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PLAY BALL!: SUBSTITUTING CURRENT FEDERAL NON-REGULATION OF FANTASY SPORTS LEAGUES WITH LIMITED SUPERVISION OF HYPER-COMPETITIVE LEAGUES

Erick S. Lee^{*}

I. INTRODUCTION

A wife slowly realizes that her once doting husband has become more and more emotionally distant, often making up flimsy sounding excuses why he is unable to keep previously planned appointments. Suspecting infidelity in the marriage, the wife decides to follow her husband out one night, tracking him to a suburban home. Ignoring rational advice from accompanying friends to stay out of the house, the wife nonetheless enters the home and hears sounds of scuffling and mumbling from a back room. She enters, catching her husband not in the throes of an illicit extramarital affair, but surrounded by a group of other men in the midst of a fantasy baseball draft!?!¹

The extent to which fantasy sports has permeated society in recent years has turned what was previously a game played amongst only the most diehard fans into a cultural phenomenon spanning across all age demographics.² Recent surveys and studies indicate that approximately

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1. *KNOCKED UP* (Universal Pictures 2007) (appearing as a plot device in the motion picture). See THE-NUMBERS.COM, *Knocked Up*, <http://the-numbers.com/movies/2007/KNCKD.php> (last visited Jan. 20, 2008) (showing that the film has grossed over \$218 million from theaters worldwide and over \$123 million in home video sales to date).

2. See, e.g., Anya Sostek, *Leagues of Their Own: Fantasy Sports Keep Many Former Co-Workers Connected Even After They Go Their Separate Ways*, PITT. POST-GAZETTE, July 29, 2007, at D1 (“As the popularity of fantasy sports has grown, people increasingly don’t have much

sixteen million people in the United States participate in fantasy sports.³ Revenues from fantasy sports and its corollary industries, such as magazines and advice websites, are estimated to total \$2 billion annually.⁴ The insertion of fantasy sports as a plot device in a major Hollywood film further illustrates its importance in popular culture and has cemented its role as a major player in today's social fabric.⁵ The popularity of fantasy sports has spawned a number of similar games, ranging from fantasy celebrity leagues⁶ to even a fantasy United States Supreme Court league.⁷

With the rise of hyper-competitive fantasy sports leagues offering the opportunity to win huge cash prizes for players willing to pay a sizeable entry fee,⁸ criticism has provoked debate as to whether fantasy sports leagues should fall under the purview of federal statutes regulating gambling.⁹ Recently, in *Humphrey v. Viacom*, the United States District Court for the District of New Jersey directly addressed the legality of fantasy sports leagues when adjudicating a challenge as to whether individuals could claim losses from playing fantasy sports under state gambling-loss recovery laws.¹⁰

This Article proposes that the current federal laws regulating the gambling industry do not apply to fantasy sports leagues because

choice but to get involved in some way.”).

3. Steve Almasy, *Fantasy Sports Offers Prizes - Monetary and Emotional*, Aug. 29, 2007, <http://www.cnn.com/2007/LIVING/08/29/fantasy.sports>.

4. *Id.*

5. See KNOCKED UP *supra* note 1.

6. See Tabloid Fantasy League, <http://www.tabfl.com> (last visited Jan. 21, 2008). This website is one where players compete by selecting a number of celebrities for their team and earn points depending on whether their drafted stars appear in upcoming issues of major Hollywood gossip magazines. See *id.*

7. See *You Can Join the U.S. Supreme Court Fantasy League*, MONTANA LAWYER, Oct. 2003, at 37 (describing how players can compete by “predict[ing] the outcome of 15 cases that will come before the U.S. Supreme Court during its 2003-2004 ‘season’ . . . [as well as] predict[ing] the ‘vote spread’ in each case”).

8. See Michael Lewis, *Top Fantasy Football Site DimeSports.net Announces \$100,000 First Place Winner and . . .*, Jan. 17, 2008, <http://www.reuters.com/article/pressRelease/idUS12956+18-Jan-2008+PRN20080118> (noting how one fantasy sports provider awarded prizes of \$100,000, \$50,000, \$25,000 respectively to the top three players in 2007); see also National Fantasy Football Championship, 2008 Prizes, <http://www.fantasyfootballchampionship.com/prizes2008.asp> (last visited Jan. 30, 2008) (noting the site's grand prize of \$100,000 to the overall grand championship).

9. See, e.g., Nicole Davidson, *Internet Gambling: Should Fantasy Sports Leagues be Prohibited*, 39 SAN DIEGO L. REV. 201, 229 (2002); Michael J. Thompson, *Give Me \$25 on Red and Derek Jeter for \$26: Do Fantasy Sports Leagues Constitute Gambling?*, 8 SPORTS L.J. 21, 39-42 (2001).

10. *Humphrey v. Viacom Inc.*, No. 06-2768, 2007 U.S. Dist. LEXIS 44679, at *5 (D.N.J. June 20, 2006).

participation in these leagues does not constitute gambling. Part II discusses the history of gambling in general and traces the cycles of government regulation of the industry. Part III discusses how fantasy sports are played and addresses the arguments made by both proponents and opponents as to whether such games trigger the same concerns as other closely related online gambling activities. The key federal statutory measures enacted to address gambling will be examined in Part IV, with particular emphasis on legislation that could potentially be used to regulate Internet fantasy sports leagues. Part IV also considers, in light of existing statutes, whether new measures to control fantasy sports are necessary. Part V argues that the current federal policy of not applying existing federal laws to recreational fantasy sports is the correct policy. Finally, Part VI argues that limited federal legislation is necessary to address and regulate hyper-competitive fantasy sports leagues.

II. HISTORICAL CYCLES OF GAMBLING REGULATION

A. Colonial America to the Mid-Nineteenth Century

The history of gambling laws in the United States can be defined as a series of reactionary “waves.”¹¹ The first wave of gambling laws originated in the colonial United States during the years prior to the Civil War.¹² At the onset of this country’s history, gambling was not only tolerated, but encouraged as a means of financing the development of the budding nation.¹³ Early lotteries were also used to fund the development of private colleges such as Yale, William and Mary, Columbia, Harvard, and Dartmouth, in addition to financing the growth of private industries.¹⁴ The increased popularity of lotteries, especially those that were publicly administered, created an entire industry where commercial middlemen,

11. See I. NELSON ROSE, *GAMBLING AND THE LAW* 1–2 (Gambling Times Inc. 1986) [hereinafter ROSE, *GAMBLING AND THE LAW*]; see also I. Nelson Rose, *Gambling and the Law: The Future of Internet Gambling*, 7 VILL. SPORTS & ENT. L.J. 29, 44 (2000) [hereinafter Rose, *Future of Internet Gambling*] (discussing the “waves” of gambling laws in American history).

12. ROSE, *GAMBLING AND THE LAW*, *supra* note 11, at 1.

13. See, e.g., U.S. Comm. on the Review of the National Policy Toward Gambling, *Gambling in America: Final Report of the Comm. on the Review of the National Policy Toward Gambling* 143 (1976) [hereinafter *Gambling in America*]; see DAVID WEINSTEIN & LILLIAN DIETCH, *THE IMPACT OF LEGALIZED GAMBLING: THE SOCIOECONOMIC CONSEQUENCES OF LOTTERIES AND OFF-TRACK BETTING* 8–9 (Praeger Publishers 1974); see also HENRY CHAFETZ, *PLAY THE DEVIL: A HISTORY OF GAMBLING IN THE UNITED STATES FROM 1492 TO 1955*, 20–27 (Clarkson N. Potter, Inc. 1960) (noting that “[t]hrough most colonial lotteries were held to raise money for public purposes,” there were already early criticisms as to its gambling overtones).

14. See CHAFETZ, *supra* note 13, at 22–23.

ticket brokers, and lottery contractors were hired to ensure that the games were run correctly.¹⁵ This was also seen in the aftermath of the Civil War, where public lotteries and gambling were commonly used to provide the necessary revenue to fund reconstruction projects.¹⁶ Similar uses of lotteries continue today, as state lotteries are often organized to raise funds for educational purposes.¹⁷

B. Post-Civil War America to the Great Depression

As prominent gambling scholar Henry Chafetz notes,¹⁸ gambling in early American history provided the country with a means of fraternity where “[m]en holding widely divergent political beliefs and living on different economic planes” could nevertheless sit together at a table to play cards.¹⁹ As the nation expanded westward, gambling followed, as travelers mingled and played with the local citizens.²⁰ However, early American support and acceptance of gambling faced a backlash starting in the mid-nineteenth century with a wave of anti-gambling sentiment.²¹ After the Civil War, gambling in the United States declined in acceptance due to rising concerns over eroding morality and violence in the country.²² Further evidence of this shift in attitude toward gambling is the fact that a reformed gambler led the anti-gambling movement.²³ Media and political groups also helped form “anti-gambling societies, whose members pressed for anti-gambling legislation.”²⁴ As the popularity of anti-gambling groups

15. See WEINSTEIN & DIETCH, *supra* note 13, at 9.

16. ROSE, GAMBLING AND THE LAW, *supra* note 11, at 1.

17. WEINSTEIN & DIETCH, *supra* note 13, at 15.

18. ROSE, GAMBLING AND THE LAW, *supra* note 11, at 292–93 (noting that Chafetz’s book, *Play the Devil*, was considered one of the “great printed source[s] on gambling,” which was later “supplanted by the Government sponsored” publications).

19. CHAFETZ, *supra* note 13, at 42.

20. See CHAFETZ, *supra* note 13, at 136–37; see generally NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776–1976, 373–76 (U.S. Dept. of Justice Nov. 1977) [hereinafter DEVELOPMENT OF THE LAW OF GAMBLING] (describing the gambling and drinking “rendezvous” in western towns).

21. See, e.g., WEINSTEIN & DIETCH, *supra* note 13, at 10 (noting how scandals, changing moral attitudes, and concern over the “social and economic effects on the working man and the poor” all contributed to an increase in organized opposition against lotteries).

22. See Rose, *Future of Internet Gambling*, *supra* note 11, at 44 (noting how “anti-gambling prohibitions epitomize[d] the traditional approach taken by American laws . . . [as] part of a greater moral framework, designed by policy-makers as a reflection of an imagined ideal society”).

23. CHAFETZ, *supra* note 13, at 87–95 (stating that Jonathan Green is credited as spearheading the anti-gambling reform movement in the United States during the mid-nineteenth century).

24. *Id.* at 91; see also WEINSTEIN & DIETCH, *supra* note 13, at 10 (noting that states initially

increased, the private sector provided financial backing, and the groups developed into larger scale organizations dedicated to rescuing people from the vice of gambling.²⁵

Chafetz points to mid-nineteenth century Chicago as illustrative of the hostility gambling suffered during the time period.²⁶ For example, soon after Chicago's Board of Trustees was "given the authority to abolish gambling . . . [it] promptly closed two dens and sent the proprietors to" jail.²⁷ Additionally, Mayor John Wentworth spearheaded an operation to close down a particularly notorious network of brothels and gambling dens in 1857.²⁸ Raids of gaming establishments became commonplace, with gamblers and bookmakers arrested and heavily fined.²⁹ Police seized and confiscated property with reckless abandon, leading most of the gambling activity in the city to dry up and become nonexistent.³⁰

Despite the hard line espoused by Chicago's government, gambling roared back into prominence in the 1860s due in particular to a change in public perception of the industry.³¹ By 1870, increasingly lax police enforcement of criminal laws not only tolerated but encouraged gambling.³² This treatment of gambling mirrored the manner in which gambling was regulated years earlier in certain areas of the South.³³

As Chafetz notes, in 1811 Louisiana saw all gambling declared illegal within state boundaries, with the exception of New Orleans.³⁴ However, within nine years, the moral backlash against gambling in New Orleans soon led to the prohibition of gambling in the city, which ultimately had little practical effect on the industry.³⁵ Although financial crisis briefly

sought to regulate gambling by "tightening the licensing regulations," which were later replaced by laws that outright prohibited gaming).

25. CHAFETZ, *supra* note 13, at 92–95 (stating that anti-gambling societies were often intimately involved in the lives of gamblers, keeping a list of "patrons of gambling establishments, amounts they had won or lost," and threatening to out these gamblers to their employers if they were "unswayed by warnings" "about the perils of gambling").

26. *Id.* at 214–19.

27. *Id.* at 214.

28. *See generally* DEVELOPMENT OF THE LAW OF GAMBLING, *supra* note 20, at 347.

