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EXPLAINER

***White v. Cuomo*: What Comes Next After Daily Fantasy Sports Gambling in New York?**

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Introduction

On March 12, 2022, the New York Court of Appeals, in the case of *White v. Cuomo*,¹ upheld the validity of a 2016 law authorizing daily fantasy sports (DFS) gambling in New York State by a four-to-three vote.² (DFS is formally known in New York as “interactive fantasy sports.”[IFS])³ Daily fantasy sports are contests in which the players “assemble a roster of athletes in a given sport and use the actual aggregated performance statistics of those athletes to determine the contest’s winner.”⁴

The DFS market has largely been captured by two companies: DraftKings and FanDuel. DraftKings has explained the workings of DFS in its filings submitted to the U.S. Securities and Exchange Commission (SEC). It has stated, “Since our launch, we have monetized our DFS offering by facilitating peer-to-peer play, whereby users compete against each other for prize money. We provide users with technology that establishes DFS contests, scores the contests, distributes the prizes and performs other administrative activities to enable the ‘skin-in-the-game’ sports fan experience. Our revenue is the difference between the entry fees collected and the amounts paid out to users as prizes and customer incentives in a period.”⁵

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¹ *White v. Cuomo*, 2022 NY Slip Op 01954 (N.Y. Mar. 22, 2022).

² 2016 N.Y. Laws 237.

³ See Racing, Pari-Mutuel Wagering and Breeding Law (hereinafter PML), art. 14, §§ 1400 and 1401.8.

⁴ *White v. Cuomo*, *supra* note 1. Fantasy sports have similarly been termed “contests where persons compete for cash or prizes based on a scoring system that takes into account the accumulated statistics of professional athletes chosen as part of a fantasy team.” Anthony N. Cabot and Louis V. Csoka, *Fantasy Sports: One Form of Mainstream Wagering in the United States*, 40 J. MARSHALL L. REV. 1195 (2007).

⁵ DraftKings Inc., *Annual Report for the Fiscal Year Ended Dec. 31, 2021*, U.S. Securities and Exchange Commission (SEC) Form 10-K (Feb. 18, 2022).

The Rationale of the Majority Decision

In the majority opinion, authored by Chief Judge Janet DiFiore, the Court attempted to navigate the morass of gambling laws and the New York State Constitution. The Court concluded that, to escape the reach of New York's traditional 1894 constitutional ban on gambling,⁶ the skill elements in a contest must predominate over the elements of chance. In other words, contests must rely more on participants' skills than chance. Based significantly on the findings of the State legislature in the 2016 legislation authorizing DFS as a skill game,⁷ the majority determined that the skill elements predominated over the chance elements. The Court further opined that "the historic prohibition on 'gambling' in Article I, section 9 does not encompass skill-based competitions in which participants who exercise substantial influence over the outcome of the contest are awarded predetermined fixed prizes by a neutral operator."⁸ It similarly stated that "Article 14 [of the State Constitution] permits only IFS contests that have prizes that are predetermined, announced prior to the start of the contest, awarded by a neutral operator, and which do not change based upon the number of participants or the amount of entry fees collected."⁹

Courts' decisions on what constitutes gambling in various states have had seemingly endless unintended consequences. Any decision attempting to establish a bright line rule on what constitutes permissible quasi-gambling is likely to be subject to numerous legal, logical, and ironical questions.¹⁰ That is evident in New York State, whose constitutional provision has been debated with little resolution for over 125 years.¹¹ The New York gambling legal world has more slippery slopes than there are ski resorts in the Rocky Mountains.

The gist of this explainer is not to critique the *White* decision. That critique has been made in Judge Rowan Wilson's dissenting opinion. Any criticism of a decision finding that a specific competition does not constitute gambling is analogous to shooting fish in a barrel—an idiom that, in itself, could give rise to a legitimate game of skill.¹²

⁶ See N.Y. Const., art. 1, § 9.

⁷ 2016 N.Y. Laws 237; *supra* note 2. "Interactive fantasy sports are not games of chance because they consist of fantasy or simulation sports games or contests in which the fantasy or simulation sports teams are selected based upon the skill and knowledge of the participants..." PML, art. 14, § 1400.1(a).

⁸ *White v. Cuomo*, *supra* note 1.

⁹ *Id.* A neutral operator requirement should mean that the game is not played between the player and the bank/operator. Generally, house-banked games such as blackjack, craps, roulette, and baccarat would not meet the neutral operator requirement, unless the prize is predetermined.

