

## **Sports Gambling**

Each year almost \$150 million is bet at Nevada Sports books out of a total estimate of \$380 billion gambled on sports mostly through untaxed and unregulated offshore bookmakers. The media broadcasts the point spreads and bookies reap “the vig.” To begin to address this absurd and long-standing ridiculous situation, some states have considered legalizing sports betting. New Jersey, which has had casino gambling in Atlantic City since 1976, has made the first move in that direction, but has been challenged in court by professional and amateur sports leagues and the NCAA.

### **NCAA v. CHRISTIE**

--- F.Supp.2d ----, 2013 WL 772679 (D.N.J.)

Feb. 28, 2013.

### **OPINION**

SHIPP, District Judge.

This matter comes before the Court upon several motions filed by the Parties. The National Collegiate Athletic Association (“NCAA”), National Basketball Association (“NBA”), National Football League (“NFL”), National Hockey League (“NHL”), and Office of the Commissioner of Baseball doing business as Major League Baseball (“MLB”) (collectively, “Plaintiffs” or “the Leagues”) filed their Complaint on August 7, 2012. On August 10, 2012, Plaintiffs filed a “Motion for Summary Judgment and, If Necessary to Preserve the Status Quo, a Preliminary Injunction” seeking to enjoin Defendants Christopher J. Christie, Governor of the State of New Jersey, David L. Rebeck, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and Frank Zanzuccki, Executive Director of the New Jersey Racing Commission (collectively, “Defendants” or the “State”), from implementing N.J. Stat. Ann. 5:12A–1, *et seq.* (2012) (“New Jersey’s Sports Wagering Law” or “Sports Wagering Law”). On November 21, 2012, Defendants filed a Cross Motion for Summary Judgment and Opposition to Plaintiffs’ Motion for Summary Judgment. Defendants’ Cross Motion challenged the constitutionality of the Professional and Amateur Sports Protection Act (“PASPA”). . .

The Court, having considered the Parties’ submissions, for the reasons stated below, and for other good cause shown, finds that Plaintiffs are entitled to summary judgment and a permanent injunction.

#### ***I. Summary of the Court’s Opinion***

This case requires the Court to determine whether an act of Congress is unconstitutional because it purportedly violates New Jersey’s sovereign rights. After careful consideration, the Court has determined that Congress acted within its powers and the statute in question does not violate the United States Constitution.

Congress, pursuant to an 88–5 vote in the Senate and with the vocal support of one of New Jersey's own Senators, enacted PASPA in 1992 to stop the spread of gambling on professional and amateur sports. To that end, PASPA made it unlawful for States to authorize a sports wagering system. PASPA included a grandfather clause which exempted states with preexisting sports wagering laws. PASPA also granted New Jersey a one year window to legalize wagering on sports. New Jersey did not exercise that option. Over twenty years later, however, New Jersey amended its state constitution and passed a law authorizing gambling on sports. That law directly conflicts with PASPA.

Professional and amateur sports leagues sued the Governor of New Jersey and other State officials to prevent the implementation of New Jersey's Sports Wagering Law. The State, and other Defendants who intervened in the case, argue that PASPA violates the federal Constitution and cannot be used by the Leagues to prevent the implementation of legalized sports wagering. The Leagues disagree. If Defendants are correct, they will be permitted to enact their proposed sports wagering scheme. If they are not, Defendants will be prohibited from enacting sports wagering in New Jersey because PASPA is a federal law which overrides New Jersey's law.

This case presents several issues. Specifically, it is alleged that PASPA violates: 1) the Commerce Clause; 2) the Tenth Amendment; 3) the Due Process Clause and Equal Protection Principles; and 4) the Equal Footing Doctrine. The Court begins its analysis of these issues with the time-honored presumption that PASPA, enacted by a co-equal branch of government, is constitutional. Moreover, the Court is required to adopt an interpretation that would deem the statute constitutional so long as that reading is reasonable. Pursuant to this mandate, the Court has determined that PASPA is a reasonable expression of Congress' powers and is therefore constitutional.

First, PASPA is a rational expression of Congress' powers under the Commerce Clause. The fact that PASPA allows legalized sports wagering to continue in those states where it was lawful at the time of its enactment does not deprive the statute of constitutionality because Supreme Court precedent permits “grandfathering.” Second, PASPA does not violate the Tenth Amendment because it does not force New Jersey to take any legislative, executive or regulatory action. PASPA also does not raise the political accountability concerns outlined by the Supreme Court's Tenth Amendment jurisprudence. Third, regarding Defendants' additional allegations, the Court has determined that Congress had a rational basis to enact PASPA in the manner it chose.

