

# PROFESSIONAL SPORTS LEAGUES' BIG BET: "EVOLVING" ATTITUDES ON GAMBLING

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*While Vice President and General Counsel of the Green Bay Packers, I became aware of and was invited to join a fantasy football draft to be held immediately before the start of a National Football League ("NFL") season. Similar to thousands of events being held around the country in that time frame, a group of Packers employees—primarily scouts, administrators and other front office executives—were to gather in a room (in this case the Packers' War Room where we sat during the real Draft each year) and draft players for our fantasy "teams." These players' season-long individual performances would determine our success, or lack thereof, in the league standings. Millions of people around the country played fantasy football, and we at the Packers organization—football fans like everyone else—were set to join in the fun.*

*As general counsel of the organization, however, something about this didn't feel right. Knowing the NFL's mantra of "integrity of the game" and longstanding issues with gambling, our formation of a draft of NFL players, even in the name of fun amongst colleagues, raised my antennae as the team's liaison with the NFL's legal department. I queried my colleagues organizing the league about all the details, and they did ease concerns of mine regarding two important rules of this proposed league. First, the league was free: no money would exchange hands; the rewards were primarily trash-talking and bragging rights. And, perhaps more importantly, Packer players were off-limits to fantasy owners of this league; we could not draft our own players. While these facts lessened my anxiety level about the league, it was in my nature—and my job description—not just to leave it at that. Much to my colleagues' disappointment, I felt I had to bring this venture to the attention of the NFL to get sign-off.*

*I reached out to my contact at the NFL on legal and business matters. I matter-of-factly explained the nature of the fantasy football draft that was about to take place, emphasizing the two features to preemptively address concerns: no money exchanged and no Packers drafted. When I finished explaining and implicitly asking for the league's blessing and consent to allow this, there was a pregnant pause in the conversation. Finally, my contact said the following: "Andrew, we didn't have this conversation." When I started to follow up, he cut*

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me off: “We didn’t have this conversation. How are your kids?” I got the message.

The NFL knew there were degrees of “soft” gambling that occurred regularly around the sport, from heavily-publicized betting lines to fantasy drafts held in every setting imaginable. However, it was clear from my conversation—or non-conversation—that the league did not want to give consent to it occurring amongst the teams. Sure, the fantasy draft and league we were about to implement was innocent and harmless. However, from the league’s standpoint, forever concerned with public trust and actions that could be perceived as antithetical to the integrity of the game, it was important that it maintain plausible deniability that they did not know. The Packers fantasy draft proceeded and continued throughout my time there. As we see the NFL and other sports leagues now embrace gambling, at varying degrees and levels, I always think back to that story.

*Side note: the worst fantasy football general managers I have ever witnessed are people who actually pick NFL players for a living, some of whom are the best in their profession at doing so! These men, some of whom are now running NFL teams today, would pick players they knew and liked from the scouting process, thinking they were able to use information that no one else had in building their fantasy teams. Of course, in doing so, they ignored picking the obvious star players who would actually bring in the needed fantasy points. I smile when watching these guys held up as some of the best general managers in “real” football; they were some of the worst fantasy general managers who ever played the game.*

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## INTRODUCTION: THE MANTRA OF INTEGRITY

Integrity has been the watchword of American professional sports leagues. In order to gain public trust and confidence from fans, media, sponsors, networks and other stakeholders in their games, the leagues’ mantra of integrity is critical. These stakeholders must be certain they are investing in a product that is beyond reproach.

An area that has traditionally struck at the heart of that integrity is gambling, specifically sports gambling. Throughout the history of sports law and policy, leaders at every level of sports—from league commissioners, to team management, to legislators—have held up roadblocks to sports gambling, all in the name of “integrity of the game.” Indeed, the first true commissioner in sports, Judge Kenesaw Mountain Landis, was hired by Major League Baseball with a mandate to restore integrity after the “Black Sox” scandal in 1919, which featured “Shoeless” Joe Jackson and the Chicago White Sox “throwing” the World Series for gambling profit.

Further examples of strong sanctions for gambling included baseball’s “Hit King” Pete Rose’s banishment from the game for sports betting—an expulsion that continues today, 27 years later—former NFL stars Paul Hornung’s and Alex Karras’s suspensions by NFL Commissioner Pete Rozelle for the 1963 season for betting amounts ranging from \$50 to \$500 on league games; and former NBA referee Tim Donaghy’s firing in 2007 upon accusations that he made calls that affected point spreads in certain games. When even the appearance of impropriety came up in these situations, league leaders acted to remove the subjects in question from the game. Gambling struck at the heart of the cherished “integrity of the game,” and players involved in gambling activities were dealt with harshly.

For this reason and others, although common and even accepted in other countries, gambling in sports exists largely in the shadows in the United States. However, as professional sports leagues move into a new era of fan engagement, high profits, and placement of franchises in Las Vegas, there appears to be an increasing re-evaluation and potential reset regarding gambling and its potential threat to the leagues’ cherished integrity. Professional sports leagues are increasingly accepting that gambling is part of their future and are actively assessing the best ways to react, respond, and potentially monetize the legal landscape around sports gambling.

This Article examines recent trends in an ever-changing sports gambling landscape, especially through the lens of increasing acceptance forged through fantasy sports, specifically Daily Fantasy Sports (“DFS”). DFS are services that allow consumers to not only wager on their season-long lineup of players but also new and revised weekly (in the case of football) or even daily (in the case of the National Basketball Association (“NBA”), the National Hockey League (“NHL”), and Major League Baseball (“MLB”)) lineups.

The Article will examine the conflicted stance between leagues’ ardent defense of New Jersey’s efforts to legalize sports betting while openly

embracing DFS as perhaps a “softer” form of gambling. This Article will further examine how a symbol of this change in attitude and action can be crystallized in what is happening in the city most associated with gambling in the country: Las Vegas. The NHL has relocated an expansion franchise there, which will begin play in the fall of 2017, and the NFL now will join them in a splashy new stadium set to host the Raiders in 2020. The Article will then assess whether, in light of the powerful fan engagement tool DFS has become, professional sports leagues’ acceptance of sports gambling is based on a diminishing threat to integrity or an increase in monetization opportunities.

### I. PASPA AND FAILED ATTEMPTS TO OVERTURN IT

In 1989, Major League Baseball Commissioner Bart Giamatti, a former Yale professor with a romantic view of baseball’s purity, launched a comprehensive inquiry into the sports gambling history of Pete Rose, the sport’s leader in total base hits, and the then-manager of the Cincinnati Reds.<sup>1</sup> As noted above, the Giamatti–Rose saga resulted in Rose’s expulsion from the league with which he is synonymous: Major League Baseball. Rose remains barred from baseball today, three commissioners removed from Giamatti, despite his repeated entreaties for acceptance to all three (Fay Vincent, Bud Selig, and now Rob Manfred).

The Giamatti–Rose showdown was emblematic of professional leagues’ resistance towards gambling, and the discipline they have levied because of it. While only three states had authorized sports betting in the early 1990s, NFL Commissioner Paul Tagliabue, NBA Commissioner David Stern, and MLB Commissioner Fay Vincent, spurred on by the public disgust with the Rose-saga, urged action to prohibit its expansion at the time.<sup>2</sup> Citing the common pillar of *integrity*, Vincent testified before Congress that “[t]he legalization of team sports betting by any state or municipality would increase the chances that persons gambling on games will attempt to influence the outcome of those games.”<sup>3</sup> The NBA mobilized opposition to an Oregon lottery scheme that included NBA teams, eventually forcing the state to no longer base winnings on outcomes of the league’s games.<sup>4</sup>

Public opposition in the name of integrity was one thing; enacting legislation banning sports betting proved more difficult. In 1990, Congress introduced several bills containing amendments banning sports betting, but was unable to pass them into law.<sup>5</sup> The unsuccessful efforts eventually provided

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1. See *The Pete Rose Decision: Rose Investigation Chronology*, L.A. TIMES (Aug. 25, 1989), [http://articles.latimes.com/1989-08-25/sports/sp-983\\_1\\_pete-rose](http://articles.latimes.com/1989-08-25/sports/sp-983_1_pete-rose).

2. See Steven A. Holmes, *Sports Betting; League Heads Speak Out Against Sports Lotteries*, N.Y. TIMES (June 27, 1991), <http://www.nytimes.com/1991/06/27/sports/sports-betting-league-heads-speak-out-against-sports-lotteries.html?mtref=query.nytimes.com>.

3. See *id.*

4. See *id.*

5. See *id.*

momentum towards a successful bill, as Congress enacted the Professional and Amateur Sports Protection Act (“PASPA”) in 1992.

Pockets of resistance to gambling prohibitions emerged—including cash-strapped state legislatures and revenue-seeking casino operators—with lobbying muscle behind them.<sup>6</sup> In arguments that persist today and create a continuing conundrum in this area, sports betting proponents forcefully argue that a ban on legal sports betting will not eliminate the market, but rather leave it “in the hands of organized crime.” They argue that the leagues’ mantra of integrity of the game would be better protected by “state officials who [would] carefully regulate [sports betting] . . .”<sup>7</sup>

#### A. *Professional and Amateur Sports Protection Act (“PASPA”)*

PASPA makes it unlawful for a government entity or person in any way to facilitate or conduct a “lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly . . . 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.”<sup>8</sup> Under PASPA, state government efforts to regulate—and thereby tax—sports gambling are prohibited, as that would be “authorization.”<sup>9</sup>

Upon its enactment, PASPA made an initial allowance for states then operating sports betting schemes to choose to continue these schemes and be “grandfathered-in” under the new law.<sup>10</sup> Four states chose to maintain their gambling operations: Delaware, Montana, Oregon, and, of course, Nevada. The exception was limited, however, to only the schemes currently in place in these states. Delaware and Oregon had a parlay system—a scheme that requires selecting multiple correct outcomes—built into their state lotteries; Montana allowed bars to offer various types of “sports pools;”<sup>11</sup> and Nevada had what would be considered full-scale sports betting, the “forbidden fruit” when it comes to professional sports leagues and their athletes.<sup>12</sup>

The success these states have had hosting sports betting schemes varies. Oregon, facing pressure from the NCAA and NFL, decided to phase out operation of the state parlay lottery in 2005 as part of an effort to host “March

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6. *See id.*

7. *See id.*

8. 28 U.S.C. § 3702 (1992).