29. CHAFETZ, *supra* note 13, at 216–17.

30. DEVELOPMENT OF THE LAW OF GAMBLING, *supra* note 20, at 347–48.

31. WEINSTEIN & DIETCH, *supra* note 13, at 10–11.

32. CHAFETZ, *supra* note 13, at 217–18.

33. *See id.* at 194 (describing how New Orleans was exempt from Louisiana gambling laws).

34. *See id.*; *see also* DEVELOPMENT OF THE LAW OF GAMBLING, *supra* note 20, at 267 (noting how "Louisiana is an exception to all generalizations which may be made concerning the development of gambling law in the South," with "gambling . . . indirectly legalized in New Orleans").

35. CHAFETZ, *supra* note 13, at 194–95.

shut down gambling in New Orleans, the city remained one of the country's gambling centers and served as a model for the rest of the nation on how to effectively run a gaming enterprise.³⁶ As evidenced by the history of New Orleans, gambling has shown an uncanny ability to persevere, survive, and even flourish despite periods of limited prosperity and difficult legal standing.³⁷

Nonetheless, in response to growing concern over the social ills accompanying gambling, many state governments have historically attempted to, at the very least, make the industry less accessible.³⁸ In the late nineteenth century, scandals involving the hugely popular Louisiana lottery led to a protracted battle between lottery organizers and government officials, a conflict the government eventually won after a nearly forty year battle.³⁹ Pennsylvania outlawed wagering on horse racing in 1903, and the District of Columbia, Tennessee, Alabama, Georgia, and Missouri followed shortly thereafter.⁴⁰ The movement against betting on horse racing soon spread west, with similar bans seen in Louisiana, Texas, and California by the early twentieth century.⁴¹ In the western United States, anti-gambling sentiment materialized in the form of "heavy fines and jail sentences on anyone connected with gambling, including patrons."⁴² These fines and sentences were a new tactic in the war against the industry as previous measures only targeted gaming organizers.⁴³ This backlash was ultimately short lived as the popularity of gambling would soon roar back into a period of success.⁴⁴

C. Post-Great Depression to the Present

In recent years, the gaming industry, along with public acceptance of gambling in general, has exploded, as gambling is once again in a state of

36. See *id.* at 194–203 (stating that in slow economic times, the smaller gambling houses were shuttered, with only the top notch lavish dens surviving to serve the city's gamblers).

37. See, e.g., *id.* at 318, 323, 327–28, 331–39 (citing how Richard Canfield's gambling houses survived changes in laws and government, and were only wiped out after the anti-gambling movement shut down illegal gambling in the city).

38. WEINSTEIN & DIETCH, *supra* note 13, at 13.

39. See CHAFETZ, *supra* note 13, at 299–308.

40. *Id.* at 380–82.

41. *Id.* at 382–83 (stating that the fight against horse racing did have the effect of revitalizing pool or pari-mutuel betting, especially in Kentucky).

42. *Id.* at 388.

43. *Id.* at 379, 388 (comparing the new legislature's criminalization of patron behavior to previous actions against only operators).

44. See Rose, *Future of Internet Gambling*, *supra* note 11, at 41–42.

prosperity.⁴⁵ Today, gambling is considered to be a “popular national hobby” with a long-term “pervasive influence on the sports world.”⁴⁶ Commentators have observed that “gambling has become a lot more accepted over the past 20 years, with the increase in casinos and lotteries and the advent of television coverage and online gaming.”⁴⁷ Elections in November 1996 signaled a swing toward increased acceptance of gambling, when many states approved the legalization of new high-stakes casinos.⁴⁸ As Professor Rose notes, while some states rejected the outward growth of legalized gambling during the 1996 elections,⁴⁹ the popular voice indicated “a tidal change in the way Americans feel about legal gambling . . . [with voters] for the first time ever . . . accept[ing] local gaming as a normal part of their lives.”⁵⁰

This modern day re-emergence of gambling has its roots in the post-Great Depression landscape of the United States.⁵¹ Gambling’s popularity regained form “from 1929 to the end of World War II,” to the point where “wives . . . complained that [their] take-home pay was slim after the bookmakers got their share.”⁵² The Great Depression made gambling more popular as people with little means found relief in the form of gambling, where at least there was a “chance of hitting the jack pot [rather] than . . . worry along with less than enough.”⁵³ Polls showed a steady rise in public participation in gambling in the American population, from twenty-nine percent in 1938, to fifty-four percent only two years later in 1940.⁵⁴

Nevada remains the shining example with regard to the modern trend of increased social acceptance of gambling. In 1945, the state legislature

45. See *id.* at 42 (noting that legal lotteries are now found in more than forty U.S. territories, and that “Americans spent more money on gambling . . . than they did on all live events, including concerts, plays, all movie theaters, all spectator sports, and all forms of recorded music combined”).

46. Ante Z. Udovicic, *Special Report: Sports and Gambling a Good Mix? I Wouldn't Bet on it*, 8 MARQ. SPORTS L.J. 401, 403 (1998).

47. Ron Schachter, *Targeting Student Gambling*, UNIVERSITY BUSINESS, Jan. 1, 2008, available at <http://www.universitybusiness.com/viewarticle.aspx?articleid=982&p=1#0> (quoting Dan Romer, director of The Annenberg Public Policy Center of the University of Pennsylvania, an organization that produces national surveys about youth gambling trends).

48. Rose, *Future of Internet Gambling*, *supra* note 11, at 47–48.

49. *Id.* at 48.

50. *Id.*

51. See *id.* at 41 (citing how the modern reemergence of gambling “has its roots in the re-legalization of casinos in Nevada in 1931 and the reopening of racetracks during the Depression”).

52. CHAFETZ, *supra* note 13, at 445.

53. *Id.* at 446.

54. *Id.* at 448–49.

created a state agency in charge of licensing gaming operations, a powerful entity designed to ensure the legitimacy of the games.⁵⁵ In the early 1960s, the gambling revolution startled the country when “supposedly conservative New Hampshire adopted the first legal lottery and the first government operated gambling” of the twentieth century.⁵⁶ Despite the moral concerns of religious clergy in the state, Governor John King approved legislation establishing the state lottery as a means of satisfying increasing demand for school revenue.⁵⁷ Other northeastern states soon followed New Hampshire’s lead and adopted measures to establish new, or expand existing, lottery games.⁵⁸

The modern gambling boom has produced a number of astonishing figures. Internet wagering quintupled between 2002 and 2005.⁵⁹ Legal bets at Nevada sports books on Super Bowl XLII between the New England Patriots and the New York Giants was estimated to top \$100 million for the first time.⁶⁰ Overall, the game was expected to be the subject of nearly \$20 billion in wagers, with the substantial majority done in contravention of existing gambling laws.⁶¹ According to a study by the National Gambling Impact Study Commission, the gambling industry has grown tenfold in the past quarter-century, with revenues jumping 1,600 percent.⁶² An estimated \$8 billion was wagered on sports twenty-five years ago, a figure that ballooned to an estimated \$100 billion in 1997.⁶³ Wagering and gambling, in general, have been estimated to be a nearly \$400 billion industry worldwide.⁶⁴

III. FANTASY SPORTS AND THE GAMBLING QUANDARY

A. *How Are Fantasy Sports Played?*

Fantasy sports generally take one of two major formats. In the first

55. *Id.* at 452.

56. WEINSTEIN & DIETCH, *supra* note 13, at 14–15.

57. *Id.* at 15.

58. *Id.* at 16 (providing a look at the post-1960s influx of gambling in the Northeast).

59. Schachter, *supra* note 47.

60. William Lamb & Pete Caldera, *Super Bowl expected to set betting records: Most of \$20B in wagers placed illegally*, THE RECORD (Bergen County, NJ), Jan. 25, 2008, at A01.

61. *Id.*

62. Dan Bickey, *For Bettor or Worse*, THE ARIZ. REPUBLIC (Phoenix), Jan. 27, 2008, at 7.

63. Udovicic, *supra* note 46, at 405.

64. Beverly Beyette, *Odds Are, They have the Bottom Line on Gambling*, L.A. TIMES, Aug. 4, 1997, at E1.

format, known as “Pick’em,” players⁶⁵ must predict the winner of a series of games in order to accumulate points.⁶⁶ The difficulty of the game may be further increased by involving the use of point spreads.⁶⁷ Under this type of game play, in order to earn points by selecting the favored team, the player must account for whether they believe the favored team will win by a margin exceeding the stated point spread.⁶⁸ For example, if a player selects Team A to beat a spread of seven points against Team B, and Team A wins the game by seven points or less, then the player would not be credited with a point for that particular match-up. Under the Pick’em format, players compete in groups where the winners are those who accumulate the most points based on correct guesses as to the outcome of the real-life games over the course of a time period (e.g., a week or the entire season).⁶⁹

In the second and more commonly known format, players join a league and select athletes for their “team.”⁷⁰ This format of fantasy sports allows players “to use their knowledge of players, strategy and statistics to manage their own virtual teams premised on the performance of professional athletes during a given season.”⁷¹ Over the course of the season, the statistics earned by those athletes in the enumerated chosen

65. For the sake of clarity and consistency, I will be referring to participants in fantasy leagues as “players” or “team owners” throughout this Article. I will use “athletes” to refer to those people who are members of a professional or collegiate sports team and whose statistical performance on the field is used to determine winners and losers in fantasy sports games.

66. See *ESPN Pigskin Pick’em, Official Rules*, § 6, <http://games.espn.go.com/pigskin/story?pageName=pigskinvrules> (last visited Jan. 24, 2008) [hereinafter *ESPN Pigskin Pick’em*]; Yahoo! Sports, *College Football Pick’em Help, Game Play Basics*, http://help.yahoo.com/l/us/yahoo/footballpickem_c/rules/cfrules-04.html (last visited Jan. 24, 2008) [hereinafter Yahoo! Sports, *College Football Pick’em*].

67. *ESPN Pigskin Pick’em, supra* note 66; Yahoo! Sports, *College Football Pick’em, supra* note 66; see also Bill M. Woodland & Linda M. Woodland, *The Effects of Risk Aversion on Wagering: Point Spread Versus Odds*, 99 J. POLITICAL ECONOMY 638, 652–53 (1991) (describing how point spreads work, as well as proffering a theory that the development of the point spread has led to the increased popularity of sports wagering).

68. *ESPN Pigskin Pick’em, supra* note 66; Yahoo! Sports, *College Football Pick’em, supra* note 66.

69. *ESPN Pigskin Pick’em, supra* note 66; Yahoo! Sports, *College Football Pick’em, supra* note 66.

70. See, e.g., *ESPN FF 2007, Rules: Introduction*, <http://games.espn.go.com/ffl/content?page=fflrulesintro> (last visited Feb. 21, 2008); Yahoo! Sports, *Overview: Yahoo! Fantasy Sports Baseball Help*, <http://help.yahoo.com/l/us/yahoo/baseball/rules/brules-01.html> (last visited Feb. 21, 2008).

71. Eric Sinrod, *United States: Perspective: Online Sports Fantasies Get Dose of Reality*, MONDAQ BUSINESS BRIEFING, July 9, 2007, available at http://www.mondaq.com/article.asp?article_id=4990.

categories are added up, and the player whose team scores the highest number of points in those categories is declared the winner.⁷² Even within this format of play, there may be a number of slight variations that alter the game play, such as head-to-head match-ups⁷³ or auction-style drafts.⁷⁴ Nevertheless, no matter the variation, the core and crux of the game dictates that the player whose collective team of real-life athletes accumulates the best statistical performance will generally win the league.

B. Are Concerns Regarding Gambling and Sports Implicated by Fantasy Sports?

1. Protecting the Integrity of the Game

Gambling opponents often assert a number of arguments in favor of greater regulations and legislation over the industry. Among the more common and prevalent reasons, at least in the context of sports gambling, is the issue of preserving the integrity of the game. Advocates argue that an outright ban on sports wagering is necessary to alleviate the concern that athletes may be tempted to alter their play during competition for monetary compensation.⁷⁵ Athletes are in the unique position of directly influencing the outcome of any wagers that may be placed on games they are participating in.

Anecdotal evidence supports this inference, as seen in a controversial article by Professor Justin Wolfers.⁷⁶ Wolfers argues that the inherent structure of point spread gambling in college basketball encourages dishonest behavior from athletes, a proposition with major implications for the sport's integrity.⁷⁷ Using a sample of more than 44,000 collegiate basketball games, Wolfers asserts that point shaving⁷⁸ may be a widespread

72. See CBSsports.com, *CBSsports.com Fantasy Rules*, http://baseball.sportsline.com/splash/baseball/spln/single/rules#rules_single_scoring (last visited Feb. 21, 2008).

