



End the Unfairness and Inequality Created By  
Government-Sponsored Casinos and Lotteries

# **Use Promo Code INEQUALITY**

**Inside Online Fantasy Sports Gambling  
and the Misleading, Unfounded Lobbying Push  
for “Government Regulation”**

**A Report by Stop Predatory Gambling  
November 2015**

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**About Stop Predatory Gambling**

A 501c3 non-profit based in Washington, DC, SPG is a national, bipartisan, government reform network made up of individuals and organizations from diverse backgrounds, political convictions and religious faiths.

We have dedicated ourselves to a fundamental national reform: ending government-sponsored gambling because it is dishonest, financially damaging to citizens and contributes to the institutionalized unfairness and inequality in our country.

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**Acknowledgements**

We wish to thank all the members of SPG’s network who played a role in compiling the facts for this report with special thanks to Mike Fagan, Bob Steele, Carl Bechtold, Guy Clark, Melynda Litchfield, Barrett Duke and Tom Grey.

## SUMMARY

FanDuel, DraftKings and similar commercial online sports gambling operators are not the result of a grassroots citizens' movement demanding internet gambling. Rather, they are the end result of powerful financial interests evading federal and state laws under the cloak of "Daily Fantasy Sports" (DFS). Their practices are predatory, deceptive, illegal and occur at the expense of everyday citizens.

Commercial gambling interests, along with some public officials and journalists, declare the solution is to allow government to sponsor internet gambling, or "regulated" gambling as the lobbyists call it, but these proposals provide no facts to suggest that government-sponsorship is an effective public policy. Indeed, by almost any measure, government's "regulation" of gambling has been a spectacular failure, contributing to rising unfairness and inequality in American life. We call for swift, affirmative action by public officials and law enforcement against these internet gambling operators.

### 1. "Daily Fantasy Sports" is Internet Gambling

#### *The Difference Between Season-Long Fantasy Sports and DFS*

*Season-long* fantasy sports started as a hobby and a form of community. It was a social activity. The trophy mattered more than the money. **Today, because of the introduction of "Daily Fantasy Sports" (DFS), fantasy sports has become a fleecing operation, plainly incorporating the three elements of gambling: consideration, chance, and prize.**

In season-long games, participants may exercise considerable skill in operating a team. They have to figure out who to draft, select who plays, make or reject trades, and analyze player and team statistics, all in hopes of having a successful season. Participants typically accumulate points based on the statistical accomplishments of the athletes they have selected to their teams through a draft. As originally conceived, these games were played between friends over the course of a sport's regular season.

Internet gambling operators like FanDuel and DraftKings altered both the traditional structure and the business model. Daily fantasy sports contests restart constantly and typically are played against strangers. Contests don't begin with a draft. Instead, contestants are given a "salary cap" with which to choose real players. Players' "prices" are set correspond with their perceived ability. For example, it might cost \$10,000 in "salary cap" money for Tom Brady and \$6,000 for a lesser quarterback like Matt Ryan. Winning wagers ("entries" in DFS parlance) are the ones with the best player statistical performances in that day's games. Players stats are translated into fantasy points.

Rather than simply hosting leagues for users, daily fantasy sports gambling operators serve as an exchange—just like bookmakers. They profit by keeping a cut of the money wagered, called in gambling parlance, "the juice," "the vigorish," "the vig" or "the rake."

## ***DFS Fits the Classic Definition for Commercial Gambling***

DFS *meets all* of the requirements of the fundamental definition of commercial gambling. It has **consideration** (the player wagers money), **prize** (the player wins cash prizes), and **chance** (there must be at least enough variance that an unskilled or lesser skilled bettor can win the prize, at least in the short run.)

DFS games have a fundamentally different relationship to chance than season-long fantasy games. On a given day an injury, a snowstorm, or a ball bouncing strangely could affect a result. In this regard, placing a wager with a DFS operator is very similar to placing a bet with a bookmaker.

Sports gambling operators deceptively claim that DFS is “a game of skill” but the presence of skill is irrelevant. Even if you were to argue that a “skilled” DFS player is not gambling, then it would also be true that a lesser or unskilled player must be gambling. The very existence of skilled DFS players – playing with an edge and for a profit – **depends on the presence of lesser skilled players willing to gamble at a disadvantage against them. You can’t have a skilled DFS player without a compensating gambler.**

**A recent analysis of DFS winners and losers affirms this fact. It concluded that the majority of DFS customers lack the skill to ever have success and thus are relying largely on chance to recoup some of their investment:** “While any player might get lucky on the back of a handful of entries, over time nearly all of the prize money flows to a tiny elite equipped with elaborate statistical modeling and automated tools that can manage hundreds of entries at once and identify the weakest opponents.”<sup>1</sup>

