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May 13, 2003

David W. Singleton
Secretary of Finance
820 North French Street, 8th Floor
Wilmington, DE 19801

Re: Sports Gaming Proposal

Dear Secretary Singleton:

As the Committee established by Resolution No. 63 prepares its report on sports gaming, we thought it useful to reiterate a point made by Jay Moyer in his December 18, 2002, statement to the Committee on behalf of the NFL -- legalized sports gaming is unlikely to generate substantial revenue for the state.

Although the racetracks have estimated that a legalized sports betting operation would net Delaware \$13 million a year (*News Journal*, April 16, 2003), the experience of Oregon, the only other state that has a sports lottery, indicates that this estimate is wishful thinking. Oregon's sports lottery, with \$9-\$10 million in tickets sales annually (*News Journal*, April 16, 2003), nets the state only about \$2.3 million a year (*Delaware Capitol Review*, Oct. 28, 2002). Oregon has more than four times Delaware's population (3.4 million versus 784,000, according to the 2000 Census), offers its sports lottery at about 2,500 retail outlets statewide, and does not split the proceeds with racetracks or anyone else. As the Alliance Against Sports Gambling in Delaware has asked, how could a Delaware sports lottery offered at only three tracks, and with a part of the proceeds going to the tracks, come even close to Oregon's \$2.3 million yield -- let alone anywhere near the \$13 million projected by Delaware's racetracks?

Delaware's own experience with a sports lottery in 1976 is instructive. Initially, sports lottery tickets were sold not just at three venues, as Resolution No. 63 contemplates, but at more than 146 outlets in 21 cities throughout the state, with many outlets in Wilmington, Newark, and New Castle. The number of ticket outlets grew to about 180 as the season

progressed.¹ An advertising supplement identified outlets of all descriptions at which sports lottery tickets were sold -- delicatessens, newsstands, convenience stores, liquor stores, tobacco stores, stationery stores, supermarkets, bowling alleys, restaurants, taverns, hardware stores, pharmacies, and barbershops.²

Peter M. Simmons, the Delaware Lottery Director, originally estimated that the sports lottery would net the state \$2 million (\$6.5 million in 2003 dollars) during the 14-week NFL season, based on the state's 30 percent statutory share of projected gross revenues of more than \$5.6 million (\$18.1 million in 2003 dollars) -- more than \$400,000 a week (\$1.3 million in 2003 dollars).³ The average weekly gross for the first nine weeks of the NFL season, however, was only \$53,000 (\$171,720 in 2003 dollars) -- one-eighth of what had been predicted.⁴ By mid-October, Director Simmons had revised his estimate sharply downward, predicting that the games would net the state only about \$250,000 for the season -- 12.5 percent of the original estimate.⁵ As of the final regular-season games, after which the lottery was ended, gross ticket sales amounted to only \$721,812 (\$2.3 million in 2003 dollars) (*News Journal*, Dec. 23, 2002), yielding only \$216,543 to the state (\$701,599 in 2003 dollars), assuming that the state received its 30 percent statutory share. In view of the fact that the Lottery was required to use emergency funds to meet the payout demand for the final

¹ The 146 outlets are identified in an advertisement for the sports lottery introduced as Plaintiff's Ex. 9 in *NFL v. Governor of Delaware*, 435 F. Supp. 1372 (D. Del. 1977). A *News Journal* story dated Oct. 17, 1976, introduced as Plaintiff's Ex. 62, reported sports lottery ticket sales by 180 agents. See Dep. of Peter M. Simmons, Oct. 27, 1976, Tr. 254-55, 257; see also Def. Post-Trial Brief at 30 (referring to "approximately 180 agents" for the sports lottery).

² Plaintiff's Ex. 9, *NFL v. Gov. of Delaware*; see also Def. Post-Trial Brief at 30, 70 (enumerating diverse retail outlets).

³ See Plaintiff's Post-Trial Opening Brief, *NFL v. Gov. of Delaware*, Addendum 1, Stipulation of Facts ¶ 24; Def. Post-Trial Brief at 5 (citing \$53,000 figure). We used a 3.24 inflation factor to produce 2003 dollars (as per the Bureau of Labor Statistics' Inflation Calculator, see www.bls.gov). Our legal memorandum of April 29, 2003, incorrectly cited \$400,000 and \$53,000 as the predicted and actual average weekly net yields to the state. These were actually the predicted and actual average weekly gross revenues; the state's net yields were, by law, only a fraction of its gross revenues.

⁴ Plaintiff's Post-Trial Opening Brief, *NFL v. Gov. of Delaware*, Addendum 1, Stipulation of Facts ¶ 25. See also "Lottery Chief Admits NFL Pot Is Only an Eighth of Forecast," *News Journal*, Oct. 17, 1976, Plaintiff's Ex. 62, quoted in Simmons Dep., Oct. 27, 1976, Tr. 254-55.

⁵ Simmons Dep., Oct. 27, 1976, Tr. 217.

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"Touchdown II" game,⁶ the state's actual net yield from the 1976 sports lottery may have been less.

Even taking into account the missteps of the 1976 sports lottery, its very modest yield confirms what Oregon's experience with its sports lottery currently indicates -- that a new Delaware sports lottery would not yield substantial revenue for the state. A \$701,599 net yield from Delaware's 1976 sports lottery (expressed in 2003 dollars, and assuming a 30 percent state share of the gross revenues) would have been less than one-third of the average \$2.3 million annual net yield of Oregon's sports lottery, and less than one-eighteenth of the racetracks' \$13 million estimate for a new sports lottery in Delaware. The racetracks' estimate thus seems implausible on its face. At a minimum, Delaware's experience in 1976 and Oregon's more recent experience underscore the need to view with great caution the optimistic revenue estimates of those advocating new sports lottery games in Delaware today.

Sincerely,

David H. Remes

David H. Remes
Counsel to the
National Football League

cc: Rep. William A. Oberle

⁶ "Delaware Will Pay Off on Lottery That Was Canceled and Reinstated," *N.Y. Times*, Dec. 15, 1976, at A18, col. 1.