



School of Law

LET THE PRESEASON BEGIN: WANT TO PLAY?

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FantasyLaw Edition



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SELECTED PROCEEDINGS, DEBATES, AND OTHER ACTIVITIES
OF THE 111th CONGRESS, FIRST SESSION



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PARTICIPATION: Beginning in November 2009 – and probably NOT before – you should be able to visit www.fantasylaw.org to download the forms necessary to organize and register a *FantasyLaw* League or (if you are already an Owner) to download the form necessary to request a drop/add or trade. Registration of a Team in a *Green Bag FantasyLaw* League entitles the Owner of that Team to some impossible-to-predict-or-promise combination of the joys and sorrows of participation in the League of which that Team is a part, and nothing more. Anything else the *Green Bag* may produce in the course of *FantasyLaw* operations will take the form of gifts that we may or may not bestow on some Leagues or Owners (*e.g.*, a Vinson Trophy) or a product you may purchase separately (*e.g.*, a subscription to the *Green Bag*, which may from time to time contain a *FantasyLaw* supplement).

PARTICIPANTS: We do not want to know who the Owners of *FantasyLaw* Teams are, and we will ignore all efforts to corrupt our useful ignorance. For purposes of *FantasyLaw*, we only want to know the identity and contact information for your League’s Commissioner, and the names of the League and the Teams in it. We will communicate only with the League Commissioner about the business of a League or any of its Teams. Anyone other than a Commissioner who attempts to communicate with us about a League or any Team or Owner in that League will be ignored. So, if you are one of those for whom fantasy sports are of deep importance, you should make sure that your Commissioner has made testamentary arrangements for the passing-along of his or her responsibilities as Commissioner.

EDITORIAL POLICY: This supplement is subject to the same rules and standards as the rest of the *Green Bag*. For details please see the masthead of the issue of the *Bag* in which this supplement appears.

CORRESPONDENCE: Please write to FantasyLaw, c/o The Green Bag, Inc., 6600 Barnaby Street NW, Washington, DC 20015, email fantasylaw@greenbag.org, or visit www.fantasylaw.org.



FANTASYLAW COMMENTARY

LET THE PRESEASON BEGIN: WANT TO PLAY?

Ross E. Davies

During the first session of the 111th Congress (Jan. 6-Oct. 30),¹ the *Green Bag* will be working out the kinks in a new project: *FantasyLaw*.² We are looking for a few test subjects to help us – to share the joys of playing the beta version of *FantasyLaw*. If you know (or would like to know) enough about both the federal legislative process and traditional fantasy sports to enjoy leading a fantasy league in which the stars have all been elected³ to serve in the U.S. Senate or the House of Representatives, this might be for you. Please read on.

The basic idea behind *FantasyLaw* is to enable law fans to treat federal legislators roughly the same way sports fans treat major-league and NCAA athletes.⁴ In short:

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¹ See www.house.gov/house/House_Calendar.shtml (visited Feb. 14, 2009).

² The first regular season of *FantasyLaw* will correspond to the second regular session of the 111th Congress, in 2010.

³ Or temporarily appointed. See U.S. Const. amend 17; *cf. id.*, art. I, § 2.

⁴ Of course, there is nothing entirely new under the sun (see ECCLESIASTES, ch. 1, verse 9), including exotically themed fantasy leagues, which range from baseball

- several friends or colleagues (each of whom will become a team “Owner”) get together to form a “League” of teams;
- each Owner selects (normally via some sort of draft) a group of federal legislators (the “Players” who will be on a “Team”) who the Owner believes will score well on a set of performance criteria (statistical and perhaps other measures relating to the Players’ work) compiled and processed by an impartial “Administrator” that provides support for many Leagues (for *FantasyLaw*, the *Green Bag* is the Administrator);⁵
- the Owners select either one of themselves or some other trusted friend or colleague to be the League “Commissioner” – that is, the person responsible for (a) dealing with the Administrator on matters such as registration of the League and its Teams and issues with the reporting of Player and Team performances and rankings, and (b) facilitating the resolution of disputes among the Owners in that League;
- the Commissioner submits the required paperwork and payment to register the League with the Administrator;

