

HEARING

PROPOSED 940 CMR 34.00 - DAILY FANTASY SPORTS OPERATORS

TUESDAY, JANUARY 12, 2016

LEVERETT SALTONSTALL BUILDING

100 CAMBRIDGE STREET

BOSTON, MASSACHUSETTS 02108

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Professional Court Reporter

*******COMPUTER AIDED TRANSCRIPTION*******

A P P E A R A N C E S

THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE ATTORNEY GENERAL

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Patrick Hanley, Esquire

Gary Klein, Esquire

Dan Krockmalnic, Esquire

SPEAKERS:

Peter Schoenke, President

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Griffin Finan, Counsel

Lobbying & Government Affairs at DraftKings, Inc.

Keith Whyte, Executive Director

National Council on Problem Gambling

Marlene D. Warner, Executive Director

Massachusetts Council on Compulsive Gambling

Les Bernal, National Director

Stop Predatory Gambling

Mark Gottlieb, Executive Director

Public Health Advocacy Institute

1 Meeting called to order at 10:04 a.m.

2 MR. JOHNSTON: Good morning. My name is Richard
3 Johnston. I'm the chief legal counsel at the
4 Massachusetts Attorney General's Office and we are
5 here convening a hearing on proposed regulations
6 issued by the -- to be issued by the Attorney
7 General's Office pursuant to General Laws Chapter
8 93A. These regulations are entitled 940 Code of
9 Massachusetts Regulations 34.00. They concern daily
10 fantasy sports.

11 I would like to first introduce other members
12 from the Attorney General's Office who are here with
13 me. To my left, Benjamin Meshoulam, Daniel Less,
14 Patrick Hanley. To my right, Gary Klein and Dan
15 Krockmalnic.

16 And we will be fielding testimony from various
17 people who have indicated their intent to testify
18 this morning. We have several people who have
19 indicated in writing that they would like to testify
20 this morning. We will call them. To the extent that
21 there are others in the audience who would like to be
22 heard as well, by all means, we will hear from them.
23 We have at least one other person who's indicated
24 that he will be here shortly and we will hold the

1 hearing long enough to accommodate that person.

2 As an introductory matter, the Attorney
3 General's Office has authority to promulgate
4 regulations pursuant to Chapter 93A to protect
5 consumers and others against potentially unfair and
6 deceptive trade practices, as well as, in this case,
7 the regulations seek to protect not only consumers,
8 but family members as well. This hearing is an
9 opportunity for all stakeholders as well as the
10 public to express their views with respect to the
11 draft regulations which we promulgated in November.
12 We have received written comments already, which have
13 been posted on our website. We will take oral
14 testimony today. We will receive written comments
15 through January 22nd. After we have received both
16 testimony and written comments, we will consider all
17 of them and promulgate final regulations probably
18 sometime this winter, as soon as possible after the
19 completion of the comment period.

20 For those of you who are testifying today,
21 please do us a couple of courtesies. Come to the
22 front table and please state your name and
23 affiliation for the record; please be sure to use the
24 microphone; and please speak as clearly to us as

1 possible.

2 To the extent that you have written comments
3 which you are submitting either previously or
4 simultaneously, you don't need to read the written
5 comments to us, but we encourage you to use your
6 comments to summarize in an oral way this morning.

7 We do not expect from the table here to be
8 answering questions. This is our opportunity to hear
9 from the public and we will endeavor to let people
10 speak as freely as possible. We may have a few
11 questions, but mostly in the nature of clarifying
12 things that people have said that we may not
13 understand. We will take a break during the course
14 of the morning, depending on how long the testimony
15 goes. If the testimony is lengthy, we will probably
16 take a break after an hour, an hour and a half. If
17 testimony is shorter than that, we will try to get
18 through the entire testimony before taking a break.

19 Based on those who have signed in to speak, I'd
20 like to call as the first speaker, Mr. Peter Schoenke
21 from the Fantasy Sports Trade Association.

22 MR. SCHOENKE: Good morning. Thank you for the
23 opportunity to testify today. My name is Peter
24 Schoenke and I'm the chairman of the Fantasy Sports

1 Trade Association. I'm also the founder and
2 president of Rotowire.com, a leading information
3 website for fantasy sports. I founded the website
4 almost 20 years ago when fantasy sports was just
5 starting to be played on the internet. I'm a small
6 business owner based in Madison, Wisconsin who made
7 this industry my profession because I'm passionate
8 about playing fantasy sports and helping so many to
9 enjoy the hobby.

10 This industry was started by similar
11 entrepreneurs who loved the hobby, even the more
12 recent daily fantasy sports company. And I'm here so
13 that this pastime can continue to thrive for the
14 estimated one million fantasy sports enthusiasts in
15 Massachusetts and because of the precedent these
16 regulations will set across the country. I'm here
17 representing over the 300 member companies of the
18 FSTA which provide fantasy sports games and software
19 used by virtually all of the 57 million players in
20 North America. The FSTA's members include such major
21 media companies as ESPN, CBS, Yahoo, NBC, NFL.com,
22 Fox Sports; content and data companies such as USA
23 Today, Stats, Inc. and RotoGrinders; and every major
24 daily fantasy contest operator including FanDuel,

1 DraftKings, Yahoo, FantasyAces, and DraftHubs.

2 First of all, we'd like to thank you for your
3 approach to working with our industry. Fantasy
4 sports has grown rapidly in popularity in the past 20
5 years, fueled by technological innovations that
6 doesn't often fit with centuries old laws. Daily
7 fantasy sports in particular have boomed the last few
8 years along with the growth of mobile devices. That
9 growth has brought our industry new challenges. We
10 look forward to working with you to solve these
11 issues and hope it will be a model for other states
12 across the country to follow.

13 The FSTA does have some concerns with the
14 proposed regulations, especially as it impacts the
15 fantasy sports industry beyond daily fantasy sports.
16 First, let me address those problems which impact
17 businesses that have been operating in the State of
18 Massachusetts and across the nation without any
19 issues or concerns from governments for more than two
20 decades.

21 The proposed regulations are problematic for the
22 most popular of fantasy sports formats: free fantasy
23 sports contests. For almost 20 years, companies such
24 as ESPN, Yahoo, CES, and NFL.com have provided

1 season-long and shorter duration games for free or a
2 nominal charge. The definition of a daily fantasy
3 sports operator, a DFSO, for the acronym in the
4 proposed regulations, is too broad and includes these
5 games, which I don't believe were the intention of
6 the proposed regulations.

7 For example, entities that operate season-long
8 and shorter games, like a playoff contest, shouldn't
9 be under the definition of a DFSO for their whole
10 enterprise if they also offer daily fantasy contests.
11 We believe that these regulations should not cover
12 these longstanding games and that companies should be
13 allowed to offer both so long as they follow the
14 regulations for daily fantasy sports contests. The
15 proposed regulations, as written, may force many of
16 the major three fantasy sports providers to drop
17 their longstanding paid contests or cease operations
18 in the state altogether.

19 The DFSO exemption for contests lasting an
20 entire season unnecessarily exclude many longstanding
21 fantasy games for such formats as the post-season,
22 NASCAR, golf, cricket, and other competitions. A
23 limit of at least 200 underlying competitions does
24 not fit every non-DFS contest.

1 The FSTA also believes the age at which people
2 should be able to play paid fantasy sports should be
3 18 years old. At 18 years old you're old enough to
4 vote in this country and make adult decisions.
5 Furthermore, an age limit of 21 years old appears to
6 be tied to gambling products and casinos where the
7 drinking age is a major factor for participation.
8 Fantasy sports are not necessarily played at a
9 physical location, so a similar age limit tied to
10 drinking laws should not apply.