Another sample of bettors for the first half of the Major League Baseball season this year **found the top 1 percent of players paid 40 percent of the entry fees but reaped 91 percent of the profits.** On average, the top 11 players paid \$2 million in entry fees and made profits of \$135,000 each while accounting for 17 percent of all entry fees.<sup>2</sup> Meanwhile, the “fish” in the bottom 80 percent paid an average of \$49 in entry fees and lost half that cash.<sup>3</sup>

### ***Gambling Operators Themselves Openly Admit DFS is Gambling***

Many of America's casino operators and gambling regulators openly describe DFS as "gambling." MGM Casinos Chairman Jim Murren recently said those who argue that daily fantasy games are not gambling are "absolutely, utterly wrong." Murren added, "I don't know how to run a football team, but I do know how to run a casino, and this is gambling."<sup>4</sup>

The CEO of major sports book operator William Hill U.S., Joe Asher, echoed Murren's declaration. "You put up of something of value, cash, to win something of value, cash. It's the classic definition of gambling...any suggestion that (fantasy sports) is not gambling is the biggest bunch of baloney I've ever seen."<sup>5</sup>

Even the people who run these online DFS sites privately admit they are running a gambling operation like "a casino." **DraftKings CEO Jason Robins acknowledged his website was "almost identical to a casino" in an online discussion on Reddit three years ago.**<sup>6</sup>

Both internet gambling *and* commercial sports gambling are *illegal* in almost every state in America.

### ***States Are Recognizing That Online DFS is Internet Gambling***

Nevada is only the most recent state to recognize that DFS is "gambling."<sup>7</sup> A statement released by the Nevada Gaming Control Board states "DFS involves wagering on the collective performance of individuals participating in sporting events, under current law, regulation and approvals, in order to lawfully expose DFS for play within the State of Nevada, a person must possess a license to operate a sports pool issued by the Nevada Gaming Commission."<sup>8</sup> Likewise, the Washington State Gambling Commission has specifically declared that fantasy sports constitutes gambling, declaring "[F]antasy sports have never been authorized as gambling activities in Washington and are illegal."<sup>9</sup> In addition, the states of Arizona and Louisiana treat DFS as gambling, and prohibit it because the operators are commercial businesses that receive a share of the amounts wagered.<sup>10</sup>

### ***Comparing DFS to "Playing Chess" is Meritless and Misleading***

The head of one online fantasy sports gambling operator often compares his game to "playing chess."<sup>11</sup> Chess is not considered a gambling game because it is all about skill. But in a gambling game like DFS, you can lose by bad luck *despite your skill*. Skilled chess players may lose a chess match now and then but it is because of a mistake, not bad luck. Skilled DFS players can get beat because of a bad call by a referee, an Achilles tendon injury to a star player in the first quarter of a game, or a coach's decision to throw the ball at the goal line instead of handing the football to the running back you picked for your DFS wager. A skilled chess player does not lose a match because of an unlucky set of chess pieces.

## **2. The Profit Scheme Behind Online Daily Fantasy Sports Gambling and Why It's a Bridge to Internet Gambling**

Despite the hundreds of millions of dollars on advertising and marketing, neither FanDuel nor DraftKings have turned a profit.<sup>12</sup> Some analysts consider the 2015 NFL season a make or break moment for these online gambling operators.<sup>13</sup>

DFS operators were largely off the screen until 2011, five years *after* the Unlawful Internet Gambling Enforcement Act (UIGEA) was passed that prevents financial institutions in the United States from processing transactions related to online gambling and soon after the U.S. Justice Department shut down online poker operators.<sup>14</sup> DFS emerged out of the online poker shutdown which is why many sites are run by people with backgrounds in online poker.<sup>15</sup> DFS essentially has the same business model as online poker<sup>16</sup> and the tournament formats offered are taken directly from the online poker scene, the most important one being guaranteed prize pool tournaments.<sup>17</sup>

### ***Attracting Poor Players - the “Fish”- to Feed the Good Ones - the “Sharks”***

Like online poker, the only way the daily fantasy sports model works is by attracting poor players – the “fish” - to feed the good ones - the “sharks.” “Sharks” are the players whose successes lure in the masses whose less-sophisticated wagers generate a substantial amount of the profits or “rake” for these sites. These “sharks” are experts, designing and using sophisticated algorithms to take other people's money. The top high-volume "sharks" pay entry fees for hundreds of games, submit an array of lineups with differing choices — and extract lots of profits from the mass of bettors relying on chance—i.e., the “fish.”

“Fish” are citizens who tend to be new sign-ups with limited experience and who lose their money. Finding new fish to feed to the sharks is the most important requirement if this scheme is to succeed. **In other words, the real driver of growth and profit lies in finding as many new fish as possible. Without these fish, the model falls apart.** DFS operators’ marketing deals with pro sports teams and leagues are a key to making that happen.

This is why DFS gambling operators have been one of the biggest spenders on advertising and marketing in America for much of 2015. It’s how they attract the fish.

