

No. 7777

IN THE
SUPREME COURT OF THE STATE OF NEVADA

NATIONAL FOOTBALL LEAGUE, NATIONAL HOCKEY LEAGUE, NATIONAL BASKETBALL
ASSOCIATION, MAJOR LEAGUE BASEBALL, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

PETITIONERS,

v.

THE STATE OF NEVADA, DRAFT MASTERS, LLC,

RESPONDENTS.

*ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA
FROM THE EIGHTH JUDICIAL DISTRICT COURT*

BRIEF FOR PETITIONER

TEAM # P9
COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

1. Daily fantasy sports constitute gambling, requiring a gaming license, under the Nevada Gaming Control Act (NGCA) and Nevada Gaming Commission Regulations (NGCR).
2. Nevada's licensing of daily fantasy sports gambling violates the Professional and Amateur Sports Protection Act (PASPA).

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OPINIONS BELOW

The Plaintiff-Intervenors' motion for Summary Judgment appears in the record on pages 15-20. The order of the Eighth Judicial District Court in and for the County of Clark, Nevada, appears in the record on pages 2-14. The Attorney General's opinion appears in the record on pages 21-35.

STATUTORY PROVISIONS

This case involves the application of the following statutes:

28 U.S.C. § 3702 (2014). *See* Appendix A.

28 U.S.C. § 3704 (2014). *See* Appendix B.

31 U.S.C. § 5361 (2014). *See* Appendix C.

31 U.S.C. § 5362 (2014). *See* Appendix D.

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Nev. Rev. Stat. § 463.0129 (2015). *See* Appendix I.

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Nev. Rev. Stat. § 463.0193 (2015). *See* Appendix K.

Nev. Rev. Stat. § 463.01962 (2015). *See* Appendix L.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule III.

STATEMENT OF THE CASE

Factual Background

The National Football League (NFL), National Hockey League (NHL), National Basketball Association (NBA), Major League Baseball (MLB), and National Collegiate Athletic Association (NCAA) (collectively, the “Leagues”), challenges the State of Nevada’s licensing of daily fantasy sports and being in violation of PASPA. R. at 1. Draft Masters, LLC (Draft Masters) and the State of Nevada (Nevada) (collectively, the “Respondents”) motioned for and was granted Summary Judgment on both issues by the district court. R. at 5-6. Fantasy sports can be divided into two types; traditional fantasy sports and daily fantasy sports. R. at 22. Although daily fantasy sports are similar to traditional fantasy sports, there are three main differences; duration, contest structure, and player selection. R. at 4.

In the traditional fantasy sports model, participants, referred to as owners, start the athletic season by drafting athletes, either by turn or auction. R. at 3. Skilled traditional fantasy sports owners are participants who diligently study and follow statistics of real athletes and pay close attention to real world events that could affect an athlete’s performance, such as injuries, free-agent signings, preseason games, and performances of other owners in the fantasy league, etc. R. at 3. Traditional fantasy sports last for the entire athletic season. At the end of the season, the owner with the most successful team wins the entire pool or prizes for the top placements in the fantasy league. R. at 3.

Under the daily fantasy sports model, owners are allowed to draft a new team each day for wager. R. at 3. Owners may decide to play daily leagues by themselves or supplement daily fantasy sports each day for the entire season of the real world sport with the traditional fantasy league. R.

at 3. Daily fantasy sports also allow owners to draft the same athletes as their competitors. R. at 3. There are three main structures of daily fantasy sports: head-to-head matchups, “double-ups,” or a guaranteed prize pool (“GPP”). R. at 4. Daily fantasy sports operators often offer simulated games that are both guaranteed and non-guaranteed. R. at 5. In guaranteed daily fantasy sports games, winners are paid out regardless of how many owners enter the game. R. at 5. Non-guaranteed daily fantasy games will be canceled unless a certain number of owners participate. R. at 5.

In daily fantasy sports head-to-head games, one owner competes against another owner, and the owner with the highest total score will win the entire sports payout pool. R. at 22. In “double-ups” the site operator might allow one-hundred-ten owners into the simulated game, while only paying the owners with the top fifty scores, in which, an owner finishing in the top fifty scores would receive twenty dollars, an owner finishing in the bottom sixty scores would receive no money, and the operator would take a hundred-dollar rake. R. at 22. The final daily fantasy sports game, the GPP, is a large tournament event that allows participants or owners to submit multiple entries or fantasy teams where only the top contestants receive large sums of money, in some cases over a million dollars. R. at 4.

Specifically, the owners of both traditional and daily fantasy sports assemble fantasy teams with rosters and/or lineups of actual players of a professional sport generally played over the Internet, using computer or mobile software applications. R. at 22. In both types of fantasy sports games, the owners of the fantasy teams have no ability to control how many points their simulated teams receive from an actual athlete’s performance—the actual athlete controls their own performance. R. at 22. The owners of both types of fantasy sports place a bet, which lock,

cementing the owner's particular lineup from being changed by the owner, until the start of the individual real world game or tip off, and sets a final line up. R. at 22.

Procedural Posture

The Respondents filed a Motion for Summary Judgment in the Eighth Judicial District Court in and for the County of Clark, Nevada. R. at 2. The Leagues, filed a Countermotion for Summary Judgment as Plaintiff-Intervenors. R. at 2. The Eighth Judicial District Court granted Summary Judgment to Draft Masters regarding its gambling claim. R. at 14. The Eighth Judicial District Court also granted the Respondents' Summary Judgment regarding its PASPA claim and denied the Leagues countermotion for Summary Judgment against the Respondents on both claims. R. at 14. The Leagues petitioned for writ of certiorari, which this Court granted. R. at 1.

STANDARD OF REVIEW

An order granting Summary Judgment is to be reviewed using a de novo standard of review. *Pressler v. City of Reno*, 50 P.3d 1096, 1098 (Nev. 2002); *see also Schleining v. Thomas*, 642 F.3d 1242, 1246 (9th Cir. 2011). Issues that present a question of law are reviewed de novo. *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1752 (2011); *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

SUMMARY OF THE ARGUMENT

Daily fantasy sports constitute gambling, requiring a gaming license, under the NGCA and NGCR. Under the NGCA daily fantasy sports constitute a lottery. The predominant purpose test is applicable because daily fantasy sports involve gambling transactions. Under the NGCA, daily fantasy sports constitute gambling games and sports pools involving wagering schemes, and thus require a gaming license by the NGCR. Finally, the Unlawful Internet Gambling Enforcement Act (UIGEA) did not legalize daily fantasy sports, and therefore constitute gambling under the NGCA and require a gaming license under the NGCR.

