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SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON and the WASHINGTON STATE
GAMBLING COMMISSION,

Petitioners,

v.

INTERNET COMMUNITY & ENTERTAINMENT CORP., d/b/a
BETCHA.COM,

Respondent.

**SUPPLEMENTAL BRIEF OF PETITIONERS,
THE STATE OF WASHINGTON AND THE WASHINGTON
STATE GAMBLING COMMISSION**

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ORIGINAL

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I. INTRODUCTION

This case arises from a decision of the Court of Appeals, Division II, holding that the operator of an Internet gambling website can evade Washington's constitutional and statutory bans on unauthorized "gambling" by simply reminding individuals who place wagers on the website that they have the ability to "welch"¹ on their bets. The Court of Appeals' decision is in error. The plain language of The Gambling Act, Chapter 9.46 RCW, establishes that such wagering activities fall within the statutory definition of "gambling," are both unauthorized and specifically prohibited, and, accordingly, violate Washington law. Petitioners, the State of Washington and the Washington State Gambling Commission (collectively the "Commission"), respectfully request that the Court of Appeals' decision be reversed.

II. STATEMENT OF THE ISSUES

1. Does Betcha.com conduct, promote, and facilitate illegal "gambling," under RCW 9.46.0237, when Internet gamblers use its website to stake money on an agreement or understanding that they will receive something of value in return for a "winning" wager?

¹ To "welch" is defined as "1: to cheat by avoiding payment of bets....2: to avoid dishonorably the fulfillment of an obligation." *Webster's Third New International Dictionary* 2596 (2002). While this term may be objectionable to some, it is the term used by Betcha.com and the Court of Appeals and, therefore, is used in this brief.

2. Does Betcha.com engage in illegal “bookmaking,” under RCW 9.46.0213, when it charges Internet gamblers fees for placing bets on its website?

3. Does Betcha.com’s transmission and receipt of wagers, betting odds, and other gambling information over the Internet violate the plain language of RCW 9.46.240?

III. STATEMENT OF THE CASE

A. The Internet Gambling Website: www.Betcha.com

On June 8, 2007, Internet Community & Entertainment Corporation, d/b/a Betcha.com (“Betcha.com”), began operating an Internet website that conducts and facilitates online gambling. CP 154, 176, 185, 197-98.² While Betcha.com’s office is headquartered in Seattle, Washington, the company intentionally located its computer servers in Vancouver, British Columbia to evade federal and state gambling laws. CP 174, 810. Betcha.com’s openly avowed purpose is to create a “gambling community” where gamblers can list wagers and accept bets. CP 156, 176. The site targets individuals who: 1) are willing to spend money over the Internet; and, 2) like to gamble. CP 814.

To gamble on Betcha.com, an individual registers on the website, creates a user name, and funds a wagering account with a credit card. CP

² Any reference to the Clerk’s Papers in this matter will be referred to as “CP”. Reference to the Verbatim Report of Proceedings will be designated as “VRP”.

156, 202. Once registered, Betcha.com provides the gambler with several ways to commence the betting process. CP 399. A gambler may choose to wager “person to person” or by participating in a betting pool. *Id.* A gambler may also choose to post his or her own proposed bets or to accept wagers already listed by other gamblers. CP 156.

To “list” a bet on Betcha.com, a gambler either individually drafts a proposed wager or follows drop down menus to select from a pre-existing list of suggested possible wagers. CP 156, 204-05, 399-404. The website allows a gambler to choose the amount of the wager, the odds, the point spread, the opening and closing dates of the bet, and the minimum “honor rating” that any gambler offering to accept the bet must possess. CP 400-01. Betcha.com also offers optional, pre-drafted bets created by the website’s staff. CP 179, 217-19, 340. Finally, Betcha.com offers “upgrades” that a gambler may purchase to increase the visibility of a particular proposed bet. CP 402.