A UBS Investment Report challenged the sustainability of the “sharks-fish” profit scheme used by online poker/DFS-type gambling operations:

*“... this means that simple new customer acquisition is not an important measure: the only way the system can continue to grow is if new customer growth in a given year is higher than the growth seen in the previous year. This is clearly unsustainable in the long term, as it would ultimately require more people coming into the system than there are on the planet.”<sup>18</sup>*

The only way to avoid this fate was “diversification into other forms of gaming,” according to UBS.<sup>19</sup> DraftKings has already begun such a diversification by expanding into “eSports” where they encourage people to wager and lose money *on video games*.<sup>20</sup> By developing young people to become habitual bettors, companies like DraftKings and FanDuel will take their national databases of these new gamblers and market other forms of internet gambling to them in their bedrooms and on their smartphones.

### ***The Real End Game is Internet Casino Gambling***

“Legalized sports gambling is the endgame,” said Laurence DeGaris, a University of Indianapolis sports marketing professor who has been a sponsorship consultant for the National Football League and the National Hockey League. “One-day fantasy delivers a similar fan experience to gambling, so I expect the current database of customers would provide a good foundation for sports gamblers.”<sup>21</sup>

Marc Edelman, an associate professor of law at Baruch College in New York who consults on legal issues for online fantasy sports companies, affirmed the real intent behind these DFS gambling operators: **“The online platform for daily fantasy sports contests, for the most part, already looks incredibly similar to sports books in casinos. And they were not designed that way by accident.”**<sup>22</sup>

**This explains why when Draft Kings recently expanded into the United Kingdom, one of the minority of countries in the world that allows internet gambling, it was forced to get a license to operate by the UK Gambling Commission for running “gambling software” and “pool betting.”**<sup>23</sup> The gambling license “entitles the licensee to manufacture, supply, install and adapt gambling software for electronic devices or websites” and “entitles the licensee to provide facilities for pool betting by remote communication.”<sup>24</sup>

Casino companies like MGM and Caesars have unsuccessfully lobbied for internet gambling to be legalized at the federal level.<sup>25</sup> Authorizing DFS would provide gambling interests like these a back door way to bring internet casino gambling into every bedroom, dorm room and smartphone in the nation.



### ***Unfair Tactics Used in DFS to Take Advantage of Other Players***

Some players use automated scripts to find favorable matches or set lots of lineups to better their odds. These programming scripts make it easy to enter hundreds of games or change hundreds of rosters. For example, algorithms can watch for injuries or weather surprises and help bettors change their player corps accordingly.<sup>26</sup>

There are hand-coded, hyper-sophisticated statistical models that can vacuum up data on hundreds of games, players, contests and spit out thoughts on how to bet. There are even "fish finders" and browser extensions that highlight unskilled players most easily separated from their cash.<sup>27</sup>

These scripts are a big reason why sharks can play so many games at once — which ultimately nets the sites more entry fees.<sup>28</sup>

### ***DFS Gambling Has Little to Do With Improving the Fan Experience***

DFS gambling operators claim their business is simply about providing people a better “fan experience.”<sup>29</sup> This June 2014 excerpt below from a *Wall Street Journal* story, however, reveals how DFS has little to do with being a “fan:”<sup>30</sup>

*“He (Cory Albertson) may be the most consistently profitable fantasy sports enthusiast in the country. And the reason is that to him, **fantasy sports isn't really about sports. It's about data.** He doesn't trust his eyes to tell him who the best players are; he only trusts the numbers, which tell him who is overvalued and who is undervalued. **Albertson's strategy is almost literally a formula, and it bears little resemblance to casual fandom. "It's all about having logical inputs that lead to logical outputs," he says.**”*

*The result of all this evening's research and effort is that Albertson's algorithm determined the optimal lineup for a fantasy basketball team. More precisely, on Albertson's command, it produced hundreds of lineups that collectively represent a diverse portfolio that will, he hopes, generate thousands of dollars in profits by the end of the night's games, in about six hours.*

***He says the future of the industry is based on attracting casual fans. "If this is going to get huge, we need the guys who are going to buy in for \$20. They do it for fun," Wiggins says. But if that happens, number-crunching sharks like Albertson will be lying in wait. If casual players embrace daily fantasy in bigger numbers, Albertson says, "then we'll really be a printing press."***<sup>31</sup>

Those who have studied commercial gambling will recognize this classic formula for commercial gambling's profitability.