Nevada's licensing of daily fantasy sports gambling violates PASPA. PASPA's exceptions do not apply to Nevada's licensing of daily fantasy sports gambling because Nevada's licensing of daily fantasy sports was not grandfathered-in and not in operation to the extent that the scheme was conducted by the State during the period beginning January 1, 1976, and ending August 31, 1990, or authorized by a statute as in effect on October 2, 1991.

ARGUMENT

I. DAILY FANTASY SPORTS CONSTITUTE GAMBLING, REQUIRING A GAMING LICENSE, UNDER THE NGCA AND NGCR.

Daily fantasy sports require a gaming license because daily fantasy sports are considered gambling under the NGCA and NGCR. The NGCA declares, as a matter of public policy for Nevada, "that the gaming industry is vitally important to the economy of the State and general welfare of the inhabitants." Nev. Rev. Stat. § 463.0129 (1)(a) (2015). "All establishments where gaming is conducted and where gaming devices are operated, and manufacturers, sellers and distributors of certain gaming devices and equipment, and operators of inter-casino linked systems must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good

order and general welfare of the inhabitants of the State, to foster the stability and success of gaming and to preserve the competitive economy and policies of free competition of the State of Nevada.” Nev. Rev. Stat. § 463.0129 (1)(d) (2015). The NGCR, in pertinent part provides that it is unlawful for any person to operate, in Nevada, any gambling game, gaming device, mobile gaming system, or sports pool without having first procured and maintained all federal, state, county, and municipal gaming licenses as required by statute, regulation, or ordinance or by the governing board of any unincorporated town. Nev. Rev. Stat. § 463.160 (2015).

Daily fantasy sports constitute gambling for the following three reasons: First, daily fantasy sports satisfy all of the essential elements of a lottery under the NGCA. Second, daily fantasy sports implement a wagering scheme, which constitute sports pools and gambling games. Third, the UIGEA did not legalize daily fantasy sports.

A. Daily fantasy sports are a lottery under the NGCA and require licensing under the NGCR.

Daily fantasy sports are a lottery. The NGCA defines a lottery as “any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining that property, or a portion of it, or for any share or interest in that property upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it may be known.” Nev. Rev. Stat. § 462.105 (2015). A plaintiff can establish a prima facie claim of illegal gambling by showing that an activity involves three elements: consideration, reward, and chance. Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, 3 Harv. J. Sports & Ent. L. 1 2-15 (2012) (discussing the history and legal implications of fantasy sports).

Daily fantasy sports are a lottery because daily fantasy sports involve gambling transactions, not enforceable contracts, and daily fantasy sports are predominantly a game of chance under the predominant purpose test.

1. The predominant purpose test should be applied because daily fantasy sports involve gambling transactions, not enforceable contracts.

Daily fantasy sports are gambling transactions. An enforceable contract is a contract that has a valid offer with definite terms for the performance of a certain act as a proposition to all who may accept and comply with the offers conditions, which constitutes a promise by the offeror. *Las Vegas Hacienda, Inc. v. Gibson*, 359 P.2d 85, 86-87 (Nev. 1961). The performance of the act is the consideration for such promise, which results in an enforceable contract. *Id.* A prize or premium differs from a wager in that in the former, the offeror has no chance of gaining back what was offered, but, if the offeree abides by the offer, the offeror must lose; whereas in the latter, each interested party has a chance of gain and takes a risk of loss. *Id.* Ballentine's Law Dictionary defines the word "premium" as "reward or recompense for some act done and known before the event." *Id.* (citing Ballentine's Law Dictionary 1002 (2d ed. 1970)). A premium is not to be confounded with a bet or wager, for in a bet or wager, it is unknown who is to give the reward distribution until after the event. *Id.*

When a promise is not an enforceable contract, the promise involves a gambling transaction in which the predominant purpose rule applies and becomes necessary to determine the character of the game. In *Gibson*, this Court held that an offer by an owner to pay five thousand dollars to any person who paid fifty cents for the opportunity to shoot a hole-in-one on the course was a valid contract enforceable by law and not a game of chance, but of skill. *Id.* The golfer, having paid the fifty cents for the opportunity, manifested his intent to enter into the agreement

with the owner. *Id.* This Court reasoned that an offer by one party of specified compensation, for the performance of a certain act, as a proposition to all persons who may accept and comply with the offer's conditions, constitutes a promise by the offeror. *Id.* This Court found that performance of that act is consideration for such promise, resulting in an enforceable contract and acceptance. *Id.* This Court also noted that the record contained sufficient evidence to sustain the court's finding that shooting a hole-in-one was a feat of skill; however, this Court did not analyze the skill of the game due to an enforceable contract being found, in lieu of a gaming transaction. *Id.* at 87. This Court stated that the predominant purpose test should be applied in determining whether a gaming transaction is an element of chance or skill. *Id.*

Here, daily fantasy sports satisfy the elements of reward and consideration, which have been conceded by the Respondents. The element of chance in daily fantasy sports is the only essential element in dispute barring daily fantasy sports from qualifying as a lottery under the NGCA. Similar to *Gibson*, daily fantasy sports have owners, who are the offerees, and an operator, who is the host site or offeror. The offeror takes a "rake-off," a certain percentage of the owner's "buy-in," and distributes the reward to the winning party. Unlike *Gibson*, it is unknown to whom or what party the prize will be given to prior to the game. Occasionally in daily fantasy sports, in "head-to heads," "double-ups," and a GPP, the reward depends on the number of owners participating in the game and whether or not the game is guaranteed. The offer does not have definite terms of a prize or a specified compensation for the performance of the act of winning or obtaining the most points in the competition. Thus, there is no valid offer. Because the transaction between the parties is not an enforceable contract, the transaction constitutes a gambling transaction in which the owners are making a "buy-in" to bet or wager a sum of money where each interested party playing the game has a chance of gain, or takes a risk of loss that is placed with

the operator who will distribute the rewards to the winner or winners of the bet or wager. Accordingly, as this Court found in *Gibson* the predominant purpose test applies in determining whether a gaming transaction dominant element is either skill or chance.

