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SPORTS BETTING CASE

National Collegiate Athletic Association, et al. v. Governor of the State of New Jersey, et al.

The future of sports betting in New Jersey is still very much alive. In order to understand the legal twists and turns in the sports betting case, it is necessary to understand the positions which have been taken in the Federal Courts and to clearly read and understand the opinion rendered by the Third Circuit Court of Appeals in National Collegiate Athletic Association, et al. v. Governor of the State of New Jersey, et al. regarding PASPA, the Professional and Amateur Sports Protection Act of 1992 (PASPA), 28 U.S.C. Sec. 3701 *et seq.* Some of you may have read stories about the new legislative proposal by Senator Ray Lesniak, an ardent supporter of the racing and casino industry and the strongest proponent in the fight to legalize sports betting at race tracks and casinos. Senator Lesniak has introduced a bill in the Senate and Assemblyman Ron Dancer has introduced a bill in the Assembly which would pave the way for legalized sports betting at New Jersey racetracks and casinos in exactly the manner in which the Third Circuit Court of Appeals expressed in their opinion; thereby, allowing sports betting to go forward without violating PASPA. Indeed, the United States Attorney's Office, who represented the Federal Government in the litigation at

every stage before the Court including briefs and oral argument, took the position that New Jersey could proceed with sports betting by repealing the prohibition currently enacted as law.

The interpretative statement contained in the proposed legislation is very clear. It states the following:

This bill is in response to the decision of the United States Court of Appeals for the Third Circuit (the Court) in *National Collegiate Athletic Association, et al. v. Governor of the State of New Jersey, et al.*, C.A. No. 13-1713, 1714, 1715, dated September 17, 2013, wherein the Court in interpreting the Professional and Amateur Sports Protection Act of 1992 (PASPA), 28 U.S.C. Sec. 3701 *et seq.*, stated that it does “not read PASPA to prohibit New Jersey from repealing its ban on sports wagering.” Third Circuit Decision at 73. The Court further stated that “it is left up to each state to decide how much of a law enforcement priority it wants to make of sports gambling, or *what the exact contours of the prohibition will be.*” Decision at 78-79 (emphasis added). Moreover, the United States in its brief submitted to the Supreme Court of the United States in opposition to petitions for writs of certiorari in the above-referenced case wrote that “PASPA does not even obligate New Jersey to leave in place the state-law prohibitions against sports gambling that it had chosen to adopt prior to PASPA’s enactment. To the contrary, *New Jersey is free to repeal those prohibitions in whole or in part.*” United States Brief to the Supreme Court in Opposition to Petitions for Writs of Certiorari, dated May 14, 2014, at 11 (emphasis added).

Accordingly, under this bill, New Jersey would decide that its “exact contours of the prohibition” against sports wagering should be to repeal New Jersey’s prohibitions against sports wagering “at casinos or gambling houses in Atlantic City or at current running and harness horse racetracks in this State.”

Therefore, the proposed law states the following:

1. All prohibitions, including, but not limited to, Chapter 37 of Title 2C of the New Jersey Statutes, against wagering on the results of any professional, college, or amateur sport or athletic event, are partially repealed to the extent they would apply to such wagering at casinos or gambling houses in Atlantic City or at current running and harness horse racetracks in this State.
2. This act shall take effect immediately.

Although the legal counsel for the Governor, the New Jersey Thoroughbred Horsemen's Association, Senate President Sweeney, and Assembly Speaker Oliver articulated a number of legal arguments challenging the constitutionality of PASPA, the Federal Government and the leagues utilized a tactic stating that PASPA did not offend the Constitution by prohibiting sports betting in all but four states because, as the Solicitor General writes in his brief before the Supreme Court, "PASPA does not even obligate New Jersey to leave in place the state-law prohibitions against sports gambling that it had chosen to adopt prior to PASPA's enactment. To the contrary, New Jersey is free to repeal those prohibitions in whole or in part." No provisions of PASPA required states to keep prohibition against sports gambling on the books.

The Third Circuit Court of Appeals, in affirming the United States District Court by a two to one majority states:

"But we do not read PASPA to prohibit New Jersey from repealing its ban on sports wagering. Under PASPA, "[i]t shall be unlawful for . . . a government entity to sponsor, operate, advertise, promote, license, or authorize by law or compact" a sports wagering scheme . . . Nothing in these words requires that the state keep any law in place. All that is prohibited is the issuance of gambling "license[s]" or the affirmative "authoriz[ation] by law" of gambling schemes.

Thus, Senator Lesniak and Assemblyman Dancer, in their respective legislation seek passage of a methodology already articulated by the Third Circuit Court of Appeals, which does exactly what the Federal Government said New Jersey is permitted to do. I would urge everyone to support the efforts of Senator Lesniak and Assemblyman Dancer. I anticipate that those bills will be passed by the Senate and Assembly in the near future, and we must urge Governor Christie to sign the new law into effect as soon as it reaches his desk.

