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SPECIAL FEATURES

THE DYNAMIC LEGAL ENVIRONMENT OF DAILY FANTASY SPORTS*

*Elizabeth Lohah Homer***

I. Introduction

Up until the fall of 2015, Daily Fantasy Sports (DFS) in the United States had benefited from a rapid growth in revenue,¹ an increasing acceptance into the American sports landscape,² and scant regulation from state and federal governments.³ A respectable research firm in the gaming world projected unmitigated growth for 2016 until a mixture of political, legal, consumer, and market effects led the firm to conclude DFS's future is “uncertain.”⁴

This “uncertainty” stems from a simple question asked of all pay-to-play contests: Is the contest a game of skill or of chance? A unified answer to

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1. See Dustin Gouker, ‘State of the DFS Industry’ at *Daily Fantasy Sports Expo: Strong Growth and Big Winners*, LEGAL SPORTS REP. (Aug. 6, 2015, 7:06 PDT), <http://www.legalsportsreport.com/2919/state-of-dfs-industry/> (discussing the DFS economy’s health prior to Fall 2015).

2. See Dustin Gouker, *DFS Partnership/Sponsorship Tracker*, LEGAL SPORTS REP., <http://www.legalsportsreport.com/dfs-sponsorship-tracker/> (last visited Sept. 8, 2016) [hereinafter Gouker, *DFS Partnership/Sponsorship Tracker*] (listing an up-to-date manifest of partnerships and sponsorships between DFS operators and professional sports leagues and teams).

3. Adam Krejcik & Chris Grove, *Daily Fantasy Sports Industry Update–2016*, EILERS & KREJCIK GAMING (Feb. 22, 2016), <http://ekgamingllc.com/downloads/daily-fantasy-sports-dfs-update-2016/> (access via payment only).

4. *Id.*

this question has eluded state governments.⁵ On the federal level, Congress inadvertently carved an exception into the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) to potentially allow fantasy sports contests of this nature.⁶ Now some members are considering a review of the language.⁷

In the last decade, however, most states have embraced the view of various federal courts: online poker constitutes a game of chance, and therefore, a form of gambling.⁸ Consequently, online poker, just like other forms of gambling, is banned in most states because of this characterization.⁹

The legal distinction between skill and chance is not the only factor pressuring DFS to change its model. Tribes have voiced their support for labeling DFS as unsanctioned gambling in violation of tribal compacts within their respective states, and have in turn influenced decision-makers at the state level, mulling over the fate of DFS.¹⁰

In the coming months, federal, state, and tribal governments will all play a role in the fate of DFS. Early indications suggest a complex “checkerboard” of regulation varying among governments, some addressing the “skill versus chance” question, while others carve out explicit exceptions and establish a unique legal framework specific to DFS.

II. DFS Described

The test used by the majority of courts to determine whether a contest is a game of skill or a game of chance is known as the “predominant purpose”

5. See *DFS State Watch: Monitoring Daily Fantasy Sports Action in State Government*, LEGAL SPORTS REP., <http://www.legalsportsreport.com/dfs-state-watch/> (last updated Sept. 8, 2016) (tracking state news related to DFS legislation).

6. See *Daily Fantasy Sports: Issues and Perspective, Hearing Before the House Subcomm. on Commerce, Manufacturing, and Trade*, 114th Cong. 7 (2016) (opening statement of Michael Burgess, House of Representatives), <http://docs.house.gov/meetings/IF/IF17/20160511/104902/HHRG-114-IF17-Transcript-20160511.pdf> [hereinafter *House Subcomm. on DFS*].

7. David Purdum, *Congressional Subcommittee to Analyze Daily Fantasy*, ESPN (Apr. 14, 2016), http://espn.go.com/chalk/story/_/id/15202961/congressional-hearing-held-daily-fantasy-sports-may.

8. *House Subcomm. on DFS*, *supra* note 6.

9. See *Lawson v. Full Tilt Poker Ltd.*, 930 F. Supp. 2d 476, 481 (S.D.N.Y. 2013) (“On April 15, 2011, known as ‘Black Friday’ in the online gambling world, the United States Attorney for the Southern District of New York shut down the websites of the three largest online poker companies operating in the United States . . .”).