For the foregoing reasons, this Court should find that daily fantasy sports are not enforceable contracts and are gambling transactions.

2. Daily fantasy sports are predominantly a game of chance under the predominant purpose test.

Daily fantasy sports are predominantly a game of chance. In its application, the predominant purpose test looks at the character of a game to determine whether the dominating element of either skill or chance determines the result of the game. *Gibson*, 359 P.2d at 87. An event presents the element of chance if after the exercise of research, investigation, skill, and judgment; the participants are unable to foresee its occurrence or non-occurrence, or the forms and conditions of its occurrence. *People ex rel. Ellison v. Lavin*, 71 N.E. 753, 754 (N.Y. 1904). Pure chance is defined in Black's Law Dictionary to be "the entire absence of all means of calculating results." *Id.* at 755 (citing Black's Law Dictionary 189 (2d ed. 1910)).

Under the predominant purpose test, any game advertising for non-experts' participants, where the outcome or performance is unknown, is a game predominantly of chance. In *Lavin*, the court held the advertising company's scheme was predominantly a game of chance and fell within the requisites of a lottery as defined by the United States Supreme Court under a similar statute. *Id.* at 756. The advertising company's purpose in establishing the system of competition for prizes detailed in the advertisement was to increase the sale of its various brands of cigars. *Id.* at 753. The New York Penal Code defines a lottery as 'a scheme for the distribution of property by chance,

among persons who have paid or agreed to pay a valuable consideration for the chance, whether called a lottery, raffle, or gift enterprise or by some other name.’ *Id.* at 754. (internal citations omitted). In *Lavin*, the elements of reward and consideration were met in the advertising company’s scheme. *Id.*

The court found the New York Penal Code did not provide that the distribution of the property must be by pure chance, or by chance exclusively, but merely by chance in general. *Id.* at 755. The court applied the predominant purpose test to determine the character of the game. *Id.* The court reasoned that games of cards do not cease to be games of chance because they call for the exercise of skill by the players, nor do games of billiards cease to be games of skill because at times, their result is determined by some unforeseen accident, usually called luck. *Id.* The court adopted the holding of the United States Supreme Court in *Public Clearing House v. Coyne, Postmaster*, where the Court found a lottery scheme existed, operated by Public Clearing House. *Id.* at 755-56 (citing *Pub. Clearing House v. Coyne, Postmaster*, 194 U.S. 497 (1904)). The Court reasoned that “in investing money in any enterprise the investor takes the chance of profits or even failure; but such enterprises contemplate the personal exertions of the investor or of his partners, agents, or employees, while in the case of *Coyne*, profits depend principally on the exertions of others, over whom he has no control, and with whom he has no connection. *Id.* at 756. The Court found in this sense the amount was determinable by chance.” *Id.*

In applying the predominant purpose test, the *Lavin* court examined the plan of distribution advertised, the number of persons and the characters of those invited to compete for distribution, and the event by which the distribution was to be determined. *Id.* The court held that the distribution advertised was not desired to obtain estimates from those qualified for the work by

experience and judgment, and thus made it a contest of skill or knowledge. *Id.* The court found that the distribution advertisement tried to “eliminate, as far as practicable, the elements of knowledge and judgment” by giving general statistics of the subject, to make the contest as fair a gamble as possible for the advertiser’s customer. *Id.* The court ruled that the distribution in that case was controlled by chance within the meaning of the statute. *Id.*

Here, as in *Lavin*, the element of reward and consideration are met by the daily fantasy sports operators advertising scheme of the various daily fantasy sports games the operator has for the owners to “buy-in” on operator’s host site. Daily fantasy sports operators do not advertise solely to experts or qualified owners, but to the general public at large. Similar to *Lavin*, the operators’ purpose for hosting the daily fantasy sports is to increase the sales of the games they offer on their website. The Nevada statute that defines lottery, section 462.105, mirrors the statute in *Lavin*, where the statute does not expressly provide for pure chance or exclusively by chance, just by any chance. According to section 462.105, the distribution of property does not have to be done by pure chance or chance exclusively, but merely by any or some element of chance.

When applying the predominant purpose test to determine the character of daily fantasy sports game, daily fantasy sports do not cease to be games of skill because their result is determined by some unforeseen accident, called luck. However, daily fantasy sports depend principally on the exertions of the real world athletes, over whom the owners have no control and connection. Thus, in this sense the amount realized in daily fantasy sports is determinable by chance.

Like *Lavin*, this Court should examine daily fantasy sports plan of distribution advertised, the number and character of the persons who were invited to compete for distribution, and the event by which the distribution was to be determined. Daily fantasy sports distribution as

advertised by the operator goes to the owner or owners, depending on the type of daily fantasy game played, who obtain the most fantasy points from the performance of their athletes in real world sporting events. Daily fantasy sports distribution advertised is not desired by the operators or host site to obtain owners of fantasy teams from those qualified for the work or game by experience and judgment to compete for the reward, and thus make it a contest of chance. Daily fantasy sports distribution of winnings is dependent on the number of owners who each have an interest in the outcome of the game distribution for loss or gain. Daily fantasy sports operators in fact try to eliminate, as far as practical, the element of knowledge and judgment, making the game based more on chance, by providing general statistics of athletes to cut down on research and minimize skill or judgment, shortening the duration of the game to eliminate the amount of research, knowledge, and management needed to participate or win the daily fantasy sports game. The event by which daily fantasy sports distribution of property is determined relies on the daily accumulation of fantasy points based on the actual performance of individual real world athletes in real world sporting events. This allows for the real world athletes and the Leagues to be susceptible to ills of gambling, bribes, which negatively affect the integrity of America's sports. Thus, the distribution of property in daily fantasy sports is predominantly controlled by chance within the meaning of section 462.105. Therefore, daily fantasy sports are predominantly games of chance.

For the foregoing reasons daily fantasy sports are lotteries and constitute gambling transactions under the NGCA, thus requiring a license under the NGCR.

B. Daily fantasy sports are gambling games and sports pools because daily fantasy sports are played via electronic devices for money, or any representative of value, and involve wager schemes for sporting events.

