

EXPERT COMMENTARY ON SPORTS BETTING POST-PASPA

Becky Harris

Nevada Gaming Control Board, Former Chair (2018-2019)

Becky Harris, appointed by former Nevada Governor Brian Sandoval (2011-2019), served as the first female Chair of the Nevada Gaming Control Board from January 2018 to January 2019. Harris was the first Chair to propose regulations addressing workplace sexual harassment. Prior to serving as Chair, Harris served in the Nevada Legislature for the 2015 and 2017 legislative sessions.

On May 14, 2018, the United States Supreme Court issued its decision in Murphy v. National Collegiate Athletics Association, which considered the constitutionality of the Professional and Amateur Sports Protection Act of 1992, also known as PASPA. Under PASPA, states that did not already permit sports gambling at the time the law was enacted, would never be allowed to. Ultimately the Supreme Court in Murphy invalidated PASPA as unconstitutional, freeing states to legalize and regulate wagering on individual sports events. For years, Nevada held the monopoly on full-scale legal sports betting. What are the implications for Nevada of sports betting expanding across the U.S.?

What are your thoughts on the argument that there should be a federal framework on sports betting? Are there any negatives? Positives? You testified before a congressional committee supporting state regulation. How was that received and what is next?

Nevada takes the view that states are best equipped to regulate sports betting. It is a responsibility that Nevada takes seriously and performs with fidelity. Just days after the Supreme Court repealed PASPA, regulators from four different states¹ issued a statement affirming that sports betting should remain within the states' purview. We declared in the statement that "states and tribal gaming regulatory agencies have the capacity, resources, and ability to oversee the regulation of legalized sports betting. . .and gaming jurisdictions across the United States, including tribal jurisdictions, have demonstrated their ability to oversee gaming of all sorts while adhering to the highest standards."²

¹ Nevada, Massachusetts, Louisiana, and Michigan; *see infra*, note 2.

² MEDIA STATEMENT ON BEHALF OF STATE GAMBLING REGULATORS FROM FOUR

Federal regulation would only add unnecessary cost, delay the licensing process, increase taxation, and create additional complications. It would take several years to establish a federal regulatory structure and develop the necessary expertise to administer it. In the meantime, Nevada has had its regulatory system in place for several decades and other states have begun to establish their systems.

The federal government has “historically played no role in the discharge of the traditional regulatory functions of licensing, enforcement, and audit[.]”³ and “Congress has no real expertise in establishing gaming regulatory regimes[.]”⁴ whereas Nevada has had at least forty years to develop that expertise and strictly regulates gaming.

Because a federal system of regulation would be an additional layer of regulation and would increase the costs associated with legal regulated sports, the price of bets would increase, putting legal regulated sports betting at a disadvantage to illegal sports betting.

At the time I testified before the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, not one of the legislators on that subcommittee represented a state with legal sports betting. To that end, I submitted extensive written materials⁵ to provide the Subcommittee with a solid foundation for how states can effectively regulate sports betting. The Subcommittee was engaged and asked good questions.

As part of my testimony, I informed the Subcommittee that I had been working with UNLV to create the U.S. Sports Betting Regulators Forum. This forum will be a neutral venue for all stakeholders to discuss issues of mutual concern, but is also an avenue for state regulators to identify priorities and effectuate solutions for complicated issues such as suspicious wagering activity and data sharing. Hopefully, with state regulators working closely together, any desire for federal intervention will be negated.

What are the implications for Nevada of sports betting’s expansion?

The Nevada experience is unparalleled. Nevada sets the standard and will continue to be the best jurisdiction for sports betting regardless of how many other states in the United States choose to offer it.

STATES, NEV. GAMING CONTROL BD. (May 22, 2018), <https://gaming.nv.gov/modules/showdocument.aspx?documentid=13251> (last visited Mar. 24, 2019).

³ Keith C. Miller & Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 UNLV GAMING L.J. 153, 156 (2018).

⁴ *Id.* at 174.

⁵ The Subcommittee received Nevada’s statutes, regulations, internal controls, and written materials that provided additional information and context for my oral testimony.

Spring 2019] EXPERT COMMENTARY ON SPORTS BETTING POST-PASPA 31

In 2015, the Nevada Attorney General's office issued an opinion that daily fantasy sports constitute gambling and sports wagering, and therefore, daily fantasy sports sites need to apply for a gaming license in Nevada to operate. Many proponents of daily fantasy sports consider it a game of skill rather than chance. However, the opinion stated that "a determination that an activity is a game of skill is . . . not relevant to determining whether that activity constitutes a gambling game."

The AG opinion was silent on season-long fantasy sports. What should we make of that?

Not much. The question asked of the Attorney General's Office was specific to Daily Fantasy Sports (DFS).

Does the opinion impact innovation in gaming?