10. See discussion *infra* Section IV.B.

test.¹¹ When the contest at issue is predominantly affected by chance rather than skill, articulated in the abstract as being “over 50%,” the contest is considered a form of gambling.¹² A minority of states review contests under a “material factor” test: If chance had more than a mere incidental role in the outcome, the contest is considered gambling.¹³ Other states draw a bright line rule, disallowing contests involving a bet or wager.¹⁴

The simplicity of these tests has not adapted well to Fantasy Sports, but up until recently the activity has evaded scrutiny. Traditionally, Fantasy Sports are played within a circle of friends or an office informally, focusing on one sport, throughout an entire season. Fees are sometimes required for entry, usually paid to the organizer or “commissioner” of the contest. Participants assemble a desired team that will help them achieve success.

Evolving out of these traditional season-long fantasy sports leagues, DFS shrinks the timeframe of the contest to a single day, forcing contestants to choose the best team amongst players playing that day in a particular sport.¹⁵ Daily entry fees, which can be as small as one dollar but as large as several thousand dollars, are paid to the DFS operator, who will in turn give out cash prizes to the best performing assembled team that day within a contest.¹⁶ Contests often feature complete strangers interacting solely over the internet and refresh every day. Participants may encounter a different opponent every day in the hopes of winning a top prize pooled together from other contestants.

Critics have distinguished season-long fantasy sports contests with DFS by observing that the shortening of the timeframe to a single game increases the factor of chance and decreases the level of skill necessary to play.¹⁷ On

11. See Marc Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law*, 2016 U. ILL. L. REV. 117, 130 (describing the various views of state law on judging contests).

12. *Id.* at 130 n.73.

13. *Id.* at 134.

14. *Id.* at 134-35.

15. *House Subcomm. on DFS, supra* note 6, at 20-21 (statement of Peter Schoenke, Chairman of the Fantasy Sport Trade Association).

16. *Id.* at 12 (statement of Frank Pallone, House of Representatives).

17. See Jay Caspian Kang, *How the Daily Fantasy Sports Industry Turns Fans into Suckers*, N.Y. TIMES MAG. (Jan. 6, 2016), http://www.nytimes.com/2016/01/06/magazine/how-the-daily-fantasy-sports-industry-turns-fans-into-suckers.html?_r=0 (describing how participants of DFS contests could feel helpless against those who professionally play in games).

the flipside, DFS advocates have pointed out the unique skill necessary for success in DFS.¹⁸

III. Federal Law

A. The UIGEA Carve-Out

At least one Attorney General of one state, Kansas, has stated that Congress determined that fantasy sports leagues are games of skill based on an exemption in UIGEA.¹⁹ Application of the exemption's criteria to DFS, however, may yield different conclusions based on an analysis of the "skill versus chance" question.

Congress passed the UIGEA in an effort to allow the federal government greater ability to prevent illegal gambling across state or national borders.²⁰ Specifically, the law prohibits a business from accepting "a bet or wager by any means" from someone who is located in a state where gambling is prohibited.²¹ The UIGEA defines "bet or wager" as "the staking or risking . . . of something of value" upon the result of an activity dependent on chance with the understanding that the person "staking or risking" will collect something of value upon a certain outcome.²² The familiar "predominant factor" test used by the majority of state courts is also built into the language of the definition of "bet or wager" in the statute: "the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is *predominantly subject to chance*) . . ."²³ Traditional sports gambling (as defined at 28 U.S.C. § 3702) as well as the act of giving instructions "pertaining to the establishment or movement of funds" for the purpose of betting or wagering also constitutes leaving a "bet or wager" under UIGEA.²⁴

18. See jockpostdt, *In Response to Jay Caspian Kang's New York Times Article*, ROTOGRINDERS, <https://rotogrinders.com/blog-posts/in-response-to-jay-caspian-kang-s-new-york-times-article-1092901> (last updated Feb. 2016) (pointing out the similarities between DFS and other accepted fantasy sports games).