¹⁰ For example, it is surprising to see the Court of Appeals citing with approval the decision of that Court in *People ex rel. Sturgis v. Fallon*, 152 N.Y. 1 (1897), which was regularly criticized by then New York Governor Charles Evans Hughes, who became the Chief Justice of the United States Supreme Court. See *Breed Honest Men, Says the Governor*, N.Y. TRIB. (Feb. 3, 1908).

¹¹ N.Y. Const., art. 1, § 9, *supra* note 6.

¹² "Fishing contests" and "fishing derbies" have been defined by state legislatures in such a way as not to be considered gambling. See Mo. Rev. Stat. § 311.211 (2009). For example, Wash. Rev. Code § 9.46.010 (1994) states, "The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder."

Low-Stakes Financial Consequences of *White v. Cuomo*

From a financial viewpoint, the *White* decision is arguably of limited significance. Legally, even if daily fantasy sports gambling had been considered illegal sports gambling, it still would have qualified as a game fitting clearly within the state’s definition of mobile sports gambling, and DFS wagers would have been permissible proposition wagers. Thus, had there been an unfavorable judicial outcome in *White*, daily fantasy sports contests would have become legal sports gambling contests and would have continued under Article 14 of the Racing, Pari-Mutuel Wagering and Breeding Law (PML).¹³

An end to daily fantasy sports contests would have also had minimal effect on the state’s fiscal condition. The 15% gross revenue tax¹⁴ imposed on DFS earnings attributed to New York raised \$5 million in 2018 and \$5.6 million in 2019.¹⁵ In the first 14 full weeks of mobile sports wagering, average weekly revenue to the state was \$13.2 million. In no week was the state’s revenue share less than \$6.6 million.¹⁶ Thus, daily fantasy sports gambling has not been a significant source of revenue for New York State.

Similarly, the lack of daily fantasy sports in New York would not significantly impact the revenue of the two major DFS companies—DraftKings and FanDuel—which control the DFS market.¹⁷ Gross revenue from DFS in New York totaled \$33 million in 2018 and \$37.5 million in 2019. By comparison, based on the early 2022 results, gross annual revenue from New York mobile sports gambling may exceed \$1.25 billion this year.

While New York State’s revenue from daily fantasy sports gambling may appear insignificant, DFS serves as an entry level gateway into the sports wagering market. In 2019, the New York State Gaming Commission reported 1,572,534 authorized player accounts in the state.¹⁸ As DraftKings has stated, “We established a following among ‘skin-in-the-game’ sports fans through our robust daily fantasy sports technology that now powers millions of contest entries in peer-to-

¹³ See PML §§ 1367 and 1376-a.

¹⁴ PML § 1407.

¹⁵ See New York State Gaming Commission, *Interactive Fantasy Sports Report for Calendar Year 2018*, <https://www.gaming.ny.gov/about/2018ap.php> (last viewed May 9, 2022); New York State Gaming Commission, *Interactive Fantasy Sports Report for Calendar Year 2019*, <https://www.gaming.ny.gov/about/2019ap.php> (last viewed May 9, 2022).

¹⁶ See generally New York State Gaming Commission, *Mobile Sports Wagering Reports*, <https://www.gaming.ny.gov/gaming> (last viewed May 9, 2022).

¹⁷ In 2017, the “two accounted for about 90 percent of the \$320 million in revenue generated by fantasy sports, according to research firm Eilers & Krejcik Gaming.” Eben Novy-Williams and Ira Boudway, *Gambling Laws Created Daily Fantasy Sports. Now It Could Cripple Them*, BLOOMBERG (Jan. 17, 2018), <https://www.bloomberg.com/news/articles/2018-01-17/spread-of-legal-sports-betting-could-upend-daily-fantasy-sports#xj4y7vzkg>. See also Scott Soshnick and Mason Levinson, *MSG Signs Marketing Partnership with Fantasy Site DraftKings*, BLOOMBERG (June 4, 2015), <https://www.bloomberg.com/news/articles/2015-06-04/madison-square-garden-inks-marketing-partnership-with-draftkings#xj4y7vzkg>. “FanDuel controls 63 percent of the market and DraftKings 33 percent, Eilers estimated last October, using reported revenues.”

