

No gambling allowed: the ban on sports gambling in the United States

by Professor Paul Anderson¹

In many countries around the world, sports gambling or betting activities are supported by state or federal governments and the proceeds can then be used to fund the sports enterprise. This supportive scheme is not found in the United States, as an extensive framework of federal law virtually prohibits any form of sports gambling.

This article will provide a current analysis of the state of the U.S. federal prohibition of sports gambling while also acknowledging recent measures in Congress and the states to potentially modify this complete ban.

General gambling laws

The regulation of gambling in the United States begins with federal law. Congress has developed an extensive scheme of laws that are comprehensive, often seem redundant and are rarely applied by courts in the sports context.

Federal regulation of gambling in the United States began in 1890 with the Federal Anti-Lottery Act.² Modified initially in 1948, the Act bans the transmission of lottery-related materials and parapherna-

lia within interstate commerce.³ In 1951, Congress passed the Gambling Devices Transportation Act, which makes it unlawful to knowingly transport a gambling device to a state where that device is prohibited by state law.⁴ In 1959, Congress then passed the Gambling Ship Act, which prohibits offshore gaming except on certain voyages beyond the territorial waters of the United States.⁵ However, it was not until the enactment of three laws in 1961 that the federal gambling prohibition was extended to sports gambling.

Although the Wire Communications Act (Wire Act) is not solely sport specific, in that it prohibits individuals from using a phone to receive bets or send gambling information, it was initially created due to concerns that individuals outside the state of Nevada (the only U.S. state with legalized sports gambling) were making illegal sports bets over the phone.⁶ In relation to sport the Act also criminalizes “wagers on any sporting event or contest” made over any wire communication (any form of communication that can be made with the use of a wire, cable or other form of transmission).⁷ As a result, this prohibits sports betting through telephone, e-mail, text message, cellphone or any other similar technology. The Transportation in Aid of Racketeering Enterprises Act (Travel Act) supplements this prohibition by extending it to any form of travel or mail (including mail sent online) through interstate and foreign commerce.⁸ In addition, the Interstate Transportation of Wagering Paraphernalia Act specifically criminalizes the transportation of paraphernalia related to “wagering pools with respect to sporting events”.

As a result, since 1961 it has been illegal for a U.S. citizen to engage in sports gambling. In 1970, the Illegal Gambling Business Act added federal prohibitions on gambling now related to running illegal gambling businesses,¹⁰ and as part of a new federal regulatory scheme aimed at

controlling organized crime, the Racketeer Influenced and Corrupt Organizations Act was passed focusing on organized criminal activities, such as gambling and bookmaking.¹¹

Over the years Congress has enacted several other laws that in some way impact gambling. For example, the Bank Records and Foreign Transactions Act of 1982 requires “financial institutions” and casinos outside of Nevada to report all currency transactions greater than \$ 10,000 as a means of detecting money laundering.¹² Sports betting transactions that exceed this amount are prohibited. Enacted in 1986, the Money Laundering Control Act criminalizes money laundering activities, activities often connected to extensive sports gambling schemes.¹³ The Illegal Money Transmitters Act of 1992 criminalizes the transfer of money that could be used as part of a sports gambling scheme.¹⁴ And in 1994 the Federal Anti-Lottery Act was modified to allow states to create their own lotteries. Many of these state-level lotteries have been used to fund the construction of sports facilities.

Supplementing these laws are two more that allow limited forms of gambling. The Interstate Horseracing Act supports state-specific gambling and wagering connected with horse racing,¹⁵ while the Indian Gaming Regulatory Act allows Indian tribes to control their own gaming activities,¹⁶ like slot machines and bingo, which might otherwise be illegal.

Finally, in 2006, Congress enacted the Unlawful Internet Gambling Enforcement Act (UIGEA), which prohibits the transfer of funds from a financial institution to an internet gambling website.¹⁷ The Act specifically defines a bet or wager as

“(A) [...] the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance,

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² Act of September 19, 1890, ch. 908, § 1, 26 State. 465.

³ 18 U.S.C. § 1301, *et seq.* (2012).