73. *Id.*

74. Realtime Fantasy Sports, *What is Fantasy Football?*, <http://www.rtsports.com/what-is-fantasy-football> (last visited Oct. 7, 2008).

75. See, e.g., Erica Johnson, *Betting Ruins Careers, Sports*, UNIV. DAILY KANSAN, Aug. 22, 2007, available at <http://www.kansan.com/stories/2007/aug/22/johnson> (noting how despite increased player salaries and contracts, the drive for even more money has led a number of prominent athletes to engage in high stakes gambling).

76. Justin Wolfers, *Point Shaving: Corruption in NCAA Basketball*, 96 AMER. ECON. REV. 279, 279, 283 (2006) [hereinafter Wolfers, *Point Shaving*].

77. *Id.*

78. *Id.* at 279. "Point shaving" is defined as the practice wherein players on a favored team will deliberately allow the opposing team to score in the closing moments of a game to reduce the

practice in college basketball, particularly in games where a team is strongly favored to win.⁷⁹ In such instances, athletes, “who [only] care about *winning* the game, and gamblers, who care about whether a team beats (or *covers*) the spread,” may both attain their desired results.⁸⁰ Wolfers salaciously concluded that based on his methodology, nearly one percent, or 500 games, in the sample likely involved “gambling-related corruption.”⁸¹

Sadly, this high hypothesized number of games alleged to have been tainted by gambling may be given a measure of credence in light of college basketball’s sordid history, particularly since it has endured a number of point-shaving scandals.⁸² Recent studies have implicitly supported Wolfers’ hypothesis, concluding that gambling is more prevalent among college athletes, compared to non-athlete students.⁸³ In fact, more than twenty-five percent of Division I men’s basketball and football players who responded to a study survey indicated that they had bet on college sports, with nearly four percent admitting to gambling on their own games.⁸⁴ Another study by the University of Michigan Athletic Department found that over five percent of male college athletes surveyed admitted to “provid[ing] inside information for gambling purposes, bet[ting] on a game in which they participated, or accept[ing] money for performing poorly in a game.”⁸⁵ As the organizers of that study noted, the percentage of athletes

final margin to a number below the previously established point spread. *See id.* The goal with “point shaving” schemes is for the favored team to ultimately win their games without beating the point spread. *See id.*

79. *Id.* at 280, 283.

80. *Id.* at 279.

81. *Id.* at 283.

82. *See, e.g.,* Michael McCarthy, *Point-Shaving Remains a Concern in College Athletics: Gamblers Seek Ways to Lure Players into Game-Fixing Fold*, USA TODAY, May 9, 2007, at 1C; *see also* Tim Povtak, *FBI Targets Ex-NBA Referee: Implications to the League of Tim Donaghy’s Alleged Point-Shaving and Betting Ties Are Huge*, ORLANDO SENTINEL, July 21, 2007, at D1.

83. *See* Jiun-Hau Huang et al., *Gambling and Health Risk Behaviors Among U.S. College Student-Athletes: Findings from a National Study*, 40 J. ADOLESCENT HEALTH 390, 391 (2007) (stating that the researchers noted “significantly greater problem gambling rates in athletes than non athletes,” with twenty-six percent of male college athletes having problem and pathological gambling compared to non-athletes (sixteen percent), and similar patterns among females (seven percent and four percent, respectively)).

84. *See id.* at 391; Tom Weir, *Groups Team Up to Help Protect Games, Athletes*, USA TODAY, Dec. 23, 1997, at 2C (citing Francis T. Cullen & Edward J. Latessa, *The Extent and Sources of NCAA Rule Infractions: A National Self-Report Study of Student-Athletes* (National Collegiate Athletic Association 1996)).

85. Michael E. Cross & Ann G. Vollano, *The Extent and Nature of Gambling Among College Student Athletes, Executive Summary*, available at <http://www.umich.edu/~mgoblue/compliance/gambling/summary.html> (last visited Feb. 21, 2008).

altering their behavior in response to gambling will have significant ramifications to the integrity and legitimacy of intercollegiate sports.⁸⁶

Furthermore, sports history is peppered with examples of athletes altering their play for monetary gain. In fact, two of the more well-known historical instances of gambling affecting real-life sports play are the Black Sox scandal in the early twentieth century and the Pete Rose scandal that occurred towards the end of the twentieth century.⁸⁷ In 1919, the Chicago White Sox, led by star Shoeless Joe Jackson, deliberately lost the World Series to the Cincinnati Reds.⁸⁸ The event, now known as the “Black Sox Scandal,” was the result of greed by both the players involved and the influence of an opportunistic sports gambler.⁸⁹ Faced with the prospect of complete decimation of public trust in the integrity of their beloved game, baseball officials quickly responded by banning the players who participated in the scheme from the sport.⁹⁰

Perhaps the poster child case of the dangers of gambling and athletes is the tragic case of former Cincinnati Reds player and manager, Pete Rose. Despite a stellar twenty-four-year playing career,⁹¹ Pete Rose is now mostly known for his lifetime ban from baseball for gambling on games in which he was involved during his managerial tenure.⁹² With little other option, baseball commissioner Bart Giamatti suspended Rose for life, thereby preventing him from entering baseball’s Hall of Fame.⁹³

86. See *id.* at Discussion (stating that the NCAA has been using specialized computer software that will alert investigators as to suspicious looking changes in point spreads); Weir, *supra* note 84 (stating that with early notification of the fluctuation, NCAA officials hope to quickly investigate and quash any perception of point shaving by looking to see whether key players have suffered a “suspicious injury . . . [or] whether any unsavory types have been spotted hanging around after practice”).

87. See generally Joe Gergen, *The Worst Sports Scandals of All Time*, NEWSDAY (N.Y.), Sept. 16, 2007, at B16; Bill Ordine, *No Denying: On Admissions of Guilt*, BALTIMORE SUN, Dec. 19, 2007, at 19Z.

88. Justin Wolfers, *Blow the Whistle on Betting Scandals*, N.Y. TIMES, July 27, 2007, at A23; Gergen, *supra* note 87, at B19.

89. See generally Chicago Historical Society, *History Files: The Black Sox*, <http://www.chicagohs.org/history/blacksox.html> (last visited Mar. 4, 2008).

90. Gergen, *supra* note 87, at B16.

91. WILLIAM A. COOK, PETE ROSE: BASEBALL’S ALL-TIME HIT KING 2 (McFarland & Co., Inc. 2004); see also Baseball-Reference.com, *Pete Rose Statistics*, <http://www.baseball-reference.com/r/rosepe01.shtml> (last visited Mar. 4, 2008).

92. Bill Ordine, *No Denying: On Admissions of Guilt*, BALTIMORE SUN, Dec. 19, 2007, at 19Z.

93. Murray Chass, *Rose Is Out, but He Says Wait Till Next Year*, N.Y. TIMES, Aug. 25, 1989, at A1 (noting that despite changing public perception about gambling and rising public support in favor of reinstating Rose so that he may be inducted into the Hall of Fame, current baseball commissioner Bud Selig has steadfastly refused to reinstate Rose).

A recent rash of sports gambling scandals may provide anti-gambling advocates with additional impetus. These events may be used to compel Congress to enact further legislation to curb the interplay between the two arenas, potentially impacting the future of fantasy sports. These scandals have spanned the spectrum of the sporting world, infecting many of the most popular and publicized sports.

During the summer of 2007, the National Basketball Association (NBA) was stunned by the news that Tim Donaghy, one of its long-time officials, had bet on basketball games that he officiated.⁹⁴ Donaghy later pled guilty to federal felonies stemming from sports gambling and has become the first documented instance of a “referee, umpire, linesman or other in-game official . . . being arrested or indicted for point shaving or match fixing in the history of the four major American sports leagues.”⁹⁵

Across the Atlantic Ocean, allegations of match fixing by a number of major top flight Italian soccer clubs dulled the luster of Italy’s 2006 World Cup victory.⁹⁶ Orchestrated by the general manager of Juventus, Luciano Moggi, the scheme implicated many decorated Italian clubs,⁹⁷ and involved “manipulat[ing] the results of key games through blackmail and bribes to referees.”⁹⁸ Moggi’s plan also influenced other aspects of the sport including “referee selections, player transfers, candidates for the Italian national team, and even the presentation of a popular television highlights program.”⁹⁹ Fédération Internationale de Football Association (FIFA) president Sepp Blatter labeled the controversy “the greatest scandal in the history of soccer.”¹⁰⁰ This eventually led to the demotion of several of the clubs involved, as well as the loss of consecutive league titles by Juventus.¹⁰¹

The glorification of gambling that commonly permeates the culture of professional sports may potentially be a legitimate concern regarding outside influences affecting the integrity of sports in general.¹⁰²

94. Ken Berger & Robert Kessler, *Blowing the Whistle: NBA Rocked With Disclosure of FBI Probe of Referee Who Allegedly Bet on Games*, NEWSDAY (N.Y.), July 21, 2007, at A4.

95. See Povtak, *supra* note 82.

96. Jason Burke, *OSM Investigation: Italian Football: Paradiso to Inferno*, OBSERVER SPORTS MAGAZINE, July 30, 2006, at 47.

97. Natasha Bitá, *Blatter Calls It Worst Scandal to Hit the Game*, AUSTRALIAN, May 22, 2006, at 24; see also Grahame L. Jones, *Scandal Rocks Italian Soccer, and U.S. Waits*, L.A. TIMES, May 15, 2006, at D4.

98. Frank Dell’Apa, *Scandal Hits Italian League*, BOSTON GLOBE, May 23, 2006, at D8.

99. *Id.*

100. See Bitá, *supra* note 97.

101. See *Id.*

102. See, e.g., Richard Hoffer, *Goodbye Mr. Chips: Athletes Like John Daly and Charles*

Nonetheless, outside of the Pick'em style¹⁰³ fantasy games, this concern should not be readily relied upon as a reason to call for increased federal regulation of fantasy sports. Athletes participating in Pick'em leagues who seek to alter their play on the field to ensure that they receive the points associated with their game could potentially do so under the Pick'em format of fantasy game play. This is particularly true where the format of the Pick'em league incorporates the point spread in its scoring system. However, despite the rapidly increasing payouts available to players participating in these games, the danger Pick'em games pose to the integrity of sports is ultimately minimal at best.

Unlike with traditional sports gambling, where athletes may bet and potentially reap a large amount on the outcome of a single game, scoring high enough to win cash prizes in Pick'em leagues requires correctly choosing the winning outcome over a wide breadth of games. While, hypothetically, an athlete may be able to personally influence the game in which they are participating, the difficulty in rigging the outcome of multiple games weekly, or over the course of an entire season, would likely be a formidable obstacle that would thwart and discourage any attempts of cheating.

With the traditional managerial style of fantasy sports games, the danger to the integrity of the sport is not even implicated. These types of games reward athletes for their accomplishments on the field, such that any athlete tempted to alter their play to ensure success in their fantasy league would actually be encouraged to perform *better*. Unlike point shaving and match fixing, where athletes have an incentive to not perform to the best of their abilities, such actions would only penalize the athlete's prospects of winning their fantasy league under the traditional managerial format. Furthermore, any additional danger to the sport brought on by fantasy sports is minimized by the length of the season and the breadth of point opportunities that is seen in the Pick'em format. As the traditional managerial format of fantasy sports play rewards players for choosing a roster of consistently high-performing athletes, the impact that any single athlete may have on the overall success of a fantasy sport team is thereby mitigated.

2. Morality and the Problem of Minors

Professor Michael McCann notes that “[f]antasy sports just don’t

Barkley Have Lost Millions at the Gaming Tables Waiting for Their Skill and Luck to Kick In, SPORTS ILLUSTRATED, May 15, 2006, at 18.

