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INTERNET, SPORTS AND GAMBLING

NEW JERSEY'S BERMUDA

TRIANGLE

By: Nicholas Waltman

Gambling is defined as risking money or something of value on the outcome of an event involving chance when probability of winning or losing is less than certain.¹ For something to be considered gambling it must have three elements which are prize chance and consideration.² A prize is exactly what it says, a prize/money to win. Chance is there must be a chance to win or lose. And consideration is for example you pay money to try and win the prize. If skill dominates over chance, then it is not gambling.³ This is important to note because it will be discussed in more detail later. Since the official legalization of gambling in 1931 there has been an explosion of gambling opportunities for the public. From commercial casinos to lottery tickets to off-track betting, it is easier to gamble today than ever before.⁴ In the last year Americans have wagered over a trillion dollars in the United States.⁵ Over eighty-five percent of this wagering took place in casinos which are now legal in twenty-seven states.⁶ In the past decade there has been incredible growth in the gambling industry. Twenty years ago if a person wanted to gamble they had to go to Nevada or Atlantic City. Now, there are only two states in which no form of legalized gambling exists.⁷

There are several different types of gambling, but the main ones are non-casino gambling games, sports betting, horse racing, tables games, and electronic gaming. Non-casino gambling is gambling games that take place outside of casinos that include Bingo lotteries, pull-tab games and scratch cards.⁸ Sports' betting is the activity of results and placing a wager on the outcome.⁹

¹ <https://conceptresearchfoundation.wordpress.com/2015/10/30/gambling-is-risking-money-on-a-chance-outcome/>

² <http://www.gamblingandthelaw.com/>

³ See Note 2

⁴ <http://www.library.ca.gov/crb/97/03/chapt2.html>

⁵ See Note 4

⁶ See Note 4

⁷ See Note 4

⁸ <http://online-gambling-legal.info/best-non-casino-gambling-games.php>

⁹ See Note 8

Horse racing is an equestrian, involving two or more jockeys riding horses over a set distance for competition.¹⁰ Table games are games such as blackjack, craps, roulette and that are played on a table and operated by one or more live person.¹¹ An electronic game is a game that employs electronics to create an interactive system with which a player can play.¹² The most common forms of electronic games today are slot machines and video poker machines.

New Jersey has a long cultural history of gambling. From the first horse racetrack in the United States to one of the first states to allow online gambling, New Jersey has always been at the forefront of innovation and new territory in the world of wagers, bets, and chances. During the colonial era, New Jersey's culture was more permissive of gambling than other colonies.¹³ This was influenced largely by New Jersey's ethnically and religiously diverse population. In the early days of the United States, lotteries were used to raise money for military supplies and training.¹⁴ Lotteries continued to be used in this manner until they were banned in 1844.¹⁵ A major recession in the young United States as well as the lottery's poor reputation with the public led to this ban.¹⁶ New Jersey, being accustomed to gambling as a pastime and mostly outside the reach of zealous religious reformers, didn't enforce anti-gambling laws very strictly. Slot machines, bookmaking operations, and numbers games continued to be popular with gamblers in New Jersey.

¹⁰ See Note 8

¹¹ See Note 8

¹² See Note 8

¹³ <http://www.njgamblingwebsites.com/new-jersey-gambling-history/>

¹⁴ See Note 13

¹⁵ See Note 13

¹⁶ See Note 13

The Freehold Raceway is a crucial pillar in the history of gambling in New Jersey as well as the United States.¹⁷ The half-mile racetrack began hosting horse races in the 1830s, making it the oldest racetrack in the country.¹⁸ It officially opened in 1854, when the Monmouth County Agricultural Society hosted the first annual harness race there. Since 1955, it's been the home of the Cane Pace, the first leg of the Triple Crown of Harness Racing for Pacers.¹⁹

In 1969, the question of whether or not New Jersey should create a state-wide lottery was placed on a ballot. Eighty-one percent of voters were in favor of the move, and in 1970, N.J.S.A. 5:9-1 was enacted and the New Jersey lottery was born.²⁰ Today, instant games are available at convenience stores, liquor stores, supermarkets and pharmacies throughout New Jersey. They frequently feature imagery with attention-grabbing color combinations designed to draw in potential players. This type of lottery game is very popular among casual and serious gamblers alike because winning tickets can be redeemed immediately for cash at any New Jersey Lottery retailer. Under N.J.S.A. 5:9-1, the State Lottery Law, at least 30% of unclaimed lottery prize money is given to public educational institutions within the state.²¹ The New Jersey Lottery often exceeds this amount, giving far more of its unclaimed money to schools and educational centers.²² Funding schools through lottery income is a long-standing tradition in New Jersey, going back to the construction of Queen's College and The College of New Jersey.

Atlantic City is the Mecca of Gambling, the Beast of the East, and the Gambling Capital of the World east of the Mississippi. People were optimistic and voted heavily in favor of

¹⁷ <http://www.njsportsheroes.com/horse.history.html>

¹⁸ See Note 17

¹⁹ See Note 17

²⁰ N.J. Stat. Ann. § 5:9-1

²¹ See Note 20

²² See Note 20

allowing casinos to operate in Atlantic City in 1976, after a 1974 bill to allow legal casino gambling throughout the state was voted down.²³ In 1978, the first legal casino in town, Resorts International, opened to the public.²⁴ Governor Brendan Byrne cut the ceremonial ribbon, and a new era in New Jersey gambling began. At first, the casino was only allowed to operate eighteen hours per day on weekdays and twenty hours per day on weekends.²⁵ This law remained in place until 1991, when Governor James Florio allowed Atlantic City casinos to experiment with 24-hour gambling. Their trial was a success, and in 1992, a new law was enacted to allow all casinos to operate twenty-four hours per day.²⁶ For the rest of the 1970s through the 1980s, New Jersey's decision to legalize casino gambling in Atlantic City proved to be a success.

