.*
11. Critically, Petitioner failed to establish that the preliminary injunction was necessary to prevent immediate and irreparable harm that could not be compensated by damages when Petitioner argued that there was no harm in entering a temporary restraining order even if the program was finished.
12. Respondents stated that the program “was finished” and Petitioners argued that “if it’s really true, Your Honor, that they’re not going to do this anymore, then no harm in entering an order, right, Judge? (N.T. November 4, 2024, 15:5-7).
13. This Court is not here to enter superfluous Orders.
14. Additionally, this Court found Petitioners unlikely to succeed on the merits of their claims, discussed hereinafter.

ANALYSIS

The State Lottery Law

15. Pennsylvania’s criminal code provides: “All unlawful lotteries or numbers games are hereby declared to be common nuisances.” 18 Pa.C.S. § 5512(a). “As used in this section[,] the term ‘unlawful’ means not specifically authorized by law.” (*Id.* at § 5512(d)).
16. As interpreted by the Superior Court, “[t]he basic elements of a lottery are (1) a prize to be won; (2) a winner to be determined by chance; and (3) the payment of consideration by the player.” *Commonwealth v. Lane*, 363 A.2d 1271, 1272 (Pa. Super. 1976).
17. In this case, Petitioner alleges that Respondents are conducting an illegal lottery “by lulling Philadelphia citizens—and others in the Commonwealth (and other swing states in the upcoming election)—to give up their personal identifying information and make a political pledge in exchange for the chance to win \$1 million.” (Compl. ¶4).⁵
18. This Court finds that Petitioner failed to establish that any of the three required elements to establish what constitutes a lottery in Pennsylvania were met.
19. First, Petitioner failed to prove that there was a prize to be won when both the evidence submitted by the Petitioner and credible testimony offered at the hearing established that anyone selected *earned* their million-dollar compensation by and agreeing to be a paid spokesperson for America PAC. (Pet. Ex. 7A; N.T. November 4, 2024, 37:5-17).
20. Evidence submitted by the Petitioner (Pet. Ex. 7A) established that from the initial announcement of the program by Respondent Musk at a political rally in Harrisburg, Pennsylvania, he stated that to receive the million dollars, a person selected had to choose

⁵ DA Krasner conceded that Pennsylvania residents have the Constitutional right to sign a political petition, if they so choose. N.T. November 4, 2024, P. 77, L. 7-8.

to represent America PAC as a spokesperson in exchange. (*See* Pet. Ex. 7A; *See* FN1 (transcription of “announcement video” with Mr. Musk stating: “So the only thing we ask for the million dollars is that you be a spokesperson for the petition, so that’s it.”)).⁶

21. Next, Mr. Young testified credibly when he stated that those selected to earn the one million dollars were selected by the organization in a multi-step process that involved looking at their public posts on social media and meeting them in person before the town hall events to make sure their personality would be a good fit for the role.

22. Credible testimony also established that those selected were not determined by chance and Petitioner agreed that a lack of random selection is not a lottery.

23. Mr. Young testified credibly when he detailed the process America PAC used to select a potential spokesperson.

24. Finally, Petitioner failed to establish the payment of consideration by the person selected.

25. DA Krasner alleges that there were three forms of consideration given to participate in this “illegal lottery”— PII, a political pledge, and serving as a spokesperson. (N.T. November 4, 2024, 37:3-18).

26. When testifying to this Court what Petitioner believes served as consideration DA Krasner stated that “outside of the rulebook, and later, Elon Musk started talking about we only ask for one thing—well, it’s actually number three—and that is that you be a spokesperson.

⁶This video was embedded in two posts on “X” by America PAC with the following language:

“BREAKING: Elon Musk announces that he will be randomly awarding \$1 MILLION every day from now until Election Day to registered Pennsylvania voters who sign America PAC’s petition and surprised a member of the audience as the first winner. SIGN: petition.theamericapac.org” Posted Oct. 19, 2024.

“‘ELON MUSK: I have a surprise for you. We are going to be awarding \$1 MILLION to people who have signed the petition every day, from now until the election.’ SIGN America PAC’s petition in support of Free Speech & The Right to Bear Arms: petition.theamericapac.org.” Pet. Ex. 7. Posted Oct. 20, 2024.

That was never a part of the written offering that was made available to Mrs. Smith in Southwest Philadelphia or Mr. Jones in Northeast Philadelphia.” (N.T. November 4, 2024, 37:12-18).