19. See Constitution of the State of Kansas-Miscellaneous-Lotteries, Op. Kan. Att'y Gen. 2015-9, at 5 (Apr. 24, 2015), <http://ksag.washburnlaw.edu/opinions/2015/2015-009.pdf> ("[The conclusion that DFS is a skill-based game] is bolstered by the fact that the UIGEA also specifically excludes fantasy sports leagues from the federal definition of betting. Under federal law, Congress has determined that fantasy sports leagues are games of skill.").

20. 31 U.S.C.A. § 5361(a)(4) (West, Westlaw through Pub. L. No. 114-219).

21. *Id.* § 5362(10)(A).

22. *Id.* § 5362(1)(A).

23. *Id.* § 5362(1)(B) (emphasis added).

24. *Id.* § 5362(1)(C)-(D).

Following this description, a series of exemptions are described, including one addressing fantasy sports contests. To qualify for this exemption, the operators of the “sports game” must follow four criteria:

- (1) No team created in the fantasy or simulated sports contest may mirror the current membership of a real “amateur or professional sports” team;
- (2) “[P]rizes and awards” are not dependent on the number of participants in a contest or the amount of fees paid by participants and instead “are established and made known to the participants” before the contest;
- (3) *Participants of the sports contest use their “knowledge and skill” to predict “statistical results” from real-world events, which are the predominant causes of the winning outcome in the sports contests;* and
- (4) “No winning outcome is based” on either:
 - a) “the score, point-spread, or” any activity by a “single real-world team”; or
 - b) “solely on any single” person’s performance “in any single real-world sporting . . . event.”²⁵

As the part of the exemption states, contests still must prove that “knowledge and skill” outweigh chance in the outcome of a contest—essentially a restatement of the “predominant factor” test. Therefore, the determination of DFS as a game of skill or chance within states is still critical to its future legality. Additionally, the UIGEA in general would not apply if states were to decide DFS is a game of skill, as UIGEA is intended to help enforce *state* law prohibiting acts of gambling.²⁶

Although not legally binding, legislative history reinforces the UIGEA’s uncertain treatment of DFS. The UIGEA’s author, former Representative Jim Leach (R-IA), recently spoke out to clarify that Congress did not foresee the proliferation of DFS when it passed the law; instead only writing the exemption summarized above to address traditional, season-long fantasy sports:

25. *Id.* § 5362(1)(E)(ix) (emphasis added).

26. *See id.* § 5362(10)(A); *cf.* I. NELSON ROSE & MARTIN OWENS, INTERNET GAMING LAW 62 (2009).

The assumption was that while unconstrained Internet gambling could change the nature of America's savings and investment patterns, fantasy sports would be a 'de minimus' footnote. No one ever conceived of it becoming a large scale activity or that it could transition into one-day contests.²⁷

B. Other Associated Federal Laws

While no other law besides the UIGEA mentions fantasy sports specifically, other federal gambling laws may bind DFS to certain standards.

The Interstate Wire Act of 1964 (Wire Act) prohibits those "engaged in the business of betting or wagering"²⁸ from "the transmission of writings, signs, pictures, and sounds" related to betting or wagering where this activity is illegal.²⁹ Although signed into law before the advent of the Internet, the US Court of Appeals for the First Circuit confirmed the Wire Act's application to online sports betting.³⁰ While no litigation has connected the Wire Act with DFS, the US Department of Justice may choose to prosecute DFS operators under this law if it considers DFS as gambling under federal law.

The Illegal Gambling Business Act of 1970 (Gambling Act) is a federal law designed to improve the enforcement of state law. The Act defines "illegal gambling business" as an activity in violation of state law, which generally "involves five or more persons" in the business, and is in operation for over "thirty days or has a gross revenue of \$2,000 in any single day."³¹ The parameters for the Gambling Act are slightly narrower than that of the Wire Act, yet it would still easily cover all DFS operators. Additionally, unlike the Wire Act's need to have an established "wire communication," the Gambling Act does not need to have a court assess whether the communication of betting or wagering occurs on a "wire."