Although some of the questions raised in this case are novel, judicial intervention is generally unwarranted no matter how unwise a court considers a policy decision of the legislative branch. As such, to the extent the people of New Jersey disagree with PASPA, their remedy is not through passage of a state law or through the judiciary, but through the repeal or amendment of PASPA in Congress.

## ***II. Background***

Congress enacted PASPA in 1992 to prevent the spread of state-sponsored sports gambling and to protect the integrity of professional and amateur sports. PASPA renders it 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 the 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.

In considering PASPA, the Senate Judiciary Committee stated, “[a]lthough the committee firmly believes that all such sports gambling is harmful, it has no wish to apply this new prohibition retroactively ... or to prohibit lawful sports gambling schemes ... that were in operation when the legislation was introduced.” Accordingly, PASPA provided the following exceptions:

- (a) Section 3702 shall not apply to—
  - (1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;
  - (2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both
    - (A) such scheme was authorized by a statute as in effect on October 2, 1991; and
    - (B) a scheme described in section 3702 ... actually was conducted ... at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;
  - (3) a betting, gambling, or wagering scheme ... conducted exclusively in casinos located in a municipality, but only to the extent that
    - (A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and
    - (B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation....

PASPA's “grandfather clause” resulted in exceptions for four states: Delaware, Oregon, Montana and Nevada. Additionally, New Jersey was the only state qualified to establish sports gambling within the one-year period . . . . New Jersey chose not to exercise that opportunity.

Two decades later, on January 17, 2012, New Jersey enacted the Sports Wagering Law. It allows casinos, among other entities, to “operate a sports pool” and apply for “a license to operate a sports pool.” On October 15, 2012, New Jersey promulgated regulations (the “Regulations”) pursuant to the Sports Wagering Law. The Sports Wagering Law and Regulations reflect New Jersey's intention to sponsor, operate, advertise, promote, license and/or

authorize sports gambling. The Leagues assert that New Jersey enacted the Sports Wagering Law in violation of the clear mandates of PASPA, and therefore, in violation of the Supremacy Clause of the United States Constitution. (“[T]he Laws of the United States ... shall be the supreme law of the land.”). Defendants. . . argue, in sum, that PASPA is unconstitutional.

As drafted, the two statutory regimes cannot co-exist. Accordingly, if PASPA is held to be constitutional, then the Sports Wagering Law must be stricken as preempted by the Supremacy Clause. Conversely, if this Court finds PASPA unconstitutional, it must be invalidated and the New Jersey Sports Wagering Law may be implemented. . .

### **III. Legal Standard and Analysis. . .**

#### **B. Congressional Statutes are Presumptively Constitutional**

It is a basic tenet of constitutional law that Congressional statutes are presumptively constitutional and should not be struck down unless “clearly demonstrated” otherwise. . . When presented with two possible interpretations of a statute, “courts should adopt the meaning” which finds the statute constitutional. . .

Moreover, “[t]he question is not whether that is the most natural interpretation of the [statute], but only whether it is a ‘fairly possible’ one.” . . . Therefore, “every *reasonable* construction must be resorted to, in order to save a statute from unconstitutionality.”

#### **C. The Constitutionality of PASPA**

Defendants challenge the presumption of constitutionality by arguing that PASPA violates 1) Congress' powers accorded to it under the Commerce Clause, 2) the Tenth Amendment's limitations on Congress' powers, and 3) the Due Process Clause and Equal Protection Principles. Additionally, NJTHA argues that PASPA violates the Equal Footing Doctrine. Each constitutional challenge will be addressed in turn.

##### **1) The Commerce Clause** **a. The Parties' Positions**

Defendants argue that PASPA is an unconstitutional and improper use of Congress' Commerce Clause powers. Specifically, Defendants challenge the exceptions made for states which conducted legalized sports gambling prior to the enactment of PASPA as unconstitutionally discriminatory. Defendants reiterate this argument in lodging a challenge against PASPA as violating “equal sovereignty.” In addition, NJTHA argues that PASPA exceeds and does not comport with Congress' broad powers to regulate interstate commerce. In response, Plaintiffs and the DOJ argue that PASPA is a permissible exercise of Congress' powers pursuant to the Commerce Clause and the Necessary and Proper Clause. (

##### **b. Discussion** **1) PASPA's Relation to Interstate Commerce**

Congress has the authority to “regulate Commerce with foreign Nations, and among the several States ....” and “[t]o make all Laws which shall be necessary and proper for carrying into Execution” the powers it has under the Commerce Clause. It is Defendants' burden to overcome the “substantial deference [given] to a Congressional determination that it had the power to enact particular legislation.”

