



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy.

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### **Place Your Bets: States, Sports Gambling and Fantasy Sports | OAS Episode 27 | Feb. 8, 2018**

Welcome to “Our American States,” a podcast of meaningful conversations that tell the story of America’s state legislatures, the people in them, the politics that compel them, and the important work of democracy. For the National Conference of State Legislatures, I’m your host, Gene Rose.

The numbers for Super Bowl 52 are impressive. In addition to the 103 million people who watched the game, the Twin Cities Pioneer Press reports that the stadium held 70,000 people, 3,000 police officers provided security, and 41,000 hotel rooms were booked over a 10-day period. But one statistic caught our eye: \$141 million were wagered on the game.

On this episode of “Our American States,” we’ll get the scoop from two experts from the National Conference of State Legislatures on how states are addressing sports gambling and daily sports fantasy leagues, and how a U.S. Supreme Court case could affect both industries. To give us a perspective on gambling issues, we are talking with Ethan Wilson, who is a Policy Director of NCSL’s Commerce and Financial Services in their Washington, D.C. office. Thanks for taking the time to talk with us today, Ethan.

Ethan: Of course, thank you.

Gene: So please give us some perspective, Ethan. Why is sports betting only allowed in Las Vegas in this country?

Ethan: That goes back to a law passed by Congress in 1992, the Professional Amateur Sports Protection Act, otherwise known as PASPA. Basically it grandfathered in Nevada, and people obviously think of Las Vegas, but that includes Reno and Nevada as a whole.

It actually includes and grandfathered in, to some extent, a select few other states. There is some sports betting that is allowed in states like Montana. So there are very, very few states that allow it and basically, yes, we do think of sports betting as really only being allowed in Nevada, and basically that is true.

Gene: Okay. And I want to talk about the case before the Supreme Court here in a little bit. But can you give us a number, about how much money is bet on sports illegally in the United States today?

Ethan: Sure, absolutely. The tough thing about that is with illegal markets, I mean, it really is tough to try to quantify that, and most estimates are believed to be low because it really is tough to get a handle on what that figure would be. There are estimates now that suggest in upwards of 150 billion dollars... that's billion with a "b" spent annually in the U.S. alone on U.S. sporting events. That's a crazy number. But again, I emphasize that that number could very well be low due to the challenges in quantifying an illegal market.

Gene: Okay. So let's get back to the Supreme Court case, the Professional Amateur Sports Protection Act of 1992 as you referenced as PASPA, which in New Jersey is challenging the banning of legalized sports betting in the states. Tell us, Ethan, what kind of ramifications does the Supreme Court case have on federalism and state sovereignty?

Ethan: Well, let's start with the status quo, and basically what PASPA does, what PASPA is – PASPA basically freezes in time eight restrictions and state prohibitions on sports betting as of the time it was passed in 1992. That is where states basically have existed within that space since 1992. They have not been able to change laws that were on the books. That's where we get the few states, Nevada being one of them, that allows sports betting, because that was the case in 1992.

Well, flash forward to 20... and now 18, but really within the past five years when this issue has really heated up – times have changed. There are ways of placing bets now that were not in existence in 1992 and, of course, online mechanisms, mobile devices have all changed that a lot. As of right now, states' laws in their regulatory frameworks reflect 1992 and feelings change and the idea of sports betting, it changes in the popular view.

The problem with PASPA is that it froze state laws in 1992 and now if states want to revisit their laws that were on the books since 1992 regarding sports betting, this federal prohibition contained in PASPA prevents them from doing so.

So what New Jersey tried to do is they tried to change basically what was their prohibition on the books as of 1992; they tried to change that, and of course, that was challenged in court as violating PASPA. So really what states are not allowed to do is change their own laws that are on the books. And of course that presents a constitutional issue and that has now gone before the Supreme Court. We are waiting for the Court to come down with its holding.

Given a favorable decision by the Court for states, it would potentially strike down PASPA and it would allow states to change their laws regarding sports betting. And many states would potentially keep their laws the same. However, it would allow states like New Jersey, like many others, to actually go ahead and allow and legalize and regulate sports betting.

Gene: So if I were to ask you to pull out your crystal ball, is there any way for you to predict what states would do? Would many of them, do you feel, open their doors to sports gambling?

