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**TESTIMONY OF KEVIN M. FOWLER REGARDING SPORTS WAGERING  
SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS  
DECEMBER 4, 2018**

Dear Chair Estes and Members of the Committee:

My name is Kevin Fowler and I am an attorney with the Topeka law firm of Frieden & Forbes, LLP. I represent and appear on behalf of the managers of the Kansas Star Casino, Mulvane, Kansas (Kansas Star), the Boot Hill Casino & Resort, Dodge City, Kansas (Boot Hill), and the Kansas Crossing Casino, Pittsburg, Kansas (Kansas Crossing) (collectively “casinos”) to share our views regarding the enactment of legislation to authorize sports wagering in Kansas..

The casinos represented in this testimony strongly support sports wagering in Kansas but believe that it is only viable under the right framework regulated by the Kansas Lottery and the Kansas Racing & Gaming Commission. Unlike sports wagering activities in other states such as Nevada and New Jersey, the Kansas Constitution requires that any gambling activity in Kansas, including sports wagering, must be owned and operated by the State. The regulatory framework should follow the Kansas Expanded Lottery Act (“KELA”), which has already been upheld as constitutional. To that end, the four state-owned and –operated casinos are working together on draft legislation that all casinos can fully support and hope to propose a bill for consideration during the 2019 legislative session.

As you know, the casinos offer state-owned and operated gaming under KELA which is owned/operated by the Kansas Lottery and closely regulated by the Kansas Racing & Gaming Commission. To date, the casino managers have made capital investments in Kansas of nearly \$1 billion and have an established record of delivering economic development and revenues for our State. The most recent available data reflects that, since the commencement of casino operations under KELA, the casinos generate more than \$33 million in economic activity per month and the State and affected communities directly receive approximately \$100 million in gaming revenues per year.

Sports wagering may enhance tourism as an attractive amenity at the State’s casinos within a reasonable regulatory framework. It will help drive visitation to the facilities where customers may purchase food and beverages, stay in a hotel room, or play other casino games. Implemented correctly, legislation should also help move activity out of the shadows of the illegal market and into a regulated one.

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The framework we support requires that all sports wagering activity in Kansas be conducted through the four state-owned and –operated casinos, which will provide adequate protection against unauthorized betting and prevent the establishment of “sports books” at every Lottery retail outlet (e.g, grocery stores, gas stations, convenience stores, etc.) throughout the State. If Lottery retailers were authorized to offer sports wagering, we anticipate potential problems in enforcing the prohibitions against underage gambling and promoting responsible gaming since retail clerks have to multi-task with customers buying other items, such as money orders, gasoline, snacks and traditional lottery tickets. Because Lottery retailers routinely limit the amount of cash on hand due to security risks, lottery winners of \$600 or more must currently go to the Lottery office to get paid. Since casinos have enhanced security procedures and pay winnings as soon as bets are won, the framework we support is more customer-friendly and more likely to discourage illegal betting through off-shore gaming sites. In addition, even though Kansas’ casinos are state-owned and operated as required by the Kansas Constitution, the management companies who contract with the Lottery to manage them are private companies. As a matter of policy, we also do not believe that the Lottery should be authorized or encouraged to directly compete with such private companies.

Sports wagering is a very low margin endeavor where for each \$100 wagered on sports betting, an average of \$95 is paid out in winnings to bettors. This means that the remaining \$5 received must be sufficient to cover all operational expenses – including taxes – associated with sports wagering. Sports wagering is also a subject to volatility due to the unpredictable nature of sporting events.

Sometimes this unpredictability means that the customers end up even better off than the house overall. For instance, the sports book at the Greenbrier in West Virginia paid out more in winning sports wagers in October than it received in bets since certain odds were defied as they are from time to time. The situation at the Greenbrier, while infrequent, is not unusual. Bookmakers in Las Vegas, Mississippi and elsewhere reported lower win percentages than normal in October.

That is why it is important that the take from sports betting operations by Kansas from the Lottery Gaming Facility managers be on par with the 6.75% tax paid by Nevada’s sports books on their revenue. If the tax rate or other requirements are too high, this margin becomes so thin that competing with the illegal market becomes untenable.

Onerous provisions sought by the professional sports leagues would make it economically infeasible for the casinos to manage sports wagering and effectively compete with the illegal market.