Finally, Congress passed the Professional and Amateur Sports Protection Act (PASPA) in 1992, establishing the illegality of gambling schemes by a state or individual "based, directly or indirectly . . . on one or more competitive games in which amateur or professional athletes

27. Sacha Feinman & Josh Israel, *The Hot New Form of Fantasy Sports Is Probably Addictive, Potentially Illegal, and Completely Unregulated*, THINK PROGRESS (May 7, 2015), <http://thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/>.

28. 18 U.S.C.A. § 1084(a)-(b) (West, Westlaw through Pub. L. No. 114-219).

29. *Id.* § 1081.

30. *United States v. Lyons*, 740 F.3d 702, 716 (1st Cir. 2014).

31. 18 U.S.C.A. § 1955(b)(1) (West, Westlaw through Pub. L. No. 114-219).

participate”³² PASPA explicitly grants professional sports leagues and the National Collegiate Athletic Association standing to bring suit against violators of this law.³³ Although this broad power is given to various leagues, certain states including Nevada, Delaware, Montana, and Oregon are exempt from suits originating under PAPA.³⁴ Branded as “controversial” for reasons not necessarily stemming from DFS-related issues,³⁵ PAPA is at the league’s discretion to use. With major sports leagues and teams completing sponsorship deals with DFS operators,³⁶ the use of PAPA to prevent gambling seems unlikely.

IV. State Law

A. Nevada and New York: Same Game, Two Different Outcomes

Nevada is a key state to observe when judging the characterization of DFS because it is a state where licensed gambling is permitted. In the fall of 2015, Nevada’s Attorney General dealt a big blow to the DFS industry when it decided the organization’s activity is gambling.³⁷ Undeterred by his state’s AG opinion, Nevada Governor Brian Sandoval ordered the Nevada Gaming Policy Committee to discuss special regulation that would allow DFS without requiring a gambling license.³⁸ After three of these meetings in 2016, Governor Sandoval announced that he and the Committee arrived

32. 28 U.S.C.A. § 3702 (Westlaw through Pub. L. No. 114-219).

33. *Id.* § 3703.

34. *See* Office of the Comm’r of Baseball v. Markell, 579 F.3d 293, 296-97 (3d Cir. 2009) (internal quotations omitted) (“Although PASPA has broadly prohibited state-sponsored sports gambling since it took effect on January 1, 1993, the statute also ‘grandfathered’ gambling schemes in individual states to the extent that the scheme was conducted by that State between 1976 and 1990.”); *see also* Marc Edelman, *Controversial U.S. Sports Gambling Law Turns 22 Years Old*, FORBES (Oct. 28, 2014, 8:00 AM), <http://www.forbes.com/sites/marcedelman/2014/10/28/controversial-u-s-sports-gambling-law-turns-22-today> (discussing the history of PASPA).

35. *See* Edelman, *supra* note 34.

36. Gouker, *DFS Partnership/Sponsorship Tracker*, *supra* note 2.

37. Memorandum from J. Brin Gibson & Ketan D. Bhirud, Office of the Nev. Att’y Gen., to A.G. Burnett et al., Nevada Gaming Control Bd., on the Legality of Daily Fantasy Sports Under Nevada Law (Oct. 16, 2015), <http://www.legalsportsreport.com/wp-content/uploads/2015/10/Nevada-AG-DFS.pdf>.

38. Dustin Gouker, *Nevada Takes Hard Look at Future of Daily Fantasy Sports; DraftKings, FanDuel Speak on Regulation*, LEGAL SPORTS REP. (Mar. 7, 2016, 17:53 PDT), <http://www.legalsportsreport.com/8877/nevada-eyes-fantasy-sports-regulation/>.

at the conclusion that there is “no need for changes” to Nevada law.³⁹ Thus, without a license, DFS operators are barred from participating in the state.⁴⁰

Meanwhile in New York, a similar story appeared to be unfolding. In October 2015, New York Attorney General Eric Schneiderman made news by launching a probe into the DFS industry.⁴¹ One month later, Schneiderman sent cease-and-desist letters to both DraftKings and FanDuel, the two leading DFS operators.⁴² The strongly worded documents called the two sites “leaders of a massive, multibillion-dollar scheme intended to evade the law and fleece sports fans across the country”⁴³ More importantly, Schneiderman emphatically concluded that the operators were engaged in gambling.⁴⁴

