

New Jersey Cites States' Rights In U.S. Supreme Court Filing

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New Jersey on Tuesday filed an initial brief asking the U.S. Supreme Court to overturn the federal ban on sports betting, arguing that the law exceeds Congress' authority by compelling states to prohibit wagering on sports.

The **Supreme Court** is expected to hear New Jersey's argument to overturn the Professional and Amateur Sports Protection Act of 1992 (PASPA) and legalize wagering on sports within its borders by late fall or early winter.

The question that New Jersey has presented to the high court, according to gaming attorney Daniel Wallach, is a relatively narrow one: Does a federal statute that prohibits states from modifying or repealing their own laws regulating private conduct violate the 10th Amendment anti-commandeering principal?

PASPA compels states to prohibit sports wagering, and therefore, exceeds Congress' authority, the New Jersey brief states.

"Given the narrow scope of the question presented, it is not a foregone conclusion that the high court will issue a broad referendum on PASPA," said Wallach, an attorney with Becker & Poliakoff in Fort Lauderdale, Florida.

"However, if the justices don't seize on the opportunity now to address PASPA, it will invite continuous challenges. It is certainly possible that the high court invalidates PASPA in its totality. That remains in play," Wallach told GamblingCompliance.

Jeff Ifrah, founder of the Ifrah law firm in Washington, D.C., agreed, saying he was hopeful the justices would look at PASPA in its entirety.

"State law governs gambling," Ifrah said. "PASPA is a very unusual thing."

"Our constitutional structure does not permit Congress to regulate interstate commerce in that manner," the New Jersey filing said. "Under our Constitution, if Congress wishes for sports wagering to be illegal, it must make the activity unlawful itself. It cannot compel States to do so."

New Jersey's **78-page filing** was submitted Tuesday, the deadline to file briefs in the case.

Besides New Jersey's brief, two others were also filed: One by the **New Jersey Thoroughbred Horsemen's Association**, which along with the state is a defendant in the case, and the other — an amicus brief — by the **Pacific Legal Foundation**.

As New Jersey readies to argue its case before the Supreme Court, neither Wallach nor Ifrah expect the state's efforts to backfire — a situation in which the high court would not only maintain the PASPA wagering ban on New Jersey but also **extend the ban** to Nevada.

"I don't really see that happening," Ifrah said. "Maybe, they don't even address the issue of Congress prohibiting states from decriminalizing activity within their borders."

Ifrah said the Supreme Court could rule instead that the country's professional and collegiate sports leagues, which are plaintiffs in the case, do not have standing to bring the case.

In the event of such a ruling, the case would be sent back to the 3rd U.S. Circuit Court of Appeals in Philadelphia, which has already ruled twice against New Jersey.

That would leave it up to the U.S. Department of Justice to decide whether to pursue the case.

Ifrah said it is the federal government's role, and not the leagues', to challenge New Jersey's efforts at legalizing sports betting.

"Since when do we have private businesses prosecuting the law against New Jersey," Ifrah said.

Wallach, meantime, had a prediction to offer.

"If you're asking me if I believe New Jersey will be able to accept sports bets in time for the start of the 2018 NFL season, I would say there is an extremely high likelihood of that happening," he said.

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