### ***The “Investors” in Online Daily Fantasy Sports Gambling***

DFS operators have generated headlines when announcing “new investors.” But much of these investments are really magic money. The fuel that ignited the current spending boom was the most recent round of financing in July 2015, when FanDuel raised \$275 million from six investors while DraftKings announced it had secured \$300 million. Companies that were listed as investors included Google Capital, KKR, Comcast, TimeWarner and 21st Century Fox in addition to several major sports leagues.<sup>32</sup>

DraftKings raised roughly half of its money from media companies and sports leagues including Major League Baseball, the National Hockey League and Madison Square Garden. These deals gave the company credibility as well as valuable exposure in sports venues and on team and league websites. DraftKings also bought the rights to become the official daily-fantasy partner of NHL, MLB and Major League Soccer, allowing the right to use official league marks on their games, sources familiar with the deals said.<sup>33</sup>

DraftKings often landed these deals ahead of competitors by offering extremely generous terms. In July 2015, Fox Networks contributed \$150 million to a \$300 million venture-funding round for DraftKings and received an 11% stake in the company. In a related deal with Fox, DraftKings agreed to spend \$250 million during the next three years on advertisements for the company’s Fox Sports unit, said a person familiar with the terms. That arrangement allowed Fox to take an ownership stake while collecting a 66% return on its money within three years.<sup>34</sup>

People familiar with the MLS and MLB investments in DraftKings said neither paid cash for their stakes. Instead, DraftKings offered to pay the leagues to become an official sponsor. These payments, these people said, involved a combination of cash and stock. Because DraftKings had issued stock to these partners, the company listed them as investors in the funding round, even though the leagues had not spent a dime. The deal terms also allowed DraftKings to increase its valuation to \$1.2 billion.<sup>35</sup>

NFL Commissioner Roger Goodell has said clubs can accept FanDuel and DraftKings ad dollars unless they misrepresent themselves as official NFL or team sponsors or illegally use league or team trademarks in their ads. “We have allowed ... advertising. There are sponsorship opportunities in the stadium, but not with our logos and marks.” Goodell has pointed out the NFL has not invested in either company, unlike MLB and the NHL, each of which hold an equity stake in DraftKings, or the NBA, which, along with NBC Sports, owns a piece of FanDuel.<sup>36</sup>

### **3. Internet Sports Gambling Operators Are Targeting American Youth**

No demographic is a bigger target for internet sports gambling operators like FanDuel and Draft Kings than America's youth. This should concern everyone because it is well-established that the younger children start gambling, the more likely it is they will become habitual gamblers and also problem gamblers, regardless whether they are from an urban or a suburban community.<sup>37</sup>

**According to data from the Fantasy Sports Trade Association, almost 10 million of the estimated 51.6 million fantasy sports players are under 18.<sup>38</sup> One of the companies to launch its own sports gambling operation, Yahoo, has recruited thousands of minors to play free fantasy sports. The obvious business model is for Yahoo to convert these “for-free” players into “real-money” gamblers. Such youth are at risk for being lured into real money gambling whether at Yahoo, other DFS gambling sites, or with other illegal gambling operations.**

Internet gambling is especially addictive for youth who have grown up playing video games.<sup>39</sup> By deceptively luring youth into online gambling, these sports gambling operators are setting up an entire generation of young people to become problem gamblers by making exploitive forms of gambling omnipresent in everyday life, whether in their own homes or on the smartphones they carry with them. When you combine that ubiquitous presence and availability with the intense passion kids have for their favorite athletes and sports, and then blend in sophisticated targeted marketing, player data tracking and tendency exploitation, DFS presents a dangerous, predatory mix to children in the short and longer term.

Researchers at Johns Hopkins' Bloomberg School of Public Health have published nearly a dozen papers on Baltimore youths and gambling.<sup>40</sup> They found a strong link between gambling and other problems among the city's youth, largely because it fosters impulsive behavior. Other studies in the Johns Hopkins' series found that gambling often leads to depression, crime, homelessness and joblessness in young adulthood.<sup>41</sup>

Despite these findings, casino operators and the developers of gambling games are very anxious to find new strategies to attract young people to gamble.<sup>42</sup> Surveys show that millennials still go to casinos but they spend less gambling on the casino floor (the bread-and-butter for casino operators) and more time and money on food, drink and entertainment.<sup>43</sup> The younger generation is more interested in games “such as fantasy sports,” according to gambling industry analysts.<sup>44</sup> Turning traditional season-long fantasy sports into online sports gambling gives casino operators a long-awaited opportunity to bring online casino gambling in through the backdoor across the U.S. after being rejected in Congress and most states.

By attracting young people to become habitual bettors, internet gambling operators, including DraftKings and FanDuel, will take their national databases of these new gamblers and market other forms of internet gambling to them in their bedrooms and on their smartphones. As was cited earlier, DraftKings has already begun expanding into “eSports” where they encourage people to wager and lose money on video games.<sup>45</sup>

#### 4. Online Daily Fantasy Sports Gambling Violates Federal Law

Sports gambling operators running DFS games are in direct conflict with the Professional and Amateur Sports Protection Act of 1992 ("PASPA"). While PASPA is commonly understood to prohibit state-regulated sports betting on the outcomes of professional and amateur sporting events, it also contains language that readily applies to daily fantasy sports. Section 3702 of PASPA states:

It shall be unlawful for --

- (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
- (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographic reference or otherwise) on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, **or on one or more performances of such athletes in such games.** (*emphasis added*)

**Daily Fantasy Sports are inherently tied to the individual performances of athletes in a game rather than on the final score of the game itself.** Any state legislation which attempts to legalize fantasy sports would be doing so in direct violation of PASPA's express prohibition against state sponsorship of sports wagering schemes that are based on the individual performance of athletes in an amateur or professional sporting event. Likewise, "persons" that promote or advertise fantasy sports contests to Massachusetts residents are also violating PASPA.

