



THE ARTICLE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW WHICH ALLOWS INTERACTIVE FANTASY SPORTS (IFS) CONTESTS AND EXCLUDES SUCH CONTESTS FROM THE PENAL LAW GAMBLING PROHIBITIONS VIOLATES THE NEW YORK CONSTITUTION (THIRD DEPT).

The Third Department, reversing (modifying) Supreme Court, in a full-fledged opinion by Justice Mulvey, determined that Racing, Pari-Mutuel Wagering and Breeding Law Article 14, which states that interactive fantasy sports (IFS) do not constitute gambling and do not violate the Penal Law, violates the New York Constitution:

It is undisputed that IFS contestants pay an entry fee (something of value) in hopes of receiving a prize (also something of value) for performing well in an IFS contest. Therefore, such contests constitute gambling if their outcomes depend to “a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein,” such that they are contests of chance (Penal Law § 225.00 [1]), or if they depend on a “future contingent event not under [the contestants’] control or influence” (Penal Law § 225.00 [2]). * * *

We recognize that the Legislature was sympathetic to and supportive of IFS participants (see e.g. Racing, Pari-Mutuel Wagering and Breeding Law § 1400 [3]). Nevertheless, we have rejected the Legislature’s explicitly stated basis for the removal of IFS from the Penal Law definition of gambling (see Racing, Pari-Mutuel Wagering and Breeding Law § 1400 [1]). Moreover, as part of the same legislation that decriminalized IFS, the Legislature clearly intended that IFS contests be heavily regulated (see Racing, Pari-Mutuel Wagering and Breeding Law §§ 1400 [3]; 1402-1406). Hence, we conclude that the Legislature, if it had envisioned the possibility that courts would invalidate the majority of article 14, would not have wished to preserve the decriminalization of IFS located in Racing, Pari-Mutuel Wagering and Breeding Law § 1400 (2). Thus, we refuse to sever that provision, and invalidate it as well. [White v Cuomo, 2020 NY Slip Op 00895, Third Dept 2-6-20](#)