Testimony of Jason Robins
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New York Assembly Standing Committee on Racing and Wagering
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Chair Addabbo, Chair Pretlow, and Members of the Committees, thank you for allowing me to testify today on behalf of DraftKings. My name is Jason Robins and I am a co-founder, CEO, and Chairman of DraftKings. Started in the spare bedroom of my co-founder Paul Liberman's home more than ten years ago, DraftKings has grown into a publicly traded digital sports entertainment and gaming company that employs more than 4,000 people globally, including nearly 150 right here in New York. Although we operate our mobile sportsbook in 20 states, the New York market is one of DraftKings' top priorities.

DraftKings is proud to call itself one of the leading sports wagering operators – nationwide and here in New York. We appreciate the efforts of the New York legislature, particularly Chair Addabbo, Chair Pretlow, and these committee members, who have been instrumental in the creation of the legal and regulatory frameworks for fantasy sports and now sports betting. We would not be here today without you, and we thank you for your foresight and thoughtfulness in how you have approached policymaking in the online gaming industry. And it is precisely for that reason that I believe the points I am about to make to you will resonate as you consider the suggestions we are proposing.

Since its launch in early 2022, mobile sports wagering in New York has generated more than $900 million in tax revenue and licensing fees – a seemingly unqualified success. Unfortunately, for reasons I'll explain shortly, it's far too early to declare victory. The market is built on an unstable foundation: namely, *a 51% tax rate, which is by far the highest tax rate in the nation*. Based on DraftKings' knowledge and experience in shaping sports wagering markets across the country, in our view the State's revenue projections are simply unsustainable with this tax rate. Nevertheless, we believe there is a path for New York to guarantee the sustained success of its mobile gaming industry in the coming years, all while continuing to protect consumers and generating substantial tax revenue.

Building off the testimony of Christian Genetski, I encourage the legislature to implement a lower, more sustainable mobile sports wagering tax rate. We believe that a tax rate that is more in line with the rest of the market would strike the balance between the state's need to meet or exceed its fiscal projections while giving licensed operators the ability to provide a best-in-class experience for their customers, one that rivals any other state. Additionally, the legislature should authorize iGaming, which taps into a potential revenue stream currently funneling to illegal offshore operators that lack any of the consumer protections a regulated operator would provide.

I will explain in more detail why (1) lowering the tax rate is necessary to provide the economic stability for operators to continue the initial success we have seen in New York; and (2) legalizing iGaming is an innovative way for the State to generate an additional source of revenue. Before I do that, however, I want to provide some background regarding how we got here.

Let's start with the elephant in the room: After years of work and research by the legislature and the former administration, a couple of frameworks for sports betting in New York were put on the table, and neither of them resembles what we have today. The two frameworks, broadly speaking, contemplated either a high tax rate (in the neighborhood of 50%) for a market with one or two licensees or a 15% tax rate for a competitive market with many different licensees. Both of these frameworks can be found in other states. For example, DraftKings operates in two states – New Hampshire and Oregon – where we pay a 51% tax rate. The difference is that in both of those states, DraftKings is the sole licensed online sportsbook operator. Both of those states also have an allowance for deducting promotional expenses from taxable income. In the vast majority of states, policy-makers have opted for a far lower tax rate and a competitive market, as this set up tends to produce an environment where legal operators can most effectively compete with the legal market. Excluding New York as well as single operator states, the average tax rate across the nation is approximately 15%.

Just over twelve months ago, we launched mobile sports wagering in New York and the market now has nine mobile operators. By so many accounts, the first year of mobile sports wagering in New York has been a resounding success. We know New Yorkers wagered more than $16 billion on their favorite teams and events. We believe upwards of $900 million will fund critical state programs like education, problem gaming prevention, and youth sports initiatives. But we also know that the state is at significant risk of missing future revenue projections if there is not a meaningful reduction to the tax rate.

DraftKings, alongside FanDuel, BetMGM and Bally's, did accept a 51% tax rate in exchange for a mobile sports wagering license in New York. But in reality, we had no choice. New York was – and still is – the largest market in the nation. In fact, its population is almost 50% larger than the next biggest state with legal online sports betting. It was also a different time and a different market. Operators, who were understandably excited about New York opening up, were focused far more on customer acquisition in the short term and far less on what would create a sustainable market over time. Since then, the market has begun demanding far more discipline, and the promotions and advertising that fueled the early boom have started to taper. But the most draconian decisions – the actions that operators will likely need to take to make New York sustainable under the current tax regime – still have yet to occur.