⁴ 15 U.S.C. § 1171, *et seq.* (2012).

⁵ 18 U.S.C. § 1081, *et seq.* (2012).

⁶ 18 U.S.C. § 1084 (2012).

⁷ *Id.* at § 1081 & § 1084(a).

⁸ 18 U.S.C. § 1952 (2012).

⁹ 18 U.S.C. § 1953 (2012).

¹⁰ 18 U.S.C. § 1955 (2012).

¹¹ 18 U.S.C. § 1962 (2012).

¹² 31 U.S.C. § 5311, *et seq.* (2012).

¹³ 18 U.S.C. § 1956 (2012).

¹⁴ 18 U.S.C. § 1960 (2012).

¹⁵ 15 U.S.C. § 3001, *et seq.* (2012).

¹⁶ 25 U.S.C. § 2701, *et seq.* (2012).

¹⁷ 31 U.S.C. § 5361, *et seq.* (2012).

upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

(B) [...] the purchase of a chance or opportunity to win a lottery [including a sports lottery] or other prize (which opportunity to win is predominantly subject to chance);

(C) [...] any scheme of a type described in [the Professional and Amateur Sports Protection Act of 1992];

(D) [...] any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering; and [...]

While the UIGEA law does not specifically restrict internet gambling it extends the provisions created under the other federal laws already discussed to gambling on the internet. In addition, by restricting financial institutions from accepting funds related to internet gambling, it seeks to end the activity altogether. Interestingly in relation to sports, the law also specifically exempts from its definition of bet or wager participation in some forms of fantasy sports online.¹⁸

Sport laws

Beyond this detailed framework outlawing all forms of gambling, two federal laws more specifically impact the sports industry.

The Bribery in Sporting Contests Act of 1964, though not specifically related to gambling, is still important for this analysis as it makes it a crime to bribe or attempt to bribe an individual attempting to influence the outcome of a sporting event.¹⁹ Of particular interest, the Act defines a “sporting contest” as “any contest in any sport, between individual contestants or teams of contestants (without re-

gard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence”.²⁰ This law is important in an understanding of the regulation of gambling because many gambling schemes involve bets placed on the outcome of a sporting event.

More important to this analysis, the Professional and Amateur Sports Protection Act (PASPA) prohibits a person or government entity, including a U.S. state, from operating or authorizing the operation of any betting scheme based on “competitive games in which amateur or professional athletes participate”.²¹ Not passed until 1992, the history of PASPA shows that Congress was cognizant of state governments who wanted to use sports gambling in some way or another to raise state funds. However, as one Senator remarked, by passing the Act Congress made clear that:

“State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message [...] If the dangers of State-sponsored sports betting are not confronted, the character of sports and youngsters’ view of them could be seriously threatened.

Sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling. Sports gambling raises people’s suspicions about point-shaving and game-fixing. Where sports gambling occurs, fans cannot help but wonder if a missed free throw, dropped fly ball, or a missed extra point was part of a player’s scheme to fix the game. If sports betting spreads, more and more fans will question every coaching decision and official’s call. All of this puts undue pressure on players, coaches and officials. State-sponsored sports betting could change forever the relationship between the players and the game and between the game and the fans. Sports would become the gamblers’ game and not the fans’ game.”²²

PASPA specifically covers the following entities:

“(1) the term “amateur sports organization” means –

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or
(B) a league or association of persons or governmental entities described in subparagraph (A),

(2) the term “governmental entity” means a State, a political subdivision of a State, or an entity or organization, [...] that has governmental authority within the territorial boundaries of the United States, [...],

(3) the term “professional sports organization” means –

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or
(B) a league or association of persons or governmental entities described in subparagraph (A),

(4) the term “person” has the meaning given such term in section 1 of title 1, and

(5) the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.”²³

It then defines illegal sports gambling as:

“It shall be 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.”²⁴

As a result, any form of gambling on sporting events is illegal in the United States, except in the four states (Nevada, Oregon, Montana and Delaware) that had state statutes allowing some form of sports

¹⁸ *Id.* §5362(I)(E)(ix).

