



## Sports

# Daily Fantasy Sports contests are illegal in New York, court rules

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Daily Fantasy Sports, like the contests offered by DraftKings, are illegal in New York, an appeals court has ruled. (AP Photo/Stephan Savoia) AP

By [Don Cazentre | dcazentre@nyup.com](mailto:dcazentre@nyup.com)

A New York appeals court today ruled that Daily Fantasy Sports contests -- like [FanDuel](#) and [DraftKings](#) -- violate the state constitution's ban on gambling and are therefore illegal.



The [ruling](#), which upholds a 2018 lower court decision, is now likely headed to the state's top court -- the Court of Appeals.

It's not clear yet whether players will be able to continue to participate in the contests pending the next appeal. The contests have continued since the last ruling.

One expert on state courts, Rob Rosborough of [nysppeals.com](#), believes the games can continue as the state appeals the latest ruling.

"Much to unpack here, but most immediately, the State will undoubtedly appeal as of right to the NY Court of Appeals based on the substantial constitutional question, and will get an automatic stay of the order. So [#DFS](#) can continue in NY, for now. The future is much less certain," Rosborough tweeted today.

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— Rob Rosborough (@NYSAppeals) February 6, 2020

At issue is whether Daily Fantasy Sports are a form of gambling based on chance (which is prohibited in New York), rather than skill. In 2016, state lawmakers attempted to make DFS legal by reclassifying it as a game of skill instead of chance.

The state Appellate court in Albany over-ruled that change.

“(Daily Fantasy Sports) contests are not excluded from the constitutional meaning of ‘gambling’ merely because the Legislature now says that it is so,” the court wrote in today’s decision.

Any expansion of gambling in New York is required by the constitution to be approved in a ballot referendum -- as happened in 2013 when voters approved the legalization of commercial gambling casinos in Upstate New York. The 2016 change regarding DFS did not go to the voters.

A group of private citizens filed a lawsuit challenging the 2016 change making DFS a game of skill, leading to the initial court decision declaring it illegal.

The state -- and Gov. Andrew Cuomo -- are defendants in the legal challenge.

The state Gaming Commission, which regulates casino gambling, lotteries, horse-racing and similar activities, is reviewing today’s ruling, spokesman Brad Maione said.

Daily Fantasy Sports allow players to assemble teams of players in sports such as football or baseball and use their in-game statistics to compete with other teams.

Daily Fantasy Sports are different from sports betting at casinos or sportsbooks, which became legal in New York and other states following a U.S. Supreme Court ruling in 2018.

The two top companies in Daily Fantasy Sports are partners in legal sportsbooks in Upstate New York: DraftKings is a partner at del Lago Resort & Casino near Waterloo in the Finger Lakes and FanDuel is a partner at the Tioga Downs casino in Nichols, just west of Binghamton.

Today's ruling has no impact on those sportsbooks.

The question of the state Constitution's prohibitions on gambling has been at the center of the issue of expanding New York's sports betting beyond casinos and into mobile or online platforms. Cuomo has said he believes expanding sports betting online would require a constitutional amendment.

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