103. See generally *ESPN Pigskin Pick'em*, *supra* note 66.

strike people as immoral,” perhaps due to the connotations associated with its nomenclature that “suggests that it’s not real, [and] that there’s an innocence to it.”¹⁰⁴ Nonetheless, moral antagonism toward gambling in general has consistently served as an impediment to the industry, even when cycles of regulation are considered to favor gambling.¹⁰⁵ William Eadington, the director of UNLV’s Institute for the Study of Gambling and Commercial Gaming, claims that the controversy over gambling can be characterized as a confrontation by two equally vocal camps: “one side say[ing] nothing bad happens when casinos come to town . . . [and the] other side say[ing] nothing good happens.”¹⁰⁶

Gambling opponents often argue that the industry preys on “vulnerable segments of the population, such as immigrants and the poor,” people who are unable to otherwise protect themselves due to their vulnerabilities.¹⁰⁷ Additionally, both traditional and online gambling often trigger concerns over compulsive gambling and the associated symptoms of that disease.¹⁰⁸ Thus, increased regulation is often asserted as a necessity to help prevent suicides and anxiety, as well as to advocate for increased allocation of public welfare funds toward fighting compulsive gambling.¹⁰⁹

While certainly valid in the context of traditional and online gambling, fantasy sports leagues are unlikely to trigger these concerns.¹¹⁰ The majority of fantasy sports participants typically “do not fall into the vulnerable segment of society that the anti-gambling laws have sought to protect.”¹¹¹ Furthermore, “there is simply no documentation or evidence

104. Tresa Baldas, *Fantasy Sports League or Real-Life Gambling?*, <http://www.law.com/jsp/article.jsp?id=1155892475747> (last visited Oct. 12, 2008).

105. See, e.g., Dana Gale, *Current Event: The Economic Incentive Behind the Unlawful Internet Gambling Enforcement Act*, 15 CARDOZO J. INT’L & COMP. L. 533, 543 (2007) (noting the desire to control a “social pathology” and address a “moral threat” as the key impetus behind Senator Jon Kyl’s (R-AZ) introduction and support of a Senate measure designed to prohibit Internet gambling); see also Peter Paul Shaker, Note, *America’s Bad Bet: How the Unlawful Internet Gambling Enforcement Act of 2006 Will Hurt the House*, 12 FORDHAM J. CORP. & FIN. L. 1183, 1202 (2007) (noting that a federal anti-gambling statute’s “legislative history reflects the public policy notion that gambling hurts society and ought to be strictly regulated”).

106. See Beyette, *supra* note 64.

107. M. Christine Holleman, Comment, *Fantasy Football: Illegal Gambling or Legal Game of Skill?*, 8 N.C. J. L. & TECH. 59, 74 (2006).

108. Davidson, *supra* note 9, at 224.

109. *Id.*; see also Holleman, *supra* note 107, at 74–75 (stating that suicide and divorce rates are higher in communities where gambling is legal).

110. Ryan D. Hammer, Comment, *Does Internet Gambling Strengthen the U.S. Economy? Don’t Bet on It*, 54 FED. COMM. L.J. 103, 121 (2001) (noting minimal research exists on the topic of the impact of pathological gambling on society, and what research that has been “performed on pathological gambling has often been half-hearted”).

111. Holleman, *supra* note 107, at 76.

that participation in fantasy sports has produced suicide or caused an abnormally high level of anxiety since its inception.”¹¹² While society may one day feel a greater “negative social impact due to the rise of fantasy sport participation,” the available evidence has not established a causal link between fantasy sports and the social ills historically associated with gambling.¹¹³ As one commentator has argued, restrictions on “online gambling will not remedy America’s overall gambling problem because the United States continues to allow numerous gambling alternatives.”¹¹⁴ Thus, selectively restricting the availability of fantasy sports leagues would ultimately do little to stem or address the problems posed by the gambling industry at large.¹¹⁵

More significantly, anecdotal evidence suggests that participation in fantasy leagues actually provides some positive social value. Players involved in fantasy leagues often follow their favorite sports more intimately, such that fantasy sports provide these players with a form of entertainment beyond the casual observer.¹¹⁶ Many fantasy leagues are “comprised of life-long friends and relatives, where group size is limited by the number of close friends,” and “friendship and the maintenance of ties” forms a greater part of the experience than ultimately who ends up winning the league.¹¹⁷ In fact, one fantasy player has noted that he participates in the leagues “mostly for the camaraderie,” as it allows him to keep in touch with former high school friends located all over the country.¹¹⁸

Opponents of legalized online gambling are also particularly concerned with the potential moral dangers that online gambling presents to minors.¹¹⁹ Noting that such Internet gambling sites “are the crack

112. Neville Firdaus Dastoor, Comment, *The Reality of Fantasy: Addressing the Viability of a Substantive Due Process Attack on Florida’s Purported Stance Against Participation in Fantasy Sports Leagues that Involve the Exchange of Money*, 6 VAND. J. ENT. L. & PRAC. 355, 369 (2004).

113. Aaron Levy, Note, *A Risky Bet: The Future of Pay-to-Play Online Fantasy Sports*, 39 CONN. L. REV. 325, 331 (2006).

114. Shaker, *supra* note 105, at 1202.

115. *See id.*

116. Davidson, *supra* note 9 at 226; *see also* David Roth, *My Overactive Fantasy Life*, SLATE, May 30, 2007, http://www.slate.com/id/2165544/pagenum/all/#page_start.

117. Dastoor, *supra* note 112, at 363; *see also* Sostek, *supra* note 2 (describing how fantasy sports has facilitated and encouraged former co-workers to stay in contact with each other even after some have left the company for other jobs).

118. *See* Almasy, *supra* note 3 (quoting fantasy player Mark Bleckman, who notes that “[fantasy sports] is a great excuse to keep in touch with friends”).

119. *See e.g.*, Todd Lubben, Comment, *The Federal Government and Regulation of Internet Sports Gambling*, 10 SPORTS L.J. 317, 323 (2003); Hammer, *supra* note 110, at 122 (“[T]he dangerous combination of minors and gambling is enhanced by the accessibility of Internet gambling sites.”).

cocaine of gambling,” some legislators have sought to limit the ability of children to “access Internet gambling sites on the family computer, wager with Mom’s credit card, click the mouse and bet the house.”¹²⁰ Opponents of online gambling have also contended that restricting minors from participating in Internet gambling is necessary to prevent perpetuating and encouraging the notion of “money for nothing,” as well as to save youths from the poor example that gambling parents set.¹²¹ Furthermore, gambling opponents have argued that restricting minors’ access to Internet gambling is necessary in order to prevent future detrimental gambling behavior.¹²²

As noted in a recent law review article, an increasing number of teenagers are displaying warning signs of problem gambling.¹²³ Point shaving and match fixing, evils which have traditionally been seen on the professional and college sports levels, have now been seen in high schools.¹²⁴ Gambling counselors cite anecdotal evidence that the outcome of high school athletic contests have been altered for gambling purposes.¹²⁵ As such, opponents have emphasized the need to shut down Internet sports gambling, as it is a gateway to more detrimental lifelong compulsive gambling behavior.¹²⁶ This is supported by recent studies indicating that among college-aged students, betting on the Internet each week quintupled in frequency between 2002 and 2005.¹²⁷ Among that same group, nearly five percent of college students fell into debt as a consequence of their gambling, while other negative behaviors, such as isolation or problematic relationships, have also occurred in higher frequencies.¹²⁸

Nonetheless, arguments that greater restrictions on fantasy sports are necessary to protect youths from the vices of gambling have generally been viewed as unpersuasive in light of recent studies suggesting that most fantasy players are not children.¹²⁹ Instead, studies have indicated that the

120. Lubben, *supra* note 119, at 323 (quoting Senator Jon Kyl (R-AZ)).

121. See Dastoor, *supra* note 112, at 369 (stating various negative effects that exposure to gambling could have on youths).

122. Udovicic, *supra* note 46, at 415–16.

123. *Id.*

124. See *id.* (relating an instance where point shaving has occurred).

125. See Harry Minium, *Experts Say Games Are Fixed from High School Level to Pros*, ST. LOUIS POST-DISPATCH, June 2, 1996, at 2F (noting how a New York area athlete jeopardized a potential Division I basketball scholarship by shaving points on the day scouts visited).

126. See Udovicic, *supra* note 46, at 416 (noting how compulsive gambling counselors have advocated for increased educational programs that teach high school youths about the dangers of gambling in order to “stop these kids from establishing a habit and pattern of behavior”).

127. Schachter, *supra* note 47.

128. *Id.*

129. Holleman, *supra* note 107, at 76 (“[T]he average fantasy sports player is a forty-one-

majority of fantasy sports players are “educated professionals who live in the suburban United States” and generally have the disposable income to treat these leagues as a hobby as opposed to an occupation.¹³⁰ The average fantasy players are typically “normal and well adjusted people who do not allow [fantasy sports] to have an impact on their daily lives” and thus “do not fall into the vulnerable segment of society that the anti-gambling laws have sought to protect.”¹³¹ Michael Thompson similarly writes that “it is difficult to imagine a scenario in which any young person will have their morals corrupted or have themselves placed in any danger, financial or otherwise, by participat[ing] in a fantasy league.”¹³² Notwithstanding gambling opponents’ contentions that participation in fantasy sports is a gateway to higher involvement in compulsive gambling behavior and evidence tying youth gambling to adult compulsive gambling, the same has yet to be conclusively proven as it pertains to fantasy sports.¹³³ As Thompson writes, “[t]o say that [fantasy sports] endears a child to gambling and places him on the road to ruin is a thin argument at best.”¹³⁴

Furthermore, arguments that restrictions are necessary in order to prevent minors from taking their parents’ credit cards and racking up sums of debt have also been raised. Under current federal statutes, parents are subject to liability for only the first fifty dollars worth of unauthorized charges.¹³⁵ A number of online gambling sites also include safeguards such as “credit reporting databases to match credit cards and taxpayer identification numbers to verify the true identities of users” as means to ensure that minors are barred from gambling.¹³⁶ Additionally, traditional contract doctrines dictate that contracts entered into by minors for non-necessities may be voidable at the minor’s option.¹³⁷ As such, arguments

year-old male . . .”).

130. *Id.*; see also Press Release, Fantasy Sports Trade Association, *Fantasy Sports Industry Demographics and 1st Annual Fan Choice Awards Announced* (Mar. 24, 2006), available at http://www.fsta.org/news/pressreleases/FTSA_2006_Post-Conference_pressrelease.doc.

131. Holleman, *supra* note 107, at 76.

132. See Thompson, *supra* note 9, at 40. *But see* Levy, *supra* note 113, at 331 (arguing that Thompson’s baseball card analogy fails because the preparation and research a fantasy sports player undertakes is akin to those carried out by educated sports gamblers).

133. See Davidson, *supra* note 9, at 224.

134. Thompson, *supra* note 9, at 41; see also Dastoor, *supra* note 112, at 369 (rejecting concerns that at least in Florida, youth involvement in fantasy sports is an issue which the government should be overly involved in, based on state statutes which do not restrict exposure to the gaming industry to youths).

135. *Id.* (citing 15 U.S.C. § 1643(a)(1)(B) (2006)).

136. See Hammer, *supra* note 110, at 122.

137. Theresa E. Loscalzo & Stephen J. Shapiro, *Internet Gambling Policy: Prohibition Versus Regulation*, 7 VILL. SPORTS & ENT. L.J. 11, 14 (2000).

that regulation of fantasy sports is necessary to protect minors and prevent access to destructive gambling behavior are ultimately unpersuasive.

3. Increased Prevalence of Crimes Accompanying Gambling

Gambling opponents cite a litany of tangential crimes related to the ills of gambling including “theft, embezzlement, bankruptcy, suicide, domestic violence, and child abuse and neglect” as reasons for increased regulation.¹³⁸ Similar arguments have been advanced that compulsive gamblers may be driven to commit crimes to support their habits.¹³⁹ The increased use of the Internet as a medium to facilitate gambling can also tend to exacerbate concerns over forgery and credit card theft.¹⁴⁰ Additionally, it has traditionally been argued that gambling provides “a fertile breeding ground for organized crime” and a funding source for its associated illegal activity.¹⁴¹

A number of authors have discounted these arguments as speculative at best.¹⁴² The typical fantasy sports league “tend[s] not to involve great amounts of money and arguably would not have any affect [sic] on crime rates.”¹⁴³ With most fantasy league players paying only a nominal entry fee, a player would need to participate in multiple concurrent leagues to financially justify the criminal risk.¹⁴⁴ Ultimately, the time and effort required to develop fantasy sports into an economically lucrative venture are prohibitive from a criminal perspective.¹⁴⁵ Moreover, the majority of

138. Hammer, *supra* note 110, at 121.

139. See Dastoor, *supra* note 112, at 368.

140. See Holleman, *supra* note 107, at 74 (noting the widely held view among community leaders that gambling can increase forgery and credit card theft).

