

DAILY FANTASY SPORTS: ISSUES AND PERSPECTIVES

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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¹ The prepared statement of Mr. Eggert can be found at: <http://docs.house.gov/meetings/ifi/if17/20160511/104902/hhrg-114-if17-wstate-eggertk-20160511.pdf>.

² Mr. Eggert did not respond to questions for the record.

DAILY FANTASY SPORTS: ISSUES AND PERSPECTIVES

WEDNESDAY, MAY 11, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND
TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:16 a.m., in room 2123, Rayburn House Office Building, Hon. Michael C. Burgess, M.D., (chairman of the subcommittee) presiding.

Present: Representatives Burgess, Lance, Harper, Guthrie, Bilirakis, Brooks, Mullin, Upton (ex officio), Schakowsky, Clarke, Kennedy, Cardenas, Butterfield, Welch, and Pallone (ex officio).

Staff Present: Mike Bloomquist, Deputy Staff Director; Leighton Brown, Deputy Press Secretary; Rebecca Card, Assistant Press Secretary; Paige Decker, Executive Assistant; Graham Dufault, Counsel, Commerce, Manufacturing and Trade; Melissa Froelich Counsel, Commerce, Manufacturing and Trade; Giulia Giannangeli, Legislative Clerk, Commerce, Manufacturing and Trade; Jay Gulshen, Staff Assistant; Paul Nagle, Chief Counsel, Commerce, Manufacturing and Trade; Tim Pataki, Professional Staff Member; Mark Ratner, Policy Advisor to the Chairman; Dan Schneider, Press Secretary; Olivia Trusty, Professional Staff Member, Commerce, Manufacturing and Trade; Dylan Vorbach, Deputy Press Secretary; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing and Trade; Jeff Carroll, Minority Staff Director; Lisa Goldman, Minority Counsel, Commerce, Manufacturing and Trade; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Dan Miller, Minority Staff Assistant; Caroline Paris-Behr, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Matt Schumacher, Minority Press Assistant.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. I want to thank all of our witnesses for being here today. I ask everyone to take their seats. The subcommittee on Commerce, Manufacturing and Trade will now come to order. The chair recognizes himself 5 minutes for the purpose of an opening statement.

Once again, I would say to you good morning and welcome to our hearing on daily fantasy sports. At the outset, I would like to thank the ranking member of the full committee, Representative Pallone, for his letter last fall requesting the hearing. The panel of witnesses here today will discuss the issues facing daily fantasy sports, the industry, as well as consumer protection features that are available in the marketplace.

There have been headlines, there have been advertisements, and over the last year we have all seen the introduction of these contests to fans. Some of these contests can be played for pennies while others are for substantial amounts of money. Just as the proliferation of the Internet and mobile devices have given consumers access to personalized entertainment on the go, like Netflix, Words With Friends, and Candy Crush, they have also supported the growth of the fantasy sports contests.

Between 1994 and 2003, the number of fantasy sports players increased from around 2 million players to 15 million players. In 2015, almost 60 million people played fantasy sports.

As fun and easy as the games are advertised to be, the issues involved are actually complicated, more complicated than they might first appear. This hearing is an opportunity for the stakeholders to discuss the many aspects of this complicated issue. Consumer protection is a critical component of this conversation, and indeed it is a critical component of the work that this subcommittee does day in and day out. Not only should consumers have a clear understanding of the rules and the risks for a particular contest, but the integrity of the game depends upon consumers getting what they are paying for.

There has been a significant amount of state activity in this area in the last few months. I am interested in hearing from the witnesses how state regulatory responses have impacted their industry and their marketplace. From the states that have required the daily fantasy sports sites to meet online gambling requirements, to the states that have passed legislation explicitly legalizing fantasy games, it is critical to understand the role of the states and what impact their actions have on interstate commerce.

Consistently during this term of the subcommittee, I have focused on the struggles that small businesses face in the regulatory environment. I believe that small businesses are vital to our economy, and understanding how they fit into this industry, that is reportedly dominated by a few large actors, is a critical piece of this puzzle.

Once again, thank you to our witnesses for participating this morning.

And I would yield back my time and recognize the ranking member of the subcommittee, Ms. Schakowsky, 5 minutes for an opening statement, please.

[The prepared statement of Mr. Burgess follows:]

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

Good morning. Welcome to our hearing on daily fantasy sports. At the outset, I would like to thank the Ranking Member of the full committee, Representative Pallone, for his fall letter requesting this hearing.

The panel of witnesses here today will discuss the issues facing the daily fantasy sports industry as well as the consumer protection features available in the marketplace.

There have been many headlines, and advertisements, over the last year introducing many fans to these new contests—some of which can be played for pennies while others are for substantial sums of money. Just as the proliferation of the Internet and mobile devices have given consumers access to personalized entertainment on the go like Netflix, Words with Friends, and Candy Crush, they have also supported the growth of fantasy sports contests.

Between 1994 and 2003, the number of fantasy sports players jumped from around 2 million players to 15 million players. In 2015, almost 60 million people played fantasy sports.

As fun and easy as the games are advertised to be, the issues involved are actually more complicated than they might appear at first glance. This hearing is a prime opportunity for stakeholders to discuss the many aspects of this complicated issue.

Consumer protection is a critical component of this conversation. Not only should consumers have a clear understanding of the rules and risks for a particular contest, but the integrity of the game depends on consumers getting what they paid for.

There has been a significant amount of state activity in this area in the last few months. I am interested in hearing from the witnesses how the state regulatory responses have impacted the marketplace. Also, I have a letter from the Attorney General of my home state of Texas to include in the record.

From the states that have required the daily fantasy sites to meet online gambling requirements, to the states that have passed legislation explicitly legalizing fantasy games—it is critical to understand the role of the states and what impact their actions have on interstate commerce.

Consistently during my term as subcommittee Chairman, I have focused on the struggles small businesses face in the regulatory environment. I believe that small businesses are vital to our economy and understanding how they fit into this industry that is reportedly dominated by a few large actors is a critical piece of the puzzle.

Thank you again to our witnesses for joining us this morning.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Chairman Burgess, for holding today's hearing on daily fantasy sports. I want to welcome all of our witnesses today.

Today's hearing really comes down to one question: what should be the future of this multi-billion-dollar gaming industry? Fantasy sports games competing for cash against others by picking fantasy teams of real sports players have taken off in recent years, and according to Fantasy Sports Trade Association, 56.8 million people in the United States and Canada participated in some form of fantasy sports in 2015. While this includes traditional fantasy that spans the entire football season or baseball season, a rapidly expanding share of spending goes to daily fantasy sports.

Between 2012 and 2015, daily fantasy grew from less than 10 percent of all fantasy sports spending to now more than half, and there is big money in this industry. Daily fantasy companies generate \$3.7 billion in entry fees alone.

When we talk about the daily fantasy industry, we are mainly talking about two companies. DraftKings and FanDuel represent 95 percent of the daily fantasy market. I would note, however, that neither of those companies is testifying today, neither are the sports leagues and teams that have partnered with these sites.

Daily fantasy has gotten big fast, but how should we think of daily fantasy? Companies that operate these Web sites call daily fantasy a game of skill. I will admit it takes some skill. You have to pick players to be part of your fantasy team. I doubt I would be very good at that. I know I wouldn't. But even if some skill is required, daily fantasy at its core involves betting on sports. As hall of fame quarterback Joe Namath put it when asked by CNBC, "Do you have anything"—this is what Joe said. He said, "Do you have to pay anything to play, and do they win something? It is gambling."

Several states have come to the same conclusion. Last year in my home State of Illinois, Attorney General Lisa Madigan declared daily fantasy to be illegal gambling under State law. The Illinois State legislature is considering legislation to make daily fantasy a regulated and taxed form of gaming under the oversight of the Illinois Gaming Board.

On the Federal level, it almost seems like an accident that daily fantasy sites are allowed to exist in the first place. Sports betting is illegal in all but four grandfathered States under the Professional and Amateur Sports Protection Act, and the Unlawful Internet Gambling Enforcement Act generally prohibited online gambling. UIGEA contained an exception for fantasy supports. Keep in mind that in 2006 when UIGEA passed, fantasy sports was almost all season-long fantasy, not the daily fantasy sports that we are focusing on today.

Even if daily fantasy companies claim to be legal under the letter of the law, that doesn't seem like the lawmakers' intent. Former Congressman Jim Leach, who introduced UIGEA, said last year that he had no idea that the fantasy exception would, quote, morph in today's cauldron of daily betting, unquote. He continued, quote, it is sheer chutzpa for the fantasy sports companies to cite the law as a legal basis for existing, unquote.

As long as the Federal law on daily fantasy seems ambiguous, the legality of daily fantasy will be determined largely at the State level. Daily fantasy companies have responsibility to comply with these State regulations, blocking use in States where daily fantasy has been determined to be illegal gambling.

If these sites are going to operate, daily fantasy companies need to take robust steps to prevent use by minors or those struggling with gambling addiction. Ensuring they take these steps will require appropriate regulation.

So what should be the future of daily fantasy? Should it be allowed? Several States have already decided the answer is no. And if betting through daily fantasy is going to take place, what regulations need to be in place to protect consumers?

I am disappointed that the companies most central to this discussion are not here today to answer these questions.

That said, I welcome our witnesses and look forward to hearing your perspectives on this industry.

And I yield back.

Mr. BURGESS. The gentlelady yields back. The chair thanks the gentlelady, recognizes the chairman of the full committee, Mr. Upton of Michigan, 5 minutes for an opening statement.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman.

So today we are going to hear from stakeholders about the daily fantasy sports industry that indeed has attracted so much attention and excitement in the last couple of years. Most folks' exposure to fantasy sports consist of a group of friends and coworkers getting together for a season-long pool. The games are a fun way to bring communities together, even Republicans and Democrats for sure, around some of our very favorite national pastimes, but what we have seen in the last couple years is the explosive growth of a new segment of the fantasy world, daily fantasy sports. About 60 million folks are playing fantasy sports and a reported 14 million are playing daily fantasy sports with sometimes millions of dollars at stake.

So as we explore the current landscape of daily fantasy sports and the new innovations that they offer for fans, consumer protections have to be in place for players on the Web sites. It is clear that adult players deserve a fair game and clear rules.

I look forward to hearing from the witnesses about what internal controls are in place to ensure game integrity on fantasy sports Web sites, particularly if different operators use different controls. I am also interested to learn about the self-regulatory activities industry has put in place and the technological tools available in the market to implement consumers protections, including age limits and geofencing.

States all across the country are looking at these issues, which is going to help inform whether a Federal role is warranted or not. So my State, Michigan, there is a bill pending in the legislature to expressly legalize daily fantasy sports, but we must keep in mind that a patchwork of differing and contradictory state laws has the potential to negatively impact consumers and harm further growth and innovation in the process.

Thank you all for being here today. I look forward to your testimony.

And I yield back.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Good morning. Today we will hear from stakeholders about the daily fantasy sports industry that has attracted so much attention and excitement in the last year or two.

Most people are familiar the fantasy sports that consist of a group of friends and coworkers getting together for a season long pool. These games are a fun way to bring together communities—even republicans and democrats—around some of our favorite national pastimes.

What we've seen in the last few years is the growth of a new segment of the fantasy world: daily fantasy sports. Around 60 million people are playing fantasy sports and a reported 14 million are playing daily fantasy sports, with millions of dollars at stake.

As we explore the current landscape of daily fantasy sports and the new innovations they offer for fans, I will be focusing on the consumer protections in place for players on DFS Web sites. It is clear that adult players deserve a fair game and clear rules. I am interested in hearing from the witnesses about what internal controls are in place to ensure game integrity on daily fantasy sports Web sites—particularly if different operators use different controls.

I am also interested to learn about the self-regulatory activities industry has put in place and the technological tools available in the market to implement consumer protections include age limits and geofencing.

States all across the country are looking at these issues, which will help inform whether a Federal role is warranted. In Michigan, for instance, there is a bill pending in the legislature to expressly legalize daily fantasy sports.¹

I would like to thank the witnesses for taking time to come help us understand this growing industry and I look forward to hearing your testimony.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back. The chair recognizes the gentleman from New Jersey, Mr. Pallone. 5 minutes for opening statement, please.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman.

Daily fantasy sports have become an integral part of the game for millions of fans around the country. What started as small informal betting pools among friends over the course of a season is now a sophisticated online platform where millions of dollars are exchanged across state lines every day. Entry fees for daily fantasy sports range from a few cents to several thousand dollars, and the major daily fantasy sports operators have posted revenues of more than \$1 billion in recent years.

Casual fans and diehards alike have embraced daily fantasy sports as a way to interact with the games and players they enjoy, and the leagues have taken notice. Within the past 2 years, Major League Baseball, the NBA, the NHL, and Major League Soccer have each purchased ownership stakes or invested in daily fantasy sports operators. Individual teams across professional sports have also formed lucrative partnerships with DFS operators, including nearly all NFL and MLB teams and about half of the NBA teams. These teams and their leagues know that daily fantasy sports participants watch more games than the average fan and will even watch a one-sided contest until the end if a player's performance could improve their stats and earn them money. For the leagues, this presents a massive ratings and advertising opportunity.

And despite its growing popularity, however, daily fantasy sports are currently operating in a murky legal framework by an industry is that mostly unregulated. It is crucial that consumers know what they are purchasing when they sign up for daily fantasy sports and that they understand the risk of losing money in the process. For example, there are reports that 90 percent of payouts were won but just 1 percent of winners. With the allegations of insider trading at two major daily fantasy sports operators, the potential harm to consumers is real. And today we will explore not how to stop people from playing, but how to bring fairness and transparency to the industry.

And I must also mention the hypocrisy of those arguing that daily fantasy sports is readily distinguishable from traditional sports betting. While quietly applying for and receiving gambling licenses in the United Kingdom, daily fantasy sports operators continue to argue to interested states in the United States that unlike sports betting, daily fantasy sports is not gambling. Their reliance on this arbitrary distinction of skill and chance is unconvincing, es-

pecially since both the Department of Justice and the NFL have asserted that sports betting also is a game of skill.

And speaking of the professional sports leagues, they have reaped huge profits from their partnerships with daily fantasy sports operators, at the same time most remain stubbornly opposed to sports betting on the grounds that their players could become involved in gambling and organized crime if it were legalized, yet an estimated \$400 billion is spent annually in the United States on sports betting, and 99 percent is illegal and functions almost exclusively through organized crime.

In New Jersey, voters approved a two-to-one referendum in 2011 to allow sports betting at casinos and race tracks. In response, every major professional sports league joined together and sued the state to stop the plan's implementation and stifle the will of the voters. How can the professional sports leagues oppose sports betting at casinos and race tracks but support and prosper from the betting that is taking place every day in daily fantasy sports?

To date, the leagues and others have not sufficiently explained the difference between fantasy sports, sports betting, and other forms of gambling, and I look forward to hearing from the witnesses on this topic.

I just want to conclude by thanking Chairman Upton and Burgess for holding this hearing at my request. While I am disappointed that some of the relevant actors in this place, like FanDuel and DraftKings, refused to participate today, I still believe that this hearing will be a good beginning to our efforts to level the playing field between daily fantasy sports, traditional sports betting, and gaming.

And I yield back the balance of my time. Thank you, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back.

This concludes member opening statements. The chair would like to remind members that pursuant to committee rules, all members' opening statements will be made part of the record.

The chair also wants to acknowledge the presence of our colleague from Nevada, Ms. Titus, on the dais, who is not a member of the committee, but is monitoring our activities this morning to ensure that we behave ourselves.

So we do want to thank our witnesses for being here this morning and taking their time to testify before the subcommittee. Today's witnesses will have the opportunity to summarize their opening statements, followed by a round of questions from members.

Our witness panel for today's hearing includes Mr. Peter Schoenke from RotoWire; Mr. John McManus, the Executive Vice-President and General Counsel and Secretary at MGM Resorts International; Mr. Steve Brubaker, Executive Director at Small Business of Fantasy Sports Association; Dr. Ryan Rodenberg, Assistant Professor at Florida State University within their Department of Sports Management; Mr. Mark Locke, Chief Executive Officer at Genius Sports Group; Ms. Lindsay Slader, Operations Manager at GeoComply. Where did we get to—Mr. Jordan Gnat, Senior Vice-President of Strategic Business Development at Scientific

Games; Mr. Kurt Eggert, Professor of Law at Chapman University's Fowler School of Law.

We do appreciate all of you being here this morning, and we will begin our panel with Mr. Schoenke. And you are now recognized for 5 minutes for your opening statement. Thank you.

STATEMENTS OF PETER SCHOENKE, PRESIDENT, ROTOWIRE, ON BEHALF OF FANTASY SPORTS TRADE ASSOCIATION; JOHN M. MCMANUS, EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL, AND SECRETARY, MGM RESORTS INTERNATIONAL; STEVE BRUBAKER, EXECUTIVE DIRECTOR, SMALL BUSINESS OF FANTASY SPORTS TRADE ASSOCIATION; DR. RYAN RODENBERG, ASSISTANT PROFESSOR, FLORIDA STATE UNIVERSITY, DEPARTMENT OF SPORT MANAGEMENT; MARK LOCKE, CHIEF EXECUTIVE OFFICER, GENIUS SPORTS GROUP; LINDSAY SLADER, OPERATIONS MANAGER, GEOCOMPLY; JORDAN GNAT, SVP, STRATEGIC BUSINESS DEVELOPMENT, SCIENTIFIC GAMES; AND KURT EGGERT, PROFESSOR OF LAW, CHAPMAN UNIVERSITY FOWLER SCHOOL OF LAW

STATEMENT OF PETER SCHOENKE

Mr. SCHOENKE. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to testify today.

Mr. BURGESS. Our technology here is arcane to ancient. You would think that while we are the premier technology committee in the United States, we would have only the best, but that is not true. So please continue.

Mr. SCHOENKE. I will try to work through it.

Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to testify before you today. My name is Peter Schoenke and I am testifying as chairman of the Fantasy Sports Trade Association.

The FSTA has over 300 members, including major media companies, such as ESPN, CBS, Yahoo, NBC, and Fox Sports; content and data providers like USA Today, RotoGrinders, and STATS, Inc.; and contest and league management operators, such as RealTime Fantasy Sports, MyFantasyLeague, FanDuel, and DraftKings.

Fantasy sports have become a new national pastime, with over 50 million Americans participating in some form of fantasy sports last year. Americans enjoy fantasy sports as a hobby and as a form of entertainment that gives them an enhanced experience and a deeper appreciation for the sports they love.

I am also the founder and president of RotoWire.com, a leading information Web site for fans who enjoy playing fantasy sports. I founded the Web site almost 20 years ago, when fantasy sports were just beginning to be played on the Internet. I am a small business owner based in Madison, Wisconsin, and I chose a career in this industry because I am passionate about playing fantasy sports and helping millions of others enjoy the hobby.

First I would like to give a short introduction to fantasy sports. Although it may seem to some as if fantasy sports started last fall,

with the barrage of ads during football season, the truth is that fantasy sports have been played for over 35 years. While there have been some innovations, like head-to-head contests, live scoring, and most recently the daily or weekly format, the basic concept has remained the same. The objective is for a player to select a team of real world athletes and compete against opponents based upon a scoring system that uses statistical measures of individual athlete's performances.

Take fantasy football as an example. Players draft a team of eight real world football players from different teams to play positions like quarterback, running back, wide receiver, and so forth. The goal is to assemble a fantasy team that will earn the most points, not to pick the winner of any particular game. A running back, for example, earns 1 point for every 10 rushing yards and 6 points for a touchdown. This format is typical for both season-long fantasy contests as well as daily.

Some may have the impression that the daily format is dramatically different than season-long fantasy sports, but it is virtually identical in the way it assigns points for players' performance. All of the same basic principles apply. An owner still assembles a team of real word players from different teams for multiple positions, and those players earn points through the same scoring system as in the season-long leagues. The only difference is the duration of the contest. Rather than taking place over a 17-week football season before crowning a champion, for instance, these contests take place over a single day or weekend. In essence, every week is akin to the playoff rounds in a season-long league; think speed chess versus regular chess.

Many sports observers recognize that fantasy sports are having a transformative effect on how fans enjoy sports. Ultimately this innovation can enhance fans' overall experience, to the benefit of all.

My second point today is that the states are actively regulating our industry. We support commonsense state regulation to ensure transparency and fairness and to maintain consumer confidence. I want to emphasis that we are committed to consumer protection, not just because it is the right thing to do, but because it is vital to the health of our industry. States have traditionally taken the leading role in regulating these issues, and states have taken varying approaches in the context of fantasy sports. In the majority of states, paid fantasy sports operate under the existing legal framework without separate legislation or regulation, but bound by state laws on fair commercial practices.

Some states, including Virginia, Indiana, and Tennessee, have enacted legislation to clarify the legality of paid fantasy sports contests and to ensure consumer protections. Other states are currently crafting legislation tailored to their own state's needs and interests.

We stand ready to work with any state interested in developing a commonsense regulatory framework that would allow residents to play fantasy sports while ensuring appropriate consumer protections and without dampening innovation or denying consumer choice.

Finally, at the Federal level, Congress has empowered the FTC to protect American consumers from unfair or deceptive acts or practices, and we as an industry appreciate that our businesses must comply with these standards just as all other Internet businesses do. We stand ready to work with the FTC and with this subcommittee in moving forward to ensure the fairness and transparency of paid daily fantasy sports as well as season-long fantasy sports, and to ensure that we maintain the trust and confidence of fans that choose to play fantasy sports.

We also hope that in doing so, we preserve the ability of states to regulate this activity, and that they do so without killing the innovative spirit and new and exciting choices for millions of fans who enjoy fantasy sports.

Thank you again for the opportunity to testify today. I look forward to answering any questions you may have.

[The prepared statement of Mr. Schoenke follows:]

TESTIMONY OF PETER SCHOENKE

PRESIDENT, ROTOWIRE.COM

CHAIRMAN, FANTASY SPORTS TRADE ASSOCIATION

Chairman Burgess, Ranking Member Schakowsky, and Members of the Subcommittee, thank you for the opportunity to testify before you today. My name is Peter Schoenke and I am testifying today as the Chairman of the Fantasy Sports Trade Association (the FSTA).

The FSTA has over 300 members – including major media companies such as ESPN, CBS, Yahoo!, NBC and FOX Sports, content and data providers like USA Today, RotoGrinders and STATS, Inc. and contest and league management operators such as RealTime Fantasy Sports, MyFantasyLeague, FanDuel and DraftKings. Fantasy sports have become a new national pastime, with over 50 million Americans participating in some form of fantasy sports last year. Americans enjoy fantasy sports as a hobby and as a form of entertainment that gives them an enhanced experience and a deeper appreciation for the sports they love.

I am also the founder and President of RotoWire.com, a leading information web site for fans who enjoy playing fantasy sports. I founded the website almost 20 years ago – when fantasy sports were just beginning to be played on the Internet. I am a small business owner based in Madison, WI, and I chose a career in this industry because I am passionate about playing fantasy sports myself as well as helping millions of others enjoy the hobby.

There are three points I would like to make with my testimony today. First, playing daily fantasy sports (or DFS) is a very popular hobby – just like season-long fantasy sports. For anyone who does not play fantasy sports, I will give a brief primer on what these contests entail, including a description of the daily format. Second, the states are regulating the fantasy sports industry and the FSTA has embraced common sense regulation. Third, Congress has empowered the Federal Trade Commission to protect consumers from “unfair or deceptive acts or practices” and Congress certainly has an oversight role on this issue.

First, a short introduction to fantasy sports. Although it may seem to some as if fantasy sports started last fall with the barrage of ads during football season, the truth is that fantasy sports have been played for over 35 years. While there have been innovations, like head-to-head contests, live scoring, and most recently, the daily or weekly variety, the basic concept has remained the same. The objective is for a player to select a team of real world athletes and compete against opponents based on a scoring system that uses statistical measures of individual athletes’ performances. Take fantasy football as an example: players draft a team of eight real-world football players from different teams to play positions like quarterback, running back, wide receiver, and so forth. The goal is to assemble a “fantasy” team that will earn the most points – NOT to pick the winner of any particular game. A running back, for example, earns one point for every ten rushing yards and six points for each touchdown.

This format is typical for both season-long fantasy contests as well as daily. Some may have the impression that the daily format is dramatically different than season-long fantasy

sports, but it is virtually identical in the way it assigns points for players' performance. All of the same basic principles apply – an “owner” still assembles teams of real-world players from different teams for multiple positions and those players earn points through the same scoring system as in the season-long leagues. The only difference is the duration of the contest – rather than taking place over a seventeen-week football season before crowning a champion, for instance, these contests take place over a single day or weekend. In essence, every week is akin to the playoff rounds in season-long leagues. Or, by way of analogy, think speed chess versus regular chess.

Many sports observers recognize that fantasy sports are having a transformative effect on how fans enjoy sports. Anyone who reads sports coverage online or tunes in to NFL Sunday pre-game or halftime shows is well aware of the integration of fantasy football discussion into the broader conversation about the day's games. Some suggest that fan interaction with the games will even affect how sports venues are designed and how the games are enjoyed on various viewing platforms. Ultimately this innovation can enhance fans' overall experience to the benefit of all – the teams, leagues, players, and media companies.

Second, states are actively regulating our industry. We support common sense state regulation to ensure transparency and fairness and to maintain consumer confidence. States have traditionally taken the leading role in regulating these issues, and states have taken varying approaches in the context of fantasy sports. In many states, paid fantasy sports operate under the existing legal framework without separate legislation or regulation, but bound by state laws on fair commercial practices. Some states (including Virginia, Indiana and Tennessee) have

enacted legislation to clarify the legality of paid fantasy sports contests and to ensure consumer protections. Other states are currently crafting legislation tailored to their own state's needs and interests as they pertain to this industry. We stand ready to work with any state interested in developing a common sense regulatory framework that would allow residents to play fantasy sports while ensuring appropriate consumer protections and without dampening innovation or denying consumer choice.

Third, at the federal level, Congress has empowered the FTC to protect American consumers from "unfair or deceptive acts or practices" and we as an industry appreciate that our businesses must comply with these standards just as all other online businesses do. In fact, when asked whether the FTC needed additional authority to protect paid fantasy sports players, the Chairman of the FTC reportedly confirmed that Congress has given the FTC sufficient power and authority. We stand ready to work with the FTC and with this Subcommittee in moving forward to ensure the fairness and transparency of paid daily fantasy sports as well as season-long fantasy sports and to ensure that we maintain the trust and confidence of fans that choose to play fantasy sports. We also hope that, in doing so, we preserve the ability of states to regulate this activity and that they do so without killing the innovative spirit and new and exciting choices for millions of fans who enjoy fantasy sports.

Thank you again for the opportunity to testify today. I look forward to answering any questions you may have.

Mr. BURGESS. The chair thanks the gentleman. The chair recognizes Mr. McManus for 5 minutes for your opening statement, please.

STATEMENT OF JOHN M. MCMANUS

Mr. MCMANUS. Thank you, Chairman Burgess, members of the subcommittee. I appreciate the opportunity to be here to testify today.

I am the executive vice-president and general counsel for MGM Resorts. We operate land-based casinos throughout the United States. I note that many of the members of the subcommittee are from the states where we either operate a casino or may be developing one, so I will try to be on my best behavior today.

I have submitted written testimony. I am going to just summarize it, as we have many more knowledgeable panelists on the subject today and I would like to allow additional time for your questions.

And I don't speak for the land-based casino industry generally. There are different points of view with respect to daily fantasy sports. My company has its point of view, and I will speak really on behalf of my company, but I think where there are differences, I can address that through questions if you would like.

Really, like most other people, I first became aware of daily fantasy sports through the barrage of television advertisements. And sort of the first impression I had is, what is this? And it sort of feels like gambling to me, was my initial reaction. And over the last year and a half or so, I have tried to study it, learn more about it.

We are a gambling company, a gaming company, and we are a bookmaker in Nevada, the one state that has really full scale sports betting permitted under PASPA, so it is of great interest to us. And our first reaction was, well, maybe this is something we want to get involved with. We looked into it and concluded that as a regulated company, there was a lot of risk, because there wasn't clarity on whether it was legal, exactly what it was, and, frankly, we didn't know how to make money doing it as well.

So through our study of the subject, we concluded that what we really need is to know whether or not it is legal, because whether we choose to engage in it directly, have marketing partnerships with the companies that do engage in it, or any other association, as a licensed gaming company, we need to associate ourselves with businesses that are legal, and avoid falling into situations where we are associated with an illegal operation.

So we really want clarity, and that is one point I think the industry is unified on, that having legal clarity on the subject of daily fantasy is critical. And gaming and gambling issues have historically and, I think, appropriately been regulated at a state level and legislated at a state level. There are many states represented on this subcommittee where there is no legal casino gaming and there are others where it is an important industry and part of the economy in those states. We think that is where these decisions ought to lie, on gaming anyway, that that ought to be an issue to be decided by the states to preserve the differences of the citizens of the states and let them decide what type of activity will be permissible.

However, to the extent that daily fantasy is or is not gambling, it ought to be run fairly with appropriate consumer protections and appropriate level of regulation, whether it is gaming regulation or otherwise. So we fully support consumers being able to engage in this activity, in a lawful and safe manner, and with appropriate protections. And we hope, whether it is at a Federal level or a state level, appropriate actions are taken to make sure that this is a safe playing field for those who enjoy it.

We think it is a really interesting innovation. It is something that has activated fan bases for a variety of sports, and increased engagement. I know that the leagues, with the exception of the NCAA have embraced it. And it is something that we would like to see done in a safe and responsible manner.

And with that, I will be happy to answer any questions.

[The prepared statement of Mr. McManus follows:]

TESTIMONY OF JOHN M. MCMANUS, EXECUTIVE VICE PRESIDENT,
GENERAL COUNSEL AND SECRETARY,
MGM RESORTS INTERNATIONAL
BEFORE THE
HOUSE SUBCOMMITTEE ON
COMMERCE, MANUFACTURING AND TRADE
DAILY FANTASY SPORTS: ISSUES AND PERSPECTIVES

MAY 11, 2016

Good morning, Chairman Burgess, and members of the Subcommittee. I am John McManus, Executive Vice President and General Counsel of MGM Resorts International.