¹⁸ New York State Gaming Commission, *Interactive Fantasy Sports Report for Calendar Year 2019*, *supra* note 15.

peer competitions every week.”¹⁹ The company has tried to parlay its brand as a well-known daily fantasy sports platform into being the go-to online sports betting venue.²⁰ FanDuel has followed a similar approach. Both companies apparently have been successful in reaching New York sports bettors. By the end of April 2022, the two firms accounted for two-thirds of the sports wagering handle in New York.²¹ Their competition, consisting of six major gambling companies, combined to handle only one-third of the sports wagers.

Low-Stakes Legal Consequences of *White v. Cuomo*

In a legal sense, the *White* decision will cause little change in the current operation of quasi-gambling contests in New York. The New York Penal Law establishes a lower limit than the State Constitution does for what constitutes gambling.²² Under the Penal Law, an activity is defined as an illegal game of chance when “the outcome depends in a material degree upon an element of chance.”²³ Thus, the Constitutional definition of gambling does not govern the Penal Law definition of gambling. An activity in which skill dominates over chance (the Constitutional definition) can still be an activity that depends in a material degree on luck, and, therefore, would constitute a crime in New York.²⁴ In short, even if a contest passes the Constitutional test, it still may be considered gambling under the Penal Law test.

An individual or entity seeking to have a quasi-gambling contest legalized in New York would generally need a statutory enactment specifically proclaiming that the Penal Law definition of gambling does not apply to that particular activity.²⁵ Thus, without the enactment of a statute that assures that a quasi-gambling activity will be exempt from the Penal Law, it is unlikely that new commercial activities lacking such specific protection from the legislature will enter New York to take advantage of the decision in *White v. Cuomo*.

¹⁹ DraftKings Inc., *Annual Report for the Fiscal Year Ended Dec. 31, 2021*, *supra* note 5.

²⁰ Jake Lerch, *Is DraftKings Stock a Buy Now?* THE MOTLEY FOOL (Mar. 30, 2022), <https://www.fool.com/investing/2022/03/30/is-draftkings-stock-a-buy-now>.

²¹ New York State Gaming Commission, *Mobile Sports Wagering Reports*, *supra* note 16. *See also* Mike Mazzeo, *The Fourth Is with Them: NY Online Sportsbooks Exceed \$1 Billion Handle for Fourth Straight Month*, PLAYNY (Apr. 29, 2022), <https://www.playny.com/fourth-billion-dollar-month-ny-online-sports-betting> (last viewed May 1, 2022).

²² N.Y. Penal Law § 225.00(1).

²³ *Id.*

²⁴ Consider games like bridge, blackjack and backgammon. *See Boardwalk Regency Corp. v. Attorney Gen. of New Jersey*, 188 N.J. Super 372 (N.J. Super. Ct. 1982), finding backgammon to be a game of chance.

²⁵ *See* Daniel Wallach, *NY High Court Ruling That DFS Players Are “Actual Contestants” Boosts Hopes for Other Skill Games*, CONDUCT DETRIMENTAL (Apr. 15, 2022), <https://www.conductdetrimental.com/post/ny-high-court-ruling-that-dfs-players-are-the-actual-contestants-boosts-hopes-for-other-skill-games> (last viewed May 3, 2022). Consideration should also probably be given to Article 5, title 4 of the General Obligations Law, finding gambling contracts to be illegal and void. *See* N.Y. Gen. Oblig. Law, §§ 5-401 and 5-411.

What Types of Contests Will Arguably Be Constitutional Under *White v. Cuomo*?

Actual Skill Contests

Rather than handicapping tournaments—contests in which individuals make a subjective assessment of the merits of the actual contestants in an event—actual skill contests are contests in which participants who pay entry fees/wagers directly compete against each other in an activity where skill clearly predominates over chance. These would include chess, checkers, marbles, turkey shoots,²⁶ the aforementioned fishing derbies and contests, trivia contests, darts, crossword puzzle contests, and a variety of golf contests, including lowest score, who hit the longest drive, and who hit the approach shot closet to the pin.²⁷

The difficulty in assessing the constitutionality of such contests stems from the majority's use of the language regarding a predetermined prize irrespective of the number of contestants, and the need for a neutral operator of the contest. In the late 19th century, heavyweight boxing champion John L. Sullivan barnstormed across the nation challenging individuals to see if they could last several rounds in the ring with him. The challenger might pay an entry fee and would receive a prize if they weren't knocked out by Sullivan. The prize might depend on the number of people who challenged Sullivan, and Sullivan's people would control the pools. This is clearly a contest where skill predominated over luck, but it is not clear whether the fact that there was no preestablished prize and the pools were controlled by Sullivan would affect the validity of the contest under the *White* majority's view of the Constitution.

