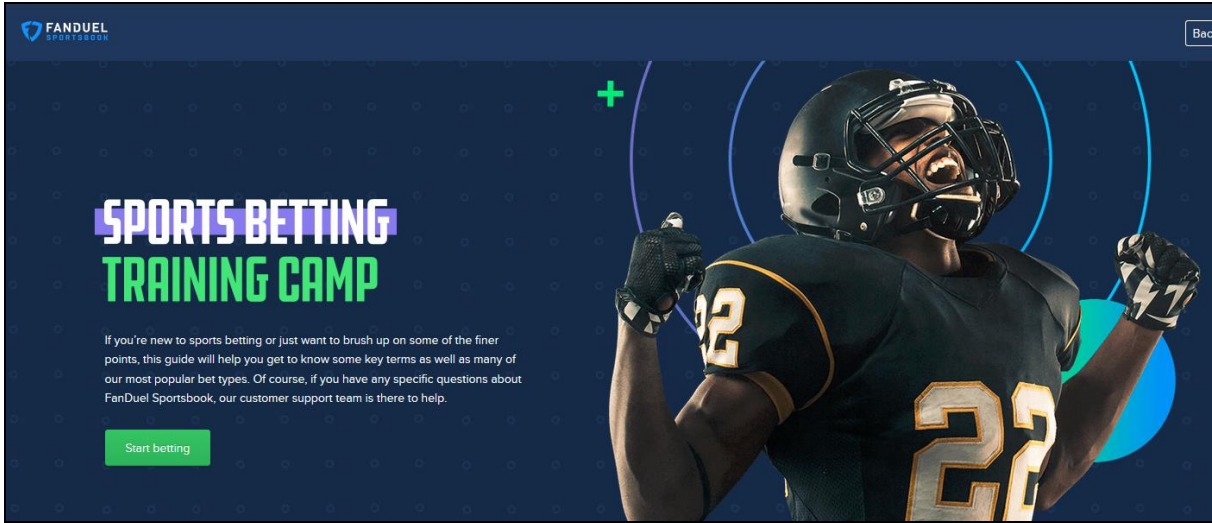


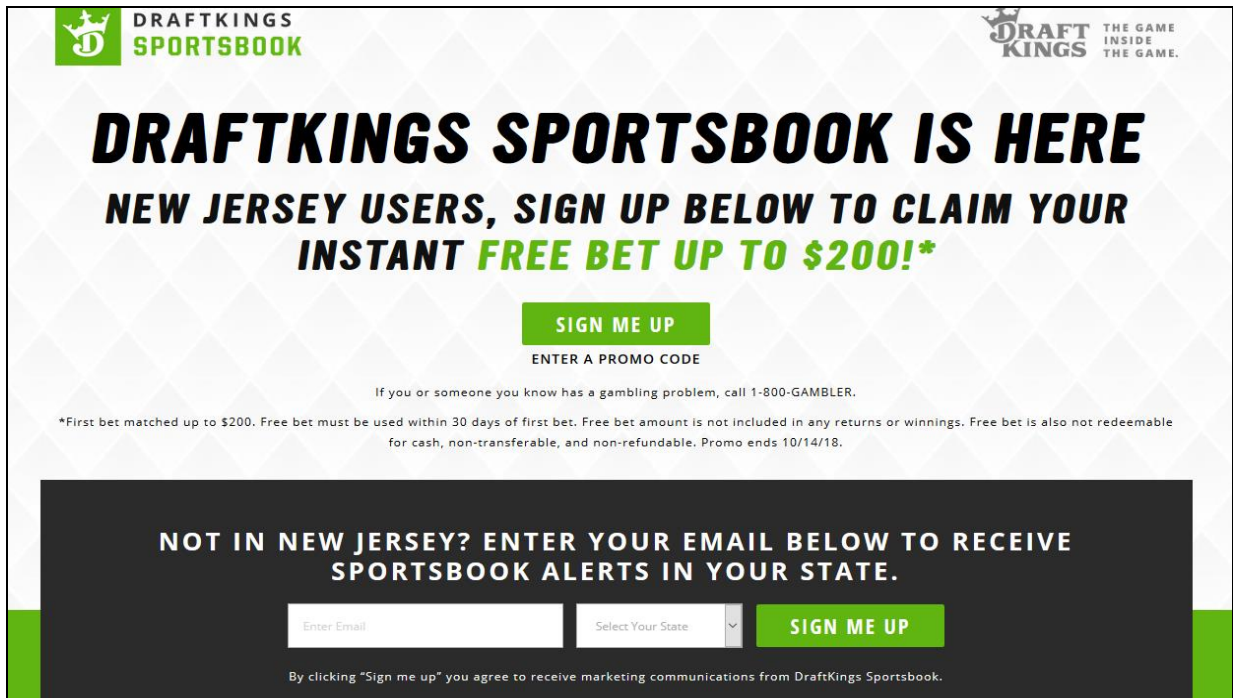


End the Unfairness and Inequality Created By Government-Sponsored Casinos and Lotteries

