No. 77777

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
NEVADA SUPREME COURT

BRIEF FOR RESPONDENTS

ORAL ARGUMENT REQUESTED
Team R6
ATTORNEYS FOR RESPONDENTS

QUESTIONS PRESENTED

I. Whether the Eighth Judicial District Court properly granted Respondent's motion for summary judgment because daily fantasy sports do not constitute gambling under Nevada law.

II. Whether the Eighth Judicial District Court properly granted summary judgment in favor of the Respondents because Nevada's licensure of daily fantasy sports does not violate the Professional and Amateur Sports Protection Act.

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OPINIONS BELOW

The opinion of the Eighth Judicial District Court, granting Draft Masters motion for summary judgment regarding the gambling claim and the issue of PASPA, is located within the record at pages two through fourteen. The denial of plaintiff-intervenors' motion for summary judgment regarding the PASPA claim is located on pages fifteen through twenty of the record. The Nevada Gaming Control Board's memorandum addressing the legality of daily fantasy sports under Nevada law can be found in the record on pages twenty-one through thirty-five.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

The constitutional and statutory provisions involved are set forth in Appendix A located on pages I through XV.

STATEMENT OF THE CASE

A. Factual Background

Daily fantasy sports consist of simulated teams chosen by the fantasy participant. R. at 22. Whether the participant is successful depends upon the points earned by the actual athlete that the fantasy participant selects. R. at 22. The "fantasy points" awarded to the participant are derived from the compilation of each athlete's performance in the individual sporting event. R. at 22. Daily fantasy sports utilize salary caps, which create an additional economic component to the games, and "requires owners to strategize how to value players and allocate their roster funds." R. at 4. There are two main categories of daily fantasy sports: head-to-head and tournament style play. R. at 5. The main distinction between the two categories is that head-to-head involves a competition between two players, whereas tournaments involve more than two participants. R. at 5. Double up fantasy games are a subset of tournament style play, requiring the participant to place in the top fifty percent to win. R. at 23. The winnings are distributed based upon whether the game played is a guaranteed or non-guaranteed style of play. R. at 23. Unlike guaranteed games, under a non-guaranteed game, if the required amount of participants is not satisfied then the game will be cancelled. R. at 5. The foundational components of daily fantasy sports and traditional fantasy sports are the same; however, they are differentiated by duration. R. at 3.

B. Procedural Background

Draft Masters, LLC ("Draft Masters") filed for declaratory relief to prohibit Nevada from licensing daily fantasy sports. R. at 5. Draft Masters alleged that Nevada was prohibited from licensing daily fantasy sports because daily fantasy sports are not gambling under Nevada law. R. at 5. The National Football League, National Hockey League, National Basketball

Association, Major League Baseball, and the National Collegiate Athletic Association (the "Leagues") intervened against Draft Masters and Nevada, pursuant to Rule 24(b) of the Nevada Rules of Civil Procedure, and alleged that Nevada violated the Professional and Amateur Sports Protection Act ("PASPA") by licensing daily fantasy sports. R. at 5. The Leagues, Draft Masters, and Nevada then cross-moved for summary judgment. R. at 5. Applying the predominant factor test, the Eighth Judicial District Court for Clark County, Nevada, found that daily fantasy sports were not gambling and granted summary judgment in favor of Draft Masters. R. at 9-12. Further, the Eighth District Court found that Nevada was exempt from PASPA because daily sports betting was permitted in the State, and granted summary judgment in favor of Draft Masters and Nevada. R. at 12-14. The Leagues petitioned this Court for writ of certiorari, which was granted. R. at 1.

STANDARD OF REVIEW

The standard of review for an order granting summary judgment is *de novo*. *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). Questions of statutory interpretation are also reviewed *de novo*. *State v. Lucero*, 249 P.3d 1226, 1228 (Nev. 2011).

SUMMARY OF THE ARGUMENT

Daily fantasy sports are not gambling, and therefore do not require a gaming license under the Nevada law. Daily fantasy sports fail to satisfy any definition of gambling because they are not conducted using a wager, they are predominately based on skill, and the inclusion of computer in the definition of electronic devices would render an absurd result. In addition, Nevada's licensing of daily fantasy sports is preempted by federal law. Congress has consistently been addressing and regulating interstate gambling and thus occupies the field of

gambling through the use of the Internet. Furthermore, even if this Court finds that daily fantasy sports constitute gambling under Nevada law, the licensing of daily fantasy sports does not violate PASPA because the Act is inapplicable in Nevada, and daily sports wagering has been authorized and actually conducted prior to its enactment. Daily sports wagering was authorized and conducted in Nevada prior to the enactment of PASPA, and daily fantasy sports are not beyond the scope of the schemes that were conducted.

ARGUMENT

I. DAILY FANTASY SPORTS DO NOT CONSTITUTE GAMBLING AND THEREFORE DO NOT REQUIRE A GAMING LICENSE UNDER THE NEVADA GAMING CONTROL ACT AND NEVADA GAMING COMMISSION REGULATIONS.

Daily fantasy sports do not constitute gambling under any of Nevada's statutory schemes regulating gambling, and thus do not require a license for operation in the State of Nevada. In addition, daily fantasy sports are not lotteries under the statute because the dominant factor of the game is skill. *Las Vegas Hacienda, Inc. v. Gibson*, 359 P.2d 85, 87 (Nev. 1961). The fact that there is not a wager present in daily fantasy sports renders the games outside the definition of sports pools in Nevada. Nev. Rev. Stat. § 463.01962 (2015). Finally, daily fantasy sports are not gambling games due to the unreasonable interpretation of including computers within the meaning of electronic devices. *Hughes Props., Inc. v. State*, 680 P.2d 970, 971 (Nev. 1984).

The Unlawful Internet Gambling Enforcement Act ("UIGEA") enacted by Congress preempts any Nevada law that attempts to further regulate daily fantasy sports. When looking at interstate gambling and its evolvement with the Internet, coupled with Congress' persistent effort to regulate the area of concern, it is evident that Congress intended to occupy the field of interstate gambling, which is properly within its power to regulate because it has a substantial impact on interstate commerce. *Arizona v. United States*, 132 S. Ct. 2492, 2502 (2012).

Congress has extensively occupied the field of interstate gambling and has addressed daily fantasy sports in the UIGEA. 31 U.S.C. § 5363 (2014). Consequently, any attempt to regulate daily fantasy sports would be preempted by federal law. As a result, daily fantasy sports do not require a license under the Nevada Gaming Control Act and Nevada Gaming Commission Regulations.

A. Daily Fantasy Sports Do Not Constitute Gambling Under Nevada Law Because it is Predominately a Game of Skill, Without a Wager, and Extending the Definition of Electronic Devices Would Render an Absurd Result.

Daily fantasy sports do not constitute gambling under any Nevada law and thus may be conducted in Nevada without a license. There are three categories of gambling that the lower court addressed: lotteries, sports pools, and gambling games. Daily fantasy sports are not "lotteries" as the game is predominately one of skill. *Gibson*, 359 P.2d at 87. Further, daily fantasy sports are not "sports pools" because a wager is not present. § 463.01962. In addition, the game is not a "gambling game" under the statute because extending the definition of "electronic devices" to include computers would render an absurd result. *Hughes Props.*, 680 P.2d at 971. Finally, daily fantasy sports are not a "percentage game" because the games are not conducted using wagers. *Id.* at 970. Therefore, Draft Masters can conduct daily fantasy sports without a license.