In 2003, The Borgata, a super-lux mega resort in the city's Marina district, proved that there was room in Atlantic City for big-budget projects.²⁷ Plans for more Borgata-like accommodations cropped up, including proposals from MGM and Jimmy Buffett. But the timing just wasn't right for these projects. When the 2008 recession brought the United States economy to a halt, all but one of these projects was scrapped. That one remaining project, owned by Morgan Stanley and under development by the Revel Entertainment Group, was completed in 2011 and opened in 2012.²⁸ In less than one year, Revel filed for Chapter 11 bankruptcy.²⁹ It proved to be difficult to draw gamblers back to Atlantic City, but Governor Chris Christie made it part of his mission to revive the city and keep gambling money in New Jersey. In addition to the casinos in Connecticut, new gambling opportunities opened in Pennsylvania, attracting

²³ <http://www.acfpl.org/ac-history-menu/atlantic-city-heritage-collections/15-heston-archives/68-history-of-casino-gambling-in-atlantic-city>

²⁴ See Note 23

²⁵ See Note 23

²⁶ <http://www.nj.gov/casinos/about/history/>

²⁷ See Note 26

²⁸ See Note 26

²⁹ See Note 26

customers who would previously have played in Atlantic City. To try to win players back, the “DO AC” campaign was launched in 2012 to show that there’s more to Atlantic City than gambling, such a vibrant nightlife and family friendly offerings.³⁰ Due to increased competition and poorer economy Atlantic City now has 8 remaining casinos.

In recent years, New Jersey has looking for more ways to increase tax revenue and internet gambling was that answer. The terms online gambling or internet gambling encompass gambling using any digital means, be that PC, TV, games console or a mobile device.³¹ In January 2011, the New Jersey Legislature passed a bill sponsored by Raymond Lesniak to allow online gambling by New Jersey residents over the age of 21.³² Because the state constitution only allows casino gambling in Atlantic City, the legislation specified that the computer servers operating the online gambling websites must be located at licensed casinos in Atlantic City.³³ The Lesniak bill evaded possible federal prohibitions against online gambling by authorizing the Casino Control Commission to create regulations to ensure that the bets were placed from inside New Jersey.³⁴ However, Governor Chris Christie vetoed the legislation because of concerns that "allowing customers to bet through any computer terminal left open the chance of commercial businesses such as nightclubs and cafes becoming gambling hubs around the state," and "the bill further created a legal fiction that a bet placed anywhere in New Jersey counted as an Atlantic City bet."³⁵

³⁰ See Note 26

³¹ <http://www.forbes.com/sites/darrenheitner/2014/02/04/is-online-gambling-virgin-on-new-territory-in-the-garden-state/>

³² See Note 31

³³ See Note 31

³⁴ See Note 31

³⁵ <http://www.onlinepokerreport.com/5860/christie-to-conditionally-veto-online-gambling-bill/>

In December 2011, the United States Justice Department issued a legal opinion that the Federal Wire Act only prohibited online sports betting, and not online casino games.³⁶ To address Christie's concerns, new legislation was drafted that prohibits businesses other than Atlantic City casinos from advertising online gambling, or allowing their facilities to be used for online gambling.³⁷ On February 26, 2013, a revised bill permitting Internet gambling was overwhelmingly approved by the New Jersey Legislature, and then signed into law by Chris Christie.³⁸ The law legalizes online casino gambling for a 10-year trial period, restricts the operation of the websites to Atlantic City's eleven casinos, and imposes a 15% tax on online gambling revenue, instead of the 8% currently imposed on casinos.³⁹ Because casino gambling is still illegal outside the city, the servers hosting the websites must be located within Atlantic City and affiliated with licensed Atlantic City casinos.⁴⁰ Now, any person over 21 with an internet connection in New Jersey can visit a legal casino without leaving his or her home. Internet gambling has become one of the hottest areas of the web, both in the sheer volume of sites and quantity of money involved.⁴¹ The internet has made gambling easier. A myriad of sites have sprung up in recent years offering countless gambling opportunities: online lotteries, bingo, or the more traditional card games such as blackjack or poker, providing opportunities to gamble in real-time, 24/7.⁴²

The internet has changed everything. The way we communicate, the way we shop, and the way we get our news have all changed dramatically since it launched, and it's only becoming

³⁶ <http://www.nytimes.com/2011/12/25/us/online-gaming-loses-obstacle-at-justice-department.html>

³⁷ See Note 35

³⁸ See Note 35

³⁹ See Note 35

⁴⁰ <http://www.gamblingonline.com/laws/new-jersey/>

⁴¹ See Note 40

⁴² See Note 40

more integrated into our lives as time progresses. New Jersey, always ready to harness the latest trend, has successfully brought its gambling culture to the internet. Only time will tell whether this is a passing fad or a permanent addition to the many legal gambling options in New Jersey. New Jersey's rich history has seen successes, failures, and adaptations to keep cultural institutions relevant. Atlantic City has been saved before. Hopefully, it can be saved again.

Like traditional gambling, internet gambling has its many social impacts. Experts say that the fast pace and instant gratification associated with online gambling make it more addictive than other types of gambling.⁴³ Online gambling is quite different from traditional casino gambling. Casino gambling is a social activity, usually conducted in the company of family or friends.⁴⁴ Online gambling is a solitary and anonymous activity.⁴⁵ Online gamblers that seek help are usually younger than traditional gamblers and have built up large amounts of debt in a shorter time than traditional gamblers.⁴⁶ In general, online gamblers are younger than traditional gamblers because younger people are more computer-savvy.⁴⁷ Younger people are also more likely to take risks. While the government promotes the gambling industry to supplement tax revenues, it has not allocated sufficient funds nor taken adequate corrective measures for dealing with the social and financial consequences that are created by addictive gambling.⁴⁸ While some people can gamble in a responsible manner, others have trouble controlling their gambling habit. "Just one more pull, only one more dollar. Anytime now this

⁴³ <http://www.problemgambling.ca/EN/AboutGamblingandProblemGambling/Pages/TheEffectsOfGambling.aspx>

⁴⁴ See Note 43

⁴⁵ See Note 43

⁴⁶ See Note 43

⁴⁷ <http://www.nytimes.com/roomfordebate/2010/07/29/should-internet-gambling-be-legalized/too-many-negative-side-effects-to-online-gambling>

⁴⁸ See Note 47

machine is sure to pay off big!" This is an example of the chatter you may hear if standing along a row of slot machines, or "one arm bandits" as some like to call them.