# “The Big Con:” A Fact Sheet on State-Sanctioned Online Fantasy Sports Gambling



Online sports gambling operator FanDuel, which cloaked itself as a “daily fantasy sports” provider, lures young people on its website to become gamblers by promoting its “Sports Betting Training Camp.” Source: FanDuel website, October 2018



In states like New Jersey, DraftKings now calls itself DraftKings Sportsbook, offering nearly every available sport and type of wager, including a full betting card of proposition bets and in-game betting options. Source: DraftKings website, October 2018

## **SUMMARY**

- 1) Today, DraftKings and FanDuel are running full-blown online sports gambling operations in some states while presenting themselves as “fantasy sports” companies in other states to gain approval.**
- 2) Proponents are deceitfully blurring the difference between traditional season-long fantasy sports and online fantasy sports gambling.**
- 3) The “skill” versus “chance” contrast made by proponents is a false argument conjured up in an obvious effort to circumvent the state’s gambling laws.**
- 4) Online fantasy sports gambling bosses, America’s casino operators and problem gambling treatment providers openly describe “Daily Fantasy Sports” as gambling.**
- 5) The proposed online fantasy sports gambling bill allows the state to force internet gambling into every home, every dorm room and onto every smart phone in a state, a massive expansion of commercialized gambling than citizens and state media have been led to believe.**
- 6) Bills to allow online fantasy sports gambling are being labeled as a “consumer protection bills” yet the lobbying campaign behind these bills are being run by commercialized gambling operators.**
- 7) Online fantasy sports gambling bills legalize “eSports,” allowing gambling operators to turn every kid’s video game console like PlayStation, Xbox and Wii in a state into a Las Vegas casino.**
- 8) Online daily fantasy sports gambling violates federal law.**

**1) Today, DraftKings and FanDuel are running full-blown online sports gambling operations in some states while presenting themselves as “fantasy sports” companies in other states to gain approval.**

FanDuel is owned by the massive European online gambling operator Paddy Power Betfair.<sup>1</sup> It is a FanDuel offers to lure young people into becoming gamblers by promoting its very own "Sports Betting Training Camp."<sup>2</sup> (See cover photo)

In states like New Jersey, DraftKings now calls itself DraftKings Sportsbook, offering nearly every available sport and type of wager, including a full suite of proposition bets and in-game betting options.<sup>3</sup> DraftKings is also the first US operator to include a live-ticket system, in which every bet essentially becomes an in-play bet.<sup>4</sup>

**2) Proponents are deceitfully blurring the difference between traditional season-long fantasy sports and online fantasy sports gambling**

- Gambling lobbyists continue to misrepresent “Daily Fantasy Sports” by claiming it is the same as traditional season-long fantasy games. Legislative proponents then perpetuate this falsehood, assuming it was fact.
- Season-long fantasy sports started as a hobby and a form of community. It was a social activity. The trophy mattered more than the money. Today, because of the introduction of Daily Fantasy Sports gambling (DFS), fantasy sports has become a fleecing operation, plainly incorporating the three elements of gambling: consideration, chance, and prize.
- Online fantasy sports gambling changed the traditional structure and business model of fantasy sports. “Daily Fantasy Sports” contests restart constantly, last a day or a weekend, and typically are played against strangers. Contests don’t begin with a draft. Instead, contestants are given a “salary cap” with which to choose real players. Players’ “prices” are set correspond with their perceived ability. Players’ stats are translated into fantasy points. Winning bets are the ones with the best player statistical performances in that day’s games.
- Rather than simply hosting leagues for users, online fantasy sports gambling operators act as an exchange—just like bookmakers. They profit by keeping a cut of the money wagered, called in gambling talk “the vigorish,” or “the rake.”
- Bettors have no control have no control over how the athletes perform, nor over other external factors that might affect the outcome such as weather, field conditions, injuries, bad bounces or questionable calls by referees, all of which exist independently of an athletes’ ability.