1. Daily fantasy sports are not lotteries because the predominate factor is skill.

Daily fantasy sports are not lotteries under section 462.105 of the Nevada Statutes because the predominant character of daily fantasy sports is skill rather than chance. Nev. Rev. Stat. § 462.105 (2015). A lottery is defined as any arrangement "for the disposal [] of property, by chance, among persons who have paid . . . valuable consideration . . . understanding or expect[ing] that it is to be distributed or disposed of by lot or chance." § 462.105. Thus, the

statute requires that three elements are present: 1) distribution of a prize; 2) depending upon chance; 3) for some sort of consideration. *U.S. Postal Serv. v. Amada*, 200 F.3d 647, 651 (9th Cir. 2000). It is undisputed that daily fantasy sports require consideration and offer a prize. When analyzing the character and nature of a game to determine whether the predominant factor is skill or chance, the test "is not whether it contains an element of chance or an element of skill, but which is the dominating element." *Gibson*, 359 P.2d at 87.

To assist in the analysis of whether daily fantasy sports are predominately games of skill or chance, experts in the field of gambling law have developed factors to assess under the predominate factor test. Jeffrey C. Meehan, *The Predominate Goliath: Why Pay-To-Play Daily Fantasy Sports Are Games Of Skill Under The Dominant Factor Test*, 26 Marq. Sports L. Rev. 5, 22 (2015).

> First, the effects-based analysis should compare the experience of average persons, without augmentation through experience or practice, with that of the most highly skilled players to determine the skill levels of the game. Second, the game should not be reviewed in isolation, but in the way it is being offered. For example, a single game of poker may be predominately chance-based, but a tournament may be skilled-based. Third, the results of a mathematical analysis of play does not need to result in the more skilled person winning virtually every time, but instead only a statistically relevant number of times in order to show that overall, in the particular game or format offered, skill is the predominate factor.

Id. (quoting Anthony N. Cabot et al., *Alex Rodriquez, a Monkey, and the Game of Scrabble: The Hazard of Using Illogic to Define the Legality of Games of Mixed Skill and Chance*, 57 Drake L. Rev. 383, 390 (2009)). While the Judicial Branch has not yet addressed daily fantasy sports, the court in *Humphrey v. Viacom* did address traditional fantasy sports, and held the game to be predominately one of skill. No. 06-2768, 2007 WL 1797648, at *2 (D.N.J. June 20, 2007). The court noted that the determination of success in the game depends on a multitude of factors in the control of the player, such as the participants' skill in carefully

deciding which players to select for the team and, among many others, which players will start in the game. *Id.* While traditional fantasy sports and daily fantasy sports can be slightly differentiated, the main distinction is the duration of the game, and given the extensive research, it is proper to assert the proposition that daily fantasy sports require even more skill than that of the traditional fantasy game.[1]

Daily fantasy sports use salary caps, further lending additional weight to prove that skill is the dominant factor. Nathaniel J. Ehrman, *Out of Bounds?: A Legal Analysis of Pay-to-Play Daily Fantasy Sports*, 22 Case W. Res. L. Rev. 79, 103 (2015). This adds an economic component, not found in traditional fantasy sports when selecting a team, and gives the participants more flexibility on how they decide to choose their players. *Id.* The participants must weigh the options and analyze whether they want to choose an elite player for a higher cost or multiple average players under the same budget. *Id.* Adding a tremendous strategy element, this additional component of daily fantasy sports is further evidence that there is more skill involved, "making preparing for a daily fantasy game a laborious process." *Id.* The fact that daily fantasy sports require more skill than traditional fantasy sports makes it clear that skill is the dominating factor in daily fantasy sports.

Gaming Laboratories Industry ("GLI"), a leading provider of game testing and certification services, conducted a study in order to answer the question of whether skilled daily fantasy sports players beat unskilled players, thereby demonstrating that skill predominates over chance in the game. Seth Young, *I Believe Daily Fantasy Sports Is a Game of Skill, and Here's the Proof*, Legal Sports Report (February 4, 2016, 5:30 PM), http://www.legalsportsreport.com/820/view-why-dfs-is-a-game-of-skill/. A 'skilled player' was

[1] *See* Jeffrey C. Meehan, *The Predominate Goliath: Why Pay-To-Play Daily Fantasy Sports Are Games of Skill Under The Dominant Factor Test*, 26 Marq. Sports L. Rev. 5, 13 (2015) (noting that with the duration distinction set aside, "daily fantasy offer *more* opportunities for the more skilled player to gain a competitive advantage")

defined as a player "with full knowledge of the fantasy performance of all players for the previous week at the moment of roster selection." *Id.* An 'unskilled participant' was defined as a player "that chose their lineups at random from the list of eligible players without any informed decisions." *Id.* The daily fantasy games studied were conducted in the same manner as Draft Masters conducts its sports games. The games tested by GLI were daily fantasy sports, rather than traditional fantasy sports, and the games were conducted using salary caps, the same component that Draft Masters utilizes.

After conducting a seventeen week study, GLI found that 'skilled players' beat 'unskilled players' 69.1% of the time. *Id.* What is even more telling is that 99.994% of the time a skilled lineup would beat an unskilled lineup, meaning that the lineups put together by skilled individuals beat lineups randomly created in 16,999 out of 17,000 games. *Id.* Most importantly, if GLI were to "include additional information that a human might use to craft a lineup, including injury status, strength of an individual player against an opposing team, or any other skill point," skill would become even more dominant. *Id.* This study, however, did not, and the statistics are still compelling in favor of skill.

The skill that is involved is in the hands of the fantasy participant, rather than that of the individual player's performance in a sporting event. The fantasy player uses his intellectual skills in analyzing factors that could make him or her more likely to win the match. For example, a participant can study the techniques and strategies that each offensive coordinator uses during the games to assess whether a certain player would get more points under one offensive coordinator over another. M. Christine Holleman, *Fantasy Football: Illegal Gambling or Legal Game of Skill?*, 8 N.C. J. L. & Tech. 59, 72 (2006). Further, the fantasy sport participant can determine whether a player is likely to get the ball more compared to another

player, or can track and study a quarterback's performance. *Id.*

Using the GLI study, coupled with the extensive research performed by various institutions on daily fantasy sports, it is apparent that skill is the dominant factor under the predominate factor analysis. Not only is there extensive time commitments in picking the roster for that game, but the skill that goes into the salary cap component is critical in determining who will get the most points or which combination of players could potentially score more points. In addition, the chance of prevailing is a direct consequence of how much skill the fantasy participant has in choosing the lineup, because if all of the skillful components were not accounted for, this would result in an increased chance of losing against someone who took into account, for example, injuries. Thus, the dominating element in daily fantasy sports is skill, thereby falling outside the definition of a lottery under Nevada law.

2. Daily fantasy sports are not gambling games or sports pools because the game does not consist of a wager, and the inclusion of computers in the definition of electronic devices would render an unreasonable result.

