



**Written Testimony of FanDuel Group Inc.  
Before the NY Senate Standing Committee on Racing, Gaming, and Wagering and  
NY Assembly Standing Committee on Racing and Wagering  
January 31, 2023**

**Christian Genetski  
President  
FanDuel Group Inc.**

Chairman Addabbo, Chairman Pretlow, Members of the Committee,

Thank you for allowing me to testify today on behalf of FanDuel.

My name is Christian Genetski and I am the President of FanDuel Group Inc. We appreciate the opportunity to engage with your committees, the Gaming Commission, and other stakeholders to evaluate the economic impact of mobile sports wagering in New York.

Let me start by expressing my gratitude on behalf of everyone at FanDuel to Chairmen Addabbo and Pretlow for their leadership on gaming issues, and for the legislation they have spearheaded over the years on both fantasy sports and sports betting, which has paved the way for FanDuel to become the nation's #1 sports betting operator. Thank you both. And we are proud to say that America's #1 sportsbook calls New York home, with our headquarters located in New York City's Flatiron District.

FanDuel currently offers online sports wagering in 18 states representing 41% of the U.S. population. Across these markets, our institutional strength has firmly established FanDuel as the number one sports wagering operator by a wide margin. The same holds true in our home state of New York, where our efficient and rapid customer acquisition, investment in local media and team partnerships, and demonstrated ability to retain and grow customer value have enabled us to flourish and capture the leading position with market share consistently in the high 40 percent range. Together with the State, FanDuel and other legal operators like DraftKings, offer New Yorkers safe mobile sports wagering with critical consumer protections in place, which help eradicate illegal sports betting sites while generating real economic benefits for the State.

January 8 marked the one-year anniversary of legal mobile sports wagering in New York. There is much to celebrate. Let's start with the good news. During year one, New Yorkers bet approximately *\$16 billion* on their

favorite teams and sporting events, generating over \$900m for the state.<sup>1</sup> It's safe to assume that until last year, anywhere from one-third to one-half of that money was being wagered in the illegal market – whether through offshore online companies or through local bookies. This tax revenue has provided support for critical services like youth sports programs, problem gambling education and treatment, and over \$700 million for education. FanDuel alone has generated nearly \$332 million in revenue for education in the State. Additionally, the introduction of mobile sports betting has positively impacted the New York economy beyond merely new tax revenue. FanDuel continues to grow its employee base in its New York headquarters, bringing technology workers into the state. We've also spent tens of millions of dollars directly with New York businesses, including sports franchises, television, radio and digital media platforms, advertising, and partnerships with local small businesses.

But the investments into the New York economy and conversion of revenue from illegal markets into tax revenue for the state is hardly the only benefit of the state's regulated framework. Importantly, with legal options like FanDuel available, bettors now have access to responsible gaming tools that simply don't exist on illegal sites. FanDuel allows customers to set their own deposit and play limits, set timeouts to take a break from the app for a period of time, and place themselves on our app's self-exclusion list. Legal operators also ensure that underage individuals cannot create an account, deposit, or wager through our platforms, employing sophisticated checks to verify a customer's identification, including requiring a detailed demographic and personal information check that includes a customer's name, address, date of birth, social security number and geolocation. Finally, customers can bet on legal platforms and trust that their deposits are safe and that they will receive their winnings. We need only look at recent high-profile scandals in the crypto exchange space to see the perils to customers of entrusting money to offshore, unregulated entities.

*Bottom line:* the launch of legal, regulated mobile sports betting in New York has been a winner for both the state and its residents. And it's fair to say that New York's sports wagering market has already far exceeded expectations economically. That's the good news.

Here's the bad news. We do not believe this level of economic success is remotely sustainable with the current tax rate of 51%. Not only is New York's sports wagering tax rate 15 points higher than the state with the second highest tax rate, Pennsylvania, but it's *nearly triple the national average of 19%*.<sup>2</sup> Although it's only been one year since the market launched, there are clear signs the New York market has already peaked, whereas other states remain on a solidly upward trajectory.