**3) The “skill” versus “chance” contrast made by proponents is a false argument conjured up in an obvious effort to circumvent the state’s gambling laws.**

- Skill and chance are not mutually exclusive, and just as betting on a horse race can involve skill, the outcome remains uncertain and a bet that one horse will win is still a gamble. **No one seriously argues horse racing is not gambling, despite the fact that an element of skill may be present.**

**4) Online fantasy sports gambling bosses, America’s casino operators and problem gambling treatment providers openly describe “Daily Fantasy Sports” as gambling.**

- **The people who run online DFS sites privately admit they are running a gambling operation like “a casino.”** DraftKings CEO Jason Robins acknowledged his website was **"almost identical to a casino"** in an online discussion on Reddit a few years ago.<sup>5</sup>
- MGM Casinos Chairman Jim Murren said those who argue that daily fantasy games are not gambling are “absolutely, utterly wrong. I don’t know how to run a football team, but I do know how to run a casino, and this is gambling.”<sup>6</sup>
- Sheldon Adelson, CEO of Las Vegas Sands and one of the most prominent executives in the gambling world, unequivocally stated that “daily fantasy sports is gambling. There is no question about it.”<sup>7</sup>
- The CEO of the major Nevada casino sports book operator William Hill U.S. said it even more bluntly: “You put up of something of value, cash, to win something of value, cash. It’s the classic definition of gambling...any suggestion that (fantasy sports) is not gambling is the biggest bunch of baloney I’ve ever seen.”<sup>8</sup>
- Gamblers Anonymous has added daily fantasy sports gambling to its list of activities it defines as gambling.<sup>9</sup>

**5) The proposed online fantasy sports gambling bill allows the state to force internet gambling into every home, every dorm room and onto every smart phone in a state, a massive expansion of commercialized gambling than citizens and state media have been led to believe.**

The key language is found where a fantasy sports contest is defined. It’s very easy to envision a contest that can meet these conditions that looks nothing like DFS. It also explains why one of Nevada’s biggest sports books, William Hill US, has been registering

as a “DFS operator” in the handful of states that allowed gambling lobbyists to rush through internet fantasy sports gambling legislation.

For example, there is nothing we've seen in the proposed bills that says a fantasy contest needs to be a peer-to-peer game, which as a result, means the gambling game can be house-banked, casino-style.

Here is a bet someone with a fantasy sports license in a state could hypothetically offer, based on the language in the DFS bill:

“Which quarterback will throw for more yards in the Super Bowl, Tom Brady or Matt Ryan? Pick a QB, wager \$100 to win \$200.”

This “contest” satisfies these requirements of the bill:

- The prize is known in advance.
- It is not based on a single athlete.
- It is not based on an entire team or teams, and doesn't involve a score or a point spread.

Other examples of bets that don't appear to run afoul of the definition – and therefore, would not be illegal gambling under state law should the DFS bill become law– include:

- “What player will score the most/least points in the next quarter of the Celtics game?”
- “Which pitcher will be the first to produce three groundouts when the Red Sox play the Orioles?”

**The language also allows for non-sports fantasy contests (e.g., awards shows, political debates, and even spelling bees).<sup>10</sup>**

**6) Bills to allow online fantasy sports gambling are being labeled as a “consumer protection bills” yet the lobbying campaign behind these bills are being run by commercialized gambling operators.**

These bills are meant to give *the appearance* of regulation. No consumer protection groups are advocating for DFS. The so-called "consumer protections" are toothless. The bills favor the gambling interests who stand to benefit by setting up a structure of self-regulation. And the primary objective is to force full-blown online gambling into people's homes, tablets and smart phones through the backdoor by cloaking it as something very different.