Daily fantasy sports do not constitute sports pools or gambling games, thereby not requiring Draft Masters to obtain a license to stay in operation. Section 463.172 provides that "it is unlawful for any person . . . [t]o deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game . . . or sports pool; without having first procured . . . [a] gaming license." Nev. Rev. Stat. § 463.172 (2015). Daily fantasy sports are not sports pools because the game does not contain a wager. Further, daily fantasy sports are not gambling games because extending the definition of "electronic devices" to include computers would render an absurd result, and the game is not a percentage game as the element of requiring a wager is not met.

a. Sports Pool

Due to the fact that daily fantasy sports do not contain a wager, the game does not constitute a sports pool under Nevada law. A sports pool is defined as "the business of accepting wagers on sporting events or other events by any system or method of wagering." Nev. Rev. Stat. § 463.0193 (2015). Consequently, to determine whether a game fits Nevada's definition of sports pools, the analysis hinges on whether the game requires a wager. A wager is defined as "a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain." § 463.01962.

The Attorney General noted that the Nevada Supreme Court defined the term 'wager' in *Las Vegas Hacienda, Inc. v. Gibson*, but argues that the Nevada legislature enacted section 463.01962, thereby rendering *Gibson*'s definition irrelevant. R. at 29. This proposition is flawed because, upon close examination of the language used in *Gibson*, it is apparent that the Nevada legislature used the language from the case to statutorily enact a definition of wager. The court in *Gibson* described a wager as being between parties where it is known who will win or who will lose depending on "the happening or not happening of an uncertain event." *Gibson*, 359 P.2d at 28. Thus, it is apparent that the definition used in *Gibson* and the definition adopted by the Nevada Legislature is one in the same. Both the common law and the statute stand for the same proposition and have two main elements: risk and uncertainty.

In *Gibson*, a golf course offered to pay out $5,000 to anyone that shot a hole-in-one after paying fifty cents for the opportunity. *Id.* at 27. A player shot a hole-in-one and was denied the $5,000 from the golf course. *Id.* The Supreme Court of Nevada looked at whether a gaming contract was involved in the transaction. *Id.* The court held that the transaction did not constitute a wager and therefore the game was not considered gambling. *Id.* at 29. The court noted "the fact that each contestant is required to pay an entrance fee where the entrance fee does

not specifically make up the purse or premium contested for does not convert the contest into a wager." *Id.* The court reasoned that because the game was one where the person loses in the event of satisfying a condition, it was proper to hold the game to be "valid and enforceable." *Id.*

Under the *Gibson* analysis, it is clear that daily fantasy sports do not constitute a wager. In *Gibson*, the participants controlled the outcome of the game, the same dominating control factor that fantasy sports participants possess. If it were not for the participant's actions of choosing the player, then they obviously would not get points from that player. It is from the fantasy participants' action of choosing the player that these points get obtained. In addition, daily fantasy sports take money to give players the opportunity to receive a prize hinging on their ability to obtain the highest number of points, which is based on skill, just as the contest in *Gibson*.

Regardless of the way the court decides to assess the wager analysis, the word uncertain in the statute renders daily fantasy sports exempt. If the game were a game of chance, then it would fit this definition. However, as discussed above, daily fantasy sports are a game of skill, not chance, making the games not uncertain. Therefore, because a wager is not present in daily fantasy sports, and because the game is not uncertain, they do not constitute a "sports pool" under Nevada law.

b. Gambling Games

Daily fantasy sports do not constitute gambling games in Nevada. Section 463.0152 defines gambling games as "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 . . . any banking or percentage game or any other game or device approved by the Commission." Nev. Rev. Stat. § 463.0152 (2015). Daily fantasy sports do not

constitute "game[s] played with cards, dice, equipment or any . . . electronic device . . . for money" or "percentage games."

i. electronic device

When looking at the plain language of the statute, it appears that daily fantasy sports fall within this category, and thus would require a license to operate in Nevada. However, extending all computer games to the phrase "electronic device" would produce absurd results and an unfair application of the statute. One of the core principles 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" if it would render a more reasonable result. *Hughes Props.*, 680 P.2d at 971. The court should also consider the overall "object and policy" of the statute, and specifically avoid constructions that produce "odd" or "absurd results[,]" or that are "inconsistent with common sense." *Disabled in Actions v. SE Pennsylvania*, 539 F.3d 199, 210 (3d Cir. 2008) (quoting *Pub. Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 454 (1989)).

In *Hughes Properties*, the appellants challenged Nev. Rev. Stat. § 463.0161 (2015), which defines "gross revenue," arguing that the plain meaning "precluded taxation of sums received as 'rake-offs' and percentage buy-ins." *Hughes Props.*, 680 P.2d at 970. The statute defines gross revenue as "the total of all sums received as winnings less only the total of all sums paid out as losses by a licensee . . ." § 463.0161. The appellant argued that the word "winnings" must contain a wager, and because the gambling games operated by appellants did not contain such, the taxation of such winnings should be barred. *Hughes Props.*, 680 P.2d at 970. The court denied this interpretation, reasoning that the "strict construction [of a statute] is only one of *several factors* to be considered." *Id.* (emphasis added). The court noted that strict construction

of the statute would defeat the purpose by precluding the tax revenue from being obtained by the State, creating an unreasonable outcome. *Id.* at 298.

If daily fantasy sports fell within the definition of electronic devices, it would render the statute's application completely arbitrary by placing an undue burden on every business because Nevada would have almost limitless power to regulate *interstate* gambling in the State. In fact, not only would daily fantasy sports be subject to regulation, but traditional fantasy sports that have been held to be a legal game of skill, would also be required to have a license, along with essentially every business that is operating a legal game for money using a computer. Businesses and the large revenue they generate for the economy would decrease, as these businesses would just move to another state, thereby avoiding Nevada's absurd interpretation of electronic devices for purposes of regulating gambling games. Here, the lower court also recognized this absurd interpretation, and thus "decline[d] to extend the definition." R. at 12. Thus, due to the unreasonable outcome when interpreting electronic devices under section 463.0152 to include computers, daily fantasy sports do not constitute a gambling game.

ii. percentage games

Daily fantasy sports are not "percentage games" under section 463.0152 and consequently do not require a license. In *Hughes Properties*, the court developed a two-part test for purposes of assessing whether a game is a "percentage game" under the statute. *Hughes Props.*, 680 P.2d at 970. First, the game must be a situation "where patrons wager against each other." *Id.* Second, "a percentage of each wager" is taken by house as "a rake-off." *Id.* As discussed in extensive detail above, a wager does not exist in daily fantasy sports, and therefore the first element of the two-part test is not satisfied. As such, daily fantasy sports are not percentage games and thus not subject to regulation.

B. Nevada's Licensing of Daily Fantasy Sports is Preempted by Congress' Objective to Occupy the Field of Interstate Gambling Through the Use of the Internet.

Given the extensive effort of Congress to regulate interstate gambling, Nevada's attempt to further impose regulations is preempted. Congress enacted numerous laws through its commerce powers to combat the growing interstate gambling industry, demonstrating Congress' intent to occupy the field of interstate gambling, which has a substantial impact on interstate commerce. *See generally Rousso v. State*, 204 P.3d 243, 248-49 (Wash. Ct. App. 2009) (stating that the UIGEA is a proper exercise of Congress's commerce powers). The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. CONST. art. VI, cl.2. In essence, "Congress has the power to preempt state law." *Arizona*, 132 S. Ct. at 2500.