to fashion to real estate to husbands. See, e.g., Jonathan Abrams, *Not your typical draft pick*, L.A. TIMES, July 11, 2007, at A1; *Fantasy or phobia?*, THE ECONOMIST, Dec. 1, 2007. And to Congress. Several years ago, a group of Claremont McKenna College students created an online “Fantasy Congress” game (see Cindy Chang, *Fantasy Sports? Child’s Play. Here, Politics Is the Game.*, N.Y. TIMES, Oct. 23, 2006), which was until quite recently accessible at www.fantasycongress.com. It would be nice to see them back in action. In the same expansive spirit, someday the *Green Bag* might extend its interest in lawmakers to support *FantasyLaw* leagues in which the players serve in other branches of the federal government – much as the founders of “Fantasy Congress” extended their interest in fantastic politics, collaborating with *Politico.com* on a “Kingmaker” game designed to “reward savvy fans of politics for guessing correctly as to what percentage of the vote each presidential candidate will take in primaries and caucuses.” Ben Adler, *Get ready for ‘January Madness’*, POLITICO.COM, Dec. 21, 2007.

⁵ In perhaps unduly optimistic anticipation of great success for *FantasyLaw*, the *Green Bag* has already begun work on a Lawmaking Hall of Fame in which to honor the star Players who shine most brightly. It may take a while, however, to establish a reliably fair process for determining not only who from the present generation ought eventually to be in the Hall, but also who among past pillars of Congress deserves a plaque. See generally BILL JAMES, *THE POLITICS OF GLORY* (1994).

Let the Preseason Begin

- the Administrator periodically posts Players' statistics – and the resulting individual and Team fantasy scores and League rankings – in a format that enables each Owner to (a) track the performances of his or her Players and Team; (b) make roster decisions – who to drop or add, who to trade, and so on; and (c) talk trash to other Owners in his or her League;⁶
- play continues through the “Season” – in *FantasyLaw*, a regular session of Congress – with winners in each League announced with great fanfare at the end.⁷

If you have ever participated in a fantasy league, this is familiar territory.⁸ However, one feature of *FantasyLaw* (other than its sources of players and performance criteria) will set it apart from the typical fantasy enterprise: the lengths to which the *Green Bag* will go to protect the identities of Owners. There is a good reason for the emphasis on secrecy: Some prospective *FantasyLaw* Owners are people who would enjoy the game, but who will (upon mature reflection) be willing to play only if they can be quite confident that their identities will remain secret.

Three features of *FantasyLaw* administration will empower Owners to keep their identities secret.

First – and most importantly – the Administrator (that is, the *Green Bag*) will not know the identities of Owners, and we will ignore all efforts to corrupt that useful ignorance. Because what we do not know we cannot disclose. The only identifying information required on *FantasyLaw* League registration forms will be the identity and contact information for a Commissioner, and the names of the League and the Teams in it.

⁶ Postings will be at the *FantasyLaw* website, with an annual wrap-up in the pages of the *FantasyLaw* section of the *Green Bag*.

⁷ Will there be a press conference and trophies? We hope so. Will both C-SPAN and ESPN cover the event? We fervently hope so!

⁸ If you haven't, do not worry. In the *FantasyLaw* section of an upcoming issue of the *Green Bag* we will present a primer on traditional fantasy sports vocabulary, operations, and strategy, and explain how they might be applied to your advantage in *FantasyLaw*.



HOW WILL HE PLAY IN *FANTASYLAW*?

Jim Bunning (left, with longtime Philadelphia Phillies fan Justice Samuel Alito) has represented Kentucky in the U.S. Senate since 1998. He played Major League baseball from 1955 to 1971. Pitching for the Phillies, Detroit Tigers, Pittsburgh Pirates, and Los Angeles Dodgers, he won 224 games, lost 184, and participated in seven All-Star Games. He was elected to the National Baseball Hall of Fame in 1996. According to Bill James,

Jim Bunning in 1960 was the best pitcher in the American League – but finished 11-14. Bunning made the Hall of Fame, but he was a tough-luck pitcher much of his career. He had half-a-dozen seasons in which, if a few things had broken different, he could have won the Cy Young Award. In 1964 he was 19-4 with two weeks to go, and had pitched a perfect game. In 1967 [h]e was clearly the best pitcher in the National League, but lost five one-to-nothing games, and was denied the award.

Whether Bunning's career in *FantasyLaw* will earn him a matching place in the Lawmaking Hall of Fame remains to be seen.