B. Gambling On Betcha.com

Every gambler on Betcha.com is assigned an “honor score.” CP 101-03. The honor score serves as a measure of the individual gambler’s reliability and trustworthiness in paying losing wagers. CP 190-91, 434. Initially, each gambler receives 250 “points” for signing up on the website. CP 191-92. As the gamblers participate in gambling activities

and receive individual feedback, Betcha.com changes their honor score. *Id.* Betcha.com adds or deducts points depending on a variety of factors, including participant feedback, the amount of money wagered,³ the promptness with which the bettor settles a gambling debt, and whether the bettor “welched” on a bet. CP 190-96, 434. Players are rewarded with honor points for paying their bets and, as Betcha.com’s website says, “pay the consequences” if they do not. CP 90.

The website is designed to facilitate the payment of bets. To obtain betting privileges on Betcha.com, gamblers must sufficiently fund their accounts to cover their bets. CP 89. If a gambler attempts to place or accept a bet without having sufficient funds to cover the wager, Betcha.com directs the gambler to add additional money to the account. CP 202, 207-08. Once a bet is listed or accepted, Betcha.com freezes the wagered funds and places them in escrow. CP 203. The wager cannot be withdrawn and the money is frozen until the bet is settled. CP 203, 210.

Each bet has an established time when the outcome of the wager will be determined. CP 209-10. Once that time has passed, the gambler signals to Betcha.com and the opposing gambler that a win, a loss, or an ambiguous outcome has occurred. CP 193, 211-14. If a winning claim is made, the opposing gambler must respond within 72 hours. CP 193, 422-

³ For instance, a \$1 bet is worth fewer honor points than a \$1000 bet. CP 194, 196.

23. If the opposing gambler agrees with the loss or does not respond within 72 hours, Betcha.com transfers the winnings to the claimant's account. CP 213, 422-23. If the opposing gambler disagrees with the determination, the bet stays in limbo until the dispute is resolved. CP 211-13. If the losing gambler opts to "welch" on the bet, the bet is not paid by Betcha.com and the wager is terminated.⁴ CP 422. However, according to Betcha.com's "terms of service," individual gamblers are responsible for collecting their own winning bets. CP 88, 815.

C. Betcha.com's Collection Of "Fees" From Internet Gambling

Betcha.com makes money by deducting several non-refundable fees from gamblers' accounts. CP 197-201, 395-97. At the outset, Betcha.com charges a flat listing fee for placing a bet on its website. CP 199, 395-96. Next, whenever a bet is accepted, Betcha.com deducts a "matching fee" for bringing the parties together. CP 199, 396. The matching fee is a percentage of the wager and is deducted from both players' accounts. CP 197, 199, 396. Additionally, Betcha.com charges a "counteroffer" percentage fee if a player wishes to negotiate the odds of a particular bet. CP 198, 396. Finally, Betcha.com offers gamblers the

⁴ Betcha.com has never had a player truly "welch" on a losing bet. The only record of the website ever registering a "welch" occurred when an employee of Betcha.com both listed and accepted the same bet, and then "welched" on it. CP 214-16, 384, 387.

ability to “upsell” their bet to increase its visibility. CP 200. Betcha.com collects these fees regardless of the outcome of any bet. CP 197-200.

D. Suspension Of Betcha.com’s Illegal Gambling Activities

Shortly after Betcha.com began operating, Special Agents from the Commission met with Betcha.com and Nicholas Jenkins.⁵ CP 443. The agents informed Jenkins that Betcha.com’s activities were prohibited under The Gambling Act, and requested that he cease operations and return any fees the site had collected. *Id.* On July 6, 2007, the Commission served Betcha.com with a formal cease and desist letter. CP 444-45. During the process, Jenkins threatened to file a lawsuit against the Commission. *Id.* On July 9, 2007, the Commission executed a search warrant at Betcha.com’s offices and seized computer equipment and various records. CP 449-52, 454-55.

E. Procedural History

On July 10, 2007, Betcha.com served the Commission with a Complaint For Declaratory Judgment and Injunctive Relief. CP 554-61. The complaint sought a ruling under the Uniform Declaratory Judgments Act, Chapter 7.24 RCW, declaring that Betcha.com’s activities did not violate The Gambling Act’s prohibitions against illegal gambling. CP

⁵ Nicholas Jenkins is the creator, CEO, Vice President, Treasurer, Secretary, and sole member of Internet Community & Entertainment’s, d/b/a Betcha.com, Board of Directors. CP 175-76. Jenkins is Betcha.com.

