

To Legalize or not: Sports gambling in Ohio

In *Murphy v. NCAA*, decided May 14, 2018, the Supreme Court struck down by 7-2 a federal law that effectively prohibited states from legalizing sports betting. By overruling that law, the Professional and Amateur Sports Protection Act of 1992 (PASPA), the court left it up to each state to decide whether to allow or prohibit betting on professional and college sports.

Ohio law currently prohibits all gambling unless there is a specific exception, such as when Ohio voters approved four casinos in 2009. If Ohio decides to legalize sports betting, state lawmakers must consider a myriad of questions such as:

- How will the industry be regulated?
- How will it be taxed?
- How and where will sports betting be made available?
- Who will oversee regulation and participation?
- What sports will be included or excluded from legalized sports betting, if any?

Lawmakers can learn a few important lessons from the *Murphy* case on what is at stake.

Sports betting has been a major underground market nationwide. In 2017, Americans bet \$4.76 billion on the Super Bowl between the New England Patriots and Atlanta Falcons, but an estimated 97 percent was wagered illegally. Moreover, the American Gaming Association estimated that Americans illegally wager around \$150 billion on competitive sports every year. Therefore, this hotly anticipated Supreme Court decision opens the proverbial floodgates for investors; start-ups and entrepreneurs; casino companies; and media conglomerates with broadcasting rights to capitalize on this large sports betting industry. It also allows Ohio lawmakers to combat the pervasive illegal sports gambling marketplace.

Though this ripe economic opportunity is now essentially on the table, stakeholders and future participants must wait to see whether the Ohio legislature or the voters will legalize sports betting.

PASPA was a federal law that made it unlawful for a state or its subdivisions to "sponsor, operate, advertise, promote, license, or authorize by law or compact...a lottery, sweepstakes, or other betting, gambling, or wagering scheme based on" competitive sporting events, [28 U.S.C. Sec. 3702\(1\)](#), and for "a person to sponsor, operate, advertise, or promote" those same gambling schemes if done "pursuant to the law or compact of a governmental entity," [Sec. 3702\(2\)](#). It effectively prohibited states from legalizing sports betting outside of Nevada. PASPA also allowed the U.S. Attorney General, as well as professional and amateur sports organizations, to bring civil actions to enjoin violations [Sec. 3703](#).

Notably, the Supreme Court concluded in *Murphy v. NCAA* that Sections 3702(1)-(2) of PASPA violated the anti-commandeering principal of the Tenth Amendment, but the Court did not address Sec. 3703's cause of action provision, which created an option for the leagues to sue or not to sue. Consequently, by not championing their property right to sue as provided in Sec. 3703, the leagues effectively waived this option and lost their claim in the sports gambling marketplace under PASPA.

Ohio team owners and potential stakeholders alike should learn from the leagues' misstep in *Murphy*. Team owners possess a fundamental property right, the right to exclude other parties from taking, with regard to the revenue legal sports betting will generate. Therefore, team owners, leagues and stakeholders should affirmatively assert their claims to ensure that state lawmakers, in considering the legalization of sports betting, strike an appropriate and fair balance between their property rights (and league owners' interest in upholding the integrity of their respective sports), gaming operators and vendors (both new and previously existing), and the state itself.

While Ohio is not one of the four states that already allows online gambling, or one of the twelve states that already has sports betting legislation in the works, at least some Ohio lawmakers have shown interest and want Ohio to be competitive in the sports gaming industry. Perhaps for that reason, the Ohio House of Representatives recently passed gaming-related legislation in the form of [House Bill 531](#), which removes the current cap on the amount of sports event grants that may be awarded in a fiscal year for sporting events that are competitively bid on by other states. Meanwhile, legislators have introduced placeholder bills in both houses of the Ohio General Assembly ([Senate Bill 316](#), [House Bill 714](#)) expressing intent "to develop and enact legislation legalizing sports wagering."

While it remains uncertain how Ohio will proceed in terms of sports betting, it is clear that Ohio voters have an opportunity to put a proposal on the ballot, and that stakeholders, league owners, investors and entrepreneurs should be prepared to assert their interests affirmatively and strike while the iron is hot.

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