I do not believe that the legal analysis impacts innovation in gaming. DFS is simply one product offering among many. While DFS has been considered innovative, DFS doesn't define innovation for sports betting.

With so much national attention on recent lottery jackpots, and acknowledging that many Nevada residents go to California and Arizona to get lottery tickets, do you think we will ever be able to amend our state constitution and have a lottery?

In order for the State of Nevada to offer a lottery, the Nevada Constitution would have to be amended. Article IV, Section 24 of the Nevada Constitution prohibits the State of Nevada and any of its political subdivisions from operating a lottery. The only exception is a narrow one for charitable lotteries with the requirement that all proceeds go to benefit charitable or not-for-profit activities.

I do not know of any efforts toward a constitutional amendment to repeal the lottery prohibition through an initiative petition or joint resolution of the Legislature. In the case of initiative petition, the measure would go the voters who must approve it in two consecutive general elections. A joint resolution would require approval by a majority of legislators during two consecutive legislative sessions and then face approval by a majority of voters in the next general election.

Given that Nevada now has a professional NHL hockey team, and will soon become the home of the Raiders, are there any concerns about having professional athletes in such close proximity to sports books? If so, how should gaming regulatory agencies address these concerns? How does Nevada plan to address these concerns?

No. Nevada has refined its sports betting regulations over decades. Should concerns arise, the Gaming Control Board has the ability to create regulations to address them. The Gaming Control Board's regulations govern all aspects of gaming, not just sports betting, and changes are made as necessitated.

Would the fact that a daily fantasy sports operator has acted inconsistently with a state's Attorney General's opinion affect the operator's suitability determination if it applied for a gaming license in Nevada to offer daily fantasy sports?

It would be one of the factors the Nevada Gaming Control Board could consider.

Does Murphy impact the potential issues of insider trading and sports integrity? Today, someone who has personal knowledge about a professional athlete's injury that is not known to the public can walk into a sports book and place a bet. To maintain Nevada's gold standard of gaming, how will Nevada address this in the future?

Would Nevada work with other states to establishing uniformity among the states regarding sports betting laws to ensure the integrity of the games and betting systems? Do we need to?

At the December 2018 Board meeting, the Nevada Gaming Control Board made the following recommendations for approval to the Nevada Gaming Commission:

22.1205 Prohibited wagers. No wagers may be accepted or paid by any book on:

1. Any amateur sport or athletic event other than Olympic sporting or athletic events and collegiate sporting or athletic events as set out in this Regulation;

2. Any sporting event or other event which the licensee knows or reasonably should know is being placed by, or on behalf of, an official, owner, coach, or staff of a participant or team or participant in that event. Each licensee shall take reasonable steps to prevent the circumvention of this regulation;

3. The outcome of any election for any public office both within and without the State of Nevada; and

4. Any athletic sports event sanctioned by a governing body where the Chair has made a finding that the governing body is

Spring 2019] EXPERT COMMENTARY ON SPORTS BETTING POST-PASPA 33

not effectively supervising such event or is not ensuring the integrity of such event.

(a) A licensee affected by such finding may appeal the finding pursuant to Regulation 4.185 through 4.195. The Chair's finding shall not be reversed absent the licensee demonstrating the governing body is effectively supervising the events it sanctions and is able to ensure the integrity of the events it sanctions.

(b) At any point after making such a finding, the Chair may rescind the finding upon receiving information satisfactory to the Chair that such governing body is effectively supervising the events it sanctions and is able to ensure the integrity of the events it sanctions.

(c) The Board shall send notice to all books pursuant to Regulation 2.070 of such finding or rescission.

Nevada already works with other state regulators to discuss issues of mutual concern and build consensus around thoughtful and effective regulation.

Should states share any data gathered on sports events to detect irregular betting patterns?

Issues related to data, such as how that data is shared and with whom, is one of the reasons the U.S. Sports Betting Regulators Forum was created—so that all interested stakeholders and parties can come together to discuss issues of mutual concern and identify appropriate solutions.

In my remarks before the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations in Congress, I expressed my opinion that collegiate sporting organizations, as well as the professional sporting organizations, should look at their internal policies, practices and procedures to determine what they can and should do in terms of protecting their data.

There is a lot of discussion about uniformity with regard to state regulation of sports betting. I think the discussion should also include some uniformity across sports conferences and organizations with regard to their internal use of all types of data. While there are many data topics that need to be more fully considered, the following questions highlight a few items regarding athletes: Who should have access to data related to illness, injury, unavailability for play, or any other information related to an upcoming event? Owners, coaches, referees, trainers, an athlete's family members? How is that data disseminated and when? Should there be restrictions on the dissemination of athlete information beyond those designated as need to know? I look forward to actively engaging in these important discussions in the years ahead.