

PRESS RELEASE

Wiley Rein Files *Amicus* Brief with Supreme Court Supporting State and Local Governments in Tenth Amendment Challenge to Federal Law Regarding Sports Betting

September 11, 2017

Press Contact

Patricia O'Connell
T: 202.719.4532
poconnell@wiley.law

Washington, DC—Wiley Rein LLP filed an *amicus* brief on September 5, 2017, with the Supreme Court of the United States in *Christie v. National Collegiate Athletic Association* on behalf of the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National League of Cities, and the International Municipal Lawyers Association. The brief supports New Jersey's challenge to the federal Professional and Amateur Sports Protection Act (PASPA).

PASPA, which was enacted in 1992, prohibits states from "authorizing" wagering on sporting events, subject to a grandfather provision permitting Nevada to continue its legalized sports betting laws then in effect and permitting three other states to continue their lotteries involving sports. The statute gives the National Collegiate Athletic Association (NCAA) and certain professional sports leagues the right to litigate to enforce its terms.

The NCAA and professional sports leagues brought a suit challenging a New Jersey law that licensed legal betting on certain amateur and professional sporting events. The United States Court of Appeals for the Third Circuit held that New Jersey's law violated

Related Professionals

Emily S. Hart
Of Counsel
202.719.4190
ehart@wiley.law
Richard A. Simpson
Partner, Deputy General Counsel
202.719.7314
rsimpson@wiley.law

Practice Areas

Government Contracts
Insurance
Issues and Appeals
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PASPA. In doing so, the Third Circuit stated that PASPA did not commandeer state law in violation of the Tenth Amendment because it did not prohibit states from repealing their existing prohibitions on sports betting and therefore left the states with room to determine their own policies and regulations.

Taking the Third Circuit at its word, New Jersey enacted a new statute that repealed its prohibitions on sports gambling at certain specified locations, specifically at casinos in Atlantic City and at certain race tracks. Once again, the NCAA and professional sports leagues challenged New Jersey's law. The Third Circuit, in a 9-3 en banc decision, held that New Jersey's partial repeal of its sports betting prohibitions "authorized" sports betting and so violated PASPA. The Supreme Court accepted review.

Wiley Rein's brief notes that Congress undoubtedly has the power to enact federal law prohibiting sports wagering, but that is not what PASPA does. Instead, PASPA directs states as to the content of state law. The brief urges the Court to reverse the decision of the appellate court because the "practical implications of the decision ... are far-reaching and profoundly negative." The brief concludes that "the Third Circuit's reading of PASPA offers states only one real-world option: to freeze in place whatever state laws were on the books in 1992, no matter how outdated and inappropriate a state may now consider those laws to be. Put differently, PASPA acts directly on the states by dictating to them what the content of state law as to sports wagering must be, notwithstanding that Congress has not preempted the field by way of federal regulation. So read, PASPA impermissibly commandeers states' ability to govern themselves."

The brief goes on to explain that there is no principled basis on which to limit the rationale of the Third Circuit decision to the field of sports wagering. To the contrary, that rationale could be used to permit Congress to order state and local governments to freeze in place existing laws in other controversial and developing areas. Examples include medical use of narcotics, physician-assisted death for the terminally ill, drug misuse and substance abuse during pregnancy, and self-driving cars.

The brief was written by Richard A. Simpson, a partner in Wiley Rein's Appellate, Litigation, and Insurance practices; Government Contracts associate Tara L. Ward; and Insurance associate Emily S. Hart, along with Lisa E. Soronen, Executive Director of the State and Local Legal Center.

To read the brief, please [click here](#).