27. Although Petitioner alleges that America PAC and Elon Musk “scammed” people by collecting consideration in the form of PII attached to political preferences, DA Krasner failed to provide any evidence of misuse beyond mere speculation.
28. This Court found this testimony unpersuasive because the terms of the offer were clearly expressed from the initial announcement of the program. In the video of Mr. Musk announcing the program in Harrisburg, PA available to view within the America PAC’s “X” posts starting on October 19, 2024, Mr. Musk stated that in exchange for becoming a spokesperson, the person selected had to accept an offer to represent America PAC. (*See* Pet. Ex. 7A).
29. Petitioner’s argument that selected spokespersons provided consideration to be considered further fails because every Pennsylvania appellate court to consider whether certain conduct was, or is not, an illegal lottery under § 5512 involved the payment of consideration in the form of money. *See, e.g., Commonwealth v. Freeman*, 458 A.2d 533, 535 n.2 (Pa. Super. Ct. 1983) (tally sheets containing, *inter alia*, amounts of money turned over to head of organization coordinating the operation); *Lane*, 363 A.2d at 1272 (defendant in possession of “numbers slips” and eighty-eight dollars and fifteen cents); *Commonwealth v. Fisher*, 161 A.2d 903 (Pa. Super. Ct. 1960) (paper bag containing fifty lottery tickets, fifteen of which were labelled as winners, and forty-six dollars); *Com. v. Polite*, 154 A.2d 287, 290 (Pa. Super. Ct. 1959) (numbers game evidenced by numbers slip and money found together); *Commonwealth v. Logan*, 94 A.2d 99, 100 (Pa. Super. Ct.

1953) (punch boards charging between five and ten cents per punch); *Commonwealth v. Mittleman*, 36 A.2d 860 (Pa. Super. Ct. 1944) (tickets purchased for fifty cents with eligibility to win up to one thousand dollars based where winner was determined by baseball statistics); *Commonwealth v. Lund*, 15 A.2d 839 (Pa. Super. Ct. 1940) (a “bank night” drawing at a theater wherein anyone could enter the drawing but to win the drawing, the winner had to be present in the theater, which required the *purchase* of a ticket, was a lottery under § 5512); *Commonwealth v. Banks*, 98 Pa. Super. 432, 435 (Pa. Super. Ct. 1930) (numbers game involving initial payment of any amount by player to individual backing the game).

30. Here, Petitioner concedes that no money was exchanged by the individuals who signed the Petition to Support the Constitution (and subsequently who were selected to be offered a position as a spokesperson for America PAC) *See e.g. Emergency Petition for Preliminary Injunctive Relief* at ¶ 78 (alleging the signers provided consideration in the form of (a) providing personal information, and (b) binding their own future conduct through a pledge of support to specified positions).

31. In an attempt to overcome the fact that money was not provided by the person signing the Petition to Support the U.S. Constitution, *i.e.*, they did not “pay to play,” DA Krasner cites cases wherein courts considered whether there was adequate consideration to support the existence of a contract in a breach of contract action. *See Cobaugh v. Klick-Lewis, Inc.*, 561 A.2d 1248, 249-50 (Pa. Super. Ct. 1989) (adequate consideration to support the existence of a contract when a golf tournament participant shot a hole-in-one after seeing a sign offering a new car to anyone who aced the hole because the car dealership benefited from promotional advertising and the golfer performed an act that he was not under a legal

obligation to perform); *Dahar v. Grzandiel*, 599 A.2d 217, 218 (Pa. Super. Ct. 1991) (contract between a dentist and attorney supported by adequate consideration when the dentist provided treatment to the attorney's client and provided status reports to the attorney that were used for settlement purposes, in exchange for the attorney's promise to protect the dentist's fee in the settlement fund); *Gottlieb v. Tropicana Hotel & Casino*, 109 F.Supp.2d 324, 329 (E.D. Pa 2000) (gambler's act of using her casino card – which required her to provide personal information and permitted the casino to gather information about her gambling habits – was sufficient consideration to support the gambler's claim that the casino breached its contract by failing to pay one million dollar prize).

32. However, this allegation does not warrant a clear right to relief because there is not a uniform definition of “consideration” under Pennsylvania law. For example, the Unfair Trade Practices and Consumer Protection Law, under which Petitioner also moves, defines consideration as “the payment of cash or the purchase of goods, services or intangible property.” 73 P.S § 201-2(7).

33. Petitioner has not cited any cases applying the definition of “consideration” as used in contract cases to cases such as this one, where a party seeks an injunction for violation of a criminal statute.

34. Accordingly, under Pennsylvania law, Petitioner failed to establish payment of consideration by the player. *Lane*, 363 A.2d at 1272.⁷

⁷ In his testimony, Petitioner stated that this alleged lottery was different from a “church fundraiser” because such fundraisers operate under a permit from the Commonwealth. Petitioner further testified that this alleged lottery would not qualify for such a permit because the “church fundraisers” are subject to a \$2,000/day prize limit and cannot award more than \$150,000 in total prizes. Notably, neither Petitioner's testimony nor his moving papers provided a citation for such requirements. In the absence of such citation, this Court will not address Petitioner's statements. *See e.g. Gbur v. Golio*, 963 A.2d 443, 454 n.11 (Pa. 2009) (trial courts are not required to parse arguments that are not developed by the parties).

