

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.