Furthermore, DFS operators appear to regularly violate the federal Interstate Wire Act of 1964 ("Wire Act"), 18 U.S.C. §1084, and the Illegal Gambling Business Act of 1970 ("Gambling Act"), 18 U.S.C. §1955. Defiantly, DFS operators often claim that their gambling is shielded by a "carve-out" in the Unlawful Internet Gambling Enforcement Act ("UIGEA"), at 31 U.S.C. §5362(1)(E)(i)-(ix)(2006), but they fail to note that the fantasy sports carve-out was necessarily intended to protect only traditional season-long participants (since the daily game industry did not exist when UIGEA was enacted), and the carve-out only applies to those games where a minimum threshold of skill-to-chance exists.<sup>46</sup>

The author of the federal UIGEA law in 2006, Rep. Jim Leach (R-IA), recently told reporters that allowing DFS was not his intention: "The assumption was that while unconstrained Internet gambling could change the nature of America's savings and investment patterns, fantasy sports would be a 'de minimus' footnote. No one ever conceived of it becoming a large scale activity or that it could transition into one-day contests."<sup>47</sup>

"The only unique legal basis provided fantasy sports by UIGEA is its exemption from one law enforcement mechanism where the burden for compliance has been placed on private sector financial firms," Leach said. "But it is sheer chutzpah for a fantasy sports company to cite the law

as a legal basis for existing. **Quite precisely, UIGEA does not exempt fantasy sports companies from any other obligation to any other law...what is self-evident is that UIGEA exempted fantasy sports from one specific law enforcement mechanism but not from the broad sweep of law itself.**"<sup>48</sup> Leach added that **fantasy sports companies are still bound by state and federal laws on sports betting, wire transfers, anti-trust and securities laws, among others.**<sup>49</sup>

## **5. Pending Legal Action Against Online Fantasy Sports Gambling Operators**

Federal grand juries have been convened in Florida to investigate whether daily fantasy sports operators have violated criminal law. The first grand jury, directed by the U.S. Attorney's Office in Tampa, is reportedly looking into whether DFS operators have violated the Illegal Gambling Business Act of 1970 ("IGBA"). The IGBA is a law enacted long before the DFS industry arose and was first designed to curb gambling operations that fund mafia families.<sup>50</sup>

Those who violate the IGBA can include employees of investigated companies and they can face penalties ranging from fines, forfeiture of illegally-obtained profits and assets to imprisonment for up to five years. Violations of IGBA can also lead to additional prosecutions under federal laws that prohibit racketeering, money laundering and other criminal practices common in organized crime.<sup>51</sup>

According to a review of federal court records, many former DFS customers have also leveled lawsuits against DraftKings and FanDuel.<sup>52</sup> Some of the customers are seeking class action status for their cases, which could broaden the cases to include large numbers of former or current players. In one suit pending in federal court in California, attorneys said thousands of players could join and demand damages totaling more than \$5 million.<sup>53</sup>

The lawsuits claim both companies have been misleading with some of their promotions and enticements to players.<sup>54</sup> Each suit alleges "false or misleading advertising" by either DraftKings or FanDuel and each seeks "restitution" for customers.<sup>55</sup> Federal lawsuits are also pending against DraftKings in Illinois and Massachusetts and against FanDuel in California.<sup>56</sup>

Most recently, U.S. Attorney Preet Bharara's office in the Southern District of New York announced an investigation into whether the business model behind daily fantasy-sports firms like DraftKings and FanDuel violates federal law.<sup>57</sup> Bharara is the federal prosecutor who shut down the U.S. online poker operators four years ago.

## **6. Government’s “Regulation” of Gambling Has Been a Spectacular Failure, and Inevitably, Online Gambling Will Be the Biggest Failure of All**

Gambling interests, along with some public officials and journalists, declare the solution for DFS is to allow government to sponsor internet gambling, or “regulated” gambling as the lobbyists call it, but these proposals provide no facts to suggest that government-sponsorship is an effective public policy. There is no need to speculate about what “regulated” online gambling really means. Simply, look at government’s experiment with state lotteries and regional casinos. There is no location in America where government-sponsored gambling has collectively improved the lives of citizens, long-term. By almost any measure, government’s “regulation” of gambling has been a spectacular failure, contributing to rising unfairness and inequality in American life.<sup>58</sup>

### ***“Regulated” Gambling Contributes to Rising Unfairness and Inequality***

A mountain of independent evidence confirms that government’s experiment of sponsoring lotteries and regional casinos is contributing to rising unfairness and inequality in our nation.<sup>59</sup> It is harming health, draining wealth from people in the lower ranks of the income distribution, and contributing to economic inequality.<sup>60</sup>