11 The FSTA is worried about the raw language
12 defining a script. We realize the goal is to
13 minimize an unfair advantage some players could have
14 by using scripts, but too broad wording will hurt
15 innovation in our industry. There are many research
16 tools and team management programs that help all
17 fantasy sports players and are used in non-DFS
18 contests that could fall under this ban. For
19 example, our industry features many research tools
20 that provide real time fantasy sports advice and
21 information based upon real time data from live
22 factors. Often some of this data can be exported to
23 a user's fantasy league. Our companies are coming up
24 with mobile apps and websites to allow for updating

1 rosters in multiple states in case of injury news to
2 make entering a full league less work and to include
3 more personalized data and contests. The broadly
4 worded automated processes wording in the script
5 definition could end much of this activity, which
6 does not appear to be the intentions of the proposed
7 regulations.

8 The definition of a DFSO contractor is also too
9 broad. Companies that provide data, content, and
10 similar services to DFSOs will be subject to all
11 these regulations. We would like to exclude any data
12 or content provider who provides publicly available
13 information that is not customized for the DFSO. The
14 FSTA has over 100 content and data companies that may
15 be limited in their ability to provide services in
16 the growing daily fantasy sports market if labeled a
17 DFSO contract.

18 The FSTA would also like less onerous rules on
19 consumer deposits. The proposed regulations already
20 have protections for problem gamers and prohibit
21 extensions in credit, both which should alleviate the
22 need for a monthly limit that our members feel is too
23 low.

24 Finally, the FSTA also believes that fantasy

1 sports should be allowed for college sports. NCAA
2 football and basketball have been a part of fantasy
3 sports nearly as long as the hobby has been around.
4 My company, Rotowire.com has been providing fantasy
5 college football and basketball information since the
6 late 1990s. Major media companies such as Yahoo,
7 CES, and ESPN have offered college football and
8 college basketball games with individual player games
9 for decades without any incidents from the players on
10 the field or college teams themselves. Even with the
11 growing prizes around college fantasy sports games,
12 we believe this won't change since fantasy sports
13 don't present the same integrity issues as sports
14 gambling. It's nearly impossible for a player on the
15 field to influence the winner of a paid fantasy
16 sports contest since his play is one of a hundred, if
17 not millions of factors. That player would also have
18 to influence the play on the field on not only his
19 teammates, but players in other games, and to know
20 the rosters and strategies of the fantasy sports
21 contest participants. It's why all the major sports
22 teams distinguish fantasy sports from sports gambling
23 and why such a gambling sensitive organization as
24 Major League Baseball would invest in the DFS

1 operator.

2 These are the major concerns of our more than
3 300 member companies. We plan to give more specific
4 recommendations and written comments. However, we
5 would again like to thank you for taking this
6 approach to working with our industry. We believe
7 fantasy sports and daily fantasy sports will continue
8 to thrive in Massachusetts if you can balance the
9 important consumer protection issues you've raised
10 with the ability for our industry to continue to
11 innovate with changing technologies, while at the
12 same time limiting the impact on contests that so
13 many residents of Massachusetts have played safely
14 for years.

15 Thank you. I'm happy to answer any questions.

16 MR. JOHNSTON: Mr. Schoenke. Thank you for
17 coming to testify. Do you expect to submit those
18 comments that you've just read in writing to us or
19 have you already posted them?

20 MR. SCHOENKE: I will -- I expect to submit
21 written comments. Probably not these. We're going
22 to expand them a little bit and offer some specifics
23 and we will submit them before the deadline.

24 MR. JOHNSTON: Thank you, that will be very

1 helpful. Thank you very much. Anything else you'd
2 like to add?

3 MR. SCHOENKE: No. Just again, we appreciate you
4 having us here and working with us, and we look
5 forward to working with you moving forward.

6 MR. JOHNSTON: Okay, thank you very much.

7 MR. SCHOENKE: Thank you very much.

8 MR. JOHNSTON: I'd next like to invite Mr.
9 Griffin Finan from DraftKings.

10 MR. FINAN: Thank you for the opportunity to
11 speak today on the Attorney General's proposed
12 regulations pertaining to daily fantasy sports. My
13 name is Griffin Finan. I am legal counsel for
14 DraftKings and I'm here today to speak on behalf of
15 the company.

16 It is no secret that DraftKings has a
17 significant interest in these proposed regulations.
18 Our company, which was founded and is headquartered
19 here in Boston, is closely tied with the Boston
20 community and the Commonwealth of Massachusetts. As
21 our CEO Jason Robins said during October's Mass
22 Challenge Start-up Awards, DraftKings loves the
23 opportunity to create products that millions and
24 millions of people love in Boston, and to create

1 jobs, thousands of them, in Boston. Our company has
2 grown from nine employees in April of 2012 to over
3 300 employees today. The growth of the DFS industry
4 has resulted in thousands of jobs across the country.

5 DraftKings shares the Attorney General's goals
6 to protect consumers and appreciates the thoughtful
7 and constructive manner by which this office has
8 approached the issue. Specifically, the goals of
9 protecting consumer data and deposits, transparency,
10 implementing safeguards for minors and individuals
11 with compulsive gambling issues, and rules for fair
12 play are critical for continued growth of the DFS
13 industry and the protection for millions of consumers
14 that love playing DFS.

15 While we do not believe state sponsored
16 regulations are necessary to achieve these goals, and
17 we believe that DraftKings currently provides its
18 customers with many of the protections these
19 regulations address, we recognize that the attorney
20 general has an interest in insuring that
21 Massachusetts consumers have the same protections,
22 regardless of which DFS platform they use to
23 participate in DFS contests.

24 Still, these are tough regulations that will

1 have a significant affect on the industry and will be
2 costly and complicated to implement. DraftKings
3 currently has a team of 50 people working to
4 implement the changes needed to comply with these
5 regulations. We have followed the attorney general's
6 recommendations to make these changes to our platform
7 that are needed to comply with these regulations
8 before the regulations go into effect.

9 However, some of the proposed regulations are
10 redundant and unnecessary to achieve the goals I
11 stated before; create technical issues for the
12 company, and seek to implement solutions for problems
13 that do not exist. I would like to take a few
14 minutes today to discuss some of the more concerning
15 regulations. DraftKings will provide detailed
16 comments and address the specific regulations I
17 mentioned in written comments to be filed by the
18 deadline.

19 First, the proposed regulations seek to
20 implement multiple safeguards to achieve the same
21 goal; to protect the finances of individual
22 consumers. However, some of these regulations go too
23 far and will limit the consumer enjoyment without
24 offering additional protections. Specifically, we

1 are concerned with the regulation that limits
2 deposits to no more than a thousand dollars a month.
3 This deposit limit is unnecessarily low and we
4 believe that the requirements to raise the deposit
5 limit will be too invasive to allow for increased
6 deposits. In addition, the fact that DraftKings has
7 in place a standard deposit limit and the regulations
8 give consumers the ability to set their own deposit
9 limits should be sufficient. Consumers are in the
10 best position to set their own limits due to their
11 financial position. DraftKings is implementing
12 methods to allow consumers to self-exclude and set
13 self-imposed deposit limits, entry limits, and entry
14 fee limits. The company also is in the process of
15 implementing methods to allow third parties with
16 certain relationships to a consumer to exclude that
17 consumer from participating in a contest. We believe
18 that these protections, as well as our standard
19 deposit limits, efforts to publish assistance to
20 problem gamers on our website, and decision not to
21 extend credit to consumers, are sufficient to protect
22 consumers.