559-61. Subsequently, Betcha.com filed two amended complaints dropping Mr. Jenkins as a plaintiff and adding the State as a defendant. CP 3-10, 622-60.

The parties filed cross-motions for summary judgment and, on November 9, 2007, the Thurston County Superior Court granted summary judgment in favor of the State. CP 11-38, 458-537; VRP 53. Betcha.com timely appealed and, in a 2-1 decision, the Court of Appeals, Division II, reversed the ruling of the Superior Court. *Internet Cmty. & Entm't Corp., d/b/a Betcha.com v. Washington State Gambling Comm'n*, 148 Wn. App. 795, 201 P.3d 1045 (2009).

IV. ARGUMENT

A. Standard Of Review And Rules Of Statutory Construction

This Court reviews motions for summary judgment *de novo*, and engages in the same inquiry as the trial court by reviewing the facts, as well as the reasonable inferences from those facts, in the light most favorable to the nonmoving parties. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590 121 P.3d 82 (2005).

Issues of statutory interpretation are also reviewed *de novo*. *State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003). A court's primary duty in interpreting any statute is to discern and implement the intent of the Legislature. *Id.* at 450. When undertaking statutory analysis, a court first

looks to the statute's plain language and ordinary meaning. *Id.* The plain meaning of a statute is discerned "from all that the Legislature has said in the statute." *Id.* "When the plain language is unambiguous – that is, when the statutory language admits of only one meaning – the legislative intent is apparent, and [the court] will not construe the statute otherwise." *Id.*

A statute is ambiguous if it can reasonably be interpreted in more than one way, but not simply because different interpretations are conceivable. *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). A court is "not obliged to discern any ambiguity by imagining a variety of interpretations." *Id.* at 955. Further, "statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided." *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987).

B. The Gambling Act Must Be Liberally Construed To Achieve Its Purpose, Which Is To Prohibit All Forms Of Gambling Not Specifically Authorized

Washington's people, legislature and courts have long recognized that gambling is a social and economic evil that the Legislature has plenary authority to prohibit or strictly limit. Const: art. II, § 24; RCW 9.46.010; *see also State ex rel. Schafer v. Spokane*, 109 Wash. 360, 362-63, 186 Pac. 864 (1920) (quoting *Ex Parte Dickey*, 76 W.Va. 576, 85 S.E. 781 (1915)); *Northwest Greyhound Kennel Ass'n, Inc. v. State*, 8 Wn. App. 314, 320, 506 P.2d 878, *review denied*, 82 Wn.2d 1004 (1973). In

fact, as initially adopted in 1889, article II, § 24 of the Washington Constitution *banned all gambling*. It was not until 1972, that the people of Washington amended article II, § 24 to permit only those gambling activities specifically approved by supermajority vote of either the Legislature or the electorate. In accordance with this amendment, the Legislature enacted The Gambling Act, which for the first time permitted some specifically limited forms of gambling activities under highly regulated circumstances. RCW 9.46.

The Gambling Act advances a two-fold policy: 1) to keep the criminal element out of gambling and 2) to promote the social welfare by “limiting the nature and scope of gambling activities and by strict regulation and control.” RCW 9.46.010. In furtherance of these policies, the Legislature directed that “[a]ll factors incident to the activities authorized in [the Gambling Act] shall be closely controlled, and the provisions of [the Gambling Act] shall be liberally construed to achieve such end.” *Id.* Courts, therefore, “must look into, through, and around any schemes and devices which appear even superficially to constitute [gambling]” to give proper effect to these laws and to further the state’s intent to ban all gambling not specifically authorized and regulated. *See State ex rel Schillberg v. Safeway*, 75 Wn.2d 339, 450 P.2d 949 (1969).

C. The Court Of Appeals Failed To Give Effect To The Gambling Act's Purpose and To Interpret The Provisions Of The Act In Accordance With Their Plain Meaning

In the case below, the Court of Appeals read ambiguity into The Gambling Act where none exists, and effectively rewrote the Act to authorize all forms of gambling activities where there is a possibility that the gambler will not get paid. The Court of Appeals decision is in error. Under the Washington Constitution and The Gambling Act, all gambling activities not specifically authorized are prohibited. Furthermore, the Legislature clearly intended to limit the nature and scope of those gambling activities that are specifically authorized under The Gambling Act. *See* RCW 9.46.010. Betcha.com's wagering activities fall within The Gambling Act's proscriptions against "gambling," "bookmaking," and the transmission of "gambling information" over the Internet. Betcha.com's assertion that these laws are ambiguous, simply because gamblers on its website have the ability to "welch" on their wagers, is contrary to the Act's plain language and should be rejected.

