

New Jersey's Chances Boosted For Sports Bet Hearing

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New Jersey's sports-betting hopes improved dramatically this week when a federal appeals court ordered the nation's four major professional sports leagues and the National Collegiate Athletic Association to respond to the Garden State's petition for a hearing before all the court's active judges.

Following Tuesday's order by the 3rd U.S. Circuit Court of Appeals in Philadelphia, two of the court's 12 active judges recused themselves from the case on Wednesday.

Six out of the remaining ten active judges must agree to an en banc hearing before it can be scheduled.

The deadline for the leagues to respond to the court's order is September 29.

"Clearly, it's encouraging that at least four judges want a response from the leagues, as last time the request for rehearing en banc was summarily denied," said Joe Asher, CEO of William Hill U.S.

Asher was referring to a [2013 decision](#) by the same court which denied an earlier appeal by New Jersey to legalize sports betting.

The 2013 ruling and the [most recent judgment](#) on August 25 were both 2-1 split decisions against New Jersey.

"I'll wait until the court decides whether to grant it [an en banc hearing] before getting too excited," Asher said.

Dennis Drazin, the architect of New Jersey's sports-betting laws, said the court's order is "a step in the right direction but not dispositive."

New Jersey Democratic state Senator [Ray Lesniak](#), who introduced the sports-betting bills that were signed into law by Governor Chris Christie, said it would be "shocking" if the appeals court does not agree to an en banc hearing.

"This is our only hope," Lesniak said.

If New Jersey does not prevail in the 3rd U.S. Circuit Court of Appeals, Lesniak said he does not plan to introduce another sports-betting bill and it will be up to Congress to legalize and regulate wagering on games.

The 3rd U.S. Circuit Court of Appeals did not give a reason for the recusal on Wednesday of U.S. Circuit Judges Michael Chagares and Patty Shwartz. The duty station for both judges is in Newark, New Jersey, but so is the duty station for U.S. Circuit Judge Joseph Greenaway, who did not recuse himself.

Two of the ten active judges — Julio Fuentes and Thomas Vanaskie — already have written opinions in favor of New Jersey's effort to legalize sports betting.

Fuentes was the lone dissenter in the 2-1 decision on August 25. Vanaskie dissented in the 2-1 decision in September 2013.

"I think Fuentes and Vanaskie will both support an en banc hearing, but while Fuentes is probably a yes vote for New Jersey in the end, I don't think Vanaskie is," said Daniel L. Wallach, a shareholder in the Fort Lauderdale, Florida, law firm of Becker and Poliakoff.

"Even though Vanaskie supported New Jersey in his 2013 dissent, he also expressly rejected the concept of a partial repeal of sports betting which is what the current New Jersey law does," Wallach said.

Remarkably, Fuentes wrote the majority opinion in 2013 and was joined by U.S. Circuit Judge Michael Fisher, the only remaining active judge who has joined a decision opposing New Jersey's sports-betting effort.

Fuentes also wrote the order denying New Jersey's en banc appeal in 2013.

The two judges who voted against New Jersey in last month's decision — Marjorie Rendell, who wrote the majority opinion, and Maryanne Trump Barry, the older sister of presidential candidate Donald Trump — are considered senior judges and, therefore, ineligible to participate in en banc hearings.

"Most en banc petitions are simply denied without a response being requested, so the fact that one has been requested here certainly indicates some interest on the part of the court," said Christopher Soriano, a gaming attorney with the Duane Morris firm in Cherry Hill, New Jersey.

The court's order for a response should be "unsettling for the professional sports leagues," according to Kevin Braig, a partner in the Columbus, Ohio, law firm of Shumaker, Loop & Kendrick.

"If the courts permit any state to tap this [sports betting] market without professional league involvement, that revenue may be lost to the leagues forever," Braig said.

National Football League spokesman Brian McCarthy on Wednesday declined to comment on the

court's order.

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