141. Dastoor, *supra* note 112, at 368.

142. See, e.g., Thompson, *supra* note 9, at 40; Dastoor, *supra* note 112, at 368. *But cf.* Levy, *supra* note 113, at 330 (arguing that while evidence does not presently exist to support the assertion that fantasy sports leagues trigger the same crime rate concerns as traditional sports gambling, “it is certainly plausible—if not likely—that fantasy sports will continue to evolve, increasing the likelihood that fantasy sports and gambling become more difficult to distinguish”); Udovicic, *supra* note 46, at 404, 413–14 (noting how Internet gambling has led individuals to commit crimes as a means to escape their debts, and how the industry can be used for money laundering). See generally WEINSTEIN & DIETCH, *supra* note 13, at 143–44 (noting that while there are “undoubtedly, a few persons who overindulge in gambling, embezzle funds, or become embroiled with loan sharks and other undesirables,” there is a lack of correlation showing a direct causal effect between gambling and increased crimes).

143. Davidson, *supra* note 9, at 222.

144. Jon Boswell, Comment, *Fantasy Sports: A Game of Skill That is Implicitly Legal Under State Law, and Now Explicitly Legal Under Federal Law*, 25 CARDOZO ARTS & ENT. L.J. 1257, 1272 (2008).

145. See *id.*; Thompson, *supra* note 9, at 40 (arguing that one “would have to participate in an inordinate number of games that require such minimal money down in order to accumulate any

fantasy league participants are involved in intimate leagues with friends, colleagues, and relatives, thereby rendering comical the suggestion that the players will resort to crime to satisfy entry fee obligations.¹⁴⁶

III. LEGISLATIVE REGULATION OF GAMBLING AND FANTASY SPORTS

A. State Regulation of Gambling and Fantasy Sports

The difficulty in defining the types of activities that constitute gambling is magnified by the fact that federal statutes have yet to codify a comprehensive definition of “gambling.”¹⁴⁷ Consequently, each state individually defines “gambling,” leading to varied definitions.¹⁴⁸ These state definitions are important because each state is recognized as the entity principally responsible for legislating gambling restrictions.¹⁴⁹ As gambling is traditionally seen as a vice affecting public welfare and health, it is commonly subjected to state control under traditional police powers rather than federal regulation.¹⁵⁰ Thus, existing state laws may guide any potential federal statute seeking to address gambling. While jurisdictional variations exist, the most commonly adopted definition of gambling involves three major elements: prize, chance, and consideration.¹⁵¹ This definition often leads to confusion since many seemingly innocuous

appreciable debt . . . [with] the time necessary to actually compete in any fantasy league [making] participation in more than a handful of them a logical impossibility”).

146. Dastoor, *supra* note 112, at 368.

147. See 18 U.S.C. § 1955(b)(2) (stating merely that the term gambling “includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein”).

148. Compare NEV. REV. STAT. ANN. § 463.0152 (LexisNexis 2007) (enumerating narrowly twenty-two specific types of casino games as falling within the definition of a “gambling game”) with UTAH CODE ANN. § 76-10-1101 (LexisNexis 2007) (defining gambling as “risking *anything* of value for a return”) (emphasis added), and CAL. PENAL CODE § 330 (Deering 2008) (mimicking Nevada’s statute by enumerating eleven specific types of casino games, as well as “any . . . game played with cards, dice, or any device”), with N.Y. PENAL LAW § 225.00 (Consol. 2007) (defining gambling broadly by stating that a “person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control”).

149. See Dastoor, *supra* note 112, at 356 (noting that “the state has the power, duty and legitimate interest in regulating gambling activities via its police powers because of the readily apparent public policy considerations”).

150. See *id.*

151. Glick v. MTV Networks, 796 F. Supp. 743, 746 (S.D.N.Y. 1992); see also PETER COLLINS, GAMBLING AND THE PUBLIC INTEREST 15 (Prager Publishing 2003) (defining gambling as “an activity where two or more parties place at risk something of value . . . in the hopes of winning something of greater value . . . [where success of the wager] depends on the outcome of events that are unknown to the participants at the time of the bet”).

activities would technically fall within the wide breadth of activities and games deemed gambling.¹⁵²

Consider, for example, *Glick v. MTV Networks*, where the court held that a sweepstakes run by a television network failed to meet the common law definition of gambling.¹⁵³ In that case, a viewer sued the network over a promotional sweepstakes intended to increase the channel's popularity and viewer ratings.¹⁵⁴ Prizes in the contest ranged from shirts and hats to grand prizes of cars and money.¹⁵⁵ To enter the contest, viewers had the option to call a "900" number for which they would be charged two dollars, request a free phone number by mail, or mail in an official entry blank.¹⁵⁶ Glick argued that the MTV sweepstakes constituted a gambling scheme violating New Jersey state laws—an argument the court ultimately rejected.¹⁵⁷ Specifically, the court noted that the element of consideration was not met because sweepstakes participants were not required to risk something of value in order to be eligible to win.¹⁵⁸ For the court, the free alternative methods to enter the contest were dispositive because it took the sweepstakes outside the purview of the gambling laws.¹⁵⁹

The absence of the prize element necessary to establish gambling may also take the accused activity outside the bounds of criminal liability.¹⁶⁰ In *McKee v. Foster*, the Oregon Supreme Court defined what type of "prize" was necessary for a game to enter the purview of gambling.¹⁶¹ Finding that players could only win "free games" that had no tangible or real-world value, the court declared that pinball machines were not gambling devices.¹⁶² The court also rejected the gambling allegation on the ground that other statutes dealing with gambling required that the prize be "greater in value than the amount hazarded."¹⁶³ Since the "free game" had no value

152. See Collins, *supra* note 151, at 15 (remarking that "activities such as purchasing lottery tickets, participating in prize draws, and taking part in newspaper competitions" may all potentially fall under the definition of gambling but are not thought of as such since they often involve relatively "small stakes").

153. *Glick*, 796 F. Supp. at 748.

154. *Id.* at 743–44.

155. *Id.* at 744.

156. *Id.* (explaining that the contest was exceptionally successful with over a million people entering the sweepstakes).

157. *Id.* at 745–48.

158. *Id.* at 747.

159. *Glick*, 796 F. Supp. at 747.

160. See *McKee v. Foster*, 347 P.2d 585, 591 (Or. 1959).

161. *Id.* (holding that "the prize must be tangible in nature and have a value in the market place" in order to satisfy the prize element of a gambling offense).

162. *Id.*

163. *Id.*

outside the context of the pinball machine, the court opined that the prize in this case did not satisfy the necessary prerequisite requirement.¹⁶⁴

B. Current Federal Statutes Addressing Gambling

The bulk of current federal laws addressing and regulating the gambling industry arose during the 1960s, when concerns regarding the influence of organized crime on sports gambling syndicates led the United States government to enact new legislation to combat the effect of organized crime on sports gambling.¹⁶⁵ The significant pieces of legislation written to address this problem were: the Illegal Gambling Business Act,¹⁶⁶ the Interstate Wire Act,¹⁶⁷ and the Professional and Amateur Sports Protection Act.¹⁶⁸

1. Illegal Gambling Business Act

Fantasy sports leagues may be subject to liability under 18 U.S.C. § 1955, which prohibits parties from running illegal gambling businesses.¹⁶⁹ The scope and applicability of § 1955 is fairly broad, imposing liability on “[w]hoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.”¹⁷⁰ Subsequent clauses further define the required conduct, including that illegal gambling businesses must involve the participation of at least five people, and that the business must continuously operate for at least thirty days or gross at least \$2000 in one day.¹⁷¹ Additionally, the gambling business must also be outlawed by the

164. *Id.* (explaining that “[t]he replay can not be sold[,] . . . can not be carried away[,] . . . [and] is intangible in nature”).

165. *See, e.g.,* *United States v. Bridges*, 493 F.2d 918, 921–22 (5th Cir. 1974) (noting that § 1955 was “intended to reach only those persons who prey systematically upon our citizens and whose syndicated operations are so continuous and so substantial as to be of national concern, and those corrupt State and local officials who make it possible for them to function”); *see also* *United States v. Follin*, 979 F.2d 369, 372 (5th Cir. 1992); *United States v. Rieger*, 942 F.2d 230, 235 (3d Cir. 1991).

166. 18 U.S.C. § 1955 (2006).

167. *Id.* § 1084.

168. 28 U.S.C. § 3702 (2006).

169. 18 U.S.C. § 1955 (2006).

170. *Id.* § 1955(a); *see also* *United States v. Becker*, 461 F.2d 230, 232 (2d Cir. 1972) (stating that “Congress’ intent was to include all those who participate in the *operation* of a gambling business, regardless how minor their roles and whether or not they be labeled agents, runners, independent contractors or the like, and to exclude only customers of the business”); *United States v. Grezo*, 566 F.2d 854, 857 (2d Cir. 1977) (listing a number of decisions by various circuit courts adopting a wide interpretation as to those parties who may be liable under § 1955).

171. 18 U.S.C. § 1955(a)–(b) (2006).

state where the conduct occurs before § 1955 liability attaches.¹⁷² The statute also lists particular gaming activities covered, as well as dictating specific exemptions from liability.¹⁷³ The current form of § 1955 is crucially important to fantasy sports league participants because, although § 1955 does not explicitly prohibit fantasy sports, the law reserves the ability to regulate it.¹⁷⁴

The applicability of § 1955 to fantasy sports depends on the threshold question of whether fantasy sports leagues themselves may be considered gambling.¹⁷⁵ Because the list of gambling activity under this statute is not exclusive, federal prosecutors are left with sufficient discretion to employ § 1955 as a means to potentially regulate fantasy sports.¹⁷⁶

Notwithstanding, case law interpreting § 1955 provides a modicum of optimism that fantasy sports leagues likely fall outside the purview of the statute. In *United States v. Bridges*, the Court of Appeals for the Fifth Circuit held that only significantly sized gambling operations are liable under § 1955 because the “congressional intent [was] to bring within federal criminal legislation not all gambling, but only that above a certain minimum level.”¹⁷⁷ A number of cases echo the requirement that a particular gambling business must be of sufficient size and sophistication to fall within the type of activity that Congress sought to prohibit.¹⁷⁸ Where a gambling operation does not meet the size and sophistication requirements, federal liability cannot be imposed on fantasy sports league operators,

172. *Id.* § 1955(b)(1)(i).

173. *Id.* § 1955(b)(2), (e) (stating that gambling “includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein,” but does not include “any bingo game, lottery, or similar game of chance conducted by [a specific tax exempt charitable] organizations”).

174. *Id.* § 1955(b)(2) (noting that the activities which constitute “gambling” are not an exclusive list).

175. See Ted Sherman, *Fantasy League Suit Thrown Out of Court*, THE STAR-LEDGER (N.J.), June 21, 2007, at 58 (addressing the issue of whether fantasy sports leagues should be classified as gambling); Jason La Canfora, *Beating Yourself Takes New Meaning*, WASH. POST, Aug. 13, 2006, at E1 (addressing the issue of whether fantasy sports leagues should be classified as gambling).

176. 18 U.S.C. § 1955(b)(2).

177. *United States v. Bridges*, 493 F.2d 918, 922 (5th Cir. 1974).

178. See, e.g., *United States v. Hawes*, 529 F.2d 472, 478 (5th Cir. 1976) (“It is not the purpose of § 1955 to prohibit gambling, but only to prohibit ‘illegal’ gambling of such a size as would affect interstate commerce.”); *United States v. Nerone*, 563 F.2d 836, 843 (7th Cir. 1977) (noting that “the purpose of § 1955 is not to subject almost any small gambling operation to federal regulation”); *United States v. Schaefer*, 510 F.2d 1307, 1311 (8th Cir. 1975) (arguing that “[t]he statute is not meant to reach gambling operations that are of insignificant monetary proportions or those that are only occasional or intermittent in operation . . . [but only proscribes] gambling that is continuous and substantial”).

although there remains the possibility of state liability.¹⁷⁹ Consequently, even a high stakes league run by a small, closely knit group of central operators would likely escape federal prosecution under § 1955.¹⁸⁰

2. The Interstate Wire Act

The Interstate Wire Act (Wire Act) was passed in September 1961 as another means for federal prosecutors to “deal with large scale interstate gambling operations.”¹⁸¹ In response to rising concerns that “illegal gambling provided a substantial source of revenue for organized crime,” Congress enacted 18 U.S.C. § 1084 to attack “large gambling syndicates that use interstate facilities.”¹⁸² The statute essentially bars the use of a “wire communication facility” to transmit betting and wagering information across state lines.¹⁸³ Specifically, the statute holds liable parties “engaged in the business of betting or wagering” who knowingly use some form of wire communication to transmit bets or wagers, which includes information used to place bets or wagers on sporting events.¹⁸⁴ However, the Wire Act does not bar the transmission of information used for reporting news about sporting events, nor does it impose liability where betting on sports is legal in both the state(s) of origin and destination of the

179. *Bridges*, 493 F.2d at 922 (noting that “insignificant (by congressional standards) gambling activity will remain subject to regulation by state law without federal intervention unless such a business grows to meet the minimum gauge of substantiality established by the statute”).