Besides the normal issues that gambling can cause which are loss of money, addiction, abuse, emotional problems and more there are many issues that online gambling poses to people and society that does not affect traditional gamblers. Underage gambling is one example. There is no true way for online gambling sites to monitor and make sure that the gambler is of legal age.⁴⁹ All the measures in place can be easily circumvented by lying. A person can be whoever they want behind a computer screen. Additionally, there is the problem with computer hackers. Computer hackers are savvy computer operators who illegally gain entry into others' computer systems. Operators of gambling Web sites complain that hackers break into their financial databases and steal credit-card information or manipulate gaming software in their favor.⁵⁰ Also, money laundering is a serious issue. Money laundering is the transfer of money gained via illegal means through third parties to purposely make its origins obscure.⁵¹ For example, a criminal could deposit large sums of cash with an Internet gambling site and later withdraw it via transfer to a legitimate bank account. This makes it very difficult for authorities to trace the path of money obtained illegally. Furthermore operating abuse is a huge issue. Operator abuses include stealing credit-card information and money from players, refusing to pay winnings, and manipulating the game software to increase profit.⁵²

One of the most current topics dealing with internet gambling is sports betting. Back in 1992 Congress passed the Professional and Amateur Sports Protection Act (PASPA). PASPA

⁴⁹ <http://www.webroot.com/us/en/home/resources/tips/digital-family-life/internet-gambling-among-teens-and-college-students>

⁵⁰ <http://www.securityweek.com/hacking-house-how-cybercriminals-attack-online-casinos>

⁵¹ See Note 50

⁵² See Note 50

states that it shall be unlawful for (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.⁵³

When drafting the bill the Judiciary Committee made it clear that it had no desire to prohibit the lawful sports gambling schemes that were in operation when Senate Bill was introduced. Congress manifested this intent in of PASPA by providing a grandfather provision for states that either had (1) operated a legalized sports wagering scheme prior to August 31, 1990, or (2) legalized sports wagering and such operations were conducted during the period of September 1, 1989, through October 2, 1991.⁵⁴ Consequently, the sports lotteries conducted in Oregon and Delaware were exempt, as well as the licensed sports pools in Nevada.⁵⁵ In addition, Congress provided a one-year window of opportunity from the effective date of PASPA (January 1, 1993) for states, which operated licensed casino gaming for the previous ten-year period to pass laws permitting sports wagering.⁵⁶ The latter exception was clearly crafted with New Jersey in mind. However, New Jersey failed to take advantage of this opportunity and carve out an exception for itself. It is important to note that also excluded from the reach of PASPA are jai alai and pari-mutuel horse and dog racing.⁵⁷ The original intent of PASPA was to limit the

⁵³ 28 U.S.C.A. § 3702

⁵⁴ 28 U.S.C.A. § 3704

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

availability of sports betting to gamblers. Currently, to date only four states Nevada, Montana, Oregon, and Delaware are grandfathered from PASPA.

Another important statute that intertwines with PASPA is the Wire Act. In 1961, Congress enacted the Wire Act as a part of series of antiracketeering laws. Subsection (a) of the Wire Act, a criminal provision, provides: Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.⁵⁸ Subsection (b) of the Wire Act sets forth exceptions, also known as a "safe harbor" clause and provides: Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information (1) for the use in news reporting of sporting events or contests, or (2) for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on the sporting event or contest is legal into a State or foreign country in which such betting is legal.⁵⁹ Subsection (c) simply provides that nothing contained in the provisions of the Wire Act shall create immunity from criminal prosecution under any state laws.⁶⁰ Finally, subsection (d) dictates when a telephone company or other common carrier, subject to the jurisdiction of the

⁵⁸ 18 U.S.C.A. § 1084

⁵⁹ Id.

⁶⁰ Id.

Federal Communications Commission, must terminate service when that service is being used to transmit or receive gambling information in violation of law.⁶¹

The first exemption was designed to permit bona fide news reporting of sporting events or contests.⁶² The second exemption was created for the discrete purpose of permitting the transmission of information relating to betting on particular sports where such betting was legal in both the state from which the information was sent and the state in which it was received.⁶³ The language of the Wire Act clearly prohibits the use of the Internet for transmission of sports bets or wagers or information assisting in the placement of such bets or wagers, unless transmission falls within one of the two exceptions noted above.⁶⁴ The statute, however, does not expressly discuss its possible application to other forms of gambling. As a result, differing interpretations have arisen over the construction of the phrase "any sporting event or contest," and over whether the 40-year old Wire Act prohibits Internet gambling.⁶⁵ Unlike the Wire Act, PASPA does not require the use of interstate wire transmissions. Reading PASPA together with section 1084(b) of the Wire Act, sports wagering is effectively limited to Nevada.⁶⁶ In essence in order to accept lawful Internet sports wagers on college or professional football, the casino must be located in Nevada and only accept Internet wagers from Nevada residents.

I will explain Horseracing betting online. It is rather simple you pick one to four horses that you would like to bet. The hard part is when you actually go to the track you have to learn the slang terms for the bets. You have to say the track name and the money you want to bet then

⁶¹ Id.

⁶² 18 U.S.C.A. § 1084

⁶³ Id.

⁶⁴ Id.

⁶⁵ <http://www.gambling-law-us.com/Federal-Laws/sports-protection.htm>

⁶⁶ See Note 65

the horse or horses. With online horse betting you just have to enter it in on the computer. You can even watch a race on the Internet, it is not like watching television, but you find out what horses win place and show. Pari-mutuel betting is the type of betting that's used in horse racing and other sporting events all players pay into a pool, and payoff odds are calculated according to the amount of money in the pool after the bet keeper, known sometimes as "the house," takes its cut.⁶⁷ Harness racing is a type of horse racing where the horses race at either a trot or a pace, pulling their riders behind them in two-wheeled carts.⁶⁸ Along with the Freehold Raceway, New Jersey is home to the Monmouth Park Racetrack in Oceanport and the Meadowlands Racetrack in East Rutherford.⁶⁹ These are regulated by the New Jersey Racing Commission, the state bureau responsible for maintaining safety standards and anti-fraud regulations in the horse racing industry in New Jersey.⁷⁰

Four off-track betting centers operate in New Jersey to serve players better.⁷¹ At these facilities, gamblers over the age of 18 can place bets on horses at the racetracks around the state. They are located in Fords, Bayonne, Toms River and Vineland and operate by taking a house cut of all money won on bets placed by their customers.⁷² These facilities are a relatively recent addition to New Jersey's horse racing industry. The first two opened in 2007 and the newest, Winners Bayonne, opened in 2012.⁷³ Horse racing remains fairly popular in New Jersey. In 2013, Governor Chris Christie signed a bill allowing New Jersey to host one horse race on a beach every year.