Government’s “regulation” of gambling has concentrated commercial gambling in economically-distressed communities, targeting citizens from the lower rungs of the income ladder. Low-income workers, retirees, minorities, and the disabled comprise a disproportionately large share of lottery and regional casino users.<sup>61</sup> The real reason for this is that those who are financially desperate look to government-sponsored gambling as a way to improve their lives and help them escape their financial condition.<sup>62</sup> *It’s become a Hail Mary investment strategy*, one that dooms them to inevitable failure.<sup>63</sup> **By targeting the least advantaged, government-sponsored gambling, whether in the form of lotteries, regional casinos or potentially online fantasy sports gambling, adds to the increasingly separate and unequal life patterns in education, marriage, work, and play that now are dividing America into haves and have-nots.**<sup>64</sup>

## ***The Business Practices of “Regulated” Gambling***

**The almost singular focus of government-“regulated” gambling has been on driving maximum sales and profits.** Some examples of the predatory and dishonest practices employed by “government- “regulated” gambling include:

- Most industries and companies are subject to truth-in-advertising laws enforced by the Federal Trade Commission. According to these laws, advertising must be truthful and non-deceptive, advertisers must have evidence to back up their claims, and advertisements cannot be unfair. State-run lotteries, however, have been exempted from these laws. Because of this, state lotteries have wide latitude in how they can promote their product, exaggerate chances of winning, and aggressively lure more of our fellow citizens to lose their money. DFS already follows this state-approved model of misleading promotion.
- State lottery media plans blatantly state that lottery promotions should be timed to coincide with the receipt of government benefits, payroll and Social Security payments.<sup>65</sup> If government authorizes DFS, one can predict with certainty that future promotions will follow this parasitic approach.
- Public records requests reveal lotteries openly target minorities and lure young people to gamble for the first time by explicitly developing lottery games and marketing efforts for these constituencies.<sup>66</sup> Likewise, DFS marketing plainly aims at hooking young people.
- Electronic gambling machines, a pillar of government’s “regulated” gambling program, are designed mathematically so users are certain to lose their money the longer they play.<sup>67</sup> At the same time, the machines are literally designed so citizens cannot stop using them, exploiting aspects of human psychology and inducing irrational behavior.<sup>68</sup> Every feature of a slot machine - its mathematical structure, visual graphics, sound dynamics, seating and screen ergonomics - is designed to increase a player's "time on device" – which means how long a person plays.<sup>69</sup> This, the aim of online slots gambling, is DFS’s goal, as well.
- The image of “responsible gambling” promoted by government gambling “regulators” is a *sham*. The success of commercial gambling enterprises depends upon people not being able to follow so-called responsible gambling guidelines. MIT Professor Natasha Schull reported in her 2012 book *Addiction By Design* that people who follow responsible gambling guidelines made up 75% of the players but contribute a mere 4% of gambling profits.<sup>70</sup> “They only bring in 4% of our revenues, the responsible gamblers,” the author of the study said. “If responsible gambling were successful then the industry would probably shut down for lack of income.”<sup>71</sup> The revenue model for “regulated” gambling hinges on getting citizens to lose control of themselves, ultimately causing harm to them and the people around them. DFS operators have the same financial motivation to use “responsible” gambling as a façade, while actually taking advantage of those who have become hooked.

- Lotteries invest in sophisticated market research to better target citizens and increase the amount of money they lose on lottery games.<sup>72</sup> Government-authorized DFS operators will employ the same kind of state-of-the-art market research to develop the “right” message to susceptible people so they lose even more of their money.
- Many lotteries have installed customized flat-screen TVs in gas stations and convenience stores to advertise lottery promotions and showcase winners, all part of a new wave of high-tech, targeted marketing intended to put the “lottery at top-of-mind and spark impulse buys.”<sup>73</sup> We all have seen the massive advertising buys by DFS operators in 2015. They have dominated every form of American media, largely using the same strategy of showcasing winners. These deceptive marketing efforts will only become more widespread and intense if government begins to rely on DFS gamblers’ losses for tax revenues.
- Lotteries mail hundreds of thousands of households coupons for free Powerball and instant tickets to introduce gambling games to “infrequent players.”<sup>74</sup> Likewise, DFS operators have openly and aggressively lured citizens to their gambling websites with offers that include a “\$200 bonus.”<sup>75</sup> If allowed to partner with government, these types of DFS promotions incentivizing citizens to gamble will continue like those used by lotteries.
- Lotteries offer bonuses to retailers who increase year-over-year gambling revenues by getting citizens to lose more money.<sup>76</sup> There is no reason to believe these kinds of lucrative incentives would be prohibited to DFS operators and their staff under a “regulated” system.

Only the uninformed and the willfully ignorant would suggest that government will promote internet gambling in a different, more ethical manner than its track record with lotteries and regional casinos demonstrates.

