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## US: Is the New Jersey Sports Gambling Law out of bounds?

The State of New Jersey's recently passed Sports Gambling Law is set to legitimise sports betting inside the state, but the bill faces a challenge from a group of American professional and collegiate sports leagues, who argue that it is in violation of the Professional and Amateur Sports Protection Act. Griffin Finan, an Associate at Ifrah Law, looks at the details of this challenge and its likelihood of success.

The State of New Jersey recently passed a law that would legalise sports betting within the state's borders, but several major entities in the world of US sports went to court this summer, claiming that the state has gone out of bounds.

The four major American professional sports leagues, as well as the National Collegiate Athletic Association, the governing body of college sports in America, have sued the state in federal court over its Sports Gambling Law, signed into law by Governor Chris Christie this past January. Their principal claim is that the law violates the Professional and Amateur Sports Protection Act (PASPA), a 1992 federal statute that imposes a broad ban on sports betting.

The state law, the Sports Gambling Law, was passed after New Jersey voters last year approved by a wide margin an amendment to the state constitution that allowed sports betting in New Jersey casinos and racetracks. Previously, the state constitution prohibited wagering on all professional and amateur sporting events, except for horse racing.

The Sports Gambling Law allows gambling on all major professional sporting and college athletic events. Collegiate sporting events involving New Jersey colleges, and all sporting events, professional or collegiate, taking place in the state are excluded. Regulations for the licence and operation of sports gambling in the state's Atlantic City casinos and horse racetracks throughout the state are expected to be finalised soon. State officials have stated that they could begin awarding licenses on 9 January, 2013.

New Jersey views the law as a way to significantly increase state revenue, building upon the state's existing gambling industry. State Senator Raymond Lesniak, who has spearheaded efforts to legalise sports gambling in the state, cited a study that concluded that legalising sports gambling in New Jersey would generate as much as \$120 million each year and add thousands of jobs in the state. Under the law, half of the revenue generated would be allocated to gambling treatment programs.

The sports organisations, however, contend that the law stands in direct conflict with PASPA, the 1992 federal law. PASPA prohibits states from authorising sports betting unless the individual state had its own sports betting scheme in place between 1976 and 1990. Four states – Nevada, Oregon, Montana, and Delaware – were granted an exemption because they had a sports betting scheme in place at the time, but only Nevada allows direct betting on sporting events. At the time that PASPA was passed, New Jersey had a one-year window to secure an exemption by legalising sports betting in the state, but the legislature failed to act.

In the lawsuit, the sports leagues also contend that 'gambling on amateur and professional sports threatens the integrity of those sports' and would also 'irreparably harm amateur and professional sports by fostering suspicion that individual plays and final scores of games may have been influenced by factors other than honest athletic competition.' In their complaint, the leagues focus on harm to their 'reputation and goodwill' and do not allege any specific economic harm that could result from the New Jersey law. The sports leagues have also asked the court for a preliminary injunction to maintain the status quo until the court is able to

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rule on the merits of their claim.

PASPA has been previously challenged in federal court and has been upheld. However, the previous challenges have presented different issues than the ones raised in this case.

The leagues have a major hurdle to overcome before their arguments can even be heard. In order to bring their lawsuit in federal court, the sports leagues must show that they have 'standing,' a constitutional requirement in US federal courts. Standing essentially involves the question of whether the sports leagues are being harmed or will imminently be harmed by the law.

In court papers, New Jersey has argued that the leagues have failed to allege that they will suffer a concrete injury that is fairly traceable to the New Jersey law. New Jersey has argued that the organisations' allegations that 'the proliferation of sports gambling threatens to harm their reputation and goodwill' and the 'character and integrity of their respective sporting events' are insufficient to meet the required threshold of imminent harm. The state's arguments focus on how the leagues are only generally affected and have failed to show a 'particularized' injury.

The leagues have replied that the interest required for constitutional standing is only an 'identifiable trifle' and that it is enough that they are the ones who run many of the sporting events, such as NFL football games or NCAA basketball tournaments, that the New Jersey laws would permit to be the subject of wagers.

New Jersey argues that given the proliferation of the sports betting industry, the harms that the leagues claim would flow from the new gambling law would occur in any case – regardless of the law or of any relatively modest increase in legal sports betting that it might cause. New Jersey points out that the sports betting industry is estimated to be worth \$380 billion annually, with over \$3 billion wagered in Nevada casinos last year alone. New Jersey has stated in court papers that 'in light of the nearly half-trillion dollar pre-existing market in sports gambling, the Sports Organizations' allegation that they will suffer some additional reputational injury from a relatively miniscule increase in legal, tightly regulated sports gambling in New Jersey is simply not credible.'

Despite the current prevalence of sports betting, legal and illegal, the sports leagues are enjoying widespread success. Major League Baseball had revenues over \$7 billion in 2011, up from \$1.2 billion in 1992, and in the past 28 years, the National Basketball Association has enjoyed a 30-fold increase in revenue. The National Football League collected \$9.3 billion in revenue last year, even after a work stoppage cancelled pre-season games and threatened to cancel the regular season.

The leagues have also argued that PASPA itself gives them standing to sue because it creates a cause of action to enjoin violations of the statute by permitting a suit to be brought by either the US attorney general or by a 'professional sports organization or amateur sports organisation whose competitive game is alleged to be the basis of such violation.'

New Jersey has countered that PASPA provides the leagues with a cause of action but it does not obviate the need for the leagues to show a concrete injury. The state has argued that 'the 'proper analysis of standing' . . . focuses on whether the plaintiff suffered an actual injury, not on whether a statute was violated.'

New Jersey has also pointed out that the US Department of Justice told Congress when PASPA was under consideration in the early '90s that there were 'federalism issues' raised by the statute. The DOJ noted that it was 'particularly troubling that [PASPA] would permit enforcement of its provisions by sports leagues.'

If this law had been challenged by the Department of Justice and not the sports leagues, its projected outcome might be quite different. The DOJ does not have to show that it would suffer harm from the law, as the sports leagues must. The DOJ could have simply challenged the New Jersey law as in contravention of federal law. However, the DOJ has chosen not to intervene in this case and challenge the New Jersey law. Thus, if the organisations' challenge to the law fails, there are no remaining hurdles for New Jersey to implement the law.

It will be difficult for the organisations to prove to the court that they meet the standing requirement to bring the case – but if they are able to do so, they will still struggle to argue that PASPA is constitutional. New Jersey's strongest argument will be that PASPA violates the Tenth Amendment of the US Constitution, which reserves to the states and the people all powers 'not delegated to the United States by the Constitution, nor prohibited by it to the states.'

A state's decision about how to raise revenue has consistently been viewed by the courts as one power reserved for the states, an issue that was raised as a concern by the Department of Justice in its review of PASPA at the time the bill was passed. The DOJ noted that 'determinations of how to raise revenue have typically been left to the states.' The New Jersey law is designed in a way that all bets have to be

placed within the state's geographical borders, which avoids the issue of money travelling across interstate lines and allowing the federal government to regulate it.

New Jersey has hired former United States Solicitor General Ted Olson to defend the law. The sports leagues have hired Paul Clement, also a former Solicitor General, to challenge the law.

The parties are currently filing briefs over motions to dismiss that should be decided in the upcoming months. Oral arguments on the motions will be heard on December 18. If these motions are not granted, the case could proceed to trial, probably in the next year. It seems likely that this case will be decided in favor of New Jersey because the sports leagues will be unable to show sufficient injury to have standing to challenge the law in federal court. If New Jersey is successful in challenging PASPA, that may encourage other states to explore similar legislation creating or expanding sports betting.

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