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The _____ MICHIGAN GAMING _____ Newsletter



OAKLAND COUNTY SHERIFF ADVOCATES FOR LEGALIZED SPORTS WAGERING

Yesterday, an [editorial](#) by Oakland County Sheriff Michael Bouchard ran in the Detroit News calling for the repeal of the federal Professional and Amateur Sports Protection Act ("PASPA"). It provides, in part, as follows:

The massive, unregulated illegal sports betting market has zero oversight, no accountability, and is devoid of consumer protections. As a result, the clear majority of this money doesn't just change hands among friends and family. Instead, it passes through criminal organizations, often based in other nations with loose laws around taxation and financial regulation.

It's important to remember that illegal sports betting doesn't stand alone — it supports a whole host of other illegal activities, from money laundering and racketeering, to extortion and drug trafficking. By bolstering crime, this cycle of illicit sports betting also drains law enforcement resources across the country. My colleagues who dedicate their lives to fighting crime and protecting all of us deserve support — and that means supplying them with full resources they require to do their jobs. But under PASPA, that isn't a reality.

[Sheriff Bouchard](#) was appointed the Sheriff in Oakland County in 1999 and has been reelected five times since. Previously, he was the Senate Majority Floor Leader. He was first elected to the state Senate in 1991. Significantly, as a Senator, he served as the Chair of the Senate's Gaming and Casino Oversight Committee. The Committee traversed the state in the beginning of 1997 to hold hearings to get Michigan residents' comments about casino gaming. The Committee also heard from industry leaders, state officials, gaming officials from states with legalized gaming, and casino operators and suppliers. The Committee worked on the package of bills that comprehensively amended the Gaming Control and Revenue Act.

SUPREME COURT HEARS ARGUMENTS IN SPORTS WAGERING CASE

On December 4, 2017, the United States Supreme Court heard oral arguments in a case challenging the federal law prohibiting sports gambling under state law (the Professional and Amateur Sports Protection Act, "PASPA"). PASPA, passed in 1992, prohibits states from authorizing "a lottery, sweepstakes, or other betting, gambling, or wagering scheme based" "on one or more competitive games in which amateur or professional athletes participate." PASPA did allow the sports betting already offered in Delaware, Montana, Nevada and Oregon in 1992 to continue unchanged. PASPA also permitted New Jersey to pass a law allowing sports betting in its casinos so long as New Jersey did so within one year of PASPA's passage. New Jersey did not take advantage of that one-year window.

Instead, New Jersey passed a 2014 law that repealed the existing ban on sports wagering, but did not simultaneously permit sports wagering. In the case before the Supreme Court, the state of New Jersey as well as members of New Jersey's horse-racing industry argued that PASPA violated the constitutional prohibition against the federal government "commandeering" states into enforcing federal law. In opposition, the National Collegiate Athletic Association ("NCAA") and the four professional sports leagues (NFL, MLB, NBA and NHL) argued that PASPA doesn't require the states to do anything; it merely prohibits them from authorizing sports betting.

Mr. Olson, attorney for New Jersey, argued that the statute impermissibly commandeered regulatory authority from the states: "because the Congress didn't attempt to regulate interstate commerce directly, and it could then, if it did so, which it did not do so, quite obviously, it could then regulate the state as a market participant to the same degree it was regulating private citizens as a market participant."

Justice Breyer appeared receptive to the argument, stating: "Now, I think what you actually

say is the federal government makes a determination of what interstate commerce will be like in respect to this particular item. It can do that, we -- including a determination, it shouldn't be -- that's a determination, okay? Once it makes that determination, it can forbid state laws inconsistent with that determination. That's called preemption. But what it can't do is say that our determination is that the states roughly can do it as they want, but they can't do it that way; for to do that is to tell the state how to legislate, in which case, it is the state and not the person who becomes the subject of a federal law."