1. Betcha.com's facilitation of online wagers constitutes illegal "gambling" under the plain language of RCW 9.46.0237.

In pertinent part, RCW 9.46.0237 unambiguously defines "gambling" as: 1) "staking or risking something of value"; 2) "upon the outcome of a contest of chance or a future contingent event not under the

person's control or influence"; 3) "upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome." RCW 9.46.0237 (attached at Appendix A). The online wagers at Betcha.com meet each of the elements of this definition.

Betcha.com requires gamblers wishing to participate in wagering activities on its website to have sufficient funds in their accounts to cover their bets. CP 89. Furthermore, the particular bets may be on any future event of their choosing that has an undecided outcome or result. CP 340-41, 399-404. Gamblers, thus, bet on Betcha.com by staking something of value upon an event outside their control or influence. RCW 9.46.0237. Finally, gamblers place their wagers on Betcha.com with an agreement or understanding that they or someone else will receive something of value depending on the outcome of that event. The "something of value" exists because gamblers betting on Betcha.com have a common understanding and expectation that they will be, and they universally have been, paid their winning wagers, notwithstanding the fact that a "welched" on bet, like any illegal gambling debt, would be legally unenforceable. *See* Footnote 4, *supra*. Moreover, gamblers also receive an additional "something of value" in the form of "honor points" when they settle their losing wagers. CP 90, 190-96.

Nonetheless, Betcha.com argues, and a majority of the Court of Appeals agreed, that because the online gamblers may “welch” on their losing bets, the wagers do not fall within RCW 9.46.0237’s definition of gambling. The Court of Appeals reached this conclusion by holding that gamblers on Betcha.com do not have an understanding that they “will” receive something of value if they win. *Internet Cmty.*, 148 Wn. App. at 807. In doing so, the court interpreted RCW 9.46.0237 to require an unconditional promise that winning bets be paid every time in order to constitute “gambling,” reasoning that, otherwise, “there is nothing risked.” *Id.* at 809.

The Court of Appeals conclusion misconstrues the definition of “gambling” and imports into it a meaning that the Legislature did not intend. First, the Legislature is presumed to mean exactly what it says in a particular statute. *State v. Keller*, 143 Wn.2d 267, 19 P.3d 1030 (2001). As this Court has previously recognized, the Legislature’s use of the phrase “agreement or understanding” denotes merely an informal agreement, rather than an understanding that contains all the formal requisites of a binding contract. *See Corbit v. J. I. Case Co.*, 70 Wn.2d 522, 531-32, 424 P.2d 290 (1967) (a mere “agreement” does not impose the same legal consequences as an over-all contract); *State v. Yancy*, 92 Wn.2d 153, 156, 594 P.2d 1342 (1979) (“agreement or understanding” as

used in a criminal statute prohibiting the promotion of prostitution meant informal agreement). Thus, in choosing to use the phrase “agreement or understanding” when defining “gambling” under RCW 9.46.0237, the Legislature selected words showing that it did not intend that the statute include an unconditional promise to pay a losing wager, as would be required under a legally enforceable contract.

Second, bettors risk both their money and their “honor” as gamblers when they place bets on Betcha.com. The gamblers on Betcha.com have an “agreement or understanding” that one of the bettors will receive something of value. That is the only reason why opposing gamblers would bother to accept each other’s bets on Betcha.com. A gambler does not deposit funds, pay non-refundable fees, and propose and accept bets on the understanding that nothing of value is at stake. This is why Betcha.com rewards bettors when they pay their losses, and warns them that they will “probably pay the consequences” when they do not. CP 90.

Betcha.com’s simple recitation that players can “welch” on a loss does not change that understanding. It would lead to an impermissible “absurd result” if gamblers could evade the State’s constitutional and statutory restrictions on gambling by simply reminding each other that they have the ability to “welch” on their illegal gambling debts. Under

Betcha.com's interpretation of RCW 9.46.0237, virtually any illegal gambling could be made lawful by such a recitation.