### ***The Severe Public Health Impacts of “Regulated” Gambling***

At least one out of every twenty citizens have had their lives turned upside down because of commercial gambling, *most of which was sponsored by government.*<sup>77</sup> This figure does not account for the reality that each gambling addict has at least 5 people close to them whose lives are also upended because of this policy.

Public officials have taken virtually no action to address this public health crisis because *these addicted gamblers are the prime source of profits for state-run gambling.* Over the last decade *there are 11 different independent studies* that show 40%-60% of electronic gambling machine profits come from citizens who have become addicted to using the machines.<sup>78</sup>

It is unfounded to suggest if online gambling such as online fantasy sports gambling is authorized, that government will regulate it differently. Government’s record on lotteries and regional casinos shows its primary purpose *is to maximize profits, not protecting the public health.*



***“You Pay Even if You Don’t Play:” How “Regulated” Gambling Has Led to Higher Taxes for Less Services***

For the 2/3 of citizens who never or rarely gamble, state-sponsored gambling is *the biggest* budget gimmick. **The facts show that, where states authorize commercial gambling, all taxpayers—including the non-gamblers-- end up paying higher taxes for less services and their states end up with worse budget problems over the long term.**<sup>79</sup>

This is because casinos and lotteries have proven to be a failed source of government revenue and have not delivered on their promises to fund education, lower taxes, or pay for needed public services. States generally expand gambling operations when tax revenues are depressed by a weak economy, or to pay for new spending programs. Yet income from casinos and lotteries does not tend to grow over time as rapidly as general tax revenue. Expenditures on education and other programs will generally grow more rapidly than gambling revenue over time. **Thus, new gambling operations that are intended to pay for normal increases in general state spending add to, rather than ease, long-term budget imbalances.**<sup>80</sup>

More troubling for taxpayers, gambling operators are not allowed to fail by the state. For example, when casinos come up short, states usually provide new infusions of money, reduced taxes, reduced funding for gambling addiction measures, or other concessions such as lifting smoking bans and loss limits, in order to sustain revenues and profitability.<sup>81</sup> **Public tax dollars too often prop up and subsidize gambling operators.** Rhode Island, Delaware, and New Jersey, to just name a few, have all recently taken special steps to help operators that might otherwise fail.<sup>82</sup>

**The push for more subsidies from taxpayers is going to intensify moving forward.** Of the 47 states with gambling revenue, 27 states reported declines over fiscal 2014 with nine states reporting declines of more than 5 percent.<sup>83</sup>

**Allowing states to sponsor online gambling such as online fantasy sports gambling will only deepen this downward spiral, forcing the taxpayers who don’t gamble to foot the bill.**

### ***“Regulated” Gambling Has Badly Failed to Reduce Illegal Gambling***

**No American jurisdiction has EVER documented a decline in illegal gambling after states began sponsoring gambling. In fact, illegal gambling tends to increase for a number of reasons.** Untaxed illegal operators can offer better odds and tax avoidance that legal operations cannot. Once gamblers start betting legally, they become less averse to gambling in unlicensed establishments. Law enforcement in gambling states view illegal gambling as a state revenue issue rather than a criminal activity, making enforcement less of a priority. Lastly, when commercial interests gained control of the casino business from organized crime, they obtained the ability and the license to abuse and destroy customers to an extent that was not possible when casinos were run by criminals.<sup>84</sup>

**It’s inevitable that the amount of illegal online gambling will only increase if online fantasy sports gambling is authorized.** If the illegal online gambling operators supposedly cannot be controlled, how can you control and regulate the ones you license? If you can't shut down the illegal operators, how would you possibly shut down licensed operators who don't follow the rules?

The criminalization of for-profit lotteries and casino-style gambling was successfully practiced for a large portion of American history. This does not mean illegal gambling was absent from society, but public institutions did their best to *contain* it. They did not incentivize citizens to lose their money gambling.

### ***“Regulated” Gambling Has Proven to Be About Granting Monopolies and Awarding Regulatory Advantages to Favored Firms***

When government sponsors gambling, it is not merely permitting private, consensual behavior. It is granting monopolies and awarding regulatory advantages to favored firms.<sup>85</sup> This has little to do with limited government and free market principles. Like we have seen with lotteries and regional casinos, online fantasy sports gambling, if authorized, will be a public policy that benefits a privileged few at the expense of everyone else.

## ***Nearly All of the People Who Run Gambling Operations and the Public Officials Who Lobby to Bring Them in, Don't Gamble Themselves***

With the zeal of a teetotaler, there is one memorable and telling trait that most gambling operators and the public officials they partner with have in common: they don't gamble.<sup>86</sup> Nearly every major casino operator, including Steve Wynn<sup>87</sup>, Jim Murren<sup>88</sup>, CEO of MGM, Sheldon Adelson of Las Vegas Sands,<sup>89</sup> and Gary Loveman,<sup>90</sup> the recent CEO of Caesars, *hardly ever gamble themselves*.<sup>91</sup> At least when it comes to the rank-and-file employees of fantasy gambling operators, they do gamble, apparently, but with the benefit of valuable inside information.<sup>92</sup> Policies to bar DFS employees from acting on this inside information are effectively unenforceable, as they are easily evaded via use of spouses, relatives, and friends to place bets using the information not available to most citizens.