Preemption can come in two forms: express preemption or implied preemption. *Id.* at 2500-01. There are two types of implied preemption: field and conflict. *Whistler Investments, Inc. v. Depository Trust & Clearing Corp.*, 539 F.3d 1159, 1164 (9th Cir. 2008). While conflict preemption is not applicable here, when Congress has occupied a legislative field, leaving states no room to regulate conduct in that field; preemption is implied. *Id.* "Where Congress occupies an entire field[,] . . . even complementary state regulation is impermissible." *Arizona*, 132 S. Ct. at 2502. Essentially, the States cannot enter, "in any respect," an area in which Congress has already reserved. *Id.*

As technology advanced and popularized, Congress recognized the impact it would have on interstate gambling, and thus sought to regulate the area through the Commerce Clause as it has a substantial impact on interstate commerce. In the year of 1961, Congress enacted four

statutory schemes to address the issue: The Wire Act,[2] The Travel Act,[3] The Interstate Transportation of Wagering Paraphernalia Act,[4] and Illegal Gambling Business Act.[5] In 1992, still concerned with the rapid expansion of Internet gambling and the fear that the States would capitalize on regulating the billion-dollar industry of interstate gambling, Congress enacted PASPA in order to prevent the states from licensing illegal interstate gambling. *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208, 211 (3d Cir. 2013).

As years passed, Congress continued to address the issue of Internet gambling that was emerging throughout the United States. Then, Congress took action to prohibit all forms Internet gambling with the express exemption of fantasy sports. The UIGEA was enacted by Congress in 2006 and prohibits "person[s] engaged in the business of betting or wagering" from knowingly accepting funds from one participating "in unlawful Internet gambling." § 5363. Congress found that "where such gambling games cross[] State borders," new methods were imperative in order to combat illegal gambling through the Internet. 31 U.S.C. § 5361 (2014). Internet gambling was a rising concern for the Government, and therefore Congress enacted the UIGEA, "in part, to *fill any gaps* in the previously existing framework of federal laws applicable to Internet gaming." Brant M. Leonard, *Highlighting The Drawbacks Of The UIGEA: Proposed Rules Reveal Heavy Burdens*, 57 Drake L. Rev. 515, 517 (2009) (emphasis added). Section 5362 of the Act, however, explicitly exempts fantasy sports, thereby demonstrating the unambiguous intent of Congress to legalize daily fantasy sports. 31 U.S.C. § 5362 (2014). Specifically, section 5362

[2] 18 U.S.C. § 1084 (2014) (prohibiting anyone "engaged in the business of betting or wagering knowingly us[ing] a wire communication facility for the transmission in interstate . . . commerce of bets or wagers on any sporting event").
[3] 18 U.S.C. § 1952 (2014) (criminalizing "[w]hoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce" with the intent to distribute, or "otherwise promote, manage, [or] establish . . . any unlawful activity").
[4] 18 U.S.C. § 1953 (2014) (prohibiting anyone who "knowingly carries or sends in interstate or foreign commerce" anything that is used for "bookmaking" or "wagering pools with respect to a sporting event").
[5] 18 U.S.C. § 1955 (2014) (criminalizing "whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business").

provides that "bet or wager does not include participation in any fantasy . . . game."

The court in *Interactive Media Entertainment & Gaming Ass'n, Inc. v. Gonzales*, when discussing the UIGEA, noted that Congress' "regulation of interstate financial transfers—an economic activity necessarily impacting interstate commerce—[is] a proper exercise of Congress's interstate commerce powers." No. 07-2625, 2008 WL 5586713, at *11 (D.N.J. Mar. 4, 2008). If it is determined that the UIGEA was a proper exercise of Congress's commerce powers, then a Tenth Amendment challenge would necessarily be precluded. *Id.*

In *Humphrey v. Viacom*, Judge Cavanaugh noted that the UIGEA "*broadly* prohibits Internet gambling and related transactions." No. 06-2768, 2007 WL 1797648, at *2 (D.N.J. June 20, 2007) (emphasis added). The court went on to note that "the law confirms that fantasy sports leagues . . . do not constitute gambling as *a matter of law*." *Id.* (emphasis added).

In *Arizona*, the Supreme Court addressed whether Arizona's additional regulations on immigration were preempted by federal law. 132 S. Ct. at 2501. One Arizona statute that was challenged by the Federal Government made it a misdemeanor for "an unauthorized alien to knowingly apply for work." *Id.* at 2503. While the Court recognized the States authority to regulate the area of employment, the Court also recognized that Congress had already passed an Act "as a comprehensive framework" for addressing the issue of illegal aliens and employment. *Id.* at 2504. The Court noted that Congress "made a deliberate choice not to impose criminal penalties on aliens" who seek employment. *Id.* The Court held that Arizona's additional penalties and further regulation on aliens seeking employment "interfere[s] with the careful balance struck by Congress with respect to unauthorized employment of aliens." *Id.* at 2505.

Taken the numerous acts that Congress has promulgated to address the issue of Internet gambling, it is clear that Congress has intended to occupy the field of interstate gambling. Even

more evidence of Congress' intent to occupy the field of *interstate* gambling is the fact that the UIGEA has an express exemption for *intrastate* gambling. This confirms the notion that because daily fantasy sports are played by individuals throughout the nation, Congress wanted regulate the field of interstate gambling and declare fantasy sports exempt "as a matter of law." Gambling on sporting games is conducted throughout the fifty states, and Congress sought to regulate the industry and its involvement with the Internet.

Analogous to the scenario in *Arizona*, Nevada is trying to put further regulations on interstate gambling, and while it may not violate the current federal laws, it is still preempted by the apparent intent of Congress to solely regulate this area of concern. *Arizona* stands for the proposition that while the Tenth Amendment provides states with power to regulate certain areas; that is no basis for trumping federal law when Congress has acted to occupy that certain field. The Tenth Amendment provides Nevada with the power to regulate gambling, but as in *Arizona*, this power is stripped when Congress takes action to specifically occupy the field of *interstate* gambling. Nevada may regulate gambling occurring within the borders of the State, but when the State attempts to regulate interstate gambling, federal preemption will apply.

II. EVEN IF THIS COURT FINDS THAT DAILY FANTASY SPORTS CONSTITUTE GAMBLING UNDER NEVADA LAW, THE LICENSING OF DAILY FANTASY SPORTS DOES NOT VIOLATE PASPA BECAUSE IT IS INAPPLICABLE IN NEVADA AND DAILY SPORTS WAGERING WAS AUTHORIZED AND ACTUALLY CONDUCTED DURING THE EXEMPTION PERIOD.

Nevada's licensing of daily fantasy sports does not violate PASPA because daily sports wagering was authorized by the State and was actually conducted within the State during the exemption period. PASPA was enacted to stop the spread of state regulated sports gambling and to protect the integrity of professional and amateur sports. *Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 216 (citing S. Rep. No. 102-248, at 3553 (1991)). PASPA makes it unlawful for any

government entity to license a betting, gambling, or wagering scheme that is based on competitive games where amateur or professional athletes participate. 28 U.S.C. § 3702(1)-(1) (2014). PASPA does not retroactively "apply to states where lawful sports gambling schemes were in operation prior to the legislation." S. Rep. No. 102-248, at 3559 (1991). As such, there are exemptions within PASPA that permit sports wagering to continue in states. 28 U.S.C. § 3704(a)(1)-(2) (2014). Because daily sports wagering was authorized and actually conducted in the State prior to the enactment of PASPA, the prohibitions do not apply and Nevada can license daily fantasy sports.

