

Rose Valentina, an individual,	
	Petitioner,
vs.	
The Royale, a Boyd corporation,	
	Respondent.

VS.

WRIT OF CERTIORARI GRANTED

NOTICE is hereby given that the petition for writ of certiorari is hereby GRANTED, limited to the following two questions:

1. Whether under Boyd law, The Royale’s iteration of Daily Fantasy Sports constitutes “gambling”?
2. If no, whether The Royale can lawfully exclude a patron, consistent with the common law, from the entirety of its property based upon the patron’s method of playing a game of skill?

Decision below: *Valentina v. The Royale*, 47 Boyd. Adv. Op. 32 (Boyd. Ct. App. 2018).

1 **THE COURT OF APPEALS FOR**
2 **THE STATE OF BOYD**

3
4 Rose Valentina, an individual,

5 Petitioner,

Case No.: 18-CIV-940516

6 vs.

OPINION

7 The Royale, a Boyd Corporation,

8 Respondent.
9

10
11 Appeal from the Boyd District Court

12 County of Nirvana

13 Argued: April 1, 2018

14 Decided: October 31, 2018
15

16 **Before Charles, Murphy, and Reyes, Appellate Division Judges.**

17 **CHARLES, J.:**

18 **I. Background and Procedural History**

19 To say that the gaming industry is important to the state of Boyd is an understatement. Boyd
20 welcomes over 40 million visitors from across the world each year. These visitors—here for gaming and
21 also for the tens of thousands of trade shows hosted in the state’s convention centers—are the economic
22 lifeblood of Boyd. To accommodate these visitors, Boyd has just over 150,000 hotel rooms spread
23 across hundreds of casinos. Boyd’s casinos support over 420,000 jobs. And in 2017, Boyd casinos
24 contributed \$53 billion to the state’s economy. This figure includes not only direct economic impact, but
25

1 also the amount of money indirectly contributed to the economy via employee wages and third-party
2 services hired by casinos. In short: gaming and conventions form the basis of Boyd's economy.

3 Rose Valentina is one of those 40 million visitors that Boyd welcomes each year. She is a
4 technology consultant who visits Boyd at least four weekends each year for business, and at least two
5 additional weekends for entertainment. Valentina attends technology tradeshow to shake hands,
6 cultivate relationships, and engender new ones. Tradeshow are an important part of her livelihood.
7 In October 2017, Valentina was staying at The Royale. Valentina was there to visit the 3MuchTech
8 conference, which was slated to run October 5–7, 2017. Valentina regularly stayed at The Royale. And
9 even while at The Royale for business, Valentina always relaxed during her stays by, for example,
10 visiting its pool, dining at its restaurants, or watching movies in her room. When Valentina checked into
11 her hotel on October 4, 2017, she took note of The Royale's advertised Million Dollar DFS Contest.¹
12 The advertising flyer at the front desk contained a large football, surrounded by several decorative dollar
13 signs, and the following words prominently emblazoned across the top of the ad: "ANYONE CAN
14 PLAY! ARE YOU OUR 1 MILLION DOLLAR WINNER?"

15 Valentina purports to not be an avid sports fan. She states that she watches maybe five football
16 games each year, and only when she is around friends who are fans the sport. Valentina also claims to
17 have never played DFS. However, Valentina was understandably intrigued at the prospect of earning 1
18 million dollars in a single day. The cost of entering the competition was \$50.

19 Valentina carefully read through The Royale's rules for the game. The Royale's DFS contest
20 allowed for a roster of nine football players. Each entrant was allowed only one lineup, consisting of
21 athletes from professional football teams slated to play on Sunday, October 7, 2017. An entrant's lineup
22 of athletes had to be drafted from at least three different teams. Further, each contestant was allotted a
23 \$45,000 salary cap for their lineup.² Each real-world athlete had a designated "price," and entrants had
24

25 ¹ "DFS" is shorthand for "Daily Fantasy Sports."

² The \$45,000 existed only within the competition. The entrants were not allotted actual money.

to allocate their salary cap to purchase a full roster of nine players. The Royale would assign a higher salary to players who had a high likelihood of earning more DFS points during that week's game. Conversely, The Royale assigned a lower salary for players who were not expected to perform as well. The Royale did not make an athlete's historical performance data directly available to entrants. The roster of players had to consist of each of the following positions:

- **One** quarterback;
- **Two** running backs;
- **Three** wide receivers;
- **One** tight end;
- **One** flex position, which must consist of **one** running back, wide receiver, or tight end;
- **One** Defense/Special Team

Entrants were unable to view other entrants' lineups. And because The Royale's rules did not provide for an auto-draft option, each entrant had to manually select their roster of players.

Further, The Royale's rules provided that an entrant would earn or lose points according to events that occurred on the field during the players' actual, real-world games. Specifically, each:

- **Quarterback** earned **4 fantasy points** per **passing touchdown**;
- **Quarterback** earned **.06 fantasy points** per **passing yard**;
- **Quarterback** was deducted **3 fantasy points** per **interception**;
- **Rushing touchdown** earned **7 fantasy points**;
- **Rushing yard** earned **.3 fantasy points**;
- **Fumble lost** subtracted **5 fantasy points**;
- **Receiving touchdown** earned **8 fantasy points**;
- **Receiving yard** earned **.4 fantasy points**;
- **Reception** earned **.4 fantasy points**;
- **2-point conversion** earned **4 fantasy points**;
- **Punt/kickoff return for touchdown** earned **7 fantasy points**;
- **Sack** earned **3 fantasy points**;
- **Interception** earned **3 fantasy points**;
- **Fumble recovery** earned **4 fantasy points**;
- **Safety** earned **3 fantasy points**;
- **Blocked kick** earned **4 fantasy points**.

1 Additionally, with respect to an entrant's defense or special team, The Royale's rules provided
2 that an entrant gained or lost points according to how many points the defense or special team
3 "allowed." Specifically, if a special team or defense allowed:

- 4 - **0 points** the entrant earned **18 fantasy points**;
- 5 - **1–6 points**, the entrant earned **12 fantasy points**;
- 6 - **14–20 points**, the entrant earned **8 fantasy points**;
- 7 - **21–27 points**, the entrant earned **0 points**;
- **28–34 points**, the entrant subtracted **3 point**;
- **35+ points**, the entrant subtracted **6 points**.

