

## New Sports Economy Institute Amicus Brief

(filed with the Supreme Court on September 5, 2017)

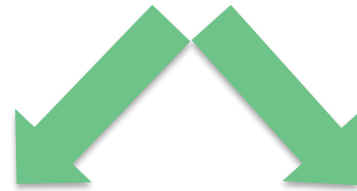
### Summary Points

(September 21, 2017)



# Dead Ends

Let's *assume* Daily Fantasy Sports ("DFS") is a game of skill.  
There are only two options



DFS is a game of skill, but not gambling

Really? Ok, would you say that sports betting,  
which also involves skill, is not gambling?



DFS is a game of skill, yet still gambling

Wait! For more than a century, the states and courts said  
sufficient skill implies people are not gambling.  
All of that was wrong?



# DFS Is Not a Game

When all options lead to a dead end, we must dig deeper, challenge everything, and ask what has never been asked before. Is DFS a game?

**DFS is NOT a game!**



# What Is A Game?

## Games:

- There is a *closed* space marked out for it (think stadium, court, ring, chessboard etc.)
- Separate occupation carefully *isolated from the rest of life*

## When in doubt, ask this: Can I play it on Mars?

*(assume you have the tools needed: the ball, chess set, card deck etc.)*



*Why? Because winners cannot be determined without access to real life sporting events*



# What is DFS/Sports Betting?

1

DFS and sports betting are markets. They are not isolated from the rest of life.

2

DFS and sports betting are pure entertainment platforms.

3

They serve NO purpose whatsoever, and their proponents never claimed otherwise



# When Are GAMES Gambling?

**Chance**

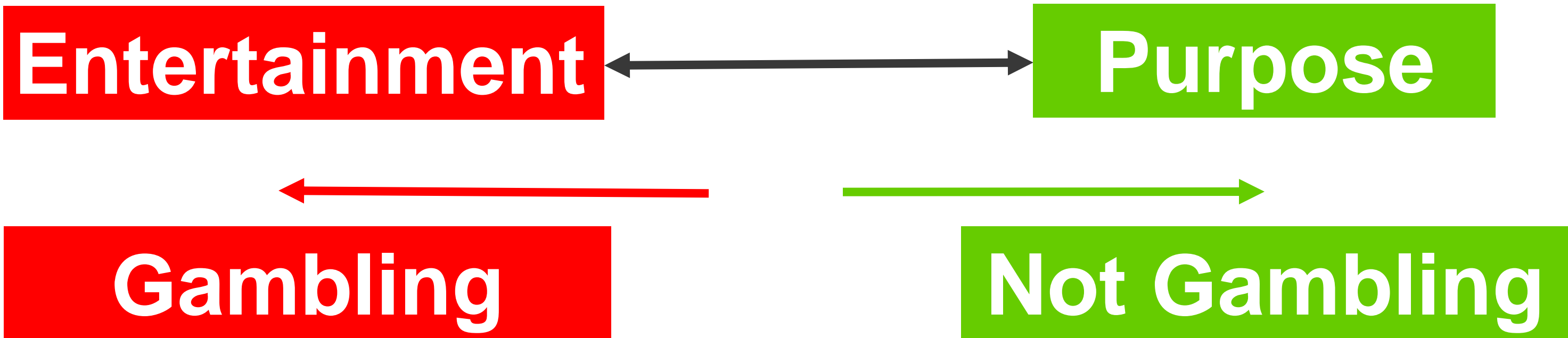
**Skill**

**Gambling**

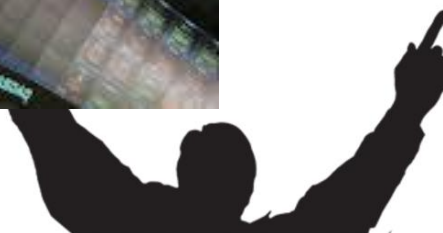
**Not Gambling**



# When Are MARKETS Gambling?



SUNDAY, OCT 11, 2009		COLLEGE FOOTBALL	
N.F.L. WEEK #5		SATURDAY, OCT 10, 2009	
401 VIKINGS	-10	-600313 E. MICH.	-23
402 RAMS	41	+400314 CENT MICH	-23
403 COWBOYS	-8	-400315 DUKE	
404 CHIEFS	42.5	+300316 N C STATE	-16.5
405 REDSKINS	37.5	+165317 MARYLAND	
406 PANTHERS	-3.5	-185318 WK FOREST	-12.5
407 BUCCANEER		319 INDIANA	
408 EAGLES	-14.5	320 VIRGINIA	-7
409 RAIDERS		321 PURDUE	
410 GIANTS	-15	322 MINN.	-3
411 BROWNS	41	+220323 U CONN	46
412 BILLS	-6	-300324 PITT.	-6.5