Similarly, there are contests where a chess grandmaster will play a series of challengers simultaneously.²⁸ The game is obviously one of skill. There are often entry fees. Yet, the prize may depend on the number of entrants and how many challengers are successful. The grandmaster controls the entry fees. Again, the issue of constitutionality depends on whether the majority's language regarding preestablished prizes and a neutral operator is an adornment or a requirement.²⁹

²⁶ Shooting games could conceivably include arcade games where the contestant plays against the house. See *The Best Arcade Shooter Games Ever, Ranked*, RANKER (Dec. 28, 2021), <https://www.ranker.com/list/best-arcade-shooting-games-of-all-time/video-games-lists> (last viewed May 5, 2022).

²⁷ In *Las Vegas Hacienda v. Gibson*, 359 P.2d 85 (Nev. 1961), the Nevada Supreme Court even determined that hole-in-one contests are contests of skill.

²⁸ See NPR, *A Chess Grandmaster Takes on 30 Opponents in a Simultaneous Exhibition*, ALL THINGS CONSIDERED (Apr. 16, 2022), <https://www.npr.org/2022/04/16/1093212516/a-chess-grandmaster-takes-on-30-opponents-in-a-simultaneous-exhibition>; Leonard Barden, *Chess Grandmaster Plays 48 Games at Once, Blindfolded While Riding Exercise Bike*, THE GUARDIAN (Feb. 10, 2017), <https://www.theguardian.com/sport/2017/feb/10/timor-gareyev-48-chess-games-blindfolded-riding-exercise-bike-leonard-barden>.

²⁹ Stated differently, would DFS still be legal under the rationale of the *White* majority if the NFL ran DFS or if executives of FanDuel regularly entered the contests? What if the predetermined prize was a percentage of the entry fees, rather than a fixed dollar amount? What if there was a minimum, guaranteed prize? Would these features turn a skill-dominated game into a game of chance?

Poker Tournaments

This clearly would be the case in tournaments of Texas Hold 'Em and Omaha Poker, where community cards are used in the game. In his dissent in the *White* case, Judge Wilson wrote: “The Attorney General, now defending DraftKings’ and FanDuel’s operations as constitutional, admits that because poker involves a substantial amount of skill and highly skilled poker players—just like highly skilled IFS players—reap the lion’s share of winnings, poker would not constitute ‘gambling’ under the Constitution, except for the fact that it was thought of as gambling at the time and now we are stuck with that anomaly.” This misconstrues the facts. Poker is a genre. It is not one particular game. There are numerous variations of poker. There are even newer versions of poker, such as Pai Gow Poker, Let It Ride, and Caribbean Stud Poker, where—unlike stud and draw variations—the players play against the house.³⁰ The community card poker games did not exist in 1894. Texas Hold 'Em also did not become commonly known until well into the 20th century.³¹ Further, a Hold 'Em poker tournament—in which success would be based on skill,³² and a player/competitor would pay an entrance fee to a neutral operator, who in turn would have predetermined fixed prizes—would not involve unconstitutional gambling. Instead, as described in the majority’s exposition, the gambling ban would not “encompass skill-based competitions in which participants who exercise substantial influence over the outcome of the contest are awarded predetermined fixed prizes by a neutral operator.”

Non-Poker Tournaments

If a tournament involving poker is a game of skill, there are similar tournaments that can be created for other games in which skill arguably predominates over chance. These could include

³⁰ See William Norman Thompson, *Gambling in America: An Encyclopedia of History, Issues, and Society*, 295–296 (2001).

³¹ See generally Martin Harris, *Poker and Pop Culture: Telling the Story of America's Favorite Card Game* (2019); Christopher Lehmann-Haupt, *Glimpses of the Gambler's Abyss*, N.Y. TIMES (July 16, 1998), <https://timesmachine.nytimes.com/timesmachine/1998/07/16/issue.html>. The *Oxford English Dictionary* lists the first usage of Hold 'Em as 1964. *Hold 'Em*, *Oxford English Dictionary* (3rd ed., Mar. 2006). It lists the first usage of the community poker game known as Omaha poker as 1985. *Omaha*, OXFORD ENGLISH DICTIONARY (3rd ed., Mar. 2004).

