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Symposium**



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POLICE BLOCKADE: HOW THE REVITALIZATION OF THE TENTH AMENDMENT COULD PAVE THE WAY TO LEGALIZED SPORTS BETTING IN NEW JERSEY

Steven L. Shur

Student Submission

I. INTRODUCTION

On January 12, 2012, New Jersey passed N.J. Stat. Ann. § 5:12A-1 (Sports Gambling Law), a law, which legalizes sports wagering in the state.¹ The passage of the law has sparked controversy across both the National Collegiate Athletic Association and the major professional sports organizations. The National Collegiate Athletic Association (NCAA), National Basketball Association, National Hockey League, and Major League Baseball have filed a complaint in federal court arguing that New Jersey's law violates the federal Professional and Amateur Sports Protection Act (PASPA or Act) which makes it unlawful for a government entity to sponsor or authorize wagering on professional or amateur athletic competitions.²

II. WHAT IS PASPA?

The Professional and Amateur Sports Protection Act "prohibit[s] sports gambling conducted by, or authorized under the law of, any State or other governmental entity."³ Under

¹ Professional and Amateur Sports Protection, 28 U.S.C.S. §§ 3701-3704 (1993).

² See Complaint for Declaratory and Injunctive Relief, Nat'l Collegiate Athletic Ass'n v. Christopher J. Christie, (No. 12-04947), 2012 WL 3171566 (D.N.J. Aug. 07, 2012).

³ S. REP. No. 102-248 at 1 (1992).

PASPA, “[s]tates [are] prohibited from sponsoring, operating, advertising, promoting, licensing, or authorizing sports lotteries or any other type of sports betting that is based on professional or amateur games or performances therein.”⁴ The concern behind PASPA’s enactment is that “[s]ports gambling threatens the integrity of, and public confidence in, amateur and professional sports.”⁵ Furthermore, the fear behind legalized sports betting is that it would “promote suspicion about controversial plays and lead fans to think ‘the fix was in’ whenever their team failed to beat the point-spread.”⁶ Nevertheless, the law provides an exception for states that previously operated a sports wagering scheme between 1976 and 1990.⁷ The states that fit within this exception are Nevada, Delaware, Montana, and Oregon.⁸ New Jersey had an opportunity to legalize sports betting before PASPA, however, the bill was not passed.⁹ Arguably most controversial, the bill “represents a judgment that sports gambling . . . is a problem of legitimate Federal concern for which a Federal solution is warranted.”¹⁰ “We must do everything we can to keep sports clean so that the fans, and especially young people, can continue to have complete confidence in the honesty of the players and the contests.”¹¹

⁴ *Id.* at 4.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ 28 U.S.C.S. § 3704 (West 2009).

⁸ Kyle Smith, *Legalize Sports Betting, And Let Gov. Chris Christie Spike the Football*, FORBES.COM (Aug. 23, 2012, 12:31 PM), <http://www.forbes.com/sites/kylesmith/2012/08/23/legalize-sports-betting-and-let-gov-chris-christie-spike-the-football/>.

⁹ Hoa Nguyen, *Judge in New Jersey Sports Betting Lawsuit Said He’ll Make Decision in Two Weeks*, THE PRESS OF ATLANTIC CITY, http://m.pressofatlanticcity.com/news/breaking/judge-in-new-jersey-sports-betting-lawsuit-said-he-ll/article_9fc29f6c-76d7-11e2-817c-0019bb2963f4.html?mode=jqm.

¹⁰ S. REP. NO. 102-248 at 7 (1992).

¹¹ *Id.* at 6.

The Senate Report clearly asserts that the federal government has the legitimate right to be concerned with protecting the integrity of professional and amateur sports. Moreover, the report explains that the federal government's intrusion outweighs the potential economic benefit legalized sports wagering would provide for the states. Specifically, the report states that "[t]he answer to State budgetary problems should not be to increase the number of lottery players or sports bettors, regardless of the worthiness of the cause [T]he risk to the reputation of one of our Nations most popular pastimes, professional and amateur sporting events, is not worth it."¹²

At the time PASPA was being considered in Congress, as many as thirteen states were considering enacting legislation allowing sports betting as a means to overcome budgetary concerns.¹³ Nevertheless, proponents of the Act, such as Senator Bill Bradley of New Jersey, believed that "the harm that state-sponsored sports betting causes" - that is, threatening the integrity of sports in the eyes of both fans and young people - "far outweighs the financial advantages received."¹⁴ The very premise of PASPA, according to Senator Bradley, was "that the revenue earned by the states through sports gambling is not enough to justify the waste and destruction attendant to the practice. Just as legalizing drugs would lead to increased drug addition [sic], legalizing sports gambling would aggravate the problems associated with gambling."¹⁵

The statute itself made it illegal for any "governmental entity" to run any kind of wagering scheme based on the outcome of sporting events.¹⁶ Under PASPA, any violation of the Act can be enjoined by a civil action filed either "by the Attorney General of the United States, or by a professional

¹² *Id.* at 7.