A. PASPA is Inapplicable in Nevada Because Daily Sports Gambling Was Authorized by Statute, and Applying the Prohibitions in the State Goes Against the Congressional Intent.

PASPA does not apply in Nevada because daily sports wagering schemes have been conducted in the State during the exemption period, and the legislative history expressly exempts Nevada from the ambit of the Act. The purpose of PASPA is to eliminate the *proliferation* of state sanctioned sports wagering and to protect the integrity of professional and amateur sports. *Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 239 (citing S. Rep. No. 102-248, at 3553 (1991)). The Judiciary Committee did not intend for the prohibitions to apply in every state, thus it created the exemptions. S. Rep. 102-248, at 3559 (1991); *see also Office of Comm'r of Baseball v. Markell*, 579 F.3d 293, 303-04 (3d Cir. 2009) (stating it is clear that only four states were the intended beneficiaries of the exemptions). First, PASPA does not apply if the ". . . wagering, betting, or gambling scheme . . . [was] conducted by the state at any time between January 1, 1976 and August 31, 1990." 28 U.S.C. § 3704(a)(1) (2014). The second exemption applies if a state had a statute that authorized a "betting, gambling, or wagering scheme prior to October 2, 1991, and the scheme was actually conducted in the state." 28 U.S.C. § 3704(a)(2)(A)-(B)

(2014). When interpreting the exemptions, the "statutory language must be given its plain meaning if it is clear and unambiguous." *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 168 P.3d 731, 737 (Nev. 2007) (citing *McKay v. Bd. of Supervisors*, 730 P.2d 438, 441 (Nev. 1986)). Because daily sports wagering has been authorized in Nevada for several decades, and because the PASPA prohibitions do not retroactively apply, Nevada is permitted to license daily fantasy sports.

1. PASPA does not apply to Nevada because sports wagering was authorized prior to the enactment, thereby satisfying the first exemption.

Nevada satisfies the first PASPA exemption because daily sports wagering schemes were operated and authorized in the State between 1976 and 1990. In order to satisfy the first PASPA exemption, "the betting, gambling, or wagering scheme must have been conducted in the state at any time between January 1, 1976 and August 31, 1990." § 3704(a)(1). This exception "permits states . . . to continue sports wagering lotteries [and schemes] that [were] previously conducted in the state." *Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 216 (citing 28 U.S.C. § 3704(a)(1) (2014)). "Statutory language must be given its plain meaning if it is clear and unambiguous." *D.R. Horton*, 168 P.3d at 737 (internal citations omitted). "PASPA is unambiguous," and cannot be interpreted in a way that would "render its language superfluous." *Markell*, 579 F.3d at 302-03 (internal citations omitted).

In the case of *Commissioner of Baseball v. Markell*, the Third Circuit conducted an in depth analysis into the statutory language of the PASPA exemptions. 579 F.3d at 300. Delaware argued that the statute was ambiguous, to which the court vehemently disagreed. *Id.* at 302. The Third Circuit found that PASPA was unambiguous. *Id.* at 303. When interpreting the statute, context should be considered; however, the context should not overpower the plain meaning of

the statute. *Id.* The court stressed that PASPA was "unmistakably clear" and that the exceptions should not be interpreted in a way to render them unnecessary. *Id.*

When looking at the plain language of section 3704(a)(1), any state that operated any type of wagering, betting, or gambling scheme at any time between January 1, 1976, and August 31, 1990, is exempt from PASPA. As the Third Circuit noted, PASPA is unambiguous, and as such, the plain meaning controls. Pursuant to the language of the statute, if a wagering scheme was conducted *at any time* during the exemption period the state is beyond the reach of the Act. Nevada easily satisfies this requirement because legalized daily sports gambling, wagering, and betting have been conducted in the State since 1931,[6] and many gaming statutes were enacted in 1949.[7] It is important to note that the Committee conceded in its report that Nevada's economy depends on sports gambling because it has been legalized for *many decades*, which shows that the gambling was authorized prior to the exemption period. Only four states were intended to benefit from the PASPA exemptions, and this Court should not go against the plain meaning of the statute to deny Nevada the opportunity to license daily fantasy sports. Daily wagering on sporting events was authorized in Nevada prior to the exemption period, thus satisfying the first exemption.

2. Applying the PASPA prohibitions to Nevada goes against congressional intent.

The Judiciary Committee recognized that Nevada has conducted legalized sports gambling for many decades; as such, the PASPA prohibitions do not apply. "The legislative history makes clear that the purpose of PASPA is to *stop the spread* of sports gambling." *Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 216 (citing S. Rep. No. 102-248, at 3555) (emphasis

[6] Anthony Cabot & Louis Csoka, *The Games People Play: Is It Time for a New Legal Approach to Prize Games?*, 4 Nev. L.J. 197, 211-12 (2004) (stating Nevada legalized all forms of gaming including sports betting in 1931).
[7] Daily sports wagering on single and multiple games has been conducted in the state of Nevada. *See* Nev. Rev. Stat. § 464.010 (2015) (authorizing pari-mutuel wagering on a sporting event); Nev. Admin. Code § 22.090 (2015) (authorizing parlay card sports wagering).

added)). The purpose is not to eliminate sports gambling where it was already authorized. S. Rep. No. 102-248, at 3559 (1991). "The relevant exception–a grandfathering clause . . . releases Nevada from PASPA's grip." *Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 216. "The legislative history makes clear that . . . only four states were the intended beneficiaries of the exceptions." *Markell*, 579 F.3d at 303. PASPA does not apply in Nevada because Congress intentionally created these exceptions for states that had legalized sports wagering. *Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 216 (relying on the Senate report of the Judiciary Committee); *see also Interactive Media Entm't & Gaming Ass'n, Inc. v. Holder*, No. 09-1301, 2011 WL 802106, at *10 n.1 (D.N.J. Mar. 7, 2011) (stating Nevada is exempt from § 3702 restrictions).

In *National Collegiate Athletic Association v. Governor of New Jersey*, the Third Circuit extensively relied on the Judiciary Committee's Senate Report regarding the implementation and creation of PASPA when determining the scope and applicability of the exemptions. 730 F.3d at 216. The court noted that although the legislative history was "sparse[,]" one thing was clear: Nevada was exempt from PASPA because the Committee did not wish to threaten Nevada's economy, which over many decades has come to depend on legalized sports gambling. *Id.* at 216-17. The aim of PASPA was two-fold. First, it was enacted to "protect the integrity of, and [strengthen] the public's confidence in professional sports." *Id.* at 216 (citing S. Rep. No. 102-248, at 3556). Second, PASPA aimed to "stop sports gambling from spreading." *Id.* at 216 (citing S. Rep. No. 102-248, at 3556 (2014)). The Committee made explicitly clear that the prohibitions were not a blanket ban and did not to apply to every state. Further, the prohibitions did not apply retroactively to states that instituted sports wagering schemes prior to the enactment of the legislation. S. Rep. No. 102-248 at 3558.

