

Testimony of Scott S. Ward on behalf of
FanDuel, Inc. and DraftKings, Inc.
Before the House Government Accountability and Oversight Committee
In Support of HB 132

Mr. Chairman and members of the committee. My name is Scott Ward. I am an attorney with the law firm Orrick, Herrington, and Sutcliffe and I am here today on behalf of my clients FanDuel and DraftKings – two members of the large fantasy sports industry that is growing and evolving across this country.

Fantasy sports have been played in Ohio for more than four decades. Over that time, Ohioans have evolved the way that they play. It used to be that fantasy sports was played with pencil and paper with your friends in your living room. Now it is played on the internet with your friends, co-workers, or just other competitors across the country. And as with any evolving industry or new innovation, the product has outstripped statutes that were not written with fantasy sports in mind.

I thought I would start with some context on where HB 132 fits into the national discussion of fantasy sports. Eleven states have passed laws defining fantasy sports similarly to the way it is defined in HB 132. In fact, eight states did so just last year and Arkansas and Mississippi have already passed similar legislation this year. Conversely no state legislature has passed a law defining fantasy sports as gambling. And while the legislation that passed each state is different, they all contain the same three elements that are contained in HB 132. First, there is a tight definition of fantasy sports. The definition is based on a federal definition that passed more than ten years ago that excludes fantasy sports from the definition of unlawful internet gambling. Second, each bill contains important consumer protections, which I will expand upon in a moment. Third and finally, each law clearly states that fantasy sports are legal and are not gambling.

HB 132 is a well thought-out, thoroughly vetted approach to fantasy sports. The sponsors of this legislation worked with the Attorney General's office and the Casino Control Commission, and incorporated their input into the bill before you today. The sponsors also spoke with interested parties including my clients, representatives of small fantasy sports companies, and other tertiary businesses who work with fantasy sports operators like credit card processors, including Cincinnati based Vantiv Corporation. Those conversations, which started almost a year ago, helped to craft legislation that is a careful balance of consumer protection while also encouraging innovation and growth in the industry by not creating undue barriers to entry by small businesses. The result is, with passage of HB 132 the 1.9 million Ohioans who already play fantasy sports will be comfortable knowing they can continue to pursue a hobby they love in both a safe and legal way.

Under HB 132 the Casino Control Commission is empowered to license and regulate fantasy sports operators. To be clear, Ohioans who have been playing fantasy sports with their buddies for decades, each of them throwing in some money to serve as the prize for the winner, won't be required to get a license. In fact they won't see any difference at all. But they will be able to continue playing their games, as they always have, knowing that they are doing so legally. Commercial operators will be

subject to regulation including: prohibition of play by minors; a requirement to ensure that people who might have an unfair advantage such as athletes, officials, and fantasy sports company employees cannot play; a requirement to keep customer funds strictly separate from operating funds so that customer money is always safe and available; a prohibition on fantasy sports based on college or high school athletics; a requirement to provide safe play provisions such as allowing individuals to restrict themselves from playing; a prohibition on using false or otherwise misleading advertising; and finally requiring a third party audit to confirm compliance with the act which must be provided to the Commission.

Under HB 132, and the rules to be promulgated by the very capable folks at the Casino Control Commission, Ohio will be a national model for protecting a hobby enjoyed by millions of Ohioans.

I have spent a lot of time going around the country talking to people about fantasy sports about the question of is it gambling or not. And when people tell me that they don't play fantasy sports, the reason they most often give is they say they don't have the time to play. And I think that's because there is an inherent understanding that it takes time, it takes research – it takes skill - to be good at fantasy sports. That's not something you hear people say about chance based gambling. Nobody says they don't have time to do a scratch-off ticket, or play the lottery or roulette.

But don't take my word for it. The NFL, Major League Baseball, NBA, NHL, Major League Soccer, and NASCAR all agree that fantasy sports are not gambling. Major League Baseball is one of the most anti-gambling organizations out there. They have dedicated themselves to making sure that gambling and the corruption issues that go with that stay out of their sport. But they took a long look at fantasy sports and have concluded it is not gambling and does not present the risks of gambling. In fact major league baseball actually has an equity stake in a fantasy sports company. They love and support fantasy sports because it creates greater engagement with their fans. In addition, all of the professional sports franchises in Ohio have or have had marketing deals with fantasy sports companies and support fantasy sports.

So here is who says fantasy sports is not gambling – the federal government, eleven states, MLB, NFL, NBA, NHL, MLS, NASCAR, every professional sports franchise in the state, and 1.9 million Ohioans who love playing fantasy sports. But we are here today because there have been questions in Ohio about whether fantasy sports, under statutes written before fantasy sports were even invented, are legal. The Attorney General's office last year issued a lengthy paper examining fantasy sports under laws in Ohio that don't define fantasy sports and ultimately concluded that it is unclear. And in conclusion encouraged the legislature to clarify the legal status of fantasy sports. As I mentioned eleven other state legislatures have exercised their prerogative as the policy makers for their constituents, through their duty to write and update the laws to make clear that fantasy sports in those states are not gambling. And millions of players in each of those states now has the freedom to play fantasy sports secure in the knowledge that the government is not going to take it away.

Similarly I encourage you to analyze HB 132 by asking yourself two questions. First, are you okay with the millions of Ohioans who have been playing fantasy sports for decades? And if so, how do we make sure they are doing so in a safe and legal way? I hope you will conclude that the definition of fantasy sports, and consumer protections contained in HB 132, is the way to protect millions of Ohioans' freedom and right to play fantasy sports. Thank you for your time and I respectfully urge you to support HB 132 and I would be happy to entertain any questions.