Furthermore, Betcha.com's argument that its gamblers understand that they may "welch" is an illusory distinction. Gamblers engaging in illegal betting activities **never** have a legal obligation to pay their losses. Such debts are *per se* legally unenforceable. *See Dodd v. Gregory*, 34 Wn. App. 638, 642-43, 663 P.2d 161, *review denied*, 100 Wn.2d 1007 (1983). It is this fact that has given rise to the occasional reality of "back alley" collection methods being employed on gamblers who "welch."⁶ In any event, nothing on Betcha.com's website alters the ability, or inability, of gamblers to collect illegal gambling debts.

The Court of Appeals' interpretation of RCW 9.46.0237 and its application of that provision to Betcha.com's activities is erroneous. Nothing in the statute, or elsewhere, requires an unconditional promise to pay a losing wager. Gamblers on Betcha.com risk their money and their reputation based on the understanding that they will receive something of value based on the outcome of a particular future event. The Internet wagers placed on Betcha.com constitute "gambling" under the plain language of RCW 9.46.0237 and the decision below should be reversed.

⁶ It also is consistent with Betcha.com's use of the term "welch" to warn players of the consequences of not paying their losses. As Betcha.com never had an actual player "welch" on a bet during the time it was in operation, the warning presumably worked.

2. Betcha.com's accepting of fees in exchange for facilitating online betting constitutes "bookmaking" under the plain language of RCW 9.46.0213.

The Gambling Act defines "bookmaking" as "...accepting bets, upon the outcome of future contingent events, as a business *or* in which the bettor is charged a fee or 'vigorish' for the opportunity to place a bet."^{7,8} RCW 9.46.0213 (emphasis added) (Attached as Appendix B). The Court of Appeals overlooked the latter half of the definition, and erroneously determined that RCW 9.46.0213 was ambiguous because "'accepting bets' can be reasonably read to have two different meanings." *Internet Cmty.*, 148 Wn. App. at 810. The court read ambiguity into the provision by holding that "accepting bets" could possibly mean 1) taking a position in the bet or 2) posting a bet without taking an interest in the outcome. *Id.* The court then concluded that because Betcha.com did not take an interest in the outcome of the bets on its website, its activities did not fall within the scope of RCW 9.46.0213's definition of "bookmaking." *Id.*

The Court of Appeals' reading ignores the second half of the definition and produces a result that is inconsistent with the stated intent

⁷ "Vigorish" is defined in the dictionary as "1: a charge taken (as by a bookie or gambling house) on bets; *also*: the degree of such a charge 2: interest paid to a money lender." *Webster's Third New Int'l Dictionary*, 2551 (2002).

⁸ Bookmaking is illegal under The Gambling Act's provisions relating to "professional gambling." RCW 9.46.0269(1)(e), .220-.225.

and purpose of The Gambling Act and the facts at issue in this case. “Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Davis v. Dep’t of Licensing*, 137 Wn.2d 95, 963, 977 P.2d 554 (1999). Included within the specific, plain language of RCW 9.46.0213 is the provision that bookmaking also means “charging a fee or ‘vigorous’ for the opportunity to place a bet.” Betcha.com admits it charges bettors for the opportunity to place bets on its website. CP 197-201, 395-97. These fees include flat rates for simply posting bets, as well as taking a percentage of the final wager. *Id.* Such behavior constitutes “bookmaking” under RCW 9.46.0213. The Court of Appeals’ decision to the contrary should be reversed.

3. Betcha.com’s transmission and receipt of gambling information over the Internet is prohibited under the plain language of RCW 9.46.240 and 9.46.0245.

RCW 9.46.240 specifically prohibits the knowing transmission or receipt of “gambling information” over the Internet.⁹ The Act further defines “gambling information,” in pertinent part, as:

⁹ RCW 9.46.240 provides, in pertinent part, that: “Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the internet, a telecommunications transmission system, or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a class C felony subject to the penalty set forth in RCW 9A.20.021....” (Attached at Appendix C).

...any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition, information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling...