¹⁹ 18 U.S.C. §224 (2012).

²⁰ *Id.* at §224(C(2)).

²¹ 28 U.S.C. §3701, *et seq.* (2012).

²² Professional and Amateur Sports Protection Act, Proceedings and Debates of the 102nd Congress, Second Session, 138 Cong. Rec. S17434-01, Oct. 7, 1992.

²³ 28 U.S.C. §3701.

²⁴ *Id.* §3702.

gambling prior to PASPA's enactment.²⁵ As a result of this exception, Nevada continued to offer legalized sports wagering, Oregon and Delaware continued their sports lotteries and Montana created a sports lottery. Still, even this limited exception has been the subject of debate as many states have attempted to enact new forms of sports gambling in recent years.

Recent congressional initiatives

During its 2011-2012 term Congress has put forth several bills that would further regulate gambling, some with specific reference to sports gambling.

Introduced 17 March 2011, because there "is no Federal or State regulatory regime in place to protect United States citizens who choose to engage in this interstate activity, or to oversee operators to establish and enforce standards of integrity and fairness" the Internet Gambling Regulation, Consumer Protection, and Enforcement Act's main goal is to create a federal licensing program for all internet gambling activities.²⁶ This bill specifically prohibits most forms of sports betting on the Internet.

Three months later on 24 June 2011 the House introduced the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act, in many ways supplementing H.R. 1174, and strengthening the UIGEA to allow further federal control of internet gambling.²⁷ The bill makes clear that the licensing program

it proposes will not relate to betting on sporting events, which is still illegal under federal law.

Supplementing the creation of a licensing program as proposed in the first two bills, on 16 June 2011 the House introduced the Internet Gambling Regulation and Tax Enforcement Act of 2011, which would modify the Internal Revenue Code imposing taxes on licensed internet gambling activities.²⁸

More specific to sports, the Sports Gambling Opportunity Act of 2012, introduced 23 January 2012, would amend PASPA and exempt "a lottery, sweepstakes, or other betting, gambling, or wagering scheme in a State authorized by such State by an applicable statute", thereby allowing more states to pass their own laws allowing forms of sports gambling.²⁹ Given that at least nine states are currently discussing legislation related to legalized forms of sports gambling this bill may gain support in the future. Moreover, keep in mind that a member of the House of Representatives from New Jersey proposed this bill, and New Jersey has recently introduced many state bills meant to allow the state to offer legalized sports betting. Perhaps it is not surprising that the same Representative proposed the New Jersey Betting and Equal Treatment Act of 2012, which would specifically extend this exemption to New Jersey.³⁰

Even though these last bills provide evidence that Congress may be moving toward legalizing some forms of sports gambling in the United States, none have yet to make it out of committee. On 23 June 2011 the House also introduced the Comprehensive Problem Gambling Act of 2011 to expand federal efforts to combat problem gambling.³¹ This bill calls on professional sports organizations to support these efforts, and calls on the government to create an advertising campaign warning of the dangers of gambling at sporting events.

State gambling laws and recent initiatives

In addition to this detailed federal regulatory scheme, each state has also enacted specific legislation prohibiting forms of gambling. Many state regulations of gambling focus on horse and dog racing and do not specifically discuss sports betting perhaps reflecting PASPA's preexisting federal prohibition of sports gambling.

However, this is the area where there is the highest potential for change. Beginning in 2011 and continuing in 2012, California, Delaware, Maryland, Minnesota, New York, Oklahoma, Rhode Island and South Carolina began reviewing proposals to expand legal gambling or lotteries associated with sports betting.