A series of injunctions and requests for relief followed, leading to a stay by the New York Court of Appeals in order to allow the state legislature to draft a solution to the issue.⁴⁵ On March 21, 2016, however, Schneiderman and the two operators reached a deal that shut down FanDuel and DraftKings within the state, pending the result of a hearing on the legality of DFS under New York law set for September 2016.⁴⁶

Here’s the twist: This hearing never happened. In the last hours of the 2016 legislative session in June, New York passed a law legalizing and regulating DFS, crucially declaring it a game of skill.⁴⁷ This avoided the state’s requirement that any expansion of gambling must be put into a constitutional amendment, a process that includes a state-wide referendum.⁴⁸ With new law in place, AG Schneiderman vowed to defend

39. Dustin Gouker, *DraftKings, FanDuel Shut Out of Nevada? Governor Says No Changes*, LEGAL SPORTS REP. (Nov. 16, 2016, 10:00 PDT), <http://www.legalsportsreport.com/12124/nevada-governor-no-need-changes-nevada-law/>.

40. *Id.*

41. Dustin Gouker, *Fantasy Sports Data Leak Fallout: New York State Inquiry; DraftKings Pulls ESPN Advertising*, LEGAL SPORTS REP. (Oct. 6, 2015, 16:49 PDT), <http://www.legalsportsreport.com/4681/espn-pulls-draftkings-ads/>.

42. Dustin Gouker, *New York AG to DraftKings, FanDuel: DFS Is Illegal Gambling, Cease and Desist in NY*, LEGAL SPORTS REP. (Nov. 10, 2015, 16:29 PDT), <http://www.legalsportsreport.com/6075/new-york-says-dfs-is-illegal/>.

43. *Id.*

44. *Id.*

45. Chris Grove, *FanDuel, DraftKings Reach Settlement with New York Attorney General*, LEGAL SPORTS REP. (Mar. 21, 2016, 9:00 PDT), <http://www.legalsportsreport.com/9130/fanduel-draftkings-reach-ny-settlement/>.

46. *Id.*

47. 2016 N.Y. Laws Ch. 237.

48. See Daniel Wallach, *New York’s Fantasy Sports Legislation May Face Constitutional*

the new language, and both operators are now active in the state.⁴⁹ While opponents have filed a lawsuit challenging, among other things, the “skill” designation of DFS in New York,⁵⁰ DFS will now have the support of the State in defending the new law.⁵¹

B. Connecticut and Oklahoma: Tribal Influence on DFS Policy

In a few states, tribal governments are making an impact on the way states handle the DFS issue. In late April 2016, the Connecticut Attorney General wrote in a legal opinion that the revenue-sharing agreement with the state’s two casino-operating tribes grants the tribes exclusive rights to operate video facsimile games in exchange for 25% of all revenue.⁵² After considering these pre-existing agreements, the Attorney General concluded, “there is a substantial risk that the passage of such legislation could jeopardize the State’s revenue-sharing arrangements with the Tribes.”⁵³ This preemptive halting of legislation may inform other states with tribal gaming compacts on approaches to DFS regulation where tribal-state gaming compacts are in place.

Meanwhile, tribal governments in Oklahoma put the brakes on the state’s DFS bill in 2016. The Oklahoma legislature had introduced bills regulating DFS that passed through committee in February 2016.⁵⁴ A coalition of tribal governments met with state legislators in March 2016, and successfully convinced the state to drop all DFS-related bills on the grounds of gaming compact breaches.⁵⁵

Roadblock, LAW360 (June 21, 2016, 11:34 EDT), <https://www.law360.com/articles/809124/ny-fantasy-sports-law-may-face-constitutional-roadblock> (describing New York’s constitutional amendment process and potential issues with the new DFS law).

