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# The Astros Cheated: Calling for the Recognition of a New Flavor of Judicial Standing Following the 2019 World Series

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**The Astros Cheated: Calling for the Recognition of a New Flavor of Judicial Standing Following the 2019 World Series**

**By: Brady Grove, Senior Staff Editor Vol. 110**



November 2019, the world of professional sports was rocked to its core when it was reported that Major League Baseball's Houston Astros had cheated their way to a World Series victory in 2017,[1] using video technology to steal signs between the opposition's pitcher and catcher and conveying the sign to Astros' batters.[2]

Those involved received minimal sanctions.[3] However, the impact went far beyond the field of play. [4] Several parties filed lawsuits against the Astros and Major League Baseball for financial injuries caused by the cheating scandal.[5] The case in focus was filed by a group of daily fantasy baseball players from the platform "DraftKings," claiming financial injuries resulting from fraud, negligence, and unjust enrichment on part of the Astros, the MLB, and the Boston Red Sox; each of whom were caught cheating in the same way.[6]

This case was dismissed by the New York Southern District Court, finding that the claim of fraud was simply too attenuated from the claimed injuries to warrant relief and survive a motion to dismiss.[7] The court based their finding on the fact that there was no relationship between the defendants and fantasy baseball players, and therefore no misrepresentation between the two as to whether baseball is "a game of skill." [8] Even if there was, the court found too many variables at hand in baseball to concretely attribute the scandal to losses suffered by gamers.[9]

Legalization of sports gambling and the growth of DFS has dramatically altered the landscape of the sports industry. In 2016, it was reported that over one-billion dollars had been wagered on baseball in Nevada sportsbooks alone.[10] In 2018, nineteen percent of Americans aged eighteen and older participated in sports betting while the same percentage played fantasy sports and about three-fourths participated in both; additionally, many of these participants spent a "significant amount" on research materials for betting and fantasy strategy.[11] Also noteworthy, on the "Fan Cost Index" for MLB teams in 2019, which measures the average dollar amount spent by families attending games, the Red Sox and Astros ranked second and third in the league, respectively.[12]

Based on the growth of the DFS/sports gambling industries, and the money spent by fans in connection to following the MLB, courts should now adopt a more liberal approach to judicial standing to allow for similarly situated future parties to seek relief. The fact that the MLB partnered with DraftKings and held workshops on maintaining the game's integrity demonstrates that MLB franchises perpetuated to fans that results would be fair.[13] While it is argued that

financial injury for gamers is too attenuated to survive dismissal,[14] public policy demands reconsideration in order to encourage participation in the sports gaming industry.

If these circumstances remain insufficient to withstand a motion for dismissal, cheating will continue to profit off sports gaming with no accountability to those who contribute to its success. The Astros scandal aftermath demands recognition of a new flavor of judicial standing throughout the United States, if the growth in sports gaming is to be taken in stride and maximized to its fullest economic potential.

[1] Jacob Bogage, *What is Sign Stealing? Making Sense of Major League Baseball's Latest Scandal*, Washington Post (Feb. 14, 2020, 12:15 PM), <https://www.washingtonpost.com/sports/2020/01/14/what-is-sign-stealing-baseball/> (<https://www.washingtonpost.com/sports/2020/01/14/what-is-sign-stealing-baseball/>).

[2] *Id.*

[3] *Id.* No players were suspended. The Astros were fined five-million dollars by the MLB, and Houston's manager and general manager were suspended by the league for one year.

[4] *Id.*

[5] Joseph Zucker, *Mike Bolsinger's Lawsuit Against Astros Over Sign-Stealing Scandal Dismissed*, Bleacher Report (Mar. 17, 2021), <https://bleacherreport.com/articles/2936734-mike-bolsingers-lawsuit-against-astros-over-sign-stealing-scandal-dismissed> (<https://bleacherreport.com/articles/2936734-mike-bolsingers-lawsuit-against-astros-over-sign-stealing-scandal-dismissed>); Tim Daniels, *Astros Sued by Season-Ticket Holder Adam Wallach After Sign-Stealing Scandal*, Bleacher Report (Feb. 18, 2020), <https://bleacherreport.com/articles/2876906-astros-sued-by-season-ticket-holder-adam-wallach-after-sign-stealing-scandal> (<https://bleacherreport.com/articles/2876906-astros-sued-by-season-ticket-holder-adam-wallach-after-sign-stealing-scandal>).

[6] *Olson v. Major League Baseball*, 447 F. Supp. 3d 159, 163 (S.D.N.Y. April 3, 2020).

[7] *Id.* at 165.

[8] *Id.*

[9] *Id.* at 166-73. The plaintiffs had cited this statement by baseball commissioner Rob Manfred in support of their claim of misrepresentation, which was ultimately dismissed by the court.

[10] David Purdum, *A Record \$1 Billion Bet on MLB in 2016*, ESPN (Dec. 6, 2016), [https://www.espn.com/chalk/story/\\_/id/18220934/mlb-record-1-billion-was-bet-major-league-baseball-nevada-2016](https://www.espn.com/chalk/story/_/id/18220934/mlb-record-1-billion-was-bet-major-league-baseball-nevada-2016) ([https://www.espn.com/chalk/story/\\_/id/18220934/mlb-record-1-billion-was-bet-major-league-baseball-nevada-2016](https://www.espn.com/chalk/story/_/id/18220934/mlb-record-1-billion-was-bet-major-league-baseball-nevada-2016)). Ironically, this report prompted the MLB to hold league-wide workshops about how to maximize the benefits of increased sports gambling and maintain the integrity of the game.

[11] *Industry Demographics*, <https://thefsga.org/industry-demographics/> (<https://thefsga.org/industry-demographics/>) (last visited April 20, 2021).

[12] *Fan Cost Index of Major League Baseball Teams in 2019*, <https://www.statista.com/statistics/202611/fan-cost-index-of-the-major-league-baseball/> (<https://www.statista.com/statistics/202611/fan-cost-index-of-the-major-league-baseball/>) (last visited April 20, 2021).

[13] *Olson*, 447 F. Supp. 3d at 166-73.

[14] *Id.*

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