STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 5, 2019)

DANIEL S. HARROP, ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2019-5273**
THE RHODE ISLAND DIVISION OF LOTTERIES; by and through Gerry S. Aubin, in his official capacity as Director; THE RHODE ISLAND DEPARTMENT OF REVENUE, by and through Marc A. Furcolo, in his official capacity as Acting Director; UTGR, INC. d/b/a TWIN RIVER; TWIN RIVER-TIVERTON, LLC d/b/a TIVERTON CASINO HOTEL; IGT NV, PLC; THE TOWN OF LINCOLN, and THE TOWN OF TIVERTON ***Defendants*****.**	:	

DECISION

STERN, J. The Rhode Island Department of Revenue, the State Lottery Division of the State of Rhode Island Department of Revenue (collectively, State Defendants), UTGR, Inc. d/b/a Twin River, and Twin River-Tiverton, LLC d/b/a Tiverton Casino Hotel (collectively, Defendants), joined by IGT NV, PLC, have moved for an order dismissing Daniel S. Harrop's (Plaintiff) Fourth Amended Complaint (Complaint). The Plaintiff has objected and seeks a declaratory judgment that the implementation of sports wagering and online sports wagering without approval from Rhode Island voters violates the Rhode Island Constitution.

I

Facts and Travel

Plaintiff filed the instant action on May 1, 2019 alleging that the enactment of sports wagering and online/mobile sports wagering violated article 6, section 22 of the Rhode Island Constitution. *See generally* Third Am. Compl. Counts I, II, and III. On September 8, 2019, this Court issued a bench decision granting the Defendants' Motion to Dismiss for Lack of Standing and entered an Order to that effect on September 16, 2019. However, on September 12, 2019, the Plaintiff filed a Motion to Amend Complaint for a fourth time, and the Court granted leave to amend. In the Fourth Amended Complaint, Plaintiff added allegations that he placed a sports wager at Twin River-Tiverton in December 2018 on the New England Patriots and lost the wager. *See* Compl. ¶¶ 8-10.

Now, Defendants move to dismiss the Complaint, claiming Plaintiff still lacks standing to challenge the enactment of sports wagering. Plaintiff asserts that he has standing to challenge the enactment of sports wagering because he placed a sports wager that was authorized pursuant to an unconstitutional statute and suffered economic harm thereby.

II

Standard of Review

In an action brought pursuant to G.L. 1956 §§ 9-30-1 *et seq.*, the Uniform Declaratory Judgements Act, the Superior Court "lacks jurisdiction to adjudicate claims . . . in the absence of an actual justiciable controversy," which includes "a plaintiff who has standing to pursue the action." *Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008) (internal citations omitted). As such, "[w]hen confronted with a request for declaratory relief, the first order of business for the trial justice is to determine whether a party has standing to sue." *Id.*

When, as here, a plaintiff's standing to pursue the action is challenged,

> "the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff 'whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable' or, indeed, whether or not it should be litigated." *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005) (quoting *Flast v. Cohen*, 392 U.S. 83, 99–100 (1968)).

Plaintiff has the burden to establish standing. *See Blackstone Valley Chamber of Commerce v. Public Utilities Commission*, 452 A.2d 931, 934 (R.I. 1982) ("One who seeks review has the burden of setting the judicial machinery in motion by establishing that he is aggrieved and has a right to redress. . . .").

III

Analysis

"The requirement of justiciability is one of the most basic limitations on the power of this Court to review and issue rulings." *Haviland v. Simmons*, 45 A.3d 1246, 1256 (R.I. 2012) (quoting *State v. Beechum*, 933 A.2d 687, 689 (R.I. 2007)). "For a claim to be justiciable, two elemental components must be present: (1) a plaintiff with the requisite standing and (2) 'some legal hypothesis which will entitle the plaintiff to real and articulable relief.'" *N & M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1145 (R.I. 2009) (quoting *Bowen*, 945 A.2d at 317).