⁶⁷ <http://www.gamblingsites.com/horse-racing/>

⁶⁸ http://www.newworldencyclopedia.org/entry/Horse_Racing

⁶⁹ See Note 68

⁷⁰ See Note 69

⁷¹ http://www.newworldencyclopedia.org/entry/Horse_Racing

⁷² See Note 72

⁷³ See Note 72

In December 2000, Congress, in spite of the Justice Department's strong opposition, amended the Interstate Horseracing Act of 1978 and specifically expanded the definition of "interstate off-track wager" to include pari-mutuel wagers transmitted between states by way of telephone or other electronic media.⁷⁴ The plain language of the revised statute would appear to permit interstate pari-mutuel wagering over the telephone or other modes of electronic communication, including the Internet, so long as such wagering is legal in both states.⁷⁵ Something interesting about horse betting is a person only has to be 18 to gamble on horses. Additionally, horse racing appears to be a sport and you are allowed to bet on it legally.

Sports' betting has now become center stage for New Jersey. Due to increased competition from other states casinos and just the general over saturation of the gambling market, New Jersey is looking for other ways to increase tax revenue and help stabilize the remaining eight casinos. New Jersey believes legalizing sports betting is that answer. However, legalizing sports betting has proven to be a challenge and it has been five years and counting of New Jersey trying to legalize it. On Dec. 13, 2010 the Legislature agreed to a constitutional amendment that would authorize the Legislature to allow sports betting.⁷⁶ The amendment proposed language to be added to Article IV, Section VII, paragraph 2 of the state constitution to "authorize by law wagering at casinos or gambling houses in Atlantic City and at current or former running and harness horse racetracks on the results of professional, certain college, or amateur sport or athletic events."⁷⁷ The amendment passed with 64 percent of the vote in the Nov. 2011 general election.⁷⁸ Ironically, this was the first election that I voted in. Shortly

⁷⁴ 15 U.S.C.A. § 3004

⁷⁵ Id.

⁷⁶ http://www.nj.com/news/index.ssf/2010/12/nj_voters_to_decide_on_legaliz.html

⁷⁷ See Note 77

⁷⁸ See Note 77

thereafter, the Legislature amended the Casino Control Act to authorize sports betting.⁷⁹ Wagers cannot be accepted on any college sporting event taking place in New Jersey, or on any New Jersey college team's game, regardless of venue.⁸⁰

On Aug. 7, 2012, the four major sports leagues and the NCAA filed an action in district court seeking to enjoin the implementation of sports betting, alleging it would violate the PASPA.⁸¹ They argued the act unequivocally prohibits sports betting, the New Jersey statutes unequivocally permit sports betting, and the state statute must yield to federal law.⁸² The leagues argued that none of the act's exceptions apply, particularly because New Jersey considered and did not approve the 1993 joint resolution that would have taken advantage of the PASPA opt-in window.⁸³ On Sept. 7, the state filed its motion to dismiss, claiming the leagues lack standing to enforce the PASPA.⁸⁴ The state argued the leagues' claim that the harm they will suffer is suspicion that games have been influenced by factors other than honest competition, which, in turn, will harm the leagues' reputation and goodwill.⁸⁵ The state argued, however, that this vague claim of injury does not satisfy the injury in fact requirement of Article III standing.⁸⁶ The state characterized the leagues' argument as "not just conjectural, but deeply implausible," citing the estimated \$380 billion wagered annually on sporting events through illegal and offshore channels.⁸⁷ The state argued the leagues have not alleged any facts that this preexisting industry has harmed their reputation or goodwill.⁸⁸ As a result, there is no reason to believe sports

⁷⁹ http://www.rutgerslawreview.com/wp-content/uploads/2015/09/5.-Goodall_Note_Macro-7.24-2.pdf

⁸⁰ See Note 81

⁸¹ Nat'l Collegiate Athletic Ass'n v. Christie, No. 2012 WL 6698684, (D.N.J. Dec. 21, 2012)

⁸² Id.

⁸³ Id.

⁸⁴ Id. at 8

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id. at 10

⁸⁸ Id.

wagering in New Jersey will cause any harm to the leagues and certainly not immediate, irreparable harm.⁸⁹

On Nov. 21, the state filed its brief on the merits, arguing the act violates the commerce clause, the due process clause, the equal protection clause, and the 10th Amendment.⁹⁰ Focusing on the 10th Amendment, the state argued the amendment prohibits the federal government from commandeering the legislative processes of a state, and the PASPA, by prohibiting the authorization of sports betting by a Legislature, commandeers the legislative process.⁹¹ With respect to the commerce clause, the state argued the fact that certain states may permit sports betting constitutes unconstitutional discrimination.⁹² The state argued the principles behind the commerce clause are uniformity in regulation, and that the act does the opposite.⁹³ This discrimination is so significant that the PASPA violates even the relatively low rational basis standard imposed under the equal protection clause and due process clause.⁹⁴

On, Dec. 21, 2012, the district court found the leagues have standing to challenge the PASPA.⁹⁵ The court noted that the injury necessary to establish standing must be only an “identifiable trifle.”⁹⁶ Based on that standard, the court concluded the potential negative effect on perception of the integrity of the leagues’ games and their relationship with their fans was sufficient enough to constitute an injury.⁹⁷ The court concluded that this “perception based in reality” is sufficient to establish the “trifle” necessary for standing.⁹⁸ The court found

⁸⁹ Id.

⁹⁰ Id. at 13

⁹¹ Id.

⁹² Id.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id. at 18

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Id.

unpersuasive the state's argument that the leagues sanction fantasy sports, noting that fantasy sports are not considered gambling under other federal statutes regulating gambling.⁹⁹ On Feb. 28, 2013, the district court found the PASPA is constitutional.¹⁰⁰ The court rejected challenges brought by the state based on the commerce clause, the 10th Amendment, the due process clause, and the equal protection clause.¹⁰¹ The court's holding centered around the legal conclusion that Congress needed only a rational basis for the PASPA to enact it, and a review of the act showed Congress had that rational basis.¹⁰² The court also concluded that the 10th Amendment is not violated where Congress prohibits activity rather than "commandeering" a state to take action.¹⁰³ As a result, the court concluded that New Jersey's efforts to implement sports betting violate the PASPA.¹⁰⁴ The court determined the appropriate remedy is a permanent injunction prohibiting New Jersey from going forward with implementation and regulation of sports betting at casinos and racetracks.¹⁰⁵

After losing, at the District Court level, New Jersey appealed the decision to the Third Circuit. The Third Circuit rejected the same arguments that New Jersey made in the District Court.¹⁰⁶ The Third Circuit said in a 2-1 ruling that a PASPA is constitutional. "It is hard to see how Congress can 'commandeer' a state, or how it can be found to regulate how a state regulates, if it does not require it to do anything at all," Judge Julio Fuentes wrote in the opinion.¹⁰⁷ New Jersey then tried to appeal the case to the *en banc* 3rd Circuit and then United States

⁹⁹ Id.

