Don’t Bet On It: Interstate Sports Betting Markets Hampered by Federal Wire Act

The sports betting legal market dramatically shifted when the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA) as unconstitutional commandeering under the 10th amendment. PASPA prohibited state and local legislatures from enacting laws that would favor sports betting. But the U.S. Supreme Court ruled that PASPA was unconstitutional because it “dictates what a state legislature may and may not do.” As a result, PASPA is no longer the primary impediment to legalized sports gambling.

Freed from the restraints of PASPA, state legislatures have been moving at a breakneck pace to enact their own framework to legalize and regulate sports betting. As of November 26, 2018, eight states have successfully enacted regulations and legislation favoring lawful sports betting. Moreover, sports betting businesses, such as bookmakers, casinos, sports data analysts, and others now may expand their businesses. Yet one federal law serves as a potential impediment to the expansion of legalized interstate sports betting – the Federal Wire Act (18 U.S.C. § 1804).

Signed into law by President Kennedy in the 1960s, the Federal Wire Act was designed as a tool to suppress organized crime, specifically by focusing on the transmission of sports wagers or information connected to sports wagering. The statute provides:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more
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than two years, or both.

By its express terms, the Federal Wire Act creates criminal liability for those who use a wire to transmit sports information in connection with a bet or wager, or alternatively, use a wire to transmit a bet or wager. However, the Federal Wire Act does not apply to intrastate commerce. But what happens if the transmission of a sports wager or information in connection with a sports wager is incidentally transmitted across state lines. For example, consider the scenario where the bettor places a bet with the bookmaker in a jurisdiction where sports betting is legal. However, the information crosses state lines, thereby creating federal jurisdiction over an action that is lawful within the state. In scenarios such as these, the Federal Wire Act applies, even though the state has regulated the activity and made it lawful.

This very scenario was encountered by a federal district court in United States v. Yaquinta soon after the law was enacted. In Yaquinta, several bookmakers in West Virginia used the telephone system to transmit bets and wagers in connection with horse racing. As part of their betting scheme, the bettors made telephone calls from a physical location in West Virginia, but transmission of those telephone calls briefly passed into Pennsylvania, before returning to a location in West Virginia. Those bettors were charged with violations under 18 U.S.C. § 1804. As a defense, the bettors argued that the Federal Wire Act should not trigger federal jurisdiction just because the transmission of betting information incidentally crossed state lines. The federal district court disagreed, noting that “intermediate crossing of a State line provides enough of a peg of interstate commerce to serve as a resting place for the congressional hat, if that will serve the congressional purpose.” Accordingly, some courts have found that federal jurisdiction can be triggered by the mere act of crossing state lines.

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