180. *See* *United States v. Calaway*, 524 F.2d 609, 616–17 (9th Cir. 1975) (stating that the statute requires “that five or more persons be *involved*, not that five or more persons be indicted or convicted . . . [as] Congress clearly meant to count all persons employed in the gambling business, not just those acting in a supervisory capacity”); *see also* *United States v. Hunter*, 478 F.2d 1019, 1022 (7th Cir. 1973) (holding that the five-person requirement should not be interpreted to mean that only those in a supervisory or ownership capacity are eligible to be counted in that requirement, but that street-level employees are also adequate). While many fantasy sports operations and gambling ventures are generally online, the question arises as to whether employees of Internet service providers could be counted as satisfying that threshold requirement. As current case law casts a wide net to include essentially any party who furthers an illegal gambling enterprise, such employees could be used to meet the prerequisite, but not specifically charged with violating the statute themselves. This question has yet to be resolved and is outside the scope of this Article.

181. *See* *Gambling in America*, *supra* note 13, at 11; *see also* *Martin v. United States*, 389 F.2d 895, 898 (5th Cir. 1968) (commenting that § 1084 “was part of an omnibus crime bill that recognized the need for independent federal action to combat interstate gambling operations”); Lubben, *supra* note 119, at 320 (The Wire Act “was originally enacted to aid states in enforcing their laws and to stifle the association between organized crime and gambling.”).

182. *Gambling in America*, *supra* note 13, at 11.

183. 18 U.S.C. § 1084(a) (2006).

184. *Id.*

transmission.¹⁸⁵ Additionally, like many other federal regulations written to address and regulate gambling, the Wire Act is limited by targeting only “individuals in the ‘business of betting or wagering,’ and not mere bettors.”¹⁸⁶

While the Wire Act was originally intended to be used as a tool to combat the use of telephones in sports wagers,¹⁸⁷ the statute arguably applies to the Internet as well.¹⁸⁸ Thus, the potential scope of the Wire Act, in terms of its applicability to a range of different types of information, poses perhaps the most substantial challenge to the legality of fantasy sports leagues. However, the applicability of the Wire Act to fantasy sports leagues depends on first concluding that the league constitutes gambling.¹⁸⁹ If it is a gambling league, the likelihood of liability under the Wire Act is high.¹⁹⁰ In fact, while the use of the Wire Act to regulate online versions of general casino games such as poker and blackjack has been questioned, at least one federal court has affirmed the use of the Wire Act to address gambling on sports.¹⁹¹

Nonetheless, fantasy sports league operators realistically fearing the prospect of federal prosecution under the Wire Act should take heart in the ample criticism regarding the modern application of the statute. For example, the efficacy of the Wire Act has been questioned in light of testimony from federal officials who claim that while the Wire Act “has been successful in eliminating many operations controlled by organized crime,” such efforts have “not eliminated or even reduced the scope of illegal gambling.”¹⁹² Furthermore, other critics have argued that the Wire Act is outdated in light of its original legislative intent to address mafia bookmaking and its lack of clear applicability to Internet gambling.¹⁹³ The

185. *Id.* § 1084(b).

186. Lubben, *supra* note 119, at 320.

187. See Adrian Goss, *Jay Cohen's Brave New World: The Liability of Offshore Operators of Licensed Internet Casinos for Breach of United States' Anti-Gambling Laws*, 7 RICH J. L. & TECH. 32, ¶17 (2001) (citing congressional references regarding the intent of the Wire Act to curb sports gambling via telephone).

188. Lubben, *supra* note 119, at 321 (arguing that a party engaging in gambling activity via a wireless Internet access point may ultimately be held liable under the Wire Act); see also Goss, *supra* note 187, at 32, ¶19 (discussing how broadly the term “wire communication facility” can be applied).

189. See 18 U.S.C. § 1955(b)(2).

190. See Gale, *supra* note 105, at 537.

191. *Id.* (citing *In re Mastercard Int'l Internet Gambling Litigation*, 313 F.3d 257, 262 (5th Cir. 2002), which affirmed that the Wire Act solely “concerns gambling on sporting events or contests”).

192. *Gambling in America*, *supra* note 13, at 12.

193. Gale, *supra* note 105, at 537.

“ambiguity in the construction of the law [to apply to Internet gambling], has kept courts from enforcing the Wire Act against” these operations.¹⁹⁴

3. Professional and Amateur Sports Protection Act

In 1992, Congress passed the Professional and Amateur Sports Protection Act (Act)¹⁹⁵ in response to growing concern over state sponsored gambling on sports, as well as to engender greater public confidence in the integrity of the various sports leagues.¹⁹⁶ This statute outlawed both government entities and private persons from sponsoring, operating, advertising, and promoting any gaming activity that is based either directly or indirectly on the performance of athletes.¹⁹⁷ The Act has given the major sporting leagues a cause of action to enjoin violations of this section by providing only a limited number of exceptions to the statute, consisting primarily of grandfather clauses exempting previously authorized government sponsored schemes and casino wagering.¹⁹⁸

As previously discussed, the applicability of the Act to fantasy sports leagues is heavily contingent on how such games are defined. As fantasy sports are completely based on the results and performances of athletes, if such activity is determined to fall under the definition of gambling, then it would likely fall squarely within the bounds of the statute.¹⁹⁹ Despite the broad range of activities that could be covered by the Act, there has been very little impetus by either federal agencies or sports leagues to employ the statute to shut down sports gambling.²⁰⁰ In fact, the statute’s provisions may actually encourage sports gambling by excluding existing legal sports

194. *Id.* But see Shaker, *supra* note 105, at 1186 (arguing that federal prosecutions under the Wire Act encompass gambling activity of all natures, and not just those based on sports wagering). Nonetheless, as Shaker subsequently notes, the courts have been less encompassing in their interpretation of the statute. See *id.*

195. *Professional and Amateur Sports Protection Act*, Pub. L. No. 102-559, § 3, 106 Stat. 4227, 4229 (1992).

196. See S. Rep. No. 102-248, at 4 (1991) (expressing concern over the public’s wariness of sporting leagues’ integrity).

197. 28 U.S.C. § 3702 (2006).

198. *Id.* §§ 3703, 3704. The Act does not provide for criminal liability for violations of its provisions, but authorizes a civil action for injunctive relief to be brought by either “the Attorney General . . . or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.” *Id.* § 3703.

199. *Id.* § 3702.

200. See Jeffrey Rodefer, *Professional and Amateur Sports Protection Act of 1992*, <http://www.gambling-law-us.com/Federal-Laws/sports-protection.htm> (last visited Mar. 29, 2008) (citing Greater New Orleans Broad. Ass’n v. United States, 527 U.S. 173, 180 (1999) as one of the only reported cases interpreting the scope of the Act).

gambling from the measure's applicability.²⁰¹ Congress' inconsistency in having a broad, far-reaching federal statute banning all gambling activity on sports, while at the same time permitting certain states to continue to provide such gaming,²⁰² creates a legally illogical situation. While the Act provides both federal officials and sports leagues with a tool to combat concerns over sports gambling, the lack of any previous prosecution under this statute underscores the unlikelihood that it will subsequently be used to regulate fantasy sports games. Nonetheless, participants in such leagues should be aware that the potential for federal prosecution, although improbable, remains present under this statute.

C. Recent and Proposed Federal Regulations that May Impact Fantasy Sports and Online Gambling

Recent increased crackdowns on gambling executives by federal prosecutors and legislation by Congress have signaled the possibility that the cyclical nature of gambling regulations has shifted back to a state of increased scrutiny.²⁰³ In 2006, federal officials arrested two major online gambling executives for violations of U.S. gambling laws.²⁰⁴ David Carruthers,²⁰⁵ chief executive of United Kingdom based BetonSports.com, was arrested by federal officials and charged with racketeering and mail fraud.²⁰⁶ A few months later, the chairman of another British sports book was also arrested for charges of illegal online gambling.²⁰⁷ United States

201. See Rodefer, *supra* note 200 (providing examples displaying Congress' intent to protest legal sports gambling already in effect).

202. *Id.* (noting how existing games in Oregon, Delaware, and Nevada were exempted from applicability under the Act, and how states contemplating adding sports wagering, such as New Jersey, were permitted to do so).

203. See generally Lori Tripoli, *Down But Not Out: Working Around the U.S. Government's Crackdown*, 11 GAMING L. REV. 116, 116 (2007) (noting that newfound government policies of limiting financial transfers to offshore gambling sites and prosecution of high level executives have led to concerns by those involved with online gambling as to the future of their industry).

204. Michael A. Hiltzik, *Latest Arrest Chips Away at Online Betting*, L.A. TIMES, Sept. 8, 2006, at A10; David Koenig, *11 People, 4 Firms Charged in Internet Gambling Sting*, WASH. POST, July 18, 2006, at D3.

205. Prior to his arrest, Carruthers wrote an editorial criticizing the United States government for their continued prosecution of people involved in online gambling under the Wire Act as "foolish at best and a violation of privacy and individual freedom at worst." David Carruthers, Editorial, *Don't Bet Against Online Gambling: The Industry Needs to Be Regulated, Not Outlawed*, L.A. TIMES, Mar. 15, 2006, at B13.

206. Hiltzik, *supra* note 204. Carruthers remains under house arrest in St. Louis, Missouri, where he is awaiting trial on those charges. See Owen B, *Profile: David Carruthers*, ONLINE CASINO REPORTS, Dec. 4, 2007, <http://www.onlinecasinoreports.com/news/specialreports/2007/12/4/profile-david-carruthers.php>.

207. See Hiltzik, *supra* note 204 (describing the arrest of Sportingbet PLC chairman Peter

government agents also targeted other officials involved in online gambling, including executives in charge of online financial transfer services.²⁰⁸

Legal commentators have noted that the “arrest[s] sent a shockwave to the gaming industry” and were seen as evidence foreshadowing changing government policy with regard to the enforcement of gambling laws.²⁰⁹ In response to these arrests, many online gambling sites turned away from the U.S. market and began focusing their ventures to more gambling friendly countries in the European Union and Asia.²¹⁰ If the U.S. government intended these arrests to signal a new dawn of anti-gambling sentiment, online operators have certainly gotten the message.²¹¹

1. Unlawful Internet Gambling Enforcement Act of 2006

Congress passed the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006 based on findings that restrictions on electronic funding to gambling websites would best serve federal desires to “enforc[e] gambling prohibitions or regulations on the Internet.”²¹² One legal commentator criticized the manner in which the law was passed because it was attached without notice to the back of the Safe Ports Act, a bill with an overwhelmingly high probability of passage.²¹³ Under its terms, the UIGEA essentially prohibits the instrumentalities of gambling by reigning

Dicks in New York based on “criminal warrant issued by the state of Louisiana”). Dicks was later released and allowed to return to England after New York Governor George Pataki refused to sign the extradition order to send Dicks to Louisiana. *British Online Gambling Firms Quit U.S.*, L.A. TIMES, Oct. 14, 2006, at C2 [hereinafter *British Online*].

208. See, e.g., *Authorities Arrest Founder of Internet Gambling Site*, N.Y. TIMES, Mar. 31, 2007, at C9 (stating that BetonSports founder Stephen Kaplan was arrested in March 2007 on charges of failing to pay excise taxes on U.S.-based wagers and Internet fraud); see also Koenig, *supra* note 204, at D3.

209. Tripoli, *supra* note 203, at 116.

210. *Id.*

211. See, e.g., *British Online*, *supra* note 207, at C2 (noting how British gaming websites began selling off portions of their businesses catering to U.S. gamblers as well as refusing to take wagers from Americans, partially in light of the arrests of high level executives); see also Frank Ahrens, *New Law Cripples Internet Gambling: Banks Are Barred from Handling Transactions*, WASH. POST, Oct. 14, 2006, at A1 (discussing “a major offshore e-currency company . . . no longer will accept payments from U.S. customers” in light of new U.S. policies).

212. 31 U.S.C. § 5361(a)(1)–(4) (2006).