¹⁰⁰ Id. at 21

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id. at 24

¹⁰⁵ Id.

¹⁰⁶ Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey, 730 F.3d 208 (3d Cir. 2013)

¹⁰⁷ Id.

Supreme Court respectively, but both Courts elected not to hear the case. However, the Third Circuit observed that PASPA leaves “much room for the states to make their own policy” and that it is left up to each state “what the exact contours of the prohibition will be.”¹⁰⁸ An interesting fact about the sports betting cases is three members of the Seton Hall Community are involved, Professor Edward Hartnett and Professor Ronald Riccio for the State and Monmouth Racetrack, and Judge Michael Shipp, the U.S. District Court Judge.

Seizing upon that language, in 2014 New Jersey took a different approach. Rather than enact a statute authorizing sports betting, it repealed the state’s criminal prohibitions on sports betting.¹⁰⁹ But, it limited that repeal to casinos, racetracks, and sites of former racetracks only.¹¹⁰ Essentially, sports betting at those sites would be unregulated by the state’s gaming regulatory authorities, but would not be subject to criminal prosecution as would someone who simply set up an unregulated sports betting shop at some other location. In deciding to legislate in this manner, New Jersey claimed that it was simply following the Third Circuit’s decision and determining the “exact contours” of the prohibition on sports betting.¹¹¹ The sports leagues argued that this type of a repeal necessarily puts the state imprimatur on sports betting, which violates PASPA.¹¹² The District Court agreed, finding that a partial repeal of sports betting prohibitions could not be accomplished in such a way as to comply with PASPA.¹¹³ So New Jersey once again appealed the case to the 3rd Circuit. The arguments by the parties centered around one critical question: what does it mean to “authorize” something?¹¹⁴ Much of the legal

¹⁰⁸ Id.

¹⁰⁹ <http://www.law360.com/articles/583649/nj-assembly-panel-oks-bill-to-repeal-ban-on-sports-betting>

¹¹⁰ See Note 110

¹¹¹ Nat'l Collegiate Athletic Ass'n v. Christie, 61 F. Supp. 3d 488 (D.N.J. 2014)

¹¹² Id.

¹¹³ Id.

¹¹⁴ Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey, 799 F.3d 259 (3d Cir. 2015)

analysis centers on whether repealing a prohibition on something even in a partial, restricted way amounts to “authorizing” it. If a repeal amounts to “authorization,” and PASPA prohibits “authorization,” then the repeal would violate PASPA. ¹¹⁵

New Jersey reiterated that it was simply following the Third Circuit’s prior decision that said that the state was free to set the contours of its prohibition on sports betting, and that the state has defined those contours as excluding casinos and racetracks. ¹¹⁶ The state also argued that there is a distinction between authorizing something by law and repealing a criminal prohibition on that activity. ¹¹⁷ The state argued that the Court’s prior opinion stands for the proposition that to “authorize” requires some affirmative act. ¹¹⁸ The leagues cited to the legislative history of PASPA, saying that Congress was concerned with stopping casino-style sports betting. ¹¹⁹ The leagues argued that New Jersey’s actions, however styled, create casino-style sports betting, and that doing so was contrary to the intent of Congress. ¹²⁰ As a result, according to the leagues, New Jersey’s actions run contrary to congressional intent and should be construed in that manner. ¹²¹

A question that arose was whether any “partial repeal” of prohibitions on sports betting was permissible, or whether the state had two and only two choices: a total ban or to the leagues, a statute that still broadly prohibits sports betting but makes a small opening for casinos and racetracks is not a repeal it is just another way to “authorize.” ¹²² The Court engaged in a

¹¹⁵ Id.

¹¹⁶ Id. at 18

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ Id.

¹²² Id. at 23

discussion about how far a repeal would have to go in order to truly constitute a repeal.¹²³ The leagues argued that a repeal cannot be limited to just a few licensed venues in the state.¹²⁴ The leagues suggested that it would be acceptable to repeal the sports betting prohibition to permit wagers under \$100, limited to family members or acquaintances.¹²⁵ The leagues further suggested that at least half of a statute needs to be repealed in order for it to be a true partial repeal rather than an implicit authorization.¹²⁶ The Court was concerned about the prospect of sports betting occurring in a completely unregulated fashion, were it to accept New Jersey's argument.¹²⁷ However, the Court also observed that the text of PASPA itself does not prohibit "regulating," but simply "authorizing" or "licensing."¹²⁸ Thus, the Court suggested that were it to adopt New Jersey's reading of the statute, New Jersey might still be able to impose some level of regulation on sports betting short of "authorizing" or "licensing" it.¹²⁹

On August 25, 2015 the 3rd Circuit held "We conclude that the 2014 Law violates PASPA because it authorizes by law sports gambling."¹³⁰ The court cited three reasons for its holding. First, the court stated that absent the 2014 law, sports gambling prohibitions would apply to casinos and racetracks; therefore, repealing those prohibitions must amount to an authorization. "The 2014 law provides the authorization for conduct that is otherwise clearly and completely legally prohibited."¹³¹ Second, the court stated that the selectiveness of the repeal limited to racetracks and casinos "constitutes specific permission and empowerment."¹³² The

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id. at 26

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id. at 33

¹³¹ Id.

¹³² Id.

court distinguished its holding in the 2013 decision that saved the constitutionality of PASPA. The court notes that “had the 2014 Law repealed all prohibitions on sports gambling, we would be hard pressed to find an ‘authorizing by law’ in violation of PASPA.”¹³³ In other words, the Court has essentially held that the only repeal that would pass muster under PASPA is a complete repeal i.e., allowing anyone in the state to offer sports betting. Third, the court held that because Congress gave New Jersey one year to opt out of PASPA initially, Congress must have concluded at the time that sports betting in New Jersey casinos would violate PASPA. “If sports’ gambling in New Jersey’s casinos does not violate PASPA, then PASPA’s one year exception for New Jersey would have been superfluous.”¹³⁴

In an interesting turn of events Judge Fuentes who wrote the majority’s opinion in the 2013 decision, was the lone dissenter in the present case. He notes that “the 2014 Law renders previous prohibitions on sports betting non-existent” and then criticizes the majority for taking issue with the “selective” nature of the repeal.¹³⁵ “As I see it, the issue is whether a partial repeal amounts to authorization. Because this logic rests on the same false equivalence we rejected in *Christie I*. Judge Fuentes notes that to repeal a statute is to make it as though the statute never existed. “A partially repealed statute is treated as if only the remaining part exists after the repeal; it is as if New Jersey never prohibited sports gambling in casinos, gambling houses, and sports racetracks.”¹³⁶ Judge Fuentes says that there is no explicit grant of permission under the statute for anyone to engage in sports betting.¹³⁷ Second, Judge Fuentes argues that there is a logical flaw in the argument: if withdrawing some prohibitions amounts to an authorization,

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id. at 40

¹³⁶ Id.

