

PASPA’S BAN ON SPORTS BETTING IS MISGUIDED: SAVE
CITIZENS THE FINANCIALLY AND MORALLY TAXING TRIP
TO VEGAS BY ALLOWING STATES TO LEGALIZE SPORTS
WAGERING.

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Not all Americans realize it, but betting on sports is illegal in the United States. It is the classic American duality: morally proscribing only one type of gambling while sanctioning lotteries, slots, and online poker as legal; as though they are somehow different than or more morally acceptable than betting on sports. The Professional and Amateur Sports Protection Act of 1991 (“PASPA”) sought to stop the spread of state-sponsored sports gambling and maintain the integrity of professional and amateur sports by banning any wagering by government entities or individuals on “competitive games in which amateur or professional athletes participate.”¹

But PASPA falls short of achieving its main objective of protecting the integrity of sports in America. The Senate Judiciary Committee feared that sports gambling would change the nature of sporting events from “wholesome entertainment for all ages to devices for gambling,” undermining public confidence in the character of athletic competitions.² This concern does not pass muster in today’s society where fans crave interactive entertainment.

Congress carved out three exceptions to PASPA’s prohibitions on sports betting, which attenuate PASPA’s effectiveness. Exempted from prohibition were (1) bets on jai alai and pari-mutuel animal racing; (2) states with preexisting sports gambling schemes; and (3) states who had casinos in operation throughout the previous ten years and could pass legislation legalizing sports betting before the prohibition took place, preserving only four states with some variation of legalized sports gambling.³ Because these exceptions continue to promote gambling in general, Congress’ singling out sports betting does not satisfy the reasonable regulation of a legitimate government interest standard under the Commerce Clause.

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1. 28 U.S.C. § 3702 (2012); S. REP. NO. 102-248, at 4 (1992), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3555.

2. S. REP. NO. 102-248, at 4 (1992).

3. 28 U.S.C. § 3704(a)(1)–(3) (2012).

The decision to legalize sports betting should be a decision left to the states.

In 2011, New Jersey voters approved legislation to enact the Sports Wagering Law, which made sports gambling legal in casinos and racetracks throughout the state.⁴ In August of 2012, the NCAA, NBA, NFL, NHL, and MLB joined by the United States as intervening plaintiff, brought action against New Jersey Governor Chris Christie, New Jersey's Racing Commissioner, and New Jersey's Director of Gaming Enforcement seeking to stop New Jersey from implementing its proposed Sports Wagering Law.⁵ In a two-to-one opinion, the Third Circuit ruled in favor of the leagues and the United States, effectively striking down the Sports Wagering Law, holding that the leagues had standing to challenge the law because it would increase some fans' negative perceptions of professional sports leagues attributed to game fixing and gambling; the Supreme Court of the United States then denied certiorari in 2014.⁶ In the fall of 2014, the New Jersey Senate approved a bill that Governor Christie subsequently signed into law, legalizing sports betting in casinos and at racetracks so long as the gambling is not state sponsored, regulated, or licensed; finding the loophole left available by the Third Circuit's earlier decision.⁷

In New Jersey, millions of dollars are lost each year to the black market of sports gambling because state casinos are not allowed to open legal sports books.⁸ In the state, analysts expect legalized sports

4. N.J. STAT. ANN. §§ 5:12A-1-6 (West 2012) (repealed 2014).

5. NCAA v. Christie, No. 12-4947, 2012 WL 6698684, at *1 (D.N.J. Dec. 21, 2012), *aff'd sub nom.* NCAA v. Governor of New Jersey, 730 F.3d 208 (3d Cir. 2013).

6. NCAA v. Governor of New Jersey, 730 F.3d 208, 214-15 (3d Cir. 2013), *cert. denied* 134 S. Ct 2866 (2014) (holding that state-licensed wagering on sports could be regulated by federal law under the Commerce Clause).

7. *Id.*; S. 2460, 216th Leg., Reg. Sess. (N.J. 2014); Chris Christie, Governor's Statement Upon Signing Senate Bill No. 2460 (Oct. 14, 2014), *available at* http://www.njleg.state.nj.us/2014/Bills/S2500/2460_G1.HTM; *see also* Bob Jordan & Steve Edelson, *Gov. Christie Signs New Jersey Sports Betting Bill into Law*, USA TODAY (Oct. 17, 2014, 6:40 PM), <http://www.usatoday.com/story/sports/2014/10/17/chris-christie-signs-bill-allowing-sports-betting-new-jersey/17457177>.