Thank you for affording me the opportunity to provide some thoughts on a few aspects of Daily Fantasy Sports ("DFS"). DFS is a relatively recent, yet hugely popular, innovation to the well-established season-long fantasy sports products that have been enjoyed by millions of people for several decades. Like many innovations, DFS was born into a legal and regulatory framework that had anticipated neither its creation nor its rapid rise in popularity. The resulting lack of legal clarity has proven a challenge for DFS operators, raised uncertainty for consumers who enjoy the activity, and created a dilemma for political leaders and government officials who are not sure what, if anything, to do about the product. I sincerely hope that we collectively solve these problems, so that enthusiasts may continue to participate in these contests with appropriate consumer protections and regulatory supervision.

In the past few months, there has been much debate about whether DFS constitutes gambling. Gambling is a topic governed by state law, and each state has its own laws on this subject; that has naturally resulted in a number of different definitions and exemptions from what is included within those definitions. For example, many state laws defining gambling include some balance of the relative levels of skill and chance for the activity being analyzed under the applicable test.

However, the distinction of whether DFS is a game of skill or a game of chance is relevant only to the extent that that distinction influences the willingness of professional and amateur sports leagues and governing bodies to embrace this activity. These organizations have been guided for many years by an erroneous belief that lawful sports betting poses a threat to the integrity of professional and amateur sports. The international sports community has taken a more progressive view, one that is supported by logic and fact: that lawful and well-regulated sports betting actually protects the integrity of the game and helps to detect and prevent unlawful efforts to fix matches.

Accordingly, I do not believe it is productive to focus on whether DFS is or is not gambling or is predominated by chance or by skill. The activity is what it is, regardless of how it may be characterized from one jurisdiction to the next. Further, DFS has already been embraced by all the major professional sports leagues and many teams in this country; thus, the debate about whether it is or is not gambling does not advance DFS public policy discussion in any meaningful way.

What is important to the land-based casino industry, and certainly of importance to customers and policymakers at the federal or state level, is that there is clarity regarding the legality of this activity and that there are appropriate consumer protections and regulation.

Let me make one thing clear, MGM Resorts, which operates land-based casinos in several states, does not view DFS as a competitive threat. To the contrary, we would prefer to see DFS be clearly legal in any state in which the will of the citizens dictates that result. Whether it is considered gambling or a contest of skill, one principle remains constant – citizens of each state should have the right to decide what is best for them, and policymakers in those states are tasked with providing the associated statutory and, as appropriate, regulatory framework.

If state law provides that DFS is a legal activity, then the real policy discussion should be focused on the nature and scope of consumer protections and regulation. States such as Nevada that have established gaming regulatory systems and that define DFS contests as gambling are well equipped to provide consumer protection and regulatory oversight. Other states may not define DFS as gambling or may look to entities such as lottery agencies or racing commissions that are well suited to ensure the integrity of this type of contest, while still other states may need to form an agency or task an existing agency with this function.

I submit that the task of regulating DFS is relatively simple: 1) ensure that the contests are run by honest and reputable people; 2) ensure that the contests are conducted in a fair and honest manner; 3) put appropriate controls in place to prevent underage age and problem gaming; and 4) make certain that any applicable laws related to financial reporting, money laundering, and similar matters are followed.

This is not complex.

The purest form of DFS involves a large number of participants paying a relatively modest entry fee and selecting a “team” of players with a fictitious “salary cap” for the chance to win a prize based on the statistical performance of the team they select in a series of real life sporting events. My comments are limited to this purest, most common form of DFS and may not apply to more exotic offerings such as high stakes head-to-head contests, single event contests, or other variations that may start to blur the lines between fantasy sports and proposition betting.

Most importantly, if we do not address the reality of demand for DFS product, we will only help create an unlawful black market run by outlaw offshore operators, just as has occurred in other segments of popular consumer gaming. DFS enthusiasts and casual customers alike are much better off having a lawful, properly regulated system run by responsible companies rather than one operated by anonymous criminals in the shadows. And, should the policymakers and citizens of a given state choose not to allow DFS, as is their right to so choose, our having strengthened a regulatory regime for legitimate operators in other jurisdictions will help drive the illegal operators out of business and thus help states to enforce DFS laws within their borders.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back. Mr. Brubaker, you are recognized for 5 minutes for your opening statement, please.

STATEMENT OF STEVE BRUBAKER

Mr. BRUBAKER. Good morning, Chairman Burgess, Ranking Members Schakowsky and Pallone. My name is Steve Brubaker. And I am here representing the small businesses of fantasy sports.

I think, like many of you, I didn't know there were small businesses of fantasy sports until about 6 weeks ago. I was contacted by a mutual friend that had some fantasy football, season-long fantasy football clients that were disappointed in some legislative activity that happened in Virginia and Indiana. I got in touch with these folks. We decided that we needed to educate legislators, now we have an opportunity to educate Members of Congress, about the needs of small businesses in this industry and how they differ from the large companies.

And we are concerned that, I think you mentioned, Chairman Burgess, this patchwork of laws across the country. We are concerned about this patchwork. It is hard work for a small group of companies to band together and try to work on legislation in 50 states at the same time. We are trying, we are making that effort, and we are going to continue on as long as we can do that.

On the two states that we had problems with early on, Virginia and Indiana, the issues for the small companies are really financial and regulatory. So we had a \$50,000 annual fee in both those states. None of the small companies make \$50,000 in those states. So if you are not making \$50,000 and the fee is \$50,000, you are barred from entry into that state, so financially we can't operate there.

Mr. Schoenke mentioned Tennessee. Tennessee has a 6 percent tax on net revenues. It is not a horrible, large tax, it is higher than we want to see it in that state, but the undefined portion of that is the regulatory fees. We don't know what they are going to be. We have to go negotiate those.

We are looking for clarity in laws. We would like to have low fees everywhere we go, low taxes if there is going to be taxes, but it is the regulatory burden that is really troublesome. So what I mean by that is many of the state laws that we have seen on the books, or are introduced so far, talk about annual audits by a third party within the state. If we had an annual audit for our companies, one audit for the company that would be reciprocally accepted across all 50 states, that would be certainly acceptable, that makes sense. You want to see our financials, here is our audited financials, here they go, all 50 states go out in the mail, but if we have to have audits in every single state, 50 states times that \$4,000 or \$5,000, \$6,000, \$10,000 fee, that is a prohibitive thing for us on the regulatory side.

On scale, we talk about DraftKings and FanDuel, huge, huge, huge companies. Some of these companies that are in the small businesses of fantasy sports group may only have 4,000, 5,000 players all across the country, so it is a different thing. It is like McDonald's compared to the local java hut you go to to get your morning coffee, or a Starbucks or something like that.

But I think critically what we want to try to get across is we want to work with you. If you are interested in doing some more research on this, we will come here and talk to you at length about the needs of small businesses. Certainly we are going to keep plugging away in the states. We are working in Illinois really hard on that bill, Congresswoman Schakowsky. It is coming along. We will see how it progresses. New York has a tough bill. They have a \$500,000 fee, a registration fee, in that state. I don't even know if DraftKings could have afforded that fee, although I think they supported that bill.

So there is a lot of work that we have to do to educate people about the number of businesses, the types of businesses.

A lot of our members are season-long. There is a drastic difference between season-long and daily. And most of that difference comes down to the active management that you have to have when you are a season-long fantasy sports player. You have to readjust your lineup every week for 16 weeks of a football season, thousands of transactions where you go back and forth improving your team so you can beat your buddy who is also in that same league with you.

You don't have that in DFS. You pick your lineup, you select it, you might enter it in one or 100 different games for that day, and then you are done. Season-long, you are constantly working on that team, because, as I said, you want to beat your friends that are playing those games with you.

I am running out of time here. I want to thank you for the opportunity of being here today.

[The prepared statement of Mr. Brubaker follows:]

WRITTEN TESTIMONY OF
THE SMALL BUSINESSES OF FANTASY SPORTS TRADE ASSOCIATION
PRESENTED BY STEVE BRUBAKER BEFORE
THE HOUSE ENERGY AND COMMERCE COMMITTEE:
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
MAY 11, 2016

Good morning Chairman Burgess, Ranking Member Schakowsky and members of the Commerce, Manufacturing and Trade Subcommittee.

My name is Steve Brubaker. I am the Executive Director of The Small Businesses of Fantasy Sports Trade Association. I come before you today to discuss the fantasy sports businesses that are not DraftKings and FanDuel.

DraftKings and FanDuel are daily fantasy sports companies that rocketed into the consciousness of the American public in 2015 due to their unrelenting advertising campaigns that flooded the airwaves and TV screens with stories of average Joes winning millions playing daily fantasy sports.

For years leading up to 2015, most Americans thought fantasy sports was simply a hobby involving sports fans getting together in their rec rooms and challenging each other on their knowledge of sports by drafting and managing imaginary teams of athletes over the course of an entire football or baseball season. These rec room

“leagues” were made up of sports enthusiasts who were co-workers, family members and friends, who competed for bragging rights and often threw a few bucks in a hat that would go to the winner at the end of the season. Over a period of the last two decades, these hobbyist leagues transitioned to the internet, which was important for the participants who no longer lived in close proximity to each other. This transition to the internet also allowed fantasy sports to grow into one of the biggest hobbies in the country, with participants numbering more than 50 million in the United States and Canada.

Public perception of fantasy sports changed dramatically after DraftKings and FanDuel’s advertising campaigns. These newly created games were not the traditional season-long leagues most knew. Instead they were offered in a gaming-style, “daily” format. Participants didn’t draft and manage a fantasy team for an entire baseball or football season, rather they picked a team for a single day game or a weekend of games. Players had the ability to create dozens and even hundreds of teams in a short period of time and instantly enter them into countless daily fantasy sports games.

As DraftKings and FanDuel continued to advertise the large prizes being won on their sites, people started asking questions and looking into these two companies. News stories were written. State attorneys general began to question the legality of daily fantasy sports. State legislatures began writing bills. The two leaders of the daily fantasy sports industry then began writing bills of their own in order to codify

their practices into state law. This resulted in two states, Virginia and Indiana, passing bills that provided safe harbor to the daily fantasy sports companies.

After those two states passed bills that became law, small fantasy sports companies found out that they had a big problem. The fee for participation in those two states had been set at a level far too high for small companies to continue operation. A state-legislated duopoly was essentially created because small companies had become financially barred from participation. This included all the traditional season-long companies that had never offered daily fantasy sports, yet by definition, they became captured by these new laws.

Concerned that they would lose their businesses, the small companies organized and formed a trade association in the early weeks of March 2016 for the sole purpose of working with legislators so they would understand that the fantasy sports industry is not just DraftKings and FanDuel. Small companies have different needs than the large companies, and traditional season-long fantasy sports is not daily fantasy sports.

Because this subcommittee announced it would hold a hearing on “Daily Fantasy Sports” The Small Businesses of Fantasy Sports Trade Association asked to participate in this hearing to help you understand that the actions you may undertake will impact the entire fantasy sports industry, which is far more than just DraftKings and FanDuel.

The small businesses of fantasy sports fall into three categories: fantasy sports game operators, vendors to fantasy sports game operators and vendors to fantasy sports participants (consumers).

Fantasy sports game operators offer a variety of mostly internet based leagues and contests for sports fans to play. There are two basic formats – season-long and daily. Season-long companies are established and have been offering fantasy sports games for decades. Daily companies are newer, many are recent start-ups that are not yet profitable and are just starting to grow their businesses. There are more than 80 small fantasy sports game operators in both formats.

These are the companies that have all been financially barred from Virginia and Indiana. 30 other states have bills pending that could potentially bar them as well.

The second category are the vendors to the fantasy sports game operators. These companies offer services that support the game sites – web developers, content providers, payment processors, attorneys, accountants, etc.

The third category are the vendors that offer products and services to the participants, like sports content, statistics, and advice. These latter two categories are made up of as many as 200 small businesses, who make some or all of their income providing services to the fantasy sports operators and participants.

This “fantasy sports ecosystem” is interdependent. One cannot survive without the other and all of them are fearful that they will lose their businesses if Congress or individual states pass laws like those passed in Virginia and Indiana.

If you want to allow small businesses to continue offering fantasy sports games rather than being financially blocked from participating, and you want to save the jobs of all the vendors that service the industry and the consumers, please consider these legislative problem areas: registration and licensing fees, and regulatory burden.

If there is one key element for you to take away from my comments this morning, it is that all of these companies are small.

While DraftKings and FanDuel had a reported \$3 billion in entry fee gross revenues in 2015, all of the small fantasy sports operators combined equaled less than 5% of that total.

Registration and licensing fees that work for the two giant companies that grossed \$3 billion don’t work for tiny companies.

The licensing fees in Virginia and Indiana are \$50,000 annually. No small company in the fantasy industry has ever made \$50,000 in annual net revenues in either of those states, so none will be licensed there until those laws change. As these

businesses suffer so do all the vendors. And the consumers lose their ability to play the hobby they have enjoyed for years.

Licensing and registration fees must take into account the size of the business paying those fees.

Colorado sent a bill to their governor on Friday that would exempt companies from paying licensing fees when they have less than 7,500 paying customers in that state. This is a sensible number for a state like Colorado. Larger states like New York and California would require a higher exemption threshold.

Illinois has a bill with a graduated registration and licensing fee structure that would charge small companies as little as \$500 to register and \$500 annually to maintain a license if they net less than \$100,000 annually in that state.

Should Congress act on this issue, small companies need solutions similar to those proposed in Colorado and Illinois.

Last week was Small Business Week in America. If we know anything about small businesses, one of their primary concerns is regulatory burdens placed on them by government.

The small businesses of fantasy sports are no different.

At present, many states are rushing to beat the clock on the expiration of their legislative sessions with fantasy sports bills that will crush small businesses with their regulatory burden.

In fact, in many of the bills likely to pass this year, the regulatory burden may be more costly than the combined cost of licensing, registration, and taxation.

The stringent regulations proposed are based on existing gaming laws and are intended to regulate the three billion-dollar daily fantasy sports giants. In many cases, these regulations are incorrectly applied to the traditional season-long companies with no regard to the differences in formats and the logistics or cost of compliance.

Many state legislative measures call for annual audits to be completed and submitted to an in-state regulatory agency. Presumably this is to ensure game participants that the money held in their accounts is safe and is held in a segregated account – and not comingled with the site operator's money.

The problem with annual audits is two-fold. First, audits are very expensive for small businesses and second, much of the current legislation in state capitols across the country would not permit reciprocity between states – meaning small

businesses would have to conduct an audit in every state, every year. No small business can possibly afford 50 audits every year.

The most simple solution for the audit issue is to require that all participant monies be held in a segregated account that cannot be used by the site operator, except to pay for contests and distribute winnings back to the participant. Colorado's bill understands this regulatory burden and exempts small companies from annual audits.

Annual game system testing is an equally costly requirement that we see in many bills across the country. We certainly understand that consumers need to feel assured that the site they are playing on has fair games. But annual testing of game systems is prohibitively expensive and is likely to keep many game providers out of the marketplace. An initial game test provided at the time application makes sense. This is also an example of a regulation that only needs to apply to daily fantasy sports games, not the traditional season-long format.

Finally, I want to take a brief moment to discuss current Federal law on fantasy sports.

In 2006, the Congress acted on this issue and passed the Unlawful Internet Gambling Enforcement Act, and while UIGEA did not specifically define what is and is not illegal internet gambling, it did tell payment processors that it was OK to

process payments for fantasy sports leagues and contests. At that time, fantasy sports only existed in the traditional, season-long format.

Because of this “exemption” for fantasy sports, traditional, season-long companies believed they had a green light to continue to legally run their businesses. Business decisions were made, investments were made, money was borrowed, employees hired, homes were bought, and families were begun based on this understanding of the legality of traditional fantasy sports.

Several years after the passing of UIGEA in 2006, small start-ups have begun offering daily fantasy sports games on the internet using the same perceived exemption in federal law for fantasy sports.

The Small Businesses of Fantasy Sports believe that their members have a Federal exemption to continue offering their fantasy sports games and contests, unless specifically prohibited by state law.

Thank you very much for the time to offer the thoughts of The Small Businesses of Fantasy Sports on this important topic.

I will leave you with these points: Small businesses have different needs than giant businesses and season-long fantasy sports is different than daily fantasy sports.

Thank you.

Mr. BURGESS. The chair thanks the gentleman. The gentleman yields back. The chair recognizes Dr. Rodenberg. 5 minutes for your opening statement, please.

STATEMENT OF RYAN M. RODENBERG

Mr. RODENBERG. Good morning, Dr. Chairman Burgess and other honorable members of the Subcommittee on Commerce, Manufacturing, and Trade. My name is Ryan Rodenberg. I work as a professor—

Mr. BURGESS. Sir, is your microphone on?

Mr. PALLONE. Closer.

Mr. RODENBERG. Good morning, Dr. Chairman Burgess and other honorable members of the subcommittee on Commerce, Manufacturing, and Trade. My name is Ryan Rodenberg. I work as a professor at Florida State University. One of my primary research lines pertains to sports gaming. I am pleased to be invited to testify at today's hearing and appreciate the opportunity to be on this panel. My written statement and oral testimony reflect only my personal views and do not necessarily reflect the views of my employer or any of the media outlets for whom I have written articles.

As I detail in my written statement, daily fantasy sports' current legal status lies at the intersection of three overlapping regulatory circles in a Venn diagram: Federal gaming law, state gaming law, and general notions of consumer protection.

Given the overlap, and recognizing the daily fantasy sports represents only a small portion of the American sports gaming market, I believe any substantive discussion of daily fantasy sports must take place in the context of a simultaneous examination of traditional sports wagering.

In this brief oral testimony, I focus on the most important Federal statute in this realm, the Professional and Amateur Sports Protection Act of 1992, or PASPA, for short. Justice John Paul Stevens, writing for a unanimous U.S. Supreme Court in a 1999 decision opined that, "PASPA includes a variety of exemptions, some with obscured congressional purposes."

Similarly, the Department of Justice raised a number of concerns about PASPA in a September 1991 letter to then Senator Joe Biden.

The paradoxical nature of PASPA's grandfathering scheme among the states has serious implications for potential consumer-protection-related regulations of daily fantasy sports as well as traditional sports gambling.

Over the course of nearly 5 years of litigation, three Federal lawsuits against two different sitting state governors, and three Court of Appeals decisions with a fourth decision imminent, here is what we know about PASPA. First, for grandfathered states such as Nevada, Delaware, Montana, Oregon, and perhaps a few others, PASPA seemingly freezes in time, circa 1992, those states' abilities to enact sports gaming related regulations.

Second, for nongrandfathered states, PASPA seemingly provides such states with the option of either retaining their sports gambling prohibitions as is or repealing their prohibitions entirely. To do otherwise would apparently render PASPA unconstitutional under the Tenth Amendment. Whether any middle ground is per-

mitted under PASPA remains a subject of still ongoing litigation filed by the NCAA, NBA, NFL, NHL, and Major League Baseball against the Governor of New Jersey.

Third, for all states, whether grandfathered under PASPA or not, the plain language of PASPA constrains the ability of governments to enact commonsense consumer protection legislation for both daily fantasy sports and traditional sports wagering. No Federal court case has squarely decided whether daily fantasy sports constitute illegal gambling. Relatedly, a Department of Justice attorney testified before Congress in 2000 and said, “there is considerable debate we found in our research over whether or not fantasy sports leagues constitute gambling or whether they are simply a contest.”

For all these reasons, I think it would be difficult for Congress to address specific issues pertaining to daily fantasy sports absent a contemporaneous evaluation of traditional sports wagering.

Thank you, Chairman Burgess and members of the subcommittee, for the opportunity to appear before you today. I am happy to answer any questions you may have.

[The prepared statement of Mr. Rodenberg follows:]

Prepared Written Statement of

Ryan M. Rodenberg

For the Hearing entitled

“Daily Fantasy Sports: Issues and Perspectives”

Before the

Subcommittee on Commerce, Manufacturing, and Trade

Of the Committee on Energy and Commerce

House of Representatives

United States Congress

May 11, 2016

Washington, DC, USA

Introduction

Chairman Burgess and other honorable members of the Subcommittee on Commerce, Manufacturing, and Trade, I am pleased to be invited to testify at the hearing entitled “Daily Fantasy Sports: Issues and Perspectives.” I appreciate the opportunity to be on this panel with distinguished representatives and experts connected to the daily fantasy sports industry. Although I work as a professor and freelance author, this prepared statement and my remarks during the hearing reflect only my personal views and do not necessarily reflect the views of my employer Florida State University or any of the media outlets for whom I have written articles as a freelance writer.

While daily fantasy sports contests have existed for almost a decade,¹ only within the past few years have such contests garnered widespread media attention and increased legal scrutiny. Indeed, the still-evolving life cycle of daily fantasy sports somewhat mirrors other innovative, technology-driven enterprises such as online ticket resellers, mobile ride-sharing services, and certain internet-based bed and breakfast providers. As set forth in Figure 1 below, daily fantasy sports’ current legal status lies at the intersection of three overlapping regulatory circles in a Venn diagram – (i) federal gaming law; (ii) state gaming law; and (iii) consumer protection policies. With daily fantasy sports representing only a small portion of the overall American sports gaming market, any substantive discussion of daily fantasy sports must take place in the

¹ Daily fantasy sports are contests where participants select real-world athletes for a “fantasy” team and compete against one or more other participants, with the statistical performances of such real-world athletes (in actual sporting events) used to determine the winners of the corresponding fantasy contests. Daily fantasy sports are closely related to traditional season-long fantasy sports, with at least two major differences. First, daily fantasy sports contests are of short duration, with leagues lasting a week, a day, or a few hours. This is in contrast to traditional fantasy sports leagues taking place over the course of several months. Second, the format of daily fantasy sports differs than its season-long cousin, with virtually all contests taking place online and involving unique configurations ranging from two-person “head-to-head” contests to large-scale tournaments with thousands of entries and seven figure prize money payouts. For a detailed history of fantasy sports, see Cabot & Csoka, *Fantasy Sports: One Form of Mainstream Wagering in the United States*, 40 *John Marshall Law Review* 1195-1219 (2007). See also Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, 3 *Harvard Journal of Sports and Entertainment Law* 1-53 (2012).

context of a simultaneous examination of traditional sports wagering.² Accordingly, I discuss each of Figure 1's three components in detail below.³

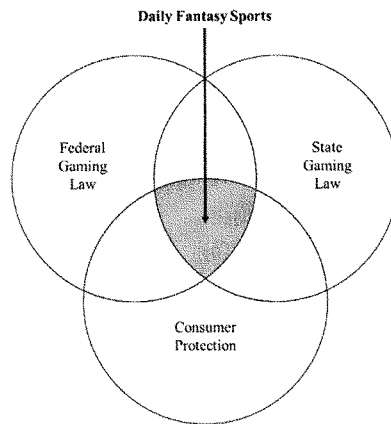


Figure 1 – DFS Legal Status Venn Diagram

Federal Gaming Law

Congress has a considerable history of enacting sports-specific legislation in the gaming realm.⁴ Two federal statutes are most often discussed in connection with daily fantasy sports. The most relevant statute in this space is the Professional and Amateur Sports Protection Act (“PASPA”) of 1992.⁵ PASPA aimed to stop the spread of state-sponsored sports gambling via injunctive relief, with the Department of Justice or “a professional sports organization or amateur sports organization whose competitive game is alleged to be

² I use the term “traditional sports wagering” broadly to include a variety of sports betting options at both the team and individual level, including futures, parlays, point spreads, totals, moneylines, proposition bets, exchange-based trading, and in-game wagering.

³ For the avoidance of doubt, I recognize that the terms “gaming,” “gambling,” “betting,” and “wagering” may hold unique definitional significance under various federal and state laws. Nevertheless, I largely use the terms interchangeably here.

⁴ See Rodenberg & Kaburakis, Legal and Corruption Issues in Sports Gambling, 23 *Journal of Legal Aspects of Sport*, 8-35 (2013).

⁵ 28 U.S.C. § 3701, et seq.

the basis of such violation” deputized to enforce it.⁶ PASPA resulted in a small number of states—Nevada, Delaware, Montana, Oregon, and perhaps others—being exempted under the law’s grandfathering provision.⁷ For grandfathered states, PASPA supposedly “freezes” the scope of that state’s legal sports gaming offerings to then-existing options.⁸ For non-grandfathered states, PASPA paradoxically provides states with the option of either retaining their sports gambling prohibitions or repealing such prohibitions in their entirety, with on-going federal litigation that may set the parameters of a permissible “partial repeal” under PASPA.⁹ Supreme Court Justice John Paul Stevens, writing for a unanimous court in a 1999 decision, opined that PASPA “includes a variety of exemptions, some with obscured Congressional purposes.”¹⁰

PASPA’s apparent scope vis-à-vis daily fantasy sports is important. Under PASPA, in relevant part, it is unlawful for state governments to “sponsor, operate, advertise, promote, license, or authorize...[a] betting, gambling, or wagering scheme based...on one or more competitive games in which amateur or professional athletes participate...or on one or more performances of such athletes in such games.”¹¹ The plain language of PASPA impacts the ability of governments to regulate both daily fantasy sports and traditional sports wagering. To date, no court has directly evaluated daily fantasy sports under PASPA.

The second federal statute with connections to daily fantasy sports is the Unlawful Internet Gambling Enforcement Act (“UIGEA”) of 2006.¹² While UIGEA remains critically important for payment

⁶ Prior to enactment, the Department of Justice raised a number of concerns about the draft bill that would become PASPA. See Letter from W. Lee Rawls, Assistant Attorney General, Department of Justice, to the Honorable Joseph R. Biden, Jr., Chairman, Committee on the Judiciary, Sept. 24, 1991.

⁷ See Holden, et al., Sports Gambling and Your Grandfather (Clause), 26 *Stanford Law & Policy Review Online* 1 (2014). See also Rodenberg & Wertheim, Hedging Their Bets, *Sports Illustrated*, May 12, 2014, p. 52-54.

⁸ See *Office of the Commissioner of Major League Baseball, et al. v. Markell, et al.*, 579 F.3d 293 (3d Cir. 2009).

⁹ See *NCAA, et al. v. Christie, et al.*, 730 F.3d 208 (3d Cir. 2013) (“*Christie I*”). See also *NCAA, et al. v. Christie, et al.*, ____ F.3d ____ (3d Cir. 2015) (“*Christie II*”). The *Christie II* litigation remains on-going as of May 6, 2016. During the March 17, 2015 oral argument in *Christie II*, New Jersey attorney Ted Olson referred to PASPA as “an Orwellian concept.” Relatedly, attorney Paul Clement representing the five sports league plaintiffs argued on February 17, 2016 that PASPA’s scope would allow up to \$1,000 bets between individuals pursuant to what he described during March 17, 2015 oral argument as a PASPA-compliant “friends and family plan.”

¹⁰ See *Greater New Orleans Broadcasting Ass’n, Inc. et al. v. United States*, 527 U.S. 173, 179 (1999)(case pertained to restrictions on gambling-related advertising and was not PASPA-focused).

¹¹ 28 U.S.C. § 3702. PASPA’s prohibition also extends to individuals acting pursuant to “law or compact of a governmental entity.”

¹² 31 U.S.C. § 5361 et seq.

processors servicing the daily fantasy sports sector,¹³ UIGEA is of questionable importance for daily fantasy sports more generally. As recent state attorney general activity has revealed, such uncertainty is ironic given that UIGEA was, at one time, frequently pointed to as establishing and validating the legality of daily fantasy sports.

In late 2015, I undertook a detailed archival examination of UIGEA’s oft-referenced fantasy sports exemption.¹⁴ Using publicly-available documents, my take-away was two-fold. First, I could not find any evidence that the drafters of UIGEA explicitly considered daily fantasy sports in the course of creating the statutory carve-out. The closest any Congressional hearing got to addressing short-duration fantasy sports was a brief, non-conclusive exchange on March 23, 1999 between Senator Jon Kyl and Major League Baseball Players Association representative Marianne McGettigan that referenced fantasy contests involving “...a week of activity or a month of activity or a couple of days of activity...”¹⁵ Second, the opening section of UIGEA explicitly states that the law does not alter, limit, or extend “any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.”¹⁶ A frequently-cited subsequent section of UIGEA provides a multi-prong safe harbor for fantasy sports in connection with UIGEA’s restrictions for payment processors.

Beyond PASPA and UIGEA, Congress has enacted a number of other statutes that could possibly touch on daily fantasy sports and traditional sports wagering.¹⁷ Examples include the Wire Act,¹⁸ the Sports

¹³ See Grove, Major Payment Processing Partner Demands That Daily Fantasy Sports Sites Exit New York, *Legal Sports Report*, Nov. 11, 2015.

¹⁴ See Rodenberg, The True Congressional Origin of Daily Fantasy Sports, *ESPN.com*, Oct. 28, 2015.

¹⁵ See Internet Gambling Hearing before the Subcommittee on Technology, Terrorism, and Government Information of the Committee on the Judiciary of the U.S. Senate, 106th Cong. (March 23, 1999).

¹⁶ See Rodenberg, What’s Next for the Daily Fantasy Industry? *ESPN.com*, Oct. 16, 2015.

¹⁷ In addition to the specific statutes mentioned in this paragraph, the Federal Trade Commission, Internal Revenue Service (e.g. Form 730), and Commodity Futures Trading Commission may have regulations that overlap with certain aspects of daily fantasy sports. First Amendment free speech considerations and rights of publicity concerns have also impacted with fantasy sports. See *C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media, LP*, 505 F.3d 818 (8th Cir. 2007).

¹⁸ 18 U.S.C. § 1084. See also Seitz, Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, 35 *Op. O.L.C.* 1-13 (Sept. 20, 2011).