RCW 9.46.0245 (emphasis added) (Attached as Appendix D). Explicit within this definition is the Legislature's intent that the transmission of information as to wagers, betting odds, and changes in betting odds be presumed to be for professional gambling,¹⁰ and thus prohibited by RCW 9.46.240. Equally explicit is the intent that the prohibition in RCW 9.46.240 reach beyond completed acts of gambling, and extend specifically to the transmission or receipt of *information* intended for use in gambling.

The Court of Appeals erroneously concluded that the definition of "gambling information" relies on the foundational elements of "gambling" and "bookmaking." *Internet Cmty.*, 148 Wn. App. at 810. As such, the court determined that, because it erroneously found that Betcha.com's activities did not constitute gambling or bookmaking, Betcha.com's activities also did not constitute the transmission or receipt of gambling

¹⁰ "Professional gambling" is defined in The Gambling Act at RCW 9.46.0269. Additionally, the term "player" (as used in the definition of "professional gambling") is also defined in the Act at RCW 9.46.0265. Copies of those definitions are attached hereto as Appendix E and Appendix F, respectively.

information. *Id.* at 811-12. Such a reading renders RCW 9.46.240's prohibition of the transmission of "gambling *information*" meaningless.

Simply because both RCW 9.46.0245 and RCW 9.46.0237 use the word "gambling" does not mean that the Legislature intended the terms to be dependent upon each other. "Identical words appearing more than once in the same act, and even in the same section, may be construed differently if it appears they were used in different places with different intent." *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433, 52 S. Ct. 607, 76 L.Ed. 1204 (1932); *see also Gen. Dynamics Land Sys, Inc. v. Cline*, 540 U.S. 581, 595 (2004). In this case, the Legislature defined "gambling information" separately from the definition of "gambling" that is set forth in RCW 9.46.0237. In conjunction with RCW 9.46.240, the "gambling information" provision prohibits the transmission of particular *information*, i.e., wagers and betting odds. The provision, therefore, reaches activities that do not necessarily contain all of the elements found in RCW 9.46.0237's definition of gambling, i.e., risk, chance, and prize. The mere transmission of such information is enough to constitute a violation of the statute. Betcha.com's entire reason for existing is to facilitate online betting activities in which participants set odds and place wagers. Betcha.com's transmission and receipt of wagers and betting odds over the Internet falls squarely within the statute's prohibition.

D. Proper Application Of The Rules Of Statutory Construction Requires That Betcha.com's Unlawful Internet Gambling Be Prohibited

The Court of Appeals' application of the "rule of lenity" to this matter was inappropriate and unnecessary. *See Internet Cmty.*, 148 Wn. App. at 808. It is a fundamental rule of statutory construction that "statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided." *Stannard*, 109 Wn.2d at 36. Additionally, the "rule of lenity" should only be applied "when [the court is] uncertain of the statute's meaning" and the maxim is "not to be used in complete disregard of the purpose of the legislature." *United States. v. Culbert*, 435 U.S. 371, 379 (1978) (Hobbs Act's scope was not intended to be limited by reference to an undefined category of conduct termed "racketeering"). Betcha.com's gambling activities were unambiguously intended to be prohibited.

The Court of Appeals' decision failed to give meaning to the intent and purpose of The Gambling Act, which is "keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control." RCW 9.46.010. To that end, the Legislature further mandated that the factors incident to legal gambling should be "closely controlled" and that the provisions of The Gambling Act should

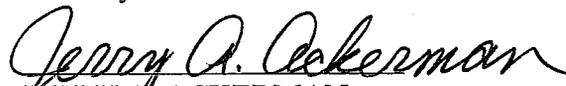
be “liberally construed” to achieve that result. *Id.* The court’s interpretation of “gambling,” “bookmaking,” and The Gambling Act, unintentionally legalizes all otherwise illegal gambling in which players have the “option” of “welching” on their losses. Betcha.com, and other gamblers and bookmakers, should not be permitted to evade the obvious intent of the Legislature and The Gambling Act by such an artifice. Instead, this Court should give The Gambling Act its plain, reasonable meaning, and hold that Betcha.com’s calculated facilitation of Internet gambling activities violates Washington law.

V. CONCLUSION

Based on the foregoing, the Commission respectfully requests that this Court reverse the Court of Appeals and affirm the Superior Court’s order granting summary judgment in favor of the State.

