

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-Eighth State Legislature**  
**Regular Session of 2016**  
**State of Hawai'i**

February 10, 2016

**RE: SB 2429; RELATING TO FANTASY COMPETITIONS.**

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition of S.B. 2429.

The purpose of S.B. 2429 is to create a new statutory charge of Promoting Fantasy Competition and to establish guidelines and regulations which would govern this new offense. This bill establishes the proposed statutory definition for “fantasy competition” as any online fantasy or simulated game or contest such as fantasy sports, online, or otherwise. In addition, under S.B. 2429, an individual violating this new offense would be subject to the penalty of a violation under Hawaii’s gambling laws.

In general, fantasy competition or sports game is a contest in which individuals create an imaginary sports team within a particular professional or collegiate sport and serves as the owner, coach or manager for their imaginary team, competing against other individuals’ teams using real-world statistics for each athlete. Although fantasy sports competitions are based on statistical performances of real athletes in real sporting events there is no question that it is indeed a form of gambling.

Currently our gambling laws include similar charges to the proposed offense of Promoting Fantasy Competition, which include §712-1221, H.R.S., Promoting Gambling in the First Degree and §712-1222, H.R.S., Promoting Gambling in the Second Degree. These two offenses criminalize any individuals who knowingly advance or profit from gambling activities. In Hawaii, “gambling” is defined in §712-1220, H.R.S., and includes staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence. The term “contest of chance” is further defined as “any contest,

game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.” Because fantasy competitions inevitably rest on the future performance of real world athletes, clearly there is a material degree of “chance” involved and therefore fantasy competitions are covered currently under the definition of “gambling” and our current gambling laws. To create the proposed addition of Promoting Fantasy Competition would only create a new statute that currently is covered under exiting gambling laws.

The Department strongly believes that Hawaii’s current gambling laws provide a good balance between protecting the interests and safety of the public, while at the same time providing reasonable and sufficient exceptions. The gambling laws do not require any further amendments or additions.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 2429. Thank for you the opportunity to testify on this matter.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE CK-TA

February 11, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 2429, Relating to Fantasy Competitions

I am Calvin Tong, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Bill No. 2429, Relating to Fantasy Competitions.

A fantasy contest is a form of gambling and like all other forms of gambling, it is also associated with a plethora of social ills and financial ruin for many people.

Numerous studies have confirmed that gambling causes problems such as bankruptcy, theft, embezzlement, suicide, child abuse and neglect, divorce, incarceration, and homelessness. Studies have also demonstrated that gambling schemes are essentially a regressive tax on low-income people, those who can least afford to participate.

The financial burden associated with these problems will far outweigh any benefit realized in the name of community betterment.

The Honolulu Police Department urges you to oppose Senate Bill No. 2429, Relating to Fantasy Competitions.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Louis M. Kealoha  
Chief of Police

  
Calvin Tong, Major  
Narcotics/Vice Division

*Serving and Protecting With Aloha*

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB2429 on Feb 11, 2016 09:00AM  
**Date:** Wednesday, February 10, 2016 1:17:49 AM

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**SB2429**

Submitted on: 2/10/2016

Testimony for JDL on Feb 11, 2016 09:00AM in Conference Room 016

| <b>Submitted By</b> | <b>Organization</b>                         | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---|---------------------------|---------------------------|
| Dianne Kay          | Hawaii Coalition Against Legalized Gambling | Oppose                    | No                        |

Comments: Tom Kay attorney for the Hawaii Coalition Against Legalized Gambling will testify for the Coalition. I believe I submitted his testimony online.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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# Hawai'i Coalition Against Legalized Gambling

