

How Elon Musk's \$1 Million Election Sweepstakes May Affect Other Sweepstakes

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Earlier this week, Philadelphia's District Attorney sued Elon Musk over his political action committee's sweepstakes to award a \$1 million daily prize to swing-state voters who pledge to support the Constitution. The lawsuit alleges that the sweepstakes is "indisputably an unlawful lottery." There's arguably a lot wrong with the sweepstakes, but is it really a lottery? If the DA prevails on one of his theories, it could have a significant impact on a broad range of sweepstakes, not just Musk's.

The DA argues that in Pennsylvania (like other states), a promotion is an unlawful lottery if it includes three elements: "(1) a prize to be won; (2) a winner to be determined by chance; and (3) the payment of a consideration by the player." The \$1 million clearly constitutes a prize and Musk has indicated that winners will be selected randomly, so it's hard to dispute the presence of the first two elements. The third is where the DA stretches in a way that should worry many companies.

In practice, the term "consideration" generally refers to a requirement that people make a purchase or pay money in order to enter a sweepstakes. Musk's promotion doesn't include a purchase or payment requirement. Instead, the DA argues that consumers provide consideration, in part, because they are required to "provide personal information (i.e., first and last name, email address, mailing address, and cell phone number)" inputted into America PAC's electronic system..." as part of the entry process.

Anyone who has worked on promotions knows that requiring people to provide contact information to enter a sweepstakes is ubiquitous. Without that, a company may not have any means to contact winners. If the simple act of requiring people to submit this type of information as part of the entry process is going to be deemed "consideration," many - and likely most - of the sweepstakes that numerous companies run every day across the country could become unlawful in Pennsylvania.

It's hard not to view this case through a political lens, but if you take off your red- or blue-colored glasses, it's easy to see how a decision that embraces the DA's broad theory of consideration could be bad for everyone, regardless of who you vote for in this election. We'll keep an eye on this case as it develops. In the meantime, for more election-related promotion news, click [here](#) to read about the My Pillow Guy's ill-fated contest in 2023.

Update: On November 4, 2024, a judge threw out the DA's claims noting, among other things, that "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."