¹³⁷ Id.

then withdrawing all prohibitions must also amount to an authorization, which means that New Jersey has no choice at all, which means that PASPA is unconstitutional.¹³⁸

On September 8, 2015, New Jersey filed a request for an *en banc* review of the case. As grounds for its request, New Jersey claims that the recent decision reached by the majority is in direct conflict with a 2013 decision, in which the court ruled that the PASPA was constitutional.

¹³⁹ New Jersey claims that, although the 2015 court acknowledged the prior court's decision, it did so in way that favored the reasoning of the dissenting judge in the 2013 decision, who believed that PASPA was unconstitutional.¹⁴⁰

En banc hearings are granted on rare occasion, and the percentage of requests granted has steadily dropped over the years. In 2000, 73 cases were decided *en banc* in the United States; however, in 2010, only 44 cases were heard.¹⁴¹ The drop in cases can also be seen in the Third Circuit, which have only issued 18 *en banc* rulings since 2010, granting rehearing *en banc* in about 1 out of 1000 cases.¹⁴² The reason for the low number of *en banc* cases not only in the Third Circuit but also across the nation can be seen in the stringency of the rule used to decide which cases deserve to be heard.¹⁴³ Pursuant to Federal Rule 35 of Appellate Procedure: An *en banc* hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance."¹⁴⁴ According to the Third Circuit, exceptional circumstances are those that "include instances in which the panel overlooked or

¹³⁸ *Id.*

¹³⁹ <http://www.legalsportsreport.com/3634/new-jersey-sports-betting-rehearing/>

¹⁴⁰ See Note 140

¹⁴¹ <http://heitnerlegal.com/2015/09/13/new-jersey-requests-en-banc-hearing-of-sports-betting-decision/>

¹⁴² See Note 142

¹⁴³ See Note 142

¹⁴⁴ Fed. R. App. P. 35

misapprehended points of law or fact that truly affect the outcome of the appeal, where the panel opinion directly conflicts with another panel decision, or where a pivotal point of the case has been affected by a new precedential decision or by a new statute that could not have been cited in the briefs or at oral argument.”¹⁴⁵

On October 14, 2015 New Jersey’s request for an *en banc* review was granted. The 3rd Circuit’s order stated, “A majority of the active judges having voted for rehearing en banc in the above captioned cases, it is ordered that the petitions for rehearing are GRANTED. The Clerk of this Court shall list the case for rehearing en banc at the convenience of the Court. The opinion and judgment entered August 25, 2015 are hereby vacated.”¹⁴⁶ In the next several months, we should know the date in which oral arguments will be heard. Indeed, if New Jersey’s argument succeeds, other states could piggyback onto the construction and consider repeals of their own statutes. New Jersey’s case has been watched closely as the push to legalize sports betting has grown nationwide. A number of other states have introduced measures to legalize such wagering this year: Indiana, Minnesota, New York, South Carolina, and Texas.¹⁴⁷ That could lead to widespread sports betting in the US or it could lead to Congress rewriting PASPA such as to close the door. Whatever happens, we can certainly expect sports betting to continue to be a hotly contested topic for years to come.

While New Jersey is fighting over whether sports betting should be legalized, offshore have already been taking sports bets for years. Offshore betting sites are not allowed to solicit American customers, but Americans are betting on them every day.¹⁴⁸ Illegal betting in the

¹⁴⁵ <http://thirdcircuitbar.org/documents/third-circuit-bar-practice-guide.pdf>

¹⁴⁶ <http://www.legalsportsreport.com/4987/nj-sports-betting-case/>

¹⁴⁷ See Note 146

¹⁴⁸ <http://lasvegassun.com/news/2015/oct/28/the-offshore-game-of-online-betting-how-a-bookmaki/>

United States far exceeds legal wagering at casinos. ¹⁴⁹ Off shore website are generating billions of U.S. dollars each year. ¹⁵⁰ The betting sites are based offshore, in countries where gambling is legal, American prosecutors are limited mostly to rounding up people who recruit bettors and move money in this country, leaving the overseas sites free to replace those who were arrested.

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Illegal offshore bets can be placed several ways. Many of the sports books, while operating legally elsewhere, rely on a system of agents who steer business to them in the United States and move the cash. ¹⁵² While the books say they do not condone illegal actions by the agents, it is beyond dispute that the agents have generated billions of dollars in revenue for the sites. ¹⁵³ High-rollers usually must be vetted by the agents, before getting passwords to their favored offshore sites where computers post odds, process wagers and maintain player accounts. ¹⁵⁴ To avoid illegal credit card transactions, wagered money usually remains in the United States, creating the need for the shadow banking system. Bettors settle up in person with the ring's agents or money collectors. ¹⁵⁵

Generally, a website resides on a server a type of bulked-up desktop computer connected to the Internet, usually a rectangular box with no screen or keyboard, but containing chips and a spinning hard drive to process and store data. ¹⁵⁶ When linked across the world with fiber optics, copper wires and other means, servers give the Internet its computational power. ¹⁵⁷ Servers can

¹⁴⁹ See Note 148

¹⁵⁰ See Note 148

¹⁵¹ See Note 148

¹⁵² <http://www.madduxsports.com/betting-offshore.html>

¹⁵³ See Note 151

¹⁵⁴ See Note 151

¹⁵⁵ See Note 151

¹⁵⁶ <http://www.nytimes.com/2015/10/26/us/pinnacle-sports-online-sports-betting.html>

¹⁵⁷ See Note 155

host websites, keep accounts, store wagers and work at speeds that back-room bookies, whose tools had not changed since the days of Damon Runyon, could never hope to match.¹⁵⁸ Servers can also be harder to find and raid than those back rooms were.¹⁵⁹