Bribery Act,¹⁹ the Illegal Gambling Business Act,²⁰ and the Dodd-Frank Wall Street Reform and Consumer Protection Act.²¹ The federal wire fraud statute could also apply in cases involving “any scheme or artifice to defraud.”²² Even the so-called “Quiz Show scandal” statute could attach if deception is found in a fantasy sports competition broadcast to viewers.²³

No federal court case has squarely decided whether daily fantasy sports contests constitute illegal gambling under federal law. However, two cases provide guidance. First, the Third Circuit Court of Appeals touched on the issue in a 2013 footnote: “We note, however, the legal difference between paying fees to participate in fantasy leagues and single-game wagering as contemplated by [New Jersey’s] Wagering Law.”²⁴ Second, a New Jersey-based federal judge wrote the following in 2007:

“Courts have distinguished between *bona fide* entry fees and bets or wagers, holding that entry fees do not constitute bets or wagers where they are paid unconditionally for the privilege of participating in a contest, and the prize is for an amount certain that is guaranteed to be won by one of the contestants (but not the entity offering the prize).”²⁵

The Department of Justice has opined on fantasy sports too.²⁶ In a 1999 letter, the Justice Department raised concerns about certain exemptions in a UIGEA precursor bill:

“Specifically, the Department of Justice opposes the exemptions for parimutuel wagering and fantasy sports leagues, because there is no legitimate reason why bets or wagers sent or received by gambling businesses on these activities should be exempted from the ban while bets or wagers on other activities are not.”²⁷

¹⁹ 18 U.S.C. § 224.

²⁰ 18 U.S.C. § 1955.

²¹ 12 U.S.C. § 5301, et seq.

²² 18 U.S.C. § 1343.

²³ 47 U.S.C. § 509.

²⁴ *NCAA, et al. v. Christie, et al.*, 730 F.3d 208, 251, n. 4 (3d Cir. 2013) (“*Christie I*”).

²⁵ *Humphrey v. Viacom, et al.*, 2007 WL 1797648, p. 5 (D. N.J. 2007).

²⁶ Widespread media reports indicate that there are one or more federal probes focused on daily fantasy sports. For example, see Reagan & Barrett, FBI, Justice Department Investigating Daily Fantasy Sports Business Model, *Wall Street Journal*, Oct. 14, 2015. As of May 6, 2016, details of any such probes have yet to be released publicly. See Woodward, Federal Fantasy Sports Probe Could Drag on For Months, Lawyer Says, *Boston Globe*, April 8, 2016.

²⁷ Letter from Jon P. Jennings, Acting Assistant Attorney General, Department of Justice, to the Honorable Patrick J. Leahy, Ranking Minority Member, Committee on the Judiciary, June 9, 1999. The same letter also included the following: “[W]e do urge Congress to craft carefully legislation to ensure that gambling on fantasy sports leagues and contests is not legalized on the Internet, when all other gambling is banned.”

A year later, a Justice Department attorney testified before Congress and said: “There is considerable debate we found in our research over whether or not fantasy sports leagues constitute gambling or whether they are simply a contest...”²⁸ In a letter responding to follow-up questions after an April 5, 2006 Congressional hearing, a different Department of Justice attorney wrote: “The [Justice] Department does not maintain information about regulatory regimes for fantasy sports, which would be a matter of state law.”²⁹

State Gaming Law

Every state has gambling statutes on the books. Some states are restrictive (Utah and Hawaii) and some states are more permissive (Nevada and New Jersey). Other states fall somewhere in between these two extremes.³⁰ But in all cases—as the Department of Justice explained multiple times—states seemingly have the right to regulate (daily) fantasy sports, if in compliance with PASPA.

A number of jurisdictions have already moved to explicitly legalize (and regulate) daily fantasy sports under state law.³¹ As of May 6, 2016, examples include Massachusetts, Indiana, Tennessee, and Virginia. However, there are open questions as to whether some state statutes may permit certain player-level proposition bets that extend beyond what is currently considered mainstream daily fantasy sports.³² Beyond these states where daily fantasy sports are permitted, there are: (i) about a dozen states where the legality of

²⁸ See Statement of Kevin Di Gregory, Internet Gambling Prohibition Act of 1999 Hearing before the Subcommittee on Telecommunications, Trade and Consumer Protection of the House Committee on Commerce, 106th Cong. (June 15, 2000). During testimony, the same Justice Department attorney took part in the following Q&A with Congressman Cox, in relevant part:

Mr. Cox – “What is the prosecutorial policy of the Justice Department with respect to fantasy sports leagues right now?”
Mr. Di Gregory – “I don’t believe that we have engaged in any prosecutions of fantasy sports leagues.”

Mr. Cox – “Is anybody else doing that?”

Mr. Di Gregory – “I know there are laws on the books in some jurisdictions. Montana comes to mind, although I may be wrong, which prohibits fantasy sports leagues and State governments, as they have always been, are, of course, going to regulate in their own States, the kind of conduct that they consider gambling, and regulate accordingly.”

²⁹ Letter from William E. Moschella, Assistant Attorney General, Department of Justice, to the Honorable Howard Coble, Chairman, Subcommittee on Crime, Terrorism, and Homeland Security, July 19, 2006. The same letter also included the following, in relevant part: “...to the extent that ‘fantasy sports’ fall within the exception to the term ‘bet or wager’ in subsection 1081(6)(vii) and, thus, are not subject to the prohibition of Section 1084, if the activity violated the laws of a particular state, it would still be illegal in that state.”

³⁰ See Rodenberg, Why Do States Define Gambling Differently? *ESPN.com*, Feb. 18, 2016.

³¹ See Gouker, DFS State Watch: Monitoring Daily Fantasy Sports Action in State Government, *Legal Sports Report*, April 26, 2016.

³² See Grove, States Passing Fantasy Sports Bills May Be Authorizing Far More Sports Betting Than They Realize, *Legal Sports Report*, Feb. 19, 2016.

daily fantasy sports is currently being contested; (ii) five states where cash-based fantasy sports have historically been banned; (iii) upwards of fifteen states where legislation is pending; and (iv) about a dozen states where there does not appear to be any current legislation under consideration.³³

The skill versus chance debate has dominated recent daily fantasy litigation in New York and elsewhere. While issues pertaining to relative levels of skill exhibited by successful daily fantasy sports participants are important and have a strong historical anchor under both federal and state laws,³⁴ they are not necessarily dispositive. For example, in legal filings, both the Department of Justice and the National Football League (“NFL”) have posited that traditional sports betting is skill-based.³⁵ But these positions did not instantly remove such sports betting from existing prohibitions on the activity. Beyond skill versus chance issues, other state law considerations potentially relevant for daily fantasy sports include provisions related to bookmakers³⁶ and betting pools.³⁷

Consumer Protection

Consumer protection concerns in daily fantasy sports and oft-mentioned “integrity of the game” considerations are best analyzed on two levels. The first level pertains to the real-world sporting events to which daily fantasy sports are tethered. While daily fantasy sports are unlikely to result in widespread corruption of the underlying sporting events, the possibility of manipulation is not completely absent, as an analogy to spot-fixing can be made. It is likely for this reason that the National Basketball Association (“NBA”), National Hockey League (“NHL”), and Major League Baseball (“MLB”) prohibit players and

³³ See Rodenberg, Daily Fantasy Sports State-By-State Tracker, *ESPN.com*, May 3, 2016.

³⁴ For example, UIGEA’s fantasy sports exemption includes a reference to “the relative knowledge and skill of the participants.”

³⁵ See Rodenberg, Documents Show DOJ, NFL Have Argued that Sports Betting is Skill-Based, *ESPN.com*, July 21, 2015.

³⁶ For an example from Washington State, see Rodenberg, ‘eBay Meets Facebook in Las Vegas:’ The Fascinating Story of Betcha.com, *ESPN.com*, Aug. 25, 2015.

³⁷ For an example from Massachusetts, see Massachusetts Gaming Commission, White Paper on Daily Fantasy Sports, p. 6-8, Jan. 11, 2016.

certain team/league personnel from participating in cash-based daily fantasy leagues³⁸ and the NFL does not allow its players, coaches, or executives to win more than \$250 in fantasy contests.³⁹

The second level of integrity-related analysis focuses on the fantasy contest itself.⁴⁰ The (mis-)use of non-public information—whether derived from insiders working for fantasy companies or athletes, coaches, trainers, or executives privy to such information—could influence the results of lucrative payouts from daily fantasy contests. Likewise, the integrity of the fantasy contest could be impacted by software vulnerability, the accuracy of statistical results received from data dissemination firms whose employees may be participating in fantasy leagues themselves, biased game scorekeepers working at the underlying real-world sporting events, opaque fantasy game mechanics, or uneven enforcement of contest rules in response to allegations of policies being violated.

Whether at the federal or state level, consumer protection considerations could take many forms beyond already-implemented post-scandal measures barring daily fantasy companies' employees from playing cash-based fantasy contests.⁴¹ A non-exhaustive list of potential consumer protection-oriented policies includes: (i) advertising restrictions; (ii) prohibiting fantasy play by minors via age verification procedures; (iii) making available compulsive gambling and addiction resources (and implementing data-driven procedures to identify problematic behaviors); (iv) geo-location tracking; (v) availability of self-exclusion lists; (vi) restricting or eliminating the use of algorithms, scripts, and bots; (vii) limiting the number entries in certain daily fantasy contests; (viii) including special protections for "head-to-head" daily fantasy contests;⁴² (ix) requiring the adoption of "know your customer" guidelines; and (x) mandating explicit

³⁸ See Levinson, Daily Fantasy Sports Growth Pushes Leagues to Regulate Players, *Bloomberg*, April 1, 2015.

³⁹ See Florio, NFL Players Can Play Daily Fantasy, They Just Can't Win Much, *Pro Football Talk*, Sept. 29, 2015.

⁴⁰ For a discussion of consumer protection considerations in the gambling industry generally, see Eggert, Truth in Gaming: Toward Consumer Protection in the Gambling Industry, 63(2) *Maryland Law Review* 217-286 (2004).

⁴¹ See McCann, In Wake of Latest Allegations, a Look at the Legality of Daily Fantasy Sports, *SI.com*, Oct. 6, 2015. See also, McCann & Green, Examining the Impact of Potential Preliminary Injunction on DFN Lawsuit, *SI.com*, Nov. 20, 2015.

⁴² Peer-to-peer "head-to-head" daily fantasy contests may deserve special attention from a consumer protection standpoint, as the format could be vulnerable to player collusion or predatory stalking. The binary, winner-take-all (minus the operator's commission) format differs from other types of daily fantasy sports that follow a tournament structure. In addition, head-to-head contests have some characteristics that resemble transactions on exchange-based platforms such as Betfair.

accounting procedures to ensure that fantasy player funds are in segregated accounts and not commingled in general operating funds.

During the past twelve months, the vast majority of daily fantasy companies have moved from a policy stance of resisting regulation to one that is now open to governmental regulation. Whether such oversight is federal, state, or both, regulation in this space seems inevitable.⁴³ But only reasonable regulation would allow the industry to remain viable and meet consumer demand. Unreasonable regulations could possibly result in an illegal daily fantasy sports market similar to that currently in place for traditional sports gambling.⁴⁴ Both the Department of the Treasury's FinCEN division and the Department of Justice have recently expressed concerns about illegal internet gambling and sports betting.⁴⁵ These concerns may apply to daily fantasy sports as well.

Inferences and Outlook

The unique characteristics of daily fantasy sports are different than traditional sports wagering.⁴⁶ However, as over a dozen on-going or recently-concluded federal and state probes have demonstrated, such differences are not enough to completely remove daily fantasy sports from the broad umbrella of federal/state gaming laws and consumer protection concerns. This overlap leads me to a number of inferences about possible near-future developments.

⁴³ Regulation through the enactment of laws is relatively inexpensive, but the enforcement of any federal and/or state regulations specific to daily fantasy sports would be time-consuming and expensive. With no federal regulatory process under consideration and state-level daily fantasy sports regulations in their infancy, it is premature to draw any reasonably clear inferences about how regulatory enforcement could/should be effectuated.

⁴⁴ Nevada and Delaware – two states where certain forms of traditional sports wagering are permissible under PASPA – control only a small fraction of the overall (legal and illegal) American sports betting market. For a textured overview of (il)legal sports gambling, see Griffin, *Gaming the Game: The Story Behind the NBA Betting Scandal and the Gambler that Made it Happen* (Barricade Books 2011).

⁴⁵ See Rodenberg, Biggest Issues for Daily Fantasy after New York Ruling, *ESPN.com*, Dec. 11, 2015. See also Purdum, Department of Justice Will Not Weigh In on DraftKings, FanDuel Controversy, *ESPN.com*, Nov. 13, 2015.

⁴⁶ Sports league executives share in this opinion. See Rovell, Commissioners Say Daily Fantasy Not Akin to Gambling, but Needs Regulation, *ESPN.com*, Oct. 27, 2015; Purdum, NFL's Roger Goodell Sees Difference Between Fantasy and Gambling, *ESPN.com*, Sept. 23, 2015; and Gouker, What the NFL, NBA, and MLB Have to Say about Daily Fantasy Sports and Sports Betting, *Legal Sports Report*, Nov. 4, 2015.

Integrity of the game considerations—for both real-world sporting events and the daily fantasy contests connected thereto—are paramount. If sports fans come to believe that honest athletic competition has been replaced by corrupted or pre-scripted entertainment, spectator sports will likely wither away. Likewise, if the millions of Americans who participate in (daily) fantasy sports come to believe that the pay-to-play fantasy contests are illegitimate, it is difficult to see how consumer interest could be retained. These game integrity concerns, whether related to real-world sporting events or accompanying fantasy contests, lend themselves to an opportunity. Congress and/or state legislators have the opportunity to enact reasonable regulations and meaningful enforcement mechanisms. Indeed, game integrity is one issue where the interests of legislators, law enforcement, sports leagues, and reputable fantasy/gaming operators are allied.

Prominent American sports leagues, a group that includes the National Collegiate Athletic Association (“NCAA”), NHL, NBA, MLB, and NFL, recently posited that they have a proprietary interest in “the degree to which others derive economic benefits from their own games.”⁴⁷ More narrowly, the same quintet of sports leagues argued that they “have an essential interest in how their games are perceived and the degree to which their sporting events become betting events.”⁴⁸ Consistent with these positions, it is plausible to infer that certain sports leagues may: (i) seek to memorialize certain gaming-related intellectual property rights through litigation or legislation; (ii) move to license so-called “official data rights” to third party gaming operators; and/or (iii) create gaming platforms themselves to offer (exclusive) wagering options directly to consumers and, in turn, cut out competitors.

⁴⁷ Response Brief of Plaintiffs-Appellees at 18, *NCAA et al. v. Christie et al.*, (June 7, 2013).

⁴⁸ Response Brief of Plaintiffs-Appellees at 13-14, *NCAA et al. v. Christie et al.*, (June 7, 2013). In the context of real-time sports data, sports leagues have similarly emphasized the value in such data. For example, in *NBA v. Motorola, et al.*, 105 F.3d 841 (2d Cir. 1997), the NFL, NHL, and MLB filed an October 3, 1996 amicus brief and posited that they: “share a common interest with the NBA in protecting and preserving for professional sports leagues and their member clubs, the rights to, and commercial value of, exclusive presentation of real-time running accounts of the live professional sporting event that result from their efforts and investments.” Proprietary and non-proprietary real-time data are the fuel for burgeoning live wagering and in-game fantasy sports. See Rodenberg, et al., Real-Time Sports Data and the First Amendment, 11(2) *Washington Journal of Law, Technology & Arts* 63-104 (2015).

Whether through equity investments or advertising partnerships, a number of sports leagues, labor unions, team owners, and media outlets have embraced daily fantasy sports and the commercial benefits that derive from it in the form of increased consumer engagement.⁴⁹ The “second-screen experience” has transformed passive sports spectators into active consumers that can be monitored and monetized. The same type of enhanced consumer engagement can be gleaned from traditional sports gambling, especially the shift to in-game wagering and micro-betting while the game is taking place. Nevertheless, certain sports leagues have simultaneously resisted Delaware and New Jersey’s move to offer traditional sports gaming options. Depending on the result of the on-going New Jersey sports wagering litigation,⁵⁰ discussions about nationwide legalized sports gambling may accelerate.⁵¹

In so doing, at least one positive aspect of a regulated and transparent fantasy and gaming market could result. Data from a highly liquid market could be harnessed to probe for irregular statistical fingerprints indicative of possible integrity issues about both real-world sporting events and fantasy contests. Indeed, in a trilogy of co-authored academic papers,⁵² I have demonstrated how forensic sports law analytics can be a useful tool in the detection of game-fixing or betting fraud. Similarly, there are a number of for-profit commercial entities that provide related services in partnership with sports leagues and athletic events.⁵³ In addition to several professional sports leagues that have adopted the practice,⁵⁴ the

⁴⁹ In addition to partnerships with certain daily fantasy companies, a number of sports leagues have also entered into commercial arrangement with companies in the business of transmitting real-time data and next-generation statistics for gambling and non-gambling purposes. See Fainaru, et al., Betting on the Come: Leagues Strike Deals with Gambling-Related Firms, *ESPN.com*, Jan. 28, 2016. See also Heitner, Is Major League Baseball Ready to Embrace Sports Betting?, *Forbes.com*, April 19, 2016.

⁵⁰ As of May 6, 2016, a decision in the case has yet to be released. Oral arguments before an *en banc* panel of the U.S. Court of Appeals for the Third Circuit took place on February 17, 2016.

⁵¹ For example, NBA commissioner Adam Silver has already articulated a new policy position favoring the legalization of traditional sports gambling. See Silver, Legalize Sports Betting, *New York Times*, Nov. 14, 2014, p. A23.

⁵² See Rodenberg & Feustel, Forensic Sports Analytics: Detecting and Predicting Match-Fixing in Tennis, 8(1) *Journal of Prediction Markets* 77-95 (2014); Feustel & Rodenberg, Sports (Betting) Integrity: Detecting Match-Fixing in Soccer, 19(10) *Gaming Law Review and Economics* 689-694 (2015); and Rodenberg, et al., Reverse Engineering the NBA Referee Betting Scandal, working paper (2016).

⁵³ While betting line monitoring is valuable, it is no panacea, especially if the results of such monitoring are not publicly released and/or turned over to law enforcement officers authorized to conduct follow-up investigations with subpoenas, search warrants, and arrest power.

⁵⁴ See Fainaru, et al. Betting on the Come: Leagues Strike Deals with Gambling-Related Firms, *ESPN.com*, Jan. 28, 2016. See also Rodenberg, MLB to Monitor Betting Lines in Real Time Starting in 2016, *ESPN.com*, Nov. 11, 2015.

commissioner of a prominent college athletic conference wrote, in relevant part, that: “fraud prevention and consultative services are key tools that support preserving and protecting the integrity of our sports and sports competitors.”⁵⁵

As the daily fantasy sports industry matures and works through its current regulatory challenges, changes are likely. Most notably, the format and time-duration of fantasy contests will shift. Like options already popular in Europe and being introduced in Nevada,⁵⁶ the future of daily fantasy sports likely lies in real-time possibilities where contestants dynamically interact as the underlying sporting event progresses. Such in-game options will be available in a variety of different mobile-friendly platforms.⁵⁷

Thank you, Chairman Burgess and members of the Subcommittee on Commerce, Manufacturing, and Trade, for the opportunity to appear before you today.

⁵⁵ Letter from Larry Scott, Pac-12 commissioner, to A.G. Burnett, Chairman, Nevada Gaming Control Board, March 5, 2015.

⁵⁶ See Gouker, NBA Commish, NHL Owner Bullish on ‘In-Game’ Sports Betting in U.S.? *Legal Sports Report*, April 30, 2015). See also Rodenberg, How Gambling ‘Courtsiders’ are Impacting Tennis, *ESPN.com*, Aug. 21, 2015.

⁵⁷ See Rodenberg, The Inevitable Rise of Real-Time Fantasy Sports, *ESPN.com*, Aug. 18, 2015.

Mr. BURGESS. The chair thanks the gentleman. Mr. Locke, you are recognized. 5 minutes for your opening statement, please.

STATEMENT OF MARK LOCKE

Mr. LOCKE. Good morning. Many thanks to the committee for giving me the opportunity to speak today and share my experiences and views in relation to sports integrity. My name is Mark Locke. I am the chief executive officer of Genius Sports. We are a U.K.-based technology company that, among other things, specialize in providing technology and education services to sport in order to help them both protect the integrity of their events and also to help them understand the markets and the environment within which they operate.

As I see it, my role here today is to share my experience and knowledge of factors that can influence the integrity of sport. At no point during today's sessions will any views I have be those other than my own, and I am certainly not speaking on behalf of or representing in any way the views of our partners or clients both here in the U.S. or internationally.

Genius Sports was established as a technology company in the year 2000, and we have been operating in the regulated international gaming, sports, and lottery markets, providing various technical solutions that, amongst other things, enable us to collect data, model how events should be expected to proceed, and monitor betting markets on a live and automated basis. As a result of this work in technology, we are able to help sports to recognize anomalies that could indicate potential problems with the integrity of their events.

As sports become more widely appreciated and internationalized, there has been an increasing need to have an education and technology services available to provide sports leagues and federations with the necessary breadth of knowledge and expertise in order to help them to manage in a safe and responsible fashion the growth of their events. We work across all sports, from technology, to education, helping these sports to achieve those goals.

I hope that my experience and knowledge will be helpful to the committee today. And once again, many thanks for giving me the honor of participating.

[The prepared statement of Mr. Locke follows:]



Genius Sports provide consultancy, technology and managed services to sports organisations in order to manage sports integrity and prevent corruption.

With offices in 10 locations internationally, we have a global reach and rich experience of managing sports integrity across geographies and cultures.

Our partners include the English Premier League, FIFA and Major League Baseball, amongst other leading sports organisations.

Genius Sports approach to combatting sports corruption and upholding integrity is based upon the informed sharing of expertise, information and data within robust regulatory environments.

The proliferation of unregulated sports gambling, particularly within the US and Asia, has heightened the threat to game integrity and consumer protection within these territories. Furthermore, it has become an important source of finance and vehicle for money laundering amongst organised crime entities.

Genius Sports work with responsible gaming companies and state lotteries in regulated wagering markets such as the United Kingdom to identify instances of corruption, analyse complex data sets and liaise with regulators and law enforcement to assist investigations.

Genius Sports has developed advanced technology, with a team of software and mathematics experts that can monitor sports betting markets in real time and alert the security divisions of sports governing bodies to any suspicious or aberrational activities.

The American Gaming Association has estimated that last year \$5 billion was bet legally on sports in Las Vegas, and that more than \$200 billion was bet illegally on sports throughout the United States. The integrity of a match is more susceptible to corrupt behaviour when there is an extensive illegal betting market than when there is a legal, licensed, regulated betting market.

Despite the Federal prohibition (PASPA) on sports betting in the United States enacted in 1992, the AGA data show clearly that there is a sizable, unregulated, untaxed illegal sports betting market in America. It is far more difficult to acquire the relevant information, data and intelligence required to investigate and prevent integrity issues when betting occurs in unregulated environments such as this.

In the United Kingdom, for example, sports wagering increasingly occurs over the Internet. This allows Genius Sports to apply its technology to this online activity and identify within seconds betting activity that is out of the ordinary.

The movement of legal sports betting worldwide to the online environment over the past ten years has allowed companies like ours to provide a valuable service to leagues and sports fans everywhere by providing an increased level of protection. Everyone wants each sporting event to take place in an atmosphere of the utmost confidence and integrity, and we are committed to continuing to work with the sports industry to develop the most advanced technology that will make a critical contribution to the world of sport.

Mr. BURGESS. The chair thanks the gentleman. The chair recognizes Ms. Slader. 5 minutes for your opening statement, please.

STATEMENT OF LINDSAY SLADER

Ms. SLADER. And I think that there is a map coming up on the screen here. Perfect.

Thank you, Chairman Burgess and members of the subcommittee for having me here today. My name is Lindsay Slader. I am the operations manager of GeoComply, who is a geolocation technology provider.

We have all heard of the Internet of things. The term used to describe how the Internet has gone from a desktop computer at home or the office to the near ubiquitous network of connected devices today. From phones in our cars, to our TV, everything is connected. However, with the Internet of things has also come the need for the Internet of places. States' rights concerns, as well as the requirement for national sovereignty over what can and can't be accessed on a territorial basis, have given rise to the need to determine with a very high degree of certainty what jurisdiction an Internet-connected consumer is governed by.

Historically the notion that you could indeed draw geographic boundaries on the Internet would have been laughable, such was the weakness of the original technologies and the availability of cheap and easy methods to fake your location. However, with the advent of regulated iGaming in the U.S. in 2013, four of the five U.S. states who are participating meaningfully in iGaming today have taken the initiative in deploying stringent geolocation and security protocols in order to geofence their services solely within their boundaries. By doing so, they act with the clear letter and spirit of the Federal law of UIGEA, which requires such rigorous geolocation tools as a prerequisite of operating within a particular jurisdiction.

Given the more recent rise of daily fantasy sports, the need to define physical location on the Internet has only become more significant. No matter how, nor in what manner, such an industry may be regulated, there is now advanced geolocation technology available to powerfully filter consumer access in any shape or form that may be required.

Be it to promote or restrict online access, technology is no longer an impediment to a chosen business or legislative model. It can be an indispensable tool and enabler.

GeoComply's technology is currently in action throughout the U.S., processing up to 1 million transactions per day. Our technology ensures state rights are respected through adequate geofencing and business operators are equipped with advanced tools needed to uphold relevant business and compliance requirements.

For Internet gaming and lottery, we are currently working with licensed operators to uphold State regulations and the geographic borders of New Jersey, Nevada, Delaware, and Georgia. This also means not only enabling eligible traffic from these states, but also blocking traffic from states that outlaw Internet gaming, such as Utah, California, New York, and so on.

For DFS, our geolocation solutions are designed to be highly adaptive to the constantly changing landscape of the DFS industry thus far. Given the volume and speed at which state DFS legislation is currently evolving, our systems are designed to turn on or off access at the drop of a hat for any particular state or region. I believe last week, for example, legislative changes were seen in about three states, whereas tomorrow, there could be a whole host of others.

By providing the means to respect sovereignty and the jurisdictional powers of a given physical territory, all via the Internet, geolocation technology, therefore, provides a necessary two-fold function: one, to uphold the preferences and rights of any given jurisdiction seeking to enable yet contain user access within their borders; and, two, to respect the wishes of any jurisdictions that choose to not participate or license such activity or that may ban it all together.

Neither can be achieved without adequately robust and adaptive geolocation tools. So if a state doesn't want it, they don't have to have it. Every use case has a technical solution.

To perform a geolocation, GeoComply is able to gather pinpoint-accurate location data from a number of data sources to determine the whereabouts of a user. Then we confirm the integrity of that data to ensure it is secure and hasn't been masked or tampered with by any host of tools, such as proxies, VPNs, remote desktop software, jailbroken devices, mock location settings, and atomizers, the list goes on.

By the time we approve or deny a transaction, the data may have gone through up to 350 checks that our compliance algorithm seeks to verify. These settings can be set and adjusted by regulators and operators, depending on the market needs and requirements. Therefore, it should be well noted that the technology and safeguards which may be necessary if state or Federal parties choose to become more involved in DFS, in some shape or form, are very capable and, in fact, quite robust to uphold such standards.

GeoComply believes that all legislative and regulatory issues can easily be addressed with effective geofencing technology.

If I can point your attention toward the map up on the screen.

So as you can see on the map here, these are live geolocation queries and instant analytics currently happening in realtime in the U.S. In particular, this demonstrates the importance of pinpoint-accurate location data, given the significant population centers in America that line your state and Federal borders. And this technology can be custom configured and adapted accordingly to any given use case be it DFS or Internet gaming or any other industry.

And then just a quick video clip. This is a zoom-in on the New Jersey-New York border, which is really a significant area for all the stakeholders speaking here today, be it gaming or DFS. This shows that not only can we accurately pinpoint someone's location, but also defend any given border even from the banks of the Hudson River in such a highly densely populated area.

That concludes my testimony. Thank you for having me.

[The prepared statement of Ms. Slader follows:]



GEOLOCATION: TECHNICAL SOLUTIONS & CAPABILITIES

Testimony: Lindsay Slader, Operations Manager

May 11, 2016

GeoComply USA, Inc.

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871 Coronado Ctr Drive
Henderson, NV 89052

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WHO ARE GEOCOMPLY?

Corporate Background

Since launching in 2011, GeoComply has quickly become the Digital Economy's trusted solution for location compliance, accuracy, and reliability. Its proprietary and highly adaptive technology has successfully met and exceeded all challenges put forth by US regulators with record-high verification rates exceeding 98%.

Today, GeoComply is the market leader in geolocation technology/compliance for Daily Fantasy Sports and internet gaming, and is used by 100% of the US regulated iGaming market base. Our unrivalled geolocation solutions are used to assist operators comply with the world's most stringent geolocation regulations. We have done so with remarkable precision and ease of use, currently processing over 1 million transactions per day across 500 million devices.

GEOLOCATION & INTEGRATED FRAUD SOLUTIONS

Why is Geolocation Important for DFS?

GeoComply's advanced and adaptive geolocation solutions are designed as tools to enable service providers, such as Daily Fantasy Sports sites, comply with restrictions as to where they deliver their services to consumers. Our technology is used to maintain compliance with such applicable state/federal regulatory requirements by providing a more precise, reliable solution than has previously been possible.

Historically, delivering reliable and accurate geolocation on the internet was considered virtually impossible due to the myriad forms of location spoofing that are out there; as well as the weaknesses of geolocation technologies such as cell tower triangulation and geolocation via IP address.

However, thanks to the GeoComply's Matrix of location data sources, anti-fraud tools and data analytics, the paradigm has shifted such that confirming one's location on the internet can be determined to a very high level of confidence.

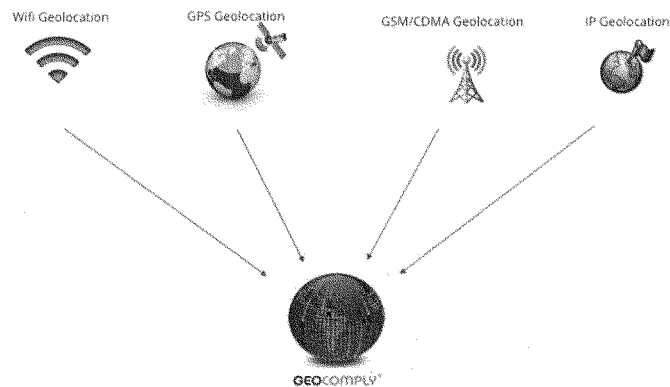
How We Do It

Key Aspects of our Proprietary and Patented Geolocation Solution

GeoComply **Combines & Encrypts Multiple Location Data Sources** for Accurate Location Results, rather than relying on a single source of data for verification.