9. Nat’l Collegiate Athletic Ass’n v. Governor of N.J., 799 F.3d 259, 267 (3d Cir. 2015) [hereinafter *Christie II*], *aff’d en banc*, 832 F.3d 389 (3d Cir. 2015), *petition for cert. filed*.

10. *See* 28 U.S.C. § 3704(a)(1)–(2) (1992) (describing jurisdictions and schemes exempt from law).

11. MONT. ADMIN. R. 23.16.1705 (2014).

12. *See* NEV. REV. ST. § 463.0193 (2016).

Madness” games.<sup>13</sup> Montana and Nevada continue to operate their betting schemes, but have been reluctant to open the door for daily fantasy sports—though for slightly different reasons.<sup>14</sup> Delaware continues to operate its parlay scheme, but it was the first state to challenge PASPA in court.<sup>15</sup>

Delaware’s sports betting scheme was a “multi-game parlay” system, in which a bettor must select the correct outcome of multiple games in order to win. But in 2009, Delaware attempted to expand this offering by allowing bettors to pick the outcome of only one game—a more traditional type of sports betting. This game, sanctioned by Delaware’s “Sports Lottery Act,” was met with intense resistance from the four professional leagues and the NCAA. The leagues challenged the law in federal court, but were denied an injunction at the District Court for the District of Delaware.<sup>16</sup>

On appeal in the Third Circuit, *Office of Commissioner of Baseball v. Markell* ruled on the scope of PASPA and what would be grandfathered in. Since Delaware was legally allowed to offer multi-game parlays, the state believed it should be allowed to offer single-game bets as well. Judge Hardiman of the Third Circuit, however, decided against the state:

[The] exception provides that PASPA’s general prohibition against sports betting shall not apply to: “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 . . . .”<sup>17</sup>

The key language of the statute the judge emphasized—“to the extent that the scheme was conducted by that State”—restricted Delaware to offering only a multi-state parlay. Since Delaware had not offered a single-game option at the time of PASPA’s enactment, the state was forbidden from expanding its gambling laws.<sup>18</sup>

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13. *March Madness Coming to Portland in 2009*, BLUE OREGON (July 7, 2006), [http://www.blueoregon.com/2006/07/march\\_madness\\_c](http://www.blueoregon.com/2006/07/march_madness_c); see *Senator Wants Sports Action Abolished*, THE REGISTER-GUARD, Apr. 16, 1996, at 3C.

14. Nevada and Montana both consider daily fantasy sports to be gambling. See *infra* Part IV; Matt Hoffman, *DraftKings or FanDuel in Montana? Don’t Bet on It*, BILLINGS GAZETTE (Oct. 20, 2015), [http://billingsgazette.com/news/local/draftkings-or-fanduel-in-montana-don-t-bet-on-it/article\\_f72b247d-5b9d-50bb-a11c-5dbcb0966abb.html](http://billingsgazette.com/news/local/draftkings-or-fanduel-in-montana-don-t-bet-on-it/article_f72b247d-5b9d-50bb-a11c-5dbcb0966abb.html); see also MONT. CODE ANN. § 23-5-801 (West 2017). Nevada requires daily fantasy sports operators to obtain a gambling license to operate in the state, something the companies have been reluctant to do. See *infra* Part IV. Montana, meanwhile, also considers daily fantasy sports to be gambling, but prohibits internet gambling, thus making it impossible to offer the daily fantasy contests. See Hoffman, *supra*.

15. See *id.*

16. See Joshua M. Peles, Note, *NCAA v. N.J.: New Jersey Rolls the Dice on a Tenth Amendment Challenge to the Professional and Amateur Sports Protection Act*, 22 JEFFREY S. MOORAD SPORTS L.J. 149, 158–60 (2015).

17. *Office of Comm’r of Baseball v. Markell*, 579 F.3d 293, 308 (3d Cir. 2009).

18. See Peles, *supra* note 16, at 160.

### B. *New Jersey’s Quest for Sports Betting*

Prior to PASPA’s enactment, the law gave states a grace period during which to decide whether to offer sports betting and take advantage of the exception. As noted above, four states did. New Jersey, however, was not among the four—even though New Jersey has historically taken an open approach to gambling, specifically building up the gambling economies in Atlantic City and at horse racetracks throughout the state.

In 2011, with New Jersey’s casino industry beginning to falter, the state legislature passed the “Sports Wagering Law,” which allowed casinos to offer sports betting.<sup>19</sup> The bill was met with almost immediate backlash from professional sports leagues and the NCAA, which filed a lawsuit in the District of New Jersey seeking an injunction.

The case eventually made its way to the Third Circuit Court of Appeals. In *NCAA v. Governor of N.J.* [hereinafter “*Christie I*”], New Jersey—cash-strapped and seeing sports betting as an untapped revenue source—argued that by preventing states from regulating sports gambling, PASPA violated the “anti-commandeering” doctrine of the Tenth Amendment. The “anti-commandeering” provision, as established in *New York v. United States*, prevents the federal government from forcing states to establish and enforce regulations.<sup>20</sup> New Jersey claimed that PASPA required the states to ban sports betting, thus “conscripting the states into doing the work of federal officials.”<sup>21</sup>

The court disagreed. Judge Fuentes decided that PASPA was not commandeering but rather “preemptive.” Citing “classic preemption language” in PASPA, the judge noted the law “invalidate[s] state laws that are contrary to the federal statute.”<sup>22</sup> This distinction matters because instead of the federal government forcing the states to institute restrictions on gambling, it is prohibiting the states from authorizing any sports betting scheme.

### C. *New Jersey’s Resilience*

Despite losing the case on the merits, New Jersey was emboldened by the Third Circuit’s ruling and the opinion’s distinction regarding authorization. It relied on this language in its subsequent attempt to bring sports betting to the state in 2014. At that time, the state enacted a new law aimed at repealing

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19. See *id.* at 152.; N.J.S.A. 5:12A-1 et seq.; Christopher L. Soriano, *The Efforts to Legalize Sports Betting in New Jersey—A History*, NEW JERSEY LAWYER (April 2013), [https://www.duanemorris.com/articles/static/soriano\\_njlawyer\\_0413.pdf](https://www.duanemorris.com/articles/static/soriano_njlawyer_0413.pdf).

20. See generally *New York v. United States*, 505 U.S. 144 (1992) (finding unconstitutional a federal provision requiring a state to “take title” of radioactive waste if the state did not establish or gain access to a waste depository).

21. See *Nat’l Collegiate Athletic Ass’n v. Governor of N.J.*, 730 F.3d 208, 262 (3d Cir. 2013) [hereinafter “*Christie I*”], *cert. denied*, 134 S. Ct. 2866 (2014).

22. See *id.*

specific prohibitions against sports betting.<sup>23</sup> Essentially, by lifting restrictions on who would be permitted to place bets (anyone over the age of twenty-one) and where such bets would be placed (racetracks and casinos), New Jersey again tried to maneuver through the court's ruling in an attempt to bring sports betting to its beleaguered gambling industry. New Jersey argued that under the holding of *NCAA v. Governor of New Jersey* ("Christie I"), PASPA prevented the states from authorizing sports betting schemes and the 2014 law merely removed the state restrictions against sports betting. Furthermore, New Jersey argued that PASPA could not force the state to keep these prohibitions in place, or else it would violate the anti-commandeering doctrine.

Unfortunately for New Jersey, its attempt to pass this law was met with the same resistance as its previous attempt. Once again, the Third Circuit thwarted the effort.<sup>24</sup> The three-judge panel held that, despite the state's claims to the contrary, the 2014 law was effectively an authorization of sports betting.<sup>25</sup> The court stated that because the only places where it was legal to offer sports betting under the new law—casinos and racetracks—still required a state gaming license to operate, the law, essentially, was a form of sports betting regulation.<sup>26</sup> The decision forced New Jersey to either enforce all prohibitions or remove every restriction to sports betting and make it fully legal.

The New Jersey cases raised an interesting question: Did PASPA force states to enact laws to carry out the federal objective? Although the three-judge panel decided that *Christie I* had, in fact, settled the anti-commandeering question, New Jersey appealed the decision and requested an *en banc* review in front of the entire Third Circuit bench. It was during the *en banc* oral arguments that the court re-opened the anti-commandeering question.<sup>27</sup> The new case in front of the full bench, as with all *en banc* hearings, vacated the previous ruling in *Christie II* and provided new hope to New Jersey and sports betting proponents by allowing for new arguments concerning the anti-commandeering question.<sup>28</sup>

That glimmer of hope, however, was short-lived. The decision of the *en banc* court re-established the original decision in *Christie II* that determined the partial repeal to be nothing more than a veiled attempt to authorize sports

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23. See Amelia Curotto, Comment, *Hanging on by a "Tail": New Jersey's 2014 Effort to Legalize Sports Gambling Stays Alive in the Third Circuit*, 23 JEFFREY S. MOORAD SPORTS L.J. 481, 482 (2016).

24. See *Christie II*, *supra* note 9, at 265; Curotto, *supra* note 23 at 495.

25. See *Christie II*, *supra* note 9, at 265–66.

26. See Curotto, *supra* note 23, at 495.

27. See *id.* at 502; see also Patrick Doughty & Joshua Calo, *Sports Betting in the Wild, Wild, Wild East: Setting the Line on New Jersey's Final Challenge to PASPA*, MOORAD SPORTS L. BLOG (Feb. 20, 2016), <http://lawweb2009.law.villanova.edu/sportslaw/?p=3490>.

