Testimony Before the Illinois House Judiciary – Criminal Committee
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“DAILY FANTASY SPORTS IS ILLEGAL
UNDER FEDERAL LAW AND MOST STATE LAWS”

Prof. John W. Kindt*

Daily Fantasy Sports (DFS) is illegal under three Federal laws:

1. the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), 31 U.S.C. secs. 5361-67;
2. the Professional and Amateur Sports Protection Act of 1992 (PASPA), 28 U.S.C. secs. 3701-04; and

As the most relevant Federal legislation prohibiting DFS, the Congressional intent behind UIGEA was highlighted in October 2015 by the primary sponsor of UIGEA, former U.S. Representative James Leach (R-IA).

Noting the Congressional intent and history of UIGEA, Representative Leach emphasized that DFS operators’ claims that DFS was legal under UIGEA were “sheer chutzpah.” Representative Leach even “e-mailed The Associated Press stating ‘the carve out for Fantasy sports in the Unlawful Internet Gambling Enforcement Act (UIGEA) does not provide them [i.e., DFS operators] with immunity against other federal and state laws that could limit their activities.” See, e.g., Staff, Unlawful Internet Gambling Enforcement Act Author Jim Leach Unhappy With DFS Sites, SCOUT, Oct. 20, 2015, at www.scout.com/fantasy/story/1601134-uigea.

Colleagues and I testified in favor of UIGEA during the 2006 Congressional hearings, and we can confirm that Fantasy sports was to be only season-long and does not include DFS. See, e.g., Internet Gambling Prohibition Act of 2006: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the House Comm. on the Judiciary,109th Cong., 2d Sess. 12-16, 20-63 (testimonies & prepared statements of Bruce G. Ohr, Chief, U.S. Dep’t Just., Organized Crime & Racketeering Section, and Prof. John W. Kindt, Univ. of Ill.).
DFS companies are under investigation by U.S. Attorney Offices in New York City, Boston, and Tampa, Florida. Currently, DFS is under increasing Congressional scrutiny. See, e.g., Hearing Before the Subcomm. on Crime, Terrorism, Homeland Security, and Investigations of the House Comm. on the Judiciary, 104th Cong., 1st Sess. 18 (prepared statement of Prof. John W. Kindt, Univ. of Ill.).

On December 23, 2015, Illinois Attorney General Lisa Madigan issued an opinion to the Illinois House Judiciary – Criminal Committee stating that DFS constituted “illegal gambling” pursuant to the 2012 Criminal Code, subsection 28-1(a); 720 ILCS 5/28-1(a). DFS has also been declared illegal by the state attorney generals of Texas, Hawaii, Georgia, Mississippi, Alabama, Nevada (with an exception) and New York (with false advertising issues pending).

The Boston Globe and other media have reported that the major DFS companies have not turned a profit in months and may soon be insolvent. A pro-DFS news site has even admitted that the large DFS company FantasyHub “is refusing to pay players or provide players with any concrete information regarding their money.” The title of the article is descriptive: Chris Grove, As FantasyHub Scandal Deepens, DFS Lobbyists Are Pushing Bills That Would Let It Happen Again And Again, LEGAL SPORTS REPORT, Feb. 26, 2016.

In March 2016, Virginia and then Indiana supposedly legislated regulations for DFS, but the Washington Post exposed the nationwide tactics of DFS lobbyists who “proposed a two-page bill … called a ‘fluff sandwich’ with a line in the middle declaring that fantasy sports games are ‘not illegal gambling’.” Jenna Portnoy & Drew Harwell, Fantasy sports games make a play for legitimacy, WASH. POST, Mar. 18, 2016, at www.washingtonpost.com. The so-called DFS regulations in Virginia and Indiana only provide the appearance of regulation—without any practical effect.

Given the current Federal prohibitions against DFS, it is common knowledge that DFS lobbyists realize that they cannot get Congress to legalize DFS. Accordingly, DFS lobbyists are manipulating individual states into passing laws appearing to regulate DFS. Such state laws would then compel state attorney generals to defend their state regulations. The end result would pressure Congress to enact future Federal legislation enabling “nationwide DFS.”

