

MASSACHUSETTS SPORTS BETTING: HISTORY, LEGALITY AND POLICY CONSIDERATIONS

Paul Connelly, Director of Licensing, MGC
Justin Stempeck, Associate Counsel, MGC



Why Sports Betting? Why Now?

- The Professional and Amateur Sports Protection Act (“PASPA”)
- Passed in 1993
- Federal prohibition on sports betting except Nevada, also allowed for sports lotteries in Oregon, Delaware and Montana
- PASPA says:
 - it shall be unlawful for a governmental entity to
 - Sponsor, Operate, Advertise, Promote, License or authorize by law or compact
 - A lottery, sweepstakes, or other betting, gambling or wagering scheme based directly or indirectly...on one or more competitive games in which amateur or professional athletes participate or on one or more performances of such athletes in such games.
- What does this mean?

New Jersey's PASPA Challenge – Why Everyone is Talking

- First State to formally challenge PASPA
- Started in 2011 – NJ voters approved referendum to allow for sports betting in state
- Passed into law in 2012, state could issue licenses to casinos/racetracks to allow sports betting
- NBA, NFL, MLB, NHL, NCAA immediately sued in Federal Court – Leagues win 2013
- NJ appeals to 3rd Circuit Court of Appeals, 3 judge panel affirms lower court
- The Court decision suggested NJ couldn't affirmatively legalize sports betting so NJ decriminalizes sports betting at licensed racetracks and casinos
- Leagues sue again. NJ loses again. NJ appeals again, 3rd Circuit panel affirms again.
- NJ requests 'en banc' hearing – NJ loses 6-3. NJ appeals to the Supreme Court.

New Jersey Goes to Washington

- Supreme Court only hears 1% of cases
- Question at center of the discussion: Does PASPA 'commandeer' states and require them to maintain a prohibition on sports betting, violating the 10th Amendment?
- Tenor of questions by the Justices was skeptical of PASPA
- Decision finds in favor of New Jersey, PASPA is overruled
- Sports betting is a state by state decision



What's been happening in Massachusetts as NJ fought its way to the Supreme Court?

- 2011 Expanded Gaming Act, M.G.L. c. 23K passed
 - Plainridge Park Casino opened in June 2015 – slots only
 - MGM in Springfield slated to open August 2018 (full casino)
 - Encore Boston Harbor slated to open June 2019 (full casino)
- Daily Fantasy Sports legalized via temporary law in August 2016 (expires July 2018)
 - Daily fantasy sports must comply with Attorney General consumer protection regulations
 - Daily fantasy sports are not gambling
- State Legislature created a commission to study online gaming and daily fantasy sports
 - During that commission all three casino licensees indicated they favored sports betting at their facilities
 - Commission drafted a report distributed to legislature with various recommendations
- MGC authored a white paper on Daily Fantasy Sports
- MGC authored a white paper on Sports Betting

What's been happening in Massachusetts as NJ fought its way to the Supreme Court – cont'd

- Only two pieces of pending legislation that tangentially address sports betting
- One bill was filed well before the Supreme Court decision the other more recently as an amendment to the budget
- Both are more focused on setting up a framework to permanently legalize DFS and place it under regulation by the Massachusetts Gaming Commission
 - Would establish a tax
 - Registration fee
 - Consumer Protections
- Both would establish a study committee to examine impact of sports betting legalization in the Commonwealth
- Both bills currently in committee (Legislative Session ends 7/31/18)
- DFS was previously legalized in Chapter 219 of the Acts of 2016 but only through 7/31/18, currently pending H.4297 would make that legalization permanent
 - That version has no registration fee, tax or oversight from any entity aside from existing attorney general consumer protection regulations

What has the discussion been in Massachusetts since the Supreme Court Decision?

- Governor Charlie Baker initially said “it’s certainly something we should look into”
- Now is saying we have a lot of “homework” to do on the topic
- Democratic House Speaker Robert Deleo strongly implied it will not be reached this legislative term and will require additional research to craft legislation
 - Notably, both CT and RI have either proposed legislation that legalizes sports betting
- MGC has taken no official position on the legalization of sports betting
- Any legalization of sports betting would require decriminalization of many offenses codified in statute
 - Would need to determine what entity would regulate the industry and how it would regulate
 - Would need to determine if there would be a detailed, comprehensive law or a more general grant of authority to a regulatory body empowered to draft regulations as necessary

What's the size of the illegal sports betting market nationally?

- The \$100 (\$200?, \$300?) Billion Question
- Nationwide there are many estimates – inherent difficulty given that sports betting is illegal almost everywhere
- AGA put out a figure of \$150 billion, more conservative views present \$50-60 billion
- These projected figures represent “handle” or total amount wagered
- Revenue from such handles is roughly 5%
- A \$50 million handle produces only \$2.5 million in gross gaming revenue
- Most state taxes apply to the revenue, not the handle

What's the size of the sports betting market in Massachusetts?

- Limited state specific studies
- AGA commissioned study by Oxford Economics suggested a range of possible tax revenues in Massachusetts from a low of \$8.6 million to a high of \$61.3 million
- These figures assume a handle in Massachusetts of between \$127 million and \$472 million
- AGA study looked at different tax rates and different distribution models all of which are critical in evaluating the market
- Not a small market, but not the solution to every state budget shortfall either
- Sportsbooks are a low margin business

What does illegal sports betting look like? How is it evolving?

