

Who supports daily fantasy sports? It's anybody's bet

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AUSTIN—Cue the Broadway cast recording of *Hamilton*. At the Texas Capitol, it's "The World Turned Upside Down" in terms of figuring out Republican and Democratic positions on legalization of paid daily fantasy sports businesses.



BGCT Photo / Kalie Lowrie)

Some things have remained constant in Austin. Rep. Richard Peña Raymond, D-Laredo, still wants to see fantasy sports classified as games of skill, rather than as games of chance prohibited by Texas law. He [introduced a bill](#) to that effect in 2016.

Raymond introduced that legislation even after Attorney General Ken Paxton issued an [opinion](#) on Jan. 19, 2016, stating his beliefs that "a court would conclude that participation in paid daily fantasy sports leagues constitutes illegal gambling."

Daily fantasy sports sites permit players to pay a fee to enter a game in which they create a fantasy sports team using real professional athletes. The athletes' performance in various statistical categories determines how a fantasy league team fares. The fantasy player wins or loses money

accordingly, with the sponsor site claiming a percentage.

Paxton drew a distinction between commercial daily fantasy sports operations and “traditional fantasy sports leagues ... where no person receives any economic benefit other than personal winnings and the risks of winning or losing are the same for all participants.”

This session, Raymond has introduced [HB 1544](#), which stipulates that “an individual who pays money or other consideration to participate in a fantasy sports contest is not placing a bet for the purposes of application of an offense” under the state’s penal code.

Bipartisan support claimed

While Raymond’s previous attempt to declare daily fantasy sports legal failed to gain traction, this year he claims bipartisan support for the measure.

During a March 12 [hearing](#) on HB 1544 before the House Licensing and Administrative Procedures Committee, Raymond said: “I can’t remember the last time that I could stand up and say I appreciated the Republican Party of Texas and the Democratic Party of Texas for both putting in their platforms that they support this legislation.”

Actually, the [Republican Party of Texas platform](#) includes two planks on gambling. On the one hand, the platform unequivocally says, “We oppose the expansion of gambling.” However, it also includes the statement Raymond referenced, which says, “We support action by the Texas Legislature clarifying existing state law without attaching new taxes or fees to the fantasy sports industry, which would grow the size and scope of government.”

‘It’s just trickery’

Rob Kohler, consultant with the Texas Baptist Christian Life Commission, wonders how state Republican leaders could have agreed to the seemingly contradictory positions.

“I think some folks have been tricked. I don’t know who tricked them, but it’s a scheme,” Kohler said. “It’s just trickery, and there’s no place for it.”

Ironically, while the state’s Democratic Party has gone on record in support of Raymond’s proposal, it is not included in the [party platform](#). Manny Garcia, executive director of the Democratic Party of Texas, called the difference “just a technicality in phrasing.”

“The Texas Democratic Party’s executive committee passed a resolution in support of Rep. Raymond’s legislation,” Garcia wrote in an email.

When asked if a resolution by the party’s executive committee carried the same weight as a platform approved by delegates to the state convention, he replied: “Both are a representation of our values. Neither is binding to elected officials.”

In spite of a Republican attorney general’s opinion that participation in daily fantasy sports constitutes illegal gambling, Sen. Lois Kolkhorst, R-Brenham, introduced [SB 731](#), a companion bill to Raymond’s proposal in the House.

Kolkhorst did not respond to an email asking how SB 731 could be reconciled with her party’s stated opposition to expansion of gambling.

Skill or chance?

Texas Republican Party Chair James Dickey offered his rationale.

“The resolution is the definition of gambling as participating in games of chance—contests where knowledge/experience/insight/information have no impact. Rolling the dice or selecting a card or spinning a wheel are purely games of chance—as are lotteries,” Dickey wrote in an email.

“There are other situations, though, where dollars paid could result in higher than dollars returning that are not completely dependent on chance: investing in the stock market or real estate, for example. There is of course an element of chance in any effort, but knowledge and experience play a significant role as well.

“The party’s resolution is that fantasy sports is a similar situation—it’s impossible to predict whether or how someone will be injured, but it’s not all impossible to have knowledge about which players are better, or more likely to perform better under certain circumstances. Therefore, since knowledge and insight and experience have an ability to change the probability of outcomes in this activity, it is by definition not gambling.”

Rodger Weems, chair of Texans Against Gambling, rejected that assertion.

“The people of Texas and their legislature must not be fooled by bills that purport to ‘clarify’ the legal status of daily fantasy sports,” Weems said. “Daily fantasy sports needs no clarification because it is clearly illegal. Period. The plain language of the law says so, and an opinion from the Texas attorney general says so.

“If proponents of this bill think they can shortcut the difficult process of expanding gambling in Texas, they are mistaken. The Texas Constitution makes gambling expansion difficult for a reason.”