

TESTIMONY OF JOHN M. MCMANUS, EXECUTIVE VICE PRESIDENT,
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BEFORE THE
HOUSE SUBCOMMITTEE ON
COMMERCE, MANUFACTURING AND TRADE

DAILY FANTASY SPORTS: ISSUES AND PERSPECTIVES

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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.