

## Experts Bet On High Court's Blessing For Sports Wagering

By **Matt Fair**

*Law360, Radnor, Pennsylvania (April 13, 2018, 5:32 PM EDT)* -- A panel of sports law experts appearing at a symposium at Villanova University on Friday expressed optimism that the U.S. Supreme Court would clear the way for legalized sports betting as it weighs an appeal over New Jersey's efforts to strike down the state's ban on the activity.

The justices are considering whether the Professional and Amateur Sports Protection Act unconstitutionally usurps the authority of states to regulate sports wagering as they see fit, or whether the law is simply a case of federal law preempting state law.

The appeal comes after a Third Circuit decision in August 2016 saying that PASPA barred New Jersey from enacting a bill supported by then-Gov. Chris Christie that repealed prohibitions on sports wagering insofar as they applied to racetracks and casinos.

Members of the panel at Villanova on Friday said they suspected that the Supreme Court's willingness to hear the case, which was argued in December, indicated that the justices were willing to make major changes to PASPA.

"I don't think the Supreme Court took the case to do nothing," said Kate Lowenhar-Fisher, an attorney with Dickinson Wright PLLC in Las Vegas.

Lowenhar-Fisher was one of four panelists tapped to discuss the future of sports betting as part of the Jeffrey S. Moorad Sports Law Symposium hosted by Villanova's Charles Widger School of Law.

A decision from the high court allowing some form of sports wagering outside the four states where it existed at the time PASPA was enacted in 1992 would give government the chance to regulate and tax an estimated \$150 billion worth of illegal bets that members of the panel said are currently placed every year.

But while states may be salivating at the prospect of tapping into a market they're currently barred from entering under PASPA, Lowenhar-Fisher said sportsbooks in Nevada, where some \$5 billion worth of sports bets are placed every year, actually operate with very low margins.

"A lot of people are laboring under a misapprehension about the economics of a sportsbook," she said.

In Nevada, she said, the best run sportsbooks, even before paying their expense, hold onto only about 4.75 percent of the total bets they take. For this past year's Super Bowl, she noted, the hold across all of the state's sportsbooks was a mere .17 percent.

"After they paid their employees, they lost money," she said. "So I think it's important to recognize that even if we legalize sports betting among the various states that you have to be very careful to watch the taxes and fees that might be levied on such an operation because you could easily tax and fee it into oblivion."

Ethan Wilson, an attorney and policy director for the National Conference of State Legislatures, agreed that states would have to tread lightly if they wanted to ensure the success of any new sports wagering regimens they implement in the wake of a Supreme Court ruling striking down PASPA.

"They don't want to tax these businesses into death," he said. "States will definitely be smart about that and they want to try and legislate taxing schemes that are workable and that work for businesses."

While the panel agreed that any decision striking down PASPA would leave it up to states to take their own individual approaches to sports betting, Gary Slaiman, an attorney who works as a consultant to Morgan Lewis & Bockius LLP in Washington, D.C., said he believed the federal government would eventually get involved in regulating the industry.

"In this country, letting the states get out there and experiment is a pretty time-honored tradition," he said. "I think eventually, because it makes sense to have a national market, and once you see a few of those states get some experience with it, you'll see a federal law maybe to get some excise tax out of it or to see a more consistent set of rules and regulations."

--Editing by Pamela Wilkinson and Kelly Duncan.