³² In a poker tournament involving multiple deals, the presence of chance might be far less likely to predominate over skill.

tournaments for blackjack³³ scrabble, canasta,³⁴ bridge, video poker,³⁵ and even mahjong tournaments.³⁶

Skill-based tournaments could also include horse-racing handicapping tournaments. The New York State legislature has already provided an authorized manner to run handicapping tournaments for horse racing,³⁷ and has specifically stated that “a handicapping tournament operated in accordance with the provisions of this section shall be considered a contest of skill and shall not be considered gambling.”³⁸

Over the course of many decades, literature has described horse-racing handicapping as a game of skill. There are objective publications from more than a third of a century ago that describe computer-based successful strategies for wagering on horse racing.³⁹ Much like DFS, there are numerous computer-aided players.⁴⁰ At the very least, there is as much skill in a horse-racing handicapping contest as there is in a DFS contest. If a horse-racing handicapping contest is conducted by a neutral player and involves a predetermined prize, it should reasonably be considered an authorized competition under Article 1, section 9 of the New York State Constitution.

Arguably, a tournament on elections also would be permissible. Such a tournament could be established in much the same manner as assembling a lineup in a DFS contest. Theoretically, a competitor would select a lineup of candidates that would compete with a team of candidates assembled by other competitors. As evidenced by the multitude of consultants and political analysts who have built lucrative careers from handicapping elections, picking winners in electoral races is certainly an activity in which skill could dominate over chance.⁴¹ Once it is posited that election handicapping is a skilled activity, it would be possible to structure a contest that mirrors the way that DFS is structured.⁴²

³³ See e.g., *Teeing Off for a Cause: Charity Golf, Blackjack Tournament Friday*, OKLAHOMA GROVE SUN (Aug. 22, 2017). Edward Thorp’s 1962 book, *Beat the Dealer*, was an acclaimed best seller that showed people that blackjack could be a game of skill. See Jerry Hicks, *How to Beat the House: Blackjack Guru Wrote the Book*, L.A. TIMES (Aug. 1, 1982).

³⁴ See Gilbert Millstein, *Mr. Canasta Melds Himself a Fortune*, N.Y. TIMES (April 30, 1950), quoting card expert Oswald Jacoby stating, “The maximum degree of skill that can be displayed in playing canasta is far beyond that offered by contract bridge.”

³⁵ *US Patent Issued on July 4 for Tournament Video Poker (Nevada Inventor)*, US FED NEWS (July 5, 2017).

³⁶ Sharon Weatherhead, *Mah Jong Tournament a Solid Success*, SEBRING HIGHLANDS JOURNAL (August 3, 2017).

³⁷ PML § 906.

³⁸ PML § 906.3.

³⁹ See William L. Quirin, *Winning at the Races: Computer Discoveries in Thoroughbred Handicapping* (1979); William T. Ziemba and Donald B. Hausch, *Betting at the Racetrack* (1985).

⁴⁰ See Jay Caspian Kang, *How the Daily Fantasy Sports Industry Turns Fans into Suckers*, N.Y. TIMES MAGAZINE (Jan. 6, 2016), <https://www.nytimes.com/2016/01/06/magazine/how-the-daily-fantasy-sports-industry-turns-fans-into-suckers.html>.

⁴¹ See, for example, commentator Steve Kornacki, who makes both horse racing and election selections at NBC.

⁴² For the numerous types of DFS contests, see DraftKings, *How to Play Daily Fantasy Sports*, DRAFTKINGS, <https://www.draftkings.com/how-to-play> (last viewed May 7, 2022).

Football Parlay Cards

Forty to fifty years ago, almost every large American office was overrun in the fall by the presence of football parlay cards.⁴³ A participant paid an entry fee and selected a number of National Football League (NFL) teams to win against the point spread. There were fixed payouts depending on the number of games the participant selected. The pools were run by illegal gambling crews, but they were agnostic about the outcome of the individual games. The ability of the participants to select winners can be analogized to the level of skill involved in selecting successful DFS teams, as knowledgeable bettors should hold an advantage over players with limited knowledge. Under *White*, football parlay cards could potentially pass constitutional muster in New York.