Ethan: There are a number of states that currently have legislation on the books right now, or not even really on the books, but legislation that's been introduced. There are a lot of state legislators

that are keeping a very close eye on this. They want to be able to position their respective states in the best place possible if, in fact, the Supreme Court strikes down PASPA in whole or in part. In fact, there are roughly 16 states, and it may even be a little more than that now, that have at least legislation introduced in one chamber or another that would regulate, legalize to some degree, sports betting.

So this is an issue that is ramping up in states and states want to position themselves to be in the best position possible if, in fact, the Supreme Court comes down with a state-friendly holding, which would potentially be in May/June/July when their holding will come down.

Gene: You had mentioned earlier that technology and feelings toward sports gambling have changed quite a bit since 1992. Being a sports fan myself, I know that major sports leagues are seriously looking at sports gambling as a revenue source now, which they would not have thought of back then as something they would want to get interested in.

In particular, I think the NBA has put out a proposal that they'd be happy just taking 1 percent of the sports gaming market revenue for their league. So if something like that were to happen where one or several of the sports leagues would welcome gambling, would this have an effect on states?

Ethan: Yes, it would. This is an interesting area. I mean, when you talk about the NBA's recent integrity fee proposal, basically at the end of the day, NCSL believes that it is up to the states themselves to create these policies to best fit the states and the resident citizens of that state. So at the end of the day, that's what we think will happen if states are given the opportunity to do that.

Now whether that includes these integrity fees, that is ultimately up to the states. What I will say is that the revenues created by sports betting are, percentage-wise, very small. Of course, they can aggregate to be a significant sum for states, but they are a small percentage of the overall amount bet.

So when you have something like 1 percent on what's called the handle, which is the overall amount bet, that is a very, very significant amount of money, and that could ultimately mean a lot of money not going to states at the end of the day. But, of course, states will look at this; states will look at revenues; they will look at how best to spend potential revenues that are created by taxing legalized sports betting. But, again, something like 1 percent on a handle would potentially mean something like 20 to 30 percent of taxable earnings on what's called the hold, and that's the amount of money that is left over after the bettor takes his or her winnings.

Gene: That's a great explanation, Ethan, and while you were talking, it reminds me that some people are even pushing for being able to bet on plays, whether someone in baseball is going to get a hit or a home run or strike out or something like that.

Ethan: Absolutely. There are all kinds of bets and prop bets and you can see that in how Nevada deals with sports betting. And that's part of what makes it fun, and to do some of these side bets and do some of these prop bets, but again, at the end of the day, it really will... we hope it will be up to states to determine the space that sports betting exists in and how best sports betting would be legalized or not legalized within a state.

Gene: How would you categorize what states are doing now to enforce illegal gambling? Do most states turn a blind eye, particularly during big sporting events like this past weekend's Super Bowl?

Ethan: I would certainly say that states do not turn a blind eye. State and local law enforcement use their resources in the most efficient ways possible and, in fact, state and local law enforcement do an absolutely wonderful job with everything that they're tasked with.

The problem here is that so much of the money that gets spent on sports betting... it's aggregated to be a large sum of money, but really, it happens with so many individual bets and with so many individual people, and it happens in different means – it happens through connections via your online apps with your phones, with your computers, your desktops, laptops. And so yes, from an enforcement standpoint, it is extremely, extremely hard to capture this type of activity. And again, with state and local law enforcement really using their resources in the most efficient ways possible, they're looking to go after big-time actors; they're looking to go after organized crime; they're looking to go after violent offenders that could be populating these types of illegal markets, and stuff like that.

So I would say no, they don't turn a blind eye, but this type of activity is so, so hard to enforce that really, their hands are tied with a lot of this.

Gene: Can you give us any examples, anything states have done in recent years on sports gambling, or is the attitude that they're kind of waiting on the decision of this United States Supreme Court case?

Ethan: Again, a number of states have introduced legislation on this. Right now I do believe it's at least 16 states have legislation floating around that's been introduced at least. A lot of times what this legislation that states are looking at will do is it aims to put the state in the best position possible if the Supreme Court strikes down PASPA in whole or in part.