The most egregious demand by the leagues is a “integrity fee” or “royalty” of 1% of the total amount wagered, or handle. Typically, sports books have profit margins of 2% to 5%. The 1% “integrity fee” on handle equates to 20 to 25% of net revenue, thus making that already thin margin even thinner. Since the leagues are already expected to make billions of dollars as a result of sports wagering (*See Attached Findings of the Nielson Study*), this State should not sanction any such integrity or royalty fees.

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The casinos also object to any mandates that sports book operators only utilize data or associated video provided by the leagues, when such data and video signals are currently widely available to the public through multiple commercial sources. Because this information and data is readily available in the public domain and can derive no value from its secrecy, it is not confidential or proprietary under Kansas law and it should not be placed under the exclusive control of any league. Such provisions appear solely designed to generate additional revenue for the leagues.

Together, these provisions would create a state-sanctioned monopoly for the leagues in selling their data to sports betting operators. Moreover, recent developments between the leagues and gaming operators show that commercial arrangements concerning league data, advertising and cross-promotion related to gaming and sports betting are being negotiated and are best left to the marketplace and not legislative mandate.

Another provision sought by the leagues would grant them extraordinary regulatory powers over wagering and real-time access to confidential consumer information and locations. For example, any provision authorizing the leagues to determine which bets can and cannot be made would violate the Kansas Constitution by unlawfully delegating legislative power to private parties. These powers are best left to regulators and law enforcement officials who are experienced in overseeing gaming operations and whose only interest is in promoting and protecting the public's interest. Such provisions would also place Kansas gaming venues at a significant economic and competitive disadvantage in offering sports book. In turn, this will severely hamper the State from realizing the full benefits of a licensed, legal sports wagering market.

No state that has adopted sports betting legislation has included any of these league-sponsored mandates in their statutes or regulations. Instead, other states have largely followed a Nevada-style model – a state that has effectively overseen sports betting for decades without such provisions, and this model has worked for law enforcement, state regulators, and state taxpayers alike.

One area where the casinos do agree with the leagues, is the need for a competitive mobile sports wagering marketplace that provides consumers with a legal, regulated avenue for Lottery-approved sports wagering over the Internet while located within Kansas.

Today, Kansans can sit comfortably on their couches and place bets through illegal sites and apps such as Bovada and MyBookie.Ag that are available at the click of a button. While sports betting at the casinos may be a legal option for such consumers, they will not choose this avenue if each time they desire to place a wager they have to drive a great distance or do not want to spend an evening out to do so. Consequently, it is imperative that any sports wagering bill in Kansas allow statewide mobile wagering apps to be offered through the State's casinos.

These apps and sports wagering activities must be subject to oversight by the Kansas Racing & Gaming Commission and owned/operated by the Kansas Lottery just as all gaming is today.

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Customers would go through a vetting process to ensure they are who they claim to be. Such protocols include cross checks against credit history, banking information, drivers' licenses and other government-issued identification in creating a sports wagering account. Importantly, these registrants would also be cross-checked against self-exclusion lists so that individuals who have asked to be banned from casinos would also be banned from wagering on sports betting apps.

The importance of mobile wagering in sports betting is evident based upon recent data in New Jersey which allows sports wagering through physical books and digital applications. In October, the total amount wagered on sports through both the physical books at the casinos and mobile apps was \$261 million. However, \$174 million -- essentially two-thirds of the total amount bet on sports -- was through mobile apps. Much of this strong mobile app betting was likely due to in-game betting which spurs fan engagement, and we recommend allowing in-game betting here.

Sports wagering apps would also be complementary to helping the casinos grow their business by providing further engagement with customer databases, reaching new customers, and providing benefits and rewards for those customers to visit casinos. This will further benefit the State of Kansas due to the unique partnership between the Lottery and the casinos.

I will be happy to stand for questions.

Respectfully submitted,

Kevin M. Fowler  
FRIEDEN & FORBES, LLP



# HOW MUCH DO LEAGUES STAND TO GAIN FROM LEGAL SPORTS BETTING?

The four major leagues are projected to generate combined revenues of over **\$4.2 billion per year** through TV advertising, sponsorship, data / product revenue, media rights, merchandise, and ticket sales - all as a result of a legal, regulated sports betting market.