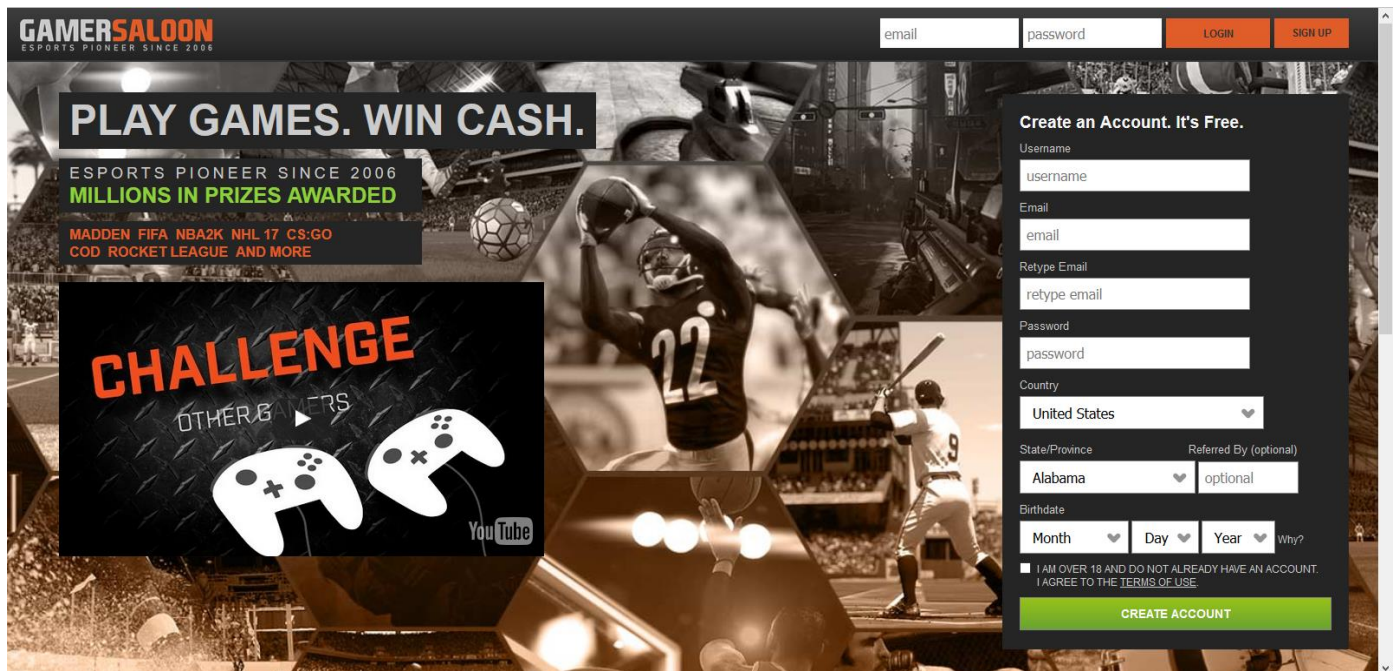
**7) Online fantasy sports gambling bills legalize “eSports,” allowing gambling operators to turn every kid’s video game console like PlayStation, Xbox and Wii in a state into a Las Vegas casino.**

Online gambling companies like DraftKings and Gamersaloon offer what is described as “eSports” where they encourage young people to wager and lose money on video games.<sup>11</sup>

“eSports” is the far more lucrative target for gambling operators. According to industry experts, the eSports revolution is going to change competition as we know it:

**Noah Whinston, who recently started an eSports team funded almost entirely by big-name venture capitalists, declared: “Within three years there are going to be more of them watching eSports than there are watching every other traditional sport combined.”**

**“Young adults today, they don’t want to just go and watch a baseball game,” adds Tobias Sherman, an eSports agent with IMG, one of the nation’s biggest sports agencies. “Whether it’s alien or foreign or absurd to us, it’s eSports that’s going to be second nature.”<sup>12</sup>**



Source: Screenshot of Gamersaloon’s home page on March 1, 2017 <https://www.gamersaloon.com/home>

## 7) Online Fantasy Sports Gambling Violates Federal Law

- Defiantly, online fantasy sports gambling operators often claim that their gambling is shielded by a “carve-out” in the Unlawful Internet Gambling Enforcement Act (“UIGEA”), at 31 U.S.C. §5362(1)(E)(i)-(ix)(2006), but they fail to note that the fantasy sports carve-out was necessarily intended to protect only traditional season-long participants (since the daily game industry did not exist when UIGEA was enacted), and the carve-out only applies to those games where a minimum threshold of skill-to-chance exists.<sup>13</sup>

The author of the federal UIGEA law in 2006, Rep. Jim Leach (R-IA), told reporters that allowing DFS was not his intention: “The assumption was that while unconstrained Internet gambling could change the nature of America’s savings and investment patterns, fantasy sports would be a ‘de minimus’ footnote. No one ever conceived of it becoming a large scale activity or that it could transition into one-day contests.”<sup>14</sup>

“The only unique legal basis provided fantasy sports by UIGEA is its exemption from one law enforcement mechanism where the burden for compliance has been placed on private sector financial firms,” Leach said. “But it is sheer chutzpah for a fantasy sports company to cite the law as a legal basis for existing. **Quite precisely, UIGEA does not exempt fantasy sports companies from any other obligation to any other law...what is self-evident is that UIGEA exempted fantasy sports from one specific law enforcement mechanism but not from the broad sweep of law itself.**”<sup>15</sup> Leach added that fantasy sports companies are still bound by state and federal laws on sports betting, wire transfers, anti-trust and securities laws, among others.<sup>16</sup>