A

Standing

1

Injury in Fact

In *Rhode Island Ophthalmological Society v. Cannon*, our Supreme Court adopted the first prong of the *Data Processing* test for standing, whereby a plaintiff has standing when he or

she "'alleges that the challenged action has caused him [or her] injury in fact, economic or otherwise. . . .'" 113 R.I. 16, 22, 317 A.2d 124, 128 (1974) (quoting *Association of Data Processing Service Organizations, Inc. v. Camp,* 397 U.S. 150, 153 (1970)) (*Data Processing*). Our Supreme Court has repeatedly defined injury in fact as "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *See e.g.*, *Key v. Brown University*, 163 A.3d 1162, 1169 (R.I. 2017).

Defendants argue that Plaintiff has not suffered a legal injury because he was not denied any legal right. Instead, Defendants assert that the Plaintiff exercised a legal right by going to Twin River-Tiverton and placing a sports wager. Defendants further argue that merely losing money on a sports wager does not amount to legal injury. Plaintiff contends he has suffered a legal injury in the form of money placed on the sports wager and lost.

a

Legally Protected Interest

The first component of the "injury in fact" test is the "invasion of a legally protected interest. . . ." *See Narragansett Indian Tribe v. State*, 81 A.3d 1106, 1110 (R.I. 2014) (quoting *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997)). What constitutes a legally protected interest has not been defined by our Supreme Court or the Supreme Court of the United States. However, the United States Court of Appeals for the Third Circuit, in *Cottrell v. Alcon Laboratories*, recently undertook an extensive discussion of what the term "legally protected interest" means for the standing analysis, which this Court finds instructive as our Supreme Court has explicitly adopted the "injury in fact" requirement of standing.[1] 874 F.3d 154 (3d Cir. 2017), *cert. denied sub nom. Alcon Laboratories, Inc. v. Cottrell*, 138 S. Ct. 2029 (2018); *see*

[1] *See infra* § III.D.

also Gustavsen v. Alcon Laboratories, Inc., 903 F.3d 1, 9 (1st Cir. 2018) (citing approvingly to the Third Circuit's analysis).

First, the Third Circuit found that "whether a plaintiff has alleged an invasion of a 'legally protected interest' does not hinge on whether the conduct alleged to violate a statute does, as a matter of law, violate the statute." *Cottrell,* 874 F.3d at 164. Here, Defendants argue that this Court must presume constitutional the challenged statute which authorizes sports wagering and that Plaintiff is estopped from challenging the constitutionality of the statute because he benefited from it by engaging in sports wagering. Specifically, counsel for Defendant Rhode Island Department of Revenue stated during oral argument that Plaintiff has "no cause of action because of the estoppel, and it's for that reason the motion to dismiss has to be granted." Hr'g Tr. 17:8-10, Oct. 25, 2019. However, the Defendants are conflating a motion to dismiss for failure to state a claim and a motion to dismiss for lack of standing. The Defendants have moved this Court for an order dismissing Plaintiff's claim for lack of standing, and this Court cannot grant relief that the Defendants did not request. *See Nye v. Brousseau,* 992 A.2d 1002, 1011 (R.I. 2010).[2]

[2] Rule 12(h) of the Rhode Island Superior Court Rules of Civil Procedure provides that "[a] party waives all defenses . . . which the party does not present [] by motion . . . except (1) that the defense of failure to state a claim upon which relief can be granted . . . may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits. . . ." Thus, although the Defendants may interpose the defense of failure to state a claim upon which relief can be granted at a later point in this proceeding, the Court notes that on a Rule 12(b)(6) standard—one requiring the Court to '"assume the allegations contained in the complaint to be true and view the facts in the light most favorable to the plaintiffs,'" *Chariho Regional School District by & through Chariho Regional School Committee v. State*, 207 A.3d 1007, 1012 (R.I. 2019) (quoting *Goddard v. APG Security-RI, LLC*, 134 A.3d 173, 175 (R.I. 2016))—the Defendants' estoppel argument must necessarily fail. Our Supreme Court "has generally applied the principle of estoppel in those situations in which the party seeking to challenge the constitutionality of a statute was within the class of persons benefited or protected by the statute." *Lynch v. King*, 120 R.I. 868, 875, 391 A.2d 117, 121 (1978); *see also Easton's Point Association v. Coastal Resources Management Council*, 522 A.2d 199, 201–02 (R.I. 1987)