¹³ Senator Bill Bradley, *The Professional and Amateur Sports Protection Act-Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORT L. 5, 8 (1992).

¹⁴ *Id.*

¹⁵ *Id.* at 6.

¹⁶ 28 U.S.C.A. § 3702 (West 2006).

sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.”¹⁷

Section 3704 of PASPA carved out a controversial exception. Under this section, every state is banned from state-sponsored sports wagering except Nevada, Oregon, Montana, and Delaware.¹⁸ This is because PASPA provided for a loophole which permitted states that had legal, state-sponsored casino gaming within ten years prior to the Act's effective date to establish a state-sponsored sports wagering scheme.¹⁹ However, this loophole only provided these states a one-year window from the effective date of the Act to comply with this provision.²⁰

To further explain the carved out exception, the Judiciary Committee report explained that it did “no[t] wish to apply this new prohibition retroactively” to Oregon or Delaware, which instituted sports lotteries prior to the introduction of our legislation, or to threaten the economy of Nevada, which over many decades has come to depend on legalized private gambling, including sports gambling, as an essential industry.²¹ Thus PASPA, as explained by the Judiciary Committee, was designed to limit the expansion of sports wagering, not to eliminate it from the nation completely.²²

III. NEW JERSEY’S MISSED PASPA OPPORTUNITY

In an attempt to rebuild the shore resorts the New Jersey State Legislature passed a law permitting casino gaming in Atlantic City in 1976.²³ However, the legislature chose not to permit wagering on either collegiate or professional sports.²⁴ As

¹⁷ 28 U.S.C.A. § 3703 (West 2009).

¹⁸ Nguyen, *supra* note 9; 28 U.S.C.A. § 3704 (West 2009).

¹⁹ 28 U.S.C.A. § 3704 (West 2009).

²⁰ 28 U.S.C.A. § 3704(a)(3)(A) (West 2009).

²¹ S. REP. NO. 102-248, at 8 (1992).

²² *Id.*

²³ N.J. Stat. Ann. § 5:12-1--5:12-210 (West 2005).

²⁴ Michael Levinson, *A Sure Bet: Why New Jersey Would Benefit from Legalized Sports Wagering*, 13 SPORTS LAW. J. 143, 149 (2006).

a result, the New Jersey State Legislature missed an opportunity to produce revenue for the state and keep Atlantic City competitive with other states that authorize gaming.²⁵

As indicated above, the federal government did not want to impede on states that already allowed certain types of gaming. As such, Congress provided the opportunity for any state that operated casinos within the ten-year period prior to the effective date of PASPA to legalize sports wagering.²⁶ This exception provided states, specifically for New Jersey, one year to legalize sports wagering.²⁷ However, the New Jersey State Legislature was unable to approve a joint resolution that would have placed a referendum question on the ballot as to whether sports wagering should be legalized.²⁸ As such, New Jersey failed to legalize sports wagering and, as a result, subjected itself to the confines of PASPA.²⁹

Since the passing of PASPA, New Jersey has lost its status as the sole gambling destination on the east coast of the United States. As a means to combat lost revenue and secure its competitive standing in the gambling market, the Interactive Media Entertainment and Gaming Association (iMEGA) and three New Jersey horse racing groups filed a lawsuit in federal court claiming that PASPA

Has an inconsistent effect on iMEGA members and members of the N.J. Horsemen's Associations, and private citizens similarly situated in the 46 remaining states ... who desire to take advantage of multiple forms and platforms for Sports Betting services... based solely on their status as residents of different jurisdictions... [and] creates liability on the part of plaintiffs and their members and private citizens similarly situated in the 46

²⁵ *Id.*

²⁶ *Id.*; see *In re Casino Licensees*, 633 A.2d 1050 (N.J. Super. App. Div. 1993).