• THE ESPN BASEBALL ENCYCLOPEDIA 1116 (5th ed. 2008) (Gary Gillette & Pete Palmer, eds.); THE NEW BILL JAMES HISTORICAL BASEBALL ABSTRACT 255 (pbk. ed. 2003); *see also* THE SABR LIST & RECORD BOOK (2007) (Lyle Spatz, ed.).

Let the Preseason Begin

Second – and this is a natural consequence of the first precaution – all communications to the Administrator about a *FantasyLaw* League or Team will come from that League’s Commissioner. No exceptions. An Owner will have no direct dealings with the Administrator.⁹ Anyone other than a Commissioner who attempts to communicate with the Administrator about a League, or about any Team or Owner in that League, will be ignored, no matter who they are or what Team they might claim to own.¹⁰

Third, the *Green Bag* will deny the tech-savvy and curious the opportunity to identify Owners by poking around on the internet or on someone’s computer or email server. The internet, for good and ill, is not the place to transmit or store information that you want to keep secret. Figuring out who transmitted what from where to whom over the web is just too easy for too many people. In light of the *Green Bag*’s commitment to Owner control of Owner identity (and our inability to pay for spiffy security systems), the risk is too great that someone might identify an Owner’s name with a Team via an internet trail or some other sort of e-discovery associated with on-line administration of a *FantasyLaw* League. And so you will not be able to register your League on the internet, nor will you be able to modify a League or Team profile, or make Team roster changes on the web. In this context, it makes sense to do things the old-fashioned way – on paper. The paperwork required to participate in *FantasyLaw* League will be short and simple – and available on the *FantasyLaw* website in pdf – and so this approach should not deter anyone who wants to play.

⁹ Unless he or she is also a Commissioner. But an Owner who is also a Commissioner will communicate with the Administrator only in his or her capacity as a Commissioner, and the Administrator will rebuff any effort by the Commissioner to deal as an Owner with the Administrator on the ground that the Administrator does not – and refuses to – know whether the Commissioner really is an Owner.

¹⁰ So, if you are one of those fanatics for whom fantasy league play is of compelling importance, and you end up as an Owner in a *FantasyLaw* League, you might want to make sure that your Commissioner has made testamentary arrangements for the passing-along of his or her responsibilities as Commissioner. Otherwise you and your fellow Owners might, in the event of an unfortunate event, be left with no way to communicate with the Administrator.

For everything else, though, the internet will remain useful. At the *FantasyLaw* website, Owners and Commissioners will be able to: (1) download and print out *FantasyLaw* registration forms and other paperwork; (2) view and download the Administrator's weekly reports of Player statistics, Team scores, and League rankings; and (3) view and download other *FantasyLaw* resources. In addition, naturally, everyone will be free to (4) do independent research to their hearts' content to learn about Players they are considering for a draft, trade, or other transaction. On the other hand, obviously, this approach will enable an Owner who would prefer to avoid the internet entirely to participate in *FantasyLaw* without difficulty – entirely on paper.

The results of this simple-minded set of precautions should satisfy even the most prudent prospective *FantasyLaw* participant: Under the *Green Bag*'s strict willful ignorance policy for Owner identity, even if there were a Team in a *FantasyLaw* League named, for example, "Ross Davies's Team" there would be no way for anyone to learn from the *Green Bag* whether someone named Ross Davies really owned that Team, or whether it was someone else with a weird sense of humor and bad taste in names, or whether it was Davies assuming that no one would believe he would be foolish enough to advertise his ownership of the Team. Or maybe Davies is one of the many people who will not care whether anyone knows of their ownership of a particular *FantasyLaw* Team. Or he could be one of the many people who will enjoy being associated with a Team. The essential point is that by (1) insisting that *FantasyLaw* Owners be identified to the *Green Bag* only by the names of the Teams they own; (2) treating all efforts to identify Owners by name with their Teams as presumptively false and operationally irrelevant; and (3) refusing to communicate electronically with anyone at all in ways that could leave a trail leading to an Owner, we will take the *Green Bag* completely out of the loop when it comes to the identities of Owners. No knowledge equals no capacity to disclose and thus no possibility of disclosure. All Owners' identities will be perfectly safe from disclosure by the *Green Bag*. Beyond that, secrecy will be each Owner's own business.