1124 Fort Street Mall, Suite 209  
Honolulu, HI 96813

Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, February 11, 2016

9:00 a.m. Conference Room 016

## Member Organizations

Advocates for Consumer Rights  
Animal Rights Hawaii  
Buddhist Peace Fellowship  
Christian Voice of Hawaii  
Church of Jesus Christ of Latter-day Saints  
Church of Perfect Liberty  
Disciples of Christ  
Hale Kipa  
Hawaii Appleseed Center  
for Law & Economic Justice  
Hawaii Assemblies of God  
Hawaii Association of  
International Buddhists  
Hawaii Christian Coalition  
Hawaii Conference of Seventh-day  
Adventists  
Hawaii Conference of the United  
Church of Christ (UCC)  
Hawaii District United Methodist  
Church  
Hawaii Family Forum  
Hawaii Pacific Baptist Convention  
Hawaii Rainbow Coalition  
Hawaii Religions for Peace  
Hawaii Youth Services Network  
Honolulu Friends Meeting  
(Quakers)  
Honolulu Police Department  
Institute for Religion and Social  
Change  
The Interfaith Alliance Hawaii  
Kokua Council  
League of Women Voters of Hawaii  
Life of the Land (Hawaii)  
Dr. Martin Luther King, Jr.  
Coalition Hawaii  
Mestizo Association  
Muslim Association & Islamic  
Center of Hawaii  
Pacific Gateway Center  
Presbytery of the Pacific  
Saints Constantine & Helen Greek  
Orthodox Church  
Smart Business Hawaii  
Soto Zen Mission of Hawaii  
Temple Emanu-El  
Windward Coalition of Churches  
The Woman's Board of Missions  
for the Pacific Islands (UCC)

## Cooperating Organizations

Catholic Charities  
Catholic Diocese of Honolulu  
Chamber of Commerce of Hawaii  
Hawaii Bankers Association  
Hawaii Business Roundtable  
Hawaii State Parent Teacher  
Student Association  
Hawaiian Humane Society

My name is Tom Kay and I'm attorney for the Hawaii Coalition Against Legalized Gambling. Our organization is opposed to SB2429 which proposes to add two new sections to Chapter 712 of the Hawaii Revised Statutes.

Section 1. Promoting fantasy competition sets an unrealistic offense of promoting fantasy competition by either a teenager promoting gambling at a school or college; or a professional athlete promoting a fantasy competition in his own sport. The section then provides for a defense of either limiting a players bets to \$1000 per month or setting up contests separately for experts and beginners. We find no substance or merit in Section 1.

Section 2 of this bill amends Section 712-1220 by adding a new definition of fantasy competition. Paragraph (3) of this definition states "The winning outcome of the game or contest reflects the relative skill of the participants. . ." The purpose of SB2429 is to establish by statute that fantasy competition is a game of skill not chance.

This approach may relate back to the "carve out" for fantasy sports being declared a game of skill in the 2006 Federal Unlawful Internet Gaming Enforcement Act (UIGEA) but it has no relevancy under Hawaii law in 2016.

The proposed fantasy competition definition in SB2429 includes daily fantasy sports. As clearly stated by Attorney General Douglas Chin in his January 27, 2016 opinion, "daily fantasy sports contests are contests of chance under Hawaii law because chance is a material element for the vast majority of players."

We respectfully request that the Senate Committee on Judiciary and Labor vote against SB2429.



ONLINE TESTIMONY SUBMITTAL  
Senate Committee on Judiciary and Labor  
Hearing on Thursday, February 11, 2016  
Conference Room #016

DATE: February 3, 2016

TO: Senate Committee on Judiciary and Labor  
Sen. Gilbert Keith-Agaran, Chair  
Sen. Maile Shimabukuro, Vice Chair

FROM: Eva Andrade, President

RE: Opposition to SB2429 Relating to Fantasy Competitions  
Opposition to SB2722 Relating to Fantasy Contests

Hawaii Family Forum is a non-profit, pro-family education organization committed to preserving and strengthening families in Hawaii, representing a network of various Christian Churches and various faith-based groups. We oppose this bill because we believe that conducting or participating in a fantasy contest is a stepping stone to establishing gambling in Hawai'i. In fact, the CEO of DraftKings has called the daily fantasy sports model "almost identical to a casino."<sup>i</sup>

Proponents hide under a cloud of semantics by claiming that these games are not gambling, contending that the games involve more skill than luck. Semantics aside, we could debate and examine evidence on both sides of the argument but it would not negate the fact it's still gambling, and bad public policy. Major fantasy sports sites have already been outlawed by state regulation in 7 states, and the percentage of players who lose money at daily fantasy sports sites like FanDuel and DraftKings is astonishingly high.