RESPECTFULLY SUBMITTED this 26th day of October, 2009.

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APPENDIX A

RCWs > Title 9 > Chapter 9.46 > Section 9.46.0237

9.46.0233 << 9.46.0237 >> 9.46.0241

RCW 9.46.0237

"Gambling."

"Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting and handicapping contests as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health, or accident insurance. In addition, a contest of chance which is specifically excluded from the definition of lottery under this chapter shall not constitute gambling.

[2005 c 351 § 1; 1987 c 4 § 10. Formerly RCW 9.46.020(9).]

APPENDIX B

RCWs > Title 9 > Chapter 9.46 > Section 9.46.0213

9.46.0209 << 9.46.0213 >> 9.46.0217

RCW 9.46.0213
"Bookmaking."

"Bookmaking," as used in this chapter, means accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or "vigorish" for the opportunity to place a bet.

[1991 c 261 § 1; 1987 c 4 § 5. Formerly RCW 9.46.020(4).]

APPENDIX C

RCWs > Title 9 > Chapter 9.46 > Section 9.46.240

9.46.235 << 9.46.240 >> 9.46.250

RCW 9.46.240

Gambling information, transmitting or receiving.

Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, the internet, a telecommunications transmission system, or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a class C felony subject to the penalty set forth in RCW 9A.20.021. However, this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules adopted under this chapter.

[2006 c 290 § 2; 1991 c 261 § 9; 1987 c 4 § 44; 1973 1st ex.s. c 218 § 24.]

Notes:

State policy -- 2006 c 290: "It is the policy of this state to prohibit all forms and means of gambling, except where carefully and specifically authorized and regulated. With the advent of the internet and other technologies and means of communication that were not contemplated when either the gambling act was enacted in 1973, or the lottery commission was created in 1982, it is appropriate for this legislature to reaffirm the policy prohibiting gambling that exploits such new technologies." [2006 c 290 § 1.]

APPENDIX D

RCWs > Title 9 > Chapter 9.46 > Section 9.46.0245

9.46.0241 << 9.46.0245 >> 9.46.0249

RCW 9.46.0245

"Gambling information."

"Gambling information," as used in this chapter, means any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition, information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling. This section shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the federal communications commission.

[1987 c 4 § 12. Formerly RCW 9.46.020(11).]

APPENDIX E

RCWs > Title 9 > Chapter 9.46 > Section 9.46.0269

9.46.0265 << 9.46.0269 >> 9.46.0273

RCW 9.46.0269

"Professional gambling."

(1) A person is engaged in "professional gambling" for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any form of gambling activity; or

(b) Acting other than in a manner authorized by this chapter, the person pays a fee to participate in a card game, contest of chance, lottery, or other gambling activity; or

(c) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity; or

(d) The person engages in bookmaking; or

(e) The person conducts a lottery; or

(f) The person violates RCW 9.46.039.

(2) Conduct under subsection (1)(a) of this section, except as exempted under this chapter, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit the premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities authorized by this chapter, and acting other than as a player, and the person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, the person shall be considered as being engaged in professional gambling: PROVIDED, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund" shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: PROVIDED FURTHER, That the books and records of the games shall be open to public inspection.

[1997 c 78 § 1; 1996 c 252 § 2; 1987 c 4 § 18. Formerly RCW 9.46.020(17).]

APPENDIX F

RCWs > Title 9 > Chapter 9.46 > Section 9.46.0265

9.46.0261 << 9.46.0265 >> 9.46.0269

RCW 9.46.0265

"Player."

"Player," as used in this chapter, means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants shall not be considered as rendering material assistance to the establishment, conduct or operation of the social game merely by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises for the game, or supplying cards or other equipment to be used in the games. A person who engages in "bookmaking" as defined in this chapter is not a "player." A person who pays a fee or "vigorous" enabling him or her to place a wager with a bookmaker, or pays a fee other than as authorized by this chapter to participate in a card game, contest of chance, lottery, or gambling activity, is not a player.

[1997 c 118 § 2; 1991 c 261 § 2; 1987 c 4 § 17. Formerly RCW 9.46.020(16).]