There are four critical points we want to emphasize: 1) Despite an inordinate level of investment in the first 3 months, the New York market is not growing handle nor customer base in line with every other state; 2) There is a direct causal link from the high tax rate to the lack of market expansion, namely that it prohibits operators from investing in New York as they do in other markets; 3) The experience of more mature markets in Europe validates

---

<sup>1</sup> Governor Hochul Announces Mobile Sports Wagering Generated \$909 Million for New York State in First Year of Operation: More than \$16 Billion Wagered on Sports in New York State in First Year of Operation, (Jan. 13, 2023), available at: <https://www.governor.ny.gov/news/governor-hochul-announces-mobile-sports-wagering-generated-909-million-new-york-state-first>

<sup>2</sup> Justin Byers, *Sports Betting Operators Struggling With New York's High Tax Rate*, FRONT OFFICE SPORTS, (June 21, 2022), available at: <https://frontofficesports.com/sports-betting-operators-struggling-with-new-yorks-high-tax-rate/#:~:text=Sports%20Betting-Sports%20Betting%20Operators%20Struggling%20With%20New%20York's%20High%20Tax%20Rate,19%25%2C%20per%20Morgan%20Stanley.>

that high tax markets see legal operators pull back or exit over time, ceding the market to unregulated operators and reducing tax revenue; and 4) Lowering the tax rate to one commensurate with the next highest state in the country would reverse these investment and growth trends, and set the state on a much healthier path toward exceeding budget estimates in the years to come.

***The New York Market is Trending Downward.*** All you need to do is look at the past year to see that the market is broken. As the Spectrum report notes, handle in New York has declined over 20% since the initial three months of launch in January-March 2022. This is simply not a trend line we see in other states, where the first football season following launch typically generates an enormous spike in handle, and each successive Q4 far outpaces the other three quarters. In both year one states and longer tenured states the trend lines only go up and to the right. Even New Jersey, our most mature state and one which has been cannibalized by the launch of New York, has exhibited far stronger growth trends than New York this year.

An equally alarming indicator is that based on FanDuel's own data, New York has one of the lowest market penetrations – that is the percentage of adults who have placed a bet on FanDuel – in the country, sitting at only 6.4%. By comparison, Louisiana, which launched one month later than New York, is at 7.4%, and in our most recent launch states, Ohio has 6.9% after only 3 weeks of operation, whereas Maryland has tipped 7.5% after only 3 months. Given the fact that FanDuel has an outsized market share in New York, this deficit is even more of an outlier.

***The lack of investment by operators is the cause of the downward trend.*** The cause of this underperformance is no mystery. Sports betting markets grow rapidly over their first 5 years because operators invest heavily during that period to convert users from the illegal market and ensure the market reaches its full potential so that, at maturity, the market will be profitable for the long-term. In New York, operators sprinted out of the gate with generous customer bonusing. Once operators understood how bonuses were being taxed, and it was evident no tax relief was forthcoming in 2022, their approaches immediately changed.

FanDuel's own approach in New York illustrates this dynamic. FanDuel is 20+ points higher in New York market share than its closest competitor, meaning that we are far and away the best positioned to invest in the state. Because the 51% tax rate precludes FanDuel from reaching sustainable profitability even with a dominant share, however, FanDuel has significantly decreased its investment in New York vis a vis other states. We measure our investment levels by reference to the total % of GGR that we spend on media and customer promotions in a given state. By this measure, FanDuel is now investing 50% less in New York than in its other states. Indeed, FanDuel's 2023 projected media spend per capita for Louisiana, a much smaller state that launched a month later than New York and in which FanDuel has less dominant share, is nearly twice that of New York, and in healthy tax environment markets new (Maryland) and old (New Jersey), FanDuel's 2023 projected media spend per capita is triple that of New York.