²⁷ *In re Casino Licensees*, 633 A.2d 1050, 1051 (N.J. Super. App. Div. 1993).

²⁸ *Id.*

²⁹ *Id.*

remaining states, including New Jersey, who wish to take advantage of iMEGA members' services and/or...Sports Betting in general based solely on their status as residents of different jurisdictions.³⁰

The District Court of New Jersey, however, dismissed this suit for lack of standing.³¹ According to the court, the plaintiffs failed to show an actual injury and did not prove that members who engage in sports gambling activities prohibited by PASPA face obstacles in pursuing their own claims.³²

Since the dismissal of the above-mentioned lawsuit, New Jersey voters passed a nonbinding referendum in November 2011 to amend the State Constitution to legalize sports wagering, prompting the New Jersey Legislature to pass N.J. Stat. Ann. § 5:12-1.³³ In opposition of the New Jersey law, the NCAA, National Basketball Association, National Football League, National Hockey League, and Major League Baseball (the leagues) filed a lawsuit against New Jersey for injunctive relief.³⁴ In the complaint, the leagues assert that legalizing sports betting “would irreparably harm amateur and professional sports by fostering suspicion that individual plays and final scores of games may have been influenced by factors other than honest athletic competition.”³⁵ The leagues further argue that PASPA clearly bars New Jersey from sponsoring, operating, advertising, promoting, licensing or authorizing sports-based gambling.³⁶

³⁰ Interactive Media Entertainment & Gaming Ass'n, Inc. v. Holder, (No. 09-1301), 2011 WL 802106 at *10-11 (D.N.J. Mar. 7, 2011).

³¹ *Id.* at *1.

³² *Id.* at *5.

³³ Tom Hester, NEW JERSEY NEWSROOM (Nov. 9, 2011), <http://www.newjerseynewsroom.com/state/rep-frank-pallone-to-introduce-bill-to-overturn-federal-ban-on-legalized-sports-betting-in-nj>.

³⁴ Complaint, *supra* note 2.

³⁵ Complaint, *supra* note 2, at 6.

³⁶ Complaint, *supra* note 2, at 4.

In the current lawsuit against New Jersey and Governor Chris Christie, the leagues and the NCAA are attempting to utilize the increased power given by PASPA to affect state gaming policies. It is without question that the NCAA is influential with regard to state gaming policy, even beyond the terms of PASPA. For instance, the NCAA refused to hold any men's college basketball tournament games in Oregon because of Oregon's sports lottery, notwithstanding the fact that the state never offered wagering on NCAA games (nor could it in light of the *Markell* court's reading of PASPA).³⁷ Likewise, here, the NCAA has threatened to withhold any NCAA events in New Jersey.³⁸ Furthermore, the leagues and the NCAA claim that the New Jersey Law is hypocritical. They argue that New Jersey recognizes the potential harm of sports betting by banning betting on collegiate games in which a New Jersey college is playing in the state.³⁹ Nevertheless, the constitutionality of PASPA has been questioned.⁴⁰

IV. CONSTITUTIONAL ARGUMENTS

A. COMMERCE CLAUSE AND UNIFORMITY

According to the Commerce Clause of the Constitution, the federal government has the power to regulate interstate commerce.⁴¹ Further, Congress must uniformly penalize all states.⁴² Upon reviewing recent United States Supreme Court Commerce Clause cases, it would be very difficult for those who

³⁷ Levinson, *supra* note 24, at 146; Office of the Comm'r of Baseball v. Markell, 579 F.3d 293, 295 (3d Cir. 2009).

³⁸ Audio tape: 2012 Sports Law Symposium, held by the Rutgers School of Law-Camden Sports and Entertainment Law Society (October 23, 2012) available at <https://camlaw.rutgers.edu/av-request/15641/6683165841?width=970&height=570&iframe=true> [hereinafter Rutgers Sports Symposium].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ U.S. CONST. art. I, § 8, cl. 3 (“The Congress shall have power to ...regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”).

⁴² U.S. CONST. art. I, § 8, cl. 1.

oppose PASPA to support a claim that sports wagering does not substantially affects interstate commerce.

