

## SUPREME COURT'S RECENT SPORTS BETTING DECISION

Presented by:

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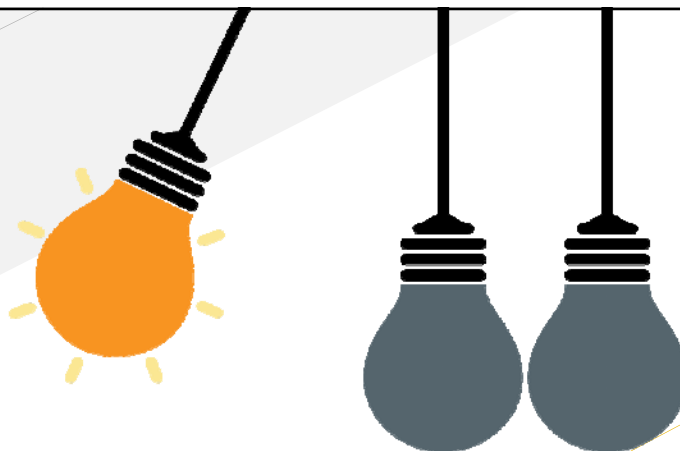
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# The Changing Landscape of Sports Wagering



**ECKERT  
SEAMANS**  
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## The Professional and Amateur Sports Protection Act (PASPA)

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- PASPA provided that:

“[i]t 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...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.”

28 U.S. Code § 3702.

## PASPA

- PASPA prohibited states from operating, sponsoring, authorizing, advertising, licensing or promoting sports wagering
- Allowed sports betting schemes conducted by states in prior years to continue through various exceptions



## Enforcement of PASPA

- PASPA provided that:

“A civil action to enjoin a violation...may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.”

28 U.S. Code § 3703.

## Enforcement of PASPA (cont.)

- Delaware's attempt to implement full sports betting in 2009
  - Professional and university sports leagues brought an action alleging that the Delaware Sports Lottery Act violated PASPA
  - The Third Circuit held that the PASPA exception only permitted Delaware to institute multi-game (parlay) betting on at least three NFL games, consistent with the betting scheme conducted during the time period that triggers the PASPA exception. *Office of the Commissioner of Baseball v. Markell*, 579 F.3d 293 (3d Cir. 2009)

## Enforcement of PASPA (cont.)

### Developments in New Jersey

- In 2011, New Jersey voters passed a referendum authorizing sports wagering in casinos and racetracks
- In 2012, the New Jersey legislature passed the Sports Wagering Act enacting the referendum



## Enforcement of PASPA (cont.)

*National Collegiate Athletic Ass'n. v. Christie*, 730 F.3d 208 (3d. Cir. 2013) (“*Christie I*”)

- The NCAA and the professional sports leagues sued New Jersey’s Governor alleging that New Jersey’s Sports Wagering Act violated PASPA
- New Jersey argued PASPA infringed on New Jersey’s sovereign authority to end its ban on sports wagering and that PASPA violated the anti-commandeering doctrine
- The District Court issued a permanent injunction against the New Jersey law and concluded that PASPA was constitutional
- The Third Circuit affirmed but noted that it “did not read PASPA to prohibit New Jersey from repealing its ban on sports wagering”

## Enforcement of PASPA (cont.)

*National Collegiate Athletic Ass'n. v. Christie*, 832 F.3d 389 (3d. Cir. 2016) (“*Christie II*”)

- Enforcement action prompted by a 2014 New Jersey law that repealed its ban on sports wagering, in part
- The sports leagues filed another suit asserting that the 2014 law also violated PASPA
- Once more, the District Court and the Third Circuit ruled in favor of the sports leagues, holding that the partial repeal does not comport with PASPA
- The Third Circuit stated that “to the extent that in *Christie I* we took the position that a repeal cannot constitute an authorization, we now reject that reasoning.”
- New Jersey petitioned for certiorari

## The Supreme Court's Involvement

- The Court granted certiorari on June 27, 2017
- Argument was held in December 2017
- The Supreme Court's decision was issued May 14, 2018 (*Murphy v. National Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018))



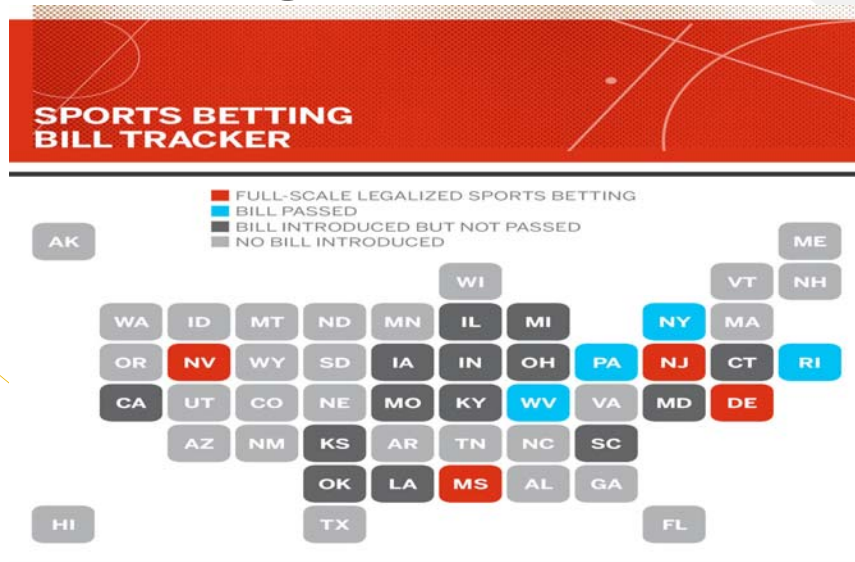
## The Supreme Court's Opinion

- The Court's opinion was delivered by Justice Alito
- The Court emphasized that it was weighing in on constitutional questions only and not the various policy issues relating to sports wagering
- The Court found that PASPA violated the anti-commandeering doctrine
- "PASPA's anti-authorization provision unequivocally dictates what a state legislature may and may not do"
- "A more direct affront to state sovereignty is not easy to imagine"
- The provision in PASPA applicable to state conduct is not severable from the provision governing individual conduct