49. Press Release, N.Y. State Office of the Att’y Gen., Statement from A.G. Schneiderman on Daily Fantasy Sports Legislation Signed Into Law by Governor Cuomo Today (Aug. 3, 2016).

50. *White v. State*, No. 5861-2016 (N.Y. Sup. Ct. Mar. 24, 2017).

51. Memorandum of Law in Support of Motion to Dismiss, *White v. State*, No. 5861-2016 (N.Y. Sup. Ct. Jan. 11, 2017), <http://www.legalsportsreport.com/wp-content/uploads/2017/01/MOL.pdf>.

52. Susan Haigh, *Looney Says Fantasy Sports Bill Unlikely After AG’s Warning*, WASH. TIMES (Apr. 18, 2016), <http://www.washingtontimes.com/news/2016/apr/18/ag-jepsen-warns-fantasy-sports-bill-could-risk-tri/>.

53. Op. Conn. Att’y Gen. 2016-03, at 1 (Apr. 18, 2016), <http://www.ct.gov/ag/cwp/browse.asp?a=1770&bc=0&c=29568>.

54. Dustin Gouker, *Tribal Gaming Interests Waking Up on Fantasy Sports: Oklahoma Coalition Quashes Bill*, LEGAL SPORTS REP. (Mar. 21, 2016, 05:00 PDT), <http://www.legalsportsreport.com/9116/tribes-and-fantasy-sports/>.

55. *Id.*

C. Virginia Finds a Third Way: Others Follow

In some states, DFS lobbyists have paved a third way that bypasses the “skill v. chance” question. This option seems popular in states where gambling is illegal, and where there are no tribal-state gaming compacts to conflict with the sanctioning of DFS.

On March 7, 2016, Virginia Governor Terry McAuliffe signed into law the Fantasy Contests Act, making Virginia the first state to sanction DFS with regulations accepted by the industry, intended to improve the safeguards of the contest.⁵⁶ Operators must pay a \$50,000 licensing fee, follow a host of consumer protection rules, and undergo an annual audit.⁵⁷ Virginians must be eighteen years of age to play DFS.⁵⁸ Notably, Virginia’s bill does not declare whether DFS is a game of chance or a game of skill, instead opting to treat DFS as its own separate kind of sanctioned contest.

Indiana followed Virginia’s suit weeks later with a nearly identical bill.⁵⁹ Unlike Virginia, Indiana’s Gaming Commission will provide more focused oversight of the industry, although the law expressly declares DFS a game of “skill.”⁶⁰

Tennessee became the third state to pass a bill similar to Virginia and Indiana in late April. Unlike the first two states, a public difference of opinion over “skill versus chance” emerged. On April 5, 2016, at the request of a legislator, the State Attorney General released a three-page legal opinion concluding that Tennessee law considers DFS illegal gambling.⁶¹ The State Code labeled gambling as “risking anything of value for a profit whose return is to *any degree contingent on chance*”⁶² The

56. VA. CODE. ANN. §§ 59.1-556 to 59.1-570 (West, Westlaw through end of 2016 Reg. Sess.); see Jenna Portnoy, *Why FanDuel and DraftKings Are Happy with These Restrictions*, WASH. POST (Mar. 8, 2016), https://www.washingtonpost.com/local/virginia-politics/virginia-becomes-first-in-nation-to-regulate-fantasy-sports-industry/2016/03/08/a40d0bd4-e542-11e5-b0fd-073d5930a7b7_story.html (“The two most prominent daily fantasy sports companies, DraftKings and FanDuel, lobbied for the legislation and said they hope other states follow suit.”).

57. VA. CODE. ANN. §§ 59.1-557 & note, 59.1-559.

58. *Id.* § 59.1-557(D)(3).

59. IND. CODE §§ 4-31-20.6, 4-33-24-1 to 4-33-24-30 (Westlaw through 2016 Reg. Sess.).

60. *Id.* § 4-33-24-9(2).

