

New Jersey Asks Appeals Court For Second Hearing On Sports Betting

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[Tony Batt. GamblingCompliance](#) [1]

Signaling its intent to exhaust all legal options, New Jersey is asking a federal appeals court for a second hearing, which could include all the court's active judges, to reconsider a ruling in September rejecting the state's law legalizing sports betting.

Ted Olson, the attorney who won the U.S. Supreme Court case that allowed George W. Bush to become President, waited until the filing deadline late Friday to request [an en banc hearing](#) [2] before the 3rd U.S. Circuit Court of Appeals in Philadelphia, Pennsylvania.

"This appeal involves a question of exceptional importance," super-lawyer Olson wrote in a 15-page petition.

Congress "cannot commandeer a state's authority by telling it how to regulate its citizens," Olson said.

In a [2-1 decision on September 17](#) [3], the 3rd U.S. Circuit Court of Appeals ruled New Jersey's sports-betting law violates the Professional and Amateur Sports Protection Act (PASPA), which Congress passed in 1992.

Despite PASPA, sports wagering in the United States has mushroomed into a \$500bn industry with "nearly all of it in the illegal and unregulated black market," Olson said.

If the en banc appeal is denied, New Jersey can still appeal to the U.S. Supreme Court.

"The bottom line — this landmark case and this important issue aren't going away anytime soon," said Daniel L. Wallach, an attorney with the Fort Lauderdale, Florida, firm of Becker & Poliakoff.

Wallach said he thinks the 3rd U.S. Circuit Court of Appeals will grant the en banc (a French legal term meaning on a bench) even though an overwhelming majority of such appeals are summarily dismissed.

"The issues are clearly of exceptional importance, and there is a powerful dissenting opinion," Wallach said.

Wallach also predicted the court will take the unusual step of asking the U.S. Department of Justice, the National Collegiate Athletic Association, and the [four U.S. professional sports leagues](#) [4] to respond to New Jersey's en banc appeal before voting whether or not to grant another hearing.

"We could be looking at a rehearing in the spring [of 2014]," Wallach said.

New Jersey's request for an en banc hearing makes sense, according to Washington, D.C. gaming attorney Griffin Finan.

"The test for rehearing a case is that it be a case of exceptional importance, and the issue of Congress's power to regulate the states clearly meets that standard," said Finan, an associate of the firm Ifrah Law.

"Regardless of what happens with the en banc appeal, I still expect this case to be petitioned to the Supreme Court and a strong likelihood that the court will hear it," Finan said.

The advantage of an en banc appeal is that it will be faster than a full review by the U.S. Supreme

Court, according to Ryan Rodenberg, an assistant professor of sports law analytics at Florida State University.

“The importance of the underlying issue, coupled with the fact that both a sitting state governor and the Department of Justice are litigants, increases the chances that a full panel of 3rd Circuit judges will agree to hear the case,” Rodenberg said.

In the appeal filed Friday, Olson repeatedly cited the dissenting opinion of Judge Thomas Vanaskie, and claimed the majority opinion “trenches on the state’s sovereign power to regulate gambling within its borders.”

“As the dissent aptly observed, the majority’s holding eviscerates the constitutional lines drawn ... that recognized the limit to Congress’s power to compel state instrumentalities to carry out federal policy,” Olson wrote.

Christopher Porrino, the director of the division of law in the New Jersey attorney general’s office, co-signed the appeal. Attorneys representing the New Jersey legislature and the New Jersey Thoroughbred Horsemen’s Association also filed petitions seeking an en banc hearing.

“The state of New Jersey is taking the lead on this and the horsemen and our clients are joining in,” said Michael Griffinger, who represents New Jersey Senate President Stephen Sweeney and Assembly Speaker Sheila Oliver.

Although some attorneys representing New Jersey gaming interests reportedly preferred appealing directly to the U.S. Supreme Court, the central players now appear to be on the same page.

“All counsel are on board for an en banc strategy,” said Dennis Drazin, who runs Monmouth Park for the New Jersey Thoroughbred Horsemen’s Association.

“We have always been committed to strict adherence to the governor’s decisions on how to proceed.”



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