Daily fantasy sports involve a wager and therefore, constitute sports pools and gambling games under the NGCA and the NGCR. The NGCA defines “wager” as a sum of money or representative value that is risked on an occurrence for which the outcome is uncertain. Nev. Rev. Stat. § 463.01962 (2015).

Daily fantasy sports involve wagers because the games involve a sum of money that is risked on an occurrence in real word sport games played via electronic device and thus are gambling games and sports pools requiring a license under the NGCR.

1. Daily fantasy sports are a type of gambling game because daily fantasy sports are played via electronic devices for money, or any representative of value.

Daily fantasy sports are gambling games. “Gambling game” is defined as “any game played with cards, dice, equipment or any mechanical, or electronic device or machine, such as a computer, smart phone or computer tablet, for money or any representative of value.” Nev. Rev. Stat. § 463.0152 (2015). *See* Nev. Rev. Stat. § 205.4735 (2015) (defining, computer as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions); *see also* Nev. Rev. Stat. § 360B.410 (2015) (construing computer as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions). This Court has recognized that there are two types of gambling games, banking games and percentage games. *Hughes Properties, Inc. v. State*, 680 P.2d 970, 971 (Nev. 1984). Percentage games have been defined as games where patrons wager against each other and the house takes a percentage of each wager as a “rake-off.” *Id.* In addition to the rule of construction, which is one of several factors to be considered and is

to be utilized in conjunction with other rules of statutory construction, it is this Court's duty to give effect to the clear intention of the Legislature and to construe the language of a statute to give it force and avoid nullifying the statute's clear purpose. *Id.* (citing *Woofert v. O'Donnell*, 542 P.2d 1396, 1400 (Nev. 1975)). Moreover, one of the fundamental rules of statutory interpretation "is that the unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another that would produce a reasonable result." *Id.* (quoting *Sheriff v. Smith*, 542 P.2d 440, 443 (Nev. 1975)). In cases where the legislature has had time and opportunity to amend an administrative agency's "reasonable interpretation of a statute, but fail[ed] to do so, such acquiescence indicates the interpretation is consistent with legislative intent." *Id.* at 972. (citing *Summa Corp. v. State Gaming Control Bd.*, 649 P.2d 1363 (Nev. 1982)). Furthermore, in situations where the Legislature amends a former statute, or an uncertain interpretation of a former statute is clarified by subsequent legislation, "it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute." *Id.* (quoting *Smith*, 542 P.2d at 443).

Daily fantasy sports are percentage games where the owners "buy-in" and the operators of daily fantasy receive a "rake-off" for the daily fantasy sports contest played on an electronic device for money or the representative value of money. In *Hughes*, this Court held that regulation of the Gaming Commission providing for assessment of sums received as "rake-offs" in games in which the house took percentage of each wager was valid. *Id.* In that case, taxpayers sought a refund of allegedly overpaid quarterly license fees by arguing the plain meaning of what is now section 463.0161 of the Nevada Revised Statutes, defining "gross revenue," excluded taxation of sums received as "rake-offs" and "buy-ins" and further sought to have Nevada Gaming Commission Regulation 6.080(1)(d) declared unconstitutional. *Id.* at 970. This Court agreed with the Second

Judicial District Court's interpretation that there was no major difference between "rake-offs" and "buy-ins" and the profits resulting from other games since the casino would undoubtedly win on slots and other non-percentage games over a period of time. *Id.* at 971. This Court reasoned that Nevada licenses gambling games primarily as a means of producing revenue and if this Court were to adopt the taxpayers' construction of the statute, Nevada would be prohibited from including the revenue produced by all percentage games in the calculation of a licensee's gross revenue. *Id.* This Court found the taxpayers' construction of section 463.0161 to be an unreasonable interpretation, inconsistent with the legislative intent, due to the "winnings" appearing in the statute, and found that the statute must be interpreted in a manner consistent with the obvious legislative intention to tax the proceeds of gambling. *Id.* This Court also found regulation 6.080(1)(d) a valid implementing regulation consistent with the NGCA and the legislative intent behind the act. *Id.* Importantly, this Court noted that regulation 6.080(1)(d) included "rake-offs" and "buy-ins" as elements of gross revenue since its effective date and that when the Legislature amended section 463.0161, the statute specifically included "rake-offs" and "buy-ins" within the definition of gross revenue, consistent with regulation 6.080(1)(d). *Id.* at 972.

Here, daily fantasy sports are games played with electronic devices such as computers, electronic tablets, smart phones, smart watches, Google glasses, or smart televisions for money or any representative of value of the wager or "buy-in." Daily fantasy sports owners wager against each other and the house or operator takes a certain percentage of each wager as a "rake-off." Similar to *Hughes*, this Court should agree and find that there is no difference between "rake-offs" and "buy-ins" and the profits derived from other games, because the casino is certain to win on banking games or other non-percentage games such as slots over a period of time.

For the foregoing reasons, daily fantasy games are a type of gambling game.

2. Daily fantasy sports are sports pools because daily fantasy sports involve wagering schemes on sporting events.

Daily fantasy sports are sports pools. A sports pool is “the business of accepting wagers on sporting events or other events by any system or method of wagering.” Nev. Rev. Stat. § 463.0193 (2009). This Court has determined that “wager” exists when “two or more contracting parties have mutual rights in respect to the money [wagered] . . . and each of the parties necessarily risks something, and has a chance to make something upon the happening or not happening of an uncertain event.” *State v. GNLV Corp.*, 834 P.2d 411, 412 (Nev. 1992) (quoting *Gibson*, 359 P.2d at 86); *see* Nev. Rev. Stat. § 463.01962 (2015). Importantly, “a prize differs from a wager in that the person offering the prize must permanently relinquish the prize upon performance of a specified act.” *Id.* at 412-13.

A daily fantasy sports operator’s performance is dependent on the result of a wager on a sporting event and not mandated by contract. In *GNLV Corp.*, this Court held that the casino’s payouts were not the result of a wager and, therefore, could not be deducted as a loss. *Id.* at 413. The Golden Nugget Hotel and Casino operated a program where enrolled patron members automatically received a fifty-cent ticket each time the last dollar wagered of a total of seventy-five dollars was placed in certain designated slot machines toward the purchase of a gold certificate, which dispensed regardless of gains or losses from the play involved with the total increment of the seventy-five dollars wagered. *Id.* at 412-13. The gold certificates were redeemed for tokens, cash, and various other services the hotel and casino offered. *Id.* This Court followed the decision and reasoning of *Gibson* to determine whether the payout was considered a prize or wager. *Id.* This Court found that Golden Nugget’s distribution of fifty-cent tickets was mandated by a contract

between the Golden Nugget and its patron members and was not dependent on the result of a wager. *Id.* at 413.