And that could mean a number of things. That could mean states looking at actual regulatory frameworks, looking at actual licensing structures, who would be able to have sports betting going on – is it going to be brick and mortar locations like casinos, like racetracks? Or is it actually going to be available online?

So states are really working through this, and every state will be different, and that's what's great. We really do want states to be the laboratories of democracy for this and find out what works for them, and sports betting is no different.

So right now we see this legislation trying to put states in the best position possible and, of course, tax and revenue are a big part of this as well. States are looking to put revenues towards education, towards responsible gaming, towards healthcare, towards law enforcement. So states are looking at this from a number of angles, they want to position themselves well, and they want to be able to hit the ground running if the Supreme Court comes down with a favorable ruling.

That being said, most states I believe will end up looking at this after the Supreme Court comes down. A number of states will keep the status quo. Right? They'll keep their bans in place,

because that's what the legislators will determine works best for them. A number of other states will, after it gets going and if states have legalized this and there is a precedent or at least a better precedent than there is now, then maybe states will decide to look into it and maybe they'll dip their toes into the water. But, again, at the end of the day, it really gets down to what state legislators feel is best for their individual state.

Gene: Any final thoughts, Ethan, that you would want to pass on to state legislators across the country?

Ethan: Sure. I can't stress this enough and this really is NCSL's belief, that states are the laboratories of democracy and this should be an issue and a debate that state legislators are having in their respective chambers and in their state capitol. We hope that they're given the opportunity to do that because right now, federal preemption really takes it out of state legislators' hands, and we hope that changes and we think that state legislators will continue to create smart, tailored policies that will operate well within their states and will benefit their citizens.

Gene: We've been talking with Ethan Wilson, Policy Director of NCSL's Commerce and Financial Services in their Washington, D.C. office. Thank you so much for your time today, Ethan.

Ethan: Thank you so much, Gene.

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Gene: During the major sports seasons, many Americans are involved in fantasy leagues, which for the most part are friendly competitions where people act as sports team owners. But that changed in 2015 when two businesses, DraftKings and FanDuel, launched a multi-million advertising campaign in which players put up money to compete in these leagues.

To help walk us through this development is Jake Lestock, a Policy Specialist in NCSL's State-Federal Relations Division, who also joins us from Washington, D.C., and has written a legis brief on the subject that I highly recommend called "Tackling Daily Fantasy Sports in the States." Welcome to the program, Jake.

Jake: Thanks for having me.

Gene: Let's start off with defining: What are fantasy sports contests?

Jake: Fantasy sports contests are a type of game in which participants assemble imaginary teams made up of real athletes who then compete against each other based on how well the players perform in their games.

There are actually two types of fantasy sports, so we have to be careful to clarify: the traditional, season-long leagues that are a large number of people, I mean, those are the ones where you might be in with a group of your officemates or something like that, that last the whole season; and then there are daily fantasy sports which are very similar, but people place entry fees to start and they usually last only a day or a week; it provides players a chance to win or lose money more frequently, and that's where the big household names of DraftKings or FanDuel come in.

Gene: Are these legal in the United States now, Jake?

Jake: This is a big question right now. The most common argument on whether daily fantasy sports are legal really revolves around the phrases whether they are games of skill or games of chance. The Unlawful Internet Gaming Enforcement Act, which was passed in 2006, created some pretty strict regulations on online gambling, but classified fantasy contests as games of skill.

So while the act's language is pretty vague and it placed these fantasy sports games in this legal gray area, and that allowed for Congress or the states to determine individually whether they were legal or not; so right now there are a lot of states that are still in this gray area.

Gene: Is there something in particular that gave DraftKings and FanDuel impetus to aggressively go after this market?

Jake: I think the fact that there was this legal gray area, they saw an opportunity to make some money and were able to push this in the states, and now states have started to respond because there used to not be any rules or regulations for this new industry, and I think they just saw this as a potential to make money.

Gene: So what do you tell the average fan, Jake: Is it legal to participate in these games? Do they have anything to worry about?

Jake: The players do not have anything to worry about. There are many states where it's completely legal and there are no problems right now, and there are some states where they're still in this gray area. But if anything, the legal challenges are going to be placed on the operators and not the players.

Gene: And tell us, has NCSL taken a position on these contests?