23 We are also concerned with the requirement
24 limiting play to those 18 years or older. DraftKings

1 believes that its consumers who currently must be 18
2 or older in Massachusetts should be able to decide
3 how to spend their money. No store subjects an adult
4 to the level of scrutiny that would be imposed by the
5 proposed regulations, including requiring income and
6 asset information unless that consumer is seeking
7 credit, which DraftKings has never extended to its
8 customers.

9 DraftKings also believes that some of the
10 proposed regulations, including the ban on
11 simultaneous log-ins, and the definition of
12 "Beginners" will have an unintended affect of harming
13 consumers and the customer experience. As our
14 consumers know, many of our contestants use multiple
15 devices at the same time for convenience purposes and
16 to assist them in the contests they enter.
17 Prohibiting that consumer from entering a contest on
18 his or her computer and checking the score or a bet
19 or other contest without logging out will hurt the
20 customer experience and does not appear to be related
21 to an existing problem.

22 In addition, DraftKings believes that the skills
23 and knowledge necessary to be successful on its
24 platform are unique, depending on the sport the

1 customer is participating in. For example, a
2 contestant in an NBA contest needs skills and
3 knowledge that are far different than a contestant in
4 an NFL contest. For this reason, we believe that our
5 policy of defining a beginner based on the number of
6 contests entered in a particular sport makes more
7 sense than defining a beginner based on the number of
8 contests entered in all DraftKings contests.
9 Allowing a consumer to learn the specific intricacies
10 of a contest and the skills necessary to succeed in a
11 lower risk environment is only beneficial to the
12 consumer.

13 Additionally, DraftKings believes that some of
14 the proposed regulations, including the ban on
15 college sports attempt to solve a problem that does
16 not exist. We will address the concerns I just
17 discussed and others more comprehensively when
18 DraftKings submits its comments to the proposed
19 regulations by January 22nd.

20 DraftKings appreciates the opportunity to
21 provide its perspective pertained in the proposed
22 regulations and remains committed to complying with
23 the implemented regulations. That said, DraftKings
24 is a startup company and requests that the attorney

1 general implement a regulatory framework that
2 protects consumers without unnecessarily harming our
3 still-growing industry.

4 Thank you.

5 MR. JOHNSTON: Thank you very much. We look
6 forward to your written comments.

7 MR. FINAN: Thanks.

8 MR. JOHNSTON: I'd next like to invite Keith
9 Whyte from NCPG.

10 MR. WHYTE: Good morning.

11 MR. JOHNSTON: Good morning.

12 MR. WHYTE: Thank you for the opportunity to
13 testify on the proposed regulations regarding daily
14 fantasy sports operators. We appreciate the
15 opportunity to work with your office and we applaud
16 you for taking action to address possible negative
17 consequences from excessive daily fantasy sports
18 play.

19 It's important to note that NCPG is neutral on
20 legalized gambling, and we do not take a position on
21 whether or not fantasy sports is or should be legal
22 or illegal, regulated or not regulated. Instead,
23 we're concerned about, again, people who are playing
24 regardless and making sure that they have the

1 appropriate consumer protections.

2 Our concerns about players center on two areas;
3 the characteristics of the games, and the
4 demographics of the common player. True fantasy
5 sports contests are structured with small entry fees,
6 long seasons, and minimal prizes which offer little
7 risks of gambling problems. However, increased event
8 frequency, higher entry fees, and larger prizes in
9 DFS have long been associated with an increased risk
10 of gambling addiction. And the reported demographic
11 profile of fantasy sports participants, predominantly
12 young male sports enthusiasts, indicate that they are
13 at higher risk for gambling addiction. Reports from
14 gambling operators themselves, the daily fantasy
15 sports players, their 40 percent of daily fantasy
16 sports players play casino games, which is a
17 significantly higher rate than the general
18 population, indicate that there is a substantial
19 overlap between fantasy sports players and casino
20 patrons.

21 A recent study had also found that college
22 students who played fantasy sports were more likely
23 to develop gambling problems and were less likely to
24 see fantasy sports as potentially problematic.

1 Fantasy sports players who grow preoccupied, unable
2 to stick to limits of time or money, and therefore do
3 suffer harm, suffer financial or emotional harm may
4 meet the gambling addiction criteria. Marlene
5 Warner, the executive director of the Massachusetts
6 Council on Compulsive Gambling, our chapter in this
7 state, will further detail the causes and
8 consequences of gambling addiction in the State of
9 Massachusetts.

10 We must note there is still a great deal we do
11 not know. As many witnesses have noted, this is an
12 emerging industry. We therefore call on government
13 and operators to help participate in research
14 initiatives that will help shed some light on the
15 characteristics of fantasy sports players and the
16 structural characteristics of the games. And we
17 would note that in other gambling-related industries,
18 such as the internet poker side, such participation
19 by operators using actual player data has
20 revolutionized our view of the risk factors and the
21 concerns about gambling addiction, and that in fact,
22 we have been able to find that most people that
23 gamble on the internet do so for moderate means. So
24 we really -- we've been working with operators to

1 encourage them to provide data to independent,
2 qualified, reputable third parties to show us that if
3 what they say is true, that it is fairly low risk for
4 many of their players. And again, we have detailed
5 recommendations in our written comments that we are
6 submitting at this time.

7 The National Council on Problem Gambling has
8 worked with many stakeholders, including daily
9 fantasy sports operators themselves to develop our
10 set of, we believe the first in the world, consumer
11 protection guidelines for daily fantasy sports. The
12 framework is, of course, a work in progress as this
13 is an emerging industry and it's expected to evolve
14 in response to changes in legislation, regulation,
15 operator conduct, and our own research. I won't
16 detail the guidelines, but they have been provided
17 and, as I said, they were developed in concert with
18 many of the daily fantasy sports operators. And we
19 know that operators are taking these regulations into
20 account and, in fact, many are trying to comply with
21 them.

22 We would like to further comment on several
23 specific provisions of the guidelines before you. We
24 would note that in 34.074, requiring daily fantasy

1 sports operators to offer essentially warnings or
2 assistance to problem gamblers in their advertising,
3 this may have the impact in the massive amount of
4 play in this significant advertising of dramatically
5 increasing calls to gambling issue hotlines and
6 services such as provided by the National
7 Massachusetts Councils. So we would note that
8 perhaps operators that are going to promote a service
9 would be asked to help voluntarily or contribute to
10 the costs of operating such help lines.

11 34.105, Protections for Problem Gamers. The
12 National Council on Problem Gambling is a strong
13 supporter of the concept of self-exclusion and indeed
14 we've been working on these issues for 20 years.
15 However, a third party does raise some concerns
16 because it is very important to keep in mind that
17 these programs are: one, primarily designed for
18 problem gamblers who have or who may have a mental
19 health disorder; and two, are grounded in the
20 therapeutic concept of relapse prevention.
21 Therefore, special care needs to be taken with the
22 development, especially of third party exclusion.
23 While the responsibility for exclusion program relies
24 on the continuum between the individual, and in this

1 case the DFSO, is widely agreed and important to the
2 primary responsibility lies with the self-excluder.
3 Third party exclusion in other countries is usually
4 restricted to first degree family members and we
5 would also note that the Massachusetts Gaming
6 Commission has introduced -- created a third party
7 exclusion through the Expanded Gaming Act and we
8 believe their approach is a model of excellence and,
9 again, it is primarily restricted to first degree
10 relatives. There's an appeal process and other
11 protocols in place, but most importantly, it's
12 operated by the commission and not the operators
13 themselves. At the intersection of vulnerable people
14 who want to self-exclude or who are being
15 involuntarily excluded by family members or other
16 relatives, having that done on the operator's side
17 can create some potential issues. I think it's also
18 burdensome for the operators and we recommend that
19 third parties be involved in processes, it's highly
20 sensitive, highly delicate, highly nuance procedure.