8 The entrant whose lineup earned the most points would be declared the winner. The 1st place
9 winner would be awarded \$1 million; 2nd place would be awarded \$100,000; 3rd place would be
10 awarded \$60,000; 4th place would be awarded \$40,000; 5th place would be awarded \$30,000; 6th place
11 would be awarded \$20,000; 7th place would be awarded \$15,000; 8th and 9th places would each be
12 awarded \$10,000; 11th through 49th place would be awarded \$150; and 50th through 99th would be
13 awarded \$100; and 100th through 500th place would be awarded \$50.

14 The Royale's rules stated that any person who wished to enter the competition had to enter their
15 lineup by physically presenting themselves at the casino's sportsbook, located on the casino floor. To
16 ensure no interstate activity took place, The Royale prohibited lineups from being entered via the
17 internet or over the phone. Entrants could enter their lineup beginning on **Sunday, September 30, 2017**
18 **at 10:00 AM**. The final opportunity to enter or modify one's lineup would be on **Sunday, October 7,**
19 **2017 at 7:00 AM**.

20 Valentina states that on the night before the contest was slated to begin, she "researched for one
21 hour, at most" before deciding which players would form her lineup. Valentina insists that she did not
22 engage in any scientific analysis in deciding her lineup. Rather, Valentina states that she elected players
23 whom she felt would perform reasonably well. On the morning of Sunday, October 7, 2017, Valentina
24 made her way to The Royale's sportsbook and entered her lineup at 6:43 AM.

1 On the Sunday of the competition, there were fourteen football games—a total of twenty-eight
2 teams played, and each boasted a roster of fifty-three players. The Royale Million Dollar DFS Contest
3 accepted lineups from 9,892 entrants. Based on each team’s performance, the best possible lineup would
4 have earned a player 412.36 points. Valentina’s roster earned her an extraordinary 399.44 points. The
5 next-closest player earned 328.40 points.

6 The Royale suspects that Valentina engaged in research beyond the mere hour that she purports
7 to have done in her hotel room the night before the competition. Instead, The Royale suspects that
8 Valentina used sophisticated statistical models to determine what combination of nine players was likely
9 to yield the most points.³ The Royale awarded Valentina her \$1 million prize. But based on its
10 suspicions, The Royale informed Valentina that she was forbidden from entering onto the property,
11 including the casino floor, the casino hotel, and the casino’s convention space, for any reason
12 whatsoever. The Royale likens Valentina’s conduct to that of card-counting in the popular game
13 “blackjack.” Based on this comparison, The Royale asserts that it may lawfully exclude Valentina from
14 its premises.

15 Valentina was devastated. Valentina asserts that while her winnings will certainly improve her
16 short-term financial health, she requires access to the many technology conventions held in Boyd each
17 year to ensure her long-term livelihood. Because most of these conventions take place at The Royale’s
18 property, Valentina argues that the exclusion jeopardizes her fiscal future. Valentina further states that
19 she is not an avid casino player, and therefore does not require access to The Royale’s casino floor.
20 Valentina offered to return 100% of her winnings if The Royale agreed to allow her to access the
21 convention space only, but The Royale refused the money and refused to lift the ban.

22 In anticipation of a then-upcoming technology convention, Valentina sought a declaratory
23 judgment from the Boyd state trial court stating that The Royale’s DFS contest was a form of
24 “gambling” under state law. Valentina correctly asserts that if The Royale’s DFS contest is in fact

25 _____
³ The veracity of The Royale’s suspicions is immaterial to the controversy before this court.

1 “gambling,” then The Royale cannot lawfully bar her from the casino in connection with her conduct
2 during The Royale’s game because the ability to exclude patrons based on their conduct while gambling
3 lies solely with the Boyd Gaming Control Board. *See* Boyd Rev. Stat. § 322.93. In the alternative,
4 Valentina sought a declaration stating that even if The Royale’s activity was a game of skill—rather than
5 “gambling”—the common law does not permit The Royale to excise her from the property because of
6 her own right of public access. Alternatively, and finally, Valentina asserts that if The Royale can ban
7 her, it may not categorically ban her from the entirety of the property, and must instead ban her only
8 from the casino floor.

9 At the trial court level, the Boyd District Court Judge—following bench trial—agreed with The
10 Royale in part and held: (1) that The Royale’s Million Dollar DFS Contest was a game of skill; and (2)
11 that The Royale could, consistent with the common law, lawfully exclude Valentina from the gaming
12 floor but not from the entirety of the property. This matter comes before us because of Valentina’s and
13 The Royale’s cross-appeal of that decision.

14 We affirm.

16 **II. Standard of Review**

17 We review *de novo* a district court judge’s determination of whether a particular activity
18 constitutes gambling under Boyd law. Boyd Rev. Stat. § 322.94(3). But the district court’s factual
19 determinations are reversed only if its findings are clearly erroneous or clearly against the
20 preponderance of the evidence. *Pre-Paid Solutions, Inc. v. City of Little Rock*, 34 S.W.3d 360, 362 (Ark.
21 2001).

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1 **III. Discussion**

2 If a statute's language is clear and unambiguous, the Court must give its language is plain
3 meaning. *Slade v. Caesars Entertainment Corporation*, 373 P.3d 74, 75 (Nev. 2016). Ultimately, the
4 Court's task is to give effect to the legislature's intent. *Fraternal Order of Eagles Sheridan Aerie No.*
5 *186, Inc. v. State ex rel. Forwood*, 126 P.3d 847, 855 (Wy. 2006).

6 There is a dearth of legislative history and common law precedent in the state of Boyd. Thus, to
7 answer the questions before us—and to select which common law analysis better comports with the
8 Boyd legislature's objectives—the Court necessarily turns to our state's codified public policy. The
9 Boyd legislature has declared: "The gaming industry is vitally important to the economy of this State
10 and to the general welfare of its inhabitants." Boyd Rev. Stat. § 322.93(1). To that end, Boyd law
11 provides that the "continued growth and success of gaming is dependent upon public confidence and
12 trust that licensed gaming is conducted honestly and competitively." Boyd Rev. Stat. § 322.93(2). That
13 public confidence, the Boyd legislature declares, can be "maintained only by strict regulation of all
14 persons, locations, practices, associations, and activities related to the operation of licensed gaming
15 establishments." Boyd Rev. Stat. § 322.93(3).

16 Moreover, "[t]o ensure that gaming is conducted honestly, competitively, and is free of criminal
17 and corruptive elements, all gaming establishments in this state must remain open to the general public,
18 and the access of the general public to gaming activities must not be restricted in any manner, except as
19 provided in Boyd Rev. Stat. § 322.93(5)." Boyd Rev. Stat. § 322.93(4). The statute goes on to provide
20 that "[t]he Boyd Gaming Control Board shall have the exclusive authority to exclude a patron for
21 reasons stemming from such patron's conduct during a game that constitutes 'gambling,' as defined in
22 Boyd Rev. Stat. § 322.94." Boyd Rev. Stat. § 322.93(5)(a). It follows, then, that if the game at issue is
23 not "gambling," the law commands that "[n]othing in this section shall be construed to abrogate or
24 abridge any common-law right of a gaming establishment to exclude any person from gaming activities
25 or eject any person for any lawful reason." Boyd Rev. Stat. § 322.93(5)(b).

