

# END OF PASPA—AND THE LEGALIZATION OF SPORTS BETTING

## THE NEW FRONTIERS

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## On May 14, 2018, the U.S. Supreme Court struck down the 1992 federal Professional and Amateur Sports Protection Act (PASPA) that banned states from allowing betting on sports games.

The high court ruled that the law was unconstitutional, and their ruling paved the way for the legalization of sports betting in all fifty states. However, not all states have gotten on board with the new freedom to authorize sports betting, largely due to pressure from opponents who continue to argue—as they have for decades—that legalizing sports betting will pose a serious threat to the integrity of both professional and collegiate sporting events. Lawyers on both sides of the argument have their work cut out for them.

**“CONGRESS CAN REGULATE SPORTS GAMBLING DIRECTLY, BUT IF IT ELECTS NOT TO DO SO, EACH STATE IS FREE TO ACT ON ITS OWN. OUR JOB IS TO INTERPRET THE LAW CONGRESS HAS ENACTED AND DECIDE WHETHER IT IS CONSISTENT WITH THE CONSTITUTION.”**

—JUSTICE SAMUEL ALITO

### Enactment of PASPA

During Congressional hearings during the 1950s, Congress learned of the influence of organized crime on the sports betting industry. Fearful that sports would become corrupted—and that a lucrative revenue source to crime syndicates would continue to flow unabated if safeguards were not put in place—then-US Attorney General, Robert F. Kennedy urged Congress to pass the Wire Act to control interstate gambling, an Act that was signed into law by President John F. Kennedy in 1961.

In 1992, Congress went a step further and prohibited sports gambling under all state laws (with the notable exception of ‘sports lotteries’ in Delaware, Oregon, and Montana, as well as licensed betting pools in Nevada) when it enacted PASPA pursuant to 28 U.S.C. § 3701. The passage of the Act was in response to the voiced concerns of professional sports organizations, including the NFL, MLB, NCAA, and, most notably that of NBA Commissioner David Stern, who testified that ‘the interstate ramifications of sports betting are a compelling reason for federal legislation.’

### PASPA Overturned

In a direct challenge to PASPA, New Jersey approved a state constitutional amendment permitting sports gambling, and the state’s legislature passed the Sports Wagering Act (2012) authorizing sports wagering at casinos and racetracks. Interestingly, a state referendum revealed overwhelming voter support for the legalization of sports gambling in New Jersey, despite challenges there by the NBA, MLB, NFL, NHL, and NCAA. Other states also pushed to overturn PASPA, citing state tax and tourism benefits.

When New Jersey Governor Philip D. Murphy filed suit to have PASPA overturned based on unconstitutional ‘federal

## Executive Summary

### › The Issue

What impact is the overturning of PASPA having on state-regulated sports betting?

### › The Gravamen

States are ‘scrambling to get in on gambling’ given their new authority to pass statutes and regulations governing professional and collegiate sports betting.

### › The Path Forward

Whether by mobile apps or in-person bookmaking facilities, states must act at the legislative level to keep sports betting legal and out of the hands of crime syndicates.

government commandeering' of state laws, the U.S. Supreme Court agreed, holding in a 6-3 decision, that PASPA indeed conflicted with the anti-commandeering rule of the Tenth Amendment to the Constitution. (*Murphy v. National Collegiate Athletic Association*, No. 16-476, 584 U.S. \_\_\_ (2018)).

## An Ineffective Ban

Even before the Supreme Court's ruling, PASPA hardly served to effectively ban sports betting, resulting in illegal wagers totaling over \$150 billion annually. Both 'bookies', as well as internet sports gambling sites, continued to thrive while the only losers under PASPA were the states, which were prevented from getting their fair share of sports betting profits via tax revenues. Today, despite the legalization of sports betting, not all states are opting to exercise that right, but twenty-nine states have, whether in the form of online platforms or in-person sportsbooks—in addition to those states that license tribal casinos.

## Pay to Play

After examining the business opportunity at hand, not all professional sports organizations are standing firm in their opposition to sports betting. Both the NBA and MLB have entered into agreements whereby sportsbook operators can access "official data" in exchange for paying the leagues a percentage 'off the top'. Swiss-based Sportradar's lawyers are advising certain sportsbook operators on the particulars of the NBA's new fee (variously referred to as an 'integrity fee', or, more disparagingly as a 'shakedown fee') as they market their sports data feed, called Betradar.

Sportradar is also promoting MLB data—for a "royalty Fee" of 0.25 percent of MLB game wagers, or 'handles'. The questions that lawyers are debating, however, are what constitutes 'official data' versus 'unofficial data', and is the fee really to ensure 'sports integrity'? Or is it merely garden-variety monetizing of a valuable asset? At the same time, league lawyers are engaging in lobbying of state legislatures in order to get a legislative 'kosher stamp' on their clients' commercialized data feed arrangements. Currently, those efforts have paid off in Illinois and Tennessee as both states have passed laws requiring their sportsbook operators to use (read: 'purchase') official league data.

## Impact on College Sports

Of concern to opponents of legalized sports betting is the effect on collegiate sports. Wagering on college games is now legal in about half of the states, with concerns continuing to be voiced about such betting being detrimental to college sports. For example, will matches of any sort get 'thrown' like a latter-day rendition of "On the Waterfront"? But like their professional counterparts, collegiate sports managers too are concerned about their bottom line, and for some time, the NCAA has complained about dwindling in-house crowds as many fans stay home to watch the game. Their thinking in support of college game wagering is that if a fan has 'financial skin in the game', he or she might be that much more inclined to actually be there to support their team.