21 And as DFSOs operate across the nation, what you
22 do here and what we do here is going to have an
23 impact. Obviously, the operators have a large
24 incentive to create one set of policies and

1 procedures for consumer protection that apply across
2 their platform. So again, we would hope that as
3 we've learned in self-exclusion, a balkanized
4 solution is specific only to DFSO and can be only
5 incorporated in the State of Massachusetts is
6 unlikely to be effective. It is unlikely to be an
7 effective gateway for those who need the help the
8 most. We know that in states where the self-
9 exclusion program is run by a third party such as a
10 commission, and where it applies a little bit more
11 broadly, or at least the information is envisioned to
12 be allowed to be shared across some of these
13 platforms, it is more effective. So in other words,
14 if you have a customer that has to exclude -- has to
15 sign up and then exclude themselves from every single
16 fantasy site in Massachusetts and then do the same
17 for everywhere they may live or play, but still not
18 be harmonized with the Massachusetts Gaming
19 Commission's own casino self-exclusion process, which
20 is also then a harmonized lottery, you can see how an
21 excluded gambler might spend their entire lifetime
22 just trying to exclude themselves.

23 It's proposed further that DFSOs allow what we
24 would call preventative exclusion; where that is you

1 may wish to exclude yourself if you're not already a
2 customer of a company because you either have a
3 gambling problem or you believe you're at risk for
4 developing a gambling problem. And this so-called
5 preventative exclusion, obviously raises some of the
6 same challenges that third party exclusion does. We
7 support the concept, but again we note that under
8 current rules, you would have to sign yourself up
9 with the various sites you're trying to exclude
10 yourself from, and that may be a little bit more
11 temptation or risk that a vulnerable person may wish
12 to undertake.

13 Finally, we do look forward to working with you,
14 as we have been, as well as operators, advocates,
15 consumer protection organizations, other legislators
16 and regulators across the country, to develop a set
17 of comprehensive consumer protection standards. We
18 would highly recommend that the guidelines we've
19 developed be used as a template and incorporated
20 where appropriate in your efforts.

21 And again, we applaud the commission for taking
22 -- we applaud the attorney general, my apologies, for
23 taking the lead on this. We remain eager and willing
24 to work with you. We thank you for the opportunity

1 to testify. We will submit our comments in writing
2 and be happy to answer any questions.

3 MR. JOHNSTON: Thank you very much for coming.
4 Do you intend, when you submit final written
5 comments, to include copies of the regulations that
6 are ----

7 MR. WHYTE: Yes.

8 MR. JOHNSTON: ---- guidelines that you've
9 worked out with the industry?

10 MR. WHYTE: Absolutely.

11 MR. JOHNSTON: And when were they finalized?

12 MR. WHYTE: They were finalized on December 7th,
13 so we're still chasing this, as everyone else is.

14 MR. JOHNSTON: Okay. Well, thank you very much.
15 We'll look forward to getting your comments and the
16 guidelines.

17 MR. KROCKMALNIC: Rich, I have a question if you
18 don't mind?

19 MR. JOHNSTON: By all means.

20 MR. KROCKMALNIC: Keith, will your comments go
21 into any greater specifics about the problems that
22 you see, or the concerns that you've identified with
23 respect to third party self-exclusion?

24 MR. WHYTE: Yes, we have an extensive section on

1 that. We've worked with -- on the gambling side,
2 we've worked with operators and regulators for 20
3 years and we also worked internationally. So third
4 party is becoming a little bit more current both here
5 in the United States and internationally. I'm
6 advising over in Singapore on their process, so we
7 have a lot of experience. It is a very, very
8 difficult issue to get a handle on.

9 MR. KROCKMALNIC: Thanks.

10 MR. WHYTE: Thank you.

11 MR. JOHNSTON: Any other questions? Thank you
12 very much.

13 Mr. Whyte referred to Marlene Warner. I'd like
14 to ask her to testify next.

15 MS. WARNER: Good morning.

16 MR. JOHNSTON: Good morning.

17 MS. WARNER: Hello, and thank you again for the
18 opportunity to provide to you feedback from the
19 attorney general's proposed regulations for daily
20 fantasy sports contest operators and for your overall
21 consumer protection concerns.

22 My name is Marlene Warner. I'm the Executive
23 Director of the Massachusetts Council on Compulsive
24 Gambling. The Mass Council is a 33 year old

1 organization that was founded by Tom Cummings, a
2 Boston school teacher who struggled with gambling in
3 his own lifetime and realized that going to a 12 step
4 program was not enough. He established the council
5 to advocate for the state, through the state, to own
6 up to the downside of state sponsored gambling, at
7 that time simply to track on the lottery, and pay for
8 treatment services for its residents. Fast forward
9 to today. The Mass Council advocates on behalf of
10 all people that gamble to keep it healthy and safe.
11 We work with vendors to the Department of Public
12 Health, the Mass Gaming Commission, and in
13 facilitation of private funders to provide advocacy,
14 capacity building, technical assistance, and
15 information referral systems to all people who
16 gamble, including those for whom it has become a
17 problem. We directly provide education and treatment
18 support services for the nearly 140 treatment
19 providers who have the Massachusetts Problem Gambling
20 Specialists Certificate. We run a 24 hour help line
21 and provide online chat services to those contacting
22 us in crisis. We work with re-entry and recovery
23 entities of the state to provide a safety net for
24 those population at highest risk for a gambling

1 disorder, including individuals with multiple
2 expressions of addiction, mental health disorders,
3 and/or those individuals within the criminal justice
4 system, and we develop and showcase public awareness
5 efforts and statewide campaigns. In addition, in the
6 past four years, we worked very closely with the Mass
7 Gaming Commissions, all the casino licensees, and the
8 Mass State Lottery to establish many new and
9 innovative approaches to responsible gambling.

10 Today the Commonwealth boasts the first state
11 initiated responsible gambling framework, the most
12 robust research agenda in this area, the first
13 responsible gambling information center on site at a
14 casino in the United States, the first third-party
15 casino exclusion program, etcetera, etcetera. I
16 could go on. We've been a very proud and active
17 partner in determining and implementing a number of
18 these initiatives, and we're quite pleased that we're
19 here in Massachusetts where a number of the
20 regulatory bodies take this as a big issue and are
21 very concerned.

22 In addition to running the council, I also have
23 the great privilege to sit on the board of directors
24 of the National Council on Problem Gambling and

1 currently serve as the vice-president. We just heard
2 from Keith from the National Council.

3 The reason I give all that extensive background
4 is in way of an introduction of our organization,
5 both as an entity that provides services and
6 protections to the people of the Commonwealth, but
7 also as one that stands firmly in the belief that to
8 be successful, one needs to involve all parties at
9 the table: people affected, regulators, operators,
10 and program vendors. We stand firm in our approach
11 to working directly with our industry partners to
12 develop the best approach to addressing the downside
13 of gambling. At the council we define gambling as
14 risking substantive value on the outcome of an event
15 when the outcome is less than certain. There is a
16 clinical diagnosis of gambling disorder defined by
17 the Diagnostic and Statistic Manual of Mental Health
18 Disorders, Version 5, that outlines the nine criteria
19 that describes the negative impact that an individual
20 may experience due to their gambling. And from a
21 recent baseline study done by the SEIGMA Team at the
22 University of Massachusetts at Amherst on behalf of
23 the Mass Gaming Commission, we know that 1.7 percent
24 of Mass residents have experienced a problem with

1 their gambling in the past 12 months, and 7.5 percent
2 at are a high risk to have a problem; statistics that
3 are relatively consistent with national prevalence
4 data.