28. See Doughty & Calo, *supra* note 27 (citing oral arguments from *en banc* rehearing regarding vacation of prior ruling).

betting.<sup>29</sup> It also affirmed the ruling in *Christie I* that PASPA did not violate the anti-commandeering principles of the Tenth Amendment.

With this decision, New Jersey is nearly out of options in overturning PASPA. Last month, the Office of the Solicitor General met with lawyers representing the leagues and the state.<sup>30</sup> At the request of the United States Supreme Court, the Solicitor General will file a brief on whether the Court should grant *cert.* on New Jersey’s case after hearing arguments from both sides.<sup>31</sup> The Solicitor General’s recommendation is generally given much weight by the Supreme Court Justices and may ultimately determine the fate of PASPA.<sup>32</sup> However, while a brief is expected shortly, it does not appear President Trump’s nominee for Solicitor General, Noel Francisco, will be confirmed in time.<sup>33</sup> But either way, this could very well be New Jersey’s last roll of the dice for sports betting.

#### D. *The Future of the Professional Leagues’ Resistance*

While it may still be unclear how high sports betting is on legislative agendas across the country, professional leagues have had another opportunity to address a form of sports betting in recent years. Enter Daily Fantasy Sports. DFS, as it is known, is a relatively new take on the traditional fantasy sports model. Fantasy sports allow fans to select a roster—or lineup—of players from real teams to compete against other lineups. Points are awarded based on the real-world performance of a selected player and the lineup with the most points wins. At the end of the season, contestants with the best record win their league—often a cash prize.

Traditional fantasy sports follow a “season-long” model, meaning contestants set lineups based on a set of players they “drafted” at the beginning of the season. This style forces contestants to adjust their lineups based on draft strategies, injuries, off days, bye weeks, etc. Daily Fantasy Sports, as the name

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29. See Nat’l Collegiate Athletic Ass’n v. Governor of N.J., 832 F.3d 389, 396 (3d Cir. 2016).

30. See John Brennan, *NJ Officials Met with US Solicitor General on Sports Betting*, NORTHJERSEY.COM (April 11, 2017, 12:56 PM), <http://www.northjersey.com/story/news/business/meadowlands-matters/2017/04/11/nj-officials-met-us-solicitor-general-sports-betting/100325750/>.

31. See Dustin Gouker, *The Likely New Solicitor General, And What It Could Mean for US Sports Betting*, LEGAL SPORTS REPORT (March 10, 2017, 11:58 AM), <http://www.legalsportsreport.com/13313/solicitor-general-francisco-sports-betting/>.

32. See Brennan, *supra* note 30.

33. See Marcia Coyle, *Noel Francisco, Trump’s Solicitor General Pick, Is Sidelined for Now*, THE NATIONAL L.J. (April 6, 2017), <http://www.nationallawjournal.com/id=1202783127057/Noel-Francisco-Trumps-Solicitor-General-Pick-Is-Sidelined-for-Now?slreturn=20170415205902>. See also Gouker, *supra* note 31 (describing Francisco as potentially pro-New Jersey because of strong states’ rights views).

implies, however, allows contestants to select new rosters and compete for cash prizes every game day. Contestants are not stuck with the same few players for months, but rather can pick who they deem to be the best player any given day. This immediacy, along with other slight differences, has drawn comparisons to typical sports betting. Essentially, DFS contestants are inclined to analyze game-to-game matchups rather than hoping a specific group of players perform well over the course of a season.

Traditional fantasy sports was specifically exempted from the 2006 Unlawful Internet Gambling Enforcement Act [hereinafter “UIGEA”].<sup>34</sup> This exemption allowed sports websites like Yahoo, ESPN, and CBS Sports to launch fantasy platforms and grow the popularity of fantasy sports. DFS grew out of this popularity and perhaps filled a demand for fans looking to win money based on the outcomes of sports games any given night.

The professional leagues were quick to jump aboard DFS. Despite the heavy overtones of sports betting associated with DFS, fans had already had a taste of the nightly contests and the leagues were all too happy to have fans watch an otherwise “boring” midweek contest between two cellar-dweller teams for the implications for their DFS contest. At the same time the professional leagues were paying super-lawyer Paul Clement to defend the integrity of sports during oral arguments of the *en banc* Third Circuit regarding New Jersey’s proposed sports gambling legalization, the NBA, MLB, and NHL were actively *investing* in Daily Fantasy Sports companies.<sup>35</sup>

In order to understand the future of sports betting in the United States, it is crucial to look at why DFS was so tempting for the professional leagues and how the issues that arose following the DFS success changed the conversation about the demand for sports betting and the integrity of the game.

## II. CASE STUDY: THE NFL IN 2015; DAILY FANTASY SPORTS AND GAMBLING GREY AREAS

The 2015 NFL season marked the fiftieth season of America’s most popular sport. The league marked the occasion by gilding the yard numbers and NFL Shield logo. Gold numbers and logos, however, were not the only noticeable addition to the NFL viewing experience in 2015.

An incessant barrage of television and radio commercials, internet pop-up advertisements and even pre-game and in-game promotions marketed a new

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34. See 31 U.S.C. §§ 5361–5367 (2006); Dustin Gouker, *UIGEA Author: “No One Ever Conceived That Law Would Allow Daily Fantasy Sports”*, LEGAL SPORTS REPORT (May 8, 2015, 8:15 PM), <http://www.legalsportsreport.com/1369/uigea-author-did-not-intend-daily-fantasy-sports-carveout> (quoting Representative Jim Leach’s assessment that exemption would be “de minimus [sic] footnote”).

35. See *infra*, notes 39-42.

way to consume, and wager on, the NFL.<sup>36</sup> Daily Fantasy Sports (“DFS”), the ads explained, were a more frequent, more exciting and (left unsaid) more lucrative version of the traditional season-long fantasy football games.<sup>37</sup> Fans who had played general manager on a seasonal basis could now do so weekly, drafting real-life NFL players onto imaginary teams every week of the season. Each NFL player would be assigned a price based on several factors including position, skill, and opposing team, and fans could fill out their rosters while staying under a predetermined “salary cap,” balancing star players with higher prices while filling out their rosters.

In calculating performance, fans were awarded points based on aggregating their players’ on-field performances during the game; the fan roster with the most points won. The same process would happen next week, and the week after, and so on. Now the familiar, widely-popular season-long fantasy leagues that millions of Americans played with family members, friends, or coworkers could be accelerated to happen on a weekly basis, without the apparent inconvenience of having to wait until the end of the NFL season to win.

And, as the marketing campaigns blared, boy, could fans win a lot! Commercials boasted of millions of dollars in cash prizes from games that were as easy to play as could be. At the peak of the ad campaigns, a DFS commercial appeared on television *once every ninety seconds*.<sup>38</sup> Two companies emerged to garner massive mindshare and market share as the leading DFS operators: DraftKings and FanDuel. Each week appeared to be a mini-arms race between the two tech startups, both trying to outdo the other with higher and higher cash prizes, more contest offerings, and sponsorships.

DraftKings and FanDuel had become the Coca-Cola and Pepsi of DFS. Indeed, with their constant marketing and ad buys, it was hard to believe how young and how early-stage these companies were. During the summer prior to the start of the 2015 NFL season, both start-ups closed staggering investment rounds. FanDuel raised \$275 million from notable investors such as Google, Time Warner, NBC Sports, and Comcast.<sup>39</sup> At the time, this single round of investment was greater than the entire amount previously invested across the

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36. See Dustin Gouker, *DraftKings’ TV Blitz: One Commercial Every 1.5 Minutes; \$82 Million Spent in ’15*, LEGAL SPORTS REPORT (Sept. 2, 2015, 7:20 PM), <http://www.legalsportsreport.com/3483/draftkings-tv-commercial-blitz/>.

37. See DraftKings, *Draft Kings TV Commercial*, YOUTUBE (Nov. 19, 2013), <https://www.youtube.com/watch?v=soniQkpTLhE>; FanDuel, *FanDuel TV Commercial 2015—Promo Code BANG200*, YOUTUBE (Mar. 30, 2015), <https://www.youtube.com/watch?v=B0pd0R1S1ec>.

38. See Gouker, *supra* note 36.

39. See Dustin Gouker, *Report: FanDuel Raises \$275mm For Billion-Dollar Valuation, Doubling All Investments in DFS Sites*, LEGAL SPORTS REPORT (July 13, 2015 9:58 PM), <http://www.legalsportsreport.com/2326/fanduel-raises-275-million/>; *Daily Fantasy Sports Investment & Acquisition Tracker*, LEGAL SPORTS REPORT, [http://www.legalsportsreport.com/dfs-investment-and-acquisition-tracker/#DraftKings\\_funding\\_history](http://www.legalsportsreport.com/dfs-investment-and-acquisition-tracker/#DraftKings_funding_history) (last updated Jan. 2, 2017) [hereinafter “DFS Tracker”]

entire daily fantasy sports industry.<sup>40</sup> Not to be outdone, DraftKings reportedly closed an investment round of over \$300 million a few weeks later.<sup>41</sup> Additional reports would later show an additional undisclosed round of \$200 million raised by DraftKings.<sup>42</sup> Both companies now had valuations of around \$1 billion and deep war chests to be the market leader synonymous with DFS; to be Coke, not Pepsi.<sup>43</sup>

Notable from a sports gambling standpoint were certain investors in these DFS companies, investors that were as important a group of stakeholders in American sports as any. Sports leagues and team owners, traditionally strongly opposed to any form of “gambling” in the name of integrity, were putting their money into DFS.<sup>44</sup> They recognized the massive fan engagement tool that daily fantasy was, and the potential monetization opportunities that it offered. As for intersections with “gambling”?<sup>45</sup> Stay tuned.

