Supreme Court Rules on Sports Wagering Case

On Monday, May 14, 2018 the Supreme Court of the United States (SCOTUS) released a decision that will effectively overturn a federal law that has, for the past 25 years, prohibited states from legalizing and regulating sports wagering within their own borders.

The case, Murphy v. NCAA, was initially filed by the NCAA and four professional sports leagues (the National Football League, the National Basketball Association, Major League Baseball, and the National Hockey League) as an action against the State of New Jersey (via their Governor, Chris Christie and later Phil Murphy) for violating the Professional and Amateur Sports Protection Act (PASPA) in attempting to legalize, and later decriminalize, sports betting in their state. New Jersey's central argument was a claim that PASPA, as a federal law, is unconstitutional as it infringes upon the 10th amendment anti-commandeering clause of the Constitution, in disallowing states from authorizing sports betting activity under their individual state laws. Justice Alito, in his 7-2 majority opinion, agreed with New Jersey, writing that PASPA “unequivocally dictates what a state legislature may and may not do”, in violation of the 10th amendment.

Justice Alito provided that the job of the Supreme Court is to “interpret the law Congress has enacted and decide whether it is consistent with the Constitution”, and further, that “PASPA is not.” According to Alito's opinion, "PASPA 'regulate[s] state governments regulation' of their citizens," a power that is not granted to Congress under the Constitution. In so ruling, the Supreme Court has effectively overturned the federal law, and now states will almost immediately be allowed to legalize and regulate sports wagering via their own legislative efforts. More than 18 states have either passed or filed legislation to do just that, several of which will become effective in the coming months.

During the 2018 legislative session, two bills were filed in the Indiana General Assembly which would have legalized and regulated sports wagering in our state (pending the outcome of the Supreme Court decision). However, neither bill was passed prior to adjournment of the legislative session. Several Indiana legislators have expressed their intent to pursue legislation during the 2019 legislative session that would legalize sports wagering in Indiana. As work begins to formulate legislation prior to January, the point of discussion will now turn to whether and how Indiana will do so – namely, what will the regulatory and tax framework look like in Indiana? Who should be allowed to offer sports bets? Where and how should bets be placed (i.e., brick and mortar and/or internet and mobile)? How can Indiana best ensure the continued integrity of sporting events?

On Tuesday, May 15, 2018, the Indiana Legislative Council met to assign topics to Interim Study Committees. Annually, Interim Study Committees meet throughout the time that the legislature is not in session to study topics assigned to them by the Legislative Council. At their meeting, the Legislative Council assigned to the Interim Study Committee on Public Policy, the study of the "potential fiscal impact of governmental entities and the existing gaming industry that sports wagering might have in Indiana and its potential impact on professional and collegiate sports." This will serve to further expedite the beginning of official conversation surrounding the legalization of sports wagering in Indiana, and will give
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stakeholders the opportunity to influence the structure of the sports wagering landscape in Indiana even prior to the official start of the 2019 legislative session. Committee assignments have yet to be made public, but the Interim Study Committee on Public Policy will likely be made up of members from the standing House and Senate Public Policy Committees.