



August 2018, Number 85-10

Judiciary and Jurisprudence; Regulation and Licensing

States may allow betting on sports after Supreme Court ruling

[August 31](#) — Following a U.S. Supreme Court [ruling](#) in May that cleared the way for states to legalize sports wagering, some states are allowing bets on the outcome of sporting events, and others are considering it. The Texas Constitution and state statutes prohibit sports betting, but proposals could emerge in 2019 during the regular session of the 86th Legislature to allow and tax wagering on college and professional sports in Texas.

Federal law overturned. In a 6-3 decision, the U.S. Supreme Court struck down the federal Professional and Amateur Sports Protection Act (PASPA), which prohibited Texas and most states from authorizing sports gambling. New Jersey had challenged the 1992 law in *Murphy v. National Collegiate Athletic Association*. The suit sought to expand gambling beyond the casino and racetrack betting already operating in New Jersey. PASPA, which made it illegal for states to sponsor, operate, advertise, promote, license, or authorize betting based on sports events, exempted Nevada, Delaware, Montana, and Oregon, which already had legalized sports betting or pools when the law was enacted. The Court held that PASPA violated the anti-commandeering rule under the U.S. Constitution's 10th Amendment. The rule prohibits the federal government from directly requiring state governments to take certain actions. The Court said, "Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own." The court's ruling did not legalize sports betting in individual states but allowed states to do so.

Current Texas law. Both constitutional and statutory provisions restrict gambling in Texas. [Art. 3, sec. 47\(a\)](#) of the Texas Constitution requires the Legislature to prohibit lotteries and gift enterprises, and Penal Code, [ch. 47](#) prohibits many forms of gambling, including sports betting.

The state's constitution and laws have been amended to allow the state lottery, charitable bingo and raffles, sports team

charitable raffles, and wagering at racetracks on horse and dog races. Texas' three federally recognized Native American tribes operate facilities with limited wagering, although the state has challenged the legality of two of the operations and court proceedings are ongoing.

Under Penal Code, [sec. 47.02\(a\)\(1\)](#), it is a crime to bet on the results of a game or contest or on the performance of a participant. Offenses are class C misdemeanors punishable by a maximum fine of \$500.

Sec. 47.02(b) provides a three-pronged defense to prosecution for gambling when:

- the gambling was in a private place;
- no one received economic benefit other than personal winnings; and
- except for skill or luck, the risks of losing and chances of winning were the same for all participants.

In 2016, a Texas attorney general [opinion](#) stated that courts would likely find betting as part of commercial daily fantasy sports leagues to be illegal gambling under Penal Code, sec. 47.02. If participants bet as part of a season-long fantasy sports league that met the above criteria under sec. 47.02, the opinion said, it likely would not be considered illegal gambling.

States move to allow sports betting. Since the U.S. Supreme Court ruling, several states have now legalized sports betting. In about 10 states, wagers on sporting events are allowed or regulations are being developed, while other states are considering legalization, according to the National Conference of State Legislatures (NCSL). In addition, federal lawmakers have proposed legislation to handle sports betting uniformly across states.

(continued on page 2)

States may consider several issues when authorizing sports betting, including the minimum age to bet, how betting venues will be regulated, the taxes or fees the state will impose, where and on which events it may take place, and whether online or mobile betting is allowed. States generally tax revenue taken in by betting establishments and may impose licensing or other fees on them. So far, most states tax betting revenue at around 7 to 15 percent of the amount bet, according to NCSL.

Supporters of legalizing sports betting in Texas say it is inevitable, and states that legalize it will benefit through tax revenue and an above-board way to combat illegal betting. They say Texans gamble now and will bet on sports in other states, so any social costs already exist, and problem gambling could be addressed through education, prevention, monitoring, and treatment. Legalizing sports betting would expand gambling only

narrowly, supporters say, and any further expansion would have to be approved by the Legislature or the voters. Regulations and oversight could help ensure the integrity of sports events, they say.

Opponents of legalizing sports betting in Texas say Texans already have sufficient gambling opportunities and allowing sports betting would be a significant shift from the level and type of games currently authorized. They say potential state revenue from sports betting could be overestimated and would be offset by social costs, such as increases in compulsive or other problem gambling. Allowing sports betting could open the door to expanded gambling, opponents say, and could corrupt college and professional sports, undermining the integrity of the contests.

— *Kellie A. Dworaczyk*