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<sup>1</sup> ““FanDuel to open sportsbook at Meadowlands in New Jersey,” *ESPN*, July 12, 2018, [http://www.espn.com/chalk/story/\\_/id/24077347/fanduel-open-sportsbook-meadowlands-racetrack-new-jersey](http://www.espn.com/chalk/story/_/id/24077347/fanduel-open-sportsbook-meadowlands-racetrack-new-jersey)

<sup>2</sup> Fanduel sports gambling website, October 2018, <https://www.fanduel.com/sports-betting-guide>

<sup>3</sup> “DraftKings Sportsbook App Goes Live For NJ Online Sports Betting Statewide,” *Legal Sports Report*, Aug 6, 2018 <https://www.legalsportsreport.com/22598/draftkings-sportsbook-launch-nj-sports-betting/>

<sup>4</sup> *Ibid.*

<sup>5</sup> “Nevada AG: DraftKings CEO called daily fantasy sports 'a casino'” *Las Vegas Review Journal*, Oct. 17, 2015 <http://www.reviewjournal.com/business/gambling/ag-draftkings-ceo-called-daily-fantasy-sports-casino>

<sup>6</sup> “Gambling or a Game of Skill: Debate Swirls Over Fantasy Sports,” *Las Vegas Review Journal*, July, 11, 2015 <http://www.reviewjournal.com/business/casinos-gaming/gambling-or-game-skill-debate-swirls-over-fantasy-sports>

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<sup>7</sup> "Why Sheldon Adelson is Against Daily Fantasy Sports," *Yahoo Finance*, Sept. 9, 2016  
<http://finance.yahoo.com/news/exclusive-why-sheldon-adelson-is-against-daily-fantasy-sports-144543169.html>

<sup>8</sup> "Gambling or a Game of Skill: Debate Swirls Over Fantasy Sports," *Las Vegas Review Journal*, July, 11, 2015  
<http://www.reviewjournal.com/business/casinos-gaming/gambling-or-game-skill-debate-swirls-over-fantasy-sports>

<sup>9</sup> "The next frontier of Daily fantasy sports is here," *New York Daily News*, June 6, 2016  
<http://www.nydailynews.com/sports/peek-frontier-daily-fantasy-sports-article-1.2662962>

<sup>10</sup> "States Passing Daily Fantasy Sports Bills May Be Authorizing Far More Sports Betting Than They Realize," *Legal Sports Report*, February, 19, 2016 <http://www.legalsportsreport.com/8421/dfs-bills-authorize-sports-betting/>

<sup>11</sup> "League Of DFS Legends: DraftKings Launching Fantasy eSports Platform," *Legal Sports Report*, Sept. 18, 2015  
<http://www.legalsportsreport.com/4025/draftkings-fantasy-esports/>

<sup>12</sup> "Will eSports revolution change competition as we know it?" *Orange County Register*, March 6, 2016  
<http://www.ocregister.com/articles/esports-707042-immortals-sports.html>

<sup>13</sup> The exemption often cited by DFS proponents is listed below—and it does not apply—because a winning outcome IS based on the performance or performances of a combination of teams: "31 U.S. Code 5362 (1) (E) (ix) (III) No winning outcome is based— (aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams;" First, the language of the act prohibits (i.e., doesn't exempt) gambling based on outcomes based on a "combination of teams" and second, the selection of individual players from multiple teams to compose a fantasy team still results in outcomes based on a combination of teams, since each individual player's statistics necessarily materially turn on what his individual team does (plays called; opportunities provided; errors made; etc.) and, in the aggregate. This clearly involves a "combination of teams."

<sup>14</sup> "The Hot New Form Of Fantasy Sports Is Probably Addictive, Potentially Illegal And Completely Unregulated," *ThinkProgress*, May 7, 2015 <http://thinkprogress.org/sports/2015/05/07/3648832/daily-fantasy-sports-gambling/>

<sup>15</sup> "Former congressman says DFS is 'cauldron of daily betting,'" *Associated Press*, Oct. 12, 2015  
<http://bigstory.ap.org/article/7b3af0d8b0c04f059e8b301adf8b1784/former-congressman-says-dfs-cauldron-daily-betting>

<sup>16</sup> "Former congressman says DFS is 'cauldron of daily betting,'" *Associated Press*, Oct. 12, 2015  
<http://bigstory.ap.org/article/7b3af0d8b0c04f059e8b301adf8b1784/former-congressman-says-dfs-cauldron-daily-betting>