***The negative impact of decreased investment will compound over time, shrinking the market and with it the tax revenue.*** How will FanDuel and its fellow operators' inability to significantly invest in New York promotions and advertisements affect the State? As the Spectrum report illustrates, we suspect that New York's sports

wagering handle will continue to drop 10%-20% on a year-to-year basis. But the prospect for the longer term is potentially more dire. As legal operators struggle to make the numbers work, they will not only reduce marketing and generosity, but they may also be forced to adjust pricing in New York to ensure a higher hold percentage. Operators with lower share will likely elect to withdraw from New York altogether. For consumers, that means fewer options, less competition, and a much worse value proposition, all of which make the illegal offshore options more attractive. The continued exodus of customers to the illegal market not only materially decreases the tax revenue to the state, it leaves New Yorkers without the consumer protections and responsible gaming tools offered by the regulated market.

More mature markets in Europe have already experienced this phenomenon. France legalized sports betting but did so with the highest tax rate in Europe—54.9% compared to Europe’s average of 19%. Year 1 looked a lot like it did in New York. Since inception, the number of legal operators in France has halved, resulting in a relatively smaller regulated market and a larger, unregulated market. We have seen other examples, too, in Germany, Poland and Portugal, each of which passed punishing tax regimes that led to fewer legal operators, a less compelling offering for customers, and in turn a more robust illegal market, leading to weaker customer protection, less responsible gaming measures, and lost tax revenue.

New York’s exorbitant tax rate, combined with an initial three-month frenzy of operator spending to spike initial growth, produced a banner first year of tax revenue. But even 12 months in, it is readily apparent that this success will not hold. As the market stagnates due to operators continuing to pull back or withdraw entirely, the high tax rate will be insufficient to overcome the lack of growth in the market, leading to increasingly lower revenues for the state. Now is the time to step in and change the incentive toward growth.

***Lowering the tax rate would change the trajectory of the New York market.*** We firmly believe that lowering the tax rate to one commensurate with the next highest rate in the country will fundamentally alter the long-term outcome in New York. By way of example, if the tax rate were more competitive in New York, we estimate that in 2023 FanDuel alone would invest a further \$200-250 million above our current plans. We project that this investment would allow us to activate an additional 300,000 customers as well as drive more activity from existing customers, leading to an estimated \$350 million plus in additional GGR over a three-year period. Beyond FanDuel, it would give existing competitors with smaller share, as well as potential new market entrants, a plausible path to reinvest in the state as well. By restoring investment, New York’s growth trend line will quickly resemble other states. We’ve already seen what real investment can yield in the first few months of operation. Having New York on a clear, sustainable growth trajectory at a 35% tax rate as opposed to a shrinking, less competitive, less consumer-attractive market at 51% is the clear right choice for New York in both the near, and especially the long term.

Accordingly, for legal operators to continue offering safe and responsible ways for fans to bet on games, while still generating substantial tax revenue for the state, we propose lowering the tax rate to 35%. We would like to thank Senator Addabbo for reintroducing his legislation, Senate Bill 1962, which would, among other things, lower the tax rate with the addition of 4-5 licensed mobile sports wagering operators. By passing Senator Addabbo’s proposal, New York would still have the highest effective tax rate in the country, while allowing

FanDuel and its market competitors to resume material investment in growing the market. We have modeled the market internally at a 35% rate with some new entrants, and we have strong conviction that the New York market will prove sufficiently robust that in this scenario the growth of the market will more than offset the difference in the current tax rate, and that the State will exceed its FY23-27 online sports wagering tax revenue projections.

FanDuel is the market leader in this industry, the New York leader, and proud to call New York its home. We want New York to be the beacon of success for our industry. And it still can be. But the big early tax revenue numbers – not to mention the consumer safeguards expanded to New Yorkers – will prove to have been a fleeting achievement if we do not change course.

Thank you, and we look forward to working with the legislature, the Commission, and the State to continue offering a safe and successful sports betting product to New Yorkers.