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Leo Ernst

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Government Regulation of Daily Fantasy Sports is on the Way: On the Heels of the Employee Scandal within DraftKings and FanDuel, Nevada Rules that Betting on Daily Fantasy Sports is Gambling

BY [LEO ERNST](#) / ON NOVEMBER 24, 2015

On Thursday, October 15, Nevada regulators took the plunge to combat Daily Fantasy Sports (“DFS”) sites like DraftKings and FanDuel and ruled that DFS gaming is a game of chance rather than a game of skill. As such, the Nevada Gaming Control Board has mandated that DFS sites obtain gambling licenses in order to operate in Nevada.

In accordance with the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”), if DFS is ruled to be a game of skill, it is exempt from the prohibitions of the statute; however, if states decide that it is predominantly a game “subject to chance, upon an agreement or understanding that [a] person or another person will receive something of value in the event of a certain outcome,” then it is subject to the UIGEA and state regulations.

Nevada’s financial motivation for this ruling are immediately recognizable: (1) the UIGEA prevents Nevada gambling corporations (casinos, notably) from expanding across multiple states, so the DFS industry has the advantage of interstate gaming between players from multiple states; (2) by forcing the DFS sites to obtain licenses to operate in Nevada, the state not only receives license fees, but also a portion of each sites revenue (which is incredibly lucrative given DFS has become a multi-billion dollar industry over the past few years).

This shift in the DFS industry comes on the heels of a well-publicized scandal involving DraftKings and FanDuel, where it has been alleged that employees on both sites have been using information available only to them to make huge profits participating in the daily contests (pundits’ estimates for the profits gained span tens of thousands of dollars to millions). While intuitively it would seem as if Nevada’s response of calling for state regulation of DFS is appropriate, I submit the scandal is more so the Nevada Gaming Control Board’s smoking gun to rationalize forcing the sites to obtain licenses to be able to derive profits therefrom.

The simple fact of the matter is that whether or not employees at DraftKings and FanDuel have been unethically utilizing insider information to gain a competitive advantage over non-employees, this has zero bearing on whether or not DFS should be classified as a game of chance instead of a game of skill. The timing of the ruling directly following the scandal is not

likely a coincidence as public opinion concerning the lack of regulation of DFS has never been lower.

This ruling poses serious problems for the exponentially-growing DFS industry and their thousands of customers, as Nevada is the clear epicenter of the gaming industry in the United States. Prior to Thursday, only a handful of other states had prohibited the unregulated operation of DFS sites, and Nevada's decision is more relevant than the others' combined. If other states follow suit (which, as sure as you and I born, will happen), the lack of government regulation and oversight that has led to DFS's absurd growth will shrink.

For now, both DraftKings and FanDuel have suspended operations within the state of Nevada, pending their decisions as to whether or not to obtain licenses to operate within the state as a gambling institution.

Citations:

1. Nevada Gaming Says Daily Fantasy Sports is Gambling Under State Law, Illegal to Offer Without State License, Chris Grove, LEGAL SPORTS REPORT (<http://www.legalsportsreport.com/5173/nevada-says-dfs-is-gambling/>)
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3. Nevada Regulators Tell FanDuel, DraftKings: Get Out or Get a License, Associated Press, NBC NEWS (<http://www.nbcnews.com/tech/tech-news/nevada-regulators-tell-fanduel-draftkings-get-out-or-get-license-n445851>)
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6. Unlawful Internet Gambling Enforcement Act of 2006 (available at <https://www.govtrack.us/congress/bills/109/hr4411/text>)

Leo T. Ernst is a second-year law student at the Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Law Journal.