- Sophisticated and technology driven
- Mobile and app platforms are critical
- Growth of in-play betting
- Multiple online sites easily available
- Local bookie is likely using a 'pay per head' software as a service to run his operation
- With the growth of cryptocurrency there has been a parallel growth in online casinos and sportsbooks that accept cryptocurrency with obvious concerns regarding consumer protection, money laundering and criminal connections

Unsettled questions in sports betting legalization

- What sports can you bet on? Minor League? College? Esports?
- How do you define 'sports?'
- What are other states doing?
- What has Nevada done?
- Balancing regulatory efforts and black market concerns



Legalization?: Framework for Approach

Potential legalization efforts guided by overarching policy objectives, including but not limited to a desire to:

- Transition sports betting activity from black market to legal, regulated markets
- Capture tax revenues
- Expand economic opportunities to potential providers and related industries
- Identify and mitigate potential negative externalities, including efforts to promote responsible gaming

Minimizing the Black Market

Essential considerations when attempting to attract bettors away from black market:

- **Online / Mobile Availability**
 - Convenience and accessibility matters; competition with increasing sophistication of black market
- **Products Offered**
 - Illegal products offer full range of sports betting options (e.g. in-game betting); increasingly attractive to betting public
- **Taxes and Fees**
 - Sportsbooks are relatively low-margin operations; taxes and fees impact profitability and ability to offer attractive odds and products vs. black market
- **Security / Consumer Protection**
 - True differentiator from black market – finally bettors can engage in safe market
- **Responsible Gaming**
 - Legal providers could provide tools to allow bettors to monitor and manage betting activity

Implementation Considerations

- **Who** (i.e. which providers) should be allowed to participate in offering sports betting?
- **Where** (i.e. through which access channels) should sports betting be allowed; brick & mortar, online, or both?
- **What** types of bets and on which types of contests should sports betting be allowed?
- **When** and at what pace should sports betting be allowed; gradual rollout or all-at-once?
- **How** should sports betting be taxed and regulated?

WHO should be allowed to provide sports betting?

- Potential first-mover advantages make this an important question
- Is sports betting an extension of an existing regulated market, or a new activity?
- Likely stakeholders:
 - Existing Gaming Licensees
 - Racetracks / OTB
 - Native American Tribes
 - Lottery
 - New Brick & Mortar Entrants
 - New Online Entrants

WHERE should sports betting be allowed?

Basic Model:

- Brick & Mortar
 - Bets and payouts conducted in-person at authorized provider
- Online
 - Bets and payouts conducted over the internet using computers, tablets or smartphones
- Brick & Mortar betting is seen primarily as a driver of non-gaming (e.g. food, beverage, room) revenues at casinos
- Online sports betting – based on convenience and ability to rapidly evolve to meet consumer demand – is increasingly popular; may be critical factor in transitioning bettors from black market to legal market

WHAT types of bets should be allowed?

What is the appropriate range of betting options?

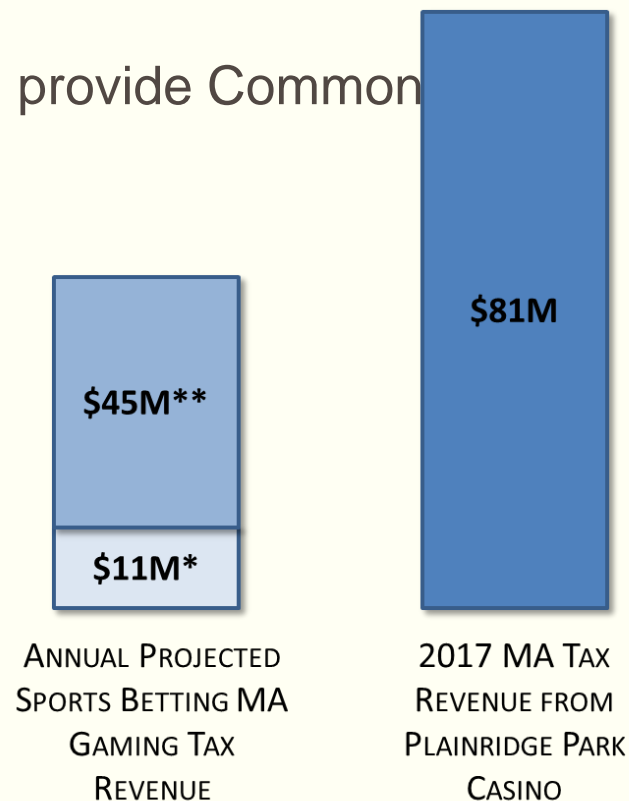
- Traditional Sports
 - Horse Racing
 - Professional Sports (e.g. Football, Baseball, Basketball, Hockey)
 - Amateur Sports (e.g. Football, Baseball, Basketball, Hockey)
- New “Sports”
 - eSports
 - Virtual Sports
- “Futures” Betting
 - Entertainment (e.g. Reality TV Shows)
 - Elections
 - Other Real-World Events
- In-Game Betting?

WHEN and at what pace should sports betting be allowed?

- First-mover advantages among states
- Northeast identified as potentially most active region to adopt sports betting
- Immediate roll-out, or wait and see

HOW should sports betting be taxed and regulated?

- Goal is to create legal marketplace that is safe for bettors and provide Commonwealth opportunity to capture revenues
- Tax rates are traditionally high on high-margin casino gaming
- Tax rates and fees (including “integrity fees”) must be considered within context of sports betting profitability and public policy desire to transition betting activity from black market
- Regulatory approach can be accomplished through:
 - Strong statute addressing who, where, what, when and how
 - Empowered regulator to address who, where, what, when and how
- Online considerations may make an “Omnibus Regulatory Approach” attractive





QUESTIONS?