8. Interview with Anthony N. Cabot, Partner, Lewis & Roca LLP, in *Is Your Fantasy League a Federal Crime?*, LEGAL BLITZ (Nov. 16, 2011), <http://thelegalblitz.com/blog/2011/11/16/is-your-fantasy-league-a-federal-crime/>. "The Revel, Showboat and Trump Plaza casinos all have closed or will close this month in Atlantic City, joining the Atlantic Club, which closed in January. The closings eliminated about 5,900 jobs, or about 20 percent of the casino workforce in New Jersey." Matt Bonesteel, *Chris Christie Throws Lifeline to Atlantic City, Allows Sports Gambling in New Jersey*, WASH. POST (Sept. 8, 2014), <http://www.washingtonpost.com/blogs/early-lead/wp/2014/09/08/chris-christie-throws-lifeline-to-atlantic-city-allows-sports-gambling-in-new-jersey/>.

betting to generate \$1 billion in bets and almost \$100 million in annual revenue, and even benefit Las Vegas gaming companies because of their investments in Atlantic City hotels and casinos.⁹

The National Gambling Impact Study Commission estimates that illegal wagers total \$380 billion annually and, in 2012, only \$3.45 billion were legally wagered in Nevada's sports books.¹⁰ The disparity between these numbers shows Americans' desire to bet on sports and their limited legal options to do so—"Americans do not have a problem finding ways to bet on sports."¹¹

Betting aside, there are many other factors that affect the integrity of a sporting event: cheating, bias in the media and in officiating, player trades, contract negotiations, disagreements between organizations, and goals of the owners.¹² Brian Tuohy, leading expert on game fixing in sports and author of *Larceny Games*, questions Congress' involvement and suggests that leagues should be responsible for "insulating themselves against the dangers of gambling and potential game fixing."¹³ Widespread legalization of sports betting would bring gamblers out of the shadows and spur more bookmakers and casinos to cooperate with the FBI and

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9. See Chris Sieroty, *Federal Court Tosses New Jersey Sports Betting Law*, LAS VEGAS REV. J. (Sept. 17, 2013, 4:17 PM), <http://www.reviewjournal.com/business/casinos-gaming/federal-court-tosses-new-jersey-sports-betting-law>.
 10. *Sports Wagering*, AM. GAMING ASS'N (June 30, 2012, 3:41 PM), <http://www.americangaming.org/industry-resources/research/fact-sheets/sports-wagering>.
 11. Erin McClam, *Game On: Christie Fights for Sports Betting*, NBC NEWS (July 15, 2013, 5:45 AM) (quoting Joe Brennan Jr.), <http://www.cnbc.com/id/100885834>. Joe Brennan Jr., former director of the Interactive Media Entertainment & Gaming Association also opines that "[e]ither the leagues are willfully blind or they're just incredibly ignorant when it comes to sports betting." *Id.*
 12. See Jason Goldstein, Note, *Take the Money Line: PASPA, Bureaucratic Politics, and the Integrity of the Game*, 11 VA. SPORTS & ENT. L.J. 362, 368 (2012); Ben Golliver, *Spurs Fined \$250K for Resting Players*, SPORTS ILLUSTRATED (Nov. 30, 2012), <http://nba.si.com/2012/11/30/gregg-popovich-david-stern-spurs-fined-nba/>. In 2012, San Antonio Spurs head coach, Gregg Popovich, was fined \$250,000 for sending home his four best players before the Spurs' only road game against Miami. It was the final game of a six-game road trip, early in the season, and Popovich wanted to rest his starters before their next game against a divisional opponent. NBA Commissioner David Stern decided to charge the hefty fine because Popovich did a huge disservice to the league and the fans, violating a league policy "against resting players in a manner contrary to the best interests of the NBA." *Id.* (quoting the NBA).
 13. Brian Tuohy, *Why Sports Gambling Should Be Legal*, SPORTS ON EARTH (Oct. 15, 2013), <http://www.sportsonearth.com/article/62954908>.

professional sports leagues to track abnormal and illegal gambling activity.¹⁴

Not only would legalized sports betting bring jobs and money to the state, it would boost fan interest. In an era of social media, technology-driven lifestyles, and a preference for interactive participation, fans' attempt to have a stake in the game creates the ultimate engagement between fan and sport, cultivating fan interest and confidence in games. Meet the inspiration behind fantasy sports. Fantasy sports are a legal form of sports gambling, and the major leagues know it: some online players are winning thousands of dollars a week engaging in these attempts to predict on-the-field outcomes.¹⁵

In states where betting is considered morally acceptable and economically beneficial, the choice of if and how to regulate all forms of gambling should be left to the state, leaving Congress out of the equation. Bankrupt municipalities, strapped for cash and burdened by unemployment, will not deny the forthcoming economic boost by capturing money, which is inevitably being spent in a black market, capable of bolstering crippled public sectors through proper regulation. New Jersey's reality is no vagary; even after denial from the highest court in the land, New Jersey legislators will continue to fight PASPA regulations, until they come up with a novel idea to circumvent the Third Circuit's ruling and one which is legally sound in federal law.¹⁶

14. Goldstein, *supra* note 12, at 372 (explaining that the Arizona State University basketball point-shaving scheme by point guard Stevin "Hedake" Smith was uncovered when Las Vegas bookmakers noted irregular betting patterns on Arizona State games and reported it to the FBI).

15. James Surowiecki, *A Call to Action*, NEW YORKER (Feb. 11, 2013), http://www.newyorker.com/talk/financial/2013/02/11/130211ta_talk_surowiecki.

16. S. 2250, 216th Leg., Reg. Sess. (N.J. 2014), *available at* http://www.njleg.state.nj.us/2014/Bills/S2500/2250_I1.PDF.