

Now's The Time To Get Ready For Sports Betting, Attys Say

By [Zachary Zagger](#)

Law360 (March 15, 2018, 4:51 PM EDT) -- An imminent [U.S. Supreme Court](#) decision could open the door to sports betting in many states, but companies looking to jump into the space should start preparing and start looking for partnerships with existing casinos now, attorneys say.

The Supreme Court [heard oral arguments](#) in December in a case between New Jersey and the [National Collegiate Athletic Association](#) and major professional sports leagues over the Professional and Amateur Sports Protection Act, or PASPA, a federal law that prohibits states from authorizing wagering on sports betting.

Many experts are optimistic that the high court decision, which could come as early as this Monday, will strike down PASPA or at least parts of it in a way that provides a path for states to legalize sports betting.

Some states are already moving forward with legislation to allow sports betting depending on what the Supreme Court decides, and many others are exploring the possibilities. Even [Major League Baseball](#) and the [National Basketball Association](#), two of the leagues opposing New Jersey in the Supreme Court, have begun to [lobby state lawmakers](#) to influence these prospective betting bills.

While the sports and gambling industries wait for the decision, attorneys say that companies who want to participate in sports betting, particularly if they want to do so by the next [National Football League](#) season, should start finding the right partners and, at least in New Jersey, start the regulatory approval process.

“I think that some companies have been preparing for quite some time, but like anything else, it takes time for news to really permeate throughout the relevant universe,” said Behnam Dayanim, who chairs the advertising, gaming and promotions practice at [Paul Hastings LLP](#). “I think that some companies are just now starting to become engaged.”

“But I do think the handwriting is on the wall,” he said. “It can’t hurt to prepare now because

it won't be wasted effort. ... Of course, if the Supreme Court does overturn PASPA then it will come even more immediately. Companies who want to be in that space need to be prepared."

State lawmakers across the country are considering various sports betting bills. Some, like California, are looking at amending their state constitutions or existing law to allow the possibility of sports betting should the Supreme Court decision enable such a possibility, while others are trying to set up more of a regulatory system.

States that are setting up regulatory systems tend to give the existing brick-and-mortar casinos in the state the ability to offer sports betting, meaning third-party operators and other service providers need to reach partnership contracts and revenue-sharing agreements with those casinos.

For instance, West Virginia lawmakers passed versions of a bill this month that would allow the state's five casinos to apply for a license from the state Lottery Commission to allow them to operate sports betting. Those bets would be allowed at the location or via mobile and internet platforms.

The issue is that many brick-and-mortar casinos do not have the immediate capabilities to operate a sportsbook, while the sportsbooks and mobile platform providers would need a license, according to gambling attorney Dennis M.P. Ehling of [Blank Rome LLP](#).

"So there is a lot of discussion now about potential partnerships, things that may or may not come to fruition, but people are spending a lot of time talking and exploring what might work depending on how they see things," Ehling said.

Of course, there is still no way to know for sure how the Supreme Court is going to rule, meaning a contract could be for naught.

Ehling said it is a good idea for the contracts to provide options that would kick in only if a decision makes sports betting possible, such as a right of first refusal. It is also important for there to be some kind of upfront value to the deal in case things do not pan out in the high court.

"No one is really looking to put a six-figure chunk down on a bet," Ehling said. "Although

these are wagering companies, they are not willing to make that sort of bet,” so they’re looking for ways to make value happen up front in any contracts.

Further, while states are passing bills, attorneys say there really is no way to begin the licensing process with state regulators until the Supreme Court rules, except for in New Jersey.

Though it’s still not technically legal in New Jersey either, the New Jersey Division of Gaming Enforcement Director David Rebeck earlier this year reportedly invited prospective sports betting providers to apply for state licenses.

The move comes as the state is trying to defend a law that only repeals sports betting restrictions at the state’s casinos and racetracks, which would enable casinos and racetracks to offer sports betting but not permit the state to regulate the activity. The law was an attempt to allow sports betting without violating PASPA and provide a test for the federal courts that ultimately has landed at the high court.

Even if the court rules against New Jersey, many expect momentum for legalized sports betting to continue, and New Jersey has a head start.

“Most of the clients want to get a positive start here because one way or another, New Jersey is going to come out on top,” said gambling and white collar attorney A. Jeff Ifrah of [Ifrah Law](#). “Our advice to our clients is let’s help you start finding a partner, negotiate that contract and beginning the regulatory process to apply for the license.”

Of course, these efforts rest on the much-anticipated ruling by the Supreme Court. The wait is only intensifying efforts by gambling companies and the sports leagues to shape the potential future of legalized sports betting.

“The speculation has really been converted into action, so it is a lot different than in December,” Ifrah said, noting that the arguments against PASPA have been out there for a while and the Supreme Court granted certiorari in June. “I don’t know if it was the oral arguments went well or the press coverage [made it seem] that the oral arguments went well, but there is definitely a feeling out there that this is going to happen.”

--Editing by Jack Karp.