In *United States v. Lopez*, the Supreme Court “identified three broad categories of activity that Congress may regulate under its commerce power.”⁴³ These powers include: (1) “the use of the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce, or person or things in interstate commerce,” and (3) “those activities having a substantial relation to interstate commerce.”⁴⁴

Although there is uncertainty as to what constitutes a “substantial effect” on interstate commerce,⁴⁵ applying the rational basis test found in *Gonzales v. Raich*, Congress’s fear that “sports gambling is likely to spread on a piecemeal basis and ultimately develop an irreversible momentum” is a rational basis for regulating sports betting.⁴⁶

The stronger argument, however, is that PASPA violates the Constitutional uniformity requirement.⁴⁷ There is no justification for why PASPA created an exception for Nevada, Oregon, and Delaware, while making sports wagering illegal in the other forty-seven states.⁴⁸ This exception grants a “federal monopoly on lawful sports wagering,” because the law only permits sports betting in three states.⁴⁹ As Senator Charles Grassley stated, “there is simply no rational basis, as a matter of Federal policy, for allowing sports wagering in three states,

⁴³ *United States v. Lopez*, 514 U.S. 549, 558 (1995) (citing *Hodel v. Virginia Surface Mining & Reclamation Ass’n, Inc.*, 452 U.S. 264, 276-77 (1981); *Perez v. United States*, 402 U.S. 146, 150 (1971)).

⁴⁴ *Lopez*, 514 U.S. at 558-59.

⁴⁵ See Jason J. Ranjo, *Game Over?: The Potential Demise of the Professional and Amateur Sports Protection Act*, 42 RUTGERS L.J. 213, 219 – 220 (2010) (extrapolating the rules for analyzing the Commerce Clause under *United States v. Morrison* and *Gonzales v. Raich*).

⁴⁶ *Id.* at 222.

⁴⁷ U.S. Const. art. I, § 8, cl. 1.

⁴⁸ 28 U.S.C.A. § 3704(a)(1) (2005).

⁴⁹ S. REP. 102-248, 13 (1992).

while prohibiting it in the other forty-seven, nor any rational basis, or support for the language of S. 474 [PASPA].”⁵⁰

B. TENTH AMENDMENT

When originally ratified, the purpose of the Tenth Amendment was to obstruct additional federal powers from being inferred from the absence of federal limitations, or rights provisions in the Constitution.⁵¹ As the language itself states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁵² One of the “powers not delegated to the United States [federal government] by the Constitution”⁵³ is the express and implied power “to regulate matters affecting its citizens, including the raising of revenue.”⁵⁴ Thus, in response to the lawsuit against Chris Christie, the defense argues that the injunctive relief sought by the four leagues and the NCAA⁵⁵ is barred because PASPA violates the Tenth Amendment.⁵⁶

The Tenth Amendment was an initial concern for those who originally opposed PASPA. In the original Judiciary Committee hearings on Senate Bill 474, (eventually PASPA),⁵⁷ Senator

⁵⁰ *Id.* at 13.

⁵¹ David N. Mayer, *Justice Clarence Thomas and the Supreme Court's Rediscovery of the Tenth Amendment*, 25 CAP. U. L. REV. 339, 352 (1996).

⁵² U.S. CONST. amend. X.

⁵³ *Id.*

⁵⁴ Complaint and Demand for Declaratory Relief at 127, *Interactive Media Entm't & Gaming Ass'n v. Holder*, (No. 09-1301), 2012 WL 3171566 (D.N.J. Mar. 23, 2009).

⁵⁵ National Basketball Association, National Football League, National Hockey League, and Major League Baseball.

⁵⁶ Answer of Intervenor-Defendants Stephen M. Sweeney and Sheila Y. Oliver to Complaint for Declaratory and Injunctive Relief, *Nat'l Collegiate Athletic Ass'n v. Christopher J. Christie*, (No. 12-04947), 2012 WL 6601270 (D.N.J. Dec. 13, 2012).

⁵⁷ See S. REP. No. 102-248.