## Post-PASPA

- Many questions raised for states considering legislation, including:
  - Who can offer sports betting?
  - What is the proper tax rate?
  - Should integrity fees be established?
- A few states approached sports wagering proactively
- Congress is considering its post-PASPA role
- The sports leagues' changing views on sports wagering

## Sports Betting Bill Tracker



Source: ESPN; Current as of August 1, 2018



## Status of Sports Wagering in Pennsylvania

- In October 2017, the Pennsylvania Legislature voted to approve the most significant expansion of gaming in the Commonwealth since casinos were first legalized
- The Pennsylvania Gaming Control Board announced that casinos may begin to submit their petitions for approval for sports wagering certificates on May 31, 2018
- A sports wagering certificate holder must pay a one-time authorization fee of \$10,000,000 and an annual renewal fee of \$250,000
- Effective tax rate of 36 percent on revenue

## Tax Rates

State	Effective Sports Betting Tax Rate
Mississippi	12%
Nevada	6.75%
New Jersey	8.5% in-person; 13% online
New York	8.5%
Pennsylvania	36%
West Virginia	10%

## Pennsylvania's Temporary Regulations

- What constitutes a “sporting event”?
- The regulations permit a sports wagering certificate holder to employ the services of only one operator licensee to assist with its sports wagering operations
- Permits only one sports wagering website or mobile application per certificate holder/licensee



## Pennsylvania's Temporary Regulations (cont.)

- Requires server and other equipment that is capable of receiving sports wagering bets to be located within Pennsylvania
- Requires use of services of a third-party integrity and risk management supplier to assist with identifying suspicious or illegal sports wagering activities
- Additional temporary regulations will be issued before sports wagering commences

## Integrity Fees

- The MLB and NBA are lobbying for a fee of 1% of the total amount bet on their games
- Unlike the NBA and MLB, the NCAA is not seeking an “integrity fee”
- The NCAA remains opposed to legal sports wagering but a representative has stated that individual schools should decide whether or not to pursue fees from sports-betting operators
- Comments of the University of Pittsburgh - Department of Athletics, the Pittsburgh Pirates and Penn State to the Pennsylvania Gaming Control Board





## eSports

- eSports or competitive video gaming is an emerging sport
- Like traditional sports, there are teams who compete against each other for a prize
- Popular games include League of Legends, Overwatch and first person-shooter games
- Twitch and YouTube
- The future of eSports





## Thank You.

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**STATE ADMISSIONS:**

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**EDUCATION:**

J.D., The Dickinson School of Law  
of the Pennsylvania State  
University, 2012

B.S., West Chester University of  
Pennsylvania, 2009



## Sarah C. Stoner

### ASSOCIATE

Sarah Stoner has a broad-based regulatory practice, with an emphasis on public utility law and gaming law. She has extensive experience assisting clients with license applications before regulatory bodies, contested enforcement matters, rulemaking proceedings, and regulatory review.

Within the firm's Utilities Group, she works primarily on issues related to electric and natural gas services. She represents electric generation suppliers, natural gas supplier and distribution companies, gas and electric brokers, and telecommunications companies before various state utility commissions. On behalf of those clients, she has assisted them with licensing, regulatory compliance, administrative proceedings, policy advocacy and monitoring of pertinent issues.

Sarah has a wide range of experience serving casino and horse racing licensees, as well as other gaming industry entities. She practices regularly before the Pennsylvania Gaming Control Board and the Pennsylvania State Horse Racing Commission, representing casino and racetrack owners and operators, gaming equipment manufacturers, and vendors.

### REPRESENTATIVE MATTERS

- Provides regulatory monitoring and policy-oriented advocacy to a competitive trade organization pertaining to a variety of electricity issues before the Pennsylvania Public Utility Commission.
- Routinely represents a variety of electricity, gas, and telecommunications companies regarding utility regulatory and policy-oriented matters.
- Represents casinos, gaming manufacturers and vendors on various matters before regulatory agencies.

### PROFESSIONAL AFFILIATIONS

- Practitioner Instructor for Problem Solving I Course at The Pennsylvania State University, Dickinson Law School
- Pennsylvania Bar Association Public Utility Law Section
- William W. Lipsitt American Inn of Court, Former Member

## COMMUNITY INVOLVEMENT

- Habitat for Humanity of the Greater Harrisburg Area, Former Board Member

## NEWS AND INSIGHTS

### PUBLICATIONS

- ["Benefits of Going Green with Alternative Energy"](#), The Energy and Environmental Law Supplement to The Legal Intelligencer, July 2014.
- "Does Your Business Record or Monitor Customer Phone Calls for Quality Control or Training Purposes? Why Consent is Key," co-author, Eckert Seamans' Utilities and Telecommunications Alert, April 2013.
- "Judicial Review of Arbitration Awards and Mediation Agreements: Tips for Sustaining Deference," co-authored with Julia Rabich and Nancy Welsh, American Arbitration Association's Dispute Resolution Journal, February/April 2012.

### SPEAKING ENGAGEMENTS

- "Wanna Play Fantasy Sports in PA? Not So Fast!" presented to members of the Dauphin County Bar Association, July 2016.
- "Overcoming Obstacles to Success," panelist, Pennsylvania Bar Association Women in the Profession, November 2013.