Moreover, our Supreme Court has explicitly mandated that the standing analysis focuses on "the claimant, not the claim. . . ." *McKenna*, 874 A.2d at 226. Therefore, whether Plaintiff has alleged an invasion of a legally protected interest does not hinge on a presumption that the statute authorizing sports wagering is constitutional. *See Cottrell*, 874 F.3d at 164. For purposes of the instant motion, the Court will not presume the statute constitutional and will not engage in an analysis as to whether the Plaintiff has failed to state a claim upon which relief can be granted due to estoppel.

Second, the Third Circuit found that "financial or economic interests are 'legally protected interests' for purposes of the standing doctrine." *Id.* Accordingly, "[m]onetary harm is a classic form of injury-in-fact," and standing normally exists to claim damages. *Danvers Motor Co., Inc. v. Ford Motor Co.*, 432 F.3d 286, 293 (3d Cir. 2005). Moreover, for economic injury under the standing doctrine, "[t]he line is not between a substantial injury and an insubstantial injury. The line is between injury and no injury." *Pontbriand*, 699 A.2d at 862. As such, even "[a] dollar of economic harm is still an injury-in-fact for standing purposes." *Carpenters Industrial Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017). Here, the Plaintiff alleges that he

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(finding that the trial justice improperly raised *sua sponte* the constitutionality of the composition of the CRMC because all parties to the litigation had sought a benefit from the statute creating the CRMC). Here, viewing the facts in the light most favorable to the Plaintiff, he is not clearly protected or benefited by the statute authorizing sports wagering; the statute confers no direct benefit on Plaintiff nor does it protect any specific rights he may have. *See Lynch*, 120 R.I. at 875, 391 A.2d at 121 (holding that the Director of Public Safety for the city of Pawtucket was not clearly a member of the class benefited or protected by The Officers' Bill of Rights because the statute was designed to protect the rights of policemen); *see also infra* § III.C. Moreover, our Supreme Court has noted that "[a] dismissal of a declaratory-judgment action before a hearing on the merits, under Rule 12(b)(6), is proper only when the pleadings demonstrate that, beyond a reasonable doubt, the declaration prayed for is an impossibility." *Tucker Estates Charlestown, LLC v. Town of Charlestown*, 964 A.2d 1138, 1140 (R.I. 2009). Here, the Defendants have failed to show that Plaintiff is clearly within the class of persons protected or benefited by G.L. 1956 § 42-61.2-2.4, nor is it clear beyond a reasonable doubt that the relief prayed for is impossible.

placed a sports wager and lost. Compl. ¶¶ 9-10. Accordingly, Plaintiff seeks damages in the form of the "return of money lost by Plaintiff." *Id.* at 23. Because Plaintiff suffered monetary harm—regardless of the amount of money lost[3]—he has alleged a legally protected interest.[4]

"Third, legally protected interests may arise from the Constitution, from common law, or solely by virtue of statutes creating legal rights, the invasion of which creates standing." *Cottrell*, 874 F.3d at 164 (internal quotations omitted). However, "[t]he mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to" confer standing. *Stoianoff v. Montana*, 695 F.2d 1214, 1223 (9th Cir. 1983) (analyzing Article III standing). Thus, a plaintiff may have standing to challenge a constitutional violation where he or she was harmed, rather than presenting generalized claims about the impairment of abstract interests. *See Bowen*, 945 A.2d at 317 (holding that plaintiff's interest in a declaratory judgment as to whether proposed constitutional amendments were properly brought before the voters at a general election was "indistinguishable from the interests of the general public, and [that] he [] failed to allege a particularized injury"); *In re Town of New Shoreham Project*, 19 A.3d 1226, 1228 (R.I. 2011) (holding that a plaintiff who has a general "interest in issues of climate change" was