Chuck Grassley characterized the bill as “a substantial intrusion into States' rights [that] would restrict the fundamental right of States to raise revenue to fund critical State programs.”⁵⁸ Senator Grassley argued that lotteries and gaming have been “traditionally” state issues, and in light of the fiscal crises states faced in the early 1990s, “Congress should not be telling the States how they can or cannot raise revenue.”⁵⁹ Also cited in the report is a letter from the Justice Department to Chairman of the Judiciary Committee Senator Joe Biden stating concerns over the bill because it would present “federalism issues.”⁶⁰

As stated above, PASPA was passed because “sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling.”⁶¹ Specifically, “[s]ports gambling raises people's suspicions about point-shaving and game-fixing. Where sports gambling occurs, fans cannot help but wonder if a missed free throw, dropped fly ball, or a missed extra point was part of a player's scheme to fix the game.”⁶² Yet even after initial concerns about the constitutionality of the law, in the recent suit filed by the four major professional leagues and the NCAA against Chris Christie, the complaint again argued, “[G]ambling on amateur and professional sports threatens the integrity of those sports and is fundamentally at odds with the principle - essential to the success of Plaintiffs - that the outcomes of collegiate and professional athletic contests must be determined, and must be perceived by the public as being determined, solely on the basis of honest athletic competition.”⁶³ Although PASPA was passed into law, there were concerns about this argument and whether the integrity of sports competition was enough for the federal government to hurdle the line of traditional state's rights.

⁵⁸ S. REP. No. 102-248, at 12.

⁵⁹ *Id.*

⁶⁰ *Id.* at 13.

⁶¹ 138 CONG. REC. S17434 (daily ed. Oct. 7, 1992) (statement of Sen. Bill Bradley).

⁶² *Id.*

⁶³ Complaint, *supra* note 2.

Three years after PASPA was enacted, and “[a]fter 60 years of being asleep at the constitutional switch, the Supreme Court decided that our Founders did indeed create a government of limited powers.”⁶⁴ At issue in *Lopez* was the Gun-Free School Zone Act, which made it a federal crime “for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.”⁶⁵ Although essentially a commerce clause issue,⁶⁶ the majority sided against the federal government because finding in favor of the government would lead to unlimited federal power, essentially granting Congress plenary police power.⁶⁷ Similar to the statute in *Lopez*, PASPA gives Congress expansive police power to regulate ways for states to raise revenue. Thus, like *Lopez*, the court should find that PASPA violates a historic police power granted to the states and should be declared unconstitutional and in violation of the Tenth Amendment.

C. WHY PASPA IS STILL AN ACTIVE LAW

Although it is true that several actions have been brought since *Lopez* regarding the unconstitutionality of PASPA, these cases have not directly addressed the Tenth Amendment issue. As one of the four states recognized by PASPA permitted to conduct sports betting, in 2009 Delaware passed legislation to reopen sports betting.⁶⁸ The goal was to increase traffic to the

⁶⁴ Editorial, *Expansion Checked*, WALL ST. J., Apr. 27, 1995, at A14 (referencing the holding in *United States v. Lopez*).

⁶⁵ *United States v. Lopez*, 514 U.S. 549, 551 (1995) (quoting the Gun-Free School Zones Act of 1990).

⁶⁶ *Id.* The federal government argued that possessing a firearm could affect the national economy by imposing high financial costs upon society through insurance and by preventing individuals from traveling into areas where violent crime occurs and thus, affecting interstate commerce. *Id.* at 563 – 564.

⁶⁷ *Lopez*, 514 U.S. at 567.

⁶⁸ Office of the Comm’r of Baseball v. Markell, 579 F.3d 293, 295 (3d Cir. 2009).

“racinos” and to increase play at video lottery terminals.⁶⁹ The Delaware Supreme Court held that the proposal for betting on multiple game outcomes did not violate the Delaware Constitution.⁷⁰ Nevertheless, the professional sports leagues filed suit against the State in federal court to prevent the state from introducing sports betting, or to limit sports betting to the original parlay betting implemented by Delaware at the time PASPA was passed in 1990s.⁷¹

Although the court ultimately found in favor of the professional sports leagues, there is a key distinction between *Markell* and the latest case involving New Jersey and Governor Christie. The main argument offered by Delaware was that its plan was not in violation of PASPA because it acted within the statutory exception, which stated that Delaware was one of the four exempted states from the sports betting ban.⁷² In other words, Delaware simply challenged the interpretation of PASPA, which limited the state to parlay betting. Nonetheless, the Third Circuit ruled that although the state was grandfathered-in, the only form of sports betting allowed under PASPA was the exact form implemented by Delaware at the time the federal statute was enacted.⁷³ Thus, Delaware did not challenge the constitutionality of the statute, leaving that question unanswered.

