



by Andrew Klebanow

If PASPA is Repealed, Then What?

Much has been written about the Professional and Amateur Sports Protection Act (PASPA) and its possible repeal. To summarize, there are three possible outcomes. The first is that the Supreme Court of the United States (SCOTUS) rules PASPA is unconstitutional. In that case, it will be up to individual states to decide whether to allow sports betting and the various forms it might take. The second scenario is that SCOTUS lets PASPA stand in its current form. In this scenario it would be up to Congress to decide if it wants to repeal or amend PASPA. Given the current political climate in Washington D.C., passage of such a bill might take some time. The third scenario is that SCOTUS takes a completely different route, either issuing a partial repeal or potentially invalidating the four state exemption that currently exists.

Should the Supreme Court rule in New Jersey's favor, one can expect sports betting to be available in a number of jurisdictions in fairly short order. Five states, outside of the four that already had legislation in place prior to the passage of PASPA in 1992, have already passed legislation authorizing sports betting, and approximately fifteen others are considering enabling legislation or studying the issue. The question now becomes, should PASPA be repealed, what are the challenges that America's tribes face in creating sports betting products that are competitive with what various states with commercial casinos and lotteries will ultimately offer.

Before speculating on the kinds of sports betting products that various states may authorize, tribal leaders must recognize that sports betting already exists today, within and outside of the four states that are currently allowed to offer some versions of sports betting. The vast majority of sports wagering in the United States is placed through illegal sports book operators. Contrary to any misconceived perceptions, illegal sports book operators typically offer their customers good products, favorable odds and convenient forms of wagering including mobile applications. They also offer short-term credit and a wide variety of betting options. They have long-established relationships with their customers and it will take considerable effort for any legal sports book entity to move market share. Notwithstanding, there is a substantial portion of the U.S. population that is uncomfortable placing bets with illegal sports book operators and it is that market that presents the greatest opportunity for market growth.

There are a number of options that state governments can choose. They may confine sports wagering to commercial casinos and racetracks. In this scenario, states may require

that customers place bets in person or they may permit casino operators to offer mobile betting options, such as what is available in Nevada today. This process requires bettors to first open up an account at their favored casino and place money on deposit. Once their account has been approved and funded, bettors can place bets on their mobile devices as long as those devices are located within the state. These technologies rely on geo-fencing and know-your-customer procedures to prevent wagers from being placed from out of state or by minors. States may also allow customers to top off their accounts using debit cards or they may require patrons to return to their favored casino to top off their accounts should players extinguish their funds.

Another option is that states may allow their lotteries to offer sports betting at retail outlets as well as through online portals. State lotteries already have robust channels of distribution with betting terminals located in thousands of convenience stores and other locations. With the IT infrastructure already in place, state lotteries could quickly add sports betting to their suite of betting products. The problem for lotteries is that sports wagering is an inherently risky business and it very possible that a lottery operator could lose a bet or a lot of bets. Lotteries tend to be risk-averse, so they would probably only offer those sports betting products, such as parlay cards, that have fairly minimal risk. Thus, they will only offer a limited set of betting options.

Since the SCOTUS hearings last December, major professional sports leagues along with the NCAA have lobbied state legislatures for a share of wagering volume should sports betting become legal. Originally called an "integrity fee," lobbyists for the leagues have recently rebranded this as a "royalty fee." Regardless of the term, after spending 25 years defending PASPA at every level of the U.S. judiciary, and now recognizing that the law may be repealed, the leagues have changed their stance and would now like a sizable piece of the action, or as they have put it, a seat at the table. They have asked for a 1 percent tax on wagering handle, which equates to approximately 20 percent of sports betting win. Under this formula, the leagues take no risk and benefit whether the sports book enterprise wins or loses.

Tribes would be wise to take a stance similar to the State of Nevada, whose leaders stated emphatically that Nevada never has and never will pay the leagues an integrity fee. Other states, whose legislators may be more susceptible to lobbying efforts, may acquiesce to the leagues' lobbyists. If they do, they will forever put their states' legal sports betting products at a

significant disadvantage to both illegal sports book operators and to those Indian casinos that are wise enough to forego the integrity fee option.

Moving Forward

The first order of business for tribes that do not have clauses in their compacts that already address sports betting will be to renegotiate their compacts with their respective state governors. In these negotiations, tribes must clearly communicate that sports betting is a low-hold business. Sports book operators traditionally retain 5 percent of sports book wagering handle. From that gaming win, Nevada's casinos pay a tax of 6.75 percent to the state along with an excise tax of 0.25 percent of wagering handle to the federal government. The 6.75% levy is a fair and reasonable rate and other states would be wise to set their revenue sharing agreements with tribes to that benchmark when renegotiating compacts. Demanding more would require tribes to offer less attractive odds and sports betting products that are inferior to those provided by illegal sports book operators.

In any negotiation, it is imperative that tribes be allowed to offer sports wagering products that are priced competitively and offer a wide range of convenient betting options. Sports bettors, like all American consumers, appreciate making purchases through their mobile devices, and those devices are ideally suited for sports betting. In Europe, sports betting operators offer their customers a wide variety of betting options including in-game proposition bets that keep customers engaged throughout games.

With compact issues resolved, individual tribes would then be free to establish their own regulations governing sports betting and establish their own sports books. While each tribe can perform these tasks individually, it may be wiser to form alliances with other tribes to establish sound regulations that have been vetted by multiple stakeholders including those schooled in tribal law, gaming law and sports betting law. There are other advantages to such alliances. Costs are shared and policies are consistent with tribes within a state as well as with those in other states.

The next step is the establishment of a sports betting operation. Tribes may do so individually or collectively. The latter is essentially a centralized, white labeled sports book operation. The centralized operation allows individual tribes to brand their own sports book, based on a robust, well-tested and technologically sound platform. Again, those development costs would be shared among all tribes within the alliance.

Next, individual tribes must identify dissemination services that will provide the actual odds for sports bets. In Nevada, a disseminator is not permitted to take bets. They essentially provide advice to a sports book as betting volumes shift from one possible outcome to another. One need only visit any

Nevada casino sports betting website, where it is clearly stated what dissemination service the sports book operator relies on.

With the sports betting system and regulatory oversight established, tribes must then decide on the scope of their sports betting operation. This can be limited to a simple walk-up betting counter or a set of kiosks within a casino coupled with a mobile betting app, to a large-scale, Nevada-style sports book with large video displays, betting stations, viewing areas, VIP lounges, a central bar and sports-oriented dining. The latter may serve as a valuable amenity that draws new kinds of patrons, but rest assured, it will take a significant investment to build and operate.

Should PASPA be repealed, sports betting can provide tribes with a unique opportunity to expand their gaming product offerings, attract new kinds of customers and grow gaming revenues. Cooperation with other tribes offers an effective and efficient way to achieve those goals. ♣

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