5 We recommend that the attorney generals not
6 define DFS as gambling, but the experience of the
7 players and some of the negative impacts that have
8 been reported to us via the help line and through our
9 networks, albeit it anecdotally, are consistent with
10 those experienced by people with gambling disorders.
11 We just received a phone call yesterday from a mother
12 concerned about her son's DFS play.

13 We also want to make sure to make clear -- to
14 make clear, consistent -- draw a clear and consistent
15 line between daily fantasy sports and fantasy sports
16 as the high stakes or high speed action of gambling
17 is what often makes it problematic for individuals.
18 We see similar circumstances in the lack of problems
19 with contributing to the stock market versus day
20 trading or playing the lottery numbers versus
21 scratching a ticket, although this up until a \$1.4
22 billion jackpot was announced. I think everyone's
23 kind of crazed about that. Considering all of that
24 background, I believe that rules and regulations have

1 many strengths. We were pleased to see minors
2 described at age 21, we are concerned constantly
3 about that pre-frontal cortex; self-limitations and
4 self-exclusion options being made available and keep
5 pointing to a lot more detail, and I'll give some
6 more in a moment; and we were particularly happy to
7 see some of the stringent guidelines relates to
8 prohibiting fantasy sports play on college, high
9 school, and student sporting events; as well as
10 advertising to minors; prohibiting extensions of
11 credit; and providing referral information for
12 helpful resources if a problem arises.

13 However, there are a few areas where I believe
14 the proposed regulations have not gone far enough or
15 have drawn distinctions that are minimalistic in the
16 goal to provide stronger -- in the goal to provide
17 strong consumer protections. Under the definitions,
18 there's a clear distinction made between beginner and
19 highly experienced players. While I appreciate those
20 distinctions are made to, you know, level the playing
21 field, it may also cause one to consider themselves a
22 professional player, something we hear often on our
23 help line, that can often lead to making rash
24 decisions to devoting large amounts of money and time

1 to something that is not going to actually payoff. I
2 equate these titles to high roller or winner labels
3 that people with gambling disorders often covet
4 because it boosts their self-worth.

5 Truthful advertising. In addition to the items
6 listed already, it would be useful to clearly
7 prescribe that DFSOs must advertise the age to play
8 on all advertising. Clearly, -- I'm sorry -- limit
9 advertising during events aired or occurring during a
10 time when minors may be watching, and set strict
11 guidelines for advertising at stadiums that are used
12 for professional sports teams, but also by college
13 teams such as our own Gillette Stadium where UMass
14 football plays.

15 There also needs to be standards for lease
16 branded restaurant space at sporting venues, also
17 similar to Gillette stadium where all ticket holders
18 can go in and there's an instant blend of
19 advertising, alcohol, sports, fantasy tips, DFS
20 updates, and access to play by all present.

21 In the protections for problem gamers, while
22 self-exclusion is a well-documented tool to help
23 people with problems, it is most useful with staff
24 who are well-trained to understand and recognize

1 problems and offer proper referrals. In addition,
2 policies and guidelines regarding self-exclusion need
3 to be clearly offered and explained regarding all
4 aspects, including what happens to an individual's
5 frequent player points and earned fantasy dollars. I
6 will say that currently, the Mass Council runs the
7 on-site center at our space down at Penn National's
8 site, our only casino right now in Massachusetts, and
9 they do all the self-exclusions. And one of the
10 number one concerns is whether people are able to
11 access all the dollars and points they have been
12 received on their player's card before they self-
13 exclude. So it's a major concern for folks.

14 Similar to the Mass statewide exclusion, we
15 would recommend an information session for anyone
16 returning to play following an exclusion regarding
17 their future risk. We would also recommend that
18 DFSOs be required to allow self-exclusion regardless
19 of whether an individual is a subscriber or not,
20 similar to what Keith mentioned earlier. Self-
21 limitation, not only play management, which is being
22 rolled out by the MGC this spring, is a useful tool
23 to help individuals make informed decisions about
24 their play. We would recommend that in addition to

1 limiting money, we also would like to see DFSOs to
2 monitor time spent on play, as well as an opt-in
3 feature for DFS companies to offer players to see
4 periodic pop-up warnings due to the amount of time
5 and money that is being spent. Folks often talk
6 about losing themselves in the play and kind of lose
7 all track of time.

8 In addition to the proposed regulations, we
9 would like to make sure there are opportunities built
10 in to offer players many options for informed
11 decision making; explaining the odds, explaining
12 changes to the expediency of the play, explain how
13 practice sites work; all so people can better
14 understand what they're risking and going in and
15 understand -- going in with their eyes wide open into
16 their DFS play in addition to the extensive onboard
17 procedures that were described in the regulations.

18 Finally, similar to the robust research agenda I
19 spoke to you about earlier, I would like to see an
20 atomized data to offer to a statewide research
21 initiative to better help people with gambling
22 disorder and provide protections to those wanting to
23 play responsibly.

24 Thank you for the opportunity to provide this

1 testimony today. I'm happy to answer any questions
2 that may be appropriate.

3 MR. JOHNSTON: I have two questions. One is are
4 you planning to submit written comments between now
5 and ----

6 MS. WARNER: I am.

7 MR. JOHNSTON: ---- the 22nd? Thank you.
8 Second, you indicated toward the end of your
9 testimony that you would like to see better
10 explanations of how practice sites work. Just
11 explain what you meant.

12 MS. WARNER: So, one of the things that we have
13 heard from folks is that they will -- and this is for
14 online gambling in general, but specifically also
15 fantasy sports that they start to think that there's
16 some special play or there's something special about
17 how they're working without being engaged in a
18 competition, and then they are engaged in a
19 competition. Sometimes it's set up a little bit
20 differently and just describing that for folks.
21 Especially when we're talking about some of the --
22 there are sites out there where children can play and
23 they're under the age, and then once they become of
24 age, they can play on the official sites, just

1 describing any of the differences there.

2 MR. JOHNSTON: Okay, thank you very much.

3 MS. WARNER: Thank you.

4 MR. JOHNSTON: I'd next like to invite Les Bernal
5 from Stop Predatory Gambling.

6 MR. BERNAL: Good morning.

7 MR. JOHNSTON: Good morning.

8 MR. BERNAL: Good morning everyone. My name is
9 Les Bernal, and I'm the National Director of Stop
10 Predatory Gambling. We're based out of Washington,
11 D.C. I'm personally from Lawrence, Massachusetts and
12 I have an office in Massachusetts as well.

13 Just briefly, I just want to make a few brief
14 points to highlight kind of we are opposed to these
15 regulations and things we ask the attorney general's
16 office to keep in mind as they move forward on these
17 issues.

18 Our mission specifically is opposed to the role
19 of government in sponsoring and promoting gambling.
20 So by state government getting into this issue, we
21 are -- state government now is entering the internet
22 gambling business. So what I think is unintentional,
23 by entering the world of DFS, we are essentially in
24 Massachusetts doing the biggest expansion of gambling

1 in state history. We are now opening internet
2 gambling into every living room, every bedroom, or
3 every smart phone in the State of Massachusetts. So
4 it's not simply about DFS, that the end game here is
5 probably wildly discussed. This business model of
6 DFS itself hasn't even proven to be lucrative. Where
7 the money is, is in the end game, in creating
8 internet gambling to market more extreme forms of
9 online gambling to citizens in this state and
10 ultimately around the country. So we're not debating
11 kind of the small DFS, we're debating the biggest
12 expansion of gambling in state history.