Here, the outcome of daily fantasy sports games is dependent on the result of the real world individual athletic performances in sporting events. Unlike *GNLV Corp.*, daily fantasy sports payouts or distribution of money is a result of a wager. Daily fantasy sports owners have mutual rights to the money wagered and each owner carries a risk of loss, as well as a chance to capitalize on the distribution of winnings. Distinct from *GNLV Corp.*, daily fantasy sports are not enforceable contracts because daily fantasy sports involve a wager for the determination of the payout, not a prize where the offering the prize must relinquish the prize upon defined terms of specified compensation and upon performance of a specified act. Thus, daily fantasy sports operators are in the business of accepting wagers on sporting events, which individual athletes on the owner's fantasy teams perform and the operators allocate fantasy points to the individual athletic performances to determine the outcome of the owner's games for distribution. "This conclusion is consistent with the views of one of the leading attorneys representing daily fantasy sports operators, who stated that 'fantasy sports' was 'a significant evolution in the realm of sports betting.'" *Legality of Daily Fantasy Sports Under Nevada Law*, Op. Att'y Gen. 27 (2015) (citing Anthony N. Cabot & Louis V. Csoka, *The Game People Play: Is It Time for a New Legal Approach to Prize Games?*, 4 Nev. L.J. 197, 215 (2004).

For the foregoing reasons, daily fantasy sports are sports pools.

Because daily fantasy sports meet all of the elements of a "wager" under the NGCA, daily fantasy sports constitute sport pools and gambling games, and are subject to licensure under the NGCR.

C. The UIGEA did not legalize daily fantasy sports.

Daily fantasy sports did not become legal due to the enactment of the UIGEA. The UIGEA provides that “a bet or wager does not include participation in any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team, that is a member of an actual team, that is a member of an amateur or professional sports organization and meet the following conditions: (1) all prizes and awards offered to participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants; (2) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals in multiple real-world sporting or other events; and (3) No winning outcome is based on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams or solely on any single performance of an individual athlete in any single real-world sporting or other event.” 31 U.S.C §5362 (2006).

Here, the UIGEA does not trump PASPA, which prohibits the operation of sports gambling by a state entity or person to the law of a governmental entity. The purpose of the UIGEA is to prohibit wire transfers to Internet gambling sites or affiliated banks, and for enforcing gambling laws on the Internet where such gambling crosses state borders. 31 U.S.C. § 5361 (2014). The UIGEA provides in the rules of construction “no provision of this chapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.” 31 U.S.C § 5361 (2006). This rule of construction provides further evidence that legislature did not intend for the UIGEA to supersede PASPA. One of leading attorneys representing daily fantasy sports operators stated, “the

exemption in UIGEA for fantasy sports does not mean that fantasy sports are lawful, only that fantasy sports are not criminalized under UIGEA. Legality of Daily Fantasy Sports Under Nevada Law, Op. Att’y Gen. 27 (2015) (citing Anthony N. Cabot & Louis V. Csoka, *Fantasy Sports: One Form of Mainstream Wagering in the United States*, 40 J. Marshall L. Rev. 1195, 1201 (2007)).

The UIGEA decriminalizes fantasy sports transmission of bet or wager via the Internet across state borders, not the legalization of fantasy sports in states prohibiting or barring sports gambling by federal or state law. The term unlawful Internet gambling means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the state in which the bet or wager is initiated, received or made. 31 U.S.C. § 5362 (2014). Unlawful Internet gambling does not include placing a bet or wager where intrastate and accordance with the laws of such State and the bet or wager does not violate any provision of the PASPA. 31 U.S.C §5362 (2006).

Here, the exemption expressed in the UIGEA does not apply to daily fantasy sports because the daily fantasy sports game does not meet the three expressed conditions of the UIGEA. The analysis of the conditions of the UIGEA remains the same as the aforementioned analysis from the *Lavin* court, which adopted the United State’s Supreme Court’s holding in *Coyne*. The UIGEA expressly provides these exemptions to clarify what does *not* constitute gambling. In contrast with these exemptions, the factors examined in the predominant purpose test from *Lavin* and *Coyne* demonstrate that daily fantasy sports *do not* fall within the exempted categories of the UIGEA- meaning they are a predominant game of chance, which constitutes gambling under both the UIGEA and NGCA. The former Representative Jim Leach, the congressman who drafted UIGEA,

stated, “the only unique basis provided fantasy sports by UIGEA is its exemption from one law enforcement mechanism where the burden for compliance has been placed on private sector financial firms, but it is sheer chutzpah for a fantasy sports company to cite the law as a legal basis for existing. There is no credible way fantasy sports betting can be described as not gambling...[o]nly a sophist can make such a claim.” *Legality of Daily Fantasy Sports Under Nevada Law*, Op. Att’y Gen. 27 (2015) (citing Tim Dahlberg, Former Congressman Says DFS Is “Cauldron of Daily Betting,” at <http://cdcgamingreports.com/former-congressman-says-dfs-is-cauldron-of-daily-betting>).

Therefore, the legislative intent, purpose and the exemptions within the UIGEA do not apply to the legalization of daily fantasy sports, therefore UIGEA did not legalize sports gambling through the express exemption provided within the statute for fantasy sports.

For foregoing reasons, UIGEA does not legalize daily fantasy sports under federal law or NGCA and constitutes gambling, thus requiring a license under the NGCR.

II. NEVADA’S LICENSING OF DAILY FANTASY SPORTS GAMBLING VIOLATES PASPA.

The licensing of daily fantasy sports in Nevada violates PASPA. PASPA declares that it shall be unlawful for any State or person to sponsor, operate, advertise, promote, license, or authorize by law or pursuant to any compact of a government entity a lottery, gambling, wagering, or other betting scheme based directly or indirectly on competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games. 28 U.S.C. § 3702 (2012). PASPA exempts betting or wagering schemes in operation in a State, to the extent that the scheme was conducted by that State any

period beginning January 1, 1976, and ending August 31, 1990; where both authorized by a statute as in effect on October 2, 1991 and actually was conducted in that state at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity. 28 U.S.C. § 3704 (2012).