Jake: Yes, NCSL has policy on DFS included in our State Sovereignty for Gaming Resolution, which essentially says that NCSL believes that the federal government should respect the sovereignty of states to allow or prohibit daily fantasy sports, and we would oppose any efforts by the federal government to overrule state authority.

Gene: And do you have an idea of how much money is being spent on these contests every year, Jake?

Jake: That's a little tougher to explain. There aren't many numbers out there, but according to the Fantasy Sports Trade Association, they estimate that in 2017 about 59.3 million people played, and the average player spends around \$550. But really we wouldn't be able to tell unless the big operators like DraftKings and FanDuel really released their numbers, which they haven't done.

Gene: Okay. And you mentioned state sovereignty earlier and earlier in our program we talked with your colleague, Ethan Wilson, about the Professional Amateur Sports Protection Act of 1992, which is before the Supreme Court right now. Could that court decision have an effect on these contests?

Jake: Yeah. Essentially if PASPA is overturned, DFS games would no longer be in this gray area and they wouldn't have to really determine whether they're considered games of skill or games of chance; they'd just be legal. And it would be left up to the state governments to decide whether or not they were allowed.

And actually, it's interesting to talk about the CEO of DraftKings recently just said that they are starting to build a sports betting product and he hopes that his startup will be ready if and when sports gambling is legalized, which is pretty ironic considering the DFS industry in the past few years has been trying to distance themselves from anything related to gambling so that they could pass the laws in the states where it was a game of skill and not a game of chance like gambling.

Gene: Okay. And tell us, have states enacted any laws in regard to these games? What type of legislation are you seeing out there?

Jake: This issue has been pretty hot in the states the past couple of years. As of now, 19 states have enacted laws to legalize paid entry fantasy sports games. Essentially what they're trying to do with these laws is to: first, create a legal clarity and get out of that gray area; second is to create regulations and safeguards for their residents, which would be things like a minimum age of players or how the funds are raised, where the operators can use their funds; and then finally, it's another way for states to kind of raise revenue.

Gene: And speaking of that revenue, have states seen any economic benefit to this so far?

Jake: Of the 19 states that have legalized daily fantasy sports, 10 have imposed operating fees, which is just a fee in order for the operators to work in their states, and these range from 5 grand every three years to about 50 grand annually. But the big thing to look at is that 10 states have approved taxing operators' revenue generated within the state.

It's pretty early to tell as states have just started legalizing this new industry and are in the early stages of assessing its impact, but those who believe taxing daily fantasy sports companies will create meaningful revenue for their budgets may be in for some disappointment. For instance, one of the largest states, New York, has estimated their bill was going to generate around 25 billion dollars in revenue and the state taxes DFS gross revenue for use in New York at a rate of like 15.5 percent, which is pretty high.

And although in 2017 these sites only paid a little bit more than 4.8 million to the state, and with a state with a budget larger than 150 billion dollars, that's a pretty small coin. So while it's easy for state coffers to salivate when they see these headlines about the big, new, billion-dollar industry, it's pretty important that states have a realistic expectation of how much revenue this is going to create for them.

Gene: If the Supreme Court were to come with a decision that favored the states, could you see the states getting a larger revenue stream from this?

Jake: I would think that it might generate some more players for DFS, but I think the majority of the revenue through the Supreme Court ruling would probably come through sports betting.

Gene: When you talk to state legislators across the country, what kinds of questions are they asking about this? Are there some other things that they should know about?

Jake: Yeah. Usually when they ask me about it, they kind of want to see the regulations that other states are having. But a majority of the legislators and staff that have reached out to me are really looking at how much money they can raise. Obviously with state budgets going into some troubling times, any kind of revenue raiser is what they're looking for and, like I said before with New York, I hope that legislators and legislative staff don't look at this as the big ticket to get out of any budget shortfalls.

Gene: So we've been talking with Jake Lestock, a Policy Specialist with NCSL's State-Federal Relations Division, from the Washington, D.C. office. Jake, thank you so much for being a part of the program.

Jake: Thanks for having me.

Music and Gene VO:

And that concludes this edition of "Our American States." We invite you to subscribe to this podcast on iTunes and Google Play. Until our next episode, this is Gene Rose for the National Conference of State Legislatures. Thanks for listening.