DFS places real-time gambling at every school desk, work desk, family TV, video game, and cell phone. People of all ages will be able to “click their phones, lose their homes.” Virtually all academic experts concur that DFS is designed to create ubiquitous real-time gambling without any effective consumer protection.

Specifically designed to seduce a youth market, the DFS marketing philosophy also reportedly synchronizes well with pornography marketing techniques. Eben Novy-Williams,

The U.S. National Gambling Impact Study Commission Report concluded that DFS-type gambling was “impossible to regulate” and had to be prohibited. The U.S. Gambling Commission was sponsored by former U.S. Senator Paul Simon (D-IL) and U.S. Representative Henry Hyde (R-IL) with the bipartisan support of virtually the entire Illinois Congressional delegation. The U.S. Gambling Commission was enacted with an 80 percent bipartisan vote.

Since the U.S. Gambling Commission, these conclusions have been confirmed by experts at Congressional hearings and in academic publications, including the multi-volume United States International Gambling® Report, produced at the University of Illinois and in concert with other research universities.

In 2015 Congressional hearings began re-investigating the proliferation and abuses involving DFS. All states should reject the claims and endeavors of DFS lobbyists to leverage state governments into confrontations with the U.S. Department of Justice and the majority of state attorney generals, including Illinois Attorney General Lisa Madigan.

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Gov. McAullife’s Dilemma:

The Daily Fantasy Sports Emperor is Wearing No Clothes

by Prof. John Kindt*

Virginia, the Mother of Presidents, will soon become the “Godfather of Gambling” if Governor Terry McAuliffe signs the “daily fantasy sports” (DFS) bill into law. Ignoring the Attorney Generals of seven other states who have recently declared DFS illegal, the Virginia General Assembly has fast-tracked Virginia to become the first state specifically to authorize sports gambling on every child’s cell phone.

DFS will place real-time gambling at every school desk, work desk, family TV, video game, and cell phone. People of all ages will be allowed to “click their phones, lose their homes.” Lobbyists for DFS claim that the Virginia law will regulate DFS, but academic experts indicate that the law’s practical effect will be to create ubiquitous real-time gambling without any effective consumer protection.

The Boston Globe and other media have reported that the major DFS companies have not turned a profit in months and may soon be forced out of business by actions underway by the New York Attorney General, as well as the attorney generals of Illinois, Texas, Hawaii, Mississippi, Nevada, Georgia, and other states investigating DFS.

Specifically designed to attract a youth market, the DFS marketing philosophy also reportedly synchronizes well with pornography marketing techniques, as reflected in a recent Bloomberg news article titled “Porn Giant Vivid Wants to Rescue Daily Fantasy Sports.”

The U.S. National Gambling Impact Study Commission Report concluded that DFS-type gambling was “impossible to regulate” and had to be prohibited. The U.S. Gambling Commission was sponsored by former U.S. Representative Frank Wolf (R-Va.) with the bipartisan support of the Virginia Congressional delegation, and it was enacted with an 80% bipartisan Congressional vote.

Since the U.S. Gambling Commission, these conclusions have been confirmed by experts at Congressional hearings and in academic publications, including the multi-volume United States International Gambling Report, produced at the University of Illinois and in concert with other research universities.
The Virginia General Assembly seems to be unaware that Congressional hearings in 2015 highlighted the majority legal opinion that DFS is illegal under Federal law. Abuses involving DFS promoters are also being investigated by the U.S. Attorney Offices in New York City and Tampa, Florida.

Contrary to the claims of DFS lobbyists, the majority expert opinion is that DFS is illegal under the 2006 Unlawful Internet Gambling Enforcement Act (UIGEA). The Wall Street Journal and national media have reported that the DFS lobby is trying to cloak DFS in the color of legality by fast-tracking state legislatures into passing state laws under the guise of consumer protection.

Governor McAuliffe and Virginia Attorney General Mark Herring should not allow Virginia to be manipulated into becoming the precedent for leading children and the general public into deleterious DFS gambling via every smart phone.

*Univ. Illinois Prof. John Kindt, educated at U.Va. Law Sch. and William & Mary, has testified repeatedly as an expert witness before Congress and many state legislatures analyzing gambling issues. The Univ. Illinois is listed on the first page of Sources of Information by the U.S. National Gambling Impact Study Commission Report.

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