1
2 **A. The Royale’s Million Dollar DFS Contest is not “gambling” under Boyd law.**

3 Under Boyd law, a “gambling” involves risking something of value on:

- 4
5 (a) a contest where chance, rather than the skill of the player, is dominant or predominant over
6 other factors in affecting the outcome of the game; or
7 (b) a future contingent contest not under the player’s control or influence.

8 Boyd Rev. Stat. § 322.94(1). “Skill,” in turn, means “the knowledge, dexterity, or any other ability of
9 natural persons.” Boyd Rev. Stat. § 322.94(2). The parties do not contest that The Royale’s entrance fee
10 for the Million Dollar DFS Contest constitutes “something of value.” Thus, the Court is left with the
11 question of whether the contest is predominated by skill or chance, or whether the contest requires
12 entrants to wager the entrance fee on a future contingent contest outside the player’s control or
13 influence.

14 ***1. The Royale’s Million Dollar DFS Contest is predominated by skill.***

15 The Boyd statutes leave the term “Predominant” undefined. *See* Boyd Rev. Stat. § 322.94(1)(a).
16 Thus, the Court must give the phrase its plain and ordinary meaning. *In re Resort at Summer Litigation*,
17 127 P.3d 1076, 1079 (Nev. 2006). “Predominant” is an adjective, meaning “[m]ore powerful, more
18 common, or more noticeable than others; having superior strength, influence, and pervasiveness.”
19 *Predominant*, Black’s Law Dictionary (10th ed. 2014). In accordance with that plain and ordinary
20 meaning, the Court must determine whether “chance predominates rather than skill.” *Com. v. Dent*, 992
21 A.2d 190 (Pa. Super. Ct. 2010); *see also Dep’t of Corrs. v. Workers’ Comp. Appeals Bd.*, 90 Cal. Rptr.
22 2d 716, 720 (Ct. App. 1999) (defining the term “predominant as to all causes” as requiring “greater than
23 50 percent”); *Las Vegas Hacienda, Inc. v. Gibson*, 359 P.2d 85, 87 (Nev. 1961) (explaining that the “test
24 of the character of a game is not whether it contains an element of chance or an element of skill, but
25 which is the dominating element”); Anthony Cabot et al., *Alex Rodriguez, A Monkey, and the Game of*

1 *Scrabble: the Hazard of Using Illogic to Define the Legality of Games of Mixed Skill and Chance*, 57
2 Drake L. Rev. 383, 402 (“Courts that utilize the predominance test at least have a benchmark to judge
3 these cases: a game is legal if it is greater than 50% skill and is illegal if it is greater than 50% chance.”).

4 The Court finds *People v. Cohen* to be instructive. *People v. Cohen*, 289 N.Y.S. 397, 400 (N.Y.
5 City Magis. Ct. 1936). There, the court determined that a slot machine called the “electric eye” was a
6 game of skill. *Id.* The machine was coin operated and required the player to aim a pistol at a target. *Id.*
7 The pistol emitted a ray of light, and the object of the game was to “hit the bull’s eye.” *Id.* Skilled timing
8 and aim, the court held, was essential to the game. *Id.* Because the operator of the machine could
9 develop those skills “by reason of practice,” the player could ascertain the ability to hit the bull’s eye. *Id.*
10 Accordingly, the court found that the “electric eye” was a game “of skill and ability,” and therefore not
11 prohibited by law. *Id.*

12 Here, The Royale’s Million Dollar DFS Contest is predominated by skill. To begin, entrants in
13 The Royale’s contest who expect to do well must consume a great deal of information. They must first
14 manage their \$45,000 salary cap. In selecting their roster, for example, an entrant might choose the
15 quarterback and tight end that are expected to perform the best in that weekend’s games. But these
16 players’ salaries may well eat into nearly half of that entrant’s total salary cap, as players who are
17 expected to perform well are more expensive than other players. Thus, choosing the predictably best
18 quarterback and tight end might leave an entrant little “money” in their salary cap to select the
19 remaining seven players on their roster. An entrant may have more success selecting a roster comprised
20 of players that are likely to over-perform in relation to their assigned salary.

21 The entrant also has a large amount of data at their disposal during roster selection. For example,
22 statistics for quarterbacks include: passes completed, passes attempted, percentage of passes completed,
23 yards gained by passing, touchdowns, interceptions thrown, how many times the quarterback was
24 sacked, how many yards were lost as a result of their being sacked, yards gained per pass attempt, rushes
25 attempted, and rushing yards gained. That amount of information is typically available for each and

every day that player has been on the field. If an entrant digests these statistics, she can then determine which players have a higher probability of out-performing their assigned salary. And the fact that The Royale does not offer an auto-draft option means that players must conscientiously select each player. It is estimated that DFS contestants typically spend an average of 8.67 hours each week conducting research and participating in contests. Todd Easton & Sarah Newell, *Are Daily Fantasy Sports Gambling?*, Pre-press J. of Sports Analytics 1, 3 (2018).

An astute entrant will also keep abreast of media reports relating to players that they might select for their roster. For example, the media regularly reports on player injuries. And a player who sustains a minor injury during practice might not perform as well in the weekend game. Reports on injuries or other similar events would undoubtedly influence an entrant's roster choices. To be sure, an unforeseen injury in the middle of a game can result in a player sitting out the remainder of the game, and consequently not earning any points for that remainder. But that same variable of uncertainty is present in nearly every game of skill. A tennis player can, at any moment, accidentally injure herself during a match, but no one would say that this variable converts tennis from a game of skill into a game of chance.

Additionally, an entrant can also keep track of information relating to game day conditions. An entrant can review which games will be held in indoor or "domed" stadiums and what the weather is expected to be like during a game for those in outdoor stadiums. Further, the entrant might take into consideration whether a player she selected will be traveling, or whether the player will enjoy a home-field advantage.