Let the Preseason Begin

In sum, *FantasyLaw* is imbued with the playful, competitive, slightly nerdy spirit of traditional fantasy sports and structured to operate much like traditional fantasy leagues. Its operations will be tempered only slightly to accommodate the special, but reasonable, interests and sensibilities of some of those most likely to enjoy fantasy competition in the context of federal legislation.



But what is the point of creating fantasy leagues for law fans? What is it that the *Green Bag* hopes to achieve through *FantasyLaw*? Three things.

First, to have some fun. A well-designed fantasy league conducted by interested, congenial owners (and a commissioner), and administered by an efficient, accurate, honest administrator can be great fun, regardless of the source of players or statistics.¹¹ A league based on Congress will be especially interesting, at least to the *Green Bag* and we hope to at least a few others, and the *Green Bag* will do its level best to be efficient, accurate, and honest. Interested, congenial law fans should have a lot of fun with *FantasyLaw*.

Second, to foster informed interest in the work of federal legislators. Playing in a *FantasyLaw* League will inevitably inspire Owners to attend closely to the behavior of a large and diverse group of Senators and Members of the House, week-in and week-out. The statistics the *Green Bag* will compile and report will tell us a lot about what individual legislators do, and in an unusually accessible format. Measurements we are considering – and currently alpha testing – include the following:

- Bills introduced
- Bills passing Senate
- Bills passing House
- Bills reported
- Bills signed/survived veto
- Voting attendance

¹¹ See note 4, *supra*.

Earmarks per capita
Campaign contributions per capita
Press releases issued
Hill publication appearances
C-SPAN appearances
Television talk-show appearances
Colbert Report/Daily Show appearances

Some may fall by the wayside; others will be added. Eventually, probably many others.

Third, to provide a resource and platform for legislation scholars. The data the *Green Bag* will be accumulating and sharing will, we expect, be useful in its own right. The *FantasyLaw* section of the *Green Bag* – along with the associated website¹² – will be, in essence, a miniature law review with its own independent font of empirical research on which authors and editors can draw.

Developing and administering *FantasyLaw* to achieve these ends is going to be a lot of work, now and over the long haul, and so the *Green Bag* has formed a separate editorial board dedicated to this project. Its founding members are Brendan Coffman, Joshua Cumby, Lauren Girardot, Emily Christine Kendall, Daniel Klionsky, Alex Mitchell, Sarah Nash, and Brian Rock. If you participate in *FantasyLaw*, you will become familiar with their names and work over the next few years, because each of them is responsible for (1) developing and maintaining one or more categories of the *FantasyLaw* performance criteria that will make this program useful, entertaining, and educational, and (2) editing (and in some cases writing) the material that will appear on the *FantasyLaw* website and in the *FantasyLaw* section of the *Green Bag*.



Now you have the basics of *FantasyLaw*. Not enough to actually play the game, but enough to make a reasonably informed judgment about whether or not you would like to play it.

¹² www.fantasylaw.org.

Let the Preseason Begin

Which brings us back to the invitation implied at the outset. Beginning this summer, in what amounts to a *FantasyLaw* preseason, the *Green Bag* hopes to work with a small group of test subjects, playing a preliminary version of *FantasyLaw* in which

- (a) the rules will change during the course of the season as we figure out just what works best;
- (b) numerous errors will be made as we gradually get good at driving this new vehicle;
- (c) incorrect scores and rankings will be reported on our work-in-progress website as we gradually establish a comprehensive, accurate, and speedy scoring system; and
- (d) we will hound the Commissioners of our test-subject Leagues (because we will not be able or willing to talk to Owners directly) for feedback on what does not work and ideas about what might.

All to the end that when we open *FantasyLaw* to the public in late 2009 (so that drafts and League registrations for the 2010 season can take place before the season opens in January), it will work well for everyone.

If you think you will be able to put together a group of from six to nine friends and colleagues who can live with all that I have described (and be good sports about it), and you are willing to serve as the Commissioner of a preseason *FantasyLaw* League in which they would be the Owners, please email me at rdavies@greenbag.org.¹³ It should be fun, and if you end up as a Commissioner, someone in your League will have the pleasure of winning in the preseason, for what little that is worth.



¹³ Please do not waste your time telling me who those friends or colleagues are. I will not care and will not believe you, because that is part of the *Green Bag's* commitment to the secrecy of Owner identities. See pages 237 & 239-41, *supra*.