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New Jersey's Appeal to Legalize Sports Betting Await SCOTUS Approval

BY [JACOB TABMAN](#)/ ON JANUARY 24, 2017

The state of New Jersey continues to push for the legalization of sports betting within its borders in the case *Governor Christopher J. Christie, et al. v. National Collegiate Athletic Association, et al.* The latest appeal by New Jersey currently awaits the United States Supreme Court's approval.¹ As of now, all of New Jersey's appeals have been denied.² Maybe, just maybe, New Jersey will finally be dealt a winning hand.

Billions of dollars are wagered on sporting events each year.³ A staggering 47 million people bet on the Super Bowl alone.⁴ Curiously, Nevada is the only state where sports betting is legal.⁵ As a result, billions of dollars are wagered illegally each year.⁶ The Professional and Amateur Sports Protection Act of 1992 ("PASPA") prohibits sports gambling in all states besides Nevada.⁷ In 2014, New Jersey partially repealed one of its state laws to permit sports betting at racetracks and casinos. However, it faced strong resistance from the major professional sports leagues, the NCAA, and the Department of Justice.⁸ The courts have consistently ruled against New Jersey, preventing New Jersey from repealing its state law and thus its attempt to legalize sports betting.⁹

The most recent loss for New Jersey was during the summer of 2016, where an *en banc* Third Circuit Court of Appeals ruled 9 to 3 against New Jersey.¹⁰ In its appeal to the United States Supreme Court, New Jersey argued, in its reply brief, that the ability to repeal a state law falls solely within the authority of the State and that Congress may not interfere.¹¹ PAPSAs are federal acts, and the U.S. Government, by forcing the states to abide by and implement PAPSAs, threatens the anti-commandeering doctrine.¹² The opposition, however, argues that PAPSAs are constitutional and do not infringe upon states' rights.¹³ Accordingly, the major professional sport leagues and the NCAA contest that New Jersey's attempts to legalize sports betting is in violation of PAPSAs.¹⁴

New Jersey has recently received support from several other states. The West Virginia Attorney General filed an amicus brief in support of New Jersey's position, arguing that *en banc* Third Circuit "usurps states' rights by maintaining the federal ban on sports betting."¹⁵ West Virginia's amicus brief was then joined by Arizona, Louisiana, Mississippi and Wisconsin. Of most concern to the states is the notion of unconstitutional commandeering.¹⁶ The states take issue with Congress forcing the states to apply federal policy against sports betting.¹⁷

In order to have its appeal granted, New Jersey will need a minimum of four Supreme Court Justices to elect to hear the case.¹⁸ The justices will meet this Friday, January 13 to discuss the appeal and decide whether to hear the case.¹⁹ The odds are stacked against New Jersey however, for the Supreme Court only accepts a small fraction of the appeals it considers.²⁰

New Jersey is also contemplating a new way of legalizing sports betting. In October, a new bill was proposed that would fully repeal New Jersey's ban against sports betting.²¹ The bill, NJ A4303, "attempts to abide by the prescription of the U.S. Court of Appeals for the Third Circuit, which has intimated to New Jersey that its prior laws ran afoul of PASPA, but that a full repeal would not do so."²² It is currently unclear how much support the bill will receive from New Jersey lawmakers, yet it nonetheless offers New Jersey another roll of the dice.

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[1] Dustin Gouker, New Supreme Court Filings Mean New Jersey Sports Betting Appeal Nears Its End Game, Legal Sports Report (Dec. 28, 2016 11:04 PST) <http://www.legalsportsreport.com/12489/nj-sports-betting-case-update/> "The latest filings in the New Jersey sports betting case represent the last steps before the US Supreme Court decides whether to hear the state's appeal".

[2] Dustin Gouker, US Pro Sports Leagues, NCAA Oppose NJ Sports Betting Appeal To US Supreme Court, Legal Sports Report (Dec. 14, 2016 13:42 PST) <http://www.legalsportsreport.com/12395/pro-leagues-ncaa-oppose-nj-sports-betting-appeal/> "The state has lost at every step along the way in two attempts to legalize sports betting. The latest defeat came this summer when an en banc panel of the Third Circuit ruled 9-3 against New Jersey."

[3] Gillian Spear, Think sports gambling isn't big money? Wanna bet?, NBC NEWS (July 15, 2013 4:16 AM ET) <http://www.nbcnews.com/news/other/think-sports-gambling-isnt-big-money-wanna-bet-f6C10634316> "According to the Nevada Gaming Commission, \$3.2 billion was wagered in sports bets in the state's casinos in 2011."

[4] Jonathan Wood & Michelle Minton, Constitutional Stakes Are High In New Jersey's Sports-Gambling Case, The Daily Caller (Dec. 09, 2016 2:23PM) <http://dailycaller.com/2016/12/09/constitutional-stakes-are-high-in-new-jerseys-sports-gambling-case/>

[5] <http://www.legalsportsreport.com/10951/new-jersey-loses-sports-betting-case-again/> "PASPA is the law that outlaws betting on sports in all states except for Nevada..."

[6] Dustin Gouker, New Jersey Loses In Sports Betting Case Once Again, As Court Rejects Appeal, Legal Sports Report (Aug. 09, 2016 7:23 PST) <http://www.nbcnews.com/news/other/think-sports-gambling-isnt-big-money-wanna-bet-f6C10634316> "Between \$60-70 billion is illegally wagered on college football each year according to CNBC."

[7] See supra, note 4 "With the exception of Nevada, sports gambling is mostly banned in the United States."

[8] Dustin Gouker, New Jersey Sports Betting, Legal Sports Report <http://www.legalsportsreport.com/nj/>

[9] See supra, note 2 "The state has lost at every step along the way in two attempts to legalize sports betting. The latest defeat came this summer when an en banc panel of the Third Circuit ruled 9-3 against New Jersey."

[10] Id.

[11] See supra, note 1 The State of New Jersey arguing that "Congress lacks the power to compel a State to prohibit acts under its own state laws. If all a State does is narrow its own state-law prohibitions, there is nothing Congress constitutionally may preempt."

[12] See supra, note 4

[13] See supra, note 2

[14] Id.

[15] Dustin Gouker, Five States Join New Jersey In Sports Betting Case With Supreme Court Filing, Legal Sports Report (Nov. 14, 2016 13:41 PST) <http://www.legalsportsreport.com/12101/five-states-join-new-jersey-sports-betting-case-in-favor/>

[16] Id.

[17] Id.

[18] See supra, note 1 "Four of the justices would have to vote to hear the case."

[19] Id.

[20] Id. "SCOTUS hears only a small percentage of the appeals made to it."

[21] Dustin Gouker, Third Time's The Charm? New Jersey Introduces Bill That Would Legalize Sports Betting Everywhere In State, Legal Sports Report (Nov. 1, 2016 07:13 PST) <http://www.legalsportsreport.com/11962/new-jersey-sports-betting-repeal/>

[22] Id.