American prosecutors say offshore gambling sites are beyond their legal reach.¹⁶⁰ Offshore gambling sites can be difficult to prosecute, requiring hundreds of hours of labor-intensive work, sources, wiretaps and surveillance.¹⁶¹ Even if they do, prosecuting other crimes may be deemed more important than stopping illegal gambling.¹⁶² Offshore gambling sites, hoping to do business in countries where gambling is legal, are often licensed in small island jurisdictions like Malta, Alderney in the Channel Islands, and Curacao, just off the Venezuela coast, as well as in Costa Rica.¹⁶³

Arguably the most talked about thing in sports betting currently is one week fantasy sports league such as FanDuel and DraftKings. Daily fantasy sports are a subset of fantasy sport games. As with traditional fantasy sports games, players compete against others by building a team of professional athletes from a particular league or competition, and earn points based on the actual statistical performance of the players in real-world competitions.¹⁶⁴ Daily fantasy sports are an accelerated variant of traditional fantasy sports that are conducted over short-term periods, such as a week or single day of competition, as opposed to those that are played across an entire season.¹⁶⁵ Daily fantasy sports are structured in the form of competitions; users pay an

¹⁵⁸ See Note 155

¹⁵⁹ See Note 155

¹⁶⁰ http://www.nytimes.com/interactive/2015/10/15/us/sports-betting-daily-fantasy-games-fanduel-draftkings.html?emc=eta1&_r=0

¹⁶¹ See Note 159

¹⁶² See Note 159

¹⁶³ See Note 159

¹⁶⁴ <https://www.sportsbettingonline.net/daily-fantasy-sports/>

¹⁶⁵ See Note 163

entry fee in order to participate, and build a team of players in a certain sport while complying with a salary cap. ¹⁶⁶ Depending on their overall performance, players may win a share of a pre-determined pot. Entry fees help fund prizes, while a portion of the entry fee goes to the provider as rake-off revenue. ¹⁶⁷

In 2006, the federal government passed a law called the Unlawful Internet Gambling Enforcement Act (UIEGA) that established fantasy sports as a "game of skill" and not a "game of chance." ¹⁶⁸ The law says it's legal if it: (1) is not dependent solely on the outcome of any single sporting event or non-participant's singular individual performance in any single sporting event; (2) has an outcome that reflects the relative knowledge of the participants, or their skill at physical reaction or physical manipulation (but not chance), and, in the case of a fantasy or simulation sports game, has an outcome that is determined predominantly by accumulated statistical results of sporting events, including any non-participant's individual performances in such sports events. ¹⁶⁹ At the time of UIEGA, fantasy sports were a low-key competition in which bettors assembled their own teams, and then watched how their players performed over an entire season. Now the daily fantasy sports market is a multi-billion dollar industry. UIEGA has created more questions than it has answered in the realm of fantasy sports with seemingly no enforcement tools attached thereto. Furthermore, it seems to have changed the law with respect to what is and what is not legal, or at least confused many.

On October 4, 2015, ESPN is reported that DraftKings employees are made roughly \$6 million playing on rival FanDuel's site. ¹⁷⁰ New York Attorney General Eric T.

¹⁶⁶ See Note 163

¹⁶⁷ See Note 163

¹⁶⁸ 31 U.S.C.A. § 5363

¹⁶⁹ Id.

¹⁷⁰ <http://www.businessinsider.com/draftkings-daily-fantasy-sports-fanduel-2015-10>

Schneiderman has opened an investigation into daily-fantasy-sports betting websites DraftKings and FanDuel, after reports emerged that employees at both companies had won major payouts betting on each other's platforms, according to *The New York Times*.¹⁷¹ The scandal broke after a user on a fantasy-sports forum noticed last week that DraftKings employee Ethan Haskell admitted to "inadvertently releasing data before the start of the third week of NFL games."¹⁷² That data could have given Haskell or other users a significant edge in DraftKings contests, which have considerable payouts. Haskell won \$350,000 at FanDuel the same week.¹⁷³ People's minds are concerned as to what information employees at sites like DraftKings and FanDuel have access to, and if they are using that data to win money at rival sites. A day after the New York attorney general opened an investigation, DraftKings and FanDuel said that it had banned its employees from gambling on any daily fantasy games and also was banning employees of other fantasy sites from playing on their sites.¹⁷⁴ On October 19th according to the Summary of Findings, it stated Haskell could not have possibly used the information from DraftKings for the FanDuel tournament, "because he did not receive that information until 40 minutes after the FanDuel lineup was locked."¹⁷⁵ The FanDuel \$5M NFL Sunday Million contest began at 1:00 p.m. on September 27, 2015; the information was received at 1:40 p.m."¹⁷⁶

Many people question daily fantasy sports leagues legality. If you think about it now wagering on the performance of athletes is just fine. The federal government says betting on daily fantasy sports is legal and that putting up entry fees in hopes of winning money through

¹⁷¹ See Note 169

¹⁷² See Note 169

¹⁷³ See Note 169

¹⁷⁴ See Note 169

¹⁷⁵ <http://www.forbes.com/sites/darrenheitner/2015/10/19/draftkings-employee-did-not-use-insider-information-to-win-350000/>

¹⁷⁶ See Note 174

online sites such as FanDuel or DraftKings does not qualify as gambling, even though it matches a common-sense definition. Regardless of which side you sit on, daily fantasy-sports sites are legal under today's laws and they will continue to flourish, racking up hundreds of millions of dollars in revenue.

On October 15, The Nevada Gaming Control Board has concluded that daily fantasy sports activity constitutes gambling under Nevada law.¹⁷⁷ The Board came to this conclusion after reviewing a legal analysis conducted by the Gaming Division of the Office of the Nevada Attorney General.¹⁷⁸ It has been deemed that, under Nevada law, daily fantasy sports meets the definition of a game or gambling game and that any operator that wishes to conduct business within the state must hold a gambling license.¹⁷⁹ DraftKings has applied for and received a gaming license in the United Kingdom and has thus far escaped scrutiny in the U.S. for same.¹⁸⁰ Now every move made by the daily fantasy industry is dissected.