When looking to the Third Circuit's interpretation of the PASPA exemptions and the legislative history, it is apparent that PASPA has no application within the State of Nevada. In fact, the Committee conceded that Nevada authorized and conducted legalized sports gambling for *many decades*. This concession solidifies that not only has Nevada authorized daily sports wagering, but that the Committee did not intend for its prohibitions to reach the boundaries of Nevada. If Congress intended for the PASPA prohibitions to apply to Nevada, it would not have created the exemptions, nor would it have expressly stated that Nevada was exempt from the Act. Denying Nevada the ability to license daily fantasy sports goes against Congress's intent because it would be a retroactive application, which would negatively affect the economy of Nevada. Prohibiting Nevada from licensing daily fantasy sports would not further any congressional aims because it would not "stop the spread of sports gambling" as the wagering schemes were already conducted in the State.

Although the goal of PASPA was to stop the spread of sports gambling, since its enactment, the opposite effect has occurred. Since 1991, the amount of gamblers in the United States has exponentially increased. For example, the gross revenue for legalized gambling went from $8.6 billion in 1991 to $34.6 billion in 2010.[8] It is critical for daily fantasy sports to be licensed to ensure that the wagering is properly conducted and regulated. One of the guiding principles behind the enactment of PASPA was to uphold the integrity of sports and eliminate sports betting. However, sports wagering will never be completely eliminated, and forbidding Nevada from licensing daily fantasy sports will increase the likelihood that it will be conducted underground, increasing the amount of unregulated sports gambling. Unregulated, underground sports wagering will tarnish the integrity of sports more than regulated sports gambling because

[8] Chil Woo, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act*, 31 Cardozo L. Rev. 569, 588 (2013).

it is nearly impossible for law enforcement to monitor and control, which makes it easier for impropriety to creep into sporting events.[9] The reality is that gambling on sports will continue. Sports gambling must be regulated to ensure that any impropriety is detected and does not impact the outcome of a game, and proper regulation ensures that impropriety will be detected. Licensing daily fantasy sports ensures that sports wagering is properly executed. Accordingly, Nevada can license daily fantasy sports because the plain meaning of the statute and the congressional intent is clear that the prohibitions do not apply.

B. PASPA is Not Violated Because Daily Sports Wagering Was Authorized and Actually Conducted in Nevada Prior to the Exemption Period.

Licensing daily fantasy sports does not violate PASPA because Nevada authorized daily sports wagering and the wagering was actually conducted prior to PASPA's enactment. Under the second exemption there is a two prong test. PASPA is not violated if the sports wagering, betting, or gambling was authorized by a statute prior to October 2, 1991, and the wagering or betting scheme was actually conducted at any time between September 1, 1989, and October 2, 1991. 28 U.S.C. § 3704(a)(2)(A)-(B) (2014). Because daily sports wagering was authorized and actually conducted prior to 1989, PASPA is not violated.

1. Nevada statutes authorized daily sports wagering schemes prior to the enactment of PASPA.

Daily sports wagering was authorized in Nevada before 1991, thereby satisfying the first prong of the second PASPA exception. The second PASPA exception requires the state to have a "betting, gambling or wagering scheme authorized by a statute [prior to] October 2, 1991." § 3704(a)(2)(A). When interpreting a statute the clear and unambiguous meaning controls. *D.R. Horton*, 168 P.3d at 737; *see also Markell*, 579 F.3d at 302-03 (stating "PASPA is

[9] *See Id.* at 593-94 (stating in 2007 a NBA referee officiated games to ensure the result he recommended to sports bettors was correct in exchange for money. A regulated state sports book would have tracked and detected the betting and the irregularities in the games).

unambiguous"). Multiple forms of daily sports wagering were authorized by statute in Nevada before October 2, 1991. In fact, Nevada began permitting widespread sports betting in 1949. *See Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 215; *see also* Nev. Rev. Stat. § 464.010 (2015) (authorizing pari-mutuel wagering on sporting events); Nev. Admin. Code § 22.090 (2015) (authorizing parlay wagering); Nev. Admin. Code § 22.140 (2015) (authorizing sports wagering).

In order to satisfy the first prerequisite of the exception, all that is required is that the state had a statute authorizing sports wagering in effect before 1991. Nevada easily meets this burden. Multiple forms of daily sports gambling were authorized before the enactment of PASPA. Wagering on the outcome of *a single* sporting event has been authorized in Nevada since 1949. *See* Nev. Rev. Stat. § 464.010 (2015). In 1985, parlay style and sports pool wagering were adopted and effective in the State. It is evident that Nevada had statutes authorizing sports gambling in effect for many years before the enactment of PASPA. When looking to the language of the PASPA exception and the Nevada gaming laws it is clear that the first requirement is satisfied.

2. Daily sports wagering was actually conducted in Nevada prior to PASPA.

Daily fantasy sports wagering is not a substantive change from the daily sports wagering that has been consistently conducted in Nevada since 1949, thus the PASPA exemption is satisfied. To satisfy the second prong of the second exemption, the "betting, wagering, or gambling scheme must have been actually conducted in the state at any time between September 1, 1989, and October 2, 1991." § 3704(a)(2)(A)-(B). Numerous daily wagering schemes were conducted in the State prior to the exemption. *See* Nev. Admin. Code § 22.140 (2015) (authorizing daily sports wagers); Nev. Admin. Code § 22.090 (2015) (authorizing parlay sports

betting); Nev. Rev. Stat. § 464.010 (2015) (authorizing pari-mutuel wagering). The current sports wagering scheme does not need to be identical to the wagering that was conducted prior to the enactment of PASPA. *Markell*, 579 F.3d at 303. So long as there is not a substantive change from the sports wagering that was conducted, then the PASPA exemption is satisfied. *Id.* at 304. A substantive change is one that goes far "beyond the scope" of the wagering scheme that was conducted during the exemption period. *Markell*, 579 F.3d at 304. A minor, or *de minimis*, alteration will not violate PASPA. *Id.*

The Third Circuit determined the scope and applicability of the "actually conducted" prong of the PASPA exemption. In *Markell*, Delaware proposed new sports wagering legislation that "authorized point spread bets on individual games, over/under bets on individual games, and multi-game parlay bets." 579 F.3d at 295. "After the proposal of the wagering legislation, the National Football League, National Basketball Association, National Hockey League, the Office of the Commissioner for Baseball, and the National Collegiate Athletic Association [the 'Leagues'] sought to enjoin the new law asserting that the law violated PASPA." *Id.* at 296. Delaware argued PASPA was not violated because the exemption was satisfied. *Id.* at 301. The Leagues disagreed stating that the new proposed law was a substantial deviation from the sports lottery that was conducted in 1976 and went far beyond the scope of the wagering that was actually conducted, thereby falling outside of the PASPA exemption. *Id.* at 300.

The Third Circuit held that the point spread betting on a single game and the over/under betting on a single game violated PASPA because those two betting schemes were not "actually conducted" in the state in 1976. *Id.* at 303. However, "the multi-game parlay wagering scheme that involved [National Football League] teams" did not violate PASPA because it was similar to the scheme that was actually conducted in Delaware during the exemption period. *Id.* at 303.