13 And the reason why that's so problematic for
14 everyone here and for the citizens of this state is,
15 we don't have to speculate what regulated gambling by
16 government looks like. There are very specific,
17 fundamental, and irreconcilable conflict when
18 government starts regulating gambling because the
19 very business practices that government is trying to
20 protect in order to protect consumers, at the same
21 time government is relying upon the revenue that
22 these same business practices generate. And so what
23 we've seen over 40 years is that the singular focus
24 ultimately on this issue, when it comes to

1 governments regulating gambling policy has been on
2 driving sales and profits, okay? And a prime example
3 that I want to show you, I actually included in my
4 testimony, and if anyone is interested, I'm happy to
5 email it to you, is just -- just this past December,
6 December of 2015, I want you to see what regulated --
7 government regulated gambling looks like in
8 Massachusetts.

9 So here we have a legendary Joe Camel
10 advertisement, you know, "Celebrate the holidays with
11 a pack of Joe Camel." And if anyone recalls from 21
12 years ago, Joe Camel is this cartoon figure targeted
13 to kids and get young people lured into smoking.
14 Let's contrast that with a Massachusetts Lottery
15 scratch ticket which was one of the biggest sellers
16 in December, 2015. And image of Frosty the Snowman,
17 okay, with a crossword puzzle. Okay, Frosty the
18 Snowman, iconic image for children, is put on a
19 government regulated gambling scratch ticket. So
20 this is a tobacco company, we have a public outcry.
21 But this is a government program using a cartoon
22 figure, an iconic figure, targeting young people and
23 we don't question that. So when we say that we're
24 going to protect consumers, I just want to say to

1 someone, how is this protecting consumers? So that's
2 why government regulated gambling, whether it's in
3 regional casinos, whether it's lotteries, has been a
4 failure in this country.

5 The last couple of points I'd like to make
6 before moving on is, closing up here is, you know,
7 there's been a lot been discussed on this or there's
8 a lot of reports and so forth. You guys have done a
9 good job investigating this, the facts on this. But
10 there's one story that appeared over the last week
11 that deserves everyone to take a hard look at,
12 because I know when the attorney general's office
13 started down this road, their intentions were good;
14 we're going to try to meaningfully address, you know,
15 protect consumers on this issue. But a very powerful
16 story was written in the New York Times and the New
17 York Times magazine and the title of it was: "How the
18 Daily Fantasy Sports Industry Turns Fans into
19 Suckers." And this wasn't written by some, you know,
20 holy roller, no anti-gambling type of person. This
21 was written by a guy that actually plays DFS on a
22 regular basis. And he, in depth, described the
23 business practices and how this business model works.
24 And so the term that's important -- people aren't

1 going to -- the DFS lobbyists will stand up and talk
2 about this, they're not going to use this phrase.
3 This is the phrase he used in the New York Times and
4 I think that it's a phrase that goes to the core of
5 these business practices, and the phrase he calls it
6 is "bum hunting" okay? "Bum hunting." And what that
7 is is, bum hunting is when you have these very
8 skilled -- and players using these algorithms who go
9 after and they target everyday people and they
10 exploit them for all they're worth. So the question
11 -- I know much of the rationale behind these consumer
12 protections, right, is to protect everyday citizens
13 from being cheated and exploited. Well, the point of
14 this whole article is you can't protect this practice
15 of bum hunting, okay, of going after these players
16 who are being exploited, everyday people. You can't
17 protect them because the sites themselves
18 acknowledge, in the New York Times, they can't detect
19 the scripts that are happening, okay? Research --
20 has FanDuel acknowledged to them -- that they can't
21 even acknowledge -- they can't even detect the
22 scripts. So how -- as well intended as it began down
23 this road, how do you stop these practices? And I
24 think the evidence is that you can't, okay? You

1 can't. And so the best solution ultimately is when
2 it comes to government approach towards gambling is
3 to not promote it, not advertise it everywhere, but
4 attempt to contain it, okay, as you know, out of --
5 you know, private, out of the public eye as much as
6 possible. That's how the public benefits from a
7 gambling policy, not by advertising it, not by
8 putting Frosty the Snowman scratch tickets on every
9 street corner in the State of Massachusetts.

10 So with that, I appreciate the opportunity to
11 say a few words and I appreciate your work on this
12 issue.

13 MR. JOHNSTON: Thank you very much and thank you
14 for submitting the written comments. Will you be
15 submitting anything further or is this ----

16 MR. BERNAL: Perhaps. But for now, that's all I
17 have.

18 MR. JOHNSTON: Well, you're certainly welcome to.

19 MR. BERNAL: Thank you.

20 MR. JOHNSTON: Next I'd like to ask Mark
21 Gottlieb, of the Public Health Advocacy Institute to
22 join us. Good morning.

23 MR. GOTTLIEB: Good morning. First, thanks so
24 much for your leadership in protecting consumers from

1 the harms caused by DFS operators in Massachusetts.

2 I'm Mark Gottlieb. I'm the executive director of the
3 Public Health Advocacy Institute, a public health law
4 and policy nonprofit located at Northeastern
5 University School of Law.

6 In October of last year, we submitted a deeply
7 and carefully researched legal memo to General
8 Healy's office analyzing the legality of paid DFS
9 operations in Massachusetts. And what we found is
10 that while there is no Massachusetts statute or court
11 that has specifically declared DFS to be illegal
12 gambling, he was very clear that daily fantasy sports
13 operators such as DraftKings and FanDuel are
14 conducting illegal gambling operations in the
15 Commonwealth. And this was based on an analysis of
16 the applicable statutory law as well as the decisions
17 of the Supreme Judicial Court.

18 Our conclusion is that without a legislative
19 carve out for DFS, these firms are operating outside
20 the law in Massachusetts. I know that that's not the
21 conclusion that this office came to. And while I
22 appreciate the attorney general's desire to seek a
23 middle ground between filing for an injunction to
24 shutter DFS operations here and allowing these

1 companies to operate an enterprise affecting so many
2 consumers with virtually no regulatory protections, I
3 fear it may not be possible to effectively strike
4 that balance, and this is due to two primary reasons.
5 One, some of the most important consumer protections
6 proposed in these regulations may be very difficult,
7 if not technically impossible to enforce, and two,
8 the protections themselves, if implemented and
9 rigorously enforced would disrupt the DFS business
10 model to such an extent that it is no longer a viable
11 one. And it's not even clear that it is a viable one
12 right now, as Mr. Bernal just had mentioned.