GeoComply's locations solutions are **device neutral**. We offer secure and accurate location verification solutions for all devices – including desktops, laptops, smartphones, and tablets – so consumer preferences don't have to be ignored. Our technology is embedded directly into the user interface to reduce customer friction and eliminate unnecessary and cumbersome hurdles around technology. This is coupled with a powerful singular back office portal containing tools for customized border configurations, advanced reporting tools, and configurable location parameters.

GeoComply collects Wifi, GPS, GSM, and IP location data from a user's device to deliver highly accurate location results. Carrier data can also be supported if desired. No other location solution exists on the market that provides this level of cross referencing to best determine user location to satisfy compliance needs and anti-fraud systems.



Cross referencing multiple sets of location data, with failover and redundancy protection, delivers the "reasonable assurance" needed to comply with a wide range of regulatory requirements, and augment fraud detection and monitoring.

GeoComply's technology is capable of **proxy, VPN, malware, and enhanced remote desktop detection** to thwart spoofing attempts and high-risk transactions. These tools can be customized to fulfill specific legal and regulatory obligations,

which typically demands high levels of maintenance to keep up with legislative changes and continual technological innovation.

Wrapped around this complex, inter-locking matrix of checks and data-points, is a comprehensive analytics engine that continuously scans and assesses whether any transaction contains irregularities or indications of manipulation. Alerts and reports are constantly being run and investigated by dedicated teams of analysts on both the GeoComply and the Service Provider's side as a final line of defense against potential threats.

GeoComply's geolocation process occurs within an eCommerce website according to the operator's specifications (reason, time, frequency, type of data collected, etc.). The user experience is optimized so that whatever the regulatory and operational requirements of the customer may be, the geodata is captured with the minimum interference to the end-user experience.



Accuracy and Reliability

GeoComply offers pinpoint accuracy to determine a user's exact whereabouts down to a building level and within feet of accuracy. A complete snapshot of a user's location and data vulnerabilities are profiled according to regulatory and business requirements, regardless of the device, connection, operating system, or browser used by the customer.

GeoComply's dynamic selection technology leverages proprietary solutions to customize how/which data sources are used to satisfy federal/state geolocation requirements. We layer on multiple anti-spoofing checks and failover systems in real-time to ensure the highest pass rate possible with the least customer friction.

Links

Watch our technology demo video presented at the December 2015 RAWA hearing here:
<https://youtu.be/MVyQHLYERQ>

Mr. BURGESS. The chair thanks the gentlelady. The chair recognizes Mr. Gnat. 5 minutes for your opening statement, please.

STATEMENT OF JORDAN GNAT

Mr. GNAT. Thank you, Chairman Burgess, Ranking Member Schakowsky, Ranking Member Pallone, and members of the subcommittee, for the opportunity to testify before you today.

My name is Jordan Gnat and I am the senior vice-president of strategic business development for Scientific Games Corporation. Scientific Games is a leading innovator in the regulated global lottery, gaming, and interactive industries offering a range of products, technologies, and services to more than 300 customers on six continents for the last 40 years. Scientific Games is also the service provider to the Delaware Lottery of its legal, regulated sports betting offering at over 100 retailers and three race tracks.

I am honored to be with you today to share my observations from my 12 plus years in the international gaming industry. I would like to offer some insights regarding the means by which other countries have successfully implemented regulated sports wagering systems.

My testimony will outline two case studies from Ontario, Canada, and the EU to help illustrate how these best practices, from geolocation and age verification, to betting limits, realtime global monitoring of betting activity, and education have been enabled effective and transparent sports wagering in international jurisdictions.

Additionally, in almost all cases, these regulatory systems have enabled both governmental lotteries and commercial gaming operators to offer innovative products through multiple, highly regulated, licensed distribution channels. In fact, nine of the top ten legal sports betting jurisdictions in the world offer sports wagering either exclusively through their lottery or a combination of lottery and commercial operators, being land-based or Internet.

Let's begin with Canada. Legal sports wagering has been available in Canada since the early 1990s. Each of the five provincial lottery corporations in Canada offer a full line of sports betting, but in the form of parlay wagering, meaning that a wager placed must be on the outcome of more than one event, activity, or performance.

To provide you with an example of how legal, secure, regulated sports betting happens in Canada, I will use the Province of Ontario as a case study. Ontario launched Pro-Line in 1994, and it is available at the nearly 10,000 licensed lottery retailers in the province. The first product launch was a simple three game parlay with a minimum and maximum betting limit set. Over the past 20 plus years, the product offerings have continued to evolve in sophistication to include two-event parlays, proposition wagering, and cross event wagering. The product has also evolved from a lottery-only channel to now include the casino channel. Recognizing the differences between the two, Ontario created a differentiated model for lottery retailers. With betting maximums for players at \$100 and casinos, with betting maximums for players at \$1,000. For its Internet activity, Ontario is soon to offer its sports betting products online alongside its current casino and lottery products.

British Columbia, for example, offers a full range of Internet sports betting products. Both provinces use geolocation and age verification systems to ensure that players are of age and located specifically in BC or Ontario.

I will now turn to Europe. The majority of jurisdictions in Europe offer sports wagering through their lottery or a combination of lottery and commercial operators. Each jurisdiction establishes its own betting rules, risk management teams, policies, odd setting frameworks, or outsources it to professional organizations.

In 2012, the World Lottery Association introduced the Global Lottery Monitoring System, GLMS. The system went live in partnership with Sportradar in June 2015. GLMS provides its members alerts on betting anomalies from around the world. Each member reacts to the alert independently, looking at the betting in their particular market, and determines what corrective action is necessary, including voiding bets, and reporting to the appropriate authorities.

There are 27 global members of GLMS from Europe, Canada, South America, Asia, and Africa. The program is planned to be expanded in the latter part of 2016.

In addition to technological advancements, professional sports organizations themselves are beginning to introduce measures to ensure game integrity. As an example, in 2013, FIFA, FIFPro, and Interpol came together to announce a new initiative to combat match fixing in the form of a training program called “Don’t Fix It.” The program focused on raising, quote, awareness of the dangers of match fixing among players, referees, officials, administrators, organizations, and public authorities, and to raise the ability of those involved in professional soccer to know how to recognize it, reject it, and report it.

It is estimated that the illegal U.S. sports betting market could be as much as \$400 billion. To put this number into perspective, the legal, regulated global lottery business is approximately \$280 billion and the U.S. casino industry is approximately \$240 billion.

The point to understand here is that sports betting is already an enormous market in the U.S. Implementation of regulations that ensure integrity, accountability, and consumer safeguards in sports wagering can turn the current multi-billion-dollar black market into a transparent, effective system that keeps professional sports and amateur sports safe for future generations.

Mr. Chairman and Ranking Member Schakowsky, I again want to thank you and your members of this committee for inviting me to testify before you today at this very important hearing.

I hope my presentation has provided helpful insights on some key elements of successful regulatory systems employed around the globe, and I look forward to the opportunity to answer your or our colleagues’ questions. Thank you.

[The prepared statement of Mr. Gnat follows:]

Testimony of
Jordan Gnat
Senior Vice President, Strategic Business Development
Scientific Games Corporation
Before the Subcommittee on Commerce, Manufacturing & Trade
Committee on Energy & Commerce
U.S. House of Representatives
May 11, 2016

Thank you, Chairman Upton, Ranking Member Pallone, Chairman Burgess, Ranking Member Schakowsky and members of the Subcommittee, for the opportunity to testify before you today. My name is Jordan Gnat and I am the Senior Vice President of Strategic Business Development for Scientific Games Corporation (SG). SG is a leading innovator in the regulated global lottery, gaming and interactive industries, offering a range of products, technologies and services to more than 300 customers on 6 continents for the last 40 years. These products include instant lottery games, lottery gaming systems, terminals and services, and internet applications. SG is also the service provider to the Delaware Lottery of its legal, regulated sports betting offering at over 100 retailers and 3 racetracks.

I am honored to be with you today to share my observations from my 12+ years in the international gaming industry. In particular, I have witnessed firsthand a core set of best practices in the implementation of sports wagering regimes that protect the consumer while going to great lengths to ensure the integrity of sports. I would like to offer some insights regarding the means by which other countries have successfully implemented regulated sports wagering systems.

As this Committee contemplates this issue, my testimony will outline two case studies from Ontario, Canada and the EU to help illustrate how these best practices; from geolocation and

age verification to betting limits, real-time global monitoring of betting activity and education, have enabled effective and transparent sports wagering in international jurisdictions.

Additionally, in almost all cases, these regulatory systems enable both governmental lotteries and commercial gaming operators to offer innovative products through multiple highly regulated, licensed distribution channels. In fact, 9 of the top 10 legal sports betting jurisdictions in the world offer sports wagering either exclusively through their lottery or a combination of lottery and commercial operators, being land-based or internet, where there is a mature commercial casino and betting market. Why is it done this way? Lotteries have an infrastructure built around integrity of play, ubiquitous distribution, player protection and responsible gaming. This holds true as well for commercial operators in many cases with the exception of ubiquitous distribution, unless it is online.

Let's begin with Canada. Legal sports wagering has been available in Canada since the early 1990's. The Criminal Code of Canada provides for Provincial Lottery Corporations to be established to conduct and manage lottery and gaming activity within its borders. Each of the 5 Provincial Lottery Corporations in Canada offer a full line of sports betting but in the form of parlay wagering, meaning that a wager placed must be on the outcome of more than one event, activity or performance. While the Criminal Code of Canada today specifically prohibits single bets, legislation has been introduced in the Canadian Parliament to remove this prohibition, which illustrates how sports betting regulations are ever-evolving to meet market demands.

To provide you with an example of how legal, secure, regulated sports betting happens in Canada, I will use the Province of Ontario as a case study. Ontario launched "Pro-Line" in 1994 and it is available at the nearly 10,000 licensed Lottery retailers in the province. The first product launched was a simple 3 game parlay with minimum and maximum betting limits

set. Over the past 20+ years, the product offerings have continued to evolve in sophistication to include 2 event parlays, proposition wagering and cross event wagering. The product has also evolved from a Lottery only channel to now include the casino channel. Recognizing the difference between the two, Ontario created a differentiated model for Lottery retailers, with betting maximums for players at \$100, and for Casinos with adjusted odds and offerings and betting maximums at \$1,000. Casinos and their staff have the training and infrastructure to manage large bets and provide an experiential offering.

For its internet activity, Ontario is soon to offer its sports betting product online alongside the current casino and lottery products.

British Columbia offers a full range of internet sports betting products. Both Ontario and BC use geolocation and age verification systems to ensure that players are of age and located specifically in BC or Ontario. Geolocation works by capturing the IP addresses of the player and these are tracked by latitude and longitude. Companies like Digital Element, GeoComply and Neustart take this data and determine where the wager request originates and then respond to confirm the wagers based on the location.

Age verification is managed by companies like IDology and Equifax. These companies aggregate data including census records and driver's license data. Players' registration information is sent and the system cross references all sources to provide verification.

I will now turn to Europe. Sports betting is available throughout Europe. The majority of jurisdictions in Europe offer sports wagering through their lottery or a combination of lottery and commercial operators. A notable exception is the UK which has a fully commercial market. Each jurisdiction establishes its own betting rules, risk management teams, policies and Odds setting framework (or outsources it to a professional organization).

In 2012, the World Lottery Association (WLA) introduced the Global Lottery Monitoring System (GLMS). This system went live, in partnership with Sportradar, in June 2015. GLMS provides its members alerts on betting anomalies from around the world. Each member reacts to the alert independently, looking at the betting in their particular market, and determines what corrective action, including voiding bets, is necessary. There are 27 global members of GLMS, 20 from Europe, 1 from Canada, 2 from South America, 2 from Asia, 2 from Africa. The program will be expanded in the latter part of 2016.

In addition to technological advancements, professional sports organizations themselves are beginning to introduce measures to ensure game integrity. In 2013, FIFA, FIFPro and Interpol came together to announce a new initiative to combat match fixing in the form of a training program for players called “Don’t Fix It”. The program focused on raising “awareness of the dangers of match fixing among players, referees, officials, administrators, organizations, and public authorities”¹ and to raise the ability of those involved in professional soccer to know how to recognize it, reject and report it.

Conclusion

It is estimated that the illegal sports betting market in the US could be as much as \$400billion. To put this number into perspective, the legal, regulated global lottery business is approximately \$280billion and the US casino industry is approximately \$240billion.

The point to understand here is that sports betting is already an enormous market in the US – legalizing sports betting will not create something that isn’t already there. Instead, implementation of regulations that ensure integrity, accountability and consumer safeguards in sports wagering can turn the current multibillion dollar black market into a transparent,

¹ <https://www.fifpro.org/en/projects-partners/don-t-fix-it/about-don-t-fix-it>

effective system that generates important tax revenue like we see all around the world and keeps professional and amateur sport safe for the future generations.

Mr. Chairman and Ranking Member Schakowsky, I again want to thank you and the members of the Committee for inviting me to testify at today's very important hearing. I hope my presentation has provided helpful insights on some of the key elements of successful regulatory systems employed around the globe. I look forward to the opportunity to answer your and your colleagues' questions.

Mr. BURGESS. The chair thanks the gentleman. Mr. Eggert, you are recognized. 5 minutes for opening statement, please.

STATEMENT OF KURT EGGERT

Mr. EGGERT. Thank you, Chairman Burgess and Ranking Members Schakowsky and Pallone. I appreciate the chance to talk about daily fantasy sports. I am a law professor. This is my third time testifying in front of this subcommittee about Internet gambling issues. And I must be doing something right, or you wouldn't keep inviting me back. At least that is my hope.

I should say up front, I don't oppose or support daily fantasy sports or gambling. My purpose is to argue that if it is legalized, it needs to be regulated so that there is proper consumer protection, to maximize the experience of players, and to protect them from being cheated or beaten unfairly, and also to make sure that problem gamers get the help they need so that gambling and daily fantasy sports don't destroy the players and their families.

One issue that constantly comes up is, is it gambling or not? Is this a game of skill or a game of chance? And I would like to say that for the people who are really good at it, it is not a game of skill, it is not a game of chance, it is a game of algorithms.

The top players are, as far as I could tell, I have read a lot of interviews of the big winners, they are not long-time sports experts. Many of them I have seen come up through either poker or data management. And what they do is they construct these very sophisticated algorithms and import a huge amount of data, much more data than any human could hold in their brain at one time, and use these algorithms to spit out lineups, and then they can take these lineups and enter them into multiple, multiple, many times different competitions, both high stakes, mid stakes, low stakes.

And so you can be just an average recreational gamer and suddenly be playing head to head with one of the top daily fantasy sports gamers in the world and perhaps not even recognize it. That would be as if you are out there playing tennis and suddenly Roger Federer is slamming balls at you, and you are playing for money.

The last two times I testified, I talked about Internet poker, and the big issue there are BOTs. And the Internet poker industry says, it is wrong to use these algorithms to beat human players, and they claim that they can stop it. I am not sure they can, but at least they are trying.

In daily fantasy sports, as far as I can tell, they don't even try to stop algorithms; instead, welcome the professionals, who gamble a lot of money every day, against people without these algorithms. So they have a huge advantage, not because they know more about sports, but because they have more data and have algorithms that can use that data to select the best portfolio of teams.

I would like to ask industry representatives to explain, why is this a good thing to have a few top players take all this money from the many recreational players who are just trying to have a good time?

So let's look at what these algorithms can do. They can track, say in baseball, for a hitter, they can track whether the hitter is good against lefties or righties or against this particular pitcher, they

can track what direction the wind is likely to blow on a given day, they can track when will the sun be in the batter's eyes. I listened to one person who just won a competition, and he said, we were tracking the strike zone of the umpire. How many average players can import that kind of knowledge and make use of it? But the professionals can.

So what do you do to help the recreational player? I think you need strong consumer protection. You need to limit the amount of lineups that people can enter, because people who are entering a lot of lineups are either pros or people probably with a problem. You also need to label the high earners so that the average player knows, look, I am going against somebody way out of my league, and can either choose to play or not.

You also need services for problem gamers. You need them to know that they can get help if they need it. You need to prevent insider playing. And you also need regulators to oversee the games to make sure that people get paid and that the right people get paid.

So with that, I am done. I appreciate you inviting me back. And I am happy to answer your questions.

[The prepared statement of Mr. Eggert can be found at: <http://docs.house.gov/meetings/if/if17/20160511/104902/hhrg-114-if17-wstate-eggertk-20160511.pdf>.]

Mr. BURGESS. Well, thank you. And thanks to all of our witnesses for their testimony.

And we will move now into the question and answer portion of the hearing for member questions. I will begin the questioning by recognizing myself for 5 minutes.

And, again, let me just say, fascinating amount of information you have provided for us this morning.

Perhaps if I could, Mr. Eggert, let me just ask you before we leave your algorithm concept, and Ms. Slader, I want to include you in this question, because you heard Chairman Upton talk about how do you exclude someone who is underage, OK, from involving themselves in these daily fantasy sports.

You know where they are and you kind of know something about how they are playing. Is there a way to exclude the 18-and-under-year-old group from playing these sports? And we all know teenage boys live on sports, right? That is all they do.

Ms. SLADER. I can speak to excluding individuals, not necessarily about verifying their age or identity.

When GeoComply does a geolocation, the geolocation is anonymous, so we don't know who they are, where they live, whether they are a big-time player or anything. All we are concerned about is where they are. But if we, based on the data that we have, or the operator of the Web site decides that we need to exclude this player, cut them off for a certain period of time, GeoComply can help with that. We have tools that would cause you to always fail a geolocation, and therefore never be able to enter a contest. You could do that by their account name, you could do it by any device that has ever been associated with their account.

So if they play on two computers and a tablet, we can block them all. You could do it by an IP address, so their home Internet connection or work or wherever they may have ever played. So there

are lots of tools at our disposal to keep people out if you singled out an individual.

Mr. BURGESS. Yes. But the cleverness of a 16-year-old really shouldn't be underestimated.

Mr. Eggert, how do you recommend that this issue be addressed? Is there a way to do it with data, with algorithms?

Mr. EGGERT. Well, the new Massachusetts regulations require, you have to prove who you are and you have to have only one account and one name. And I think that is necessary both to make sure that minors aren't playing the games and also to give people tools if they want to self-exclude, you can have a process where they can self-exclude and they just can't come in with a different name. So I think it can be done, and I think it has to be done.

Mr. BURGESS. Yes, but that is for someone who wants to play by the rules, but someone who wants to not play by the rules, how are you going to exclude them?

Mr. EGGERT. Well, if you have to prove who you are in order to play, there may be ways around that, but at least I think the states should try to make sure they know who is playing and that they are of age and that they haven't excluded themselves.

Mr. BURGESS. Well, Mr. Schoenke, let me just ask you from the small business perspective here, how do you see addressing that problem? Chairman Upton addressed it, the underage person should not be allowed to play. How do you prevent that from happening?

Mr. SCHOENKE. We as an industry, the FTSA have always been against minors playing fantasy sports, paid fantasy sports contests for money. Our leading providers and our leading companies use something called Know Your Customer technology. When people sign up, they give a whole bunch of information on them, name, address, they run it through databases using leading third-party companies to figure out if the customer is who they say they are, and then, you need a credit card, you need to sign up for credit card information. And then the companies, the major providers of daily fantasy, they don't want minors to play. If they find out that a minor is playing, they will refund the person in question.

Mr. BURGESS. All right. Let me just ask you, are most of the transactions done on a credit card-type transaction—

Mr. SCHOENKE. Yes.

Mr. BURGESS [continuing]. Or using bit coins and digital currency to—

Mr. SCHOENKE. Yes.

Mr. BURGESS [continuing]. For these transactions?

Mr. SCHOENKE. Yes. So it is all primary credit cards, PayPal, you know, those kinds of transactions.

Mr. BURGESS. Mr. Brubaker, let me just ask you, and I don't know, maybe I should be asking others on the panel as well, I mean, I don't want to telegraph the limited amount of knowledge that I have about this issue, but I am just having a hard time with the season-long sports and the daily fantasy sports. Clearly those are different avenues.

I guess what I don't understand is football, if I understand correctly, you play a game once a week, any given Sunday, and yet daily fantasy sports you are playing these same games all week

long, but there is no actual game being played. So how is that constructed? How do you actually construct a daily fantasy sports transaction when the games are only played one day a week?

Mr. BRUBAKER. So on daily, you bet one game, or you have one contest that you play. All right? In season-long, you draft your own team to play for an entire season. You are the GM of a football team, and you draft the players for your team and you enter them for that weekend. And then the next weekend, if you have an injury, say Tom Brady gets injured, he is your guy you drafted, you have to sit him and put a different quarterback in his spot. That is all the work you have to do.

Mr. BURGESS. You are obligated for the whole season at that point? You can't fire your team and walk away?

Mr. BRUBAKER. I don't believe you can, well, you can. There are waivers and there are trades you can do with other people within your league to, if you need a quarterback, you can trade a running back for another team's quarterback, something like that. Those are the transactions that go on in season-long that don't happen in daily.

So daily, you pick your players. Now, I am no expert in daily. I did get a FanDuel account a few weeks ago to learn how to play that, and I was playing baseball. So in that, you pick a pitcher, you pick a catcher, you pick a first baseman, so on and so forth, and you lock those people in on your team for that game only and you pay your fee. And then at the end of that game, all the players that you pick, their stats are added up, and if you beat everybody else, you win, if you don't, you don't.

Season-long, you do your draft before the first game of the season is played, be it baseball or football. You don't know if you won or not until the end of the season after all 16 games have been played. So that is the difference.

Mr. BURGESS. Thank you for that.

Ms. Schakowsky, you are recognized 5 minutes for questions, please.

Ms. SCHAKOWSKY. Thank you.

Professor Eggert, you referred to the Massachusetts attorney general who just issued regulations. I am wondering if there are any other states or is this the furthest-along model of regulation?

Mr. EGGERT. I think it is a good model. I know that Tennessee just issued some regulations. To be honest, I think those are fairly well-advanced. I think Massachusetts is a good model, but I think it can be improved on.

Ms. SCHAKOWSKY. OK.

Well, one of the concerns that the regulations issued in Massachusetts attempt to address is fly-by-night daily fantasy sports companies that collect wages and fees from users and then fail to pay out. Are you seeing that at all as a problem?

Mr. EGGERT. Well, right now, the industry is dominated by the two major companies, and they are far from fly-by-night. I haven't heard of instances in the U.S. where that has happened. I know it has happened with gaming organizations in the Cayman Islands, for example. And so that can well be an issue. I haven't seen it here.

Ms. SCHAKOWSKY. OK.

So, Mr. Brubaker, you are talking basically about the 2 percent of the industry? Because if 98 percent are dominated by two companies, is your space the rest?

Mr. BRUBAKER. Well, there have been different statistics for what DraftKings and FanDuel mean to the rest of the industry. There are daily statistics only, which I think is 95 percent for DraftKings and FanDuel and 5 percent for the other daily providers. There are several other daily providers that do daily fantasy sports.

Ms. SCHAKOWSKY. OK.

Mr. BRUBAKER. And there are also all the small companies that do season-long, which would skew that percentage.

Ms. SCHAKOWSKY. Right.

Mr. BRUBAKER. But we are small. I mean, they are small companies.

Ms. SCHAKOWSKY. Professor Eggert, are you seeing gambling addicts playing DFS? And do you know if this is a big issue?

Mr. EGGERT. I think there was a recent study that indicated that there is an overlap between people with problem gambling issues and daily fantasy sports play.

Obviously, this is a very new industry and the kind of study that would really nail this down takes a lot to do, and I anticipate that we will see more of that.

Ms. SCHAKOWSKY. Thank you.

You mentioned in your written testimony that Massachusetts regulations would forbid daily fantasy contests based on amateur sports, such as high school or college. And the NCAA has repeatedly professed its opposition to NCAA sports being part of it. So why is this prohibition important?

Mr. EGGERT. I think it is important to protect amateurs, high school kids, college kids, from having somebody have a great interest in whether they score that touchdown or fall out of bounds right at the 1-yard line. When we have seen game-fixing in college sports, it is really hard for a college kid isn't making a lot of money, will never go pro, it is very tempting to take a pile of money to do the wrong thing. And I think we need to protect high school and college athletes from that.

Ms. SCHAKOWSKY. Does anybody on this panel disagree with that?

OK.

In the time remaining, if you could talk a little bit more—you did already—about what you would add to Massachusetts regulation and what might then be the more complete model for States. And are you saying that the state is the best place to regulate?

Mr. EGGERT. I think the state is the best place to regulate because I think that there are local interests that are implicated. I think some states don't want to have gambling or daily fantasy sports which are equivalent to gambling, and I think that they should have the right to do that if they don't want to have it. It shouldn't be forced on them.

Ms. SCHAKOWSKY. So talk to me about what Massachusetts, for example, or any state should add in terms of consumer protection. That is my emphasis.

Mr. EGGERT. Well, what I would want to look at, these regulations have just gone into place, and it would be good to see how

they work. My concern is I would consider reducing even further the limits that they have only the number of entries. They allow a decent number of entries, and what we have seen is that the professionals enter a lot. And it may be that they have overstated the number.

I would also want to look at a form of labeling of, I think, what they call highly experienced players. I think that should be based on how much you make rather than have you entered a lot of games. Because somebody may have entered a lot of games and not be very good, and they shouldn't be labeled as, oh, this is a scary person.

Ms. SCHAKOWSKY. It could be a person with a problem, though, right?

Mr. EGGERT. It could be a person with a problem, but if you over-label as the top players and label many people who aren't, I think people will start ignoring the labels. So I would want to tighten up who gets labeled as a highly experienced player.

Ms. SCHAKOWSKY. Thank you.

I yield back.

Mr. BURGESS. The chair thanks the gentlelady.

The gentlelady yields back, and the chair recognizes the gentleman from New Jersey, Mr. Lance, the vice chairman of the subcommittee, 5 minutes for questions, please.

Mr. LANCE. Thank you, Mr. Chairman.

Mr. Locke, as a sports monitoring service in many legal international sports-wagering jurisdictions, can you walk us through how your technology works to protect the integrity of sport? Is usage of this technology required in most legal sports-wagering jurisdictions?

Mr. LOCKE. Sure. I mean, the technology and the services that we offer operate in two distinct areas.

The first is around the technology play, which allows us to aggregate and monitor betting lines internationally. What we do is we model how we expect sports events to look on a mathematical basis, and then what we do is we overlay what is actually going on in international betting markets in a live environment with that. And the way that we work with sports in that respect is we provide factual data on any anomalies, any differences to what we would expect that could indicate issues that need to be looked at.

Also, from a technology point of view, what we do is we work with sports to identify correlated risk. So, for example, if you are seeing anomalies with particular players and umpires or officials all in the same game or all in the same series of games, we will highlight that, as well, for sports to look into and sports to police.

The other side, which is important and I think the emphasis, especially here, should be focused on is around education. The way that we work with sports at the moment is to help sports to understand the environment that they work in and any of the risks that they may be exposed to.

A great example of that is if, say, for example, a team physio is in a bar having a drink, he runs into somebody, they strike up a conversation, they just share the fact that there might be a particular injury of a particular player. The guy goes away, places some wages, and comes back. He is able to put pressure on the

physio of the team by saying, "Listen, you fed us some inside information. Here is your share of the winnings." And he has effectively put him in a position where he feels like he is providing inside information.

So part of our services is around educating the teams, the players, the umpires as to the risks that they may be exposed to in the markets that they operate in.

Mr. LANCE. OK.

Anyone else on the panel who would like to comment on that?

Mr. Brubaker, in your testimony, you discussed the challenges for small operators to comply with 50-state audits that had been required in recently passed legislation.

Can you give us a sense of how many of your members have players in all 50 states? And do you see a path forward for states accepting audits from one another to reduce the regulatory burden on smaller operators?

Mr. BRUBAKER. So, on the states, there are only 45 states that fantasy sports can be played in right now. And so the five are going to escape me at this moment, but I would imagine that most companies have players from almost every state. Now, there are not a lot of players in some states. You may have 400 or 500 in a state like New Jersey; you may have 20 in Delaware. But they are spread out all over the country.

And the second part of your question was, sir? I am sorry.

Mr. LANCE. Do you see a path forward for states accepting audits from another state to reduce the regulatory burden on smaller operators?

Mr. BRUBAKER. The path forward is for us to get to a lot of states and talk to legislators and try to get that changed. Some state bills that we have seen just say there has to be an annual audit. It is not quite as specific as some other states that say it has to be from an auditor within the state.

And so there is a lot of work to do, and when you are a small organization with a small number of companies, that is a lot of work and it takes a lot of time. We will push for those regulatory issues to be uniform across all the platforms, but we are playing catch-up in a lot of these States right now.

Mr. LANCE. Thank you, Mr. Chairman. I yield back 50 seconds.

Mr. BURGESS. The chair thanks the gentleman.

The gentleman yields back. The chair recognizes the other gentleman from New Jersey, Mr. Pallone, the ranking member of the full committee, 5 minutes for your questions, please.

Mr. PALLONE. Thank you, Mr. Chairman.

I obviously believe there is a lot of hypocrisy surrounding the support of daily fantasy sports compared to traditional sports-betting. And the daily fantasy sports industry has been arguing that daily fantasy sports is somehow completely separate from sports-betting despite the fact that similarities can't be denied.

And the same is true of the professional sports leagues. At the same time that they are embracing daily fantasy sports, they are banding together to prevent New Jersey from allowing sports-betting, claiming they are trying to protect the integrity of professional sports. It is going to get involved in organized crime and illegal stuff.

So sports-betting, as has been mentioned, is legal in some States and in many other countries, including Canada, and the sports world is not falling apart.

My questions are mostly for you, Mr. Gnat. You said in your testimony that Canada has had legal betting since the early 1990s. Is sports-betting in Canada limited to betting on Canadian sports, or do Canadians legally bet on American sports as well?

Mr. GNAT. Thank you.