The new single game wagering schemes violated PASPA because those two schemes "went beyond the scope of the wagering that was actually conducted" thereby constituting a substantial deviation. *Id.* Because no single game wagering schemes were conducted in Delaware during the exemption period, any single game wagering would be a violation of PASPA. *Id.* at 304. Although the new wagering system cannot go beyond the scope of the wagering that was conducted during the exemption period, the court stressed that the phrase "actually conducted" *does not* mean identical. *Id.* at 303. In fact, "Delaware is not [required] to conduct the scheme [in the] exact[] same manner as it was conducted," and *de minimis* changes do not violate PASPA. *Id.*

Section 22.060 of the Nevada Administrative Code, authorizes single game sports betting such as "over/under" and point spread betting, and these schemes have been "actually conducted" in Nevada. Nev. Admin. Code § 22.060 (2015); *see also* Anthony Cabot & Louis Csoka, *The Games People Play: Is It Time for a New Legal Approach to Prize Games?*, 4 Nev. L.J. 197, 211-12 (2004) (stating that Nevada legalized all forms of gaming including sports betting in 1931). In Nevada, sports wagering is conducted both in person and over electronic gaming devices. *See* Nev. Admin. Code § 5A.020 (3)-(4) (2015). The State authorizes and licenses interactive gaming service providers to manage and administer the daily betting. Nev. Admin. Code § 5A.020(4)(a)-(f) (2015). Over/under and point spread schemes permit wagers to be placed on a single sporting event, and competitors wager as to whether the total number of points scored will be higher or lower than a specific amount. Nev. Admin. Code § 22.060(4) (2015).

Multi-game parlay betting is also authorized under the Nevada Gaming Code. *See* Nev. Admin. Code § 22.090 (2015). In this type of wagering system, competitors place multiple,

single bets on the outcome of separate sporting events, and winning a portion of the entire wager pool is contingent on winning each of the individual bets. *Id.* Pari-mutuel systems of wagering are also permitted in Nevada. § 464.010. This system permits bets to be placed on the outcome of a *single sporting event*. Nev. Rev. Stat. § 464.005(5) (2015). The competitors wager against each other and place all bets into one pool, and the top three competitors will receive a portion of the entire wager pool. *Id.* Finally, Nevada permits elimination style poker, also known as "heads up poker," which is gambling between two players where the competitor with the winning score wins the entire wager pool. Nev. Admin. Code § 223.010 (2015).

Unlike Delaware, single game and multi-game sports wagering schemes have been extensively conducted in Nevada prior to the enactment of PASPA, and the wagering on daily fantasy sports is not a substantive change from those schemes. Daily sports betting has been "actually conducted" in Nevada for approximately sixty-seven years, and wagering on daily fantasy sports is similar to those forms of gambling. Although daily fantasy sports wagering is not identical in every respect to the prior sports wagering schemes, it does not need to be. The core principles of pari-mutuel, parlay, and sports pool wagering are substantially similar to wagering on daily fantasy sports, and any difference is, at best, minimal. Daily fantasy sports can be divided into three main categories: guaranteed prize pool ("GPP"), head-to-head, and double-ups. Nathaniel Ehrman, *Out of Bounds?: A Legal Analysis of Pay-To-Play Daily Fantasy Sports*, 22 Sports Law. J. 79, 86 (2015). In the head-to-head style of fantasy sports wagering, two players compete against each other, and the competitor with the highest score wins the wagered money. Head-to-head daily fantasy sports wagering is similar to "heads up poker." Although "heads up poker" can be played in person, it can also be played via an interactive gaming service provider, which is similar to daily fantasy sports. With daily fantasy sports,

Draft Masters acts as the interactive gaming service provider, and participants compete against each other for the ultimate winnings. Additionally, and most importantly, the objective of head-to-head daily fantasy sports and "heads up poker" is the same. In "heads up poker," two players play against each other and the player with the best hand wins. Just as in "heads up poker," in head-to-head daily fantasy sports the competitor with the most points will win.

In comparing the wagering system utilized in GPP and double ups with that of pari-mutuel and parlay style wagering, the similarities are compelling. In a pari-mutuel system, a wager is place on a team, and the competitor will win *only if* that team has the most points. The most points are obtained based upon the individuals' performance on that team, which is the same as daily fantasy sports because winning is contingent on the competitor obtaining the most points. Just as in pari-mutuel wagering, the total number of points for the fantasy team is based upon the performance of the individual athletes.

Further, daily fantasy sports can be compared to parlay style betting. In parlay betting the competitor places wagers on multiple different sporting events and winning is contingent on *all* of the individual wagers being successful. In daily fantasy sports, competitors place multiple wagers on individual athletes. These athletes make up the fantasy team, and winning is contingent on the competitor successfully picking each of the individual athletes. If the athletes selected by the competitor are not successful, the fantasy competitor will lose. This is similar to parlay betting because a competitor will lose a parlay without successfully picking each team. Due to the similarities in both the form and execution of daily fantasy sports and other daily sports wagering schemes conducted prior to PASPA, daily fantasy sports should be licensed by the State. Licensing daily fantasy sports will ensure that it is adequately regulated and monitored by the Nevada Gaming Commission. Because single game sports betting has been continuously

conducted in Nevada, and because the betting is similar in both principle and execution to daily fantasy sports, the second PASPA exemption is satisfied and Nevada is permitted to license the scheme.

CONCLUSION

For the foregoing reasons, this Court should affirm the Eighth Judicial District Court and uphold the order granting summary judgment because daily fantasy sports are predominately skill-based, do not contain wagers, and an unreasonable result occurs when computers are included within the scope of electronic devices. Even if this Court determines that daily fantasy sports constitute gambling, Nevada is permitted to license the schemes because daily sports wagering was authorized and actually conducted prior to the enactment of PASPA.

APPENDIX A

U.S. CONST. art. VI, cl.2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

18 U.S.C. § 1084 (2014)

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

18 U.S.C. § 1952 (2014)

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to--
(1) distribute the proceeds of any unlawful activity; or
(2) commit any crime of violence to further any unlawful activity; or
(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform--

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

(d) If the offense under this section involves an act described in paragraph (1) or (3) of subsection (a) and also involves a pre-retail medical product (as defined in section 670), the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under subsection (a) is greater.

(e)(1) This section shall not apply to a savings promotion raffle conducted by an insured depository institution or an insured credit union.

(2) In this subsection--

(A) the term "insured credit union" shall have the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(B) the term "insured depository institution" shall have the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(C) the term "savings promotion raffle" means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest being subject to regulations that may from time to time be promulgated by the appropriate prudential regulator (as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481)).

18 U.S.C. § 1953 (2014)

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law, (5) equipment, tickets, or materials used or designed for use in a savings promotion raffle operated by an insured depository institution or an insured credit union, or (6) the transportation in foreign commerce to a destination in a foreign country of equipment, tickets, or materials designed to be used within that foreign country in a lottery which is authorized by the laws of that foreign country.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) For purposes of this section--

(1) the term "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions);

(2) the term "insured credit union" shall have the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(3) the term "insured depository institution" shall have the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(4) the term "lottery"--

(A) means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers; and

(B) does not include the placing or accepting of bets or wagers on sporting events or contests;

(5) the term "savings promotion raffle" means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest being subject to regulations that may from time to time be promulgated by the appropriate prudential regulator (as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481)); and

(6) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

18 U.S.C. § 1955 (2014)

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

(b) As used in this section--

(1) "illegal gambling business" means a gambling business which--

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "insured credit union" shall have the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(3) "insured depository institution" shall have the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(4) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(5) "savings promotion raffle" means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest being subject to regulations that may from time to time be

promulgated by the appropriate prudential regulator (as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481)).

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to--

(1) any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity; or

(2) any savings promotion raffle.

28 U.S.C. § 3702 (2014)

It shall be unlawful for--

(1) a governmental entity to sponsor, operate, 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.