DraftKings investors included MLB, the NHL, and Major League Soccer (“MLS”).<sup>46</sup> FanDuel investors included the NBA.<sup>47</sup> While the NFL did not secure an equity stake in either company, it certainly embraced DFS. Nearly all of its thirty-two teams partnered with one of the companies in marketing and/or licensing deals, as did the NFL Players Association. And, while the league did not invest, two of the league’s most influential and well-known owners, Jerry Jones of the Dallas Cowboys and Robert Kraft of the New England Patriots, were early private investors in DraftKings.<sup>48</sup>

The leagues’ and owners’ investments did not stop at financing the two companies; their brand identification only grew stronger. Visibility at stadiums, on television broadcasts, and in and around other media increased dramatically. The iconic AT&T Stadium—home of the Dallas Cowboys and often referred to

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40. See Gouker, *supra* note 39; *DFS Tracker*, *supra* note 39.

41. See Dustin Gouker, *DraftKings Gets \$300 Million Investment, Led by Fox Sports*, LEGAL SPORTS REPORT (July 26, 2015, 8:53 PM), <http://www.legalsportsreport.com/2645/draftkings-raises-300mm-led-by-fox-sports>; *DFS Tracker*, *supra* note 39.

42. See Curt Woodward, *DraftKings Raised \$200m in Investments in Summer*, BOSTON GLOBE (Oct. 30, 2015), <http://www.bostonglobe.com/business/2015/10/30/draftkings-raised-another-before-regulatory-scrutiny-gearing-for-nfl-blitz/6chr2cn09b4WXVfUD9LZKL/story.html>; *DFS Tracker*, *supra* note 39.

43. See Gouker, *supra* note 39.

44. Compare *id.*, with *supra* Part II.

45. Andrew Brandt (@Andrew Brandt), TWITTER (Feb. 9, 2016, 5:53 PM), <https://twitter.com/andrewbrandt/status/697236845684457472>.

46. See Gouker, *supra* note 41.

47. See *DFS Tracker*, *supra* note 39; Marc Edelman, *7 Legal Risks of the NBA Investing in FanDuel*, FORBES (Nov. 13, 2014, 8:28 AM), <http://www.forbes.com/sites/marcedelman/2014/11/13/7-legal-risks-of-the-nba-investing-in-fanduel/#2b01352360c7>.

48. See Andrew Brandt, *The NFL Has a Gambling Problem*, MMQB (Nov. 5, 2015), <http://mmqb.si.com/mmqb/2015/11/05/nfl-gambling-daily-fantasy-dfs-draftkings-fanduel-goodell>.

as “Jerry World”—featured the exclusive “DraftKings Fantasy Lounge.”<sup>49</sup> Its location was encircling the tunnel that leads the Cowboys’ players onto the field; indeed, it was the last thing the players saw as they ran out onto the field! The professional leagues were financially tying themselves and giving implicit approval to these companies and DFS.

On the network level, DFS could be distinguished from traditional fantasy sports enough to allow experts to promote DFS contests, even at the expense of their own proprietary content. ESPN’s fantasy football expert, Matthew Berry, restructured his weekly fantasy sports columns in favor of advising viewers in sponsored segments that featured his own DraftKings lineup.<sup>50</sup> ESPN also branded fantasy segments promoting DFS over its own integrated season-long fantasy platform.

DFS, while bursting into American fans’ lexicon in 2015 through the barrage of NFL-centric advertising, was certainly not a new phenomenon. And, while emerging as the market leaders in quick fashion, neither were DraftKings and FanDuel. Nigel Eccles, a former employee of British gaming company Betfair, co-founded FanDuel in 2009.<sup>51</sup> And in 2012, World Series of Poker alumnus, Jason Robbins, co-founded DraftKings.<sup>52</sup> In fact, keen-eyed fans may remember seeing commercials for both companies long before 2015. However, the 2015 advertising blitz brought DFS from the sports-geek fringe to the center of national conversation. And the rise was so swift and so “in your face” that the companies not only attracted fans, networks, and leagues, but others took notice as well. As money and attention began to flow, so did scrutiny from legislators.

#### A. *From Curiosity to Scrutiny*

The stakeholders of DFS—principals, investors, leagues, networks, etc.—had to know that as the attention and the revenues flowed in, so would attention from governing bodies in various degrees. And all parties involved were neither

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49. See Press Release, Dallas Cowboys, Draft Kings and Dallas Cowboys Sign Long-Term Partnership Agreement, (Aug. 13, 2015), <http://www.dallascowboys.com/news/2015/08/26/draftkings-and-dallas-cowboys-sign-long-term-partnership-agreement>.

50. See Matthew Berry, *Love/Hate: Winning in Week 1 is the First Step to Not Finishing Last*, ESPN (Sep. 13, 2015), [http://www.espn.com/fantasy/football/story/\\_/page/TMR150910/matthew-berry-love-hate-list-sleepers-busts-best-starts-sits-fantasy-football-week-1](http://www.espn.com/fantasy/football/story/_/page/TMR150910/matthew-berry-love-hate-list-sleepers-busts-best-starts-sits-fantasy-football-week-1) (“This year, the column will still be the same as you have always known. Intros, lots of players, and this season we will add more of a focus on daily fantasy (DFS), specifically geared toward the official daily fantasy sports provider of ESPN, DraftKings.com. In case you've somehow been under a rock, we are doing a pretty cool promotion with them. Sign up to play in a league on ESPN.com (there's still time!) and then enter the Millionaire Maker on DraftKings.com.”).

51. See John McDuling, *The Bizarre, Multibillion-dollar Industry of American Fantasy Sports*, QUARTZ (Dec. 13, 2014), <https://qz.com/298042/the-bizarre-multi-billion-dollar-industry-of-american-fantasy-sports>.

52. Jason Robbins, LINKEDIN, [www.linkedin.com/in/jason-robins-26270b1](http://www.linkedin.com/in/jason-robins-26270b1).

naïve nor blind to the potential conflict. But they knew (1) it would take time for governing bodies to sort out whether DFS was truly gambling and (2) what a powerful fan-engagement tool DFS represented. As I've tweeted before, "No major sports league wants DFS to go away. Significant fan engagement tool while providing sponsorship and other ancillary revenues."<sup>53</sup>

The tipping point from curiosity to scrutiny came in October 2015 with news that would forever change the DFS landscape. On October 6th, the *New York Times* reported that employees of both companies accessed confidential data and analysis on the platform that employed them, and used the information to their advantage on the competing platform's site.<sup>54</sup> New York Attorney General Eric Schneiderman soon began what would be a yearlong battle—sometimes one that was quite pitched—against the two companies, accusing them of fostering an environment rife with "insider trading" for these employees' personal benefit.<sup>55</sup> The *New York Times* went on to detail how several of the top players and big-prize winners on both sites were employees at the competing company.<sup>56</sup> The companies admitted little regarding these allegations—only that they hired employees from "the pool of devoted daily fantasy sports enthusiasts and allowed them to play the games."<sup>57</sup>

A week later, the Nevada Gaming Control Board ("NGCB") released a statement explaining that, in its view, DFS constituted sports betting, and that any company wishing to offer DFS contests in Nevada must apply for a state gaming license.<sup>58</sup> While this decision, at the time, was overshadowed by New York's "insider trading" controversy, its effect is still visible today. DraftKings and FanDuel, not wanting to admit they were conducting a sports betting operation in one state out of fear of admitting it in the others, were forced to

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53. Andrew Brandt (@AndrewBrandt), Twitter (Feb. 9, 2016, 5:53 PM), <https://twitter.com/andrewbrandt/status/697236845684457472>.

54. See Joe Drape & Jacqueline Williams, *In Fantasy Sports, Signs of Insiders' Edge*, N.Y. TIMES (Oct. 11, 2015) [hereinafter Drape & Williams, *Insiders' Edge*], [https://www.nytimes.com/2015/10/12/sports/fantasy-sports-draftkings-fanduel-insiders-edge-football.html?\\_r=0](https://www.nytimes.com/2015/10/12/sports/fantasy-sports-draftkings-fanduel-insiders-edge-football.html?_r=0); Joe Drape & Jacqueline Williams, *New York Attorney General Opens Inquiry Into Fantasy Sports Sites*, N.Y. TIMES (Oct. 6, 2015), <https://www.nytimes.com/2015/10/07/sports/draftkings-fanduel-inquiry-new-york-attorney-general.html>.

55. See Darren Rovell, *New York Attorney General Launches Inquiry into DraftKings, FanDuel*, ESPN (Oct. 7, 2015), [http://www.espn.com/chalk/story/\\_/id/13825667/new-york-attorney-general-eric-schneiderman-launches-inquiry-draftkings-fanduel](http://www.espn.com/chalk/story/_/id/13825667/new-york-attorney-general-eric-schneiderman-launches-inquiry-draftkings-fanduel).