[3] Defendants also argue that "unless Harrop bet $5,000 or more, the amount in controversy is below this Court's jurisdiction." State Defs.' Mot. to Dismiss Ex. A. 20. However, § 9-30-1 confers exclusive original jurisdiction in declaratory judgment actions upon the Superior Court and the Family Court. Section 9-30-1; *see also Ask Properties v. Olobri*, 565 A.2d 873, 874 n.1 (R.I. 1989). As such, the Defendants' argument in this regard is without merit because this Court has jurisdiction to entertain Plaintiff's declaratory judgment action irrespective of the amount in controversy.

[4] The Court also finds the Defendants' reliance on *Schwartz v. Upper Deck Co.*, 104 F. Supp. 2d 1228 (S.D. Cal. 2000) misplaced. In *Schwartz*, the plaintiffs were trading card purchasers who claimed they suffered losses when they participated in alleged illegal gambling activity. *Id.* at 1229. The court held that the plaintiffs lacked standing to bring a RICO action because they failed to establish that they suffered injury to their business or property. *Id.* at 1230. In *Schwartz*, the court analyzed standing to sue "under the federal RICO framework" and explicitly noted that "[w]hile [p]laintiffs may in fact possess a common law right of redress, this . . . does not equate with the standing requirement of" RICO. *Id.* Accordingly, *Schwartz* is inapposite because it involves the specific and heightened standing requirements under the RICO statute.

without standing because it was not aggrieved by a commission's decision); *see also Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009) (holding that plaintiff voters lacked standing to complain that the ballot language summarizing a constitutional amendment approved by the voters was misleading because the plaintiffs did not claim that they were themselves misled).

Here, Plaintiff is claiming that the statute which authorized him to place a sports wager is unconstitutional, and the existence of the unconstitutional statute caused him an economic injury. This is not an abstract claim, and Plaintiff is not resting his claim on a generalized interest to ensure adherence to the constitution. Rather, Plaintiff has specifically claimed that he was harmed by an unconstitutional statute. *Cf. id.*

Lastly, "a plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 107 (1998). Rather, "[t]he litigation must give the plaintiff some other benefit besides reimbursement of costs that are a byproduct of the litigation itself." *Id.* Here, taking the allegations in the Fourth Amended Complaint as true, Plaintiff placed a sports wager and lost money on that wager months before he filed the instant action. Compl. ¶¶ 8–10. As such, Plaintiff's alleged economic injury is not the costs of suing, but instead the money lost on the wager. If Plaintiff is successful, this litigation would confer on him reimbursement of the money spent on the sports wager. *See Cottrell*, 874 F.3d at 164 (noting that someone who is entitled to a portion of recovery if his suit is successful has a legally protected interest in the outcome of the suit).

Based on the foregoing factors, the Court finds that Plaintiff has alleged the invasion of a legally protected interest: interest in the money that he spent and lost on a sports wager. Section 42-61.2-2.4 of the General Laws authorized the Plaintiff to place a sports wager on the New

England Patriots at Twin River-Tiverton in or around December 2018. Compl. ¶ 8. The Plaintiff had a legally protected interest in the money placed on that sports wager, *see Danvers Motor Co.*, 432 F.3d at 293, and has alleged that he suffered an invasion of that legally protected interest from the enactment of sports wagering in this state that is distinct from that of the generalized public. *Cf. Bowen*, 945 A.2d at 317.