Nevada's licensing of daily fantasy sports gambling violates PASPA because daily fantasy sports were not grandfathered-in or in operation in a State, to the extent that the scheme was conducted by that State any period beginning January 1, 1976, and ending August 31, 1990. Also, PASPA's exceptions do not apply to Nevada's licensing of daily fantasy sports to the extent traditional fantasy sports actually was conducted in that State at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity.

A. Daily fantasy sports were neither grandfathered-in nor in operation in Nevada, to the extent that the scheme was conducted by that State during any period beginning January 1, 1976, and ending August 31, 1990.

Daily fantasy sports are not grandfathered-in. PASPA provides that it shall not apply to a lottery, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31 1990. 28 U.S.C. § 3704 (a)(1) (2012). PASPA unambiguously indicates that states may not purport to authorize or license sports gambling activities where such conduct has been federally prohibited. *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 730 F.3d 208, 236 (3d Cir. 2013). In enacting PASPA, Congress explicitly noted that the law was complementary to and consistent with current

Federal law with respect to sports wagering. *Id.* “Congress has, for example, criminalized attempts to fix the outcome of a sporting event, 18 U.S.C. §224, barred the placement of a sports gambling bet through wire communications to or from a place where such bets are illegal, 18 U.S.C. §1084, and proscribed interstate transportation of means for carrying out sports lotteries, 18 U.S.C. §§1301,1307(d).” *Id.*

The licensing of daily sports gambling, betting, or wagering conflicts with PASPA, and is preempted. In *NCAA*, the court upheld PASPA’s constitutionality and enjoined New Jersey’s sport wagering law, which sought to license sports gambling on certain sporting events. *Id.* at 240. Although the loophole in the drafting of § 3704 would have effectively permitted New Jersey to be exempted before the enactment of PASPA, the Legislature failed to hold a referendum on the legalization of sport gambling in the State within the one-year window, and was thus subject to PASPA’s full application. *Id.* at 217. Over two decades later, New Jersey finally held its referendum and as a result enacted the Sports Wagering Law, whereby the Leagues then filed suit, alleging it violated PASPA. *Id.* The court found that “PASPA makes clear that the federal policy with respect to sports gambling is that such activity should not occur under the auspices of a state license.” *Id.* at 236. New Jersey’s Sports Wagering Law clearly stood contrary to this policy because it stood “as an obstacle to the [] accomplishment and execution of the full purpose and objectives of Congress” and was properly preempted. *Id.*

Here, the issue of whether Nevada’s licensing of daily fantasy sports gambling violates PASPA is a matter of first appearance for this Court. This Court should use and adopt the decisions of the United States Court of Appeals for the Third Circuit for instruction in determining issues involving PASPA because the Third Circuit’s decisions are the most reasonable interpretations of

the applicability of PASPA's exemptions. Neither Nevada nor Draft Masters argue the constitutionality of PASPA. Analogous to *NCAA*, Nevada seeks to license daily fantasy sports gambling on certain sporting events. However, it was not until the advent of the Internet in 1994 that daily fantasy sports were created. Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, 3 Harv. J. Sports & Ent. L. 1, 4 (2012). Although the loophole in the drafting of §3704 would have effectively permitted Nevada's licensing of daily fantasy sports to be exempted, PASPA's enactment predates the rise of daily fantasy sports, and thus could not have been authorized and legalized in Nevada within the one-year window. As daily fantasy sports were not conducted or authorized within Nevada during PASPA's exemption period by two years after PASPA's enactment, Nevada is subject to PASPA's full application.

The purpose of PASPA is to prevent the spread of state licensing of sports gambling. This purpose is consistent with the legislative history and intent of Congress in enacting the Wire Act, Gambling Act, and the UIGEA in the prohibition and enforcement of sports gambling in interstate commerce to protect the integrity of America's sports by preventing scandals involving the rigging of sporting contest in the interest of winning a wager in cases such as: the infamous Black Sox scandal of the 1919 World Series, the MLB all-time hit leader Pete Rose for allegedly wagering on games he performed in, and Tim Donaghy, a NBA referee who bet on games he officiated while making calls to negatively impact athlete's performances to rig the game and bet in his favor. The licensing of Nevada's daily fantasy sports clearly stands contrary to this policy of preventing the spread of sports gambling because it stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress and to prevent the spread of state licensed sports gambling and properly preempts Nevada from licensing daily fantasy sports.

In line with the decisions rendered in *NCAA*, this Court should enjoin the Respondents from licensing daily sports gambling on sporting events in which professional or amateur athletes participate, or are intended to participate in violation of PASPA.

B. PASPA's exceptions do not apply to Nevada's licensing of daily fantasy sports gambling to the extent traditional fantasy sports were actually conducted in that State at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity.

Nevada never authorized or conducted daily fantasy sports within the period of PASPA's exemption. PASPA provides that it "shall not apply to a lottery, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both: such scheme was authorized by statute as in effect on October 2, 1991, and actually was conducted in the State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity." 28 U.S.C. § 3704 (a)(2) (2012). In order to ascertain whether an activity falls within the PASPA exception, it is necessary to determine the "extent" or degree to which such a lottery was first "conducted." *OFC Comm. Baseball v. Markell*, 579 F.3d 293, 301 (3d Cir. 2009). One of the "fundamental canon[s] of statutory construction" is the presumption that Congress's selection and placement of specific terms or particular language within statutes are done so "intentionally and purposefully," such that the meaning of each section does not conflict with the others, and remains both internally consistent and consistent with general context in which the framers drafted the law. *Id.* 579 at 302-03. Thus, terms are not considered "ambiguous" merely because they may be susceptible to differing interpretations. *Id.* The general motives and public policy concerns surrounding a statute's enactment must act as the guide in which its meaning is derived, so as to "avoid

constructions that produce ‘odd’ or ‘absurd’ results or that are ‘inconsistent with common sense.’” *Id.* at 304 (citing *Disabled in Action v. SEPTA*, 539 F.3d 199, 210 (3rd Cir. 2008)).