56. See Drape & Williams, *Insiders' Edge*, *supra* note 54.

57. See *id.*

58. Memorandum from the State of Nevada Office of the Attorney General (Oct. 16, 2015), <http://www.legalsportsreport.com/wp-content/uploads/2015/10/Nevada-AG-DFS.pdf> ("In short, daily fantasy sports constitute sports pools and gambling games. They may also constitute lotteries, depending on the test applied by the Nevada Supreme Court. As a result, pay-to-play daily fantasy sports cannot be offered in Nevada without licensure." (footnote omitted)).

leave Nevada and, to this day, no longer offer DFS contests in Las Vegas, the home of American sports betting.<sup>59</sup>

The freeze-out in Nevada is significant due to the previously mentioned close ties—whether as investors or part of sponsorship arrangements—between the DFS companies and the professional leagues. After decades of opposition to sports betting in the name of the “integrity of the game,” the NFL, NBA, NHL, and MLB were now inextricably linked to DFS, classified by many, including state attorney generals and the NGCB, as sports betting.<sup>60</sup>

Upon further review, the NGCB may have had more in mind than DFS when shutting down these companies. As noted in *Christie I*, the leagues argued that sports betting would have a negative impact of fans’ perception and trust of the games. Leagues referenced polling showing negative perceptions of them were a team to move to Las Vegas.<sup>61</sup> That stance from the sports leagues has some very interesting context now, as just a year later two of the four major professional sports leagues appear to be embracing Las Vegas. As described below, the NHL is poised to kick off the 2017-18 season with a new expansion team, the Las Vegas Golden Knights.<sup>62</sup> As for the NFL, the Oakland Raiders have now been approved for relocation to Las Vegas by an NFL owners vote of 31-1 in March of 2017.<sup>63</sup>

#### B. *New York State of Mind*

Despite being unable to operate in Nevada, DFS was still growing nationally. However, Schneiderman sent the two leading DFS entities—as well as all other DFS companies then operating in New York—a cease and desist letter alleging that they were “in violation of New York State law against illegal gambling.” The letter further alleged that FanDuel and DraftKings both “use[d] deceptive advertising to lure consumers into an unregulated online gambling operation . . . .”<sup>64</sup> Schneiderman had raised the stakes; he was

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59. See Patrick Doughty, *Has the Luck Run out for DraftKings and FanDuel?*, MOORAD SPORTS L. BLOG, [http://lawweb2009.law.villanova.edu/sportslaw/?p=3298#\\_edn1](http://lawweb2009.law.villanova.edu/sportslaw/?p=3298#_edn1).

60. See *id.*

61. See Patrick Doughty, *Pound for Pound: A Legal Analysis of the Gambling, Alcohol, and Taxation Issues the NFL Must Weigh As it Expands to London*, 22 JEFFREY S. MOORAD SPORTS L.J. 593, 599 (2015).

62. See Alex Prewitt, *All In: Behind the Scenes with the Golden Knights, Vegas’s First Major League Franchise*, SPORTS ILLUSTRATED (Jan. 9, 2017), <http://www.si.com/nhl/2017/01/23/las-vegas-golden-knights-behind-scenes>.

63. See Phil Matier & Andy Ross, *How Raiders, Sheldon Adelson Had a Falling Out in Vegas*, S.F. CHRONICLE (Jan. 31, 2017), <http://www.sfchronicle.com/raiders/article/How-Raiders-Sheldon-Adelson-had-a-falling-out-in-10898537.php>.

64. Press Release, Eric T. Schneiderman, Attorney General, New York, A.G. Schneiderman Issues Cease and Desist Letters to FanDuel and DraftKings, Demanding That Companies Stop Accepting Illegal Wagers in New York State (Nov. 11, 2015), <https://ag.ny.gov/press-release/ag-schneiderman-issues-cease-and-desist-letters-fanduel-and-draftkings-demanding>.

shutting down DraftKings and FanDuel (and all other DFS entities) in the state in which they had the most consumers. This was a preemptive shot across the bow from Schneiderman, setting the stage for a legal fight that would be costly financially and emotionally.

As my saying goes, “*there will be lawyers.*” Both companies brought in major—read “high priced”—law firms, which responded to Schneiderman’s cease-and-desist letter with predictable defiance.<sup>65</sup> Beyond arming themselves with legal teams, FanDuel and DraftKings each launched grassroots campaigns about how DFS were “games of skill,” and thus protected from legal and legislative inquiries common to “real” gambling—an issue that, to this day, remains unresolved.<sup>66</sup> Meanwhile, banks, credit agencies, and payment services began to pull out of agreements with the companies for fear of being tied to any state investigation.<sup>67</sup>

DFS entered the courtroom with new developments arising almost, well, daily. The companies both requested injunctions against their cease and desist letters as well as a declaratory judgment that DFS was not considered gambling under the New York law on November 13<sup>th</sup>.<sup>68</sup> Shortly thereafter, on November 17<sup>th</sup>, Attorney General Schneiderman filed separate complaints against both companies alleging five counts of illegal gambling and four counts of “false advertising.”<sup>69</sup> Schneiderman, as previously stated, appeared motivated and driven to drive DFS from the New York borders, largely in the name of consumer protection and preventing residents from developing any compulsive gambling habits (this, of course, in a state with a thriving state lottery and sanctioned horse race wagering).

As soon as the complaints were filed, FanDuel decided to wave the white flag and officially cease operations in New York, although DraftKings

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

66. See Jimmy Vielkind and Bill Mahoney, *FanDuel and DraftKings Prepare Legislative Push in New York*, POLITICO (Nov. 16, 2015, 5:58 AM), <http://www.politico.com/states/new-york/albany/story/2015/11/fanduel-and-draftkings-prepare-legislative-push-in-new-york-028012> (describing fan protests following AG Schneiderman’s cease and desist letters to DFS operators).

67. See Fitz Tepper, *DraftKings and FanDuel Lose a Payment Processor*, TECHCRUNCH (Jan. 29, 2016), <https://techcrunch.com/2016/01/29/draftkings-and-fanduel-lose-payment-processor>.

68. Complaint at 2, *People v. Draftkings, Inc.*, No. 102014/2015 (N.Y. Sup. Ct. Nov. 12, 2015), <http://www.legalsportsreport.com/wp-content/uploads/2015/11/2015.11.13-DraftKings-Verified-Petition.pdf>; Complaint at 1, *People v. FanDuel, Inc.*, No. 161691/2015, slip op. 32332(U) (N.Y. Sup. Ct. Nov. 13, 2015), <http://www.legalsportsreport.com/wp-content/uploads/2015/11/fanduel-doc-3.pdf>.

69. Complaint at 29, *People v. DraftKings, Inc.*, No. 453054/2015, slip op. 32332(U) (N.Y. Sup. Ct. Nov. 17, 2015), [https://ag.ny.gov/pdfs/DK\\_Complaint.pdf](https://ag.ny.gov/pdfs/DK_Complaint.pdf); Complaint at 28, *People v. FanDuel, Inc.*, No. 453056/20156, slip op. 32332(U) (N.Y. Sup. Ct. Nov. 17 2015), [https://ag.ny.gov/pdfs/FD\\_Complaint.pdf](https://ag.ny.gov/pdfs/FD_Complaint.pdf).

remained in operation.<sup>70</sup> On December 11<sup>th</sup>, New York Supreme Court Justice Manuel Mendez granted preliminary injunctions against the two companies due to the state’s “interest in protecting . . . those with gambling addictions.”<sup>71</sup> Later that day, however, New York State Supreme Court Appellate Division Justice Paul G. Feinman granted a temporary stay of the injunction in order to prevent irreparable harm to the DFS companies.<sup>72</sup> FanDuel resumed operations in the market along with DraftKings.<sup>73</sup> So after nearly a month and a half of nonstop court battles, everything was essentially back to where it started—DFS companies offering contests under scrutiny and threat from Attorney General Schneiderman.

On New Year’s Eve of 2015, Schneiderman again showed his teeth. In an amended complaint, the attorney general sought relief to include complete “restitution of all funds obtained from consumers in connection with the fraudulent, deceptive, and illegal acts. . . .”<sup>74</sup> and called for up to a \$5,000 penalty for *each violation* of New York General Business Law (“NYGBL”).<sup>75</sup> This was an unprecedented use of punitive power under the NYGBL and, if enforced, would have cost FanDuel and DraftKings (and other companies that could certainly not afford it) millions of dollars.<sup>76</sup> Despite the amended complaint, the companies were able to stave off these punitive measures, winning a needed reprieve when the Supreme Court Appellate Division ruled they could continue operating until the resolution of the case, one not expected to be heard until the fall of 2016.<sup>77</sup>

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70. See Grove, *supra* note 65.

71. See *id.*; Joe Drape, *DraftKings and FanDuel Are Allowed to Operate in New York, for Now*, N.Y. TIMES (Dec. 11, 2015), [https://www.nytimes.com/2015/12/12/sports/draftkings-fanduel-daily-fantasy-sports-judge-upholds-ruling.html?\\_r=0](https://www.nytimes.com/2015/12/12/sports/draftkings-fanduel-daily-fantasy-sports-judge-upholds-ruling.html?_r=0) (quoting J. Mendez).

72. See Drape, *supra* note 71.

73. See Grove, *supra* note 65.

74. Amended Complaint at 34, *People v. DraftKings, Inc.*, No. 453054/205 (N.Y. Sup. Ct. Dec. 31, 2015), <https://www.scribd.com/doc/294409273/NYAG-DraftKings-Amended-Complaint>; Amended Complaint at 33, *People v. FanDuel, Inc.*, No. 453056/2015 (N.Y. Sup. Ct. Dec. 31, 2015), <https://www.scribd.com/doc/294409560/NYAG-FanDuel-Amended-Complaint>.

75. See *id.*

76. See Saqib Iqbal Ahmed, *New York Asks Fantasy Sports Sites to Give Money Back in Amended Lawsuit*, REUTERS (Jan. 4, 2016, 2:44 PM), <http://www.reuters.com/article/fantasysports-new-york-lawsuit-idUSL1N1400FR20160104>.

77. See Grove, *supra* note 62; Stewart Bishop, *DraftKings Seeks Total Halt of NY AG Action Pending Appeal*, LAW 360 (Mar. 9, 2016, 7:34 AM), <https://www.law360.com/articles/769623/draftkings-seeks-total-halt-of-ny-ag-action-pending-appeal>.

### C. *First Settlement Reached*

On March 21, 2016, both companies agreed to settlements with Schneiderman.<sup>78</sup> They would cease all operations in New York until after the case was resolved.<sup>79</sup> In exchange, Schneiderman agreed to drop the more serious charges against the two companies, those involving illegal gambling.<sup>80</sup> The agreement also provided that in the event that the New York state legislature expressly authorized DFS by the end of the current term (June 30, 2016), the companies would be allowed to resume operations.<sup>81</sup>

As with most settlements in any business context, both sides presented positive spins. Schneiderman could claim victory over the DFS invasion into New York while appearing to have protected New York consumers of DFS, the focus of his original suit against the companies (he spoke of DFS potentially leading to compulsive and addictive behavior).<sup>82</sup> Meanwhile, DraftKings and FanDuel were able to avoid the more serious legal challenges involving illegal gambling.<sup>83</sup> And if the state legislature could pass an authorization bill, the companies would be back in business before the 2016 NFL season, a key deadline for the DFS industry.