13 For example, Section 24.06 is designed to ensure
14 that there is only one DFS account for each player
15 and by banning the use of proxy servers and requiring
16 company verified true identities from users and
17 limiting users to one session at a time, it's going
18 to be difficult for professional DFS players or
19 sharks, as they're sometimes called, to use scripts
20 and algorithms to consistently win dozens of games
21 daily against casual players. Assuming that
22 operators have the technical capabilities to carry
23 out these requirements and that the AG's office has
24 the capability and capacity to enforce these

1 provisions, there would still be no way to stop those
2 sharks from using proxy accounts in others' names who
3 are cooperating with them to play multiple games at
4 different skill levels. This applies to some of the
5 Section 34.12 fairness protections as well as
6 Sections 5 and 6, which protect beginner games and
7 exclude highly experience players, exclusions which
8 proxy players could evade. It's unclear whether the
9 prohibition on scripts is even enforceable by the
10 operators or the attorney general's office. Some
11 believe that the sophistication of these scripts now
12 make them mostly undetectable by the DFS operators.
13 The biggest challenge, however, is that these
14 proposed regulations, if they were enforceable and
15 vigorously enforced would effectively end the DFS
16 business scheme and the operators' viability. And as
17 Mr. Bernal mentioned, the New York Times magazine
18 writer Jay Caspian Kang wrote this extended article
19 in last week's magazine, and it was also corroborated
20 by several others in recent publications this past
21 fall, this is less of a budding industry as it is a
22 business scheme. The article, "How the Daily Fantasy
23 Sports Industry Turns Fans into Suckers" explains why
24 attracting and retaining professional players who had

1 an overwhelming advantage over casual players is
2 essential for DraftKings and FanDuel. Unless pros
3 stake a lot of money on these contests, the contest
4 prizes will be too low to draw users to the contests.
5 And because the operators only make money on a
6 percentage of the total funds wagered, which is
7 called the "rake," it's necessary to attract large
8 numbers of inexperienced players, sometimes referred
9 to as "fish," to feed those sharks and insure that
10 there's big money contests with profitable rates for
11 the operators. The money the sharks put up, along
12 with the massive marketing efforts, comprise the bait
13 for these fish, to use the fishing metaphor as far as
14 I think I can.

15 If effective enforced consumer protections are
16 put into place to prevent the use of scripts and
17 third party software allowing pros to play and change
18 lineups for many contests in very little time, they
19 won't play and then that model falls apart. If pros
20 cannot effectively bum hunt or use tools to find
21 inexperienced players to challenge, they won't play
22 and the model falls apart. If the regulations could
23 be and were enforced, the DFS business would dry up
24 because it's built on an unfair business model.

1 This leaves us with something of a Catch 22, I
2 think. The attorney general wants to avoid
3 shuttering DFS sites in Massachusetts and instead
4 require fair play to protect consumers, but fair play
5 may be fatal to the industry's business model and
6 would result in an indirect shutdown; that is, unless
7 the companies were desperate to continue operations,
8 evading enforcement efforts.

9 It is an impossible situation that invites
10 cheating of both the consumer and of the
11 Commonwealth. It can be and should be avoided in the
12 simplest manner possible: enforcing the illegal
13 gambling laws we already have and banning paid daily
14 fantasy sports operations from Massachusetts, absent
15 express authorization by the legislature. This has
16 been or is being done in other states, notably New
17 York and Illinois recently. Six other states also
18 banned these operations. It's the most responsible
19 approach for consumer protection and for public
20 health.

21 Thank you.

22 MR. JOHNSTON: Thank you very much.

23 MR. GOTTLIEB: And I will be submitting written
24 comments in the next couple of weeks.

1 MR. JOHNSTON: Well, get them in by the 22nd.

2 MR. GOTTLIEB: Yes.

3 MR. JOHNSTON: Thank you very much.

4 MR. GOTTLIEB: Can I answer any questions?

5 MR. JOHNSTON: Not from me? Anyone else? I'd
6 next like to call Attorney Daniel Wallach.

7 MR. WALLACH: Good morning. My name is Daniel
8 Wallach. I'm a gaming and sports attorney with the
9 law firm of Becker & Poliakoff in Ft. Lauderdale,
10 Florida. I've been reporting on, covering, and
11 following the sports gambling and daily fantasy
12 sports industry for the better part of two years.
13 And the Massachusetts Attorney General's regulations
14 strike me as achieving the perfect balance between
15 protecting consumers while permitting operators to
16 profitably operate their business, which is an
17 important balance. These regulations can be so
18 onerous that it would drive most of these companies
19 out of business.

20 Now, in looking around the country at some of
21 the schemes, or legislative and regulatory schemes
22 that have been proposed, I have come upon, you know,
23 state licensing fees. California and Florida have
24 proposed half a million dollar annual permit or

1 registration fees. That simply can't stand. I mean,
2 that kind of approach in licensing not only violates
3 the Professional Amateur Sport Protection Act of
4 1991, which is a federal law that prohibits state
5 sponsored sports gambling, but it would leave the
6 industry in the hands of only a few: DraftKings and
7 FanDuel. So besides being legally infirm, any kind
8 of a licensing apparatus would prevent small emerging
9 innovating companies from remaining in the space or
10 entering in the space. So I think what the
11 Massachusetts Attorney General's Office seeks to
12 accomplish here is the perfect balance; not violating
13 existing federal law while achieving the maximum
14 consumer protection imaginable. But make no mistake,
15 the industry -- the daily fantasy sports industry is
16 at a crossroads. No industry can perpetuate where 90
17 percent of winnings go to a small or vastly small
18 preponderance of players.

19 Now I've read statistics or studies that show
20 that the net losers, or at least 70 percent of DFS
21 players are net losers. Well, that might benefit the
22 companies and the sharks in the short term. The long
23 term survival of the industry and the business model
24 depends on leveling of the playing field. Now I'm

1 not here to speak about the legality of daily fantasy
2 sports under Massachusetts law. I'm not a
3 Massachusetts trained attorney. That's not why I'm
4 here today. I'm here to stress the importance, the
5 single importance of leveling the playing field so
6 that the contests are fair, equitable, and
7 transparent for those who choose to play fantasy
8 sports. The 90 percent, 2 percent, the 70 percent
9 net losing, that has to come to an end. The business
10 needs it to survive and consumers need it to be able
11 to, you know, not be preyed upon by more experienced
12 players. No other statutory scheme, no other
13 regulatory scheme proposes as the Massachusetts AG's
14 regulations do, a ring fence in the beginner games
15 that are limited to beginning players. That is
16 paramount. I applaud those efforts and I believe
17 that this is a model that can be followed by other
18 state lawmakers and other regulatory bodies. More
19 importantly, the industry itself depends -- or the
20 success of a player in daily fantasy sports depends
21 on a vast amount of information. We know everything
22 under the sun about Adrian Petersen, Tom Brady, about
23 all of the underlying real world players, the data,
24 everything is studied to ridiculous extremes. But a

1 participant in a DFS contest knows absolutely nothing
2 about his opponent, and those days have to come to an
3 end. It is a situation where opponents have no
4 identification as to how good they are, how
5 experienced, how much they've won. What the attorney
6 general's regulations do is put an end to that
7 anonymity. For an industry that is so dependent on
8 data and player information, it is stunningly silent
9 on know your opponents. It's one thing to know your
10 customers, but I think paramount, any form of
11 consumer protection is to have great disclosure of
12 the odds of winning and who your opponents are. And
13 the attorney general's regulations go a long way
14 towards curing that inequity, and I applaud the
15 efforts by the Massachusetts AG. You talk about
16 every single measure of consumer protection that can
17 be thought of here; it is addressed by the attorney
18 general's regulations.