35. Because “the grant of a preliminary injunction is a harsh and extraordinary remedy,” and the party seeking a preliminary injunction “bears a heavy burden of proof” *see Cutler*, 289 A.3d at 149, this Court is constrained to conclude that Petitioner failed to meet its burden of proving that it has a clear right to relief on its claim that Respondents’ conduct violates the State Lottery Law.

Unfair Trade Practices and Consumer Protection Law

36. Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (UTPCPL) prohibits individuals and corporate entities from engaging in deceptive acts or practices. *See generally* 73 P.S. §§ 201-1 *et seq.*

37. The UTPCPL empowers the Attorney General or a District Attorney to bring an action in the name of the Commonwealth to enjoin any act that violates the UTPCPL. 73 P.S. § 201-4.

38. Specifically, the UTPCPL outlaws “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of [73 P.S. 201-2(4)].” 73 P.S. § 201-3(a).

39. As is relevant to this case, the UTPCPL defines “unfair or deceptive acts or practices” as “engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” 73 P.S. § 201-2(4)(xxi).

40. Petitioner claims Respondents’ conduct creates a likelihood of confusion or misunderstanding because the individuals who signed the Petition to Support the Constitution, and thereby gave their personal identifying information to Respondents, were led to believe that they were receiving “eighteen lottery tickets” for the chance to win one

million dollars, when, in reality, the one million dollars was not a prize, but a payment for an employment contract that was awarded after America PAC hand-selected the recipient.

41. Respondents argued the one-million-dollar award has always been payment for an employment contract; therefore, their actions were not deceptive.
42. For the purposes of a preliminary injunction, Petitioner failed to make a clear showing of deceptive conduct by Respondents.
43. Petitioner cites various posts made by Respondents on the social media platform “X” to support his argument that the promise of a chance to win one million dollars is deceptive. (*See e.g.* Pet. Ex. 7, 7A, 9, 13, 13A, and 18).
44. A review of this evidence shows that the intentions behind Respondents’ posts are clear when taken in their entirety and not in excerpts. Respondents’ posts regarding their Petition to Support the U.S. Constitution and their subsequent program where they awarded one million dollars a day to someone selected from the pool of applicants do not rise to a level of deceptive conduct because there was never a point where the information that the fact that the one million dollars was being *earned* was completely left out of the information provided to the potential registered voters. For example, if you took a soundbite of Exhibit 7A where Respondent Elon Musk is seen on stage announcing the first winner of the program, he states that John Dreher was being “awarded” one million dollars for signing the Petition to Support the Constitution. *See* Ex. 7A. Petitioner used this to contend that *any* registered voter signing Respondents’ Petition to Support the U.S. Constitution believed that they had eighteen chances to “win” the one-million-dollar award.
45. However, seconds later within the same announcement and video, Exhibit 7A also depicts Respondent Musk stating, “the only thing we ask ... is that you continue to be a

spokesperson for the [Petition to Support the U.S. Constitution.]” *Id.* This supports this Court’s determination that Respondents were not deceptive and from the program’s initiation, Respondents were clear with applicants that being awarded one million dollars was payment for working as a spokesperson for America PAC. It would be illogical to think that Respondent Musk could possibly speak two sentences simultaneously.

46. Petitioner also testified that “Mrs. Smith from Southwest Philadelphia” or “Mr. Jones in [] Northeast [Philadelphia]” would view the “X” platform posts memorialized and produced as exhibits 7, 9, 12, 13, and 18 and believe that by signing the Petition to Support the U.S. Constitution, they would be given eighteen chances to *win* one million dollars.

47. However, “Mrs. Smith from Southwest Philadelphia” and “Mr. Jones from [] Northeast [Philadelphia]” did not testify at the hearing. Petitioner did not present the testimony of *any* person who signed the Petition to Support the U.S. Constitution concerning their understanding of those social media posts and what would happen if they signed the Petition.

48. Instead, Petitioner testified in a conclusory fashion that Respondents’ actions were similar to other fraud investigations that his office conducted without detailing the facts of those other investigations or how they were similar to the facts of this case.

49. The absence of testimony from individuals who signed the Petition to Support the U.S. Constitution regarding their understanding of Mr. Musk’s social media posts and what their expectations were by signing and referring other registered voters to sign the Petition to Support the U.S. Constitution prevents any conclusion that Respondents’ actions were likely to be misleading or confusing and, in turn, is fatal to Petitioner’s claim that Respondents engaged in deceptive conduct.

50. This Court concludes that Petitioner failed to meet its burden of proving that it has a clear right to relief on its claim that Respondents' conduct violates the UTPCPL.

51. Since Petitioner has not fully and completely established a clear right to relief and that he is likely to prevail on the merits of either his violation of the State Lottery Law or the UTPCPL claims, this Court denied his request for a preliminary injunction. *Cutler*, 289 A.3d at 149.

BY THE COURT:



ANGELO J. FOGLIETTA