

New Jersey Mum On Sports-Betting Appeal

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[Tony Batt, GamblingCompliance](#) [1]

A spokesman for the New Jersey attorney general's office on Tuesday declined to comment on reports that Governor Chris Christie has decided to ask for a new hearing in the 3rd U.S. Circuit Court of Appeals on a decision which prevents the Garden State from legalizing sports betting.

"Nothing to report at this time," Leland Moore, a spokesman for New Jersey Acting Attorney General John Jay Hoffman told GamblingCompliance in an email.

"As you may or may not be aware, the state has until November 1 to file," Moore said.

Sources said Christie has decided to petition for a "en banc" hearing in the 3rd U.S. Circuit Court of Appeals before appealing to the U.S. Supreme Court to overturn a ruling which blocks the state from legalizing sports betting.

An en banc hearing would include all judges on active status at the 3rd U.S. Circuit Court of Appeals.

In a [2-1 decision on September 17](#) [2], a three-judge panel of the 3rd U.S. Circuit Court of Appeals denied New Jersey's appeal of a lower court's decision upholding a federal ban on sports wagering.

Christie has decided to pursue an en banc hearing even though some attorneys who represent New Jersey gaming interests would prefer to appeal directly to the U.S. Supreme Court, according to sources.

Michael Drewniak, a spokesman for the governor, on Tuesday referred questions about the sports-betting case to the New Jersey attorney general's office.

If the 3rd U.S. Circuit Court of Appeals grants New Jersey's petition for an en banc hearing, the process of reviewing the case and issuing a decision could take about a year.

This would delay action by the U.S. Supreme Court, an argument made by attorneys who advised against pursuing an en banc appeal.

On the other hand, even if New Jersey appeals directly to the Supreme Court and is granted a hearing, a final decision may not be issued until 2015.

Daniel L. Wallach, an attorney with the Fort Lauderdale, Florida firm of Becker & Poliakoff, said he would be "shocked" if Christie does not seek an en banc hearing.

"You stand a much better chance if you come to the Supreme Court with a federal statute having already been declared unconstitutional. New Jersey has just one more chance to make that happen — and that's with a petition for rehearing en banc," Wallach told GamblingCompliance.

Even if New Jersey is denied an en banc hearing or loses again after the rehearing, the state still can appeal to the U.S. Supreme Court, Wallach said.

"Why wouldn't New Jersey want to avail itself of this risk-free option? It has nothing to lose, and its prospects for rehearing are actually pretty good," Wallach said.

But Anastasios Kaburakis, an attorney and an assistant professor of management and sports business at Saint Louis University, said New Jersey would be taking a risk by seeking an en banc hearing.

“If an en banc hearing takes place, and still does not yield the anticipated result for New Jersey, that is another major blow to the state’s efforts challenging the constitutionality of the Professional and Amateur Sports Protection Act,” Kaburakis told GamblingCompliance.

Approved by Congress in 1992, [the Professional and Amateur Sports Protection Act](#) [3] (PASPA) prohibits New Jersey and other states from legalizing sports betting while exempting Nevada, Delaware, Montana and Oregon.

“New Jersey does run the risk of having yet another decision that may deter the Supreme Court from assuming a different position,” Kaburakis said.

No matter which option New Jersey decides to pursue, its biggest weapon may be the dissenting opinion of U.S. Circuit Judge Thomas Vanaskie in the 2-1 decision on September 17.

“That increases the odds that the case gets another hearing,” said Ryan Rodenberg, an assistant professor of sports law analytics at Florida State University.

“A 3-0 decision would have made an en banc hearing pretty unlikely,” Rodenberg said.

Griffin Finan, a gaming attorney in Washington, D.C. said it is unlikely the final resolution of the sports-betting case will occur at the 3rd U.S. Circuit Court of Appeals in Philadelphia.

“It seems likely that whatever happens with an en banc appeal that the Supreme Court will be petitioned to review the case,” Finan said.



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