

MARCH 13, 2018

## Constructing a Sports Gambling System for New York

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It is now conventional wisdom that the U.S. Supreme Court will soon find the 1992 Professional and Amateur Sports Protection Act ("PASPA") unconstitutional. PASPA is the federal law that requires states (except for those that had sports gambling before 1992) to make sports gambling illegal. If PASPA is unconstitutional, then the individual states would be free to determine whether to legalize sports gambling.

However, it's not that easy in New York State. Key and complex decisions need to be made by the legislature and the electorate before New York can establish a comprehensive system to legalize sports gambling.

The initial hurdle is New York State's constitution, which bans all of forms of gambling with certain specified exceptions. In terms of sports, the key exceptions are pari-mutuel horse racing and casino gambling. Since casino gambling can be viewed in the U.S. to encompass sports gambling, in 2013, as a part of the casino authorization legislation, New York State authorized the four upstate casinos to have sports gambling if PASPA were to be amended or found unconstitutional. Thus, if the Supreme Court finds PASPA unconstitutional, once the Gaming Commission establishes regulations, the four upstate casinos could begin sports gambling. For all the other entities in the state, sports gambling would need a constitutional change. If both the Senate and Assembly pass a sports gambling authorization in 2018, a newly elected legislature could then pass a second authorization in 2019. The amendment would then be submitted to the electorate in November of 2019. Full sports gambling could conceivably begin in 2020.

What, then, would occur? Who will be able to offer sports gambling, besides the casinos? Could the racinos, combined tracks and casinos, the individual racing associations, Off Track Betting ("OTB"), the state lottery, or the fantasy sports groups? The OTBs have been requesting sports gambling for over 40 years, and the fantasy sports companies would be harmed significantly from direct competition from sports gambling. Using the lottery system would bring a virtual army of retailers to sell sports gambling products. Perhaps individual bars, taverns, and even airport terminal managers would want to be part of any sports gambling network.

How would the federal and state governments tax revenue resulting from sports gambling? The federal government already taxes it. Some of the sports leagues are suggesting that they receive funds to preserve the integrity of their sports. What would the state tax rate be? Would state tax revenue, like the lottery, be funneled to education? If the state's tax is too high, would this open the way for tribal sports gambling to offer better odds and services to bettors?

How would revenues to OTBs make their way to local governments? Further, how would revenues from Video Lottery Terminals operated by racetracks be distributed to horsemen and to the state's horse breeders?

Would there only be in-person betting from individual tellers, or could there be slot-like machines that offer sports bets? Would telephone wagers and computerized bets be authorized, and would exchange wagering, where individual bettors offer their own lines to other bettors, be allowed? The state could authorize only one technology operator, or it could license several technology companies to oversee sports gambling.

What sports would be authorized as wagering products? Will games played by in-state colleges be the subject of bets? How about betting on minor league professional sports or on non-U.S. sports leagues? Will there be in-game wagering? Must one bet on individual games, or could one bet on the potential Super Bowl or World Series champion?

There is also the issue of proposition wagering, which involves betting on events not directly connected with the outcome of the event. Who wins the coin toss? How many completions will Tom Brady have? What's the over and under for the length of the national anthem? A decision will be needed regarding what proposition bets will be allowed.

On its face, sports gambling looks like the easiest game to operate. It should be a mortal lock for any operator to make money. However, legalizing sports gambling is actually a labyrinth. Given its past performances, it is even money that the state government will get tangled up in this maze. Mistakes in the maze have consequences. It can be a cruel game, with winners and losers. Authorizing sports betting is far closer to Jumanji than to Candyland.