b

Concrete and Particularized

The second requirement of the "injury in fact" test is that the plaintiff's alleged injury must be concrete and particularized. *See Key*, 163 A.3d at 1169. Concreteness and particularization are two different requirements. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1543 (2016). "A 'concrete' injury must be 'de facto'; that is, it must actually exist;" it must be real and not abstract. *Id*. at 1548. "For an injury to be 'particularized,' it must affect the plaintiff in a personal and individual way." *Id*. However, even if "hundreds or thousands (or even millions) of other persons may have suffered the same injury[, that] does not change the individualized nature of [an] asserted right[]. . . ." *Hassan v. City of New York*, 804 F.3d 277, 291 (3d Cir. 2015); *see also Ecological Rights Foundation v. Pacific Gas & Electric Co.*, 874 F.3d 1083, 1093 (9th Cir. 2017) (holding that an injury is not a generalized grievance merely because it is widely shared).

Here, Plaintiff's injury is both concrete and particularized. First, Plaintiff's alleged economic harm of losing money on a sports wager is nonspeculative; rather, it is actual and measurable as a definite amount of money. *Cf. Kawa Orthodontics, LLP v. Secretary, U.S. Department of the Treasury*, 773 F.3d 243, 246 (11th Cir. 2014) (holding that plaintiff's alleged injury of loss of the value of efforts undertaken to learn how to comply with Affordable Care Act

was "too abstract and indefinite"). Plaintiff's alleged injury is also particularized because losing money on the alleged sports wager affected him in a personal way. It is irrelevant that thousands of other individuals may have also placed sport wagers in Rhode Island and lost money because Plaintiff has still alleged an individualized injury. Accordingly, Plaintiff has satisfied the second requirement of the "injury in fact" test.

c

Actual and Imminent

Lastly, the alleged injury must be actual or imminent. *See Key*, 163 A.3d at 1169. As such, mere speculation about whether an injury may occur does not satisfy the standing requirements. *See Amnesty International USA v. Clapper*, 667 F.3d 163, 179 (2d Cir. 2011) (Raggi, J., dissenting) (noting that mere fear of unlawful electronic surveillance interception by the FAA "is plainly insufficient to establish standing"). Here, Plaintiff has clearly suffered an actual injury because he allegedly placed a sports wager and lost. Plaintiff is not claiming that tomorrow he may go place a sports wager at Twin River-Tiverton, possibly lose that wager, and thereby suffer injury. Plaintiff actually placed and lost the sports wager prior to the instant litigation; his alleged injury is not speculative or a mere possibility.

Based on the foregoing, the Court finds the Plaintiff has satisfied the "injury in fact" requirements. He has alleged "'an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical."' *See Key*, 163 A.3d at 1169 (quoting *N & M Properties*, 964 A.2d at 1145).

B

Legal Hypothesis Entitling Plaintiff to Real and Articulable Relief

The second requirement for justiciability is that the facts alleged by the plaintiff "'yield to some conceivable legal hypothesis which will entitle the plaintiff to some relief against the defendant.'" *N & M Properties*, 964 A.2d at 1145 (quoting *Goodyear Loan Co. v. Little*, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970)). It is well settled under the Uniform Declaratory Judgments Act that this Court "has the power to construe a statute and to declare the rights and obligations of the parties." *P.J.C. Realty, Inc. v Barry*, 811 A.2d 1202, 1207 (R.I. 2002). Accordingly, this Court can interpret § 42-61.2-2.4, review its constitutionality, and determine whether Plaintiff's alleged economic damages are compensable. *See Key*, 163 A.3d at 1170 (holding that plaintiffs had standing under the Uniform Declaratory Judgments Act for the determination of whether an abutting field's use was unlawful under applicable city zoning ordinances because they alleged economic damages stemming from construction of the field).