As detailed above, an entrant can exercise as much or as little skill and deftness as she desires in approaching the Million Dollar DFS Contest. But like the activity in *Cohen*, skill is generally essential to one's success in the contest. "Skill," in the context of The Royale's contest, means digesting vast amounts of information to decide how to allocate one's salary cap. By reason of practice, an entrant increases her chances to win by adhering to a strategy in selecting her roster. Even if the Court accepts

1 as true Valentina’s contention that she did not engage in any research before selecting her lineup,
2 “[d]iffering skill levels” do not transform a contest of skill into “a contest of chance.” *People v. Hunt*,
3 616 N.Y.S.2d 168, 170 (N.Y. Cnty. Crim. Ct. 1994) (finding that three-card monte was not a game of
4 chance); *see also Humphrey v. Viacom, Inc.*, No. 06-2768 DMC, 2007 WL 1797648, at *2 (D.N.J. June
5 20, 2007) (“The success of a [season-long] fantasy sports team depends on the participants’ skill in
6 selecting player for his or her team”).

7 A holding that The Royale’s contest is a game of chance and therefore “gambling”—like the
8 dissent urges—would be out-of-step with a growing mountain of evidence. For example, studies show
9 that the majority of winnings from daily fantasy sports go to 1.3 percent of players. Andrew J. Griffin,
10 Note, *A Fantastic Gamble: An Analysis of Daily Fantasy Sports Under the UIGEA and the*
11 *Predominance Test*, 23 B.U. J. Sci. & Tech. L. 456, 474 (2017). Further, in another study, authors found
12 that randomly generated teams were outperformed by “skilled” simulation-generated model teams in
13 DFS football over ten weeks’ worth of games. Easton, *supra.*, at 5. And in assembling thirty-five DFS
14 teams for thirty-five different contests, not a single “unskilled” team received a payout. *Id.* at 6. The
15 probability of this occurring, the authors emphasized, “is difficult to truly comprehend.” *Id.* at 7.

16 The proper test to categorize the activity is not—as the dissent would hold—whether chance
17 proximately influences the result. *See post*, at 19 (opinion of REYES, J.). The law is very clear: the
18 statute tasks this Court with determining whether chance “predominates,” not whether chance
19 proximately influences the contest. Additionally, the dissent also errs by asserting the activity in
20 question must be analyzed according to the abilities of the general population. *See id.* The statute
21 commands that the Court analyze skill according to the abilities of “natural persons,” not “natural
22 persons within the general public.”

23 In summary, DFS contests—like The Royale’s—provide ample opportunity for entrants to utilize
24 knowledge and research to succeed. “Chance” certainly plays a role in the game, too. After all,
25 unexpected weather or injuries can have a meaningful impact on a player’s performance. But nearly all

1 contests—even contests like golf or swimming, which are certainly predominated by skill—are subject
2 to the whims of chance, in some respect. Thus, we hold that The Royale’s Million Dollar DFS Contest is
3 predominated by skill, not chance.

4
5 ***2. The Royale’s Million Dollar DFS Contest does not entail risking something of value
on a future contingent contest outside the player’s influence.***

6 The majority finds *White v. Cuomo* informative, but we disagree with the dissent’s contention
7 that its holding should apply to our state’s statute. *See White v. Cuomo*, 2018 WL 5984057, No. 5861-
8 16, ___ N.Y.S.3d ___ (Oct. 26, 2018). There, a judge from the New York Supreme Court interpreted a
9 New York statute that defined gambling as staking something of value on a “future contingent event,”
10 rather than a “contest.” *See id.* at *3. It is axiomatic that the term “event”—which can encompass, for
11 example, the “event” of a specific player’s performance on the field—is narrower than the term
12 “contest,” which necessarily requires that the wager depend on the result of a contest outside the
13 player’s control.

14 The results of the real-world football contests are irrelevant to The Royale’s contest. The
15 Royale’s Contest rules require that each entrant’s roster be comprised of at least three different football
16 teams. Because of this rule, the players on any given entrant’s roster will never assemble on the same
17 field together for the same team. A particular team could perform terribly during the game, but a DFS
18 contestant’s player could perform remarkably well and net the entrant a high amount of points. By the
19 same token, a particular team could perform remarkably well during a game, but the DFS entrant’s
20 selected athlete could perform terribly.

21 The Million Dollar DFS Contest is a contest in and of itself, separate and apart from the result of
22 any football game. The Royale’s contest has its own rules, and the entrants abide by those rules to
23 participate in a true contest. Entrants can work hard to accumulate their own points, and they pit their
24 own rosters against the rosters of every other entrant. Once an entrant’s roster is locked and the real-
25 world games begin, the entrant has no control over how many points their lineup will earn. But the

1 participation in the contest occurs before the “locking” takes place. The process of selecting a roster is
2 what renders entrants as participants in their own contest, rather than observers of someone else’s. And
3 it is immaterial that the player cedes control once they have exercised their skill. *See Las Vegas*
4 *Hacienda, Inc. v. Gibson*, 359 P.2d 85, 87 (Nev. 1961) (explaining that the district court’s holding that a
5 hole-in-one contest is a game of skill was supported by the record because a skilled player “will get [the
6 ball] in the area where luck will take over more often than an unskilled player”). The Royale’s contest
7 does not depend on whether a particular athlete achieves a particular goal, rather the Contest depends on
8 how an entrant’s roster fares against the rosters of every other entrant.

9 Accordingly, The Royale’s Million Dollar DFS Contest does not require entrants to wager their
10 entrance fee on a future contingent event outside the participant’s control. And as explained in section
11 A.1., *supra*, the Contest is predominated by skill. Thus, the Contest—and the ability to exclude a patron
12 for their method of playing that contest—is outside the purview of the Boyd Gaming Control Board. *See*
13 Boyd Rev. Stat. § 322.93(5)(a). It follows, then, that whether The Royale’s exclusion of Valentina from
14 the premises was lawful depends entirely on the scope of its common law ability to exclude patrons.

15
16 **B. The Royale’s exclusion of Valentina from the entirety of the premises exceeded the scope of
its common law ability to exclude patrons.**

17 Valentina contends that even if this Court finds that The Royale’s Million Dollar DFS Contest is
18 not “gambling,” it is unlawful for The Royale to exclude her based on her method of playing its game of
19 skill. Alternatively, Valentina asserts that if The Royale can exclude her based on her method of playing
20 a game of skill, it can only exclude her from the gaming floor. Thus, the issue here is twofold: (1)
21 whether a casino has the authority to exclude a patron for her method of playing a game of skill; and (2)
22 whether the patron can be excluded from the entire premise based on her method of playing.