In fact, in its own reporting, DraftKings data showed that 89.3% of players had an overall negative return across 2013 and 2014<sup>ii</sup>. Again, their own data showed that nearly 90% of players lost money on fantasy contests in both 2013 and 2014. Is this what we want for Hawai'i residents?

The New York Times recently reported that just 10 to 20 percent of people who enter these fantasy competitions win anything at all<sup>iii</sup>, and the Sports Business Journal found that through the first half of the 2015 Major League Baseball season, 91% of all winnings were collected by just 1% of all players<sup>iv</sup>.

DraftKings and Fanduel made \$200 million in New York in 2015 – hundreds of millions of dollars taken away from one state in one year. And as you know, the issue did not end there. New York's attorney general filed a lawsuit asking FanDuel and DraftKings to give back all the money they made in the state.



Page Two

The confusion continues to mount as just a few days ago FanDuel Inc. and DraftKings Inc. ran into more trouble when Citigroup Inc. said it was blocking transactions by New York state residents<sup>v</sup>.

As a faith-based organization that cares deeply about the families in Hawai'i, we will continue to oppose the establishment of any form of gambling in Hawai'i. Even if it were decided that fantasy contests are simply just a game of skill, there is only one winner and that will not be the people of Hawai'i. Major fantasy contest sites would reap the benefit of taking millions of dollars away from hard working people right here in our beloved State.

While it may sound like a good idea to allow fantasy gaming in Hawai'i, the potential greater negative economic impact must also be considered. Not unlike the social costs associated with other addictive behaviors, compulsive gambling wreaks havoc on individuals, families, and communities.

Mahalo for the opportunity to testify.

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<sup>i</sup> <http://www.reviewjournal.com/business/gambling/ag-draftkings-ceo-called-daily-fantasy-sports-casino>

<sup>ii</sup> <http://fusion.net/story/235153/the-percentage-of-players-who-lose-at-daily-fantasy-sports-like-draftkings-is-astronomical/>

<sup>iii</sup> [http://www.nytimes.com/2015/09/27/upshot/daily-fantasy-sports-and-the-hidden-cost-of-americas-weird-gambling-laws.html?\\_r=0](http://www.nytimes.com/2015/09/27/upshot/daily-fantasy-sports-and-the-hidden-cost-of-americas-weird-gambling-laws.html?_r=0)

<sup>iv</sup> <http://www.sportsbusinessdaily.com/Journal/Issues/2015/07/27/Opinion/From-the-Field-of-Fantasy-Sports.aspx>

<sup>v</sup> <http://www.bloomberg.com/news/articles/2016-02-05/citigroup-blocks-draftkings-fanduel-transactions-in-n-y-state>





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SENATE COMMITTEE ON JUDICIARY AND LABOR  
Hearing Scheduled 9:00 a.m. Thursday, February 11, 2016, Conference Room 016  
SB 2429 RELATING TO FANTASY COMPETITIONS

TESTIMONY

Susan Dursin, Legislative Committee, League of Women Voters of Hawaii

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Committee Members:

**The League of Women Voters of Hawaii strongly opposes SB 2429** which purportedly establishes fantasy competition as a violation of the gambling laws while providing an affirmative defense under limited situations. This bill is not clearly written and possibly adds sections to the Hawaii Revised Statutes which are contrary to what is set out as its intent.

There are many reasons that fantasy gambling should not be approved by this committee, but because the language of this bill is so convoluted and clouded, it is impossible even to address the various proposals. Regardless of what it appears to say, SB2429 legalizes fantasy competition. That does not serve the public and will, through the bill's lack of clarity, generate considerable scrutiny and dispute.

Please hold this bill.

Thank you for considering my testimony.