Considering that *iMEGA* was dismissed and the court never decided the merits of the constitutionality claim and that

⁶⁹ *House OKs Retooled Sports Betting Plan*, ESPN.COM, <http://sports.espn.go.com/espn/news/story?id=4151275> (last updated May 8, 2009, 11:56 AM). Video lottery terminals (VLTs), which were virtually indistinguishable from slot machines, were put in at the State's three race tracks, thereby creating “racinos.” *Editorial: If it Walks Like a Slot Machine...*, THE DENVER POST, http://www.denverpost.com/opinion/ci_20516290/editorial-if-it-walks-like-slot-machine (last updated May 01, 2012) (explaining VLTs); *Racino*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/racino>.

⁷⁰ *Markell*, 579 F.3d at 295.

⁷¹ See *Office of the Comm'r of Baseball v. Markell*, No. 09-538, 2009 LEXIS 69816, at *1 (D. Del.), *vacated*, 579 F.3d 293 (3d Cir. 2009).

⁷² *Id.* at *2.

⁷³ *Markell*, 579 F.3d at 301-02.

Markell failed to address the constitutionality question, the expectation in *National Collegiate Athletic Association, et al. v. Christopher J. Christie, et al.* is that New Jersey will reassert its constitutional arguments pursuant to *iMEGA*. Foreshadowing its approach to the leagues' complaint, Chris Christie stated that he does not "believe that the federal government has the right to decide that only certain states can have sports gambling, and it does not acknowledge that there is illegal sports gambling going on in every state in America as we speak."⁷⁴

It is without doubt that gambling is a traditionally prohibited event regulated by the states.⁷⁵ Nonetheless, the District Court of New Jersey recently held that New Jersey's sports betting law is illegal and enjoined the State from "sponsoring, operating, advertising, promoting, licensing, or authorizing 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."⁷⁶ This holding clearly dealt New Jersey a setback with regard to its pursuit to institute a sports betting system. Nonetheless, the Court acknowledged that some of the questions raised in this case are novel.⁷⁷ As such, it appears Governor Christie's claim that PASPA violates the Commerce Clause and Tenth Amendment is worthy of consideration.

First, New Jersey will likely appeal the District Court's decision.⁷⁸ Second, Judge Shipp, who wrote the opinion for the

⁷⁴ *4 Major Pro Sports Leagues, NCAA Sue To Stop N.J. from Allowing Betting*, NJ.COM (Aug. 08, 2012, 6:17 AM), http://www.nj.com/politics/index.ssf/2012/08/4_major_pro_sports_leagues_sue.html.

⁷⁵ Rutgers Sports Symposium, *supra* note 38.

⁷⁶ *Nat'l Collegiate Athletic Ass'n v. Christie*, (No. 12-4947), 2013 WL 772679, at *25 (D.N.J. Feb. 28, 2013).

⁷⁷ *Id.* at *3.

⁷⁸ Mark Maske, *Sports Betting Debate Rages on as New Jersey Case Heads to Appeals Court*, THE WASHINGTON POST (March 9, 2013), http://articles.washingtonpost.com/2013-03-09/sports/37582436_1_legal-sports-william-j-pascrell-iii-college-sports.

Court, noted that he fully anticipated that he would not be the final arbiter in this suit.⁷⁹ Thus, it is possible that Judge Shipp deferred to the Legislature while fully anticipating New Jersey's appeal. Therefore, if the Third Circuit holds true to the recent trend of reverting back to a federal government of limited powers as indicated by *Lopez*, it is unclear how the Third Circuit can overlook the concerns identified by Senator Chuck Grassley in the Judiciary Committee hearings. In other words, it seems unlikely that the Third Circuit Court can find PASPA constitutional because it prevents New Jersey from raising revenue through state run gambling lotteries.

V. The Sports Leagues Should Withdraw Suit: Betting is Beneficial

Although illegal in forty-six states, betting on sports happens throughout the United States.⁸⁰ As indicated by the National Gambling Impact Study Commission (NGISC), which issued its Final Report in 1999, less than 1% of all sports wagering is done legally.⁸¹ Yet even with the large percentage of illegal gambling, there has been little concern regarding the honesty and validity of the sports contests.⁸² As further argued by Joseph Asher,⁸³ "even if [sports betting] really could be stopped, the biggest victims would be the leagues themselves."⁸⁴ This is clearly indicated in the NGISC study, which estimated that revenue generated from illegal sports gambling ranged as high as \$380

⁷⁹ Christopher Baxter and Ryan Hutchins, *Sports Betting in N.J. on Hold After Loss in Court*, THE STAR LEDGER, http://www.nj.com/politics/index.ssf/2013/03/nj_absorbs_a_court_loss_in_att.html (updated March 01, 2013 at 3:24 PM).

