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Garden State fights for sports betting

There has been much recent discussion in Illinois about possible gambling expansion. Will existing or new casinos in Illinois have sports books to allow the placing of bets on professional sports? Not likely, but that hasn't stopped the State of New Jersey from trying.

New Jersey is in the middle of a fight to legalize sports gambling, and it has some big opponents. Two-thirds of New Jersey's voters approved an amendment to the state constitution and the New Jersey Sports Wagering law was enacted by the state legislature in 2012. On its face, the New Jersey law allows casinos and other entities to "operate a sports pool" and apply for a license to operate a sports pool, to allow for sports wagers. N.J. Stat. Ann. §5:12A-2(a).

The National Basketball League, National Football League, National Hockey League, Major League Baseball and the National Collegiate Athletic Association (the leagues) joined together to oppose the New Jersey Wagering law. Specifically, the leagues brought an action seeking to enjoin New Jersey Gov. Chris Christie and other government officials from implementing New Jersey's Sports Wagering Law, arguing that it is preempted by federal law.

In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA). 28 U.S.C.A. §3702. This Act states that "[I]t shall be unlawful for (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to law or

compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games."

A "grandfather clause" exception is carved out of the federal statute for states that already had such gambling operations in place between January 1, 1976 and August 31, 1990. That exception applies to four states: Delaware, Nevada, Oregon and Montana. 28 U.S.C.A. §3704.

The leagues' complaint was filed in the U.S. District Court for New Jersey. In support of their request for a permanent injunction, the leagues filed a motion for summary judgment arguing that New Jersey's law was preempted by PASPA. In response, the New Jersey defendants filed a cross motion for summary judgment arguing that PASPA is unconstitutional.

Specifically, New Jersey argued that PASPA violates the Commerce Clause, the 10th Amendment (infringement on states' rights), due process and equal protection principals and the Equal Footing Doctrine. *National Collegiate Athletic Ass'n. v. Christie*, 2013 WL 7772679 (D.N.J. Feb. 28, 2013). The Department of Justice also joined the litigation on the side of the leagues, to enforce and to defend the federal statute.

From a constitutional perspective, Congress has the authority to "regulate Commerce with

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foreign Nations, and among the several States..." U.S. Const. Art. 1 §8 cl. 3. There also is a presumption of constitutionality with regards to acts of Congress, which makes challenges to federal statutes difficult. Such challenges must establish that there is no rational basis for a Congressional finding that the regulated activity affects interstate commerce." *Hodel v. Indiana*, 452 U.S. 314 (1981).

New Jersey tried to argue that PASPA violates the principles of

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federalism by compelling and commandeering New Jersey to prohibit sports wagering in violation of state sovereignty. In response, the leagues and the DOJ argued that PASPA does not require the states to affirmatively enact any laws or regulations and, as such, principles of federalism and state sovereignty are not implicated.

Ultimately, the District Court in New Jersey held that Congress has the power to regulate gambling, that PASPA is a reasonable expression of Congress' powers and is therefore constitutional, rendering the New Jersey Sports Wagering Law preempted by PASPA.

As part of the opinion, the court noted that the legislative record provided support for finding a rational basis.

The district court recognized that PASPA's legislative history included concerns that: what sports stand for and how they are perceived would forever be changed if PASPA was not enacted; the integrity of sports games would be threatened; public confidence would be eroded; suspicion over controversial plays would be heightened; teenage gambling would increase beyond the estimated 1 million compulsive gamblers under age 20; and that the problems associated with gambling are national in nature, and cross state lines.

More practically, supporters of the federal statute also claim that legalization of sports betting could lead American fans to wonder whether there are attempts to bribe players to affect their performance, throw games or defeat point spreads.

Despite the district court's ruling, the fight is not over in New Jersey and the state has vowed to take the case to the Supreme Court.

The appellate challenge is expected to play out in the 3rd Circuit Court of Appeals in Philadelphia. Until the district court's decision is overturned, sports gamblers will have only four states in which to play.