**\$4.23B**

Direct and Indirect Revenues  
Impact

**\$596M**

Direct TV  
Advertising  
Revenue from  
Gaming Services



**\$267M**

Direct  
Sponsorship  
Revenue from  
Gaming Services



**\$89M**

Data and Video  
Revenue



**\$3.28B**

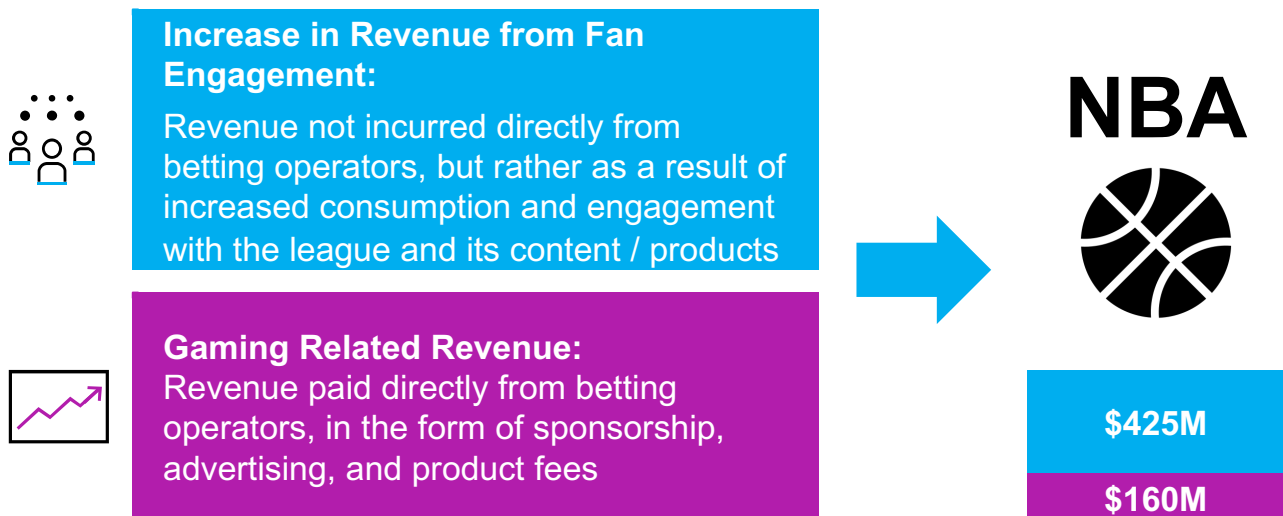
Indirect  
Revenue from  
Media Rights,  
Sponsorships,  
Merchandise and  
Ticket Sales



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# HOW MUCH DOES THE NBA STAND TO GAIN FROM LEGAL SPORTS BETTING?

**TOTAL PROJECTED REVENUE:  
\$585 MILLION**



# FAN ENGAGEMENT REVENUE

NBA revenue impacted by consumption is projected to increase 5.8%

(\$M)	Current	% Change	Post-PASPA
Media Rights	\$3,750	8.1%	\$4,055
Sponsorship	\$1,120	4.0%	\$1,165
Merchandise	\$384	1.0%	\$388
Ticket Sales	\$2,024	3.5%	\$2,095
<b>Revenue Impact</b>	<b>\$7,278</b>	<b>5.8%</b>	<b>\$7,703</b>