In Canada, you can bet on any sport in any country. And even in certain jurisdictions, as the sports have continued to gain sophistication, the offerings have begun to gain sophistication as well.

Mr. PALLONE. I am just going to interrupt you because I have to get through this.

Have you heard of any major game-fixing scandals linked to sports-betting in American sports since sports-betting was legalized in Canada?

Mr. GNAT. Not to my knowledge.

Mr. PALLONE. All right. So there haven't been any major scandals.

We also know that the illegal sports-betting market in the U.S., you mentioned, is estimated to be as high as \$400 billion. So the integrity-of-the-game argument just doesn't make sense to me. In fact, legalizing sports-betting would simply allow for the same kinds of consumer protections that we are discussing today for daily fantasy sports.

So my question is, would you like to comment on how bringing the current black market, organized crime, mob, whatever, doing all this sports-betting, if you bring it out into the sunshine and make it legal, how could you ensure integrity?

Mr. GNAT. Regulation, just in general, brings an environment of accountability, integrity, and consumer trust. Prohibiting does not do that. It traditionally drives it underground, where you have no integrity in the game. And therefore, the people involved are not accountable to anybody, and the consumers' interests are not maintained.

So I think that when you take a look at examples of how it has been done in other jurisdictions, even in Nevada, sports-betting has been done legally and responsibly in other jurisdictions, and, as you said, the world does not come crashing down around it.

Mr. PALLONE. Kind of like prohibition of alcohol, I would think.

If sports-betting were not legalized, do you see a way to stop the practice from occurring illegally?

Mr. GNAT. I don't see how you can prevent something that is an industry of this size and this magnitude that exists today.

Mr. PALLONE. All right.

Now let me go to the Fantasy Sports Trade Association, Mr. Schoenke, if I can.

I know you said that you can comprehensively answer any questions about the industry, because even though FanDuel and DraftKings are not here, I am going to ask you the questions that they would normally be here to answer.

Last year, DraftKings applied and received a gambling license in the United Kingdom. FanDuel also applied for a gambling license, I stress gambling license, in the U.K. but hasn't yet received it, to

my knowledge. Yet, in the U.S., both companies maintain that daily fantasy sports is not gambling.

So what is DraftKings' rationale for getting a gambling license in the U.K. if they say that daily fantasy sports is not gambling? And what about FanDuels? How do they justify this when they ask for a gambling license in the U.K.?

Mr. SCHOENKE. The laws of the United States are very different than the laws of the United Kingdom. In the United Kingdom, any game that has any skill is also under gambling. In America, in most states, if a game has more skill than luck, it is not considered gambling.

That is why fantasy sports, for over 20 years, as an enterprise, has never been considered gambling. We didn't meet before Congress or at the State levels, but that has been called into question the last—

Mr. PALLONE. But they are doing the same thing, right, in both places?

Mr. SCHOENKE. Well, I think that the laws are different. It is a different country. Here in the United States.

Mr. PALLONE. Well, it sounds like in one place—

Mr. SCHOENKE [continuing]. If you have more skill than luck, it is considered—

Mr. PALLONE. Well, they are not really doing anything differently. You are not telling me that, right?

Mr. SCHOENKE. Well, it is the same game, definitely.

Mr. PALLONE. OK. That is all I am asking. It sounds like the difference is that in one country they have a lot of smart lawyers or lobbyists that are defining things in one way and in the other they are not. But the game is the same, correct? The game is the same.

Mr. SCHOENKE. It is still a game that has far more skill than luck.

Mr. PALLONE. All right. Thank you very much.

Thank you, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman.

The chair now recognizes the gentleman from Oklahoma, Mr. Mullin, 5 minutes for your questions, please.

Mr. MULLIN. Thank you, Mr. Chairman.

And thank you to the panel for being here. A lot of interest in this, more so than members, I think, that are interested in it. But, Chairman, appreciate you having the hearing. Outside, there are a lot of people wanting to get in.

And I think there are a lot of unknown facts that people are trying to get information, and that is the whole point of this panel, OK, what exactly is the way that we are heading? What is the future? And how is this going to be a benefit or a negative?

And so I am going to focus just a little bit on this, and this is kind of a generic question for the panel itself. Is anybody aware of certain pushbacks, lawsuits, concerns through the states or through different organizations that have come after online betting?

Anybody want to take that? Not all at once.

Mr. RODENBERG. I am happy to speak to that.

Mr. MULLIN. OK.

Mr. RODENBERG. So I think it comes from two distinct areas. Certainly, there have been a large number, perhaps dozens, of private lawsuits that have been consolidated as part of a class action.

Mr. MULLIN. What are those lawsuits concerning?

Mr. RODENBERG. A number of different claims based on allegations of fraud, based on allegations of illegal gambling. They are in very preliminary stages. The vast majority of those lawsuits have been consolidated in a Federal district court in Massachusetts.

Mr. MULLIN. Let me stay there for just a second. On the fraud, what specifically are we talking about with fraud?

Mr. RODENBERG. Allegations have been made of false advertising, misuse of inside information, as part of these private lawsuits. A number of the claims were similar enough that they were consolidated. But they are at such a preliminary stage, nothing has been resolved in the course of them, though.

Mr. MULLIN. Is that due to a specific group? Is that due to the ability to be able to fraud people online because it is faceless and nameless and unregulated?

Mr. RODENBERG. Perhaps that is a component of it. I mean, perhaps indirectly, to answer your question, a majority of the defendants are the daily fantasy companies themselves, as well as a few of the lawsuits have named investors and affiliated companies, including payment processors, including some high-level successful daily fantasy players. So perhaps some of that can be inferred, in terms of who the defendants are.

Mr. MULLIN. What are the qualifications for a fantasy sports group to go online? Is there a regulating body that oversees it, that says, before you are able to do this, you have to comply with certain agreements; we are going to come in and we are going to look over your shoulder? Does that exist? Or is it just put up a Web site and let's go bet?

Mr. RODENBERG. In a small minority of states, all literally within the last couple weeks—Virginia, Indiana, Tennessee. There are regulations in Massachusetts now. Those have recently been enacted and signed by state governors, but most of them have effective dates sometime this summer, so it is literally in its infancy.

Outside of formal state-run regulations, certainly a vast majority of fantasy companies are members of Fantasy Sports Trade Association, whether Mr. Schoenke's organization or others, but that is certainly more of a private self-regulatory model than a formal governmental one.

Mr. MULLIN. Mr. Locke, what did your company have to do?

Mr. LOCKE. What did we have to do within fantasy?

Mr. MULLIN. Yes, to build a new business inside the United States and to keep down the complaints, make sure it is fair, make sure that it is on the up-and-up, so to say. Were there certain qualifications you had to comply with, or just use your best business model?

Mr. LOCKE. So we are not a fantasy operator. We work in sports integrity. So we provide services to sports that enable them to protect their events. In terms of working in the U.S., we have not had to comply with any regulations.

Mr. MULLIN. So you work with the fantasy betting organizations?

Mr. LOCKE. We don't work with any fantasy betting organizations in the U.S. Our prime business in the U.S. is working with sports to help protect the integrity of their events.

Mr. MULLIN. OK.

What are the biggest pushbacks, these complaints that we are seeing? Is it coming from the state or coming from organizations? Is it coming from the sport community itself?

Mr. RODENBERG. It is related to my previous response. The biggest pushback has come at the state level. So, as of 2 weeks ago, by my count, there are roughly a dozen state attorney generals—

Mr. MULLIN. OK.

Mr. RODENBERG [continuing]. From New York to Illinois to Texas, from Hawaii to Idaho to Georgia to Tennessee, that have looked at daily fantasy under the auspices of their state law, and they have concluded that it constitutes illegal sports gambling in their state. They have issued—whether it is a cease-and-desist letter or a negotiated settlement with daily fantasy companies. In the last 6 months, fantasy companies have removed themselves from those excluded states.

Certainly the list of excluded states has risen dramatically from the original 5 states—Washington, Louisiana, Arizona, Montana, and Iowa—to now it is slightly over 15. So certainly the number of excluded states has increased in the last 6 months. But that is the other, in terms of pushback, that has come from the state level so far.

Mr. MULLIN. Thank you. Thank you for your time. My time has run out.

Thank you, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman.

The chair recognizes the gentlelady from New York, 5 minutes for your questions, please, Ms. Clarke.

Ms. CLARKE. Thank you, Mr. Chairman.

Mr. McManus, brick-and-mortar casinos are subject to strict regulation that mandate consumer protections, such as age verification, support for problem gamblers. Casinos can lose their license to operate legally if they don't comply with these safeguards.

Of course, consumer protections must be implemented carefully and effectively to be successful. Some of the consumer protections that have been suggested for daily fantasy are similar to those that have already successfully been put in place by casino operators.

I would like to hear from you how MGM complies with gambling regulations and protects consumers. For instance, are age restrictions on gambling that apply in every state in which gambling is permitted? Can you discuss how you ensure that your customers are old enough to gamble legally?

Mr. MCMANUS. Yes. Thank you for the question.

We only operate land-based casinos. We don't have an online presence at this time. So it is a different approach to age verification. But we do it the old-fashioned way, as you would for serving alcohol. You ask for identification; you verify identification. There is extensive training for our gaming staff, security staff, and for, frankly, anyone to question whether somebody is of age.

Some states have regulations that require you to present identification as you enter a casino. Others, it is just a responsibility of the operator to assure that only people of age are gambling. Within our facilities in our jurisdictions, and I don't know if there are differences elsewhere, the minimum age is 21.

Ms. CLARKE. So let me ask, Nevada regulations prohibit some gambling by certain employees of the holder of the gambling license. What policies do you have in place to ensure that MGM employees are complying with that regulation?

Mr. MCMANUS. Yes, different jurisdictions have different rules. Some exclude all employees. In Nevada, if you are a key employee, you are excluded. I, for instance, am excluded from gambling at our facilities. I could play at a competitor's facility. And that is really to avoid even the appearance of impropriety, that a gambling game is somehow fixed.

Ms. CLARKE. And what about casino policies for handling gamers' money? For example, betting pools are kept separate from funds used for casino operations, right?

Mr. MCMANUS. Yes. In Nevada, we have requirements to maintain sufficient cash in our cage to make sure that we can pay winners, things of that sort. Again, in the online environment, it is a little different because you have an account, typically. Most of our customers are paying for chips with cash.

Ms. CLARKE. Right. We are just trying to get the distinction crystal clear.

Mr. MCMANUS. Yes.

Ms. CLARKE. You also have policies in place to help people addicted to gambling. How do your casino employees identify problem gamblers? And how are they trained to respond if they learn that a customer may be struggling with a problem gaming?

Mr. MCMANUS. Sure. And I am by no means the authority on problem gaming. There is extensive training, though, for our employees.

And I would say the biggest thing that is uniformly accepted in the land-based-casino industry is making information and help available. There are 800-numbers. There are methods for self-exclusion or self-limiting, in some cases, where, somebody who has identified themselves with a problem is able to say, "Please don't let me game here," and we enforce that. And, frankly, our regulators enforce that, where we would be fined if we were marketing to somebody who self-excluded themselves.

How somebody is specifically identified at a gaming table, for instance, I am really not the expert on that.

Ms. CLARKE. No problem.

Are there any other consumer protections that your casinos have in place?

Mr. MCMANUS. We have many consumer protections. Gaming regulation is exhaustive. It is thorough. The most basic consumer protection is making sure that the casinos are run by honest and reputable people and their backgrounds are scrutinized so you know who you are dealing with. And then it is every aspect of our industry is regulated that you have to do it with integrity, from advertising to how you conduct the game.

Ms. CLARKE. Very well.

Mr. Chairman, I yield back.

Mr. BURGESS. The gentlelady yields back.

The chair thanks the gentlelady and recognizes the gentleman from Kentucky, Mr. Guthrie, 5 minutes for your questions, please.

Mr. GUTHRIE. Thank you. This has been interesting. I appreciate it.

Professor Eggert, in your testimony, you discussed the prevalence of scripting tools on daily fantasy sports Web sites. My understanding is that a script allows one player to enter or change multiple lineups and many contests faster than a human could. Is that correct?

And what about a DFS site could make it more optimal for scripting tools than a season-long fantasy sports?

Mr. EGGERT. Yes, that is correct. If you have an algorithm that generates hundreds and hundreds of lineups, professionals use scripting tools in order to easily input those into the DFS site.

And as far as how it is different from season-long, I haven't looked into scripting tools in season-long. My understanding is that the purpose of season-long is to do trades and things like that where people are much more engaged in the game and so the strategy is how to work with other players. And so I suspect that scripting tools aren't used that much because people are much more hands-on with their individual lineups. But, again, I haven't looked at the season-long as much.

Mr. GUTHRIE. OK. Thank you.

And, Mr. Schoenke and Mr. Brubaker, how do your member companies view scripts on their services?

Mr. SCHOENKE. So, scripts is a new term; this is a new technology. Largely what it was was that the companies didn't have the functionality in their own game and so some players figured out how to do something on their own, so they developed something to swap out players at the last second if there was an injury.

But since then, the industry has shifted in terms of scripts. The companies have built a lot more functionality into their games so they can do it. Also, the leading companies, FanDuel, DraftKings, Yahoo, have banned third-party scripts.

And we have also seen this addressed at the state level, where the state regulations we talked about in Massachusetts and also the state laws that are passing in Indiana, Tennessee, and Virginia, they also ban third-party scripts as well. So I think that is going to minimize any kind of unfair advantage that people would have by using these—

Mr. GUTHRIE. Mr. Brubaker, you will answer this, Mr. Brubaker, as well. I know the service providers, you just said. But fantasy games, are they able to detect when somebody is using the script on their site?

Mr. SCHOENKE. Yes, I can answer that.

There is technology they are using. They are using the best practices. It is definitely the goal. These regulations and laws make it an incentive to do it.

Also, if a customer is caught using a script, there is a disincentive for them to use it. Their account will be suspended, could be revoked completely. So there is a disincentive for them to try to make an end-around as well.

Mr. GUTHRIE. OK.

Mr. Brubaker?

Mr. BRUBAKER. For season-long fantasy sports, you do a draft before every season starts. So there would be 12 teams in a league, and each general manager of that team would hold a draft, and they would go through all 12 people, then they would start over. You have seen drafts on TV before. Same thing. There is no scripting in season-long. Scripting is something unique to daily fantasy sports. And it does allow people to enter multiple contests. And I think Peter did a pretty good job of explaining how they do it on the DFS side.

Mr. GUTHRIE. OK. In a previous question, though, you said that there are two major players in the daily fantasy sports and you represent the small player?

Mr. BRUBAKER. So there are two major players in all of fantasy sports.

Mr. GUTHRIE. So what is the difference? But what is a key characteristic of a small player, I guess?

Mr. BRUBAKER. Small companies. Small companies. So there are probably 80 providers that are not DraftKings and FanDuel. And they range, as Peter mentioned, Yahoo is one the larger ones, but many are very small companies that have 2,000, 3,000, 5,000 players total in their company, where DraftKings and FanDuel have millions of players.

So the scale is completely different between what the two big companies do and the traditional smaller companies, season-long companies, that have been around for many, many years.

Mr. GUTHRIE. OK. I am about out of time.

And there was a question previously asked, and Mr. Eggert answered it, but, Mr. Brubaker, if you would. Some have made the argument that setting a license or registration fee—I am going to read quick because I am running out of time—are a barrier to entry into the marketplace to keep fly-by-night operators from running off with players' money.

Are fly-by-night operators a concern in the daily fantasy marketplace?

Mr. BRUBAKER. Maybe Peter should answer the daily question. Is that all right?

Mr. GUTHRIE. OK. That is fine, yes.

Mr. SCHOENKE. In the state laws that we have been advocating for, at least with FSTA's work with legislators, one of the key components for consumer protection is that the consumer funds be protected so that there will be segregation of funds. And that is one thing we are strongly advocating for at the state legislatures.

Mr. GUTHRIE. Well, thank you. I have run out of time, and I yield back. I appreciate your answers. Thank you.

Mr. BURGESS. The chair thanks the gentleman.

The chair now recognizes the gentlelady from Indiana, Mrs. Brooks, 5 minutes for your questions, please.

Mrs. BROOKS. Thank you, Mr. Chairman.

I am very pleased that in this 114th Congress we have been in exploring what we call the disruptor series, which changes the landscape of the economy. And we have explored things like Uber and Bitcoin and now this. And with this packed audience today, it

is interesting because I think this, too, is something that is really kind of disrupting the way we think about the world of gaming and gambling.

And I think it is important for us to explore the largest disruptor in the gambling community, the daily fantasy sports. But there are a lot of different questions that we have to grapple with, as to whether or not, we don't want to limit innovation, but we want to protect consumers, and where do we find that balance.

And, obviously, Indiana has just taken the lead in becoming the second State in the Nation, as I understand, to adopt what we thought was thoughtfully developed legislation. It creates the regulatory framework that ensures games are fair, participants are over 18 years of age, and that sites allow players to restrict their own play.

And while some of the regulatory measures maybe are stern, 150,000 Hoosiers are participating in daily fantasy sports, and they need to have confidence in the integrity of the products. And so I hope that we can continue to explore how to expand the safeguards that Hoosiers now enjoy and ensure that we can embrace this new trend in sports entertainment.

A couple of questions that I have. My question is, if we don't allow this type of—well, I learned yesterday that the total illegal sports-betting market in the United States grew to \$148.8 billion in 2015—the illegal sports betting.

And so I guess to Dr. Rodenberg and maybe others, if states don't allow this within their state, won't this simply drive more competition overseas to places—where are the places that we would be competing with? And can you just talk about that and can the industry talk about that, if we don't figure this out?

Mr. RODENBERG. Sure. Antigua, Curacao, and Costa Rica are the most likely overseas jurisdictions that have sports-book operations some may and some may not offer those services to American citizens. That is certainly a possibility, that if daily fantasy is not legalized and regulated in jurisdictions like yours that may be so inclined, that there could be an underground market. The offering of DFS is so new, though, I think that is a little premature.

And one interesting figure in terms of the \$140-plus-billion. The overall kind of market of daily fantasy is quite small relative to that. I mean, the estimates I have seen are anywhere between \$3 billion and \$4 billion, so it is a very small portion of the overall American sports-gaming market.

So, while important and certainly relevant to the disruption and the disruptor series that you are evaluating as part of the subcommittee, it is still a small portion of the overall American sports-gaming market.

Mrs. BROOKS. However, like Uber and Bitcoin and others, they maybe started out small, but look at where it grows.

Any other comments from anyone else about the offshore competition if we don't get this right and figure this out? Anyone want to comment?

Mr. MCMANUS. Yes, I would like to comment.

I think I can speak for my entire industry here, any form of unlawful gambling is bad. And we do find that these forms of entertainment are not going to go away if they are made unlawful, and

you will develop a black market if you don't have a legal outlet for daily fantasy.

One comment I would like to make when we talk about season-long verses daily, for me the distinction on whether regulation is appropriate is whether it is house-banked. If it is a season-long fantasy operator who just creates the platform for private leagues, I see no need for regulation. But as soon as you are taking money from citizens and promising to pay back under certain scenarios, you should be regulated, and, respectfully, whether it is a small business or a large business.

Mrs. BROOKS. Mr. Brubaker, you have talked about the difficulty with small operators complying with 50 different state audits. And can you give us a sense of how many of your members have players in all 50 states?

Mr. BRUBAKER. We don't know for sure. That question came up previous to your arrival, and there were five states where no play is allowed or has been allowed. And Dr. Rodenberg did mention there have been some changes since that from different attorneys general that have made some decisions. But I would say most of our companies have players in every legal state.

Mrs. BROOKS. OK. Thank you.

My time is up. I yield back.

Mr. BURGESS. The chair thanks the gentlelady.

At this point, I believe all members' requests for time have been honored, and I would recognize the gentleman from New Jersey for an additional 5 minutes should he so desire.

Mr. PALLONE. Thank you.

As to Mr. Brubaker, let me follow up on the gentlewoman's comments.

You talked about the difficulty small fantasy sports companies may have trying to comply with so many different state laws. So do you support Federal involvement? And is there a way to do something at the Federal level that doesn't force states who don't want daily fantasy sports or gaming to allow it?

Mr. BRUBAKER. We will work with just about anybody that wants to help us figure this out. If that is the Federal Government, we will do that. If it is going state to state, that is a much harder path for us to go down.

Certainly, so we looked at UIGEA as companies, these small companies did, and they saw that in 2006 as a green light by the Federal Government to go online with fantasy sports. Now, that was all season-long at that time. That was before daily even was contemplated.

So we have companies that are relying on you guys and said, go ahead and go start your businesses, and they have gone out and they have started their businesses. And now we have States coming in and changing the game, changing the format.

I don't think you will hear any daily fantasy sports company or season-long fantasy sports company balk at consumer protections as long as they are done in a way that is financially viable to stay in business.

Mr. PALLONE. All right. Well, maybe that is something—

Mr. BRUBAKER. If they get too expensive.

Mr. PALLONE. Maybe that is something we can look into. Thank you.

Let me go back to Mr. Schoenke again.

And, again, I am asking you specifics about DraftKings and FanDuel, which you said you can answer. I want to talk about the so-called insider trading scandal that was reported on last fall. Ethan Haskell, a DraftKings employee, was accused of using information he obtained in the course of his work to help his play on FanDuel's platform. And an independent investigation cleared him of any wrongdoing, noting that he didn't receive the information until his lineup was locked.

But the report prepared by the law firm that conducted the independent investigation was not publicly released. Do you know why DraftKings did not release that report?

Mr. SCHOENKE. I don't have that information. I know they have been pretty forthcoming with a lot of the details of what—

Mr. PALLONE. The mike.

Mr. SCHOENKE. I apologize. I said I don't have the details of that.

Mr. PALLONE. All right. But, again, we are relying on you to answer these questions of DraftKings and FanDuel.

Where did the information received by Mr. Haskell come from? Do you know who sent it to him? Was that person playing daily fantasy sports? Did that person gain an advantage from the information?

Mr. SCHOENKE. The information that he had was the number of players, the percentage ownership, which may give you an advantage if you know that one player, you know, has a lot of ownership and one player doesn't. And so it was the internal, you know, mechanism to calculate that. And he compiled the report after the game was locked, when it was no big deal, and there was an inadvertent release of that.

Mr. PALLONE. Well, Mr. Schoenke, you know, since you say you can answer these questions, maybe you can't today, but with the chairman's permission, I would like you to follow up and get back to me and try to answer them on behalf of DraftKings, if you would.

All right. Now, DraftKings prohibits its own employees and employees of other daily fantasy sports operators from playing on its site, and FanDuel prohibits its employees from playing on its own site or other daily fantasy sport sites.

How does DraftKings ensure that employees of other daily fantasy sports operators are not playing? Do competitors share their employee lists with DraftKings, to your knowledge?

Mr. SCHOENKE. It is also a component of the laws that we are advocating for across the country and that have been passed. One of the key components is that daily fantasy sports companies and, actually, all paid fantasy sports companies cannot play on other people's platform. So there is obviously a big legal incentive to get it right, as well.

Mr. PALLONE. And how does FanDuel ensure that its employees are not playing on another DFS site? Do competitors share those lists of users with FanDuel?

Mr. SCHOENKE. As far as what the specific companies are doing, I don't have that.

Mr. PALLONE. Well, again, I would ask you to find out, because Professor Eggert points out that employees have access to spreadsheets that show the players who are the biggest losers on the DFS sites. And I am just wondering how does FanDuel ensure that those lists are not being used to invite those losers to head-to-head matches. And same thing with DraftKings. You, I guess, can't answer these things right now.

Mr. SCHOENKE. No, but we as an industry are advocating for laws at the state level to prevent this from happening. And I think that will be a big disincentive for any company to allow that to happen.

Mr. PALLONE. Well, I am going to ask you to get back to me on these questions. Because, again, the two companies didn't come, and they say that you can answer the questions. So please get back to us. And I will send it in writing, as well, so you know.

Thank you, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman.

A couple of things for followup. And I guess, Mr. Eggert, even off topic from what we have been discussing, the concept of the amount of data that—or maybe, Mr. Gnat, this is to you—the amount of data that is generated seems just to be phenomenal.

And is this useful for anyone else involved in the sport? Is, say, a general manager interested in some of these performance statistics? It just seems like this has the potential for changing the way competition is handled by how well you are able to manage these large data flows.

Would either of you care to comment on that?

Mr. EGGERT. Oh, I think general managers have an increasingly great interest in data acquisition and management. And I think the sport is moving in that direction, to be more data-based and less just see how the person swings the bat. It has gotten so far that I think there is an ESPN fantasy sports analyst who is good at this kind of data management so that she can talk about these issues. So data is becoming increasingly important.

Mr. BURGESS. Mr. Gnat, did you have something you wanted to add to that?

Mr. GNAT. Thank you, Mr. Chairman.

As far as I know, there are lots of sports organizations out there today who actually employ members of their general manager's staff who are data analysts, who will go and look at players and see how they play in certain environments and decide how they select.

I mean, the entire concept of the movie "Moneyball" and the whole Billy Beane and how he was selecting teams for the Oakland As, that is all really based on the concept of starting with data analytics.

Mr. BURGESS. Well, Ms. Brooks is quite correct; we have been doing the disruptor series, and, of course, at the base of the disruptor series is the way data is now handled and managed throughout every stratum of our ecosystem right now.

Mr. Pallone made the observation that this could perhaps drive interest in a team that otherwise their won-lost record might not generate that much enthusiasm but because you might have players that were on a roster you are now interested in the perform-

ance of that team. And while he was describing that, I couldn't help but think that, had this been around 30 years ago, the New Jersey Generals might still be a franchise of the USFL, but maybe not. I don't know. It is just purely speculation at this point.

Mr. LANCE. Purely speculative, Mr. Chairman.

Mr. BURGESS. Well, again, I want to thank our panel.

Ms. SCHAKOWSKY. May I make a comment?

Mr. BURGESS. Yes, please. The gentlelady is recognized.

Ms. SCHAKOWSKY. So, last night, I was one of about 5 million people who have checked out John Oliver's explanation of daily fantasy sports. Regardless of one's position on it, you might get a kick out of it. I am not his agent. I get no kickback from John Oliver. But it is a humorous but also informative, from my point of view, explanation of daily fantasy sports.

Mr. BURGESS. The chair thanks the gentlelady.

Seeing no further members wishing to ask questions for this panel, I do want to thank our witnesses for being here today.

Before we conclude, I would like to submit the following documents for the record by unanimous consent: a letter from the American Gaming Association; a letter from The Mellman Group; a letter from the Stop Predatory Gambling group; a letter from the National Conference of State Legislators; a letter from the Office of the Attorney General from the State of Texas.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Pursuant to committee rules, I remind members they have 10 business days to submit additional questions for the record. And I ask the witnesses to submit their responses within 10 business days upon receipt of those questions.

Without objection, the subcommittee stands adjourned.

[Whereupon, at 12:02 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



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**TESTIMONY OF GEOFF FREEMAN
PRESIDENT AND CEO, AMERICAN GAMING ASSOCIATION
HOUSE SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE
MAY 11, 2016**

Introduction

The American Gaming Association (AGA) represents America's commercial and tribal casino operators, gaming manufacturers, suppliers and other businesses affiliated with the licensed casino gaming industry. We are a national industry that operates in 40 states, supports 1.7 million jobs and contributes \$240 billion to America's economy every year.

Regulatory Clarity for DFS

Over the past year, public interest in Daily Fantasy Sports (DFS) has exploded. This growing popularity has raised important questions about the appropriate regulatory environment, the adequacy of federal and state gaming laws and the best way to protect consumers and the integrity of games.

It also provides an opportunity to review the effectiveness of America's 25-year-old federal sports betting ban in light of growing public acceptance of gaming in general, the soaring interest in sports betting in particular and the development of new technologies that can aid law enforcement in overseeing betting activities.

As far as DFS is concerned, AGA's position is simple: DFS currently operates in a legal gray zone. We think it should be black and white. The gaming industry wants to see clear rules of the road that lay out where DFS is going to be legal, how it is going to be regulated and how consumers are going to be protected.

The casino gaming industry should be included in discussions regarding changes to federal gambling laws and any legislation seeking to expand or clarify Daily Fantasy Sports. And further, any changes to amend federal sports betting laws should explicitly preserve existing Tribal-State Compacts.

Many states are already taking action.

In Indiana, Governor Mike Pence recently signed legislation that defines DFS as a game of skill and establishes a regulatory framework to allow DFS companies to operate and protect consumers. In Nevada, the Gaming Control Board has defined DFS as a form of gambling that requires a state gaming license. Governor Brian Sandoval has asked the Nevada Gaming Policy Committee to recommend an appropriate regulatory model. From AGA's perspective, both states have provided necessary legal clarity.

We believe regulatory clarity advances several important public policy goals: It will protect consumers from unscrupulous operators and unfair games; it will add legitimacy to DFS contests and ensure everyone is on a level playing field; and it will encourage new innovation and new entrants.

AGA's position is the result of a deliberative process that took into account the full spectrum of gaming stakeholders. As DFS grew in popularity and raised regulatory questions, AGA created a Sports Betting Task Force to forge an industry point of view.

The result is an industry consensus that where DFS operates – either as a regulated gambling activity requiring a full license or as a more lightly regulated game of skill – the gaming industry wants the opportunity to enter the market.

Illegal Sports Betting Market

The debate about DFS touches on the broader issue of sports betting in America. DFS gives sports fans the ability to engage more deeply with their favorite sports and athletes. But the desire to engage with the sports Americans enjoy is also fueling illegal sports betting.

In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA), effectively outlawing sports betting in most of the U.S. Four states that previously allowed forms of sports betting were grandfathered into the law: Nevada, Delaware, Montana, and Oregon. Today, only Nevada permits traditional, full-fledged sports betting on many college and professional sports through licensed bookmakers.

But the 25-year old ban has failed to achieve its objectives. Instead of curbing sports betting, it has just driven it underground with trillions of dollars estimated to be wagered illegally over the life of the law.