61. Op. Tenn. Att’y Gen. No. 16-13 (Apr. 5, 2016), <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op16-013.pdf>.

62. TENN. CODE ANN. § 39-17-501(1) (West, Westlaw through 2016 Reg. Sess.) (emphasis added).

Attorney General argued that fantasy sports contests are impacted by a variety of “fortuitous factors – weather, facilities, referees, injuries, etc.”⁶³

The Tennessee legislature subsequently ignored the Tennessee Attorney General’s opinion by passing a bill regulating the DFS industry. Unlike Virginia and Indiana’s regulations, Tennessee will impose a 6% tax on revenue generated by the State’s residents who use DFS sites.⁶⁴ The Secretary of State will assign a license fee (designated at a later date) and will oversee consumer protections and audit functions built into the law.⁶⁵ The bill passed determines that DFS is a game of skill, as Indiana’s law does.⁶⁶

Mississippi, Colorado, Missouri, and Massachusetts have all passed legislation regulating and legalizing DFS to varying degrees in 2016.⁶⁷ Several more states are considering the passage of bills in 2017, while others, wary of the “skill” or “chance” question, sit on the sidelines until more legal clarity is established.⁶⁸

V. Conclusion

At this time, so much is happening in the Fantasy Sports, e-sports, and online sports arena that it is difficult to stay abreast of it all. According to an Associated Press report, Alabama lawmakers gave a DFS bill the “Shroud Award” for being “the ‘deadest’ bill [in] the [2016] legislative session.”⁶⁹ At the other end of the spectrum, the Golden Nugget Casino in Atlantic City, New Jersey, inked a deal with Inspired Gaming to introduce “virtual reality sports” in its online gaming portfolio.⁷⁰ Entertainment companies are also starting to get in on the action. According to news sources, Cineplex recently entered into a partnership with Sony to create the

63. Op. Tenn. Att’y Gen. No. 16-13, at 2.

64. Dustin Gouker, *Tennessee Governor Signs Daily Fantasy Sports Bill; Third State to Enact DFS Law*, LEGAL SPORTS REP. (Apr. 28, 2016), <http://www.legalsportsreport.com/9774/tennessee-governor-signs-daily-fantasy-sports-bill-law-third-state-regulate-dfs/>.

65. *Id.*

66. *Id.*

67. Dustin Gouker, *Legislative Tracker: Daily Fantasy Sports, Sports Betting*, LEGAL SPORTS REP. (last visited Jan. 20, 2017), <http://www.legalsportsreport.com/dfs-bill-tracker/>.

68. *Id.*

69. Associated Press, *Fantasy Gaming Bill Wins ‘Shroud Award’*, WASH. TIMES (May 5, 2016), <http://www.washingtontimes.com/news/2016/may/5/fantasy-gaming-bill-wins-shroud-award/>.

70. Steve Ruddock, *Golden Nugget Becomes First U.S. Online Gaming Operator to Offer Virtual Sports*, NJ GAMBLING SITES (May 5, 2016), <http://www.njgamblingsites.com/5135/golden-nugget-virtual-sports/>.

Canadian Gaming Championships, and developers are hard at work creating games they hope “to be the next big hit on streaming platforms”⁷¹

Developments such as these have prompted Congress to begin examining the issues surrounding DFS. On May 11, 2016, the Subcommittee on Commerce, Manufacturing, and Trade of the House Committee on Energy and Commerce convened a hearing pithily entitled: Hearing on “Daily Fantasy Sports: Issues and Perspectives.”⁷² No bill has yet to be introduced, but there is concern within Congress about the interest of consumer protection in the ever-growing online gaming environment. With at least thirty states considering DFS legislation, the coming months are sure to be of high interest to players, would-be players, lawmakers, and regulators alike.

71. Cole Watson, *E-Sports Gambling: A Market in Its Infancy*, CGMAGAZINE (May 2, 2016), <http://www.cgmagonline.com/2016/05/02/e-sports-gambling-market-infancy/>.

72. Hearing on “Daily Fantasy Sports: Issues and Perspectives,” Subcommittee on Commerce, Manufacturing, and Trade (May 11, 2016), COMM. ON ENERGY & COM.: DEMOCRATS, <https://democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-daily-fantasy-sports-issues-and-perspectives-subcommittee-on> (last visited Aug. 21, 2016).