28 U.S.C. § 3704 (2014)

(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.

31 U.S.C. § 5361 (2014)

(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.

31 U.S.C. § 5362 (2014)

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 a 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 a 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--

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 19341 for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any other transaction that--

(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;

(vii) any deposit or other transaction with an insured depository institution;

(viii) participation in any game or contest in which participants do not stake or risk anything of value other than--

(I) personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

(II) points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or

(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.

(2) Business of betting or wagering.--The term "business of betting or wagering" does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service.

(3) Designated payment system.--The term "designated payment system" means any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

(4) Financial transaction provider.--The term "financial transaction provider" means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

(5) Internet.--The term "Internet" means the international computer network of interoperable packet switched data networks.

(6) Interactive computer service.--The term "interactive computer service" has the meaning given the term in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)).

(7) Restricted transaction.--The term "restricted transaction" means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of section 5363 which the recipient is prohibited from accepting under section 5363.

(8) Secretary.--The term "Secretary" means the Secretary of the Treasury.

(9) State.--The term "State" means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

(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.

(B) Intrastate transactions.--The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where--

(i) the bet or wager is initiated and received or otherwise made exclusively within a single State;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include--

(I) age and location verification requirements reasonably designed to block access to minors and

persons located out of such State; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and

(iii) the bet or wager does not violate any provision of--

(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

(II) chapter 178 of title 28 (commonly known as the "Professional and Amateur Sports Protection Act");

(III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

(IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(C) Intratribal transactions.--The term "unlawful Internet gambling" does not include placing, receiving, or otherwise transmitting a bet or wager where--

(i) the bet or wager is initiated and received or otherwise made exclusively--

(I) within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act); or

(II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of--

(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(II) with respect to class III gaming, the applicable Tribal-State Compact;

(iii) the applicable tribal ordinance or resolution or Tribal-State compact includes--

(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(iv) the bet or wager does not violate any provision of--

(I) the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

(II) chapter 178 of title 28 (commonly known as the "Professional and Amateur Sports Protection Act");

(III) the Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

(IV) the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(D) Interstate horseracing.--

(i) In general.--The term "unlawful Internet gambling" shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

(ii) Rule of construction regarding preemption.--Nothing in this subchapter may be construed to preempt any State law prohibiting gambling.

(iii) Sense of Congress.--It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of the enactment of this subchapter. This subchapter is not intended to change that relationship. This subchapter is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.

(E) Intermediate routing.--The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

(11) Other terms.--

(A) Credit; creditor; credit card; and card issuer.--The terms "credit", "creditor", "credit card", and "card issuer" have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(B) Electronic fund transfer.--The term "electronic fund transfer"--

(i) has the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that the term includes transfers that would otherwise be excluded under section 903(6)(E) of that Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) Financial institution.--The term "financial institution" has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino,

sports book, or other business at or through which bets or wagers may be placed or received.

(D) Insured depository institution.--The term "insured depository institution"--

(i) has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); and

(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

(E) Money transmitting business and money transmitting service.--The terms "money transmitting business" and "money transmitting service" have the meanings given the terms in section 5330(d) (determined without regard to any regulations prescribed by the Secretary thereunder).

31 U.S.C. § 5363 (2014)

No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling--

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

Nev. Rev. Stat. § 462.105 (2015)

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.

Nev. Rev. Stat. § 463.0152 (2015)

"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.

Nev. Rev. Stat. § 463.0161 (2015)

1. "Gross revenue" means the total of all:
(a) Cash received as winnings;
(b) Cash received in payment for credit extended by a licensee to a patron for purposes of gaming; and
(c) Compensation received for conducting any game, or any contest or tournament in conjunction with interactive gaming, in which the licensee is not party to a wager,

less the total of all cash paid out as losses to patrons, those amounts paid to fund periodic payments and any other items made deductible as losses by NRS 463.3715. For the purposes of this section, cash or the value of noncash prizes awarded to patrons in a contest or tournament are not losses, except that losses in a contest or tournament conducted in conjunction with an inter-casino linked system may be deducted to the extent of the compensation received for the right to participate in that contest or tournament.

2. The term does not include:
(a) Counterfeit facsimiles of money, chips, tokens, wagering instruments or wagering credits;
(b) Coins of other countries which are received in gaming devices;
(c) Any portion of the face value of any chip, token or other representative of value won by a licensee from a patron for which the licensee can demonstrate that it or its affiliate has not received cash;

(d) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed;
(e) Cash received as entry fees for contests or tournaments in which patrons compete for prizes, except for a contest or tournament conducted in conjunction with an inter-casino linked system;
(f) Uncollected baccarat commissions; or
(g) Cash provided by the licensee to a patron and subsequently won by the licensee, for which the licensee can demonstrate that it or its affiliate has not been reimbursed.

3. As used in this section, "baccarat commission" means:
(a) A fee assessed by a licensee on cash paid out as a loss to a patron at baccarat to modify the odds of the game; or
(b) A rate or fee charged by a licensee for the right to participate in a baccarat game.

Nev. Rev. Stat. § 463.0193 (2015)

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

Nev. Rev. Stat. § 463.01962 (2015)

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

Nev. Rev. Stat. § 463.172 (2015)

1. The Chair of the Board, in the Chair's sole and absolute discretion, may:
(a) Provide written approval for a person to transfer an interest for which the person has been licensed, registered, found suitable or approved, to or from an inter vivos trust; and
(b) Administratively approve any licensing, registration, finding of suitability or approval required for the person, the trust or the interest as a result of the transfer.

2. An administrative approval received pursuant to this section relates back to the date on which the trust was executed.

3. Prior written administrative approval from the Chair of the Board must be obtained before any amendment to such a trust is effective.

Nev. Rev. Stat. § 464.005(2015)

As used in this chapter, unless the context otherwise requires:

1. "Gross revenue" means the amount of the commission received by a licensee that is deducted from off-track pari-mutuel wagering, plus breakage and the face amount of unpaid winning tickets that remain unpaid for a period specified by the Nevada Gaming Commission.

2. "Off-track pari-mutuel system" means a computerized system, or component of such a system,

that is used with regard to a pari-mutuel pool to transmit information such as amounts wagered, odds and payoffs on races.

3. "Off-track pari-mutuel wagering" means any pari-mutuel system of wagering approved by the Nevada Gaming Commission for the acceptance of wagers on:
(a) Horse or dog races which take place outside of this state; or
(b) Sporting events.

4. "Operator of a system" means a person engaged in providing an off-track pari-mutuel system.

5. "Pari-mutuel system of wagering" means any system whereby wagers with respect to the outcome of a race or sporting event are placed in a wagering pool conducted by a person licensed or otherwise permitted to do so under state law, and in which the participants are wagering with each other and not against that person. The term includes off-track pari-mutuel wagering.

Nev. Rev. Stat. § 464.010 (2015)

1. It is unlawful for any person, either as owner, lessee or employee, whether for hire or not, to operate, carry on, conduct or maintain in this state, any form of wagering under the pari-mutuel system on any racing or sporting event without having first procured and maintained all required federal, state, county and municipal licenses.

2. It is unlawful for any person to function as an operator of a system without having first obtained a state gaming license.

3. Where any other state license is required to conduct a racing or sporting event, that license must first be procured before the pari-mutuel system of wagering may be licensed in connection therewith.