Since the federal prohibition on sports betting was enacted, Americans have grown more and more passionate about professional sports in the U.S. Wagering provides them the opportunity to feel closer and more connected to teams and sporting events. In fact, two-thirds (67%) of NFL fans who watched Super Bowl 50 said they are more likely to watch a game if they bet on it; 63 percent of weekly NFL viewers say they follow teams and players more closely when they bet on games.¹

The two biggest sporting events of 2016 have been Super Bowl 50 and March Madness. AGA estimates that Americans bet nearly \$14 billion on those events.² About 97 percent of

¹ The Mellman Group on behalf of the American Gaming Association. <https://www.americangaming.org/newsroom/press-releases/80-super-bowl-viewers-say-change-sports-betting-law>

² The American Gaming Association. <https://www.americangaming.org/newsroom/press-releases/80-super-bowl-viewers-say-change-sports-betting-law> and <https://www.americangaming.org/newsroom/press-releases/march-madness-betting-total-92-billion-year>

it was bet illegally.³ In fact, according to findings from opinion research conducted by the Mellman Group, some 47 million adults who watched Super Bowl 50 reported that they bet on sports in the past year – nearly three times the total number of people who attended NFL games last season. What's more, American adults placed an estimated \$93 billion in illegal bets on NFL and college football this past season alone.⁴

The precise scope of the illegal gambling market is difficult to pinpoint, but we have seen figures ranging from \$100 billion to \$400 billion. Even at the low end, the illegal sports betting market in the U.S. is roughly five times bigger than the entire legal sports betting market in the U.K.⁵

We believe there are three key reasons federal policymakers should care about this.

First, illegal sports betting finances a range of criminal activities. Illegal sports betting is not a victimless crime. Billions of dollars flow through illegal bookies, organized crime syndicates and a web of hundreds of offshore gambling sites. These funds underwrite everything from money laundering and drug dealing to human trafficking and extortion. These are not short-term, fly-by-night operations. Many illegal sports gambling businesses have been operating for a decade or more and employ a few dozen people. In 2014 alone, 80 operations in 23 states were convicted of running illegal gambling rings.⁶

Second, illegal sports betting offers no protections for the integrity of games. As illegal sports betting explodes in popularity, protecting the integrity of games – a vital mission for sports leagues, athletes and fans everywhere – has become an increasingly urgent priority. Anyone who is concerned about sports betting's impact on sports integrity should consider this: In the illegal gambling market, there are no safeguards – let alone concerns – for the integrity of sports. And nothing threatens the integrity of sports more than a thriving sports betting black market where the bettors and those taking the bets hide in the shadows. As we have learned from the U.K., using 21st century tools to monitor betting and identify suspicious betting patterns helps promote the integrity of games and protect the sports we all love.

Third, illegal sports gambling is a parasite on local communities. While legal gaming in the United States generates \$38 billion in tax revenues and supports 1.7 million jobs across 40 states, with taxes supporting critical public services – including education, health care and law enforcement – illegal gambling does not generate a penny for state and local governments. Nothing for local schools. Nothing for local hospitals or parks. Nothing for responsible gaming programs. And it drains limited law enforcement resources.

³ The American Gaming Association.

⁴ The Mellman Group on behalf of the American Gaming Association.
<https://www.americangaming.org/newsroom/press-releases/80-super-bowl-viewers-say-change-sports-betting-law>

⁵ The American Gaming Association, based on total 2015 U.K. legal sports betting handle.

⁶ Dr. Jay Albanese on behalf of the American Gaming Association.
<https://www.americangaming.org/newsroom/press-releases/new-report-shows-strong-ties-between-illegal-gambling-and-organized-crime>

It is past time to determine if a more effective approach to sports betting in America exists. Many leaders in professional sports are already calling for one. NBA Commissioner Adam Silver has repeatedly called for bringing sports betting out of the shadows by legalizing and regulating it. MLB Commissioner Rob Manfred has called for a "fresh" look at the issue. The NHL is on the cusp of awarding a franchise to Las Vegas. And just last month, NFL Commissioner Roger Goodell said the league has "evolved" on sports betting.

American fans are suggesting they, too, are ready for a new conversation on sports betting; Roughly six in ten Super Bowl viewers believe transparent, regulated wagering could either strengthen the integrity of games or have no impact on game outcomes.⁷

The gaming industry invites those who are serious about protecting the integrity of sports to partner with us in pursuit of eliminating the sports betting black market. Millions of Americans love sports, embrace sports betting and are ready for Congress to reexamine the sports betting prohibition that was enacted during the George H.W. Bush Administration.

The AGA is committed to working with law enforcement officials, sports leagues, athletes, sports monitoring companies, regulators and policy makers to advance this discussion, which begins by understanding the nature of the illegal sports betting market in the United States.

As members of Congress consider this issue, it is clear that Americans are ready for a change.

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⁷ The Mellman Group on behalf of the American Gaming Association.
<https://www.americangaming.org/newsroom/press-releases/80-super-bowl-viewers-say-change-sports-betting-law>



To: AGA
From: The Mellman Group
Re: Executive Summary of Our Recent Super Bowl Polling
Date: February 2, 2016

This analysis represents the findings of a survey of 800 registered voters who plan to watch the Super Bowl. The survey was conducted using a registration-based sample including cell phones and landlines. Interviews were conducted January 25-28, 2016. The margin of error for each question is +/-3.5% at a 95% level of confidence. The margin of error is higher for sub-groups.

Our just-completed survey of voters who plan to watch the Super Bowl reveals they support allowing individual states to determine whether to legalize sports betting within their own borders.

Super Bowl viewers support the change because they recognize that illegal sports gambling is already happening and if it were legal, it would be regulated, taxed, and safer for consumers, benefitting American companies, American workers, and American taxpayers.

Based on the attitudes of Super Bowl viewers, the NFL should support this position: their most fervent fans support changing current sports betting law, their most important demographics support change, and their most important growth demographics support change. Moreover, those who bet on a game are more likely to tune in, more likely to engage with the teams, players and sport, and more likely to enjoy watching the game.

Most don't think changing sports betting law will threaten the integrity of the game. Indeed, 65% believe transparent, regulated sports betting will either strengthen the integrity of games or have no impact on game outcomes.

The Mellman Group (February 2016)

SUPER BOWL VIEWERS STRONGLY FAVOR LETTING STATES DECIDE WHETHER TO ALLOW SPORTS BETTING OR NOT

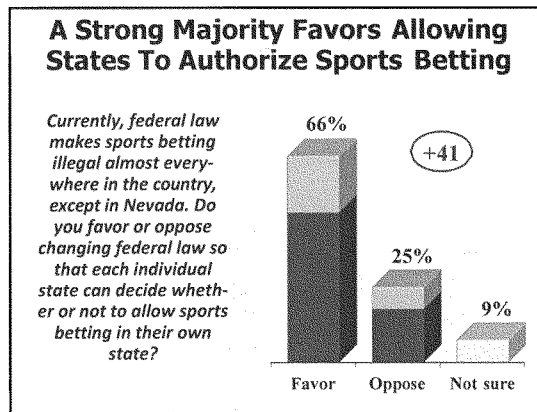
Two-thirds (66%) favor changing federal law to enable each individual state to decide whether or not to allow sports betting in their own state. Only 25% oppose. Intensity favors supporters: nearly a majority of Super Bowl viewers (48%) “strongly” support change, almost three times the number who “strongly” oppose change (17%).

Support for changing current sports betting law is also broad. Sixty-eight percent (68%) of weekly NFL viewers join 68% of occasional viewers and 61% of those who rarely watch football in supporting a change to current law.

Not only is there support for change among those who have placed a sports bet in the last year (78%), but even a majority of those who didn’t place a bet (58%) favor the change (only 30% oppose it). Support also crosses party lines with 67% of Democrats joining 67% of independents, and 65% of Republicans – solid, and rare, bipartisan support for changing current law.

Three-in-four men between the ages of 18-49, the NFL’s most coveted demographic, are the most supportive of the change (75%). Yet 67% of women 18-49 also support changing existing law. While older individuals are less supportive than younger ones, there is still considerable support among older viewers (55% of older women, 62% older men). Even those who attend religious services weekly support changing existing law by 22 points (56% favor, 34% oppose).

Few fans oppose legalizing sports betting nationally and most want states to be able to decide the question of legalization. Only 22% would legalize sports betting nationally, but even fewer would oppose the legalization of sports betting nationally (17%). Most (58%) believe that each state should be empowered to decide whether or not sports betting should be legal within its borders.



BETTING ON SPORTS INCREASES VIEWERSHIP AND AUDIENCE ENJOYMENT – PROVIDING AN OPPORTUNITY FOR THE NFL TO ENGAGE OCCASIONAL VIEWERS

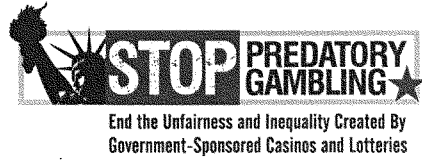
Those who placed a bet in the past indicate that it increased their viewership (86% say they are more likely to watch that game if they bet on it), engaged them in the sport (74% say they follow teams and players more closely if they place a bet) and made the game more fun and enjoyable to watch (75% agree).

The positive impact sports betting has on the NFL's popularity, fan base and ratings is not inconsequential. Overall, 41% have placed a sports bet of some kind in the past year. Those most likely to have placed a bet on sports are those who watch the NFL every week (50%), men under 50 (53%) and those in the Northeast (52%) – three core target groups and geographies for the NFL.

The impact of sports betting also helps improve viewership and fan experience for the Super Bowl. One-in-four viewers (27%) say they plan on placing a bet on the Super Bowl. This isn't limited to regular NFL fans. Indeed, a number of those who watch the NFL only occasionally (29%) plan to place a bet on the Super Bowl, as do one in ten (13%) of those people who don't watch any football except the Super Bowl.

Sports betting frequency actually increases with income. Nearly half (49%) of those who made over \$100,000 last year placed a sports bet, 10 points higher than the percentage of those with incomes under \$60,000 (39%).

Indeed, most believe legal, regulated sports betting would strengthen integrity of the game or have no impact. Sixty-five percent (65%) believe legal, regulated betting on sporting events would either have no effect on game outcomes (34%) or strengthen the integrity of games because of stronger law enforcement and monitoring of betting activity (31%).



May 10, 2016

The Honorable Michael Burgess
 Chairman, Subcommittee on Commerce, Manufacturing, and Trade
 Committee on Energy and Commerce
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Burgess:

When any reasonable observer soberly looks at the facts of almost 40 years of government-regulated gambling, there is one unavoidable conclusion:

Government's regulation of gambling has been a spectacular failure by almost any measure, and inevitably, online gambling will be the biggest failure of all.

No one needs to speculate what online gambling regulation will look like. Simply look at government's experiment with state lotteries and regional casinos, which has badly failed in at least five major ways:

- 1) It creates more inequality of opportunity than any other single act of government
- 2) It has shown over and over again that the almost singular focus of government-regulated gambling has been *on driving maximum sales and profits, not protecting citizens*: "Taxation By Exploitation"
- 3) It has led to higher taxes for less services for the 2/3 of citizens who rarely gamble and worse state budget problems over the long term: "You Pay Even If You Don't Play"
- 4) It has supremely failed to reduce illegal gambling
- 5) It has proven to be about granting monopolies and awarding regulatory advantages to favored firms and little to do with free market principles

Let us look at each of these failures in more depth.

1) No single act of government creates more inequality of opportunity than its promotion of gambling

Government's regulation of gambling has concentrated commercial gambling in economically-distressed communities, targeting citizens from the lower rungs of the income ladder. Low-income workers, retirees, minorities, and the disabled comprise a disproportionately large share of lottery and regional casino users.¹

Financially desperate citizens have become ensnared in these government-run gambling schemes as a way to try and improve their lives and help them escape their financial condition. It has become a Hail Mary investment strategy, doomed to inevitable failure. By targeting the least advantaged, government-sponsored gambling adds to the increasingly separate and unequal life patterns in education, marriage, work, and play that now are dividing America into haves and have-nots.

A mountain of independent evidence confirms that government's experiment of sponsoring lotteries and regional casinos is contributing to rising inequality of opportunity in our nation including.² It is harming health, draining wealth from people in the lower ranks of the income distribution, and contributing to economic inequality.³

2) The almost singular focus of government-regulated gambling has been on driving maximum sales and profits, not protecting citizens: "Taxation By Exploitation"

A fundamental and irreconcilable conflict exists between the interests of government-regulated gambling and the public good: the state is charged with protecting the public from the very business practices that generate more revenue for the state.

Such an entrenched conflict has allowed unfair and exploitative practices to be endemic to government-regulated gambling. It also explains why no research exists pointing to a single U.S. jurisdiction where commercial gambling regulation has successfully protected its citizens from being damaged financially, or from falling victim to gambling addiction, or both.

Only the uninformed and the willfully ignorant would suggest that government will promote online gambling in a different, more ethical manner than its track record with lotteries and regional casinos demonstrates. Some examples of the predatory and dishonest practices used by government-regulated gambling from across the nation include:

- Most industries and companies are subject to truth-in-advertising laws enforced by the Federal Trade Commission. According to these laws, advertising must be truthful and non-deceptive, advertisers must have evidence to back up their claims, and advertisements cannot be unfair. State-run lotteries, however, have been exempted from these laws. Because of this, state lotteries have wide latitude in how they can promote their product, exaggerate chances of winning, and aggressively lure more citizens to lose their money. Daily fantasy sports (DFS) already follows this state-approved model of misleading promotion.
- State lottery media plans blatantly state that lottery promotions should be timed to coincide with the receipt of government benefits, payroll and Social Security payments.⁴ If government authorizes DFS, one can predict with certainty that future promotions will follow this parasitic approach.
- Public records requests reveal lotteries openly target minorities and lure young people to gamble for the first time by explicitly developing lottery games and marketing efforts for these constituencies.⁵ Likewise, DFS marketing plainly aims at hooking young people.⁶

- Electronic gambling machines, a pillar of government's regulated gambling program, are designed mathematically so users are certain to lose their money the longer they play.⁷ At the same time, the machines are literally designed so citizens cannot stop using them, exploiting aspects of human psychology and inducing irrational behavior.⁸ Every feature of a gambling machine - its mathematical structure, visual graphics, sound dynamics, screen ergonomics - is designed to increase a player's "time on device" - which means how long a person plays.⁹ Online gambling operators share the same aim.
- The image of "responsible gambling" promoted by government gambling regulators is a *sham*. The success of commercial gambling enterprises depends upon people not being able to follow so-called responsible gambling guidelines. MIT Professor Natasha Schull reported in her 2012 book *Addiction By Design* that people who follow responsible gambling guidelines *made up 75% of the players but contribute a mere 4% of gambling profits*.¹⁰ "They only bring in 4% of our revenues, the responsible gamblers," the author of the study said. "If responsible gambling were successful then the industry would probably shut down for lack of income."¹¹ The revenue model for "regulated" gambling hinges on getting citizens to lose control of themselves, ultimately causing harm to them and the people around them. DFS operators have the same financial motivation to use "responsible" gambling as a façade, while actually taking advantage of those who have become hooked.
- Lotteries invest in sophisticated market research to better target citizens and increase the amount of money they lose on lottery games.¹² Government-authorized DFS operators will employ the same kind of state-of-the-art market research to develop the "right" message to susceptible people so they lose even more money.
- Lotteries mail hundreds of thousands of households coupons for free Powerball and instant tickets to introduce gambling games to "infrequent players."¹³ Likewise, DFS operators have openly and aggressively lured citizens to their gambling websites with offers that include a "\$200 bonus."¹⁴ If allowed to partner with government, these types of DFS promotions incentivizing citizens to gamble will continue like we have seen with lotteries.
- Lotteries offer bonuses to retailers who increase year-over-year gambling revenues by getting citizens to lose more money.¹⁵ There is no reason to believe these kinds of lucrative incentives would be prohibited to DFS operators and their staff under a so-called "regulated" system.

3) Government-Sponsored Gambling Has Led to Higher Taxes for Less Services and Worse State Budget Problems: "You Pay Even if You Don't Play"

An April 2016 report by the Rockefeller Institute of Government at SUNY Albany confirms what is becoming obvious to most Americans: "In the long-run, the growth in state revenues from gambling activities slows or even reverses and declines."¹⁶

That means higher taxes for less services for the 2/3 of citizens who never or rarely gamble. And their states end up with worse budget problems over the long term. Taxpayers who don't gamble are footing the bill. You pay even if you don't play.

This is because casinos and lotteries have proven to be a failed source of government revenue and have not delivered on their promises to fund education, lower taxes, or pay for needed public services. States generally expand gambling operations when tax revenues are depressed by a weak economy, or to pay for new spending programs. Yet income from casinos and lotteries does not tend to grow over time as rapidly as general tax revenue. Expenditures on education and other programs will generally grow more rapidly than gambling revenue over time. **Thus, new gambling operations that are intended to pay for normal increases in general state spending add to, rather than ease, long-term budget imbalances.**¹⁷

More troubling for taxpayers, gambling operators are not allowed to fail by the state. For example, when casinos come up short, states usually provide new infusions of money, reduced taxes, reduced funding for gambling addiction measures, or other concessions such as lifting smoking bans and loss limits, in order to sustain revenues and profitability.¹⁸ **Public tax dollars too often prop up and subsidize gambling operators.** Rhode Island, Delaware, and New Jersey, to just name a few, have all recently taken special steps to help operators that might otherwise fail.¹⁹

The push for more subsidies from taxpayers is going to intensify moving forward. Of the 47 states with gambling revenue, 27 states reported declines over fiscal 2014 with nine states reporting declines of more than 5 percent.²⁰

Allowing states to sponsor online gambling such as online fantasy gambling will only deepen this downward spiral, forcing the taxpayers who don't gamble to foot the bill.

4) Government-Sponsored Gambling Has Badly Failed to Reduce Illegal Gambling

No American jurisdiction has EVER documented a decline in illegal gambling after states began sponsoring gambling. In fact, illegal gambling tends to increase for a number of reasons. Untaxed illegal operators can offer better odds and tax avoidance that legal operations cannot. Once gamblers start betting legally, they become less averse to gambling in unlicensed establishments. Law enforcement in gambling states view illegal gambling as a state revenue issue rather than a criminal activity, making enforcement less of a priority. Lastly, when commercial interests gained control of the casino business from organized crime, they obtained the ability and the license to abuse and destroy customers to an extent that was not possible when casinos were run by criminals.²¹

It's inevitable that the amount of illegal online gambling will only increase if online fantasy sports gambling is authorized. If the illegal online gambling operators supposedly cannot be controlled, how can you control and regulate the ones you license? If you can't shut down the illegal operators, how would you possibly shut down licensed operators who don't follow the rules?

The criminalization of for-profit lotteries and casino-style gambling was successfully practiced for a large portion of American history. This does not mean illegal gambling was absent from society, but public institutions did their best to *contain* it. They did not incentivize citizens to lose their money gambling.

5) Government-Sponsored Gambling Has Proven to Be About Granting Monopolies and Awarding Regulatory Advantages to Favored Firms

When government sponsors gambling, it is not merely permitting private, consensual behavior. It is granting monopolies and awarding regulatory advantages to favored firms.²² This has little to do with limited government and free market principles. Like we have seen with lotteries and regional casinos, online fantasy sports gambling, if authorized, will be a public policy that benefits a privileged few at the expense of everyone else.

6) Nearly All of the People Who Run Gambling Operations and the Public Officials Who Lobby to Bring Them in, Don't Gamble Themselves

With the zeal of a teetotaler, there is one memorable and telling axiom that most gambling operators and the public officials they partner with have in common: they don't gamble.²³ Nearly every major casino operator, including Steve Wynn²⁴, Jim Murren²⁵, CEO of MGM, Sheldon Adelson of Las Vegas Sands,²⁶ and Gary Loveman,²⁷ the recent CEO of Caesars, *hardly ever gamble themselves*.²⁸

The people who make the slot machines that government sponsors don't gamble either. A *New York Times Sunday Magazine* reporter authored a cover story on slots which included a visit to the headquarters of International Gaming Technology (I.G.T.), America's biggest maker of electronic slot machines: "Most of the people I met inside I.G.T. told me they never played slot machines on their own time," he wrote. "When I asked one I.G.T. artist if he ever plays, he acted as if I had insulted him. **"Slots are for losers," he spat, and then, coming to his senses, begged me to consider that an off-the-record comment.**"²⁹

Not surprisingly, the axiom holds true for the founders of online fantasy gambling operators. One of the founders of Draft Kings told *The Boston Globe* that prior to starting the company, "I had never even stepped foot in a casino. The three of us have computer science degrees. We're a bunch of dorks that wanted to build something cool."³⁰

At least when it comes to the rank-and-file employees of fantasy gambling operators, they do gamble, apparently, but with the benefit of valuable inside information.³¹ Policies to bar DFS employees from acting on this inside information are effectively unenforceable, as they are easily evaded via use of spouses, relatives, and friends to place bets using the information not available to most citizens.

Conclusion

No great nation has ever built prosperity on the foundations of personal debt, addiction, and the steady expansion of businesses that produce no new wealth. Relying on gambling is a sign of surrender and defeat on the part of leaders who have failed to lead.

Government-sponsored gambling represents the absolute worst of crony-capitalism and big government. It pits government's interests against the best interests of its people. For government to win, its citizens must lose.

The alternative is to muster the courage to chart a path to true prosperity. An America freed from the yoke of government-sponsored gambling would be an America once again on the move—an America with broader and more sustainable economic growth, more honesty in government, more social trust, and the rekindling of the optimism that has long been our defining national strength.

That's a purpose worth sacrificing for.

Thank you for your consideration.

Sincerely,



National Director
Stop Predatory Gambling

SPG's mission is to build a more humane and just society by sunseting government's practice of using gambling to defraud and exploit citizens, whether in the form of lotteries, regional casinos or online gambling.

¹ *Why Casinos Matter, Thirty-One Evidence-Based Propositions from the Health and Social Sciences*, Institute for American Values, Council on Casinos, September 2013 <http://americanvalues.org/catalog/pdfs/why-casinos-matter.pdf>

² *Why Casinos Matter, Thirty-One Evidence-Based Propositions from the Health and Social Sciences*, Institute for American Values, Council on Casinos, September 2013 <http://americanvalues.org/catalog/pdfs/why-casinos-matter.pdf>

³ *Why Casinos Matter, Thirty-One Evidence-Based Propositions from the Health and Social Sciences*, Institute for American Values, Council on Casinos, September 2013 <http://americanvalues.org/catalog/pdfs/why-casinos-matter.pdf>

⁴ The National Gambling Impact Study Commission Report, sponsored by the U.S. Congress, 1999 www.govinfo.library.unt.edu/ngisc/research/lotteries.html

⁵ Public records request filed by Stop Predatory Gambling and Muckrock to the Massachusetts Lottery, 2010 <https://www.muckrock.com/foi/massachusetts-1/massachusetts-lottery-records-260/>

⁶ "Cash Drops and Keystrokes: The Dark Reality of Sports Betting and Daily Fantasy Games," *The New York Times*, October 15, 2016 http://www.nytimes.com/interactive/2015/10/15/us/sports-betting-daily-fantasy-games-fanduel-draftkings.html?_r=0

⁷ Natasha Dow Schull, PhD, ADDICTION BY DESIGN, MACHINE GAMBLING IN LAS VEGAS, (2012), Pg. 112 available at <http://press.princeton.edu/titles/9156.html>

⁸ Natasha Dow Schull, PhD, ADDICTION BY DESIGN, MACHINE GAMBLING IN LAS VEGAS, (2012), available at <http://press.princeton.edu/titles/9156.html>

⁹ Natasha Dow Schull, PhD, *Beware: Machine Zone Ahead*, Washington Post, July 6, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/04/AR2008070402134.html>

¹⁰ Focal Research Consultants, *The 1997/98 Nova Scotia Regular VL Players Study Highlight Report*, at 11, available at <http://stoppredatorygambling.org/wp-content/uploads/2012/12/Nova-Scotia-Problem-Gambling-Study.pdf>

¹¹ NATASHA DOW SCHULL, PhD, ADDICTION BY DESIGN, MACHINE GAMBLING IN LAS VEGAS, Pg. 267 (2012), available at <http://press.princeton.edu/titles/9156.html>

¹² "State spends millions to sway flinty Mainers to spend more on lottery tickets," Maine Center for Public Interest Reporting, October 22, 2015 <http://pinetreewatchdog.org/state-spends-millions-to-sway-flinty-mainers-to-spend-more-on-lottery-tickets/>

¹³ "State spends millions to sway flinty Mainers to spend more on lottery tickets," Maine Center for Public Interest Reporting, October 22, 2015 <http://pinetreewatchdog.org/state-spends-millions-to-sway-flinty-mainers-to-spend-more-on-lottery-tickets/>

¹⁴ FanDuel TV ad offering \$200 bonus to new players, August 2015 <https://www.youtube.com/watch?v=pnvTXsqLxoE>

¹⁵ "State spends millions to sway flinty Mainers to spend more on lottery tickets," Maine Center for Public Interest Reporting, Oct. 22, 2015 <http://pinetreewatchdog.org/state-spends-millions-to-sway-flinty-mainers-to-spend-more-on-lottery-tickets/>

¹⁶ Lucy Dadayan at el, *State Revenues from Gambling: Short-Term Relief, Long-Term Disappointment*, Nelson A. Rockefeller Institute of Government, April 2016, http://www.rockinst.org/pdf/government_finance/2016-04-12-Blinken_Report_Three.pdf

¹⁷ Lucy Dadayan at el, *For the First Time, A Smaller Jackpot*, Nelson A. Rockefeller Institute of Government, September 21, 2009, at 19-20, http://www.rockinst.org/pdf/government_finance/2009-09-21-No_More_Jackpot.pdf

¹⁸ *Why Casinos Matter, Thirty-One Evidence-Based Propositions from the Health and Social Sciences*, Institute for American Values, Council on Casinos, September 2013 <http://americanvalues.org/catalog/pdfs/why-casinos-matter.pdf>

¹⁹ *Why Casinos Matter, Thirty-One Evidence-Based Propositions from the Health and Social Sciences*, Institute for American Values, Council on Casinos, September 2013 <http://americanvalues.org/catalog/pdfs/why-casinos-matter.pdf>

²⁰ State Revenues from Gambling Show Weakness Despite Gambling Expansion," Rockefeller Institute, SUNY, March 23, 2015 http://www.rockinst.org/pdf/government_finance/state_revenue_report/2015-03-23_Data_Alert.pdf

²¹ DAVID CAY JOHNSTON, *TEMPLES OF CHANCE*, (1992)

²² *Why Casinos Matter, Thirty-One Evidence-Based Propositions from the Health and Social Sciences*, Institute for American Values, Council on Casinos, September 2013 <http://americanvalues.org/catalog/pdfs/why-casinos-matter.pdf> Pg. 18, <http://americanvalues.org/catalog/pdfs/why-casinos-matter.pdf>

²³ Stop Predatory Gambling Foundation, *The Smartest Guys NOT in the Room*, <http://stoppredatorygambling.org/blog/category/research-center/the-smartest-guys-not-in-the-room/>

²⁴ "Casino Mogul Steve Wynn's Midas Touch," *60 Minutes*, April 12, 2009, <http://www.cbsnews.com/news/casino-mogul-steve-wynns-midas-touch/>

²⁵ "Is There Life After Blackjack? Ask MGM," *New York Times*, December 26, 2004, http://www.nytimes.com/2004/12/26/business/26vegas.html?_r=0

²⁶ "Gaming Legend Profile: Sheldon Adelson," *Casino Enterprise Management*, June 2011 <http://www.casinoenterprisemanagement.com/articles/june-2011/gaming-legend-profile-sheldon-adelson>

²⁷ CHRISTINA BINKLEY, *WINNER TAKES ALL*, Pg. 177 (2008).

²⁸ Stop Predatory Gambling Foundation, *The Smartest Guys NOT in the Room*, <http://stoppredatorygambling.org/blog/category/research-center/the-smartest-guys-not-in-the-room/>

²⁹ Gary Riviin, *The Tug of the Newfangled Slot Machines*, N.Y. TIMES MAGAZINE, May 9, 2004, <http://www.nytimes.com/2004/05/09/magazine/09SLOTS.html>

³⁰ "Inside DraftKings' war room as the fantasy sports battle rages," *The Boston Globe*, December 3, 2015 <http://www.bostonglobe.com/magazine/2015/12/03/inside-draftkings-war-room-fantasy-sports-battle-rages/DAX8tBAZBOEX9kr6zoeOfM/story.html>

³¹ "Scandal Erupts in Unregulated World of Fantasy Sports," *The New York Times*, Oct. 5, 2016 <http://www.nytimes.com/2015/10/06/sports/fanduel-draftkings-fantasy-employees-bet-rivals.html>



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

STATEMENT FOR THE RECORD BY
SENATOR CURT BRAMBLE
PRESIDENT PRO TEMPORE
UTAH STATE SENATE
President of the
National Conference of State Legislatures

ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

REGARDING

DAILY FANTASY SPORTS: ISSUES AND PERSPECTIVES

TO THE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
ENERGY AND COMMERCE COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 11, 2016

**SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

May 11, 2016

Statement of

**Senator Curt Bramble
President, NCSL**

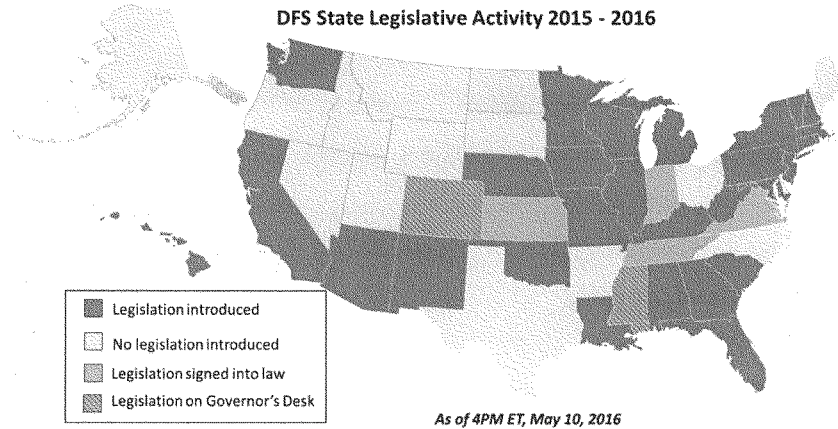
National Conference of State Legislatures

Chairman Burgess, Ranking Member Schakowsky, and members of the Commerce, Manufacturing, and Trade Subcommittee, I am pleased to submit this statement on behalf of the National Conference of State Legislatures (NCSL) and respectfully request that you submit it for the record. The National Conference of State Legislatures is the bipartisan organization that represents the 50 state legislatures and the legislatures of our nation's commonwealths, territories, possessions, and the District of Columbia.