1 ***1. Whether the casino or the Boyd Gaming Control Board has the authority to exclude***
2 ***a patron for her method of playing a game of skill.***

3 Boyd Rev. Stat. § 322.93 provides that “[t]he Boyd Gaming Control Board shall have the
4 exclusive authority to exclude a patron for reasons stemming from such patron’s conduct during a game
5 that constitutes ‘gambling,’ as defined in Boyd Rev. Stat. § 322.94.” Boyd Rev. Stat. § 322.93(5)(a). It
6 follows, then, that if the game at issue is not a “gambling,” then “[n]othing in this section shall be
7 construed to abrogate or abridge any common-law right of a gaming establishment to exclude any
8 person from gaming activities or eject any person for any lawful reason.” Boyd Rev. Stat. §
9 322.93(5)(b).

10 The Supreme Court of New Jersey takes a narrow approach to the issue of common law
11 exclusion. *See Uston v. Resorts International Hotel, Inc.*, 445 A.2d 370 (N.J. 1982). In *Uston*, a casino
12 excluded a card counter from the blackjack tables in its casino because of the blackjack strategy. *Id.* at
13 371. The *Uston* court found that the casino’s exclusion of the patron was invalid because the gaming
14 commission “alone has the authority to exclude patrons based upon their strategies for playing licensed
15 casino games.” *Id.* at 372. Because no commission regulation excluding card counters existed, the patron
16 could not be excluded for counting cards. *Id.*; *see also Donovan v. Grand Victoria Casino & Resort,*
17 *L.P.*, 934 N.E.2d 1111, 1114–15 (Ind. 2010) (holding that a gaming control board’s regulations did not
18 abrogate casino’s common law right of exclusion).

19 As discussed above, DFS contests are games of skill. And Boyd Rev. Stat. § 322.93 gives the
20 Board authority to exclude an individual based on her method a playing a game that constitutes
21 “gambling.” But Boyd statutes do not give that same authority to the Board for Games of Skill, and if
22 the legislature wanted the Board to have that same authority for Games of Skill, it would have likely
23 done so. Therefore, The Royale has the authority to exclude Valentina based on her method of playing a
24 game of skill—the DFS competition. But the question of whether The Royale can exclude her from the
25 entire premise must be decided.

1 **2. Whether the casino can exclude a patron from the entire premise based on her**
2 **method of playing a game of skill.**

3 This Court is directed to follow the common law in deciding when, and under what
4 circumstances, licensed gaming establishment can exclude a patron. Boyd Rev. Stat. § 322.93(4)
5 provides:

6 To ensure that gaming is conducted honestly, competitively, and free of criminal and corruptive
7 elements, all gaming establishments in this state must remain open to the general public, and the
8 access of the general public to gaming activities must not be restricted in any manner, except as
9 provided in Boyd Rev. Stat. § 322.93(5)

10 If that common law right to exclude is not limited in other statutory provisions, then “[n]othing in this
11 section shall be construed to abrogate or abridge any common-law right of a gaming establishment to
12 exclude any person from gaming activities or eject any person for any lawful reason.” Boyd Rev. Stat.
13 § 322.93(5)(b). Further, the common law distinguishes between innkeepers and place of public
14 amusement regarding their ability to exclude a patron for any reason or no reason.

15 Under common law, innkeepers are obligated to serve, without discrimination, all who seek their
16 services. *Madden v. Queens Cty. Jockey Club*, 72 N.E.2d 697, 698 (N.Y.1947). The policies behind that
17 common law rule are rooted in history. “Inns were [once] so far and few between that travelers found
18 themselves at the mercy of the innkeeper and were vulnerable to extortion from the innkeeper.” *Slade v.*
19 *Caesars Entm’t Corp.*, 373 P.3d 74, 80 (Nev. 2016) (Pickering, J., dissenting).

20 In contrast, a place of public amusement provides entertainment, not lodging, so the law provides
21 those establishments more authority to exclude. It is well established that a private owner of a public
22 amusement may exclude any person for any reason from its premises. *Slade*, 373 P.3d at 76. Courts have
23 deemed gaming establishments—such as race tracks—places of public amusement. *See, e.g., id.*;
24 *Brooks v. Chicago Downs Ass’n, Inc.*, 791 F.2d 512, 513, 516 (7th Cir. 1986); *Madden*, 72 N.E.2d at
25 698. However, a hotel-casino is quite different than a race track. The Royale is a hotel, casino, and
convention center. It also offers many amenities, like several hotel-casino properties in the state of
Boyd, that are outside gambling, such as restaurants, theater, wedding venues, nightclubs, spas, and
many more.

1 Thus, the issue becomes what common law duty applies to an inn that also provides gaming
2 activities. “[U]nder common law, places of public amusement that are located within an innkeeper’s
3 premises may be subject to the same common-law duties governing innkeepers.” *Slade*, 373 P.3d at 81
4 (Pickering, J., dissenting) (citing *Odom v. E. Ave. Corp.*, 34 N.Y.S.2d 312, 316–17 (N.Y. Sup. Ct.
5 1942)). A factual analysis is needed to determine what the patron’s intentions were in going to the hotel-
6 casino. *See Slade*, 373 P.3d at 81 (Pickering, J., dissenting); *Freudenheim v. Eppley*, 88 F.2d 280, 283
7 (3d Cir. 1937); *Alpaugh v. Wolverton*, 36 S.E.2d 906, 908–09 (Va. 1946) (“[T]he controlling factor in
8 determining whether the relationship of innkeeper and guest has been established is the intent of the
9 parties.”). For example, in *Uston v. Airport Casino, Inc.*, the patron challenged his access to the casino
10 because he wanted to play blackjack. 564 F.2d 1216, 1217 (9th Cir. 1977). There, the Ninth Circuit
11 court found that “[t]he relationship was not one of innkeeper and patron, but rather one of casino owner
12 and prospective gambler.” *Id.* As a result, the innkeeper common law rule did not apply. *Id.*

13 Here, Valentina went to The Royale to attend a conference. The record reflects that she is not an
14 avid gambler, but it is difficult to attend a convention without entering the casino floor—one must
15 usually walk through the casino floor to get to the convention space. Unlike *Airport Casino*, the
16 relationship between Valentina and The Royale was one of patron and innkeeper as well as casino owner
17 and prospective gambler. Due to the blurred lines between the common law that apply to this factual
18 scenario, and considering policy implications, the Court finds that the common-law innkeeper rule
19 applies here.

20 Further, Boyd Rev. Stat. § 322.93(4) provides:

21 To ensure that gaming is conducted honestly, competitively, and free of criminal and
22 corruptive elements, all gaming establishments in this state must remain open to the
23 general public, and the access of the general public to gaming activities must not be
24 restricted in any manner, except as provided in Boyd Rev. Stat. § 322.93(5).