### D. *Other State Responses*

While the New York saga was unfolding, other states—worried about similar consumer protection issues as Schneiderman—scrambled to figure out how to legislate, litigate and/or regulate the industry. However, as New Jersey found out twice, states were very limited in their ability to regulate sports betting. This meant state attorneys general had to determine if DFS constituted “gambling” under the state’s gambling laws. If so, PASPA would limit any regulation, as it would be considered improper authorization of a sports betting scheme.

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78. See Provisional Settlement Agreement (Mar. 20, 2016), <http://www.ag.ny.gov/pdfs/NYAG-FanDuel-3.21.2016%20Agreement-Final-Executed.pdf>; see also Chris Grove, *FanDuel, DraftKings Reach Settlement with New York Attorney General*, LEGAL SPORTS REPORT (Mar. 21, 2016), <http://www.legalsportsreport.com/9130/fanduel-draftkings-reach-ny-settlement>.

79. See *id.*

80. See *id.*

81. See *id.*

82. See Press Release, Eric T. Schneiderman, Attorney General, New York, A.G. Schneiderman Seeks Preliminary Injunction Against Fanduel and Draftkings, <https://ag.ny.gov/press-release/ag-schneiderman-seeks-preliminary-injunction-against-fanduel-and-draftkings> (“Experts in gambling addiction and other compulsive behaviors have identified DFS as a serious and growing threat to people at risk for, or already struggling with, gambling-related illnesses.”).

83. See David Purdum, *DraftKings, FanDuel Will Stop in NY, but Appeal, Legislation Pending*, ESPN (March 22, 2016), [http://www.espn.com/chalk/story/\\_id/15033073/draftkings-fanduel-stop-ny-appeal-legislation-pending](http://www.espn.com/chalk/story/_id/15033073/draftkings-fanduel-stop-ny-appeal-legislation-pending).

Massachusetts, the home state of DraftKings and, perhaps for that reason, considered “DFS-friendly,” took a regulatory approach. Attorney General Maura Healey determined that daily fantasy sports was not gambling, and issued regulations, released on March 25<sup>th</sup>, four days after the New York settlement.<sup>84</sup> The regulations required companies to “exclude contests based on college events, set a minimum age of twenty-one for players,” and forbade employees of DFS platforms from playing themselves.<sup>85</sup> The regulations were predictably met with praise from Boston-based FanDuel and DraftKings (Martha Coakley, former attorney general of Massachusetts and Healey’s former boss, was and is a DraftKings consultant and advisor).<sup>86</sup> Eventually more, though not all, states started adopting similar regulations.

After months of legal turmoil and an uncertain future, DFS was back on surer footing because of the New York settlement and more DFS-friendly regulations. The New York legislature officially authorized DFS on June 30, 2016 although there are still over fifteen states that prevent all or some form of DFS.<sup>87</sup> As of this writing, however, it does not appear that any court will have the chance to decide if DFS constitutes gambling or not. DraftKings and FanDuel themselves have still not decided, as they have still not registered with the Nevada Gaming Control Board, but quickly and quietly registered for gaming licenses in the United Kingdom only a few months after the NGCB ruling.<sup>88</sup> The overall presence of DFS was noticeably absent from NFL programming in 2016, a stark contrast to the DFS tidal wave of promotion the year before.<sup>89</sup> Many industry commentators blamed the absence on a lack of funding for heavy advertising, an economic burden to the still-nascent companies caused by costly legal and lobbying battles brought on, ironically, from the endless promotional work in 2015.<sup>90</sup>

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84. See 940 MASS CODE REGS. 34.00 (2016), <http://www.mass.gov/ago/consumer-resources/consumer-information/dfs>; Press Release, Attorney Gen. of Massachusetts, AG Haley Proposes Strong Consumer Protection Regulations for Daily Fantasy Sports Operations in Massachusetts (Nov. 19, 2015), <http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-11-19-daily-fantasy-sports.html>.

85. See Dustin Gouker, *AG Healey Announces Final Daily Fantasy Sports Regulations*, LEGAL SPORTS REPORT (Mar. 25, 2016, 11:41 AM), <http://www.legalsportsreport.com/9272/massachusetts-fantasy-sports-regulations> (quoting DraftKings’s and FanDuel’s reactions to Massachusetts regulations).

86. See *id.*

87. Chris Grove, *What Are the States Where You Can Play Daily Fantasy Sports*, LEGAL SPORTS REPORT (JAN 2, 2017), <http://www.legalsportsreport.com/daily-fantasy-sports-blocked-allowed-states>.

88. Jacob Pramuk, *UK Launch Gives Draftkings a “Gambling” Problem*, CNBC (Feb. 8, 2016, 1:56 PM), <http://www.cnbc.com/2016/02/08/uk-launch-gives-draftkings-a-gambling-problem.html>.

89. See Alexandra Berzon, *Fantasy-Sports Sites Curtail Ad Spending*, WALL ST. J. (Aug. 1, 2016, 8:00 AM), <https://www.wsj.com/articles/fantasy-sports-rivals-slice-ad-spending-1470052800>.

90. See *id.*

Finally, the two leading DFS companies did what everyone expected them to do, despite repeated denials from both sides and a genuine dislike among leadership of each company. DraftKings and FanDuel agreed to merge in late 2016, a true alliance of the Hatfields and McCoys.<sup>91</sup> Two previously fierce competitors for brand recognition and market share will now pool their resources and fight to save an industry that was not long ago considered a billion-dollar “fan-engagement tool.”

### III. THE EVOLUTION

#### A. *Hypocrisy*

In the past decade or so, the leagues’ refusal to embrace gambling on a theoretical level due to their mantra of integrity did not reflect their actions on a practical level. With my experience and years of recent coverage of the business of football, I can speak most pertinently to the NFL and, more specifically, the Green Bay Packers. In Green Bay, both the land containing my own home and the land containing the hotel where the team stayed before every home game were property of the Oneida Nation Indian tribe. And that hotel was annexed to the Oneida Nation Casino. Thus, gambling was occurring literally steps away from Packer players ten nights a year, and available within minutes year-round (I had to rescue a couple of drunk coaches and employees from that casino). Moreover, while we did not sell naming rights to the Packers’ historic and iconic stadium, Lambeau Field (that would have qualified as heresy), we did do so to the large entrance gates into the stadium. One of those four naming rights sponsors was, and is, the Oneida Nation, known for its sprawling casino.

League wide, there have been, and continue to be, other associations with casinos, gaming, and gambling. For the past several years, the New Orleans Saints have decamped to West Virginia to hold part of their training camp at the posh Greenbrier Resort, at times joined for practice by other teams such as the New England Patriots.<sup>92</sup> Further, the Arizona Cardinals stayed and practiced at the Greenbrier on an eastern swing during the week between games during the 2016 season. A prime attraction of the Greenbrier is a grand and ornate casino. While players are theoretically forbidden from gambling, one wonders about enforcement of that rule with their limited free time and the casino steps away from their rooms. And while the Saints have announced they will not return to train there this summer, it has been reported that the Houston Texans will move the early part of their training camp to the Greenbrier. It

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91. See Joe Drape, *DraftKings and FanDuel Agree to Merge Daily Fantasy Sports Operations*, N.Y. TIMES (Nov. 18, 2016), <https://www.nytimes.com/2016/11/19/sports/draftkings-fanduel-merger-fantasy-sports.html>.

92. See Andrew Brandt, *The NFL Wrestles with Its Vegas Double Standard*, MMQB (April 11, 2017), <http://mmqb.si.com/mmqb/2017/04/11/nfl-arm-wrestling-las-vegas>.

appears that more, and different, players will now be exposed to that resort and its casino.

Further, the Detroit Lions have a sponsorship deal with MGM.<sup>93</sup> And, while the NFL does not allow jersey sponsorship, it does allow training camp jersey sponsorship, and a couple of teams’ sponsors have contracted with state lotteries on such deals. For those teams, all players’ jerseys are emblazoned with this form of “gambling.”

When I wrote about these apparent hypocrisies in the league’s anti-gambling stance a couple of years ago, I received a call from someone who was, well, very high up in the NFL hierarchy. His message to me was that my column was being discussed around the office that day and these issues of apparent hypocrisy were being discussed in recent weeks and months. He added that the league was looking to take a more “evolved” stance when it came to gambling and casinos, and that he appreciated the column. I was flattered but even more impressed that the league was becoming “evolved,” whether my thoughts were a tiny part of that evolution or not. Change was coming, with a healthy assist from the National Hockey League.

#### B. *Vegas Calling*

There is no better illustration of changing attitudes of professional sports leagues towards gambling than the willingness to consider and eventually embrace the epicenter of gambling in the United States: Las Vegas. Despite the city’s hosting of the NBA All-Star game in 2007, any discussion prior to the last few years of one of the major sports leagues actually placing a team there appeared to be a nonstarter. After all, gambling—as we knew it—struck at the heart of the cherished “integrity of the game” that commissioners crave for their leagues. And, of more specific concern to sports leagues and executives, having players in Las Vegas would make them easy marks for potential influence of point spreads and other forms of deception, a specter that would make fans, sponsors and networks run from the leagues. The mere mention of casinos, sports books and all they represent brought agitation among league leadership: they are not representative of integrity. Well, that was then; this is now.

#### C. *NHL Guinea Pig*

Thus, it took league experts by surprise when, in 2014, the NHL decided to start the vetting process of a possible expansion to Las Vegas.<sup>94</sup> With the 20,000-seat T-Mobile Arena already planned for the city, potential team owner

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93. *See id.*

94. *See NHL Allows Las Vegas to Explore Expansion Interest*, CBC SPORTS (Dec. 8, 2014), <http://www.cbc.ca/sports/hockey/nhl/nhl-allows-las-vegas-to-explore-expansion-interest-1.2865175>.