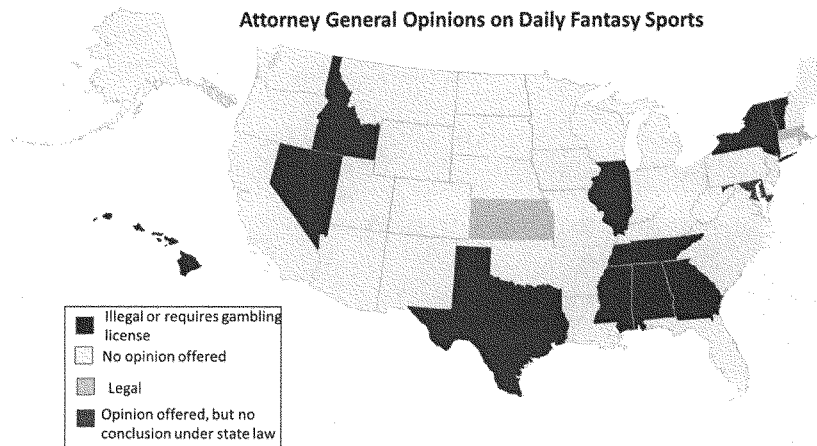
I appreciate the opportunity to provide a brief overview of the recent state activity regarding the emerging industry of daily fantasy sports (DFS). While the DFS industry is not new, it was not until a \$200 million advertising blitz in the fall of 2015 by DFS industry leaders, DraftKings and FanDuel, that the industry achieved widespread popularity with the public. Due to this massive growth in popularity in the fantasy sports realm, it's estimated that in 2015, 16 million players spent more than \$4 billion competing in daily fantasy sports contests.¹ While the industry seeks to solidify itself in the fantasy market, its emergence has also caught the attention of lawmakers and attorneys general in the states.

While most states do not have statutes that address the legality of daily fantasy sports, states do maintain the most control over the regulation of games of skill and chance, including lotteries and gambling. Therefore, legislatures across the country have started to examine the legality of this young and thriving industry, debating whether it's a skill-based game or if it's chance-based gambling. Each state appears to be tackling the issue in its own way. So far in 2016, 35 state legislatures have introduced bills addressing DFS, many of which seek to legalize and regulate the industry. In some states, attorneys general have issued opinions asserting that it is illegal gambling and have halted the business in its tracks.

¹ Bob Hobler, "An uncertain line between fantasy sports, gambling" Boston Globe, Aug. 2, 2015, <https://www.bostonlobe.com/sports/2015/08/02/fantasy-games-draw-scrutiny-ban-sports-gamblingblurs/XxWUs2cwrvel.vJc8bFt3wI/story.html>



Over the past year, over a dozen attorneys general have weighed in on daily fantasy sports. Ten state attorneys general have released opinions that daily fantasy sports is illegal gambling under state law, while Nevada also states that it is gambling and requires licensing. Three others have come out asserting that the contests are legal. Notably, Massachusetts attorney general Maura Healy is the first attorney general to have filed a series of regulations to oversee the daily fantasy sports industry. These regulations include setting a minimum age of 21 to play, excluding contests based on college events, as well as a number of consumer protections ranging from who cannot participate in the contests as well as how much a person can participate. While legislatures continue to develop and debate legislation on daily fantasy sports, it is likely we will see more attorneys general provide opinions on the legality of the games based on each state's unique laws.



Virginia was the first state to pass legislation that both legalized and created regulations on the contests on March 7, 2016. The bill was the first formal recognition of the industry, putting the state's Department of Agriculture and Consumer Service in charge of overseeing the industry and classifying the contests as a game of skill. Operators in the state must register and pay a \$50,000 operating fee. Some of the other regulations include setting a minimum age of 18 to play, requires operators to take steps to prevent employees and their immediate relatives from playing in contests, to ensure security of data at the sites, to segregate player funds from operational funds, and require an annual audit of all registered operators.

Indiana followed in Virginia's footsteps when they also passed a law regulating daily fantasy sports on March 24, 2016. The bill gives oversight to a newly created Paid Fantasy Sports Division of the Indiana Gaming Commission. Like Virginia, regulations of the industry include a \$50,000 licensing fee, ensure players are over the age of 18, prevent employees and relatives from playing, and segregating players' funds from operational funds. One area of contention that has been growing in the discussion is DFS's interaction between student athletes and college or youth sports. Indiana's law is the first legislation to be enacted forbids operators from offering contests based on amateur contests which includes college or high school sports.

Finally, Tennessee is the most recent state to sign legislation into law on April 27, 2016. This is the first case where a legislature voted to legalize and regulate daily fantasy sports just days after the Tennessee attorney general provided a negative opinion regarding the legality of the contests. The new law is similar to Indiana and Virginia in that it establishes a minimum age of 18 for players and segregates player funds from operating funds, as well as other popular consumer protections, but where it differs is how the operators are charged. Rather than an operating fee, this legislation charges operators a 6% tax on revenue generated by Tennessee residents. It also gives oversight powers to the Secretary of State and gives the Secretary the power to establish appropriate fees for application and license renewal, and other applicable fees.

States across the country are continuing to debate legislation that would better define the gray area in which fantasy sports has been operating. Just this past Monday, Colorado sent legislation to the governor's desk, making it the fifth legislature this year to pass a bill regulating daily fantasy sports. The states that have passed legislation on the matter have done so with overwhelming majorities because appropriate consumer protections were an integral part of the legalization and regulation process. Regulation of gaming has historically been a state matter and it is important that this remains the norm.

While the subcommittee considers whether there is a federal role to play in the industry and as states continue to consider the legality and regulation of daily fantasy sports, it is important to remember that the federal Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) specifically excludes fantasy sports. Therefore, the interpretation of these contests is left purely to the states, and consequently, legislatures have been producing creative policy solutions to address this issue.

NCSL strongly opposes any effort by the federal government to consider legislation that would overrule state authority by regulating daily fantasy sports at the federal level. However, should Congress feel the need for additional federal regulation of DFS, NCSL requests that Congress consider the perspective of the states and asks that it involve state legislators in any federal decisions. NCSL believes the federal government must recognize the sovereignty of states to regulate and tax daily fantasy sports. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit daily fantasy sports within their state. With regards to the broader discussion of online gaming and sports betting, NCSL believes current federal laws to be outdated given the evolving and significant effect that the internet is playing on everyday American life. I respectfully request the state legislative perspective be considered as Congress continues to examine this issue and that our testimony be submitted for the record along with NCSL policies on gaming. I appreciate the opportunity to express the views of my colleagues across the country on this topic.

ATTACHMENT 1

NATIONAL CONFERENCE *of* STATE LEGISLATURES*The Forum for America's Ideas***NCSL Supports State Sovereignty in Online Gaming**

WHEREAS, the National Conference of State Legislatures (NCSL) believes the federal government must respect the sovereignty of states to allow or to prohibit Internet gambling by its residents; and

WHEREAS, the 2011 ruling by the United States Justice Department on the Federal Wire Act of 1961, 18 U.S.C. §1084, clarifies that intra-state online gambling is lawful. Any effort by Congress or the administration to reverse this ruling is preemptive and diminishes the flexibility of state legislatures to be innovative and responsive to the unique needs of the residents of each state; and

NOW, THEREFORE BE IT RESOLVED, that NCSL requests Congress consider the perspective of the states as it examines this issue and asks that it involve state legislators in any federal efforts that seek to reform the regulation of online gaming. NCSL strongly opposes any effort by the federal government to overturn the Justice Department's ruling or consideration of legislation overruling state authority by legalizing or regulating gambling at the federal level. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit online gaming or other forms of gaming within their state.

ATTACHMENT 2

NATIONAL CONFERENCE *of* STATE LEGISLATURES*The Forum for America's Ideas***NCSL Supports State Sovereignty in Sports Gambling**

WHEREAS, the National Conference of State Legislatures (NCSL) believes the federal government must recognize the sovereignty of states to allow or to prohibit sports gambling by its residents; and

WHEREAS, the “Professional and Amateur Sports Protection Act,” 28 U.S.C. §§ 3701-3704 (PASPA), currently prohibits states from “sponsoring, operating, advertising, or promoting sports gambling,” except for a handful of states grandfathered under the law; and

WHEREAS, the federal ban instituted under the PASPA has not prevented the conduct of illegal sports gambling, but has in effect restricted the ability of all but a few states to regulate and collect revenue from sport gambling wagers estimated to be in the billions of dollars each year, to the detriment of state economies; and

NOW, THEREFORE BE IT RESOLVED, that NCSL requests Congress recognize the sovereignty of states to regulate and tax sports gambling, and repeal the federal ban on sports gambling by enacting legislation that would allow state legislatures to authorize sports gambling by statute. NCSL also requests that federal lawmakers be respectful of state legislatures that prohibit sports gaming or other forms of gaming within their state.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 19, 2016

The Honorable Myra Crownover
Chair, Committee on Public Health
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78711-2910

Opinion No. KP-0057

Re: The legality of fantasy sports leagues
under Texas law (RQ-0071-KP)

Dear Representative Crownover:

You ask for an opinion on two questions involving fantasy sports leagues.¹ Specifically, you ask whether

1. [d]aily fantasy sports leagues such as DraftKings.com and FanDuel.com are permissible under Texas law, and
2. [whether i]t is legal to participate in fantasy sports leagues where the house does not take a “rake” and the participants only wager amongst themselves.

Request Letter at 1.

I. Factual Background

To begin, a brief description of what we understand you to mean by “fantasy sports leagues” is necessary.² Fantasy sports leagues allow individuals to simulate being a sports team owner or manager. Generally, an individual assembles a team, or lineup, often under a salary limit or budget, comprising actual players from the various teams in the particular sports league, i.e., National Football League, National Basketball League, or National Hockey League. Points are

¹See Letter from Honorable Myra Crownover, Chair, House Comm. on Pub. Health, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (received Nov. 12, 2015), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

²The forthcoming description of fantasy sports play is compiled generally from the October 16, 2015, Memorandum from the Nevada Attorney General’s Office, to which you refer, concerning the legality of daily fantasy sports. See generally Memorandum from J. Brin Gibson, Bureau Chief of Gaming & Gov’t Affairs & Ketan D. Bhirud, Head of Complex Litig., Nev. Att’y Gen., to A.G. Burnett, Chairman Nev. Gaming Control Bd. & Nev. Gaming Control Bd. Members Terry Johnson & Shawn Reid (Oct. 16, 2015), <http://gaming.nv.gov/modules/showdocument.aspx?documentid=10487> (“Nev. Att’y Gen. Memo”).

garnered for the individual's "team" based on the actual game performance of the selected players, and scoring is based on the selected player's performance in the game where actual performance statistics or measures are converted into fantasy points. Each participant "owner" competes against other owners in the fantasy league. In a traditional fantasy sports league, play takes place over the course of an entire sports season, tracking the performance of selected players for the duration of the season. In contrast, in daily fantasy sports leagues, play tracks players' performances in single games on a weekly basis. With respect to both types of fantasy games, once a participant selects his or her players as the team or "lineup," they have no control over the players' performance in the actual game or the outcome of the actual game. The participant waits for the outcome, and his or her point levels are determined by the performance of the players on game day. Individuals pay a fee to participate in a league, which fees fund the pot of money used to pay out to the participants as their earned points direct. In play on the Internet sites for DraftKings and FanDuel, a portion (ranging from 6% to 14%) of the fees collected are not paid out to the participants but are retained by the gaming site. The "commissioner" running a traditional fantasy sports league may or may not retain a portion of participants' entry fees.

Turning to the law, article III, section 47(a) of the Texas Constitution provides, "[t]he Legislature shall pass laws prohibiting lotteries and gift enterprises in this State," subject to certain exceptions.³ In accordance with article III, section 47(a), the Legislature has prohibited a variety of gambling activities through chapter 47 of the Penal Code.⁴ In Texas, a person commits a criminal offense if the person "makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest."⁵ The answer to your first question turns on whether participants make a bet. Under chapter 47, a "bet" means "an agreement to win or lose something of value solely or partially by chance."⁶ And a bet specifically excludes "an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest[.]"⁷ Lastly, it is a defense to prosecution if, among other things, "no person received any economic benefit other than personal winnings,"⁸ which cannot be true if the house takes a "rake."

³TEX. CONST. art. III, § 47(a); see *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 701 (Tex. 1936) (articulating as elements necessary to constitute a lottery (1) the offering of a prize, (2) by chance, and (3) the giving of consideration for an opportunity to win the prize).

⁴See TEX. PENAL CODE §§ 47.01–.10; see also *Owens v. State*, 19 S.W.3d 480, 483 (Tex. App.—Amarillo 2000, no pet.) (recognizing the Legislature's adoption of chapter 47 pursuant to article III, section 47).

⁵TEX. PENAL CODE § 47.02(a)(1).

⁶*Id.* § 47.01(1).

⁷*Id.* § 47.01(1)(B).

⁸*Id.* § 47.02(b)(2).

II. Standard of Review

These questions require us to examine competing statutory provisions. The courts have developed time-honored canons for reconciling tension within a statute. According to the United States Supreme Court,

canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.⁹

This cardinal canon is best implemented by examining the plain contextual meaning of a statute—not by improperly removing a snippet from the statutory context.¹⁰ A court “must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous.”¹¹

In the attorney general opinion process, we cannot resolve factual issues.¹² But we can assume facts if requested, as you have here.¹³

III. Analysis

A. Paid Daily Fantasy Sports

Your first question is whether paid daily fantasy sports leagues constitute illegal gambling. Answering your question requires determining whether paid daily fantasy leagues constitute betting on the performance of a participant in a game (thus constituting illegal gambling) or instead are, in and of themselves, bona fide contests for the determination of skill (thus constituting no bet and no illegal gambling). Paid daily fantasy league participants are wagering on “the performance of a participant in a game or contest.”¹⁴ If that act constitutes a bet under the statute, then the

⁹*Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citations omitted).

¹⁰*See Cascos v. Tarrant Cty. Democratic Party*, No. 14-0470, 2015 WL 6558390, at *5 (Tex. Oct. 30, 2015) (reversing a court of appeals when its opinion “improperly takes a snippet of language out of its statutory context”); *In re Mem'l Hermann Hosp. Sys.*, 464 S.W.3d 686, 701 (Tex. 2015) (“Proper construction requires reading the statute as a whole rather than interpreting provisions in isolation.”).

¹¹*See Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 256 (Tex. 2008).

¹²Tex. Att’y Gen. Op. No. KP-0046 (2015) at 4 (noting that attorney general opinions do not resolve disputed fact questions).

¹³*See* Request Letter 1 (“Please assume the following facts, as more fully explained in an October 16, 2015 memo from the Nevada attorney general’s office to the Nevada Gaming Control Board.”).

¹⁴TEX. PENAL CODE § 47.02(a)(1).

activity is illegal gambling. Participants in a daily fantasy sports league pay a fee to participate,¹⁵ only a portion of which is included in the pot of funds that are paid out to the winning “owners.” By proffering this fee, players agree to win or lose something of value—a portion of the pot.¹⁶ The dispositive question then is whether the win or loss is determined solely or partially by chance. Proponents of daily fantasy sports games argue that skill is required to predict which players will have the best performance for their position in any particular game.¹⁷ This may well be true. However, Texas law does not require that skill predominate. Instead, chapter 47 requires only a partial chance for there to be a bet.¹⁸ Texas courts have confirmed this plain language in the statute.¹⁹ And this office has previously concluded that “the plain language of section 47.01(1) . . . renders irrelevant the matter of whether poker is predominantly a game of chance or skill. . . . If an element of chance is involved in a particular game, it is embraced within the definition of ‘bet.’”²⁰

It is beyond reasonable dispute that daily fantasy leagues involve an element of chance regarding how a selected player will perform on game day. The participant’s skill in selecting a particular player for his team has no impact on the performance of the player or the outcome of the game. In any given week:

- a selected player may become injured or be ejected and not play in all or a portion of the game—such as an injury to a third-string quarterback causing a team to rotate

¹⁵We understand that some daily fantasy sports contests charge no fee to participate and pay nothing to the winners. Brief from James Ho, Gibson Dunn, to Honorable Ken Paxton at 2, 8, 9 (Dec. 21, 2015) (“GibsonDunn Brief”) (on file with the Op. Comm.). Participation in such contests involves no consideration and no bet, and as a result cannot constitute illegal gambling in Texas. See *City of Wink*, 100 S.W.2d at 701.

¹⁶TEX. PENAL CODE § 47.01(9) (defining a “thing of value” to generally mean “any benefit”).

¹⁷See GibsonDunn Brief at 18–25; Brief from Reid Wittliff, ZwillGen, to Honorable Ken Paxton at 6–7 (Dec. 18, 2015) (“ZwillGen Brief”) (on file with the Op. Comm.).

¹⁸See TEX. PENAL CODE § 47.01(1) (a “bet” means “an agreement to win or lose something of value solely or partially by chance”).

¹⁹See *Odle v. State*, 139 S.W.2d 595, 597 (Tex. Crim. App. 1940) (“The legal meaning of the term ‘bet’ is the mutual agreement and tender of a gift of something valuable, which is to belong to one of the contending parties, according to the result of the trial of chance or skill, or both combined.” (quoting *Melton v. State*, 124 S.W. 910, 911 (Tex. Crim. App. 1910), *Mayo v. State*, 82 S.W. 515, 516 (Tex. Crim. App. 1904), and Words and Phrases, Second Series, Vol. 1, p. 433); *State v. Gambling Device*, 859 S.W.2d 519, 523 (Tex. App.—Houston [1st Dist.] 1993, writ denied) (“[I]t is the incorporation of chance that is the essential element of a gambling device, not the incorporation of a particular proportion of chance and skill.”).

²⁰Tex. Att’y Gen. Op. No. GA-0335 (2005) at 3–4.

three different players at quarterback in one half²¹ or a batter charging the mound after getting hit by a pitch and getting corrected and then ejected;²²

- a selected player may perform well or perform poorly against the opponent that week, perhaps due to weather conditions—such as a defensive tackle diving on a football after a blocked field goal attempt, only to allow the other team to recover the ball and score the game-winning touchdown;²³
- a selected player's performance may be impacted by the state of the game equipment (say, the underinflation of a football or the presence of cork inside a baseball bat)²⁴ or facilities (such as the air conditioning system in a basketball arena failing, causing the star player for a team aptly named "Heat" to suffer temperature induced legs cramps and be carried off the court);²⁵ and
- a selected player's performance may be impacted by a call of refereeing officials—such as a catch that all individuals not wearing stripes believe to constitute a touchdown being ruled an incompletion with instant replay.²⁶

The list goes on. All of these random circumstances, especially if they occur after the participants' selections are locked in, amount to chance and do not involve any skill on the part of the participant. Chance happens, especially on game day. "That's why they play the game."²⁷ Based

²¹John Werner, *Everybody hurts: Another QB injured, Bears stumble in home finale, 23-17*, WACO TRIB., (Dec. 6, 2015), http://www.wacotrib.com/sports/baylor/football/everybody-hurts-another-qb-injured-bears-stumble-in-home-finale/article_4e581922-a55e-5289-a7c7-dfa43ca15a5a.html.

²²See Thomas Neumann, *Nolan Ryan-Robin Ventura fight anniversary—13 things you should know*, ESPN.com, (Aug. 4, 2015), http://espn.go.com/mlb/story/_/id/13375928/nolan-ryan-robin-ventura-fight-anniversary-13-things-know.

²³Daniel Hajek, *Cowboys' Leon Lett On 'One Of The Worst Days Of My NFL Career'*, NAT'L PUB. RADIO, (Nov. 27, 2015), <http://www.npr.org/2015/11/27/457565031/cowboys-leon-lett-on-one-of-the-worst-days-of-my-nfl-career>.

²⁴Ian Rapoport, *More details on the investigation of Patriots' deflated footballs*, NFL.com, (Feb. 1, 2015), <http://www.nfl.com/news/story/0ap3000000466783/article/more-details-on-the-investigation-of-patriots-deflated-football>; Rick Weinberg, *Sammy Sosa gets caught with corked bat*, ESPN.com, (Aug. 4, 2004), <http://www.espn.go.com/espn/espn25/story?page=moments/33>.

²⁵Royce Young, *Spurs: AC back up and running*, ESPN.com, (June 6, 2014), http://www.espn.go.com/nba/playoffs/2014/story/_/id/11042810/san-antonio-spurs-say-air-conditioning-their-arena-repaired.

²⁶Brandon George, *Was it a catch? Controversial Dez Bryant play reversed*, DALLAS MORNING NEWS, (Jan. 11, 2015), <http://www.sportsday.dallasnews.com/dallas-cowboys/cowboysheadlines/2015/01/11/was-it-a-catch-controversial-dez-bryant-play-reversed>.

²⁷Bud Montet, *Random Shots*, MORNING ADVOC., Dec. 30, 1965, at 2C (attributing quote to University of Kentucky basketball coach Adolph Rupp), see THE BIG APPLE, *That's why they play the games* (sports adage), http://www.barrypopik.com/index.php/new_york_city/entry/thats_why_they_play_the_games.

on the facts you ask us to assume, the argument that skill so predominates that chance is minimal is nonetheless an admission that chance is an element and partial chance is involved.²⁸ Accordingly, odds are favorable that a court would conclude that participation in daily fantasy sports leagues is illegal gambling under section 47.02 of the Penal Code.²⁹

Two providers of daily fantasy sports leagues nonetheless contend that participation in such leagues is not gambling because the statutory exception to the definition of “bet” excludes “an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill[.]”³⁰ Specifically, they contend the element of skill so predominates in daily fantasy sports as to render chance immaterial and that the fantasy league participants are the actual contestants. While Texas courts have yet to address the actual-contestant exclusion from the definition of “bet,” this office addressed that matter in 1994. The question presented involved participants paying an entry fee for a chance to win prizes in a contest to forecast the outcome of approximately 150 sporting events, which required “using the skills necessary to analyze relevant data, including, but not limited to, point differentials as published in newspapers of general circulation, weather conditions, injuries or other factors.”³¹ We noted that the Practice Commentary to the statute indicated the actual-contestant exclusion “is intended to exclude only awards and compensation earned by direct participation in the contest—the pole-vaulter’s cup, the pro football player’s salary—not the receipt of a wager made on its outcome.”³² We concluded that, although the “exclusion may embrace athletes actually competing in the sporting events you refer to, it does not embrace those who pay entry fees for a chance to win a prize from forecasting the outcome of the events.”³³ Moreover, the other types of contests in the actual-contestant exclusion (speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or

²⁸The attorneys general in Nevada and New York have reached the conclusion that there is sufficient chance to violate the “material chance” standard in their state laws. *See* Nev. Att’y Gen. Memo at 9, 15–16; Letter from Kathleen McGee, Chief, New York Attorney General’s Internet Bureau, to Jason Robins, CEO, DraftKings, Inc., (Nov. 10, 2015) at 1, http://ag.ny.gov/pdfs/Final_NYAG_DraftKings_Letter_11_10_2015.pdf (“DraftKings’ customers are clearly placing bets on events outside of their control or influence, specifically on the real-game performance of professional athletes. Further, each DraftKings wager represents a wager on a ‘contest of chance’ where winning or losing depends on numerous elements of chance to a ‘material degree.’”). *See also New York v. DraftKings, Inc.*, No. 453054-2015, at 7, 10 (N.Y. Sup. Ct. Dec. 11, 2015), *New York v. FanDuel Inc.*, No. 453056-2015, at 7, 10 (N.Y. Sup. Ct. Dec. 11, 2015) (orders determining that the payment of an entry fee to participate in daily fantasy sports is risking a thing of value and, under New York statutes, constitutes illegal gambling and granting preliminary injunction and temporary restraining order against defendant in each action).

²⁹Likewise, entities that promote daily fantasy sports league gambling could possibly violate section 47.03 of the Penal Code by operating a gambling place or becoming a custodian of a bet. *See* TEX. PENAL CODE § 47.03(a).

³⁰TEX. PENAL CODE § 47.01(1)(B). *See* GibsonDunn Brief at 17; ZwillGen Brief at 4.

³¹Tex. Att’y Gen. Op. No. LO-94-051, at 1.

³²*Id.* at 2.

³³*Id.*

aircraft) inform the nature of what the Legislature means with the term “skill.”³⁴ Following this office’s 1994 opinion, the Illinois Attorney General recently concluded that Illinois’s similar statutory actual-contestant exclusion does not apply to participants of daily fantasy sports leagues.³⁵

Subsection 47.01(1)(B), and our interpretation of it, remains unchanged. For example, if a person plays in a golf tournament for an opportunity to win a prize, he or she is within the actual-contestant exclusion to the definition of betting. If instead the person does not play in that tournament but wagers on the performance of an actual contestant, he or she is gambling under Texas law. To read the actual-contestant exception as some suggest would have that exception swallow the rule.³⁶

B. Season-Long Fantasy Sports

The same framework applies to traditional fantasy sports leagues, but the outcome may differ depending on whether the house takes a rake. Payment of a fee to participate in the league constitutes an agreement to win or lose something of value, and the outcome depends at least partially on chance, thus involving a bet. However, traditional fantasy sports leagues often differ from daily fantasy sports leagues in that any participation fee is not retained by the “commissioner” of the traditional fantasy sports league and is instead paid out wholly to the participants. And section 47.02 contains a defense to prosecution when “(1) the actor engaged in gambling in a private place; (2) no person received any economic benefit other than personal winnings; and (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.”³⁷ Thus, to the extent play in a traditional fantasy sports league satisfies the above three elements, the participants in such league may avail themselves of the defense to prosecution.

³⁴See *Ross v. St. Luke’s Episcopal Hosp.*, 462 S.W.3d 496, 504 (Tex. 2015) (applying doctrine of *ejusdem generis* to hold that the a broad term in a list was constrained by the meaning of the remaining, narrower terms).

³⁵See Ill. Att’y Gen. Op. No. 15-006 (Dec. 23, 2015) at 10–13 (Letter from Honorable Lisa Madigan, Ill. Att’y Gen. to Honorable Elgie R. Sims, Jr. Ill. State Rep., Dist. 34, and Honorable Scott R. Drury, Ill. State Rep., Dist. 58).

³⁶See *Long v. Castle Tex. Prod. Ltd. P’ship*, 426 S.W.3d 73, 81 (Tex. 2014) (“[C]ourts are to avoid interpreting a statute in such a way that renders provisions meaningless.” (quotation marks omitted) (alteration in original)). One paid daily fantasy sports operator also contends that the payment of entry fees to participate in fantasy leagues are not bets. See ZwillGen Brief at 4. The New York court rejected this argument, holding that the entry fees were “something of value” under New York law and thus constituted a bet. *New York v. DraftKings, Inc.*, No. 453054-2015, at 7 (N.Y. Sup. Ct. Dec. 11, 2015), *New York v. FanDuel Inc.*, No. 453056-2015, at 7 (N.Y. Sup. Ct. Dec. 11, 2015). We agree with the New York court that the labelling of the consideration as an entry fee does not transform its character as consideration for the opportunity to win a prize.

³⁷TEX. PENAL CODE § 47.02(b); see Tex. Att’y Gen. Op. No. GA-0611 (2008) at 5 (acknowledging that the term “and” is usually used in a conjunctive sense).

In present form, which has remained unchanged for purposes of this analysis since its codification in 1973,³⁸ the Legislature has seen fit to prohibit betting on the performance of individuals in games or contests but to not prohibit actual contestants in contests of skill from receiving compensation or prizes.³⁹ Under this statutory framework, odds are favorable that a court would conclude that participation in paid daily fantasy sports leagues constitutes illegal gambling, but that participation in traditional fantasy sport leagues that occurs in a private place where no person receives any economic benefit other than personal winnings and the risks of winning or losing are the same for all participants does not involve illegal gambling. It is within the province of the Legislature, and not this office or the courts, to weigh the competing policy concerns necessary to alter this framework to legalize paid daily sports fantasy leagues.

³⁸See Act of May 24, 1973, 63d Leg., R.S., ch. 399, Sec. 1, § 47.01-.02, 1973 Tex. Gen. Laws 883, 965-66.

³⁹TEX. PENAL CODE §§ 47.01(1)(B), .02(a)(1).

S U M M A R Y

Under section 47.02 of the Penal Code, a person commits an offense if he or she makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest. Because the outcome of games in daily fantasy sports leagues depends partially on chance, an individual's payment of a fee to participate in such activities is a bet. Accordingly, a court would likely determine that participation in daily fantasy sports leagues is illegal gambling under section 47.02 of the Penal Code.

Though participating in a traditional fantasy sports league is also illegal gambling under section 47.02, participants in such leagues may avail themselves of a statutory defense to prosecution under section 47.02(b) of the Penal Code when play is in a private place, no person receives any economic benefit other than personal winnings, and the risks of winning or losing are the same for all participants.

Very truly yours,



KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

BRANTLEY STARR
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

CHARLOTTE M. HARPER
Assistant Attorney General, Opinion Committee

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

June 6, 2016

Mr. Peter Schoenke
President
RotoWire
740 Regent Street, Suite 200
Madison, WI 53715

Dear Mr. Schoenke,

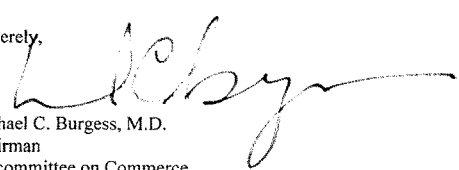
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, May 11, 2016, to testify at the hearing entitled "Daily Fantasy Sports: Issues and Perspectives."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, June 20, 2016. Your responses should be mailed to Giulia Giannangeli, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Giulia.Giannangeli@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,


Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment



600 North Lake Shore Drive
Chicago, IL 60611

HAND DELIVERY

June 21, 2016

The Honorable Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Burgess:

Thank you for your letter of June 6, 2016, by which you transmitted additional questions for the record ("QFRs") for the hearing entitled, "Daily Fantasy Sports: Issues and Perspectives," held on May 11, 2016. My responses to those questions are below.