19 I'd like to talk about one other, one other
20 important issue which is dispute resolution. Until
21 these regulations were promulgated, most of the DFS
22 operators required their customers to seek recourse
23 via arbitration, and for the most part, in an out of
24 state forum. I know one company that requires, even

1 though they're based in the northeast, they require
2 their customers to arbitrate disputes in North
3 Dakota. This is not a problem for DraftKings.
4 DraftKings is based in Boston, Massachusetts and
5 their customers can seek recourse, if not in a
6 Massachusetts court, certainly in a Massachusetts
7 arbitral forum. It is paramount that Massachusetts
8 consumers have recourse to Massachusetts dispute
9 resolution procedures. What that consists of, I'll
10 leave it to the wisdom of the attorney general and
11 the state legislature, but at a minimum, any
12 Massachusetts consumer who is aggrieved or feels
13 aggrieved by the contests in which they participate
14 should be able to seek recourse in the Commonwealth
15 of Massachusetts and not be forced to, you know, haul
16 themselves to a forum hundreds or thousands of miles
17 away to resolve a dispute that might involve hundreds
18 of dollars, which no attorney would take the case.

19 So when we talk about consumer protection, we're
20 talking about fair, meaningful and immediate recourse
21 to dispute resolution as well as a leveling of the
22 playing field. Without a leveling of the playing
23 field, these regulations are meaningless and will
24 just perpetuate the dominance of sharks over minnows.

1 The weakest of the consumers need to be protected and
2 the attorney general's regulations hit every high
3 note imaginable and I believe that they should be
4 enforced or promulgated in their entirety.

5 Now turning to scripts. There's been a great
6 deal of debate as to what a script is. I'm not a
7 technological wizard. I don't play daily fantasy
8 sports, I don't know how to automatically enter
9 multiple contests at a single time or to change my
10 lineups moments before the game, but in reading Ed
11 Miller's letter to the attorney general, I believe he
12 makes a valid point about the difficulty in
13 identifying and defining what a script is.

14 In my view, any mechanism that allows players to
15 enter multiple lineups through automation is not just
16 simply a skill of the player, you know, being
17 impacted; it is an unfair advantage. So whether you
18 limit the number of contest entries to a single digit
19 or to an amount of three percent or less of the total
20 number of entries, I think the attorney general's
21 regulations need to better define with greater
22 clarity and specificity, the different kinds of
23 scripts that are imaginable and provide a broad,
24 comprehensive definition so that there's no confusion

1 as to what is or what is not allowed.

2 Certainly, skill should dominate in any contest.
3 You should win on the virtue of your skill and
4 knowledge of professional football playing statistics
5 or professional sports statistics. You shouldn't win
6 simply because you have the ability to automate
7 multiple or hundreds of entries at a time. So that's
8 the only critique I have of the regulations, but if
9 anything, I believe that the regulations can serve as
10 a model for statehouses across the country because as
11 many as 15-20 different legislative measures have
12 been introduced in states like California, Florida,
13 Minnesota, Indiana, Pennsylvania, and so forth. None
14 -- none come even remotely close to achieving the
15 right balance between consumer protection and
16 fairness to operators as the attorney general's
17 regulations do.

18 So I applaud these efforts and these regulations
19 can't happen soon enough. It will save the industry,
20 and the sooner you can protect consumers, the better
21 -- the better the Commonwealth will be and it can't
22 be soon enough.

23 MR. JOHNSTON: Thank you very much, Mr. Wallach.
24 A couple of questions, if I might.

1 First, are you here representing any client or
2 are you coming here as an expert on the industry?

3 MR. WALLACH: I don't know if I'm an expert, but
4 I certainly talk a lot about the subject and I think
5 I know a fair amount of it. I've been passionate in
6 my coverage of the industry. I care a lot about it.
7 I'm not here on behalf of any client and I don't
8 currently represent any fantasy sports clients,
9 whether daily companies or seasonal companies. I'm
10 here strictly as, you know, as you would say, an
11 expert covering the industry. I've blanketed through
12 my writing, my public speaking, attended some
13 conferences. I have been actively following the
14 industry from the legislative approaches, from court
15 cases, to taking a fine look at the laws, and I
16 consider myself quite knowledgeable about the legal
17 and regulatory environments surrounding both fantasy
18 sports and sports gambling generally, but I'm here
19 independently and I speak for myself, not on behalf
20 of any client or even my law firm.

21 MR. JOHNSTON: Is there anything more specific
22 you'd like to say about the issue of scripts? I
23 mean, I take it that you think we should somehow be
24 more definitive about scripts? If so, in what way?

1 MR. WALLACH: You know, I'd like to speak about a
2 lot of things and hold myself out there and put
3 myself out there, but when it comes to that issue,
4 there are those who know far more about the subject
5 and I'll leave it to their wisdom. But I believe
6 what I'm getting at here is the ability to secure an
7 unfair advantage simply through automation. If that
8 can be limited or eliminated, that will go a long way
9 towards a greater leveling of the playing field.

10 You know, if you're entering hundreds of
11 contests and if a quarterback or one of your players
12 is injured and there's a last minute lineup
13 substitution, the ability to automate his replacement
14 at the last second, when players who enter manually
15 lack that capacity, certainly creates an unfair
16 advantage for those who use automation, and that is
17 probably as much as I can say about it other than,
18 you know, let's try to achieve the overarching
19 mission here, which is to eliminate the advantage
20 achieved through automation or to at least disclose,
21 you know, to fairly disclose, you know, what tools
22 are available and to limit the advantage created by
23 those automated tools because not everyone has access
24 to them.

1 I don't know if that addresses your question.
2 You may have to bring Mr. Miller up here to put a
3 finer point on it, but that is a critical issue; the
4 proper definition of making sure it has sufficient
5 clarity so that, you know, companies understand how
6 to enforce it so that players know how to abide by
7 it, and so that the attorney general's office can
8 properly administer, interpret, and enforce that
9 regulation against those who violate it.

10 MR. JOHNSTON: Do you distinguish in your own
11 mind between automation of a sort that allows
12 somebody to do better research in their own home from
13 Monday through Friday as opposed to the automation
14 that allows people to enter teams or enter changes in
15 their lineup at the last minute?

16 MR. WALLACH: Oh, a huge difference. It's a wide
17 gulf of a difference. Before you post your lineups,
18 any and all research that you do as a player is up to
19 you. You can read magazines, you can read
20 newspapers, you can email Matthew Barry until the
21 cows come home, or you can subscribe to all the top
22 level services. That's your skill, that's your
23 research. But the execution of an entry or the
24 changing of a lineup, that's not research; that's

1 automation that provides a player with an advantage
2 over a player who lacks that capacity or is just
3 simply entering multiple contests manually. So I
4 create a -- In my view I agree with you
5 wholeheartedly, there is a distinction between you
6 know, research and execution of decision making.

7 MR. JOHNSTON: I was simply posing the question,
8 but thank you for your very detailed answer.

9 MR. WALLACH: I anticipated that you agreed with
10 that.

11 MR. JOHNSTON: Thank you very much. Oh, do you
12 expect to submit any further written comments?

13 MR. WALLACH: No, at this time I do not.

14 MR. JOHNSTON: Okay. Well, thank you very much
15 for coming.

16 MR. WALLACH: Thank you for having me today. It
17 was a pleasure. Thank you.

18 MR. JOHNSTON: At least according to our sign-up
19 list, I think we've reached the end of people who
20 have indicated an intention to testify, but the
21 hearing is still open. If anyone who is here would
22 like to testify, please let us know that you would.

23 (No response).

24 MR. JOHNSTON: All right. Seeing that no one

1 else has indicated an interest in testifying, we will
2 declare the hearing closed. However, of course, as I
3 have said, we will be accepting written comments up
4 through January 22nd and we encourage anyone with an
5 interest in the topic to let us know in writing.

6 Thank you very much for attending, and we hope
7 it has been a useful exercise.

8 (Whereupon, the hearing concluded at 11:13 a.m.)


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C E R T I F I C A T E

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ELLEN K. CASSOLA,
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