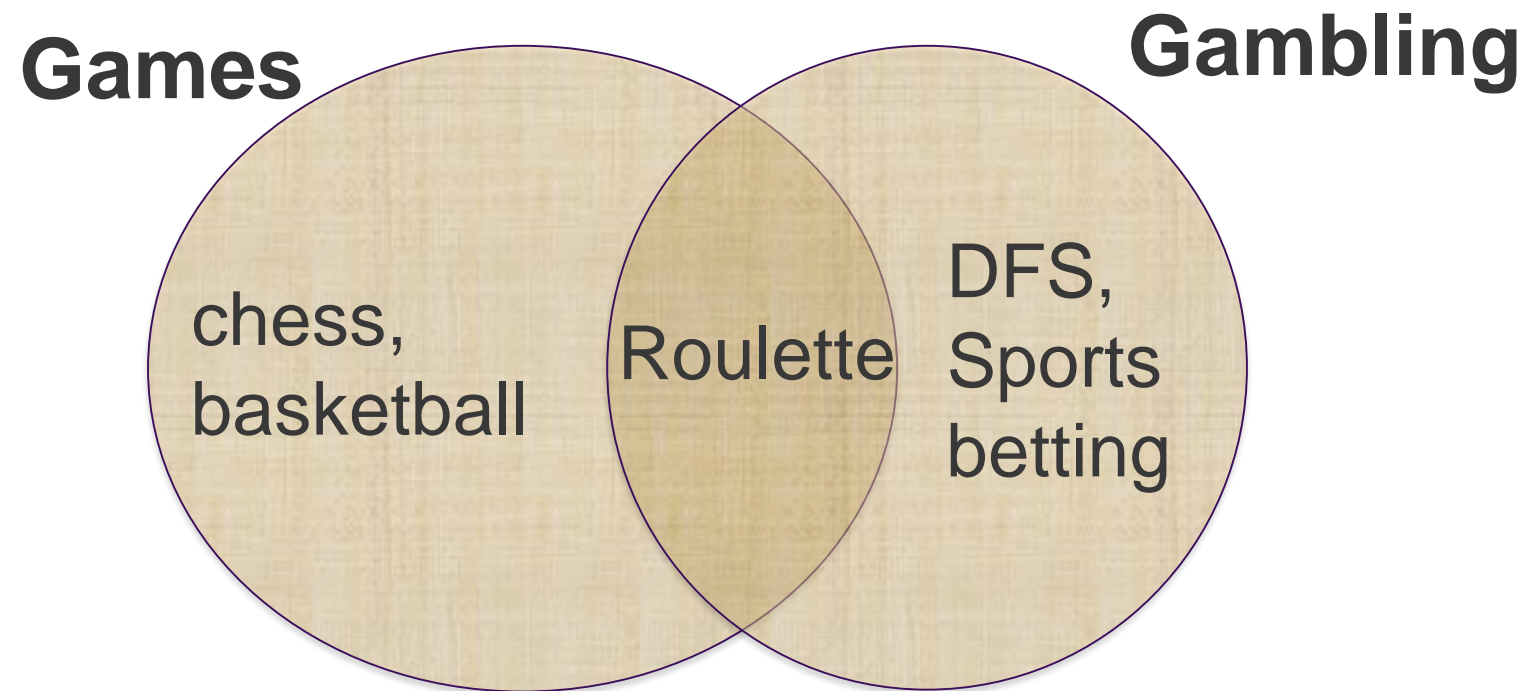




# Gaming Vs. Gambling

MYTH: Gaming and gambling are equivalent

- They are NOT. Not every game is gambling, and not every gambling platform is a game.



**Gaming**  $\neq$  **Gambling**





# Why Care? – Because The Issue is at Supreme Court

1. Games are local and regulated by the states
2. Markets are national and regulated by the federal government

New Jersey and their supporters say...

- Gambling is a state matter

New Sports Economy Institute says...

- Gambling is a state matter ONLY IF it involves games
- Gambling is a federal matter IF it involves markets

DFS & sports betting are markets so states have no say.  
Congress preempted the field.

PASPA, the federal law that bans sports gambling, is part of the dual regulatory regime that governs our nation's financial markets.



## NSEI Amicus Summary Points:

- To assess the claim “gambling is a state matter”, we must first define gambling.
- To define gambling, we must first define what a game is.
- Games are separate occupations carefully *isolated from the rest of life*.
- DFS/sports betting are markets, not games. They are not isolated from the rest of life.
- DFS/sports betting are pure entertainment platforms, serving no purpose.
- Games are not gambling when there is sufficient skill. (skill vs. chance)
- Markets are not gambling when there is sufficient purpose (purpose vs. entertainment).
- Games are local and regulated by the states.
- Markets are national and regulated by the federal government.
- DFS & sports betting are markets, so states have no say. Congress preempted the field.
- PASPA, the federal law that bans sports gambling, is part of the dual regulatory regime that governs our nation’s financial markets.