# GAMING RELATED REVENUE

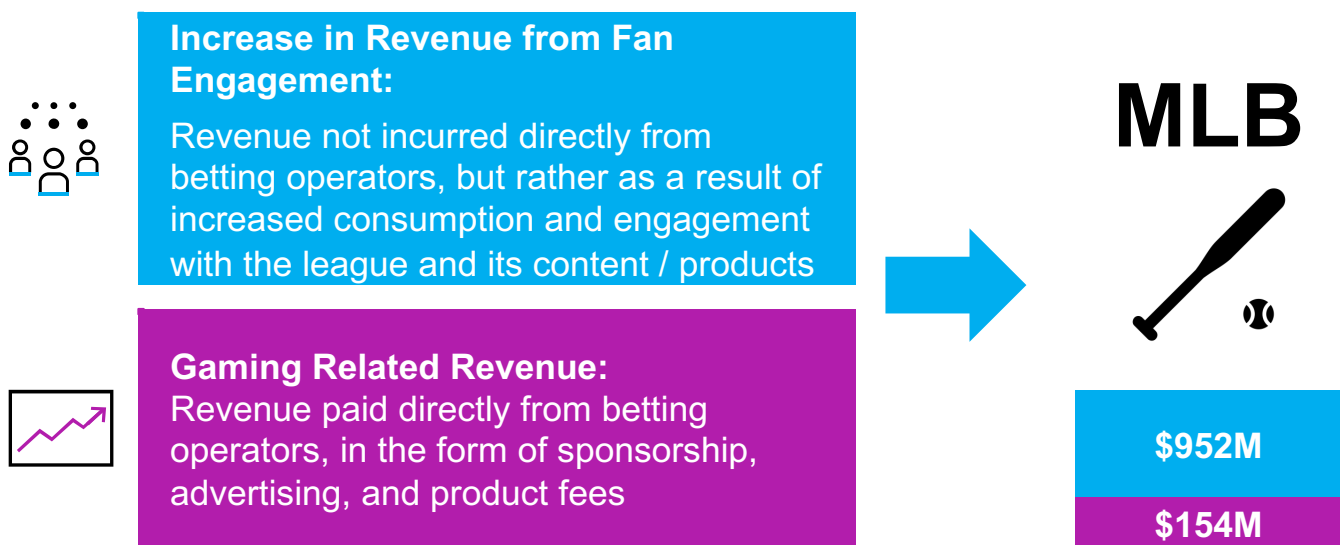
The NBA is projected to generate a combined incremental revenue of \$160M per year through TV advertising, sponsorship, and data / product revenue created by gambling services



Sources: Ad Intel, Sponsorglobe

# HOW MUCH DOES MLB STAND TO GAIN FROM LEGAL SPORTS BETTING?

## TOTAL PROJECTED REVENUE: \$1.106 BILLION





# FAN ENGAGEMENT REVENUE

MLB revenue impacted by consumption is projected to increase 10.6%

(\$M)	Current	% Change	Post-PASPA
Media Rights	\$3,780	11.1%	\$4,201
Sponsorship	\$892	6.8%	\$952
Merchandise	\$660	3.4%	\$683
Ticket Sales	\$3,661	12.2%	\$4,109
<b>Revenue Impact</b>	<b>\$8,993</b>	<b>10.6%</b>	<b>\$9,945</b>

# GAMING RELATED REVENUE

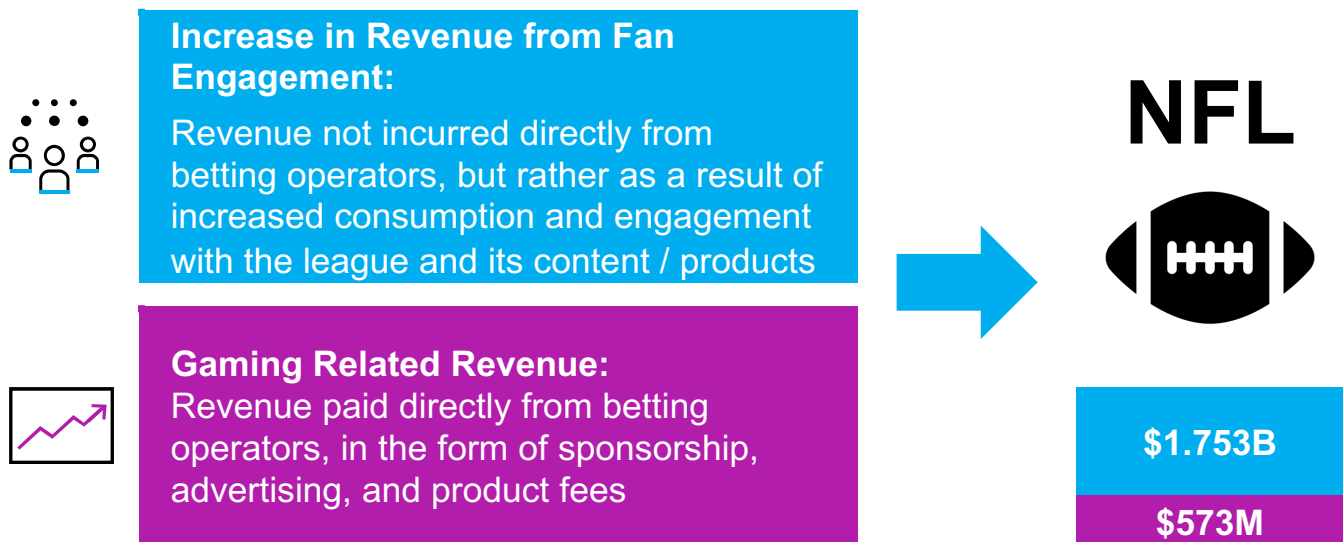
MLB is projected to generate a combined incremental revenue of \$154M per year through TV advertising, sponsorship, and data / product revenue created by gambling services



