

Daniel Wallach Interviewed About Supreme Court Prospects for New Jersey's Challenge to Federal Sports Betting Ban

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Supreme Court Or Bust In New Jersey Sports-Betting Case

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The U.S. Supreme Court is the last hope for sports betting in New Jersey after the 3rd U.S. Circuit Court of Appeals on Friday rejected the state's appeal for a second hearing on the court's decision to uphold a federal ban.

"A majority of the judges in the circuit in regular service not having voted for rehearing, the petitions for rehearing by the panel and the court en banc [are] denied," Julio Fuentes, one of the two judges who ruled against New Jersey in September, wrote in the court order.

The deadline for New Jersey to appeal to the U.S. Supreme Court is February 15, or 90 days after the rejection of its appeal for an en banc hearing, which could have included all the court's active judges.

The court's denial comes just two weeks after New Jersey submitted its appeal for a rehearing [2], and less than two months after the court ruled the sports-betting law in the Garden State violated the Professional and Amateur Sports Protection Act of 1992 (PASPA).

"In this instance, we have no statement," Leland Moore, a spokesman for acting New Jersey Attorney General John Jay Hoffman, said after the court's decision on Friday.

It would be a huge surprise if New Jersey does not appeal to the Supreme Court, given Governor Chris Christie [3]'s repeated statements to take the case to the highest court in the land, and the state's hiring of renowned

constitutional lawyer, Ted Olson.

“We’ve always known this case was headed to the Supreme Court. Personally, I’m happier to get there sooner rather than later,” said Joe Asher, CEO of U.S. operations for the British betting giant William Hill.

Some sports-betting advocates are worried New Jersey would hurt its chances [4] of being granted a hearing before the Supreme Court by pursuing an appeal for the second hearing in the 3rd U.S. Circuit Court of Appeals.

Ryan Rodenberg, an assistant professor of sports law analytics at Florida State University, said the appellate court’s denial will not be dispositive. “The U.S. Supreme Court usually follows the so-called ‘rule of four’ which requires a minority of justices — four out of the nine — to vote to agree to hear a case,” Rodenberg said.

“Given the federalism related issues in this case, the conventional wisdom would be that the more conservative justices would be interested in a case like this,” he said.

Rodenberg noted Supreme Court Justice Ruth Bader Ginsburg [5], who is generally considered liberal, also may be interested because she specifically mentioned PASPA in her dissent during the court’s decision on a voting rights law in June.

New Jersey argues PASPA is unconstitutional because it fully exempts Nevada and partially exempts Delaware, Montana and Oregon from the federal sports-betting ban instead of treating all states the same. All four exempted states allowed some form of sports wagering before PASPA.

Griffin Finan, a gaming attorney with the Washington D.C. firm of Ifrah Law, agreed with Rodenberg that the Supreme Court will not be influenced by the denial issued by the 3rd U.S. Circuit Court of Appeal.

“This case raises very important constitutional issues regarding the federal government’s ability to direct states to implement a federal policy,” Finan said.

“The importance of these issues makes this exactly the type of case that the Supreme Court is interested in resolving, and we will soon find out if the court thinks the time is right to address these issues.”

But Daniel L. Wallach, an attorney with the Fort Lauderdale, Florida, firm of Becker & Poliakoff who predicted New Jersey’s en banc appeal would be granted, said he does not think the Supreme Court will agree to consider the sports-betting case.

Citing figures from USA Today, Wallach said the Supreme Court received about 8,000 appeal petitions last year and agreed to hear only 77, or about 0.0375

percent.

“It is likely that the moment of truth will arrive only after other federal circuits have weighed in on the constitutionality of PASPA and a split among the circuits develops,” Wallach said.