The Fantasy Sports Trade Association ("FSTA") represents hundreds of companies in the fantasy sports industry, along with businesses that serve the industry. As Chairman of FSTA, I have answered the QFRs based on my understanding of the industry and knowledge of general industry practices. In addition, to the extent that some of the questions touch upon detailed knowledge regarding individual companies, I have asked those companies to supplement the FSTA responses; those responses are included as well.

Questions from The Honorable Gregg Harper:

- 1. Self-exclusion for problem gamers is an issue that has been raised in this context because of the serious amount of money at stake in daily fantasy sports. How is the self-exclusion principle implemented in the daily fantasy sports marketplace? Is there a central hub for all of the operators to exchange information securely?**

The FSTA is aware of the concerns regarding problem behavior by a small number of players. Many of the FSTA's member companies have independently elected to adopt policies and practices to address this issue by allowing players to self-exclude from

contests or put limits on how many contests they may enter or how much money they can deposit. Furthermore, the FSTA has supported proactive steps to address this issue in state legislation and regulations. The FSTA supported laws passed in Virginia, Indiana, Tennessee, Mississippi, Colorado, Missouri and New York which provide consumer protections including self-exclusion requirements. The FSTA also supported the 2015 Massachusetts Attorney General's regulations in this area, which include measures regarding self-imposed contest entry limits and self-imposed deposit limits.

Due to legal and customer privacy concerns, as well as limitations in the various Terms of Use from individual companies, there is currently no central hub for all fantasy operators to exchange information regarding player self-exclusion.

2. **Can you describe the different types of games available on your members' websites, particularly the different types of contests offered in the daily fantasy sports category. I've heard about head-to-head contests that could have entry fees as high as a thousand dollars. Would a player, who is signing onto a site for the first time, have any idea if they were playing in a head-to-head contest with a highly skilled player or "shark"?**

The FSTA has over 120 members offering a variety of free, paid, season-long and daily fantasy sports contests. For daily fantasy sports providers, the mix of offerings primarily includes head-to-head contests, 50/50 contests (where half the players win a prize), guaranteed prize pools (GPP) in which the number of entries may vary from just a few entries to several thousand, and there are private contests between two or more individuals.

Many of the FSTA's member daily fantasy sports companies have long offered beginner contests which enable beginning players to play in contests only against other users of the same experience level. The FSTA has also supported recent fantasy sports laws and regulations passed by states, many of which require operators to allow daily fantasy sports players the opportunity to see which of their fellow daily players are highly experienced. For example, in the law passed in Tennessee, a highly experienced player is defined as a person who has entered more than 500 contests or has won more than five prizes of \$2,500 or more, and that person must be identified as a highly experienced player to other users on the site. The Tennessee law also dictates that operators offer some fantasy sports contests that are open only to beginning players and exclude highly experienced players. The FSTA has supported regulations similar to those provided for in the Tennessee legislation, and many of our member companies voluntarily are adopting this framework for users in all states, for instance by displaying badges which appear next to usernames of highly experienced players and are viewable by all users on the site, regardless of location. A uniform approach by the states will help to provide a

consistent experience for players and avoid the prohibitive costs that would be incurred in providing a different system for each state.

Questions from The Honorable Frank Pallone:

- 1. FanDuel and DraftKings declined to testify and were instead represented by the Fantasy Sports Trade Association (FSTA), of which they are both members. As I mentioned during the hearing, I would like to follow up on some of the questions I have for FanDuel and DraftKings that the FSTA was unable to answer in the hearing.**

Many of the questions in this section are specific to two particular member companies of the FSTA, FanDuel and DraftKings. I am submitting as attachments the companies' supplemental responses to my answers below. Please refer to these attachments for those companies' responses.

- a. What percentage of FanDuel's players win money in an average week? What about DraftKings?**

The number and percentage of players that win prizes in fantasy sports competitions may vary among the many fantasy sports operators that FSTA represents and among different types of games and formats. In fact, there is such variety in the kinds of games offered, the many options for winning prizes, the differences in our business depending on whether it is football season or baseball, for example, and the wide variety in the level of player engagement depending on the kind of game and the sport involved, there is no meaningful "average week" in our industry. Similarly, depending on the type of contest, there can be a wide variety in the number of players that "win money" – from 50% in head-to-head and 50/50 games to just one "winner" in a season-long fantasy league.

- b. What percentage of FanDuel players lose money? What about DraftKings players?**

A fantasy sports competition is a game of skill in which only a limited number of players can win. Players do not "lose" money, as in gambling. They pay a fee to enter. The fee is a fixed amount and players understand that it will not be returned to them. Fantasy sports competitions are comparable to a golf tournament or a bowling tournament where only a limited number of contestants win prizes and only one may be the overall champion.

- c. What was the most amount of money deposited into a FanDuel account by one player, one username, and/or one IP address in one given day? For DraftKings?**

Many of our member companies have long imposed deposit limits which restrict how much a given user may deposit into his or her account in a day, week, or month. On those sites, players must affirmatively apply to the company and provide proof of financial ability in order to increase a user's deposit limit. FSTA has supported state legislation and regulations which provide for reasonable deposit limits. For example, the regulations issued by the Massachusetts Attorney General impose a deposit limit of \$1000 per month, and operators must assess the income or asset information of a user

applying for a higher limit in order to determine their financial ability to afford a higher limit.

- d. **What was the most amount of money won by one participant, username, and/or IP address playing FanDuel, across all games, contests, etc. in one day? And for DraftKings?**

The fantasy sports industry has grown and its games have diversified to serve a wide variety of consumers. Today players can compete for cash prizes or for no prize beyond "bragging rights." Cash prizes may range from a few dollars to over one million dollars.

- e. **What is the rake that FanDuel collects on each contest? What about DraftKings?**

"Rake" is a term that is generally used in gambling operations. In fantasy sports competitions, a fee model is typical. Contest operators collect a management fee that may vary but most operators collect a fee of approximately ten percent. In some cases, there is no fee at all.

2. **Last year, DraftKings applied for and received a gambling license in the United Kingdom. FanDuel also applied for a gambling license in the U.K. Yet, in the U.S. both companies maintain that DFS is not gambling.**

- a. **What is DraftKings' rationale for getting a gambling license in the UK if DFS is not gambling?**
- b. **What is FanDuel's rationale for getting a gambling license in the UK if DFS is not gambling?**

As I stated at the May 11th hearing, the laws of the U.S. and United Kingdom are substantively different; they define games of skill and games of chance differently. In the U.K., any contest with even the slightest element of luck or chance requires a gambling license. In the U.S., the laws of most jurisdictions are written differently - they define "gambling" in a way that means contests are not gambling if they are primarily a game of skill. This is a fundamental difference.

3. **Last fall, Ethan Haskell, a DraftKings employee, was accused of using information he obtained in the course of his work to help his play on FanDuel's platform. An independent investigation cleared him of any wrongdoing, noting that he did not receive the information until his lineup was locked.**

- a. **The report prepared by the law firm that conducted the "independent" investigation was not publicly released. Why did DraftKings not release that report?**
- b. **Where did the information received by Mr. Haskell come from? Who sent it to him? Was that person playing DFS? Did that person gain an advantage from the information?**

Please see the attached response to this question from DraftKings.

4. DraftKings prohibits its own employees and employees of other daily fantasy sports operators from playing on its site. FanDuel prohibits its employees from playing on its own site or other DFS sites.

- a. **How does DraftKings ensure that employees of other DFS operators are not playing? Do competitors share their employee lists with DraftKings?**
- b. **How does FanDuel ensure that its employees are not playing on another DFS site? Do competitors share lists of users with FanDuel?**
- c. **As Professor Kurt Eggert mentioned in his testimony, employees have access to spreadsheets that show the players who are the biggest losers on the DFS sites. How does FanDuel ensure that those lists are not being used to invite those "losers" to head-to-head matches? What about DraftKings?**

Many of the FSTA's member operators have policies limiting employees' participation in contests on their site as well as other operators' sites. The FSTA has supported legislation which codifies the requirement that employees cannot play in fantasy contests on their own employer's website, or in other paid fantasy sports operators' contests. For example in all seven states where laws regarding fantasy sports were passed in 2016, along with the consumer protection regulations issued by the Massachusetts Attorney General, employees of a fantasy sports operator are barred from playing on other operators' fantasy sports sites. In each case, these measures provide for penalties for lack of compliance.

5. We have heard a number of complaints about daily fantasy sports advertising. And I do not just mean the overabundance of their ads. Some are concerned that the advertisements suggest the ability to win more than is truly possible or fail to mention the statistical chance of actually winning. How does DraftKings ensure that its advertisements are not deceptive? What about FanDuel?

Fantasy contests do not have odds or a "statistical chance" of winning because their outcomes are determined by the skill of the players participating. However the FSTA strongly encourages the most forthright and accurate advertising practices by our members and others in the fantasy sports industry. The FSTA has worked closely with state legislators who feel it is important to mandate limitations on advertising and ensure that ads are not misleading. For example, the Massachusetts Attorney General's consumer protection measures for daily fantasy sports contains a section on Requirements for Fair and Truthful Advertising, and the Tennessee fantasy sports law requires that representations in ads be fair and not misleading. The laws passed in Missouri, Tennessee, and Indiana as well as the Massachusetts Attorney General regulations also have restrictions on advertising to minors. The FSTA supported these measures and has supported similar measures in bills being debated in several states.

June 21, 2016
Page 6

Thank you for this opportunity to respond further to the Committee's questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Schoenke". The signature is fluid and cursive, with the first name "Peter" and last name "Schoenke" clearly distinguishable.

Peter Schoenke
Chairman, Fantasy Sports Trade Association

Enclosures

cc: The Honorable Jan Schakowsky, Ranking Member, Subcommittee on Commerce,
Manufacturing and Trade

**FANDUEL INC. ADDENDUM
FANTASY SPORTS TRADE ASSOCIATION RESPONSE
TO QUESTIONS FOR THE RECORD
MAY 11, 2016 HEARING
SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

Questions from the Honorable Frank Pallone

1. FanDuel and DraftKings declined to testify and were instead represented by the Fantasy Sports Trade Association (FSTA), of which they are both members. As I mentioned during the hearing, I would like to follow up on some of the questions I have for FanDuel and DraftKings that the FSTA was unable to answer in the hearing.

- a. What percentage of FanDuel's players win money in an average week? And what percentage lose money?**
- b. What percentage of FanDuel players lose money? What about DraftKings players?**

Using a representative sample of data from the first seven weeks of the 2015 NFL season, FanDuel determined that approximately 21% of FanDuel players were net winners across all contests entered during the week. Further, on average, 56% of FanDuel's players win money in at least one contest in an average week.

- c. What was the most amount of money deposited into a FanDuel account by one player, one username, and/or one IP address in one given day? For DraftKings?**

FanDuel views specific user deposit information as confidential business information. We would be happy to provide the Committee with a verbal response. As a frame of reference, the average total yearly deposit for users that deposited money in 2015 was \$192.61. Calculated on a daily basis, the average daily deposit is 53 cents per day.

- d. What was the most amount of money won by one participant, username, and/or IP address playing FanDuel, across all games, contests, etc., in one day? And for DraftKings?**

The largest prize FanDuel has offered to a single winner is \$3,000,100, which FanDuel awarded to the winner of the World Fantasy Football Championship on December 13, 2015. The winner of the 2015 WFFC has the largest net and gross winnings for any player in a single day.

c. What is the rake that FanDuel collects on each contest? What about DraftKings?

FanDuel does not collect a “rake.” FanDuel offers a wide variety of contests with different entry fees and prizes. Occasionally, FanDuel pays more out in prizes than the entry fees collected. More frequently, FanDuel awards prizes that are less than it collects in entry fees for a particular contest. The difference between entry fees and prizes awarded in such instances is generally between 5 and 15%, with an average of approximately 10%.

2. Last year, DraftKings applied for and received a gambling license in the United Kingdom. FanDuel also applied for a gambling license in the U.K. Yet, in the U.S. both companies maintain that DFS is not gambling.

a. What is FanDuel's rationale for getting a gambling license in the UK if DFS is not gambling?

FanDuel associates itself with the FSTA's answer to this question. FanDuel complies with the requisite legal regime for offering its fantasy sports product in every region, country or state in which it operates. In the U.K., that compliance requires obtaining the specific “licence” that FanDuel has been granted. Similarly, FanDuel will now be applying for fantasy contest operator licenses in those U.S. states where such licensure is required by law. As recent legislative developments have made clear, jurisdictions vary on whether licenses are required, what they are called, and who administers them.

4. DraftKings prohibits its own employees and employees of other daily fantasy sports operators from playing on its site. FanDuel prohibits its employees from playing on its own site or other DFS sites.

a. How does FanDuel ensure that its employees are not playing on another DFS site? Do competitors share lists of users with FanDuel?

b. How does FanDuel ensure that its employees are not playing on another DFS site? Do competitors share lists of users with FanDuel?

All FanDuel employees must sign the company's Employee DFS Play Policy. This policy includes specific clauses stating that:

- FanDuel employees may not enter any publicly available, paid entry, or free roll contests that award cash or other prizes on the FanDuel Service.
- FanDuel employees may only use FanDuel's platform to play in private, invitation-only leagues with other FanDuel employees with no entry fees. For example, employees may participate in company-sponsored contests or free entry private league or head-to-head contests against other employees.
- FanDuel employees shall provide FanDuel with any other username they may have used prior to employment at FanDuel. Such accounts shall be suspended during the employee's tenure at FanDuel.

- FanDuel employees are forbidden from entering contests on any other non-FanDuel DFS service that charges entrance fees or offers cash or other prizes.

These signed documents are held by our legal department for the period of employment and for a period of time following the employee's departure from FanDuel. To monitor ongoing activity, all internal staff accounts use fanduel.com email addresses (with specific naming criteria for test accounts) and these accounts are monitored for prohibited activity.

To ensure employees do not play on DraftKings, FanDuel shares employee lists with DraftKings periodically with the expectation that DraftKings will suspend user accounts associated with FanDuel employee names and notify FanDuel if it knows of any play in violation of this policy.

FanDuel also solicits and accepts lists of employees from DraftKings and other competitors to enable it to exclude those disqualified individuals from playing on FanDuel's site. It frequently searches those lists against its player database to determine whether any have registered accounts. If FanDuel finds any matches, it suspends the account pending an investigation whether the individual is an employee of the competitor or if the match was a false positive.

- c. As Professor Kurt Eggert mentioned in his testimony, employees have access to spreadsheets that show the players who are the biggest losers on the DFS sites. How does FanDuel ensure that those lists are not being used to invite those "losers" to head-to-head matches? What about DraftKings?**

FanDuel employees may not play on FanDuel's or any competitor's site and cannot use company data to invite individuals who win less frequently on FanDuel to head-to-head contests. FanDuel keeps a record of individual users' contest results, but does not, as Professor Eggert suggests, regularly keep spreadsheets of individuals who are less successful than others. Contest results may be used for certain customer service and game integrity analyses, but FanDuel's policies restrict access to and use of that information for other purposes.

FanDuel's employee play policy forbids employees "from accessing FanDuel Service Data (including but not limited to, personally-identifying information of past and present players, individual player history, lineup information, or non-public player ownership percentages) unless they are specifically authorized to do so for a specific business purpose related to their job function at FanDuel."

A select group of FanDuel employees has access to contest results data for limited business purposes such as providing customer support. FanDuel's employee play policy expressly forbids those employees from making use of any non-public data, including any information regarding individuals who have been less successful in FanDuel contests. That policy states:

Employees approved to access FanDuel Service Data as part of their job function may only access that information for the specific business purpose for which they have access, and not for personal gain, and MAY NOT share or make any other use of that information, including to discuss, publish, post or otherwise communicate or make available information about individual users, their success,

win rates, lineups, instances of customer support or behavior on the FanDuel Service or any other non-FanDuel DFS service, unless such disclosure is made, in an aggregate manner, in a public forum, with the advance written authorization (given either specifically or for a category of disclosures) by FanDuel's Chief Legal Officer or his or her designee.

5. We have heard a number of complaints about daily fantasy sports advertising and I do not just mean the overabundance of their ads. Some are concerned that the advertisements suggest the ability to win more than is truly possible or fail to mention the statistical chance of actually winning. How does DraftKings ensure that its advertisements are not deceptive? What about FanDuel?

FanDuel associates itself with FSTA's response to this question. FanDuel substantiates the contents of its advertisements, ensuring that the claims made are accurate when the advertisement is filmed or created. FanDuel regularly provides advertising copy to in-house and outside counsel to ensure that claims made are truthful and not misleading.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2927
Minority (202) 225-3641

June 6, 2016

Mr. Steve Brubaker
Executive Director
Small Business of Fantasy Sports Trade Association
P.O. Box 7165
Appleton, WI 54912

Dear Mr. Brubaker,

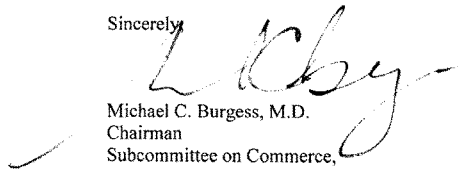
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Wednesday, May 11, 2016, to testify at the hearing entitled "Daily Fantasy Sports: Issues and Perspectives."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, June 20, 2016. Your responses should be mailed to Giulia Giannangeli, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Giulia.Giannangeli@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Responses by Steve Brubaker on the behalf of the Small Businesses of Fantasy Sports Trade Association (SBFSTA) to "Additional Questions for the Record" submitted by Congressman Gregg Harper.

- 1. Self-exclusion for problem gamers is an issue that has been raised in this context because of the serious amount of money at stake in daily fantasy sports. How is the self-exclusion principle implemented in the daily fantasy sports marketplace? Is there a central hub for all of the operators to exchange information securely?**

SBFSTA Response:

The Small Businesses of Fantasy Sports Trade Association is unaware of any industry-wide mechanism in place for the implementation of self-exclusion outside of internal company best practices. Furthermore, the state-by-state approach to legalization and regulation creates a "Swiss cheese" approach to the problem as some states are contemplatively considering self-exclusion, and others are doing little. Congress needs to act on this issue, just as they did in 2006 when they exempted season-long fantasy sports from the Unlawful Internet Gambling Enforcement Act (UIGEA). With UIGEA the Congress marked this territory as their own and are now noticeably absent from the process. Without federal action, there can never be a central hub for the secure exchange of information by all operators. States are simply unable to require other states to use a central hub, which would obviously be beneficial to players who have a problem gambling on daily fantasy sports sites.

- 2. Can you describe the different types of games available on your members' websites, particularly the different types of contests offered in the daily fantasy sports category. I have heard about head-to-head contests that could have entry fees as high a thousand dollars. Would a player, who is signing onto a site for the first time, have any idea if they were playing in a head-to-head contest with a highly skilled player or "shark"?**

SBFSTA Response:

The Small Businesses of Fantasy Sports Trade Association represents mainly season-long companies and I am not certain if our daily members offer the types of games you are asking about, so what I have done is log on to my own account at FanDuel (which I initiated solely to gain an understanding of the GIANT daily companies – (I lost my \$25 in about three days)) and printed a screen shot of the games they were offering at the time on that day. That screen shot is attached. You will notice that I have ordered the offerings by entry fee from the highest to lowest.

They do have a single game that requires a \$1065 entry fee and is open to 40 players. I looked through the entire list of offerings (3 ½ pages) and did not see any head-to-head contests on that day at that time. You'd need to inquire of FanDuel for more information on their head-to-head offerings. To answer the second part of your question, all first time players should assume that they are less experienced than the folks already on the site and caveat emptor should apply to everything we do in life – fantasy sports included. However, the identification of highly skilled players on daily fantasy sports sites should be mandated for all sites in all states. That will never occur unless Congress acts on this issue. The "patchwork" approach to regulation of the daily fantasy sports industry will NEVER provide the types of consumer protections needed to safeguard every person who wants to play daily fantasy sports. Congress green-lit season-long fantasy sports in 2006 when they passed UIGEA. Daily fantasy sports squeezed through that door a few years later and now we have a mess that only the United States Congress can clean up if uniformity in consumer protections is the goal.

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June 6, 2016

Dr. Ryan Rodenberg
Assistant Professor
Department of Sport Management
Florida State University
1114 West Call Street
Tallahassee, FL 32306

Dear Dr. Rodenberg,

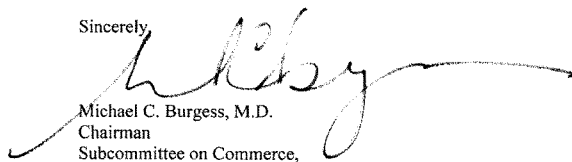
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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Ryan M. Rodenberg
 Response to Additional Question for the Record
 For the Hearing entitled “Daily Fantasy Sports: Issues and Perspectives”
 Before the Subcommittee on Commerce, Manufacturing, and Trade
 Of the Committee on Energy and Commerce
 House of Representatives, United States Congress, Washington, DC, USA
 May 11, 2016

Chairman Burgess and other honorable members of the Subcommittee on Commerce, Manufacturing, and Trade, thank you for your June 6, 2016 letter providing me with the opportunity to respond to an additional question for the record after the hearing. Please find below my response to the following question posed by the Honorable Gregg Harper: “*What are the top three consumer protection issues you believe we should be on the lookout for during this discussion?*”

The top three consumer protection issues in connection with daily fantasy sports are: (i) corruption considerations involving the tethered real-world sporting events; (ii) integrity of the daily fantasy sports contests being offered; and (iii) preservation of customer funds held by daily fantasy sports operators.¹ Developing reasonable policies regarding these issues is an area where the interests of legislators, law enforcement, sports leagues, consumers, and reputable fantasy operators are shared.

Real-World Sporting Events. Unlike Broadway shows, musical concerts, professional wrestling, and other forms of live entertainment, the vast majority of sports fans desire sporting events to be comprised of unscripted athletic competition. Accordingly, it is important to ensure that such sporting events are not manipulated for (pecuniary) fantasy purposes. Likely for this reason, a number of sports organizations—all of which frequently cite “integrity of the game” considerations for a multitude of policy positions—ban or restrict athletes and related personnel from participating in cash-based daily fantasy sports.² Like spot-fixing

¹ A number of experts have suggested potential regulatory policies and consumer protection considerations. *See* Albertson, I Won Millions in Daily Fantasy – And Even I Want Changes, *Wall Street Journal*, Oct. 6, 2015; Young, Fantasy Sports Regulation: An Inclusive Way Forward, *Legal Sports Report*, March 23, 2016; Zwillinger, et al, Regulating Daily Fantasy: Considerations for a Framework, *Law360*, May 18, 2016; Edelman, Regulating Fantasy Sports: A Practical Guide to State Gambling Laws and a Proposed Framework for Future State Legislation, *Indiana Law Journal*, forthcoming.

² Examples include bans by the National Collegiate Athletic Association, National Basketball Association, National Hockey League, and Major League Baseball. *See* Levinson, Daily Fantasy Sports Growth Pushes Leagues to Regulate Players, *Bloomberg*,

concerns in single event proposition sports betting, the real-world athletic performances fueling daily fantasy sports should be monitored. While the Sports Bribery Act attaches to several forms of game-fixing,³ the statute has never been applied to daily fantasy sports.

Fantasy Contests. Results from daily fantasy contests could be influenced via the (mis-)use of non-public information.⁴ This precise issue was the subject of headline-grabbing media coverage starting in October 2015, which resulted in consumer protection implications becoming a prominent focus. In addition to general consumer protection-related policies within the realm of the Federal Trade Commission, certain elements from the federal wire fraud statute,⁵ securities laws,⁶ and Commodity Futures Trading Commission regulations⁷ may address some of the issues related to the role of non-public information in daily fantasy sports contests by analogy. Beyond inside information issues, related concerns under this broad consumer protection umbrella include: (i) the use of algorithms, scripts, and automated bots in contest entries; (ii) the number of entries permitted by any single individual or syndicate; (iii) the soundness of the fantasy contests' computer code; (iv) the accuracy of historical and real-time sports data that determine contest outcomes; (v) the use of forensic sports law analytics to test for fantasy contest irregularities; and (vi) the identification of problematic behavior among fantasy contestants consistent with addiction.⁸

Customer Funds. A small number of daily fantasy operators have had liquidity problems and been unable to return customer funds, pay out winnings, or meet certain contractual obligations.⁹ Although infrequent, such problems represent an important consumer protection issue, as customer monies should

April 1, 2015. Relatedly, the National Football League limits fantasy winnings of players, coaches, and executives to no more than \$250. *See* Florio, NFL Players Can Play Daily Fantasy, They Just Can't Win Much, *Pro Football Talk*, Sept. 29, 2015.

³ 18 U.S.C. § 224.

⁴ *See* Staff, Here's Where the Federal Investigations into Daily Fantasy Sports Might be Focused, *Legal Sports Report*, March 18, 2016. *See also*, Woodward, Federal Fantasy Sports Probe Could Drag on For Months, Lawyer Says, *Boston Globe*, April 8, 2016.

⁵ 18 U.S.C. § 1343.

⁶ *See, e.g.* Wang, Application of the Federal Mail and Wire Fraud Statutes to Criminal Liability for Stock Market Insider Trading and Tipping, 70 *University of Miami Law Review* 220-299 (2015).

⁷ *See, e.g.* Verstein, Insider Trading in Commodities Markets, 102 *Virginia Law Review* 447-500 (2016).

⁸ Many of these issues also apply to emerging consumer protection concerns in esports gaming. *See, e.g.* Green, Skin Gambling Site SCGO Diamonds: We Told Sponsored Player in Advance When He Would Win, *Esports Betting Report*, June 13, 2016.

⁹ *See* Gouker, Daily Fantasy Sports Site FantasyHub Ceases Operations 'Temporarily' While Owing Players Money, *Legal Sports Report*, Feb. 19, 2016; Gouker, Say What? Daily Fantasy Sports Site Says DFS Illegal in Lawsuit, *Legal Sports Report*, June 3, 2016.

be held in segregated accounts and not commingled in general operating funds. Likewise, given the Unlawful Internet Gambling Enforcement Act (“UIGEA”) of 2006¹⁰ and relevant state-level bookmaker/pooling laws, funds earmarked for payments to winners should seemingly be kept separate from entry fees and other monies in customer accounts. This potential issue derives from how customer entry fees are treated under operators’ internal accounting procedures.¹¹ Indeed, in a February 2016 court filing, a leading daily fantasy sports operator stated: “In fantasy sports as well, participants pay an entry fee to participate in a contest, and the entry fees generate the fund from which the successful contestants win prizes.”¹²

The three fantasy sports-related consumer protection issues highlighted here will continue to garner attention at both the federal and state level. However, as detailed in my full written statement and oral testimony, the ability of governments to address such issues is counterbalanced by the constraints found in the Professional and Amateur Sports Protection Act (“PASPA”), which makes it unlawful for certain state governments to “sponsor, operate, advertise, promote, license, or authorize...[a] betting, gambling, or wagering scheme based...on one or more competitive games in which amateur or professional athletes participate...or on one or more performances of such athletes in such games.”¹³ Likewise, PASPA’s uneven and paradoxical grandfathering scheme among states may impact the ability to promulgate any consumer protection-leaning legislation for daily fantasy sports or other forms of sports gaming.

¹⁰ 31 U.S.C. § 5361 et seq.

¹¹ Potential issues pertaining to pooled funds attach to a variety of daily fantasy formats, including popular “50/50,” “double up,” and “head-to-head” contests. See Kang, How the Daily Fantasy Sports Industry Turns Fans into Suckers, *The New York Times Magazine*, Jan. 6, 2016. See also Schwartz, How the DraftKings-Boston Love Affair May Have Saved Daily Fantasy, *ESPN.com*, April 12, 2016. NBA commissioner Adam Silver recognized some of the general consumer protection concerns in this area and pinpointed the pooling issue: “People should know what percent of the pool of money is paid out in the same way you would at a track or at any other event where wagering is involved.” See Rovell, Commissioners Say Daily Fantasy Not Akin to Gambling, but Needs Regulation, *ESPN.com*, Oct. 27, 2015. Textured discussions of “betting pools” and “sports pools” vis-à-vis fantasy sports have been undertaken in a number of jurisdictions, including Massachusetts, Nevada, and North Dakota. See Massachusetts Gaming Commission, White Paper on Daily Fantasy Sports (Jan. 11, 2016); Nevada Attorney General Memorandum, Legality of Daily Fantasy Sports under Nevada Law (Oct. 16, 2015); and North Dakota Attorney General Letter Opinion 94-L-298 (Nov. 1, 1994). Relatedly, three Florida Attorney General Advisory Opinions analyzed the legality of pooled entry fees (in fantasy contests and otherwise) being used to pay out winnings. See AGO 90-58 (July 27, 1990), AGO 91-03 (Jan. 8, 1991), and AGO 94-72 (Aug. 23, 1994).

¹² Brief for Defendant-Appellant, *The People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York vs. FanDuel, Inc.*, New York Supreme Court Appellate Division—First Department, Feb. 22, 2016, page 20.

¹³ 28 U.S.C. § 3702. PASPA’s prohibition also attaches to those acting pursuant to “law or compact of a governmental entity.”

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June 6, 2016

Mr. Kurt Eggert
Professor of Law
Chapman University Fowler School of Law
Donald P. Kennedy Hall
One University Drive
Orange, CA 92866

Dear Mr. Eggert,

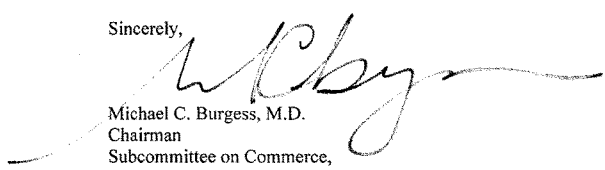
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Attachment - Additional Questions for the Record

The Honorable Gregg Harper

1. What are the top three consumer protection issues you believe we should be on the lookout for during this discussion?