⁸⁰ Rutgers Sports Symposium, *supra* note 38.

⁸¹ Maske, *supra* note 78.

⁸² Rutgers Sports Symposium, *supra* note 38.

⁸³ Joseph Asher is the CEO of William Hill Betting. *Management Bios*, William Hill Corporate, available at <http://www.williamhill.us/corporate/bios>.

⁸⁴ Rutgers Sports Symposium, *supra* note 38.

billion annually.⁸⁵ It also explained that the most popular sport for wagering is professional and college football, estimated annually at \$80-100 billion and \$60-70 billion, respectively.⁸⁶

The likely cause of the low percentage of legal sports betting is that the only state with legal sports betting books is Nevada.⁸⁷ The state of Nevada self-regulates its gambling system.⁸⁸ The state permits any person to bet on any sport of consequence either “strait up or to cover the spread.”⁸⁹ Moreover, the price per bet is created like a stock price.⁹⁰ To regulate and maintain honesty within the games, the bookkeepers monitor for unorthodox betting on specific events.⁹¹ As proof that sports betting can increase state revenue, in 2008, the total amount wagered in Nevada was \$2.57 billion, up from \$2.27 billion in 1998.⁹² For the calendar year 2009, the total net revenue from legal sports betting, excluding wagering on horseracing was \$136.4 million.⁹³

These statistics demonstrate the dramatic increase in the revenue generated from illegal betting. It is clear that there is a greater revenue stream in the illegal market than that of the

⁸⁵ Anthony Cabot, *The Absence of A Comprehensive Federal Policy Toward Internet and Sports Wagering and A Proposal for Change*, 17 VILL. SPORTS & ENT. L.J. 271, 272 (2010) (describing estimate of \$80-\$100 million in NFL wagers annually); see also Jim McDermott, *All Bets Are Not Off on Super Bowl Sunday*, ROLL CALL (Feb. 4, 2010, 12:32 PM), <http://www.rollcall.com/news/42994-1.html>; *Top Sports for Illegal Wagering*, CNBC, <http://www.cnbc.com/id/34312813?slide=4> (last visited April 20, 2010) (noting estimated \$60-\$70 billion annual wagers for college football); *The Big Business of Illegal Gambling*, CNBC (December 2009), <http://www.cnbc.com/id/34039744>.

⁸⁶ Cabot, *supra* note 85, at 272.

⁸⁷ Rutgers Sports Symposium, *supra* note 38.

⁸⁸ Rutgers Sports Symposium, *supra* note 38.

⁸⁹ Rutgers Sports Symposium, *supra* note 38.

⁹⁰ Rutgers Sports Symposium, *supra* note 38.

⁹¹ Rutgers Sports Symposium, *supra* note 38.

⁹² Cabot, *supra* note 85, at 272.

⁹³ *Id.*

legal market. This is likely due to the lack of access to the Nevada sports books. Nonetheless, it is clear that there is large-scale interest in betting on sporting events, which likely attracts the average sports enthusiast to watch events that would unlikely generate interest. Therefore, if the leagues succeed in banning sports betting, it is likely the leagues will lose viewership, which will result in lost revenue.

VI. CONCLUSION

In its suit against New Jersey and Governor Chris Christie, the NCAA and the four major sports leagues argue that New Jersey's Sports Gambling Law will impede the honesty and integrity of sporting events. They argue that sports wagering will entice athletes and officials to impact the outcome for their own benefit. Additionally, they argue that the New Jersey law violates PASPA. These claims are unfounded. Although only legal in Nevada, there are many illegal sports betting books currently active. Yet, even with illegal activity, there is very little indication that sports betting has affected the outcome of games. One would assume that the leagues would favor greater regulation to ensure that betting is prevented from impacting games. Further, there are concerns regarding the constitutionality of PASPA. Although federal courts have yet to face a claim in which the validity of PASPA has been decided, there are strong indications that the law violates the Commerce Clause and the Tenth Amendment because it violates the Constitutional uniformity requirement and interferes with the state right to raise revenue. Considering the questionable validity of PASPA and the unfounded claims that sports betting interferes with the integrity of sports, one can reasonably conclude the federal court will validate New Jersey's Sports Gambling Law.