Bill Foley was granted permission by Commissioner Gary Bettman to start a “season-ticket drive”—a way to gauge the size of a future fan base.<sup>95</sup> This was an important step due to the nature of the Las Vegas market, where there is no deep history of professional sports franchises and the economy is largely driven by the tourist and gaming industry.<sup>96</sup>

Two years later, the NHL approved an expansion franchise, the Las Vegas Golden Knights for the 2017-18 season.<sup>97</sup> This was the first expansion in nearly two decades for the NHL.<sup>98</sup> The President and CEO of the Las Vegas Global Economic Alliance, Jonas Peterson said, “This could be a watershed moment for our community and sports in Southern Nevada . . . .”<sup>99</sup>

While the NHL surely is taking a big step in how the professional leagues view gambling and Las Vegas, the league is protecting its reputation by hiring sports data company Sportradar to serve as gambling watchdog.<sup>100</sup> Sportradar, which is partly owned by the NFL and the Washington Capitals owner Ted Leonsis, works with the NHL, NBA, and NFL to supply data to global betting houses in an effort to provide “an additional layer of security and protection.”<sup>101</sup> This deal perfectly demonstrates the slow, determined, but cautious approach the leagues are beginning to take towards accepting sports betting.

#### D. *Whither the NFL?*

From an NFL viewpoint, Las Vegas has always seemed to be forbidden fruit, as the embodiment of the previously taboo subject of gambling. The league had even prevented players—including Tony Romo and dozens of others—from attending a Fantasy Football event in Vegas in the summer of 2015.<sup>102</sup> When I asked senior NFL officials about such action, they were clear that the reason for disallowing Romo and other players was not due to the fantasy football nature of the event. Rather, it was due to the “association” with a casino. The event, while not even being held at the Venetian casino in Vegas, was being held in the convention center that annexed the casino. As mentioned

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95. See *id.*; Greg Beacham, *AP Source: NHL Settles on Las Vegas for Expansion*, ASSOCIATED PRESS (Jun. 14, 2016, 10:20 PM), <http://bigstory.ap.org/article/f665e04a389a4bdb846216dcb14089c6/ap-source-nhl-settles-las-vegas-expansion>.

96. See CBC SPORTS, *supra* note 94.

97. See Beacham, *supra* note 95.

98. See CBC SPORTS, *supra* note 94.

99. See Beacham, *supra* note 95.

100. See *NHL Hires Gambling Watchdog Ahead of Las Vegas Move*, CHI. TRIB. (Aug. 23, 2016, 2:45 PM), <http://www.chicagotribune.com/sports/hockey/ct-nhl-hires-gambling-watchdog-las-vegas-20160823-story.html>.

101. See *id.* (quoting NHL Commissioner Gary Bettman).

102. See *Tony Romo-led Fantasy Event in Vegas Called Off as NFL Balks*, USA TODAY (June 6, 2015, 12:10 AM), <http://www.usatoday.com/story/sports/nfl/2015/06/06/romo-led-fantasy-event-in-vegas-called-off-as-nfl-balks/28613655>.

above, juxtaposing these actions juxtaposed against the NFL’s existing association with casinos was problematic.

A change in thinking from the NFL has occurred, spurred on, in my mind, by three forces occurring all in a span of a couple of years since early in 2015. The first reason has been a primary focus of the Article: the broad acceptance, allowance and even embrace of fantasy football, specifically DFS. Commissioner Roger Goodell, knowing what a powerful fan engagement tool that fantasy represents, distinguished fantasy football from other forms of gambling in calling it a “mash-up” of players scored on their individual statistics, rather than being based on any team outcomes.<sup>103</sup> Goodell did not fully embrace DFS, noting that—unlike the NHL, NBA and MLB—the NFL had not taken an equity stake in either company.<sup>104</sup> Of course, he knew that despite the fact that the league had not done so, two of the league’s most influential owners, and two of Goodell’s closest confidantes, had personally invested in DraftKings. Fantasy Football, and the meteoric rise of DFS and the companies providing it, have provided some pavement in the road to Las Vegas.

The second force moving the NFL towards Vegas is the fact that another major professional sports league, the NHL, has entered the market, providing a “safer” runway for the NFL. From the NFL’s perspective, the NHL’s placement of the Golden Knights in the Vegas market, discussed above, will allow another league to dip their toe in the water first. The NFL can let the NHL “work the kinks out,” so to speak, in seeing the Beta version of the concerns about entering the market that stakeholders—owners, players, networks, sponsors, etc.—may have. And beyond the “traditional” sports leagues, NASCAR is increasing its presence in Las Vegas as well, announcing in March that it would host two races annually beginning in 2018. The NFL owes a debt of gratitude to NHL Commissioner Gary Bettman and Las Vegas Golden Nights owner Bill Foley (and, to a lesser extent, to NASCAR) for providing a template of a major professional sports league entering the previously taboo market of Las Vegas.

The third, and most intricate, force spurring NFL movement towards a Las Vegas presence comes from the aftermath of the NFL’s return, after a twenty-year absence, to Los Angeles.

#### E. *LA’s Siren Song*

When I was first hired by the Packers; I vividly remember my first NFL owners meeting in the spring of 1999. At the top of the agenda of that meeting was a discussion of returning a team to Los Angeles (the league had been out of the LA market since 1994, when the Rams and Raiders moved to St. Louis and Oakland, respectively). It clearly sounded like a priority, although as we now

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103. See Brandt, *supra* note 48.

104. See *DFS Tracker*, *supra* note 39.

know nothing happened for a variety of reasons, usually involving deficiencies in stadium and ownership funding and inadequate site locations.

For other NFL owners, the lack of a franchise in LA was not necessarily a bad thing. The fact that LA was an “open market” was part of the negotiating toolbox used by owners in talks with city and state officials about funding for improved or new stadiums and practice facilities. Whether implicit or explicit, the fact that LA operated without an NFL team for over 20 years was used as a stalking horse by owners to leverage gains in their home markets.

The lack of an NFL franchise in the nation’s second-largest market changed with a billionaire, a vision, and a change of direction for NFL policy. Stan Kroenke, owner of the then-St. Louis Rams, had bought property in Inglewood, California a few years ago, something that caught my eye. When Commissioner Goodell was asked about the purchase at a Super Bowl press conference years ago, his reply noted that Kroenke “has land throughout the country and throughout the world,” and that this was nothing to note.<sup>105</sup> Of course, it was not “nothing” and represented exactly what the NFL had been searching for over two decades: the right owner, the right stadium financing (mostly private) and the right site (a vast retail and entertainment complex in which the stadium was a small piece). The rest, as they say, was history.

After the 2015 NFL season, the Rams and two other NFL teams frustrated with their own stadium situations and negotiations with city leaders, the Chargers and Raiders, all applied for relocation to LA.<sup>106</sup> The latter two teams were (erstwhile) partners in a stadium site in Carson, California and had much ownership support heading into the vote. Chargers’ owner Dean Spanos and his family were longtime league loyalists, and the sentimental vote clearly was swinging their way until with winds of change hit that fateful league meeting in January of 2016 where the Rams were awarded the keys to Los Angeles.

I watched firsthand, while reporting on the decision for ESPN, what transpired next: Cowboys’ owner Jerry Jones and other owners convince the membership to think “big” and moved the vote away from Spanos and towards Kroenke’s project. In swift order, the votes were cast and in a 30-2 landslide, Kroenke and the Rams were awarded the keys to Los Angeles, allowing him to build his Shangri-La in Inglewood.

The Chargers finished second in the three-team race for LA and were given a year-long option to join the Rams in LA if they were unable to work something out in San Diego. After another year of negotiations with city and county officials (and a referendum) failed, the Chargers finally exercised that option, and will now move to LA to join the Rams in the new stadium when it

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105. See Nick Wagoner, *Stan Kroenke Buys 60 Acres in L.A.*, ESPN (Feb. 1, 2014), [http://www.espn.com/los-angeles/nfl/story/\\_/id/10380150/st-louis-rams-owner-stan-kroenke-buys-60-acres-land-los-angeles](http://www.espn.com/los-angeles/nfl/story/_/id/10380150/st-louis-rams-owner-stan-kroenke-buys-60-acres-land-los-angeles).

106. *Rams, Chargers, Raiders Apply for L.A. Relocation*, NFL.COM (Jan. 4, 2016, 10:55 PM), <http://www.nfl.com/news/story/0ap3000000617813/article/rams-chargers-raiders-apply-for-la-relocation>.

opens in 2019. That brings us to the team that finished last in the LA sweepstakes, the team barely mentioned in deliberations about which team would be allowed to relocate there: the Raiders.

F. *Just Move to Vegas, Baby*

Unlike the Chargers, who went back to the drawing board with city, county, and state officials to try to find common ground on a financing option, the Raiders made no secret of their desire to leave Oakland. Frustrated by limited talks with the city and the sharing of a substandard facility with the Oakland A's baseball team (they are the only NFL franchise to do so), Raiders owner Mark Davis made no secret of his desire to leave.<sup>107</sup> Despite the fact that the NFL, after awarding the rights to LA to the Rams, had offered the Raiders (and Chargers) a parting gift of \$100 million to be used towards stadium negotiations in their home market, Davis seemed intent on relocating. He was first pictured in San Antonio talking to city leaders there and then, more notably, in Las Vegas. And not only was Davis talking with Las Vegas; he was making a deal. And in short order, an astounding \$750 million of public funding in Nevada was allocated towards a new stadium, assuming the Raiders would come and play there.<sup>108</sup> NFL owners, used to stadium deals taking months or years to successfully negotiate (if at all), were impressed. However, being impressed by a deal and approving a move to Las Vegas were two different things.