C

Voluntariness

The Defendants also assert that Plaintiff is without standing because he is "questioning the constitutionality of the very statute that [he] previously invoked to exact h[is] remedy." *Griffin v. Bendick*, 463 A.2d 1340, 1345 (R.I. 1983) (noting parenthetically that the plaintiff's action challenging the constitutionality of a decades-old condemnation of lands would be barred because she previously sued for damages against the state for the condemnations). Our Supreme Court has recognized that a plaintiff cannot challenge the constitutionality of a zoning ordinance after applying for a variance under the ordinance "because by filing such an application he [or she] necessarily admits the constitutionality or validity of the" ordinance. *Sweck v. Zoning Board*

of Review of North Kingstown, 77 R.I. 8, 11, 72 A.2d 679, 680 (1950). However, here, while the Plaintiff may have voluntarily placed a sports wager, he has not necessarily admitted the constitutionality of § 42-61.2-2.4 and is not relying on the statute to exact his remedy; rather, the Plaintiff is suing under the Uniform Declaratory Judgments Act, §§ 9-30-1 *et seq*.

The Court can discern no precedent which supports the Defendants' contention that because Plaintiff voluntarily placed a sports wager, he now lacks standing to challenge the constitutionality of the statute which authorized the sports wagering. The Court finds the instant action more analogous to numerous cases where a plaintiff has standing when he or she voluntarily paid a fee and thereafter challenged the legality of the fee. *See Figueroa v. U.S.*, 466 F.3d 1023, 1029 (Fed. Cir. 2006) (holding that a patentee who had paid patent application and issuance fees had standing to challenge the legality of the fees); *Schutz v. Thorne*, 415 F.3d 1128, 1133 (10th Cir. 2005) (holding that a plaintiff who had paid for a state hunting license had standing to challenge the constitutionality of the statute that set a higher fee for nonresidents than for residents). Moreover, the Plaintiff is not a beneficiary of the sports wagering statute because he suffered economic harm due to a sports wager placed pursuant to the statute; *cf. Gray v. York Newspapers, Inc.*, 957 F.2d 1070, 1084–1085 (3d Cir. 1992) (holding that an employee who accepted early retirement could not challenge the retirement program as a violation of statutory requirements that the program be available to all potentially eligible employees because her choice to retire was voluntary and she benefited from the alleged discrimination).

D

Traceability

Defendants further argue that there is another requirement to establishing standing: that the Plaintiff's injury be fairly traceable to his claim. While it is true that

> "[u]nder Article III of the United States Constitution, federal courts must limit their judicial review to an actual case or controversy[, and t]o invoke a federal court's jurisdiction, the plaintiff must have suffered some threatened or actual injury resulting from the putatively illegal action[, t]he Rhode Island Constitution has no express case or controversy requirement and the federal limitation does not apply." *Tanner v. Town Council of Town of East Greenwich*, 880 A.2d 784, 792 n.5 (R.I. 2005) (inside quotation omitted).

To establish Article III standing, "a plaintiff must have '(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *In re Johnson & Johnson Talcum Powder Products Marketing., Sales Practices & Liability Litigation*, 903 F.3d 278, 284 (3d Cir. 2018) (quoting *Spokeo*, 136 S. Ct. at 1547). However, on only one occasion has our Supreme Court mentioned the traceability requirement of federal jurisprudence, *see Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 535 (R.I. 2013),[5] and has omitted it from subsequent decisions reciting the standing requirements. *See Key*, 163 A.3d at 1169; *Lynch v. First Horizon Home Loans*, 154 A.3d 945, 946 (R.I. 2017); *Cruz v. Mortgage Electronic Registration Systems, Inc.*, 108 A.3d 992, 996 (R.I. 2015).

Thus, while traceability is clearly a requirement of Article III standing under federal jurisprudence, our Supreme Court has explicitly adopted only the first prong of the *Data Processing* standing test, which requires "an injury in fact ***resulting*** from the challenged statute."

[5] In *Mruk*, our Supreme Court summarized the standing requirements set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and stated that "'there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Mruk*, 82 A.3d at 535 (quoting *Lujan*, 504 U.S. at 560)(internal quotations omitted)). In analyzing whether a homeowner had standing to challenge the validity of an assignment of a mortgage on their home in order to contest foreclosure, the Court simply found that they were "satisfied that there is a causal connection between the injury and the challenged action; the assignment of the mortgage is the basis of the right to foreclose being asserted by the foreclosing entity." *Id.* at 536.

