

The Honorable Frank Pallone, Jr.
Testimony before the
New Jersey Assembly Tourism & Gaming Committee

November 9, 2015

Good morning, Chairman Caputo, Vice-Chair Singleton and other distinguished Members of the Committee. Thank you for inviting me here today to testify on the impact of daily fantasy sports websites on the State of New Jersey and its gaming and tourism industries.

I come before you today as both a resident and a representative of our state in Congress, and as a supporter of legal and regulated sports betting. It is from that perspective that I offer my testimony.

My work as a Member of Congress has focused to this point on the unfairness in PASPA, the federal law which bans sports betting in all but four states. I believe that states should decide whether or not they want gaming, and, as the 2011 voter referendum demonstrated, it is clear that New Jersey does.

That is why I, like many, have been taken aback by the explosive growth of the daily fantasy sports industry. Though sports betting has been banned since 1992, betting on fantasy sports has become big business, with these sites airing near wall-to-wall advertisements during this season's football games.

The Unlawful Internet Gaming Enforcement Act, also known as UIGEA, was passed in 2006, in an attempt to address the unmitigated growth of online gambling that arose as more people began using the Internet. The law banned most forms of online gambling, however Congress explicitly exempted fantasy sports. This became known as the "fantasy carve-out" and was intended to allow for the kind of low-stakes wagers amongst friends that was common at the time.

And, as you all know, daily fantasy sports today does not closely resemble the fantasy sports that existed in 2006. Instead of picking a team and wagering with people you know over the course of an entire season, daily fantasy bettors can change the composition of their teams daily, competing for weekly payouts in the millions.

When the federal government prohibited the sale and consumption of alcohol, people found a way to continue partaking. The 18th Amendment did not eliminate demand and the underground industry Prohibition created, precipitated violence and exposed people to the dangers of an unregulated supply—with thousands dying after consuming tainted liquor.

To that point, the American Gaming Association estimates \$95 billion will be wagered on pro and college sports games this year, with only \$2 billion coming through legitimate gaming facilities in states exempted by PASPA.

And though Governor Christie might think it isn't a big deal, daily fantasy is now a multibillion-dollar industry that, unfortunately, functions without any meaningful state or federal oversight. That is why I have raised the issue to federal regulators and look forward to using the oversight powers of the Energy and Commerce Committee to conduct my own investigation into the operations of these sites and their impact on consumers.

Daily fantasy sites have exploited the fantasy carve-out, turning a harmless exemption into a gaping loophole in federal gaming law that fuels the industry's growth. By prohibiting betting on real sports teams in all but four states, while allowing betting on imaginary teams, we have essentially funneled demand for sports betting into a completely unregulated industry.

And, the fact that these entities face no direct oversight is important. As we saw in a recent New York Times piece, employees at Draft Kings and FanDuel profited off of proprietary information that was shielded from the general public. The piece exposed just how the sites' lack of internal controls promoted an unlevel playing field.

What makes this all the more frustrating is the legal justification for the disparate treatment of sports betting and fantasy sports wagering. Daily fantasy sidesteps UIGEA as a so-called "game of skill," however it is beyond me why fantasy can be a game of skill, whereas betting on actual contests is not. And apparently, the Attorney General, Loretta Lynch has agreed—at least when she was a U.S. Attorney for the Eastern District of New York. As a federal prosecutor, she argued in the case of *U.S. v. DiCristina* that sports betting is, in fact, a game of skill. Though she currently sits atop the Justice Department, tasked with enforcing PASPA and UIGEA, we continue to perpetuate this legal fiction that the two are somehow different.

It was recently revealed that both the FBI and the DOJ are investigating the legality of the daily fantasy industry, so hopefully this kind of hypocrisy will be reconciled. Yet, no matter the result of these investigations, it is time to reform our nation's gambling laws—not just due to contradictions like these, but because many states have been shut out of the gaming industry, though people across the country are clearly interested in participating.

What seems clear to me, is that gambling on fantasy sports is, in fact, real gambling. So, it makes sense that we treat it as such.

The sports betting industry continues to operate illegally in New Jersey through organized crime and our state fails to capture the full benefit of this economic activity. Organized crime makes billions of dollars and yet unlike casinos and racetracks, the

operation of sport betting contributes nothing to the community—especially in terms of tax revenue.

As you all well know, the state budget is in dire shape. Atlantic City’s economy is struggling, and the racetracks in New Jersey could use an additional attraction to give them a needed boost. Bringing sports betting out from the shadows will allow us to ensure the integrity of the games. By requiring the games to be run through licensed gaming entities like casinos and racetracks, New Jersey would benefit.

Yet, the state stands to benefit beyond the flow of tax dollars into state coffers. Because our state has a well-established gaming industry with its hub in Atlantic City, and because our state is one of three in the country with a regulatory infrastructure in place to oversee Internet gambling, New Jersey is well-positioned to capture this new market. It will bring economic opportunities to our residents, gaming options for New Jersey residents and tourists, as well as revenues to the state.

Numerous studies have been conducted demonstrating the economic impact resulting from the expansion of legalized gambling. In 2000, the U.S. Government Accountability Office (GAO) explored the impacts identified by the U.S. Gambling Impact Study Commission (USGISC), using Atlantic City as a case study. Their findings reinforce what should be intuitive: Atlantic City casinos have contributed sizable tax revenues to the city, county, and state, bringing significant support to schools and financing community development projects.

But, whatever you believe about the impact of the expansion of sports betting or the impact of daily fantasy websites, it is hard to see the lack of regulation of this industry as being without costs to consumers. The public looks to the state and federal governments to ensure their fair treatment in the marketplace, and it is our responsibility to institute the proper safeguards.

Yet, the industry must also realize that it is time for regulation, not just because of all of the recent news stories, but in order to sustain their continued growth and continue to attract consumers and investors, there needs to be more legal certainty. The only way we can reliably ensure consumer protections and the continued integrity of the games is through truly independent oversight and regulation.

I want to thank you again for affording me the opportunity to testify before the Committee today and I am happy to continue being a resource to the Members of the Committee on this issue.