Mr. Olson agreed, arguing: "If PASPA said we prohibit sports betting, gambling on sports, then it could address the state as a participant in that same activity. It did not do so. This statute does -- attempted to have the states...to prohibit sports gambling, it didn't stop there. It said sports gambling under state law. And what it intended to do...is it put the accountability, the expense, the responsibility, the burdens on the states and basically said, as the -- as the Congressional Budget Office says, it won't have any effect on the federal budget because the federal government is doing nothing."

Justice Kagan took issue with that line of reasoning, noting: "the federal government is saying to the states you can't do something -- so that sounds to me the language of preemption. All the time the federal government takes some kind of action, passes a law, and then says to the states: you know what, we've got this; you can't do anything." She asked Mr. Olson: "So do you see no difference between the federal government saying to a state, look, you can't take some preferred policy option that you would like to take, and, on the other hand, the federal government saying to a state, you must help us do something?" Mr. Olson replied: "...[Yes] in many ways. New Jersey is being told it may not regulate in the way it chooses -- its legislature chooses to exercise its discretion with respect to an activity taking place in that state. It must enforce a law and keep a law on the books that has attempted to repeal the -- the executive branch and the legislative branch of the state of New Jersey have been conscripted."

Mr. Clement, attorney for the NCAA, opened by stating: “PASPA does three basic things. First, it tells the states that they may not themselves operate or advertise sports gambling schemes such as a sports-based lottery or a sports book. Second, it tells private parties...that they may not operate or advertise a sports gambling scheme pursuant to state law. And, thirdly, it tells states that they may not authorize or license third parties to conduct those sports gambling schemes that would violate federal law.” Chief Justice Roberts noted: “In other words, if the state law says you can do it, that's the only situation in which it's illegal. If the state law doesn't say anything about it, well, feel free, you can do it.”

The Supreme Court will issue an opinion prior to the end of its term in June 2018. Should it strike down PAPSAs and side with the State of New Jersey, it opens the doors to state-by-state regulation of sports betting, assuming that Congress does not respond to the decision by enacting substitute legislation.

FINCEN LAUNCHES “FINCEN EXCHANGE” TO ENHANCE PUBLIC-PRIVATE INFORMATION SHARING

The United States Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) launched a new “FinCEN Exchange” program this week to enhance information sharing with financial institutions, including casinos. As part of this program, FinCEN, in close coordination with law enforcement, will convene regular briefings to exchange information on priority illicit finance threats, including targeted information and broader typologies. This will enable financial institutions to better identify risks and focus on high priority issues, and will help FinCEN and law enforcement receive critical information in support of their efforts to disrupt money laundering and other financial crimes.

“Strong public-private partnerships and two-way information sharing is a crucial component of our efforts to combat the sophisticated money laundering methods and evolving threats we face today,” said Sigal P. Mandelker, Treasury Under

Secretary for Terrorism and Financial Intelligence. “FinCEN Exchange will bring together law enforcement, FinCEN, and different types of financial institutions from across the country to share information that can help identify vulnerabilities and disrupt terrorist financing, proliferation financing and other financial crimes.”

Private sector participation in FinCEN Exchange is strictly voluntary, and the program does not introduce any new regulatory requirements. It also does not replace or otherwise affect existing mechanisms by which law enforcement engages directly with the financial industry. It is part of Treasury's broader objective of strengthening the anti-money laundering framework by encouraging, enabling, and acknowledging more regular industry focus on high-value and high-impact activities. Operational briefings under the FinCEN Exchange program will begin in the coming weeks.

Law enforcement relies on the financial industry to report important data to fight financial crime through mechanisms such as Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs). The government, in turn, provides feedback to the private sector, including through FinCEN Advisories, SAR Statistics, briefings, and other forms of information to guide and encourage industry efforts. With the FinCEN Exchange program, the government will now be convening more regularly scheduled and as-needed operational briefings across the nation with law enforcement, FinCEN, and financial institutions to exchange information on priority illicit finance and national security threats. In consultation with law enforcement, FinCEN will invite financial institutions to participate based on a variety of factors, including whether they may possess information relevant to a particular topic.