It is well established that “Congress' power under the Commerce Clause is very broad.” Congress is empowered to “regulate purely local activities that are part of an economic class of activities that have a substantial effect on interstate commerce.” “[A]ctivity that is purely intrastate in character may be regulated by Congress, where the activity, combined with like conduct by others similarly situated, affects commerce among the States or with foreign nations.”

With the presumption of constitutionality guiding the Court's analysis, “[a] court may invalidate legislation enacted under the Commerce Clause *only* if it is clear that there is no rational basis for a congressional finding that the regulated activity affects interstate commerce, or that there is no reasonable connection between the regulatory means selected and the asserted ends.” The Supreme Court has clearly instructed that “it is not the function of the courts to substitute their evaluation of legislative facts for that of the legislature.” The testimony that is part of the legislative record includes the following:

1. The spread of legalized sports gambling would change forever—and for the worse—what [professional and amateur sports] games stand for and the way they are perceived.
2. Sports gambling threatens the integrity of, and public confidence in, amateur and professional sports.
3. Widespread legalization of sports gambling would inevitably promote suspicion about controversial plays and lead fans to think “the fix was in” whenever their team failed to beat the point-spread.
4. Teenage gambling-related problems are increasing. Of the approximately 8 million compulsive gamblers in America, 1 million of them are under 20.
5. Governments should not be in the business of encouraging people, especially young people, to gamble.
6. *Sports gambling is a national problem. The harms it inflicts are felt beyond the borders of those States that sanction it.* The moral erosion it produces cannot be limited geographically. Once a State legalizes sports gambling, it will be extremely difficult for other States to resist the lure. The current pressures in such places as New Jersey ... to institute casino-style sports gambling illustrate the point. Without Federal legislation, sports gambling is likely to spread on a piecemeal basis and ultimately develop irreversible momentum.
7. *[T]he interstate ramifications of sports betting are a compelling reason for federal legislation.*
8. Although the committee firmly believes that all such sports gambling is harmful, it has no wish to apply this new prohibition retroactively to [States] which instituted sports lotteries prior to the introduction of our legislation. . . .

In analyzing whether there is a sufficient nexus between interstate commerce and a regulated activity, the Court need not determine whether the spread of legalized sports gambling would have an effect on interstate commerce in fact, but merely whether a “rational basis” existed for Congress to reach that conclusion. .

With this well-established analytical framework as a back-drop, the Court finds that PASPA satisfies rational basis review. PASPA was enacted to prevent the spread of legalized sports gambling and safeguard the integrity of professional and amateur sports. The Senate Judiciary Committee has concluded that sports gambling is a “national problem” that in the absence of federal legislation would spread throughout the country unabashedly.

## **2) PASPA's Grandfathering Clause Comports with the Commerce Clause**

In addition, the presence of a grandfathering clause does not undermine rational basis review. The Congressional findings demonstrate that Congress had a rational basis to exempt pre-existing sports gambling systems. The findings also reflect that Congress desired to protect the reliance interests of the few states that had legalized gambling operations. As such, the exceptions made for particular states do not impugn rational basis review. . . It is also rational for Congress to remedy a national problem piecemeal. . . .

For the reasons stated below, the Court has determined that PASPA does not violate the Tenth Amendment. Most importantly, it neither *compels* nor *commandeers* New Jersey to take any action. Moreover, the federal officials who passed PASPA, and continue to support it, are clearly accountable to the citizens of the several States. PASPA, therefore, does not violate the Tenth Amendment. . .

### **III. Conclusion**

After careful consideration of the Parties' submissions, the Court has determined that PASPA is a constitutional exercise of Congress' powers pursuant to the Commerce Clause. PASPA does not violate the Tenth Amendment, Due Process Clause or Equal Protection Principles; nor does it violate the Equal Footing Doctrine. Plaintiffs' Motion for Summary Judgment, therefore, is GRANTED. Plaintiffs have also demonstrated that they are entitled to a permanent injunction. Defendants' Cross Motion for Summary Judgment is DENIED. An Order consistent with this Opinion will be filed on this date.

[New Jersey officials appealed and the case was heard by the Third Circuit Court of Appeals. No decision has yet been rendered.]