A substantive change to a gambling scheme that was grandfathered-in violates PASPA. In *Markell*, the court held that PASPA’s exception applied only to lotteries and other gambling schemes that the State actually conducted on PASPA’s effective date. *Id.* The Leagues sought to enjoin Delaware state officials from implementing certain elements of its Sports Lottery Act, whose objective was to expand the State’s current sports-betting operation beyond what it offered between 1976 and 1990 to now include wagers “in which the winners were determined based on the outcome of any professional or collegiate sporting event.” *Id.* at 296. These specific elements included permitting single-game bets on football, as well as multiple-game bets, or “parlay games” on sports other than just football. *Id.* at 295-96. During the exemption period however, Delaware only conducted a sports lottery known as Scoreboard, which consisted of three games. *Id.* at 304. The court reasoned that although PASPA did not require all aspects of Delaware’s proposed scheme to be “identical in every respect” to what it had conducted during the exemption period, *de minimis* alterations were permitted “as long as they do not effectuate a *substantive change*” (emphasis added). *Id.* at 303. Thus permissible alterations must not be incongruent with PASPA’s language and its original purpose, namely, the preservation of the integrity of sports and the elimination of state-sponsored sports gambling. *Id.* at 304. In its analysis, the Court found that the proposed aspects of the Act did not meet this standard because, as Delaware only conducted three Scoreboard games during the exemption period, including new sports and new forms of gambling constituted an expansion that went beyond the “extent” of what was conducted during 1976 and 1990. *Id.* Hence, any efforts to allow wagering on athletic contests involving sports beyond the NFL, and single-game or head-to-head betting, would violate PASPA under the statute’s plain

language. *Id.* at 304. Given this interpretation of PASPA, Delaware could only institute multigame parlays on a minimum of three NFL games. *Id.*

Here, as in *Markell*, Nevada conducted and authorized various gambling schemes during PASPA's effective exemption period, thus qualifying as one of the four states to be grandfathered in and receive preferential treatment. During that time, Nevada conducted more gambling schemes than any other state in the nation, ranging from traditional fantasy sports and sport lotteries to other sport gambling games and sport wagers on single-game sports betting events or contests. Currently, Nevada seeks to license daily fantasy sports gambling schemes, where winners are determined based on the performance of professional or collegiate individual's performances, which greatly affect the outcome of any sporting event. Drawing upon the court's reasoning in *Markell*, PASPA does not require Nevada's licensing of daily fantasy sports to be "identical in every respect" to the traditional fantasy sports which Nevada conducted during the exemption period. Certain aspects of daily fantasy sports may differ from traditional fantasy sports as long as those differences do not result in a "substantive change" from the scheme that was conducted during the exemption period.

Daily fantasy sports, however, substantively differ from traditional fantasy sports in three significant ways; duration of game, contest or payout structure, and player selection. First, traditional fantasy sports games are played for the entire season of the real world sport, whereas daily fantasy sports games are played only for a day, and repeated anew daily. Second, while traditional fantasy sports employ the most basic contest and payout structure, wherein the owner with the highest score wins, in daily fantasy sports game tournaments may take a variety of forms based on several different payout structures, such as "50/50," "double-up," "triple-up/quadruple-

up/etc.,” “top-x,” and are subject to a “rake-off.” R. at 23. Finally, traditional fantasy sports draft athletes by either “snake” or “auction” draft, the former in which participants take turns drafting players, and in the latter must bid against each other. R. at 22. These setups mean that the owners are not able to draft the same athletes as their competitors, but may instead make trades with their competitors for auctioning, drafting position, or acquiring athletes, much like general managers or real sports team owners can. R. at 22. In comparison, daily fantasy sports utilize a “salary-cap” draft, where actual players have a set fantasy salary and participants are thus able to draft the same players as their competitors, eliminating the need for trades. R. at 22.

All these substantive changes result in what one of the leading attorneys representing daily fantasy sports operators summarized as “a significant evolution in the realm of sports betting.” R. at 27. Because of the shortness in duration, coupled with the limited player drafting and trading options, daily fantasy sports lack the key element so integral to traditional fantasy sports; the ability to exhibit managerial prowess mirroring that of real world sports team owners, or general managers. The skills of real general managers involve researching players’ conduct, injuries, past performance, game weather conditions, referees, and various other aspects of actual sports team management. Fantasy team owner simulate these skills, and their performances are evaluated by the accumulation of points over the entire sport season, just like real general managers’ performances in each respective league is evaluated over the length of a full season. Contrarily, daily fantasy sports rely on player performance over a single game, and thus the owner of a fantasy team’s performance is evaluated for a single game played that day or any number of given days in isolation. As a result, daily fantasy sports owners utilize different skills to increase the likelihood of success. Incidentally, these skills are much more similar to those utilized by poker players and gamblers. Discrepancy in the level of sophistication among participants promotes an environment

that allows “sharks,” or high-volume participants to flood the leagues with hundreds of entries at once, and prey off low-skilled participants in order to reap almost guaranteed wins.

In addition, the shortened duration and payout structures of daily fantasy sports games allow for a kind of instant gratification by rewarding winners with prize money the same day they enter, a notion wholly absent, and even contrary to, the spirit of traditional fantasy sports. The founder of Draft Masters admits that the daily fantasy sports operation he runs is “almost identical to a casino,” highlighting how daily fantasy sports differ from traditional, and place them firmly in the gambling arena. R. at 21. The elimination of the central managerial aspects, coupled with the gambling-like elements that replace them, create a substantially different game that gives rise to the kind of problems that PASPA was directly aimed at combating; gambling schemes that cater to the gambling tendencies of the youth, and risk giving rise to the scandals that spurred its enactment, compromising national confidence in the sports industry.

The sports gambling scheme Nevada may conduct after PASPA’s effective date extends only to traditional fantasy sports games. Nevada’s licensing of daily fantasy sports stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress, and accordingly conflicts with PASPA and is preempted. In line with the decisions rendered in *Markell* and *NCAA*, this Court should enjoin the Respondents from licensing daily sports gambling on sporting events in which professional or amateur athletes participate, or are intended to participate in violation of PASPA.

Thus, Nevada’s effort to allow licensing of daily fantasy sports gambling on athletic contests involving sports violate PASPA under the statute’s plain language.