Additionally, daily fantasy sports operators may be concerned that applying for a gaming license in Nevada could cause them to be construed as sports gambling throughout the U.S., thereby potentially being deemed to be violating federal law. The Professional and Amateur Sports Protection Act states that it shall be unlawful for “a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery sweepstakes, or other betting, gambling, or wagering scheme . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more

¹⁷⁷ <http://venturebeat.com/2015/10/15/nevada-gaming-board-daily-fantasy-sports-is-gambling/>

¹⁷⁸ See Note 176

¹⁷⁹ See Note 176

¹⁸⁰ See Note 176

performances of such athletes in such games.”¹⁸¹ The definition of “person” includes corporations, companies, associations and firms.¹⁸²

On October 16th the U.S. Justice Department and the Federal Bureau of Investigation started probing whether the business model of daily fantasy-sports operators violates federal law.¹⁸³ The Justice Department is trying to determine whether daily fantasy games are a form of gambling that falls outside the purview of the exemption.¹⁸⁴

On October 30th Washington Redskins receiver Pierre Garcon filed a proposed class-action lawsuit against the daily fantasy sports company FanDuel.¹⁸⁵ In the case, the suit alleges that FanDuel uses player names and likenesses without their permission to promote their business and collect huge revenues." The case is about FanDuel trying to profit on Garcon's success, and that of other NFL athletes, without compensating them," the suit states.¹⁸⁶ His suit seeks unspecified damages and says FanDuel continues to promote and operate its daily fantasy football contests "on the backs of NFL players, whose popularity and performance make the Defendant's commercial daily fantasy football product possible."¹⁸⁷ The suit does not name FanDuel's chief rival, DraftKings, as a defendant. DraftKings has a marketing and licensing agreement with the NFL Players Association.¹⁸⁸

There have also been remarks from professional league commissioners about fantasy sports and sports betting. On an Opening Day game between the Washington Nationals and

¹⁸¹ 28 U.S.C.A. § 3702

¹⁸² *Id.*

¹⁸³ <http://www.wsj.com/articles/fbi-justice-department-investigating-daily-fantasy-sports-business-model-1444865627>

¹⁸⁴ See Note 182

¹⁸⁵ <http://www.usatoday.com/story/sports/nfl/2015/10/30/pierre-garcon-lawsuit-fan-duel-player-likeness/74889324/>

¹⁸⁶ See Note 189

¹⁸⁷ See Note 189

¹⁸⁸ See Note 189

New York Mets, MLB Commissioner Rob Manfred provided his position on sports gambling and fantasy sports. "The difference is one's legal and one is not," said Manfred. "It's a pretty definitive line."¹⁸⁹ In 516 word op-ed piece in the New York Times, NBA Commissioner Adam Silver diagnosed the reality of sports betting in the U.S.: Federal and state laws are not stopping anyone from betting.¹⁹⁰ Billions of dollars are being illegally wagered on sports, almost all online.¹⁹¹ In England, bets can be placed on a smartphone, at a stadium kiosk or even using a TV remote control.¹⁹² "In light of these domestic and global trends," he wrote, "the laws on sports betting should be changed. Congress should adopt a federal framework that allows states to authorize betting on professional sports, subject to strict regulatory requirements and technological safeguards."¹⁹³ The timing of the column, of course, was calculated. One week later, the NBA was due back in court as part of its ongoing fight to prevent New Jersey from making sports betting legal. The timing of the op-ed allowed him to address another seeming hypocrisy. Just one day prior to its publication, the league announced a deal with a successful daily fantasy operator FanDuel. The NBA deal also included an equity stake in the company. "The league and many of our teams are actively engaged in the so-called daily fantasy business," Silver says.¹⁹⁴ "And while I wouldn't categorize that as sports betting, on the continuum of no betting at all and legalized betting, it's certainly on the spectrum."¹⁹⁵

¹⁸⁹ <http://www.forbes.com/sites/darrenheitner/2015/09/15/congress-wisely-puts-legal-status-of-fantasy-sports-under-review/>

¹⁹⁰ http://espn.go.com/chalk/story/_/id/12262502/gambling-issue-adam-silver-wants-sports-gambling-legalized-other-leagues-join-him

¹⁹¹ See Note 183

¹⁹² See Note 183

¹⁹³ See Note 183

¹⁹⁴ <http://abcnews.go.com/Sports/im-pro-sports-gambling-realist/story?id=28690359>

¹⁹⁵ See Note 187

It seems clear that more regulation of fantasy sports is eminent. PASPA would prohibit any sports gambling operation under regulation by any state other than Nevada. The not easily fixed problem is that under the PASPA, it is unlawful for any “person”: “to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.”¹⁹⁶ It seems difficult to argue that repackaging “one or more performances of such athletes in such games” into fantasy teams and running peer to peer skill contests escapes the PASPA ban. Daily fantasy sports cleverly packaging skill as somehow “not sports betting” is ultimately “wrong.” Skillful sports betting is still sports betting.

While most daily fantasy sports discussions talk long and loudly about the UIGEA, much less attention has been paid to the Illegal Gambling Business Act (IGBA).¹⁹⁷ IGBA is a federal law which, inconveniently for daily fantasy sports, criminalizes gambling businesses deemed illegal under applicable state law. The “inconvenience” to daily fantasy sports operators has led to prudent decisions to avoid certain state markets, and avoid any IGBA issues federally, reminiscent of online poker operators’ similar approach of 10 years ago. Since the DOJ interpretation of the federal Wire Act, to clarify that non-sports gambling was not covered, there is no federal law directly prohibiting mere “gambling” absent a state or local law violation by a business.

¹⁹⁶ 28 U.S.C.A. § 3702

¹⁹⁷ 18 U.S.C.A. § 1955

Daily fantasy sports and the various sports leagues' hands might be forced at the federal level to seek repeal or amendment of PASPA. Since Nevada has decided daily fantasy sports is "sports gambling," bet on an extensive effort by the daily fantasy sports industry and its investors/suppliers/media partners and the sports leagues to act federally to protect their nest egg. Instead of fighting New Jersey under PASPA to stop state action as in the past, the daily fantasy sports operators may switch to amending PASPA in favor of state-level authorization of daily fantasy sports. The problem daily fantasy sports faces should any state aside from Nevada attempt daily fantasy sports "authorization," is that any "authorization" could trigger a PASPA violation for any person operating a daily fantasy sports business.

As well as, if not from New Jersey's case, sports betting will become legal sooner rather than later somehow. Right now Congress is trying to stop online betting from existing. So the New Jersey would be one of the places affected. As mentioned earlier horse betting is exempted from any online betting regulations. The government should not be allowed to forbid online gambling. By doing that not only will people turn to offshore terminals to gamble, like with sports betting, but it will be showing even more favoritism than their already is for the horse racing industry. Congress should want to keep online gambling in the U.S. to generate tax dollars. The only thing constant in the world is change and the internet, sports betting, and daily fantasy sports will be no exception.

