

# Sports Leagues Chided Over Supreme Court Brief

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Whether the federal sports-betting ban is overturned or upheld by the U.S. Supreme Court comes down to the simple question of whether Congress has the right to compel a state to ban wagering, according to gaming industry lawyers.

In their [71-page brief](#) filed Monday with the U.S. Supreme Court, the National Collegiate Athletic Association (NCAA) and the U.S. professional sports leagues argued against the idea that the 1992 Professional and Amateur Sports Protection Act (PASPA) impermissibly “commandeers” states’ rights to implement laws and regulations banning sports betting.

Paul Clement, an attorney with Kirkland & Ellis in Washington, D.C. who represents the NCAA and professional leagues, wrote that PASPA “does not compel state or state officials to do anything.”

“That is because PASPA only prohibits states from sponsoring, operating, advertising, or promoting sports gambling schemes, and prohibits states from licensing or authorizing third parties to engage in that conduct.”

But such an argument is questionable, said David Yellin, an attorney with Ifrah Law in Washington, D.C.

“Were PASPA as the leagues describe it, they might be correct,” Yellin said. “They treat PASPA as akin to any complex federal regulatory scheme when it is, in fact, quite unusual in requiring states to regulate in-state conduct.”

According to Yellin, “the question is not whether state law is pre-empted by federal law.”

“It is whether Congress, by requiring states to do the dirty work of prohibiting sports betting, has impermissibly commandeered the states for its own purposes.”

Keith Miller, a professor with Drake University Law School in Des Moines, Iowa, said federal law takes precedence over state statutes.

“So it really does become a matter of whether PASPA requires the states to do anything except not operate or authorize sports betting,” Miller told GamblingCompliance.

Over the years, the NCAA, National Hockey League (NHL), National Basketball Association (NBA), National Football League (NFL), and Major League Baseball (MLB) have successfully blocked New Jersey’s efforts to permit sports betting by arguing they would suffer harm from gambling.

But any mention of potential harm to the leagues is contained to just one paragraph in Monday’s Supreme Court brief, which argues that “Congress has long recognized and sought to contain the harms that can flow from various forms of gambling.”

The traditional argument that betting would cause harm to the leagues may have been undermined by recent decisions of the NHL and NFL to allow professional sports franchises in Las Vegas.

“That is probably part of it, particularly since [NHL commissioner] Gary Bettman has not been particularly concerned with gambling,” Yellin said.

Miller said it may be the leagues “thought it was a distraction to their central point.”

The NHL’s [Vegas Golden Knights](#) began their inaugural season this month playing their games at the T-Mobile Arena on the Strip, which is owned by MGM Resorts International.

NFL owners voted 31-1 in March to allow the [Oakland Raiders](#) to move their franchise to Las Vegas by 2020.

“It also probably reflects the fact that the commissioners of the NBA and MLB have both publically come out in favor of legalized sports betting,” Yellin said.

The Supreme Court **will hear oral arguments** in the New Jersey sports-betting case on December 4, with a decision likely to be issued sometime before June.

Sports wagering advocates are hopeful that justices will strike down PASPA as unconstitutional and open the doors to widespread sports betting across the United States.

However, Miller said **the court** could also “issue a very narrow ruling that really leaves most of PASPA intact.”

“Regardless of the court’s decision, I think it is inevitable that Congress will get involved in this” he said. “The leagues are not likely to stand by and allow states to offer sports betting according to their differing regulatory and licensing practices, even if the court would give the states authority to do that.

“The leagues are likely talking to members of Congress about this now.”

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