Rhode Island Ophthalmological, 113 R.I at 26, 317 A.2d at 129 (emphasis added).[6] The essence of the first prong of the *Data Processing* test is injury in fact. *See* Davis, *Administrative Law Text*, 3d § 22:02 at 423 (1972). Accordingly, our Supreme Court has repeatedly articulated "that the test for standing is 'injury in fact.'" *Tanner*, 880 A.2d at 792 n.5 (quoting *Rhode Island Ophthalmological*, 113 R.I. at 26, 317 A.2d at 129); *see also Haviland*, 45 A.3d at 1256; *N & M Properties*, 964 A.2d at 1145; *Meyer v. City of Newport*, 844 A.2d 148, 151 (R.I. 2004); *In re Ethics Advisory Panel Opinion No. 92-1*, 627 A.2d 317, 320 (R.I. 1993); *Vose v. Rhode Island Brotherhood of Correctional Officers*, 587 A.2d 913, 915 n.2 (R.I. 1991); *East Greenwich Yacht Club v. Coastal Resources Management Council*, 118 R.I. 559, 564, 376 A.2d 682, 684 (1977). Quite clearly, injury in fact and traceability are separate and distinct requirements, as laid out by the Supreme Court of the United States in *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, wherein the court noted that the three requirements of Article III standing are that the plaintiff "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, and that the injury fairly can be traced to the challenged action and is likely to be redressed by a favorable decision." 454 U.S. 464, 472 (1982) (internal quotations and citations omitted).

As such, this Court finds that traceability is not a requirement of standing under Rhode Island jurisprudence, and a plaintiff has standing when he or she has alleged that he or she suffered an injury in fact resulting from the challenged action. *See Key*, 163 A.3d at 1169; *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 289 (R.I. 2012); *DePetrillo v. Belo Holdings, Inc.*, 45 A.3d 485, 492 (R.I. 2012); *Watson v. Fox*, 44 A.3d 130, 135 (R.I. 2012); *In re Town of New*

[6] The Court did not adopt the second prong of the *Data Processing* test, which is "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." 397 U.S. at 153.

Shoreham Project, 19 A3d at 1227; *Moreau v. Flanders*, 15 A.3d 565, 574 (R.I. 2011); *Bowen*, 945 A.2d at 317; *McKenna*, 874 A.2d at 226; *In re New England Gas Co.*, 842 A.2d 545, 553 (R.I. 2004); *Weybosset Hill Investments, LLC v. Rossi*, 857 A.2d 231, 239 (R.I. 2004); *Rosen v. E. Rosen Co.*, 818 A.2d 695, 697 (R.I. 2003); *Associated Builders & Contractors of Rhode Island, Inc. v. Department of Administration*, 787 A.2d 1179, 1185 (R.I. 2002); *Cummings v. Shorey*, 761 A.2d 680, 684 (R.I. 2000); *Retirement Board of Employees Retirement System of City of Providence v. Cianci*, 722 A.2d 1196, 1198 (R.I. 1999); *Ahlburn v. Clark*, 728 A.2d 449, 451 (R.I. 1999); *Operation Clean Government v. Rhode Island Commission on Judicial Tenure & Discipline*, 741 A.2d 257, 262 (R.I. 1999); *Pontbriand*, 699 A.2d at 862; *Shawmut Bank of Rhode Island v. Costello*, 643 A.2d 194, 196 (R.I. 1994); *Burns v. Sundlun*, 617 A.2d 114, 116 (R.I. 1992); *Akroyd v. Rhode Island Department of Employment Security, Board of Review*, 585 A.2d 637, 639 (R.I. 1991); *Renza v. Murray*, 525 A.2d 53, 55 (R.I. 1987); *Newport Electric Corp. v. Public Utilities Commission*, 454 A.2d 1224, 1225 (R.I. 1983); *Blackstone Valley Chamber of Commerce*, 452 A.2d at 933; *Rohrer v. Ford*, 425 A.2d 529, 531 n.2 (R.I. 1981); *In re Joseph*, 420 A.2d 85, 88 (R.I. 1980); *Newman-Crosby Steel, Inc. v. Fascio*, 423 A.2d 1162, 1165 (R.I. 1980); *Matunuck Beach Hotel, Inc. v. Sheldon*, 121 R.I. 386, 394, 399 A.2d 489, 493 (1979); *Berberian v. Solomon*, 122 R.I. 259, 260, 405 A.2d 1178, 1180 (1979); *Rosen v. Restrepo*, 119 R.I. 398, 401, 380 A.2d 960, 962 (1977); *Malinou v. Rhode Island Hospital Trust National Bank*, 116 R.I. 548, 550, 359 A.2d 43, 44 (1976). "The ordinary meaning of 'resulting' is 'to proceed, spring, or arise as a consequence, effect, or conclusion.'" *Carrigan v. State Farm Mutual Automobile Insurance Co.*, 949 P.2d 705, 707 (Or. 1997) (quoting *Webster's Third New International Dictionary*, 1937 (3d ed. 1993)). Accordingly—and in the context of standing—this definition can encompass any injury that results as a direct or indirect consequence of the