The state of New Jersey has taken this one step further. On 17 January 2012 the New Jersey legislature passed a bill to permit wagering on professional and collegiate sports events at casinos and racetracks.³² Concomitant with this new law, the legislature also proposed a constitutional amendment specifying that proceeds from sports betting will first be used for the disabled,³³ and another amendment to allow sports betting in certain casinos if the federal ban on sports wagering is ever changed.³⁴ In addition, keep in mind that a member of the U.S. House of Representatives from New Jersey also proposed the New Jersey Betting and Equal Treatment Act of 2012, which would specifically extend the exemption found in PASPA to New Jersey.³⁵ The Rhode Island and New York legislatures have also proposed that if the federal ban on sports gambling is lifted, they would legalize sports gambling.³⁶

Whether these state specific attempts to legalize forms of sports gambling will survive legal review is questionable at best. The state of Delaware, one of the states with a limited exemption from PASPA, provides a good case study of this problem. The Delaware Constitution prohibits all forms of gambling subject to limited exceptions not including sports gambling.³⁷ However, in 2009, the state passed a Sports Lottery Act that authorized sports betting and gaming at existing and future facilities.³⁸ The state was immediately sued by each U.S. professional sports league and the NCAA; all claiming the Delaware law violated PASPA.³⁹ The United States Court of Appeals for the Third Circuit found that "PASPA unmistakably prohibits state-sponsored gambling", and that Delaware can only implement a sports wagering scheme "to the extent that the scheme was conducted previously", and so falls within the exception provided in federal law.⁴⁰

On 28 June 2012 the Delaware legislature passed the Delaware Gaming Competitiveness Act of 2012.⁴¹ One of the purposes of this Act was to "Enhance the offerings of the Delaware Lottery by allowing it to develop keno and the sports lottery

²⁵ *Id.* §3704.

²⁶ H.R. 1174 (2011).

²⁷ H.R. 2366 (2011).

²⁸ H.R. 2230 (2011).

²⁹ H.R. 3797 (2012).

³⁰ H.R. 3809 (2012).

³¹ H.R. 2334 (2011).

³² P.L. 2011, Chapter 231, Assembly No. 4385; enacted as N.J. Stat. § 5:12A-1 (2012).

³³ 2012 NJ A.C.R. 113 (Feb. 6, 2012).

³⁴ 2012 NJ A.C.R. 125 (Feb. 21, 2012).

³⁵ H.R. 3809.

³⁶ 2011 NY A.B. 9722 (last action 29 March 2012) and 2011 RI S.B. 2962, Senate Bill 2962 (12 June 2012; passed Senate, to House).

³⁷ Del. Const. art II, § 17 (2012).

³⁸ Delaware Sports Lottery Act, 29 Del. C. § 4801 *et seq.* (2010).

³⁹ OFC Comm. Baseball et al. v. Markell & Lemons, 579 F.3d 293 (3rd Cir. 2009), *cert. denied*, Markell v. OFC Comm. Baseball, *et al.*, 130 S. Ct. 2403 (2010).

⁴⁰ *Id.* at 303.

⁴¹ 2011 DE H.B. 333 (2012).

in a manner that promotes additional convenience and choices for Delawareans."⁴²

Whether this new law will withstand judicial scrutiny remains to be seen. The most recent judicial decision regarding the continued validity of PASPA's federal prohibition of sports gambling involved a challenge to the law brought by an electronic gaming website.⁴³ Finding that the plaintiff had no standing to bring the case, the court dismissed their claim, also noting that the only party that could bring such a challenge to PASPA would be the state itself.⁴⁴

Conclusion

Currently, 46 of the states within the United States prohibit every form of sports gambling. 3 states have very limited forms of legalized sports gambling. Nevada remains the only state with viable legalized forms of sports gambling.

This situation may change in coming years. Perhaps as a result of the economic downturn of the past few years several states are proposing changes to their own laws that would legalize some forms of gambling, seemingly in an effort to raise

funds for various laudable purposes. These states clearly support changing the twenty year federal ban on sports gambling.

Regardless of what these states do though, real change will have to come from Congress and a repeal of parts of the federal regulatory scheme prohibiting gambling, or from the judiciary, which has shown no inclination to overturn the federal ban on sports gambling. Until that time, states will continue to miss out on potential revenues that could be created from oversight of sports gambling activities.

⁴² *Id.* §4801(b)(4).

⁴³ *Interactive Media Entertainment & Gaming Association*, 2011 WL 802106 (D. NJ 2011).

⁴⁴ *Id.* at *10.