



Will You Soon Be Able to (Legally) Bet on Sports Outside of Nevada?

What the Supreme Court Decision Really Means

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In what was arguably the most-anticipated decision of the year by the U.S. Supreme Court, *Murphy v. NCAA*, the Professional and Amateur Sports Protection Act (PASPA) was struck down in its entirety. The court concluded that the federal government had unconstitutionally commandeered state governments to enforce federal policy. However, this decision does not mean that we will soon have broad-based legal sports wagering in all 50 states—or online.

To understand the true impact of the *Murphy* decision, one needs to look at the framework under which sports wagering activity is regulated. Sports wagering activity in the U.S. is regulated by a mix of state and federal

law. At the federal level, the now-defunct PASPA and the Federal Wire Act (FWA) are/were the primary laws directed specifically at sports wagering. Additionally, the Illegal Gambling Business Act (IGBA) and the Unlawful Internet Gambling Enforcement Act (UIGEA) also impact federal policy regarding sports wagering and

cross-border wagering. Also, of course, each state will be drafting its own set of laws and regulations. Let's take a brief look at each, and how each may impact the rollout of legal sports wagering in the U.S.

PASPA

Enacted in 1991, PASPA prohibited states that did not have existing sports wagering from legalizing and regulating sports wagering within their states. When PASPA was enacted, only five states had operating commercial casinos (Colorado, Illinois, Iowa, Nevada and New Jersey), only two states had lotteries that offered a sports wagering product (Delaware and Oregon), one state had a limited form of charitable and state sports wagering (Montana) and only one state had broad-based sports wagering (Nevada). Therefore, PASPA effectively outlawed legal, regulated, broad-based sports wagering in any state besides Nevada.

Now that PASPA has been struck down, states are no longer prohibited from legalizing and regulating sports wagering within their borders. Therefore, absent Congressional action, we are going to see sports wagering in various forms legalized and regulated on a state-by-state basis. Estimates are that between 12 and 20 states are working on, or are likely to enact, laws to legalize sports wagering within the next year or so, with states like New Jersey and Delaware leading the way.

The Federal Wire Act

The Federal Wire Act (FWA) is a 1961 federal law that was part of a package of laws designed to give law enforcement tools to attack organized crime and the interstate activities funding organized crime. The FWA applies to those who are in the business of betting, and it prohibits communications in interstate or foreign commerce when such communication involves:

1. A bet or wager on a sporting event or contest;
2. Information assisting in the placement of a bet or wager on a sporting event or contest; or
3. A communication entitling the recipient to money or credit based on a bet or wager.

The FWA does have a limited safe harbor provision that exempts the transmission of *information* assisting in the placement of bets or wagers on sporting events or contests between jurisdictions where such wagering is legal, but it does not contain any exemption for the transmission of the actual bets between such jurisdictions.

There has been debate regarding which types of wagers the FWA prohibits, but there is no question that the law applies to sports wagering.

So what does that mean for the potential to allow for sports wagers to be placed over the phone or via the internet? Because the FWA is a federal law, it impacts only activity that takes place across state lines. Therefore, it

would seem to follow that states could allow for wagers to be placed over the phone or the internet within their own borders. Case in point: Nevada has allowed sports wagers to be placed via telephone for more than 50 years and, more recently, it has allowed for such wagering (in a limited manner) via the internet, as long as the activity is conducted solely within the state.

A risk remains, however, that courts in the various jurisdictions could find that, given the inherently interstate nature of internet transmissions (data travels all around the world during transmission, meaning that even if a message is sent and received within one state, the data has assuredly traveled outside of that state, and phone transmissions these days utilize the internet as well), a wager placed and received within one state over the phone or through the internet could be found to be a violation of the FWA. For example, in *US v. Yaquinta*, the U.S. District Court, N. D. West Virginia, found a violation of the FWA for wagers that began and terminated in West Virginia because the wager information traversed across state lines during transmission.

The Illegal Gambling Business Act

The Illegal Gambling Business Act (IGBA) is another criminal gambling statute designed to attack organized crime. The IGBA prohibits anyone from conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business. An illegal gambling business is further defined by the statute to be one that violates state laws; has five or more people that conduct, finance, manage, supervise, direct, or own all or part of such business; and is either in operation for at least 30 days or takes in a gross revenue in excess of \$2,000 in a single day.

The significance of the IGBA is that it elevates state gambling law

offenses to federal criminal gaming law offenses when the activity is conducted in interstate commerce and reaches a nominal size.

What does this mean for widespread sports wagering? It means that even as sports wagering is legalized in some states, the acceptance of bets from patrons in states where sports wagering remains illegal or from states where the operator is not licensed may subject the operator, its investors, owners and employees to federal criminal liability.

The Unlawful Internet Gambling Enforcement Act

The Unlawful Internet Gambling Enforcement Act (UIGEA) is often misunderstood. The UIGEA is not a Title 18 criminal gambling statute—it is a Title 31 funds transfer statute that expressly does not impact other federal or state gambling laws. Therefore, the UIGEA does not make any form of gambling illegal, nor does it make legal anything deemed to be illegal gambling under other laws.

There are two operative provisions of the UIGEA. The first prohibits anyone in the business of betting or wagering from accepting essentially anything of value in the furtherance of illegal online wagering. The second operative provision requires financial institutions to block funds transfers for online gambling.

Part of the confusion with the UIGEA is that it exempts certain activities from its prohibitions, even if the activities are deemed illegal wagering under other laws. As noted above, this exemption does not operate to make activities that are illegal under other federal or state statutes legal; rather, it acts only to exempt such activities from the funds-transfer prohibitions of the act.

One of the exemptions from the UIGEA's prohibitions are fantasy sports contests that meet certain

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criteria—but there is no such exemption for sports wagering. Therefore, activity found to be illegal gambling under other laws will not be exempt from the UIEGA’s application.

State Laws

Finally, sports wagering activity is regulated first and foremost by the states themselves. As states draft their sports wagering regulations, they will need to address issues such as:

- Who will regulate sports wagering within their state;
- The taxes and licensing fees to impose;
- The licensing process and who will be subject to licensing;
- Who can take sports wagers (in Nevada, only persons holding a nonrestricted gaming license may operate or own any interest in a race book or sports pool);
- What events may be wagered upon; and
- Whether licensees may accept wagers that are placed over the telephone or via the

internet. (Such bets are allowed in Nevada, but are restricted to those where the transmission of the wager is initiated from within Nevada to a licensed destination that is also within Nevada.)

Given that sports pools generally operate on an extremely thin margin, states that are too heavy-handed with taxes and fees may find themselves with a dearth of experienced and reputable sports pool operators. A few states are wisely waiving some of their upfront licensing requirements and costs for established, Nevada-licensed operators, in a bid to attract them to their states.

Fortunately, the emerging sports betting states may look to Nevada as a model when drafting their laws and regulations, in order to ensure a high level of integrity and to protect consumers within their state. NL

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