213. I. Nelson Rose, *The Unlawful Internet Gambling Enforcement Act of 2006 Analyzed*, http://www.gamblingandthelaw.com/columns/2006_act.htm (last visited Mar. 27, 2008) (noting how UIGEA was “rammed through Congress by the Republican leadership in the final minutes before the election period recess,” without giving members of the Senate-House Conference Committee an opportunity to see the final language of the statute).

in and severely restricting the flow of money to gaming operators.²¹⁴ The UIGEA bars those parties involved in gambling businesses from knowingly accepting “credit[,] . . . electronic fund transfer[s,] . . . check[s], draft[s], or similar instrument[s,] . . . or the proceeds [from] any other form of financial transaction” in connection with illegal gambling activities.²¹⁵ Financial institutions are not only barred from sending electronic money transfers from U.S. citizens, they are also obligated to enact a number of new affirmative measures to identify and prevent such transactions.²¹⁶

A number of commentators have criticized the UIGEA as a statute solely concerned with keeping U.S. monies within the country and out of the hands of the foreign countries where many Internet gaming operations are based.²¹⁷ In fact, the passage of the law has led Antigua and Barbados to file a complaint against the United States with the World Trade Organization, asserting that the UIGEA undermines the United States’ obligations under international treaties.²¹⁸ The law’s numerous exceptions as to what types of activities may be considered gambling, especially an explicit exemption for fantasy sports, adds further authority to the argument that the UIGEA is ultimately not the best means to prohibit Internet gambling.²¹⁹

2. Measures to Address and Assist Problem Gamblers

Additional pending legislation in the wake of the UIGEA’s enactment may provide further substantiation to the opinion that a shift in federal policy as to gambling laws has occurred. The Comprehensive Awareness of Problem Gambling Act of 2007 (CAPGA) was introduced by Congressman Martin Meehan (D-MA) in order to address the growing concern of compulsive and problem gamblers in the country.²²⁰ The CAPGA seeks to mandate “a national campaign to increase knowledge and raise awareness with respect to problem gambling issues within the general public” by implementing new educational programs.²²¹ Additionally, the CAPGA calls for the establishment and implementation of “a national

214. See generally 31 U.S.C. § 5363.

215. *Id.*

216. *Id.* § 5364 (2006).

217. See Shaker, *supra* note 105, at 1195; see also Gale, *supra* note 105, at 546–49 (stating the UIGEA is not about morals but about money).

218. Shaker, *supra* note 105, at 1198.

219. See 31 U.S.C. § 5362(1)(E)(ix).

220. *Comprehensive Awareness of Problem Gambling Act of 2007*, H.R. 1170, 110th Cong. (2007).

221. *Id.* at § 2(a)–(b).

program of research on problem gambling,” as well as for the appropriation of grant money for treatment services.²²² Despite the well-intended benefits proposed by the bill, some congressional commentators doubt there is sufficient support to pass the CAPGA.²²³ Despite lackluster support for the CAPGA, the introduction of a bill intended to address compulsive gambling may be evidence of the government reasserting an old but tried reason for limiting gambling as part of a new wave of increased government regulation of the industry.

IV. CURRENT FEDERAL POLICY CORRECTLY OMITTS RECREATIONAL FANTASY SPORTS FROM REGULATION

Despite the passage and introduction of new legislative measures, a recent decision by a federal court in New Jersey reflects the current federal judicial policy to not regulate fantasy sports. In June 2006, noted Colorado attorney Charles Humphrey²²⁴ filed suit against a number of popular fantasy sports league providers on the ground that such leagues constituted unlawful gambling.²²⁵ Arguing that the “winners of fantasy sports leagues are determined by the statistics of actual players,” Humphrey asserted that under the common law definition of gambling, “fantasy sports are games of chance.”²²⁶ In essence, any attempt by fantasy league participants “to predict the future performances of athletes involved chance guesses, turning entry fees into unlawful gambling transactions.”²²⁷ Furthermore, Humphrey argued that, because “[a]ttempts by third parties to predict the

222. *Id.* at §§ 3–4.

223. See H.R. 6009, 109th Cong. (2006) (serving to demonstrate a similar gambling bill in a prior session which was never enacted); State Net, *Congressional Bills Legislative Forecast On 110 HR 1170, 110th Cong.* (on file with author).

224. Jessica Centers, *All In: Chuck Humphrey Has Based His Career on Gambling. Now He's Calling the Bet on Online Fantasy-Sports Competitions*, WESTWARD (Colo.), Dec. 14, 2006, at 13 (noting Humphrey's “eclectic” career, ranging from a stint as a securities lawyer to running a precursor business to Blockbuster Video to serving as a financial backer to a team of professional poker players). Since he has personally never participated in a fantasy league, Humphrey has been criticized for his admitted reason for filing suit on behalf of third parties—money. See Justin Rebello, *Are Fantasy Sports Gambling? A Colorado Lawyer Is Betting They Are*, LAWYER USA, Apr. 9, 2007, at 14 (quoting Humphrey's comment that “There are statutes that allow someone in my position to recover the gambling losses of other people . . . [a]nd \$1.5 billion is a lot to recover”).

225. See generally Complaint, *Humphrey v. Viacom Inc.*, 2007 U.S. Dist. LEXIS 44679 (D.N.J. 2006) (No. 06-2768).

226. *Id.* at 17. Additionally, Humphrey asserted that the other two elements of prize and consideration are satisfied by the monetary reward to the winner and the payment of an entry fee, respectively. See Reply Brief at 16–17, *Humphrey*, 2007 U.S. Dist. LEXIS 44679 (No. 06-2768).

227. See Sherman, *supra* note 175, at 58.

future performances of athletes involve chance guesses²²⁸ akin to people wagering on the outcome of horse races and sporting events, fantasy sports leagues should likewise be regulated as predominantly chance-determined games.²²⁹ Humphrey also argued that the “registration fees paid by fantasy sports leagues participants constitute wagers or bets.”²³⁰ Thus, because fantasy players “wager” their “entry fee for the chance to win a prize and the winner is determined predominately by chance due to potential injuries to players and the vicissitudes of sporting events in general,” Humphrey contended that such games are gambling activities.²³¹ Consequently, Humphrey asserted a right to recover the gambling losses of others by filing a *qui tam*, or private attorney general, action against the major fantasy sports league providers.²³²

In response to the defendants’ motion to dismiss, Humphrey reiterated that despite defendants’ artful descriptions of their businesses, each element of gambling was present in the action.²³³ Nonetheless, in June 2007, Judge Cavanaugh held in favor of the fantasy sports league providers, and dismissed the complaint.²³⁴ Commentators in favor of keeping fantasy sports legal have celebrated this decision.²³⁵

While gambling law scholars and fantasy league participants would arguably have preferred an explicit answer to whether fantasy sports constitute gambling, Judge Cavanaugh declined to make a conclusive ruling on the issue.²³⁶ Instead, Judge Cavanaugh “rejected [Humphrey’s]

228. Complaint at 17, *Humphrey*, 2007 U.S. Dist. LEXIS 44679 (No. 06-2768).

229. *Id.* at 17–21 (noting Humphrey’s further argument that chance predominated fantasy sports by virtue of the fact that coaching decisions, injuries, and off-field conduct of athletes often leads to statistical performances completely out of the hand of the fantasy player).

230. *Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *6.

231. *Id.*

232. Complaint at 22–24, *Humphrey*, 2007 U.S. Dist. LEXIS 44679 (No. 06-2769); *see also Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *7 (explaining that the purpose of this action is to prevent “gamblers and their families from becoming destitute due to gambling losses . . . thus becoming wards of the State . . . by providing a method for the gambler’s [family] . . . to recover the lost money from the winner”).

233. *See* Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss at 7–18, *Humphrey*, 2007 U.S. Dist. LEXIS 44679 (D.N.J. 2006) (No. 06-2768); *see also generally id.* at 18–25 (demonstrating Humphrey’s dispute of the fantasy league operators’ arguments that the complaint should be dismissed for failure to maintain a *qui tam* action and that the federal court should abstain from deciding such matters).

234. *Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *1; *see also* Sherman, *supra* note 175, at 58 (discussing the judge’s dismissal of Humphrey’s suit).

235. *See* Sherman, *supra* note 175, at 58 (noting how “ESPN attorneys *hailed* the ruling . . . [for making] clear that fantasy sports players are simply hobbyists”) (emphasis added).

236. *Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *24 (stating plainly that the court was able to decide the Defendants’ Motions to Dismiss without having to make the decision as to

arguments that fantasy sports games . . . are an illegal form of online gambling.”²³⁷ In dismissing the complaint for failure to find gambling activity, the court noted that “it would be ‘patently absurd’ to hold that ‘the combination of an entry fee and a prize equals gambling.’”²³⁸ Thus, where money is paid “unconditionally for the privilege of participating in a contest” with a distinctly known and guaranteed prize, such “entry fees do not constitute bets or wagers.”²³⁹ The court further explained a crucial distinction between “a bet” and “a known prize,” noting that a bet is:

a situation in which the money or prize belongs to the persons posting it, each of whom has a chance to win it . . . [while] [p]rize money . . . is found where the money or other prize belongs to the person offering it, who has no chance to win it and who is unconditionally obligated to pay it to the successful contestant.²⁴⁰

Using this distinction, the court concluded that because the payment of the entry fee was not a bet or wager, fantasy sports participants do not suffer any loss that would allow Humphrey to recover under the *qui tam* laws.²⁴¹ Instead, the money paid to the league operators was “a one-time, non-refundable entry fee to participate in the leagues . . . in consideration for . . . the benefit of [the operators’] extensive administrative, statistical and analytical services.”²⁴² Following this line of reasoning, Judge Cavanaugh concluded that such entry fees paid in exchange for the right to participate in the leagues did not amount to a gambling loss.²⁴³

Additionally, the court held that Humphrey could not recover under the *qui tam* laws on the grounds that the plaintiff failed to identify any participants who lost money to the fantasy sports providers, such that there was nobody in particular on whose behalf he can recover.²⁴⁴ Noting that *qui tam* statutes should be “narrowly construed because they are penal in nature,” and that their historical purpose was to seek protection for

whether fantasy sports leagues are games of chance).

237. See Sherman, *supra* note 175, at 58.

238. *Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *19–20 (citing *State v. Am. Holiday Ass’n*, 727 P.2d 807, 809, 812 (Ariz. 1986)) (noting that any alternative conclusion would lead to many types of every day contests being deemed “unlawful gambling, including ‘golf tournaments, bridge tournaments, local and state rodeos or fair contests, . . . spelling bees, beauty contests and the like’”).

239. *Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *20.

240. *Id.* at *21.

241. *Id.* at *28.

242. *Id.* at *28–29.

243. *Id.* at *29.

244. *Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *16–18; Sinrod, *supra* note 71.

gamblers from becoming insolvent, the court held that such laws were inapplicable to Humphrey due to his tenuous connection to the games.²⁴⁵ In rejecting invitations to “extend *qui tam* statutes to cover fantasy sports league entry fees,” the court held that a plaintiff must be able to sufficiently allege specific facts to show applicability under the explicit language of a particular *qui tam* law.²⁴⁶ Consequently, because Humphrey failed in the complaint to “identify even one individual who participated in even one of the subject leagues, much less one who allegedly lost money . . . in those leagues[,]” the court dismissed the suit.²⁴⁷

Congress has demonstrated a similar desire to exempt fantasy sports from regulation in its recent passage of the Unlawful Internet Gambling Enforcement Act (UIGEA). Within the text of the statute, Congress specifically carved out an exception for fantasy sports from liability under the UIGEA.²⁴⁸ The fantasy sports exception within the UIGEA provides that participation in such leagues will not be considered a bet or wager that triggers statutory enforcement.²⁴⁹ This exception, however, also requires that such fantasy sports teams not be entirely “based on the current membership of an actual team,” and that the winners of these leagues be reflective of “the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performances of individuals . . . in multiple real-world sporting or other events.”²⁵⁰ Thus, so long as the prizes available to league participants are known in advance and are not dependent on the participants themselves, traditional fantasy sports games would not implicate any liability under the UIGEA.

This exception for fantasy sports is not unique to the UIGEA, as previous iterations of anti-gambling federal legislation have also exempted such games from liability.²⁵¹ In 1995, Senator Jon Kyl (R-AZ) introduced the Crime Prevention Act, which proposed a host of criminal law reforms including measures to address Internet gambling.²⁵² While the Crime

245. *Humphrey*, 2007 U.S. Dist. LEXIS 44679, at *10–12.

246. *Id.* at *13.

247. *Id.* at *15.