CONCLUSION

For the foregoing reasons, this Court should find Draft Masters was not entitled to Summary Judgment regarding the first issue and both Draft Masters and the State of Nevada were not entitled to Summary Judgment on the second issue. This court should reverse the decision of the Eighth Judicial District Court and enjoin the Respondents from licensing daily fantasy sports.

APPENDIX A

28 U.S.C.A. § 3702

§ 3702. Unlawful sports gambling

It shall be unlawful for—

(1) a governmental entity to sponsor, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

APPENDIX B

28 U.S.C. § 3704

§ 3704. Applicability

(a) Section 3702 shall not apply to:

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both:

(A) such scheme was authorized by a statute as in effect on October 2, 1991; and

(B) a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that:

(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and

(B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

(4) parimutuel animal racing or jai-alai games.

(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

APPENDIX C

31 U.S.C. § 5361

§ 5361. Congressional findings and purpose

(a) Findings.--Congress finds the following:

(1) Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers.

(2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites.

(3) Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.

(4) New mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.

(b) Rule of construction.--No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

APPENDIX D

31 U.S.C. § 5362

§ 5362. Definitions

In this subchapter:

(1) Bet or wager—The term “bet or wager”--

(A) Means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

(B) includes the purchase of chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28;

(D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering; and

(E) does not include-- . . .

(ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:

(I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(III) No winning outcome is based--

(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or

(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event. . . .

(10) Unlawful Internet gambling.--

(A) In general.--The term “unlawful Internet gambling” means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.

APPENDIX E

Nev. Rev. Stat. § 205.4735

§ 205.4735. “Computer” defined

“Computer” means an electronic device which performs logical, arithmetic and memory functions by manipulations of electronic or magnetic impulses and includes all equipment related to the computer in a system or network.

APPENDIX F

Nev. Rev. Stat. § 360B.410

§ 360B.410. “Computer” construed

“Computer” means an electronic device that accepts information in digital or similar form and manipulated it for a result based on a sequence of instructions.

APPENDIX G

Nev. Rev. Stat. § 462.105

§ 462.105. “Lottery” defined

1. Except as otherwise provided in subsection 2, “lottery” means any scheme for the disposal or distribution of property, by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining that property, or a portion of it, or for any share or interest in that property upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise, or by whatever name it may be known.

2. “Lottery” does not include a promotional scheme conducted by a licensed gaming establishment in direct association with a licensed gaming activity, contest or tournament.

3. For the purpose of this section, a person has not “paid or promised to pay any valuable consideration” by virtue of having:

(a) Engaged in or promised to engage in a transaction in which the person receives fair value for the payment;

(b) Accepted or promised to accept any products or services on a trial basis; or

(c) Been or promised to have been present at a particular time and place,

as the sole basis for having received a chance to obtain property pursuant to an occasional and ancillary promotion conducted by an organization whose primary purpose is not the operation of such a promotion.

APPENDIX H

Nev. Rev. Stat. § 463.160

§ 463.160. Licenses required; unlawful to permit certain gaming...

1. Except as otherwise provided in subsection 4 and NRS 463.172, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others:

(a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game, gaming device, inter-casino linked system, mobile gaming system, slot machine, race book or sports pool;

(b) To provide or maintain any information service;

(c) To operate a gaming salon;

(d) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or sports pool;

(e) To operate as a cash access and wagering instrument service provider; or

(f) To operate, carry on, conduct, maintain or expose for play in or from the State of Nevada any interactive gaming system,

without having first procured, and thereafter maintaining in effect, all federal, state, county and municipal gaming licenses as required by statute, regulation or ordinance or by the governing board of any unincorporated town.

2. The licensure of an operator of an inter-casino linked system is not required if:

(a) A gaming licensee is operating an inter-casino linked system on the premises of an affiliated licensee; or

(b) An operator of a slot machine route is operating an inter-casino linked system consisting of slot machines only.

3. Except as otherwise provided in subsection 4, it is unlawful for any person knowingly to permit

any gambling game, slot machine, gaming device, inter-casino linked system, mobile gaming system, race book or sports pool to be conducted, operated, dealt or carried on in any house or building or other premises owned by the person, in whole or in part, by a person who is not licensed pursuant to this chapter, or that person's employee.

4. The Commission may, by regulation, authorize a person to own or lease gaming devices for the limited purpose of display or use in the person's private residence without procuring a state gaming license.

5. For the purposes of this section, the operation of a race book or sports pool includes making the premises available for any of the following purposes:

- (a) Allowing patrons to establish an account for wagering with the race book or sports pool;
- (b) Accepting wagers from patrons;
- (c) Allowing patrons to place wagers;
- (d) Paying winning wagers to patrons; or
- (e) Allowing patrons to withdraw cash from an account for wagering or to be issued a ticket, receipt, representation of value or other credit representing a withdrawal from an account for wagering that can be redeemed for cash,

whether by a transaction in person at an establishment or through mechanical means, such as a kiosk or similar device, regardless of whether that device would otherwise be considered associated equipment. A separate license must be obtained for each location at which such an operation is conducted. 6. As used in this section, "affiliated licensee" has the meaning ascribed to it in NRS 463.430.

APPENDIX I

N.R.S. § 463.0129

§ 463.0129. Public policy of state concerning gaming; license or approval revocable privilege

(1) The Legislature hereby finds, and declares to be the public policy of this state, that:

(A)The gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants.

(D) All establishments where gaming is conducted and where gaming devices are operated, and manufacturers, sellers and distributors of certain gaming devices and equipment, and operators of inter-casino linked systems must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State, to foster the stability and success of gaming and to preserve the competitive economy and policies of free competition of the State of Nevada.

APPENDIX J

Nev. Rev. Stat. § 463.0152

§ 463.0152. “Game” and “gambling game” defined

“Game” or “gambling game” means any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game or any other game or device approved by the Commission, but does not include games played with cards in private homes or residences in which no person makes money for operating the game, except as a player, or games operated by charitable or educational organizations which are approved by the Board pursuant to the provisions of NRS 463.409.

APPENDIX K

Nev. Rev. Stat. § 463.0193

§ 463.0193. “Sports pool” defined

“Sports pool” means the business of accepting wagers on sporting events or other events by any system or method of wagering.

Appendix L

Nev. Rev. Stat. Ann. § 463.01962

§ 463.01962. “Wager” defined

“Wager” means a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.