Exchange Wagering

Pioneered by the U.K. firm Betfair,⁴⁴ exchange wagering is a form of betting in which a betting exchange marketplace “electronically pits one bettor against another who expects the opposite result at the agreed-upon odds — usually on whether a particular horse will win a race.”⁴⁵ The players compete against each other on the outcome of a particular contest. In New Jersey, exchange wagering has been defined in the context of horse racing as a form of wagering “in which two or more persons place identically opposing wagers in a given market.”⁴⁶ In short, in exchange wagering, one person can place an offer to bet on Secretariat in the Kentucky Derby at odds of two-to-one, and one person can agree to match the bet and pay the first player two-to-one odds if Secretariat should win the Derby.⁴⁷

As conducted in this manner, exchange wagering is little different from the head-to-heads bet featured in DFS.⁴⁸ The competitors play directly against each other. The winner takes it all. The operator running the contest is neutral and takes a small share out of every entry fee/wager. The prize is predetermined before the race or before the sporting contest commences. If the handicapping ability and wagering tactics of the player dominate the chance outcome of the contest, then this activity bears significant similarity to DFS.

E-sports

The emerging field of e-sports is certainly ripe for a determination of what may constitute quasi-gambling. E-sports has been defined as “competition involving video games, including first-person shooters, real-time strategy games, and multiplayer online battle arenas in which: (1)

⁴³ In 2021, the casinos in Nevada still won \$12.28 million from parlay cards. Nevada Gaming Control Board, *Monthly Revenue Report: December 2021*, 4. (Jan. 2022), <https://gaming.nv.gov/modules/showdocument.aspx?documentid=18396>.

⁴⁴ Betfair is now owned by Flutter, which also owns FanDuel.

⁴⁵ John Brennan, *If It's Legal, Tracks May Be Safe*, BERGEN RECORD (Oct. 29, 2010). See also *In USA, Exchange Wagering Seen as Savior for Racetracks*, Sporting Post (Oct. 29, 2010), <https://www.sportingpost.co.za/horse-racing/sports-betting/usa-exchange-wagering>.

⁴⁶ N.J. Rev. Stat. § 5:5-170 (2021).

⁴⁷ Many of the terms involving Betfair and betting exchanges are explained at *Easy Explainers: Your Guide to the Betfair Exchange*, BETFAIR EXCHANGE, <https://betting.betfair.com/how-to-use-betfair-exchange/beginner-guides/exchange-explainers-310120-6.html> (last viewed May 6, 2022). It should also be noted that Betfair takes wagers on all other sports, not merely on horse racing.

⁴⁸ *How It Works*, FANDUEL, <https://www.fanduel.com/how-it-works> (last viewed May 6, 2022).

players compete against each other; and (2) the dominant element determining the results is the relative skill of the players.”⁴⁹ In Connecticut, they are considered “electronic sports and competitive video games played as a game of skill.”⁵⁰ In the past decade, e-sports have amassed an enormous audience. In 2019, Arizton Advisory & Intelligence reported that the total e-sports occasional viewership had reached over 450 million, and the number of e-sports enthusiasts worldwide had exceeded 20 million.⁵¹ That audience, whether through a fantasy format, exchange wagering,⁵² or direct wagers,⁵³ would place bets/entry fees on the participants or their teams. Again, the handicapping abilities of the audience might lead to a conclusion that the game is dominated by skill, and it would be relatively easy to structure the competition in such a way that the prizes are predetermined and the entity running the competition is a neutral player.

Conclusion

The decision in *White v. Cuomo* may not have significant fiscal consequences for the State or for the companies that run DFS contests. Given the need for the legislature to find a way to work around the lower definitional threshold for the term “gambling” in the Penal Law, there may be no immediate quasi-gambling operations that will be approved in New York. Nonetheless, in years to come, as more quasi-gambling contests seek legislative authorization in New York, the decision in *White v. Cuomo* will be of great significance. We will learn in future years whether that decision, with its slippery slopes, establishes a clear bright line or a murky fine line.

⁴⁹ Md. Crim. Law. § 12-114

⁵⁰ Conn. Gen. Stat. § 12-850 (8). *See also* Ind. Code 4-38-2-7; Tenn. Code Ann. § 4-49-102; Wash. Rev. Code § 9.46.038 (2020).

⁵¹ Press Release, *Online Betting Helps Support eSport's Burgeoning Reputation*, BLOOMBERG (June 5, 2020), <https://www.bloomberg.com/press-releases/2020-06-25/online-betting-helps-support-esport-s-burgeoning-reputation>. *See generally* EBET INC., <https://ebet.gg> (last viewed May 7, 2022).

⁵² As stated previously, exchange wagering can be analogized to fantasy wagering. *See supra* note 47.

⁵³ Direct e-sports wagers on players and teams potentially could be constructed in New York as part of mobile sports wagering.