

# Industry Alert - SCOTUS PASPA Decision

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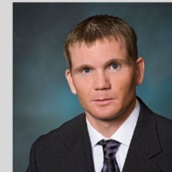
Early Monday morning, the United States Supreme Court ended a nearly six-year long legal battle regarding the constitutionality of the Professional and Amateur Sports Protection Act (“PASPA”). In doing so, the Court held that PASPA violated the 10th Amendment’s “anti-commandeering” principle, which provides that if the Constitution does not give power to the federal government or take power away from the states, that power is reserved for the states or the people themselves. This ruling opens the floodgates for states and tribes to regulate sports wagering. In fact, several states have already passed or drafted legislation in anticipation of this decision, and expect to have sports wagering operations before the next NFL football season begins.

Justice Alito authored the majority opinion, joined by Chief Justice Roberts, and Justices Kennedy, Thomas, Kagan, and Gorsuch. The Court held that “PASPA’s anti-authorization provision unequivocally dictates what a state legislature may or may not do,” and further, there is no distinction between “compelling a State to enact legislation or prohibiting a State from enacting new laws.” Rather, the basic principle of anti-commandeering applies in each case—and Congress cannot issue a “direct order to state legislatures.”

Additionally, the Court held that no part of PASPA could be salvaged as it was unconstitutional in its entirety. The Court reasoned that no provision could be severed from the provisions directly at issue—the anti-authorization provision and the prohibition on state licensing of sports gambling schemes. The remaining provisions in PASPA—(1) prohibiting states from licensing or operating sports gambling schemes, (2) prohibiting private actors from operating sports gambling schemes “pursuant to” state law, and (3) prohibiting advertising of sports gambling—were too closely intertwined with the main provisions at issue—and could not survive independently.

This decision ushers in the next gold rush for the U.S. gaming industry. However, important hurdles remain.

First, interstate sports wagering remains unlawful under the federal Wire Act. Currently, the Wire Act prohibits the knowing use of a wire communication facility to transmit in interstate or foreign commerce bets or wagers, information assisting in placing certain bets or wagers or any



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information that entitles the recipient to money or credit resulting from such a wager, on any sporting event or contest. Accordingly, until the Wire Act is repealed or amended, sports betting will only be conducted on an intrastate basis in those states that authorize sports wagering. As a result, each operator will need to comply with each jurisdiction's requirements, whether regulatory or otherwise, which itself presents a host of issues. Most notably, depending on how uniform these requirements are from state to state, a multi-jurisdictional operator may have to develop an independent infrastructure and product in each jurisdiction to conduct its sports wagering operations.

Second, each jurisdiction will have different stakeholders, whose influence will vary from state to state. In addition to the professional leagues, and their much discussed "integrity fees," this includes the commercial/tribal gaming operators, state lotteries, local/state governments, trade associations—just to name a few. Similar to New Jersey's implementation of internet gaming, which requires any internet operator to partner with a land-based operator, the land-based operators who previously spent considerable capital to develop land-based infrastructure will likely demand similar partnerships for sports wagering if a third-party operator enters their marketplace. There will be significant lobbying and advocating in every jurisdiction by the stakeholders, to maximize the potential benefits that each would enjoy.

As noted above, several jurisdictions have already started the process. For instance, state legislatures in Delaware, Mississippi, New Jersey, and West Virginia have been actively drafting legislation in anticipation of today's ruling. Outside of commercial gaming, there are also massive opportunities in tribal gaming jurisdictions. With typically less barriers to entry and a very strong market share, sports betting opportunities in such jurisdictions could prove very fruitful.

Although the stakeholders and regulatory environment may vary from state to state—certain regulatory components, e.g., standards to ensure integrity, are fundamental to the make-up of an effective sports betting regulatory regime. So, while the regulations may vary based on the particular policy goals in each jurisdiction, the universal policy goal should be ensuring the operations are conducted in a fair and honest manner, and that the integrity of the industry is vital to its success. Without an effective regulatory framework, any short-term success will be followed by increasing issues that will weaken public confidence and support for the industry.

In short, while the industry has been gearing up for this decision for several months, if not years, the possibility for expansion is now real. As each potential jurisdiction develops its regulatory framework, licensing requirements, and addresses ancillary issues, many will look to Nevada—the only jurisdiction that has operated widespread legal sports wagering for the past 30+ years—for guidance.

Lewis Roca Rothgerber Christie LLP's gaming practice has been at the center of these issues in Nevada, nationally and internationally. If you need assistance, whether it is providing advice, analysis, and/or evaluation of the numerous opportunities, regulatory frameworks, and issues that will arise in the coming years as legalized sports wagering expands, please do not hesitate to contact Karl Rutledge at [KRutledge@lrrc.com](mailto:KRutledge@lrrc.com) or Glenn Light at [GLight@lrrc.com](mailto:GLight@lrrc.com).