challenged action and is not commensurate with traditional notions of causal connection, such as but-for or proximate cause. *See id*. at 708 (holding that because "[t]he legislature used the term 'resulting' by itself and did not modify that term with the adjective 'direct' or any similar limiting term," a car insurance policy providing coverage for injuries resulting for the use of the vehicle included both direct and indirect injuries).

Here, the Plaintiff has alleged that he lost money on a sports wager because an unconstitutionally enacted statute authorized him to place that wager. Although Plaintiff's injury may be an indirect consequence of the challenged actions, Rhode Island standing law does not require that the injury in fact be the direct result of the challenged action. As such, this Court concludes that Plaintiff's injury arose as a consequence of the alleged unconstitutional enactment of sports wagering. *See Roch v. Garrahy*, 419 A.2d 827, 831 (R.I. 1980) (holding that the head of a major political party and prospective candidates had standing to challenge whether the Governor obeyed a statutory mandate in appointing members of the Board of Elections because they may "suffer some injury in the event that the Governor fails to meet statutory standards").

Thus, for the foregoing reasons, this Court finds that the Plaintiff has satisfied the two requirements of justiciability under Rhode Island law. Plaintiff has standing to assert this claim because he suffered injury in fact resulting from the challenged action, and the Uniform Declaratory Judgments Act entitles him to relief because it gives this Court jurisdiction to construe statutes and declare the rights of the parties.

IV

Conclusion

As noted by Chief Justice Warren, "[s]tanding has been called one of the [most] amorphous concepts in the entire domain of public law." *Flast*, 392 U.S. at 99 (internal

quotation marks omitted). This Court has parsed through Rhode Island and federal jurisprudence to interpret the standing doctrine and finds that the Plaintiff has standing, and his claim is justiciable. Accordingly, the Defendants' Motion to Dismiss for Lack of Standing is denied. Counsel for the Plaintiff shall prepare and submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Daniel S. Harrop v. The Rhode Island Division of Lotteries, et al.**
CASE NO:	**PC-2019-5273**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 5, 2019**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Joseph S. Larisa, Jr., Esq.; Brandon S. Bell, Esq.**
For Defendant:	**Robert Corrente, Esq.; Michael W. Field, Esq.; John Tarantino, Esq.; Nicole J. Benjamin, Esq.; Anthony Desisto, Esq.; Justin T. Shay, Esq.; Giovanni D. Cicione, Esq.,; Leah L. Miraldi, Esq.; Gerald J. Petros, Esq.; Mitchel Edwards, Esq.**