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## Say it ain't so, Joe: Gambling 100 years after Black Sox

Nearly one hundred years ago, the Chicago White Sox were embroiled in one of the largest gambling scandals in the history of professional sport.

After finishing the regular season with the best record in the American League, the Sox lost the 1919 World Series to the Cincinnati Reds, five games to three (a best of nine series that season). Allegations were then levied against eight of the 'Black Sox' who were said to have fixed the World Series games for gamblers.

Summoned before a grand jury, a number of players admitted to taking bribes for throwing the World Series. The heart-breaker was that the star player, "Shoeless Joe" Jackson, who batted .351 in the 1919 regular season and hit for .375 and never committed an error during the World Series, admitted to taking bribes. Journalist Charley Owens of the Chicago Daily News famously headlined his paper, "Say it ain't so, Joe."

Opponents of gambling in sports have expressed similar dismay now that the U.S. Supreme Court has ruled that states are free to enact laws that permit sports gambling. See *Murphy v. National Collegiate Athletic Association*, No. 16-476, slip op. (U.S. May 14, 2018).

Those consternates that are echoing Charley Owens' sentiments are concerned that legalized gambling may undermine the integrity of sports, influence youth to gamble or encourage those of modest means to squander their savings. But, supporters argue that legislation will weaken the illegal sports betting operations that experts presume results in nearly \$150 billion being gambled every year, either underground or offshore.

Further, those in support of legalized gambling see the significant economic boost for states that will result from legalizing these activities.

At its core, the recent U.S. Supreme Court opinion is further endorsement of states' rights to govern activities within their borders. The 2014 New Jersey law facing the court had repealed provisions of state law prohibiting sports gambling of sporting events by persons 21 years of age or older at a horse racing track or a casino or gambling house.

Professional sports teams and the NCAA sought to enjoin New Jersey from giving effect to that law. The U.S. District Court for the District of New Jersey entered summary judgment in the leagues' favor and issued a permanent injunction based on a federal law that makes it unlawful for states to "sponsor, operate, advertise, promote, license or authorize by law ... betting, gambling or wagering scheme ... based on competitive sporting events." 28 U.S.C. 3702(1). The 3rd Circuit affirmed.

Justice Samuel A. Alito Jr., finding support in Alexander Hamilton's Federalist Papers, the 10th Amendment and Supreme Court anti-commandeering precedent, held that "a more direct affront to state sovereignty is not easy to imagine ... the provision prohibiting state authorization of sports gambling unequivocally dictates what a state legislature may and may not do."

The 6-3 Supreme Court decision therefore declared the 26-year-old federal law, the Professional and Amateur Sports Protection Act, or PASPA, unconstitutional and now clears the way for New Jersey to immediately permit gambling:

### SPORTS TORTS

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"The legalization of sports gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each state is free to act on its own. Our job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not." *Murphy v. National Collegiate Athletic Association*, No. 16-476, slip op. (U.S. May 14, 2018).

The reaction to this ruling from professional sports leagues has been mixed. Gary Bettman, NHL commissioner, has stated that "the Supreme Court has spoken, and we need to deal with the realities of our world ... Done right, [gambling legislation would] be a one-size fits all sports betting solution that Congress passes."

Bettman also spoke to what new legal sports bookmakers will need from sports leagues, stating, "There's going to be a need for data, access to our games, our trademarks. The video of our games."

The NFL also has reversed course and seems to support legislation authorizing gambling on its games. NFL spokesman Brian

McCarthy stated that "the NFL's long-standing and unwavering commitment to protecting the integrity of our game remains absolute." The NFL has called on Congress to "enact a core regulatory framework for legalized sports betting."

The MLB has also pushed for regulation on the types of bets offered, such as not offering gambling in the minor leagues and holding off on betting on individual plays (i.e. whether or not the next pitch will be a curveball or fastball). MLB Senior Vice President of Investigations and Deputy Counsel Bryan Seeley has stated that, "those are things we want a seat at the table to talk about."