Davis presented the four funding partners of the potential relocation—the Raiders, the NFL, Nevada and casino mogul Sheldon Adelson—to the powerful NFL Stadium and Finance Committees (comprising more than half of NFL owners) in January to what I am told was a positive reception from the group. Since that time, Adelson has backed out; it appears he thought there would be more coming back to him for his sizable investment (\$650 million) than he found out was the case.<sup>109</sup> Adelson's exit may actually have been a blessing in disguise for Davis—to be explained below—and Bank of America later filling that funding gap.

Beyond the financing details, the fascinating issue from this Article's viewpoint is the lack of scrutiny the potential move received from owners and league leadership when it came to concerns over gambling. In talking to two people in the room where the Raiders proposal was being vetted, I was told that the questions asked concerned (1) the financing, and (2) whether Las Vegas

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107. See George Avalos, *Time for Oakland to “Move On” from Raiders, says Mayor Libby Schaaf*, MERCURY NEWS (March 28, 2017, 5:03 PM), <http://www.mercurynews.com/2017/03/28/time-for-oakland-to-move-on-from-raiders-mayor>.

108. See Seth Wickersham & Don Van Natta Jr., *Sin City or Bust*, ESPN (April 13, 2017), [http://www.espn.com/espn/feature/story/\\_/id/19143486/the-story-how-owner-mark-davis-moved-raiders-las-vegas](http://www.espn.com/espn/feature/story/_/id/19143486/the-story-how-owner-mark-davis-moved-raiders-las-vegas).

109. See *id.*

could sustain a long-term fan base, as it would be one of the smallest NFL markets and relies so heavily on tourism. Here is the stunning report from that meeting: *not one question was raised about gambling!* Yes, there were concerns about Las Vegas as an NFL market, but none of those concerns involved moving an NFL team to the country's bastion of gambling, a previously taboo area for the NFL. Indeed, the one element to the Raiders' move that was causing consternation among some, but certainly not all owners, was the presence of Adelson, a person as closely tied to the word "casino" as perhaps anyone in the country. Even his presence in the deal, I am told, would not have been a deal-killer.

The Raiders move was approved by a vote of 31-1 on March 27th and the NFL will cross the Rubicon into the home of American gambling in 2020.<sup>110</sup> The NFL and its leadership truly have "evolved."

### G. *Silver Linings and the Future*

The embrace of DFS and the absence of fear and loathing about Las Vegas signal a new trend when it comes to sports and gambling. While leagues continue to hold fast to their mantras of integrity and competitive balance, gambling is hardly the taboo subject that it once was. This is not your father's era when it comes to sports and gambling. Times are changing, and more sports leagues and executives are "evolving."

Nowhere is this evolution more prominently embodied than in the commissioner of the NBA, Adam Silver. It has now been nearly three years since Silver penned what appeared to be an unsolicited, out-of-nowhere Op-Ed in the *New York Times*.<sup>111</sup> There he essentially laid bare the notion that, since we all know that gambling exists in the shadows, it was time to bring it into the light. Silver became the most prominent sports leader to go on record espousing legalized gambling, a position that, now two years later, does not seem as brazen as it did at that time. Interestingly, the two commissioners who publicly declined to endorse Silver's position, the NHL's Gary Bettman and the NFL's Roger Goodell, are now placing teams in Las Vegas. And although Silver and the NBA maintained legal opposition to New Jersey's efforts to legalize gambling, Silver's comments from 2014 resonate today. Gambling is slowly peeking out of the shadows, and will see the light in the foreseeable future.

Even more recently, two more league commissioners have echoed Silver's point. Major League Baseball commissioner Rob Manfred stated that professional baseball is "re-examining [its] stance on gambling" and Don

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110. See John Breech, *One NFL Team Voted Against the Raiders Move to Las Vegas and Here's Why*, CBS SPORTS (Mar. 27, 2017), <http://www.cbssports.com/nfl/news/one-nfl-team-voted-against-the-raiders-move-to-las-vegas-and-heres-why>.

111. See Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html>.

Garber, commissioner of Major League Soccer, spoke about the league’s investigation into understanding and becoming “more engaged in [the sports betting] market.”<sup>112</sup> Reflecting what Silver had written, Manfred and Garber both said that the leagues and their owners are aware that fans bet on games and that this type of “fan engagement . . . can fuel the popularity of a sport.”<sup>113</sup> Garber stressed that “it’s time to bring it out of the dark ages” and “if done properly, can be regulated and managed and controlled.”<sup>114</sup>

Manfred now occupies the same office originally formed because of a shocking sports betting scandal and which handed down (and maintains) the most infamous lifetime ban because of sports betting. Yet, he and his counterparts in basketball and soccer appear prepared to enter a new era of sports betting.<sup>115</sup> Manfred believes the question the leagues—and country—need to ask is:

Are we better off in a world where we have a nice, strong, uniform, federal regulation of gambling that protects the integrity of sports, provides sports with the tools to ensure that there is integrity in the competition[?] Or are we better off closing our eyes to that and letting it go on as illegal gambling?<sup>116</sup>

During Super Bowl week this year, the American Gaming Association (AGA) released some striking statistics about betting on the nation’s premiere sporting event. According to the AGA, Americans bet \$4.7 billion on Super Bowl 51, yet 97% of those wagers—approximately \$4.5 billion—were placed illegally.<sup>117</sup> The reason for the tiny percentage of legalized bets made on the game, according to AGA, was PASPA’s restriction on legalized betting beyond Nevada.<sup>118</sup> The AGA continues to vociferously lobby for repeal of PASPA, and they are starting to gain allies among powerful leaders such as Silver. The AGA has been echoing Silver’s remarks and salient point of his Op-Ed: that open and regulated gambling is inevitable and will strengthen, rather than diminish, the integrity of the game.

Interestingly, Roger Goodell may also agree with the AGA and Commissioner Silver. In an interview following the Raiders’ vote, Goodell tried to assuage concerns that the league’s integrity would not be diminished by

112. Daniel Roberts, *MLB Commissioner: “We Are Re-Examining Our Stance on Gambling,”* YAHOO FINANCE (Feb. 8, 2017), <http://finance.yahoo.com/news/baseball-commissioner-we-are-reexamining-our-stance-on-gambling-170536801.html>; Dustin Gouker, *Major League Soccer Commish on Sports Betting: “Bring It Out of the Dark Ages,”* LEGAL SPORTS REPORT (March 15, 2017, 10:58 AM), <http://www.legalsportsreport.com/13376/mls-sports-betting>.

113. *See id.*

114. *See* Gouker, *supra* note 112.

115. *See id.*

116. *See* Roberts, *supra* note 112.

117. *See* Daniel Roberts, *Super Bowl Bets Are at an All-Time High – And 97% Are “In the Dark,”* YAHOO FINANCE (Feb. 2, 2017), <http://finance.yahoo.com/news/super-bowl-bets-are-at-an-all-time-high-and-97-are-in-the-dark-190700239.html>.

118. *See id.*

the presence of sports betting in Las Vegas due to “the regulatory environment there, which actually could be beneficial in this case.”<sup>119</sup> In other words, Goodell curiously praised a “regulatory environment” in Las Vegas while fighting the imposition of the same “regulatory environment” that would come with legalized sports betting in New Jersey (I am sure attorneys for the state of New Jersey flagged those comments). Whether this signals a change on Goodell’s stance regarding New Jersey’s attempt to implement similar regulations is still to be seen.

The placement of major sports league franchises in Las Vegas, the gambling capital of the country, is a feather in the cap for the AGA and all those advocating for a legalized and regulated system of sports betting in the country. My sense is that at some point—I am not sure when — some form of legalized gambling will happen, despite the leagues’ stated opposition in court. With league commissioners such as Silver endorsing the proposition, the embrace of fantasy sports wagering and the placement of franchises in the signature city for gambling in the United States, the momentum continues to build.

We saw DFS move from litigation to legislation; the same may be ahead for other forms of sports betting. Gambling is happening in and around all of sports. Sports industry leaders may inevitably join Silver in believing that legalized gambling is preferable to gambling that exists only in the shadows. Moreover, there is a more important and more compelling reason why legalized gambling may be coming to sports, another lesson learned from the DFS saga: follow the money.

Leagues, teams and other sports properties are constantly looking under every potential rock for new and untapped revenue streams. The potential for monetization of gambling is limited only by our imagination. DFS investment has clearly whetted the appetite of sports leagues, owners, and networks; this appears to be just the beginning. It has already started to a small degree, whether with casino sponsorships, training camp jersey patches promoting state lotteries, fantasy drafts and competitions on in-house league web sites, game announcers mentioning point spreads on broadcasts, etc. Gambling is already part of the sports world we live in, integrity or not.

The future will look very different than the past in many facets of sports, and it should. Change is good; it challenges people and forces attitudes and positions to evolve. As Oakland A’s famed general manager Billy Beane—portrayed by Brad Pitt—said in the movie *Moneyball*, “Adapt or Die!”<sup>120</sup> The next decade will look a lot different than this past one in regards to sports gambling.

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119. See Dustin Gouker, *NFL Commish Goodell Finally Says Something Positive About Sports Betting: Nevada Regulation “Could Be Beneficial,”* LEGAL SPORTS REPORT (Mar. 29, 2017, 5:00 PM), <http://www.legalsportsreport.com/13535/nfl-commish-goodell-sports-betting-regulation>.

120. *MONEYBALL* (Columbia Pictures 2011).

In the future, no longer will team executives feel like they need league approval for their in-house fantasy drafts like I did for my draft with the Packers coaches and scouts. In fact, one day a draft like that one will be live-streamed on Facebook Live or an in-house team site, digitized and monetized with a likely gambling component for viewers as to which players these real-life general managers will "gamble" on. Again, this is not your father's world of sports gambling.

Integrity matters to sports leagues, but so do monetization, licensing and the revenue streams possible in a regulated marketplace. Stay tuned; the sports gambling train has left the station.