In DraftKings case, and I suspect in the case of many other operators, there is a reason we have not yet taken these actions; we believe there is a chance that policy makers in New York will look at the analysis and decide that it is in the state's best interest to lower the tax rate. However, if that does not happen, DraftKings will likely be forced to take many, if not all, of the following steps to make New York a sustainable market for our business:

In a nutshell, we will likely be forced to offer a significantly worse value proposition for customers that are placing their bets in New York. This starts with the betting odds, where New York customers would receive worse odds than DraftKings offers in other states. Many customers are sensitive to this and will be inclined to either return to the illegal market or will cross the border into one of New York's many neighboring states to place their bets. Secondly, we will need to meaningfully reduce the value of promotional credits that we offer to our New York customers. Promotional credits are a tool that operators use to attract customers to their site. Without a reduction to the current tax rate, DraftKings will not be able to offer our New York customers the same types of promotions that we currently offer in other states. Much like the previous example, many customers will be attracted to the promotions they can get in the illegal market as well as in neighboring states, which will make it harder for DraftKings to attract and retain customers in the Empire State.

Because our advertising budget will have to be extremely limited, it will also not be practical for DraftKings to enter into or maintain meaningful marketing partnerships with New York teams. In other jurisdictions, DraftKings has made material investments in creating on-premises fan experiences at stadiums, arenas, and ballparks. These investments create unique spaces in some of the most iconic athletic facilities in the world, providing not only meaningful engagement with existing customers, but generating new customers as well. We have contemplated these types of investments with many of the great New York sports franchises and venues, but unfortunately none of those investments would be practical under the current tax regime. Of course, much like promotional credits, advertising and team sponsorships are an important part of attracting customers from the illegal market, thereby increasing state tax revenue and providing critical consumer protection and oversight.

With a 51% tax rate, regulated operators are at a massive disadvantage when compared to illegal offshore operators, who pay no taxes, offer no responsible gaming measures, and take no steps to ensure they are not offering bets to minors or excluded persons. These offshore sportsbooks are able to afford to offer lavish promotions to entice customers to open accounts with them, and many of them continue to market themselves to customers in New York today. If DraftKings offers worse odds and very limited promotions and advertising, it will be extremely challenging for us to compete with the illegal market.

Let me be clear. We would much prefer to see the New York market grow to its full potential rather than invest minimally into marketing and promotions at a 51% tax rate. We are more than willing to work with the State on the best long-term framework for New York, our customers, and the legal operators. Hopefully, it is clear to everyone that New York will not be able to meet its multi-year revenue projections with the current, unsustainable tax regime. And if there are concerns that lowering the tax rate could cause a short-term revenue setback, the state can authorize additional operators to enter the market and we would expect that the licensing fees from those additional operators would more than make up for any potential shortfall that might occur.

I'd like to turn to a slightly different but related topic. Much like with sports wagering, there is already a market, both legal and illegal, for those who want to engage in iGaming, or the online offering of traditional casino games such as roulette, craps, blackjack, and slots. To date, six states have legalized iGaming. States like New Jersey, Connecticut, and Pennsylvania have authorized iGaming, and results have shown that iGaming's success can come without cannibalizing existing retail gaming operators or the lottery, and certainly without experiencing the hyperbolic, doomsday scenarios that many opponents recklessly predict. It is time to look past the rhetoric and focus on how legalizing iGaming can fund crucial state services in New York. As you heard from Spectrum, their projections show the legal iGaming market here in New York would generate $2.3 to $3.1 billion in GGR in year one and $3.6 to $4.3 billion in GGR in year five.

In our experience, the stigma and fear associated with online gaming as both predatory and addictive rely on wholly inaccurate ideas. iGaming operators employ the same technology and safeguards as mobile sports wagering, including state-of-the-art age, identity, and know-your-customer verification; best available geolocation services; anti-fraud and anti-money laundering tools; innovative responsible gaming resources; secure handling of data; and cyber-security/anti-hacking services.

Moreover, while certain legacy operators have argued that the introduction of iGaming will take away customers and profits from brick-and-mortar casinos, we believe that nothing could be further from the truth. We have seen clear evidence in other states that iGaming actually bolsters brick-and-mortar gaming business by allowing casino operators to engage with loyal customers outside of their facilities and attract new customers from different backgrounds and demographics who have not previously been drawn to retail casinos. In all states with legal iGaming, brick and mortar casinos have continued to thrive since the legalization of online casino gaming. For all these reasons, as well as the critical importance of providing consumer protections that are not found in the illegal online casino market, the time for New York to legalize and regulate iGaming is now.

To reiterate, we respectfully request that the Committee (1) rationalize the current sports wagering tax rate and (2) legalize iGaming.

In closing, I want to restate DraftKings' commitment to New York and our desire to invest here. We are prepared to continue to invest in this market for the long-term, but only if the market is sustainable. We urge the legislature to move swiftly so that New York can realize the economic benefits – and New Yorkers can realize the safeguards and protections – of an even more robust gaming market. Thank you for your consideration.