24 In *Boyd*, a casino must remain open to the general public and access must not be restricted. Although
25 The Royale holds the authority to exclude a patron, Boyd Rev. Stat. § 322.93(4) limits that authority.

1 Therefore, this Court finds that The Royale cannot exclude Valentina from the entire premise.
2 The Royale may exclude Valentina from participating in gaming activities without banning her from the
3 entire property.
4

5 **IV. Conclusion**

6 It is a daunting task to select which iteration of the common law analyses to adopt for a state that,
7 like ours, has yet to grapple with several important issues. The issues decided by this Court today go to
8 the heart of Boyd's economy and livelihood. We are confident that our decision comports with the
9 state's statutes and public policy.

10 We affirm.
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1 **REYES, J., dissenting:**

2 Today, the majority holds that The Royale’s Million Dollar DFS Contest is not gambling under
3 Boyd law, and that The Royale’s common law ability to exclude patrons is that of innkeeper-patron. I
4 respectfully dissent from both of these holdings because they are averse to the text of the relevant
5 statutes and Boyd’s stated public policy, and because they contravene well-settled common law
6 principles.

7 **A. The Royale’s Million Dollar DFS contest constitutes “gambling” under Boyd law**

8 ***1. The Royale’s Million Dollar DFS Contest is dominated by chance.***

9 In accordance with the statutory text, the Court must determine whether The Royale’s Million
10 Dollar DFS Contest is “predominated” by skill or chance. The statute’s language, however, should be
11 interpreted as a direct reference to the well-settled common law “dominant factor” test. *See Opinion of*
12 *the Justices*, 795 So.2d 630 (Ala. 2001) (collecting cases). The “dominant factor” test turns on whether
13 chance “proximately influence[s] the final result.” *State ex rel. Tyson v. Ted’s Game Enterprises*, 893
14 So.2d 355, 374 (Ala. 2002) (quoting *State ex Inf. McKittrick v. Globe-Democrat Pub. Co.*, 110 S.W.2d
15 705, 717 (Mo. 1937) (en banc)). Further, “chance” must be analyzed in a “qualitative or causative
16 sense,” rather than—as the majority seems to hold today—in a quantitative sense. *See id.* at 372.

17 Determining whether the element of chance is present should not be measured according to
18 “technical standards.” *McKittrick*, 110 S.W.2d at 717. Instead, the measure should be decided “upon the
19 capacity of the general public—not experts.” *Id.* And the fact that skill might determine the outcome of a
20 game is immaterial if players are “subject to defeat” because of a fortuitous event, like “the turn of the
21 cards.” *See Com. v. Dent*, 992 A.2d 190, 196 (Pa. Super. Ct. 2010).

22 For example, the Supreme Court of Missouri in *McKittrick* held that a puzzle contest was a game
23 of chance under the predominant factor test because it was advertised as requiring “no special skill,
24 training, or education.” *McKittrick*, 110 S.W.2d at 717. At issue was a puzzle contest titled “Famous
25 Names,” sponsored by a newspaper. *Id.* at 706. The newspaper published a cartoon each day for eighty-

1 four consecutive days, and each cartoon was accompanied by a list of names. *Id.* at 706, 710. The
2 cartoons contained several clues suggesting “the most appropriate title for a cartoon out of the list of
3 names published thereunder.” *Id.* at 710. The solutions to the puzzles were, at first, very easy to
4 decipher. *Id.* But as the contest went on, the puzzles became more difficult and “it came to be a matter of
5 judgment or guessing—undoubtedly guessing for the multitude of persons without special skill, training
6 or education who had been invited by the advertising to join the contest.” *Id.* (quotations omitted).

7 The court held that although skill might bring a contestant “to a correct solution of a greater part”
8 of the puzzles, the puzzle was still a lottery because chance “proximately influence[d] the final result.”
9 *Id.* at 717. To that end, the court held that the determination of whether the contest was a game of skill
10 or chance had to be analyzed from the vantage “of the nearly 70,000 persons who entered the contest in
11 response to the advertising thereof.” *Id.* The respondent in the case argued that solving the puzzles was
12 “a science,” causing the element of chance to be absent. *Id.* But the court rejected this argument because
13 the contest was not “solely between experts.” *Id.* at 718. The fact that skill would bring contestants to a
14 correct solution in a greater number of puzzles, however, did not turn nullify the presence of chance. *Id.*
15 at 717.

16 Here, The Royale’s Million Dollar DFS Contest is proximately influenced—and therefore
17 dominated by—chance. To begin, the majority emphasizes the amount of information and study that one
18 can undertake to participate in the Contest. But the Contest requires entrants to perform based on
19 “imperfect information.” In other words, there is a limitation on how far an entrant’s study can take
20 them. See Marc Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in*
21 *Federal and State Gambling Law*, 2016 U. Ill. L. Rev. 117, 131. The most well-studied DFS player in
22 the world is nonetheless subject to defeat because of a fortuitous event. An entrant’s selected
23 quarterback might, for example, suffer an unexpected injury, or a “bad call” by the referee. Even worse,
24 an entrant might lose out on the DFS points of an entire team because of events “beyond the realm of
25 reasonable discovery,” like when a football game is canceled because of a water main break. See Marc

1 Edelman, *Could A Water Main Break Derail the Daily Fantasy Sports Industry?*, Forbes (Aug. 18,
2 2014), available at [https://www.forbes.com/sites/marcedelman/2014/08/18/could-a-water-main-break-](https://www.forbes.com/sites/marcedelman/2014/08/18/could-a-water-main-break-derail-the-daily-fantasy-sports-industry/#40bccdd5381a)
3 [derail-the-daily-fantasy-sports-industry/#40bccdd5381a](https://www.forbes.com/sites/marcedelman/2014/08/18/could-a-water-main-break-derail-the-daily-fantasy-sports-industry/#40bccdd5381a) (last visited Dec. 22, 2018). The Royale’s
4 Contest rules require entrants to select a roster comprised of athletes from, at a minimum, three teams.
5 Thus, an entrant can form their roster with as many as seven players from a single team. If such an
6 entrant had selected seven players from a single team, and if that team was subsequently unable to play
7 because of an event outside the player’s control, then that entrant would be—for lack of a better
8 phrase—out of luck.