## Action

### 1 Status of Your State

Determine what legislation has already been passed—and what legislation is pending—in your state.

### 2 Your Client's Interests

Once you study the relevant legislation, analyze it in terms of what it means for your client, regardless of which type of stakeholder your client is.

### 3 Accompanying Regulations

Become familiar with what state agencies (or agencies) will be regulating sports betting in your state and what their various regulations will mean for your client.

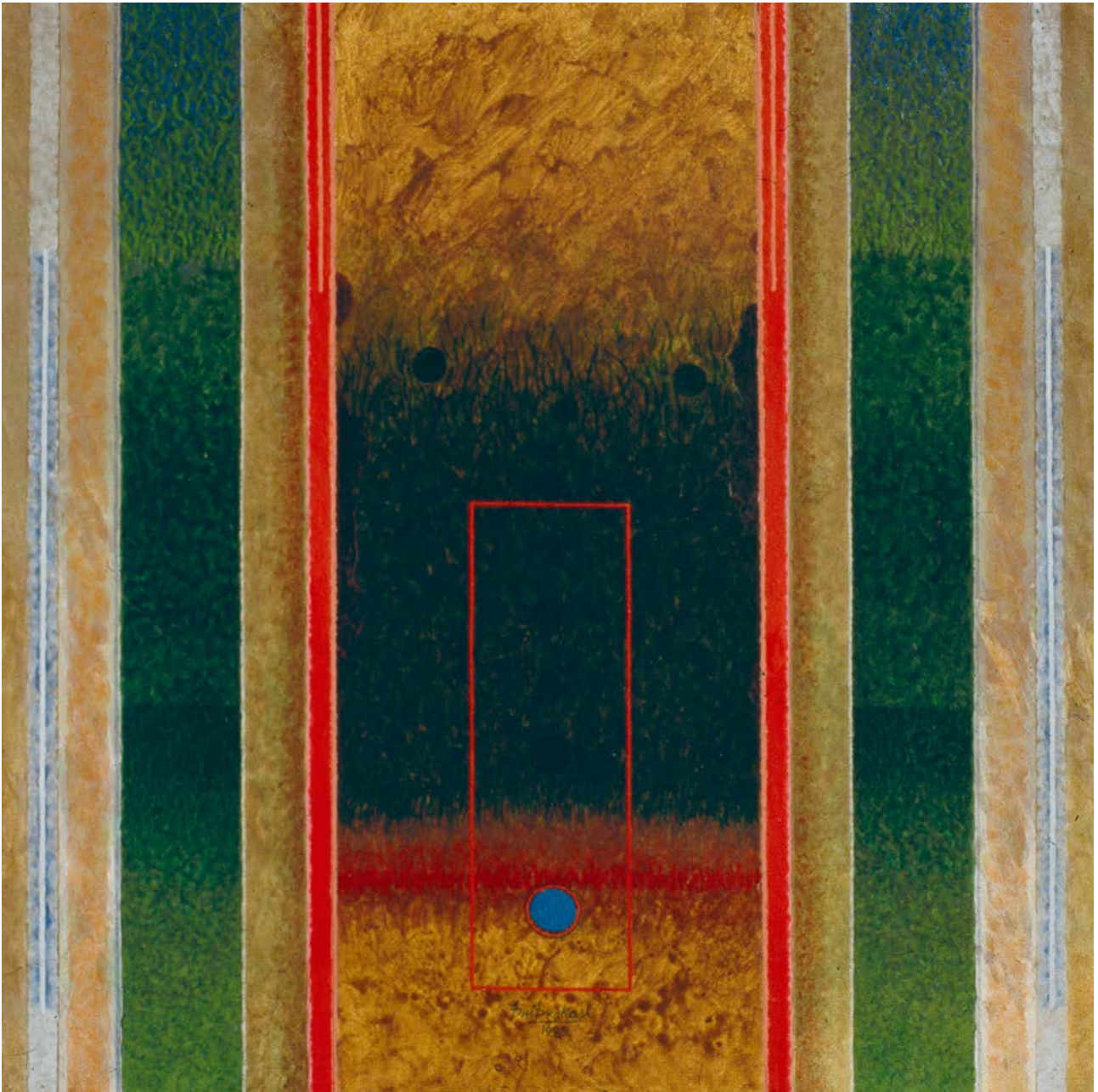
### 4 A Legal Operation?

What constitutes 'legal' versus 'illegal' can vary quite a bit from state to state; make sure your client's activities fall within the 'legal' category in all jurisdictions where they may be operating.

## Players and More Players...

With so many stakeholders—state budget officials, professional leagues, collegiate leagues, sportsbook operators, and data

vendors—having so much at stake, one thing is clear: sports betting is an industry that is headed for exponential growth nationwide. And that is a sure bet.



## Further Reading

1. <https://www2.deloitte.com/us/en/pages/technology-media-and-telecommunications/articles/sports-betting-economics.html>
2. <https://www.actionnetwork.com/news/sports-betting-legalization-biggest-issues-challenges-hurdles>
3. <https://www.marketplace.org/2022/09/06/legalized-online-sports-betting-tax-revenue-vs-temptation-problem-gamblers/>
4. <https://www.legalsportsreport.com/sportsbetting-bill-tracker/>
5. <https://lead1association.com/a-whole-new-ballgame-implications-of-legalized-sports-betting-for-college-athletics/>
6. <https://www.betmgmnc.com/blog/career-advice/5-hot-new-career-opportunities-created-by-the-legalization-of-sports-betting/>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years of experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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