Sources: Ad Intel, Sponsorglobe

# HOW MUCH DOES THE NFL STAND TO GAIN FROM LEGAL SPORTS BETTING?

## TOTAL PROJECTED REVENUE: \$2.326 BILLION



# FAN ENGAGEMENT REVENUE

NFL revenue impacted by consumption is projected to increase 13.4%

(\$M)	Current	% Change	Post-PASPA
Media Rights	\$7,915	17.9%	\$9,335
Sponsorship	\$1,320	7.6%	\$1,420
Merchandise	\$420	2.1%	\$429
Ticket Sales	\$3,424	6.5%	\$3,648
<b>Revenue Impact</b>	<b>\$13,079</b>	<b>13.4%</b>	<b>\$14,832</b>

# GAMING RELATED REVENUE

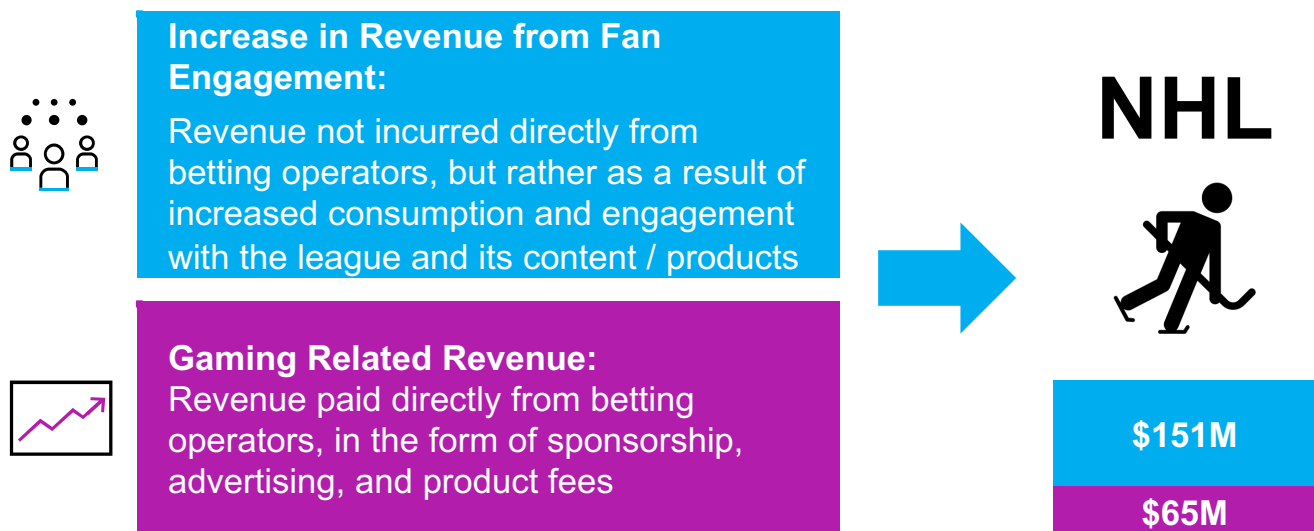
The NFL is projected to generate a combined incremental revenue of \$573M per year through TV advertising, sponsorship, and data / product revenue created by gambling services



Sources: Ad Intel, Sponsorglobe

# HOW MUCH DOES THE NHL STAND TO GAIN FROM LEGAL SPORTS BETTING?

## TOTAL PROJECTED REVENUE: \$216 MILLION



# FAN ENGAGEMENT REVENUE

NHL revenue impacted by consumption is projected to increase 3.5%

(\$M)	Current	% Change	Post-PASPA
Media Rights	\$1,570	4.3%	\$1,637
Sponsorship	\$505	2.0%	\$515
Merchandise	\$156	0.7%	\$157
Ticket Sales	\$2,038	3.6%	\$2,110
<b>Revenue Impact</b>	<b>\$4,269</b>	<b>3.5%</b>	<b>\$4,420</b>

# GAMING RELATED REVENUE

The NHL is projected to generate a combined incremental revenue of \$65M per year through TV advertising, sponsorship, and data / product revenue created by gambling services