9 Even putting aside, the influence of chance, however, the majority’s insistence that the game be
10 analyzed according to learned skill—rather than the skill of the general population—subverts the
11 common law and is, put simply, bad policy. Like the newspaper in *McKittrick*, The Royale advertises
12 that “ANYONE” can play their game. The Royale’s advertisement leaves out, however, that to have a
13 reasonable chance of success, the entrant would have to undertake the serious preparation outlined in the
14 majority opinion. But the Royale’s Million Dollar DFS Contest is not—as the *McKittrick* court would
15 put it—“solely between experts.” Instead, The Royale invites the general public to play, and then it
16 collects the entrance fees of those unwitting entrants who do not know that their chance of success is
17 miniscule. The Royale should not be able to have it both ways: it cannot invite the general public to play
18 its game, and then assert that the whether the contest is a game of chance should be analyzed from the
19 vantage point of experts. And further, well-settled common law makes clear that the dominant purpose
20 test should be analyzed using the “average skill of a majority of players likely to play the game.” 38 Am
21 Jur 2d Gambling § 4 (2015).

22 The studies cited by the majority are inapplicable to the controversy before the Court. The
23 Royale’s Million Dollar DFS Contest operates on a tiered payout structure. This structure rewards the
24 biggest prize to the player whose DFS team earned the most points, and the next-best player earns a
25 lesser reward, until the end of the payout structure. The Easton study, however, compared the average

1 points earned by an “unskilled” team against the average points earned by a “skilled” team. Todd Easton
2 & Sarah Newell, *Are Daily Fantasy Sports Gambling?*, Pre-press J. of Sports Analytics 1, 5 (2018).
3 There is no indication about how the “skilled” teams would have fared in a tiered contest, like the one at
4 issue here. Even a highly-skilled player may not find success under The Royale’s payout structure.
5 Further, the study makes clear that it undertook an analysis to determine whether DFS “is entirely a
6 game of chance,” which is a broad categorical statement that even I, as the dissenter, disagree with.
7 Easton, *supra*, at 4. Thus, the study does not fit the facts in the record.

8 Finally, the Majority’s holding that DFS is a contest of skill, falling outside the purview of state
9 regulators, breaks from the weight and momentum of authority. *See* Legality of Daily Fantasy Sports
10 Under Nevada Law, Nev. Att’y Gen. Mem. (Oct. 16, 2015),
11 <https://gaming.nv.gov/modules/showdocument.aspx?documentid=10487> (last visited Dec. 22, 2018);
12 Legality of Daily Fantasy Sports Contests, Haw. Att’y Gen. Op. 16-1 (2016), [https://ag.hawaii.gov/wp-](https://ag.hawaii.gov/wp-content/uploads/2016/01/News-Release-2016-2.pdf)
13 [content/uploads/2016/01/News-Release-2016-2.pdf](https://ag.hawaii.gov/wp-content/uploads/2016/01/News-Release-2016-2.pdf) (last visited Dec. 22, 2018); Gambling-Participation
14 in Fantasy Sports League Violation of State Gambling Laws, Fla. Att’y Gen. Op. 91-03 (1991),
15 <http://myfloridalegal.com/ago.nsf/Opinions/9ADEF3B402960199852562A6006FB71E> (last visited Dec.
16 22, 2018).

17 Thus, in my view, The Royale’s Million Dollar DFS Contest is an activity predominated by
18 chance, and it is therefore “gambling” under Boyd law.

19
20 ***2. Alternatively, The Royale’s Million Dollar DFS Contest requires entrants to wager something of value on a future contingent contest outside of their control.***

21 As correctly stated by the majority, gambling under Boyd law also encompasses risking
22 something of value on “a future contingent contest not under the player’s control of influence.” Boyd
23 Rev. Stat. § 322.94(1). For many of the same reasons discussed above The Royale’s Million Dollar DFS
24 Contest clearly involves risking something of value on a future contingent contest not under the player’s
25 control or influence.

1 The New York Supreme Court’s decision in *White v. Cuomo* directly addresses this question.
2 *White v. Cuomo*, 2018 WL 5984057, No. 5861-16, ___ N.Y.S.3d ___ (Oct. 26, 2018). There, the Court
3 was confronted with a DFS structure largely similar to the one before us here. *Id.* at *2. The majority
4 seizes upon the minute detail that the New York statute prohibited wagering something of value on a
5 “future contingent *event*”, rather than “contest,” but this term is a distinction without a difference. *See id.*
6 at *3 (emphasis added).

7 In *White*, Judge Connolly held that DFS constituted gambling because participants “win or lose
8 based on the actual statistical performance of groups of selected athletes in future events not under the
9 contestants[’s] . . . control of influence.” *Id.* at *6. No amount of research or skill, the court held, can
10 modify the fact that points are earned “based upon performances of selected athletes in events held after
11 contests are closed.” *Id.* (quotations omitted). And the fact that DFS is based on agglomerated individual
12 performances “does not negate the fact that the wagers are placed on performance in future events not
13 under the contestants’ control of influence.” *Id.*

14 Here, the majority impermissibly rewrites Boyd’s statute. The word “result” is found nowhere in
15 the statute. Yet the majority inexplicably holds that The Royale’s Million Dollar DFS Contest is not
16 gambling because the statute defines “gambling” as wagering something of value on “the result” of a
17 contest.

18 Further, the majority reads the statute’s text in an impermissibly narrow fashion. The majority
19 believes that because an entrant can exercise a degree of skill in selecting her lineup, this must mean that
20 she is no longer wagering on a future contingent event outside her control. But this is patently false.
21 Instead, the fact of skill is immaterial to the analysis. *See State v. Amboy National Bank*, 146 A.3d 188,
22 198 (N.J. Sup. Ct. App. Div. 2016) (“the fact that . . . the pool participants’ acumen in predicting the
23 outcome may play a role in the success of their picks is of no consequence.”).

24 To that end, the majority engages in a series of mental gymnastics to arrive at the conclusion that
25 The Royale’s Million Dollar DFS Contest is an independent, true contest separate and apart from the

1 real-world football contests. The fact of the matter is that if the real-world contests do not occur, then
2 The Royale's contest will not produce any winners. The Royale's contest is directly impacted by a
3 future contingent event outside the control of the entrants, and outside the control of The Royale. Using
4 the majority's reasoning, a group of individuals who place a bet on the result of a real-world football
5 game are not wagering on a future contingent event outside their control because they are, instead,
6 participants in their own true contest, separate and apart from the real-world game (i.e., who can guess
7 the winner of the real-world football game).

8 Finally, the majority's holding is contrary to the public policy of Boyd. The legislature aimed to
9 create a sophisticated and comprehensive statutory structure to regulate "all persons, locations, practices,
10 associations, and activities related to the operation of licensed gaming establishments." *See* Boyd Rev.
11 Stat. § 322.93(3). Yet the majority's holding creates a gaping hole in the protections of "the economic
12 lifeblood of Boyd." *See ante*, at 2 (opinion of CHARLES, J.). I would instead hold that The Royale's
13 Million Dollar DFS Contest is "gambling" under Boyd law because it is both dominated by chance and
14 involves wagering something of value on a future contingent contest outside the player's control.

