

Legality of Sports Betting in New Jersey May Come Down to the U.S. Constitution

by Donald Scarinci

New Jersey's proposed [sports betting program](#) is a bold move, considering that federal law limits sports gambling to just a handful of states. Since we are not currently one of them, New Jersey residents hoping to place bets on the Jets or Giants anytime soon better hope that the state has the U.S. Constitution on its side.

Earlier this year, Gov. Chris Christie signed a law that amends the New Jersey Constitution to authorize sports betting in the state's 12 casinos and five racetracks. It specifically allows "wagering ... on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place."

However, before the first bet is placed, the state must still overcome a significant legal roadblock. The NCAA, the National Football League, the National Basketball Association, the National Hockey League, and Major League Baseball have filed a lawsuit seeking to block state officials from enacting a sports gambling program in New Jersey. They argue that the proposal violates the [Professional and Amateur Sports Protection Act \(PASPA\)](#).

The federal law, passed in 1992, specifically prohibits governmental entities, including the states, from authorizing sports wagering. It also authorizes professional and amateur sports organizations, as well as the United States Attorney General, to file lawsuits to enforce its provisions.

Nevada, Delaware, Oregon, and Montana are the only states excluded under the law, although Las Vegas is the only state that currently offers extensive sports betting. Ironically, New Jersey had the opportunity to enact a sports gambling program during a one-year window before the statute took effect, but failed to act in time.

Now, New Jersey must challenge the constitutionality of the law itself.

In typical fashion, Gov. Christie is not deterred by the federal ban. "I don't believe that the federal government has the right to decide that only certain states can have sports gambling. On what basis?" Christie questioned. "If there was a grand nationwide prohibition, there wouldn't be an argument, but how is it that sports gambling in New Jersey is going to affect the sports leagues more than it already affects the sports leagues in Nevada?"

In response to the [legal argument that sports betting in New Jersey would harm the leagues](#), Christie said, "And it doesn't acknowledge that there is illegal sports gambling going on in every state in America, as we speak. So why is this more injurious than illegal sports gambling to the operations of the league or the NCAA?"

In challenging the law, New Jersey is expected to argue that the PASPA is unconstitutional under the equal protection clause of Fourteenth Amendment because it is not applied equally across all states. However, the state could also challenge the law on several other constitutional grounds, including the state's rights under the Tenth and Eleventh Amendments. The basic argument would be that the power to regulate gambling and benefit from the revenue it generates should rest with the states, particularly when the activities in question would take place solely within New Jersey.

New Jersey has tried this argument before. In 2009, New Jersey Sen. Raymond Lesniak (D., Union) and various gambling associations filed a lawsuit seeking to overturn the ban. However, it was dismissed as premature because the state had not yet officially approved a sports-betting program.

This time, New Jersey appears to be “all in.”

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