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# Nevada orders fantasy sports sites to shut down

DraftKings, FanDuel ruled to be gambling



ERIK JACOBS/THE NEW YORK TIMES

**Advertisements for DraftKings adorned Boston's South Station in September.**

**By Callum Borchers and Shelley Murphy | GLOBE STAFF** OCTOBER 15, 2015

The Nevada Gaming Control Board, regulator of the nation's gambling mecca, ruled Thursday that daily fantasy sports contests like those from Draft-Kings Inc. and FanDuel Inc. will be banned there unless the companies obtain gambling licenses.

The decision dealt yet another blow to a beleaguered industry that has rejected the

gambling label, insisting that an exception in federal law lets fantasy sports operate as a game of skill.

DraftKings and FanDuel now confront what would appear to be a no-win proposition: Acknowledge what the casino industry has said all along, that their system of paid entries and cash prizes is, in fact, gambling, or get out of Nevada.

The two sites released separate statements Thursday night in which they said they disagreed with the gaming commission's decision but they would temporarily suspend operations in Nevada.

“It figures Nevada would do this — casinos have been screaming for it,” said Richard McGowan, a Boston College professor who studies gambling. “I’d probably walk away from Nevada. You don’t want to admit you’re gambling. What a precedent that would set.”



## Cullen: Living in a fantasy world

The state should regulate the sports betting industry now calling itself sports fantasy, and tax the bejeebers out of it.

 **FBI investigating DraftKings**

 **Healey says DraftKings is legal**

A month ago, at the start of the NFL season, the only battle for DraftKings and FanDuel was with one another over who would dominate the industry.

But in a rapid-fire reversal, the competing firms are now fending off serious opponents on multiple fronts: an investigation by the FBI and US attorney's office in Boston, reports of a grand jury investigation in Florida, calls for hearings by members of Congress, and inquiries by attorneys general in New York and Massachusetts.

A fast-growing industry on the verge of mainstream popularity — backed by the likes of Major League Baseball and Comcast Inc. — suddenly faces what some specialists believe to be an existential threat.

“This is the real deal; this is Black Friday-type stuff,” said Marc Dunbar, a partner in the government relations practice at the law firm Jones Walker LLP in Tallahassee, Fla. “I worry that next football season this industry isn't going to exist.”

The Fantasy Sports Trade Association estimates 57 million people in North America participate in some form of fantasy sports.

Several attorneys whose work centers on gambling said a recent wave of national commercials could prove to be fantasy sports' undoing. While the system of cash contests hadn't escaped scrutiny before then, the ad war between DraftKings and FanDuel practically begged for a closer look at their business models, which are built on a loophole in federal law.

“They invited this attention,” said Keith Miller, a law professor at Drake University in Des Moines, Iowa, who has written about gambling regulations. “Now it seems like the wheels have fallen off in a very short period of time.”

Fantasy sports contests on DraftKings and FanDuel are shorter than traditional, season-long competitions (hence the “daily” label) and typically charge entry fees for a chance to win cash prizes, some of which exceed \$1 million. Players compete

by creating imaginary rosters of real athletes and score points when their selections perform well in games.

Like true general managers, fantasy contestants are bound by salary caps that prevent them from simply assembling all-star teams. The key to winning is often identifying unheralded athletes who are poised to break out.

DraftKings and FanDuel maintain their contests are legal in most states because of an exemption in the Unlawful Internet Gambling Enforcement Act of 2006, which distinguishes between games of chance and fantasy sports that “reflect the relative knowledge and skill of the participants.”

But the law’s coauthor, former US representative Jim Leach of Iowa, said that while it “exempted fantasy sports from one law-enforcement mechanism . . . it did not exempt fantasy activities from a spectrum of state and federal statutes related to sports betting.”

DraftKings and FanDuel already barred participation by residents of Arizona, Iowa, Louisiana, Montana, and Washington, based on strict state gambling laws. Nevada’s move could have a domino effect, starting with New Jersey, McGowan said. If enough states prohibit fantasy sports without gambling licenses, the companies may have no choice but to accept the label, he added.

Martin G. Weinberg, a Boston criminal defense lawyer who has represented Internet sports gamblers, said the federal investigation into DraftKings and other fantasy sports companies is venturing into uncharted legal territory.

“The heart of this investigation will rest in the great legal wilderness of whether the model of fantasy sports fits gambling on sports events or whether it is closer to a test of skill that’s outside the ambit of the law,” he said.

The trouble started in September, when a DraftKings employee prematurely posted information that could have given some players an advantage. That sparked speculation that insiders had access to information that could give them

an edge in their own games.

Making matters worse, the same employee won \$350,000 on FanDuel the same week.

The furor only escalated from there. Class-action lawsuits in Massachusetts, New York, Illinois, and Louisiana allege that ordinary players were cheated by insiders. Regulators are looking into whether there are adequate customer protections. And law enforcement agencies are probing whether the companies or their employees are violating existing laws.

“Put aside the issue of whether this is gambling,” said Senator Richard Blumenthal, a Connecticut Democrat who wrote a letter on Monday calling for the FBI and Federal Trade Commission to investigate the industry. “The allegations here are about fraud across state lines, which is prohibited whether it’s skill or chance or something else.”

The FTC would not say whether it was investigating, but confirmed it had received Blumenthal’s letter and would “review it closely.”

An aide to the Energy and Commerce Committee, which is expected to hold hearings on the fantasy industry, said the new reports “raise additional questions about the safety, fairness, and integrity of these new platforms for fan engagement” and that the committee would investigate them.

Despite big-name hires and the backing of influential investors, DraftKings and FanDuel probably face too much pressure from too many angles to avoid some degree of damage, said Daniel Wallach, a gambling and sports law attorney at Becker & Poliakoff in Fort Lauderdale, Fla.

“They are surrounded,” said Wallach, who was first to report, via Twitter, that the US attorney’s office in Tampa is convening a grand jury. “A year from now, we’re going to be in a highly regulated environment, and the fantasy industry and sports leagues won’t be powerful enough to stop it.”

Major League Baseball, the National Basketball Association, and the National Hockey League all own equity stakes in either DraftKings or FanDuel, which together expect to pay out more than \$3 billion in prize money this year.

Weinberg, the Boston lawyer who has defended Internet gamblers, said in the coming days, the greatest concern for fantasy sports companies may not be a prosecution, but rather the possibility that a prosecutor will try to shut them down.

“I think their bigger risk is somebody sending them a hard message that their model does violate the law, in the opinion of the government,” he said.

### **Under a microscope**

The daily fantasy sports industry is suddenly facing scrutiny on many fronts, including:

- ▶ A ban by the State of Nevada unless they obtain gambling licenses
- ▶ An FBI investigation
- ▶ A reported federal grand jury investigation in Florida
- ▶ An inquiry by Massachusetts Attorney General Maura Healey
- ▶ An inquiry by New York Attorney General Eric Schneiderman
- ▶ Numerous calls by lawmakers for congressional hearings
- ▶ A call by Connecticut Senator Richard Blumenthal for a Federal Trade Commission inquiry
- ▶ Class-action lawsuits in Massachusetts, New York, Illinois, and Louisiana

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