15
16 **B. Whether The Royale has the authority to exclude a patron based on their method of playing.**

17 Because The Royale's Million Dollar DFS Contest is a game that constitutes "gambling," the
18 right to exclude also changes. Boyd Rev. Stat. § 322.93 provides that "[t]he Boyd Gaming Control
19 Board shall have the exclusive authority to exclude a patron for reasons stemming from such patron's
20 conduct during a game that constitutes 'gambling,' as defined in Boyd Rev. Stat. § 322.94." Boyd Rev.
21 Stat. § 322.93(5)(a). With daily fantasy sports being "gambling," the authority to exclude a patron based
22 on her method of playing in the daily fantasy sports clearly belongs to the Gaming Control Board, not
23 The Royale. Therefore, I would hold this case must go before the Boyd Gaming Control Board to
24 determine whether Valentina is excluded from The Royale.

1 However, even assuming the majority is correct that The Royale’s Million Dollar DFS Contest is
2 a Game of Skill, I still respectfully dissent as to the scope of the common law rule that applies to The
3 Royale’s ability to exclude.

4 The majority opines that the innkeeper common-law rule applies to hotel-casino establishments
5 and provides a narrower position. Case law recognizing that “the common-law right of a private owner
6 of a public amusement to exclude any person for any reason from the premises” is overwhelming. *Slade*
7 *v. Caesars Entm’t Corp.*, 373 P.3d 74, 76 (Nev. 2016); *Brooks v. Chicago Downs Ass’n, Inc.*, 791 F.2d
8 512, 513, 516–17 (7th Cir. 1986) (“[T]he operator of a horse race track has the absolute right to exclude
9 a patron from the track premises for any reason, or no reason, except race, color, creed, national origin,
10 or sex.”); *Ziskis v. Kowalski*, 726 F.Supp. 902, 908 (D. Conn. 1989) (“The weight of the case law
11 upholds the common law rule that owners of places of amusement, like theaters and racetracks, are
12 permitted to exclude patrons without cause.”). Notably, not every jurisdiction follows the majority
13 common law rule. For example, as the majority noted, the Supreme Court of New Jersey interprets the
14 common law right to exclude narrowly. *Uston v. Resorts International Hotel, Inc.*, 445 A.2d 370, 371
15 (N.J. 1982). There, the court held that “the common law right to exclude is substantially limited by a
16 competing common law right of reasonable access to public places.” *Id.* However, this Court should
17 follow the majority common law position regarding places of public amusement.

18 Further, Boyd Rev. Stat. § 322.93(5) provides that “[n]othing in this section shall be construed to
19 abrogate or abridge any common-law right of a gaming establishment to exclude any person from
20 gaming activities or eject any person for any reason.” Boyd Rev. Stat. § 322.93(5). Had the Boyd
21 Legislature wanted the innkeeper rule or a narrower common law rule to apply to hotel-casinos, it would
22 have done so in Boyd Rev. Stat. § 322.93(5).

23 The majority is also concerned with the fact that hotel-casinos offer other amenities, such as
24 “restaurants, theater, wedding venues, nightclubs, spas, and many more.” Based on those amenities, the
25 public amusement common law rule would better apply than the innkeeper rule. *See Slade*, 373 P.3d at

1 78–79. Additionally, the rule suggested by the majority would allow courts to parse out parts of hotel-
2 casinos to decide whether a casino must provide a reason for exclusion or whether the casino can
3 exclude the patron without cause. Thus, there would be no consistent application of the statutes.

4 Moreover, the majority discusses Boyd Rev. Stat. § 322.93(4), which provides:

5
6 To ensure that gaming is conducted honestly, competitively, and free of criminal and corruptive
7 elements, all gaming establishments in this state must remain open to the general public, and the
8 access of the general public to gaming activities must not be restricted in any manner, except as
9 provided in Boyd Rev. Stat. § 322.93(5).

10 The *Uston* case, discussed above, also examines the issue of public access. *See Uston*, 445 A.2d at 371.
11 Although casinos must remain open to the general public, that access is limited Boyd Rev. Stat.
12 § 322.93(5). To uphold the policy behind BRS §§ 322.93(4) and 322.93(5), The Royale should wield the
13 authority to exclude patrons so that the competitiveness and honesty of gaming remains intact. And that
14 authority should extend to the entire premise. A casino is to remain open to the general public, but a
15 casino also holds the common law right to exclude *any patron* from the premise.

16 Based on the foregoing, I would hold that this case should be before the Boyd Gaming Control
17 Board. But if the majority is correct that daily fantasy sports are a Game of Skill, I would permit The
18 Royale to exclude a patron from the entire premise for any reason, other than discriminatory or unlawful
19 reasons.

20 I dissent.
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Appendix

Boyd Rev. Stat. § 322.93 — Gaming policy; public access; common law.

The legislature finds, and hereby declares to be the public policy of this state, that:

(1) The gaming industry is vitally important to the economy of this State and to the general welfare of its inhabitants;

(2) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively;

(3) Public confidence and trust can be maintained only by strict regulation of all persons, locations, practices, associations, and activities related to the operation of licensed gaming establishments;

(4) To ensure that gaming is conducted honestly, competitively, and is free of criminal and corruptive elements, all gaming establishments in this state must remain open to the general public, and the access of the general public to gaming activities must not be restricted in any manner, except as provided in Boyd Rev. Stat. § 322.93(5);

(5) Regarding the ability to exclude:

(a) The Boyd Gaming Control Board shall have the exclusive authority to exclude a patron for reasons stemming from such patron's conduct during a game that constitutes "gambling," as defined in Boyd Rev. Stat. § 322.94;

(b) Nothing in this section shall be construed to abrogate or abridge any common-law right of a gaming establishment to exclude any person from gaming activities or eject any person for any lawful reason.

Boyd Rev. Stat. § 322.94 — Gambling; Skill; standard of review.

(1) "Gambling" involves risking something of value on:

(a) a contest where chance, rather than the skill of the player, is dominant or predominant over other factors in affecting the outcome of the game; or

(b) a future contingent contest not under the player's control or influence.

(2) "Skill" is the knowledge, dexterity, or any other ability of natural persons;

(3) In the interest of uniformity, whether a particular activity constitutes "gambling" is subject to de novo review.