These leagues, of course, stand to benefit financially if/when state legislatures or Congress agree to cut them in on portion of the revenue generated by gambling. These "integrity fees" sought by the leagues would be new revenue streams previously unimagined.

Rationalized as funds that are necessary to police their sports and ensure compliance, leagues will experience a windfall from the legalized betting on their sport.

Certainly, the players' unions will bargain for a piece of that pie. In the long term, further interest in professional sports may increase player and coaches' salaries. In the short term, will spreading a portion of the leagues "integrity fees" among all players prevent corruption in the sport?

Following the Black Sox scandal, the first baseball commissioner was installed to ensure the integrity of the game. In the century that has followed, professional sports have mostly avoided large-scale gambling scandals that would impugn their purity. As we approach the

one hundred-year anniversary of the Black Sox scandal that rocked professional baseball, the role of gambling in professional sports is certainly facing a new frontier.

What will happen when a coach's call, a player's gaffe or referee's missed call changes the outcome of a game or pushes a score over or under the line? Leagues will need to ensure the safety of players and referees more than ever.

"It scares me to death," veteran MLB umpire Joe West, president of the umpire's union, told USA Today Sports. "I'm not worried about any of my guys doing anything [illegal], but I am worried about their security. People won't have just a rooting interest in games, but now they're gambling on them. So, if they lose their money, and they're mad enough, anything's liable to happen. You really worry about the criminal aspect, guys getting hurt, getting their legs broken, anything really."

In addition to the potential criminal actions of disgruntled bettors, could there ever be civil liability for tortious interference?

Take, for example, a situation like the 2015 Super Bowl, when Pete Carroll, Seattle Seahawks coach, made what was considered "one of the worst calls in football history."

Carroll called for Russell Wilson to throw from the one-yard line rather than hand the ball to Marshawn Lynch with the game on the line and just seconds remaining. This call ultimately led the New England Patriots to Super Bowl victory when Wilson's pass was picked off. If a person had bet on the Seahawks winning, could they claim tortious interference of contracts against Carroll?

Illinois has generally recognized that the elements of tortious interference with a contract are: (1) the existence of a valid and enforceable contract between the plaintiff and someone else; (2) the defendant's awareness of this contractual relation; (3) the defendant's intentional and unjustified inducement of a breach of the contract; (4) a subsequent breach by the other, caused by the defendant's wrongful conduct; and (5) damages. *HPI Health Care*

*Services, Inc. v. Mount Vernon Hospital Inc.*, 131 Ill.2d 145, 154-55 (1989).

Applying the Illinois elements of tortious interference, individuals placing bets will need to have entered into a formal contract by making their bet. The issue then arises as to whether the defendant in these situations is aware of the contract, or bet in this case, and whether or not their action was an intentional breach of contract.

This area is where it may become difficult, as the referee, coach, umpire, etc., would need to have known about the bet and have intended to breach that bet by making their particular call. A new frontier, indeed.

In addition to a changing landscape in professional sports, NCAA sports will also be affected. Interestingly, the New Jersey statute prevents individuals from betting on collegiate sporting events taking place in New Jersey or involving New Jersey colleges or universities.

Will other states follow this lead? Or, will colleges in other states support gambling (again, new revenue stream) and seek

"integrity fees" and then police their student-athletes to ensure compliance?

NCAA President Mark Emmert contends: "Our highest priorities in any conversation about sports wagering are maintaining the integrity of competition and student-athlete well-being. Sports wagering can adversely impact student-athletes and undermine the games they play.

"We are committed to ensuring that laws and regulations promote a safe and fair environment for the nearly half a million students who play college athletics. While we recognize the critical role of state governments, strong federal standards are necessary to safeguard the integrity of college sports and the athletes who play these games at all levels."

Soon state legislatures across the country will grapple with these issues and more. Millions of dollars will be lost or made based on just one pitch, blocked puck, missed tackle or shot drained. The sports world will change. Will the one-hundred-year anniversary of Shoeless Joe's disgrace serve as a harbinger of doom? Say it ain't so.