248. 31 U.S.C. § 5362(1)(E)(ix) (2006).

249. *Id.*

250. *See id.*

251. *See Symposium, Gambling and the Law: The Future of Internet Gambling*, 7 VILL. SPORTS & ENT. L.J. 29, 37–38 (2000) [hereinafter *The Future of Internet Gambling*] (detailing mid-1990s federal anti-gambling legislation that also excluded fantasy sports leagues from Internet gambling liability).

252. *Crime Prevention Act of 1995*, S. 1495, 104th Cong. § 1501 (1995) (imposing criminal penalties on parties who are “engaged in betting or wagering [and] knowingly [using] a wire or

Prevention Act ultimately failed to pass, Senator Kyl continued his quest to outlaw Internet gambling by introducing measures seeking to heavily restrict the industry.²⁵³ Though its initial measures were considered overbroad in scope,²⁵⁴ subsequent versions of the bill explicitly precluded liability for bets or wagers “made for a fantasy sports league game or contest.”²⁵⁵ These exemptions suggest a federal legislative view of fantasy sports that fails to address the concerns surrounding gambling.

A number of other parties propose treating fantasy sports leagues as outside the realm of traditional gambling. Attorney Glenn Colton has argued that fantasy leagues lack the requisite element of chance necessary to turn the activity into gambling.²⁵⁶ Colton asserts that success in playing fantasy leagues ultimately comes down to a player’s ability to “skillfully and intellectually predict how [an athlete] is going to perform.”²⁵⁷ Players are the ones who are ultimately in “control [of] many of the factors that determine the outcome in a fantasy” sports contest, and their skill in choosing which athletes to play is often the dispositive factor in the success of the game.²⁵⁸

The National Football League (NFL) echoed this conclusion when its officials changed their stance on fantasy football leagues.²⁵⁹ The NFL noted that once it “took a good look at what the game actually involved and the kind of information that was required to be successful, [the NFL] realized it wasn’t a gambling activity.”²⁶⁰ In changing its stance, the NFL has gone so far as to allow active players to participate in fantasy football leagues amongst themselves, despite the knowledge that many of these

electronic communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers, or for the transmission of a wire or electronic communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers”).

253. See, e.g., *Internet Gambling Prohibition Act of 1997*, S. 474, 105th Cong. (1997); see also *Internet Gambling Prohibition Act of 1999*, S. 692, 106th Cong. (1999).

254. *The Future of Internet Gambling*, *supra* note 251, at 37 (noting that the early versions of Senator Kyl’s bill would have “outlawed virtually everything from online gambling to online gambling magazines,” and would have potentially extended liability to “licensed casino[s] . . . advertis[ing] its legal activities on the World Wide Web”).

255. *Internet Gambling Prohibition Act of 1999*, S. 692, 106th Cong. § 2(d)(1)(C) (1999).

256. See Baldas, *supra* note 104.

257. *Id.*

258. Holleman, *supra* note 107, at 72.

259. *Id.* at 72–73.

260. *Id.* at 73 (quoting Evan Kramer, the senior director of news media for the NFL); see also Jerry Magee, *It’s No Fantasy – NFL Puts Its Stamp on Gambling*, SAN DIEGO UNION TRIBUNE, Aug. 17, 2003, at C17 (posing possible ulterior motives for the NFL’s change in stance regarding fantasy football).

leagues often involve large sums of money.²⁶¹ While the NFL strictly forbids its players from betting on games, it justifies this seemingly inconsistent policy by noting that “fantasy football is a game of skill, and gambling is not.”²⁶²

Thus, despite some indication that the recent laissez faire treatment of the gambling industry may be ending, and a swing back toward more restrictive legislation on gambling is likely to occur, fantasy sports leagues will likely fall outside the purview of this shift. While difficulties in characterizing the games as falling within the traditional definitions of gambling have made such restrictions extraneous, ultimately the concerns traditionally raised by both Internet and sports gambling are not implicated by fantasy sports.

V. THE NEED TO IMPOSE SOME REGULATIONS ON HYPER-COMPETITIVE FANTASY LEAGUES

The bulk of this Article has addressed the concerns and legal issues regarding the commonly known forms of fantasy sports leagues,²⁶³ games where the average player participates solely for entertainment. This Article has asserted that existing government policy to refrain from regulating such games is the correct course of action in light of the argument that fantasy games do not meet the legal definition of gambling. Additionally, absent are the traditional public policy ills associated with gambling. However, with the rise of hyper-competitive fantasy leagues offering cash prizes as high as \$100,000,²⁶⁴ the government should enact legislative measures.

While the line between recreational involvement in fantasy sports and involvement solely for monetary reasons is admittedly a blurred and difficult distinction, there is clearly a point where a particular fantasy game has become more akin to gambling than to entertainment. Certainly many players who participate in the common, known fantasy leagues may be drawn to participation due to a cash prize offered to the winner, where

261. La Canfora, *supra* note 175, at E1, E9.

262. *Id.* (quoting National Football League spokesman, Brian McCarthy).

263. As used in this section, “commonly known forms of fantasy sports leagues” refers to those leagues in which the majority of players are involved. These may be hosted locally offline or run by either the individual participants or by a generally known commercially available website, such as ESPN.com or Yahoo.com, and generally involve either a nominal or no entry fee. Such leagues are focused on primarily providing players with an opportunity to compete against other players for entertainment, with money prizes forming a collateral concern if it is even implicated at all.

264. See, e.g., *National Fantasy Football Championship Prizes*, <http://www.fantasyfootballchampionship.com/prizes2008.asp> (last visited Sept. 19, 2008).

available. Likewise many players who compete in hyper-competitive leagues are drawn to the opportunity to prove themselves in high stakes leagues and compete against other likeminded individuals.

However, in each of these situations, the fair assumption is that the commonly known fantasy leagues draw the recreational players, while the hyper-competitive leagues draw the professional, profit-seeking players. In cases of hyper-competitive leagues, the public policy concerns raised by the traditional formats of gambling may be implicated. For example, the large cash prizes offered by hyper-competitive leagues may reinforce and encourage the notion that one may become wealthy without working. Gambling opponents have espoused this argument and contend that such thinking wrongly preys on vulnerable segments of society.²⁶⁵ Additionally, while it has been argued that it would be comical to believe gamblers would resort to crime to fund fantasy sports league entry fees,²⁶⁶ the same cannot be said with similar equivocation as it pertains to hyper-competitive leagues, which often require more exorbitant entry fees.²⁶⁷

Currently, Congress has proposed two measures to establish government licensing of gambling operations as a means of regulating the industry.²⁶⁸ Under the Internet Gambling Regulation and Tax Enforcement Act of 2007, operators of gaming websites would be required to obtain a license from the federal government by proving that sufficient mechanisms and safeguards are available to collect applicable taxes from players.²⁶⁹ Once a license has been issued, gambling website operators would then be required to pay an operation fee of two percent of all funds transferred to the websites by players, money which is to be deposited with the federal government's general fund.²⁷⁰

265. See, e.g., Holleman, *supra* note 107, at 74.

266. See generally WEINSTEIN & DIETCH, *supra* note 13, at 143–44 (noting that while there are “undoubtedly, a few persons who overindulge in gambling, embezzle funds, or become embroiled with loan sharks and other undesirables,” there is a lack of correlation showing a direct causal effect between gambling and increased crimes); *but cf.* Levy, *supra* note 113, at 330 (arguing that while evidence does not presently exist to support the assertion that fantasy sports leagues trigger the same crime rate concerns as traditional sports gambling, “it is certainly plausible—if not likely—that fantasy sports will continue to evolve, increasing the likelihood that fantasy sports and gambling become more difficult to distinguish”); Udovicic, *supra* note 46, at 404, 413–14 (1998).

267. See, e.g., *National Fantasy Football Championship, Rules*, § 3, http://www.fantasyfootballchampionship.com/rules2008_nbc.asp (last visited May 2, 2008) (requiring that each participant pay an entry fee of \$1300 per team).

268. See *Internet Gambling Regulation and Enforcement Act of 2007*, H.R. 2046, 110th Cong. (2007); *Internet Gambling Regulation and Tax Enforcement Act of 2007*, H.R. 2607, 110th Cong. (2007).

269. H.R. 2607 §§ 2(a)(6)–(7).

270. *Id.* at § 2(a)(5).

For the most part, the similar sounding Internet Gambling Regulation and Enforcement Act of 2007 (2007 Act) mirrors the provisions of the previously discussed legislation, while detailing more specific online gaming regulations.²⁷¹ Under the 2007 Act, the Department of the Treasury will establish and administer a licensing program for anyone engaged in the “business of Internet betting or wagering in the United States.”²⁷² Licensees are obligated to enact and enforce a number of safeguards, including those that ensure that players are of legal age, that problem gamblers are identified and protected, and that the government receives its share of taxes.²⁷³ In line with traditional means of regulating gambling, the proposed 2007 Act provides for an explicit opt-out provision for states that choose to categorically ban Internet gambling within its borders.²⁷⁴

With particular interest to the subject matter of this Article, the proposed 2007 Act also grants sports leagues the ability to completely prohibit licensees from offering league games for wagers.²⁷⁵ Under the terms of the 2007 Act, “[n]o Internet gambling licensee may engage, under any license issued . . . in the business of Internet betting or wagering in connection with any sport event or contest of any sporting league which prohibits such business.”²⁷⁶ Licensees found to have violated this provision face the prospect of fines, imprisonment, or a combination of both.²⁷⁷ Of the two proposed bills, commentators predict that the more detailed 2007 Act has a significantly higher chance of passage.²⁷⁸ Whether any version of the 2007 Act will be eventually signed into law remains to be seen.

While these bills currently do not have any measures that directly address fantasy sports, proposals to implement limited statutory regulation within hyper-competitive fantasy sports leagues should be made in order to ensure the safety and well-being of participants in these games. As seen with casinos, the use of a licensing scheme provides participants with the added security that the games they are playing are not tainted and that the

271. *See generally*, H.R. 2046.

272. *See id.* at § 5383(b).

273. *See id.* at § 5383(g). The 2007 Act goes into much greater detail as to other responsibilities that must be met by the licensee as well as dictating the manner in which licenses may be renewed, enumerating the powers of the Director of the Financial Crimes Enforcement Network, and describing explicit activities which are shielded from criminal liability. *See id.*

274. *See id.* at § 5385(a) (stating similar provisions limiting the applicability of the proposed bill to Native American lands are also included as to not offend notions of tribal sovereignty).

275. *See id.* at § 5386(a).

276. *See id.*

277. *Id.* at § 5388(a).

278. *Cf.* State Net, *Congressional Bills Legislative Forecast*, H.R. 2046; with State Net, *Congressional Bills Legislative Forecast*, H.R. 2607.

house will pay any winnings due.²⁷⁹ Furthermore, the affirmative duty to ensure that players are of legal age and of sound mind and competence serves, at the very least, as a means to identify problem gamblers before any issues may further escalate. Government licensing also ensures that certain safeguards are in place to prevent financial criminal activity, as exemplified by current tax laws, which require the reporting of gambling winnings that exceed a certain threshold amount.²⁸⁰

Such requirements are arguably even more applicable to hyper-competitive online fantasy sports leagues, where the added anonymity of the Internet makes detection of fraud by the league operator, as well as the identity of the actual participants in the league, more difficult to discern. A rule requiring websites that offer hyper-competitive fantasy sports to first attain government approval through a licensing scheme would thus assure players of some measure of legitimacy.

VI. CONCLUSION

While fantasy sports has been a part of the social fabric of the United States since the first fantasy baseball league in 1980,²⁸¹ the game has, for the most part, been free from federal government influence and regulation throughout its tenure. For the majority of leagues and participants concerned, the status quo of omitting such games from gambling laws should ultimately be maintained. Yet, the time may be ripe for some regulation of the burgeoning hyper-competitive fantasy league market. As the fourth wave of gambling regulation in the United States enters full force, whether such regulations will ever be enacted remains to be seen.

279. CHAFETZ, *supra* note 13, at 452.

280. See, e.g., *Internal Revenue Service Form W-2G*, www.irs.gov/pub/irs-pdf/fw2g.pdf (last visited May 2, 2008); *Internal Revenue Service Form 5754*, <http://www.irs.gov/pub/irs-pdf/f5754.pdf> (last visited May 2, 2008).

281. Carol Slezak, *Before Fantasy was Cool; For 27-year-old Windy City League, Technology Has Changed, but the Game Stays the Same*, CHI. SUN TIMES, Mar. 30, 2008, at 62.