### **7. Taking Action to Protect Citizens**

**For all of these reasons, we strongly urge swift action by public officials and law enforcement to halt the scheme used by internet gambling operators seeking to evade federal and state laws under the cloak of "Daily Fantasy Sports."**

Enjoin their operations.

Prosecute offenders.

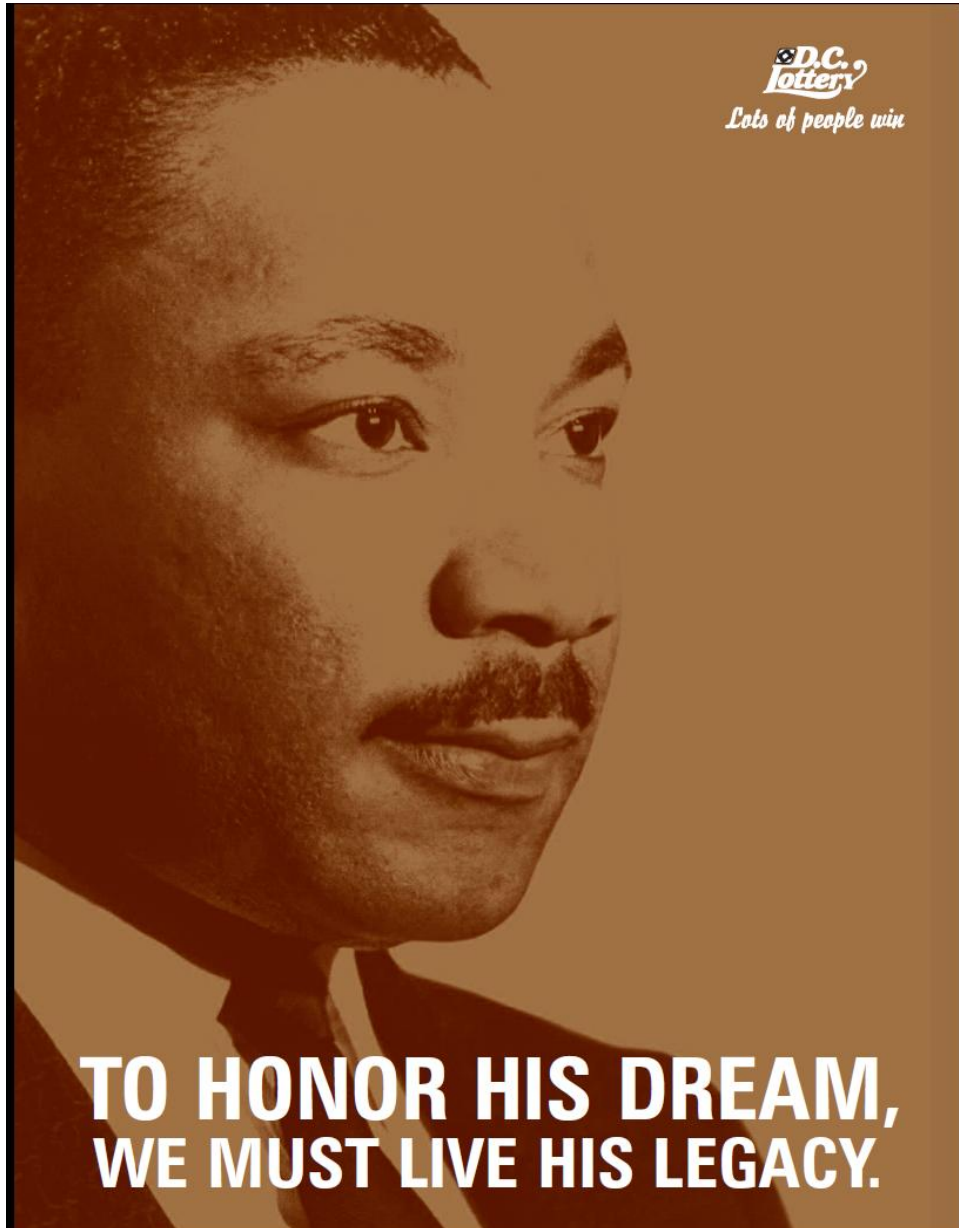
Refer to the IRS any findings that federal wagering excise taxes have been evaded.

Confiscate illegally-generated proceeds.

We urge citizens and government leaders to press their law enforcement communities and prosecutors to take these actions against the predatory, deceptive and illegal practices of DFS operators.

**For any additional information about this very important issue, we invite you to contact us (202) 567-6996 or [mail@stoppredatorygambling.org](mailto:mail@stoppredatorygambling.org)**

## What Government-“Regulated” Gambling Looks Like



An advertisement by the District of Columbia Lottery

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