

Will Sports Betting Decision Open Door to More Virtual Sports Betting in U.S.?

By Philip Sicuso and Ali Bartlett Miranda

On May 14, 2018, the United States Supreme Court issued a ruling overturning a 25-year-old federal statute that prevented states from enacting laws authorizing sports betting activity. The 7-2 ruling held that the Professional and Amateur Sports Protection Act (PASPA) “unequivocally dictate[d] what a state legislature may and may not do,” in violation of the 10th Amendment anti-commandeering clause.¹



when betting on a live sporting event with human competitors; and they resemble slot machines in that the outcomes of the games are determined through random number generation – thus making virtual sports betting a “game of chance.” In this way, although there may be an immediate tendency to associate virtual sports betting with traditional sports betting, virtual betting may share a stronger affiliation with lottery games than with bets offered through sportsbooks.

The ruling allows states to begin crafting legislation to legalize and regulate sports betting in their jurisdictions. The decision has also shined a spotlight on wagering on live sports in the United States in general, something that, until now, has only been legal in a handful of states that were grandfathered in under PASPA. With the overturn of PASPA, millions of Americans who have either refrained from wagering on sports due to its illegality or wagered on the black market through offshore betting websites will have the opportunity to partake in sports wagering closer to home as more states move toward legalization. Many see the legalization of sports betting as an opportunity to cater to a new audience of bettors and expand the gaming market. However, the repeal of PASPA does not necessarily mean that there will be immediate opportunities for legal sports betting throughout the United States. Legaliza-

tion and regulation still have to take place on a state-by-state basis; the overturn of PASPA simply set the ball in motion. However, for consumers interested in wagering on sporting events, there exists an alternative that states may be able to implement more quickly and which will supplement an eventual environment for traditional sports wagering: virtual sports betting.

An Alternative to Live Sports Wagering

Virtual sports games have been described by several sources as containing elements of video games, traditional sports betting and slot machines.² They resemble video games in that they are computer generated (although there is no “player-controlled” component); they resemble sports betting in that a virtual sports game may be designed to enable consumers to wager on the same elements of the game as they do

Nevertheless, comparable to betting on a live sporting event, the consumer has multiple wagering options for each race or match. The virtual sports program formulates the points spread and odds based upon historical sporting data.³ Real-life athletes’ historical data, statistics, and skills are used to create the program which may result in some of the “virtual athletes” bearing a strong resemblance to the skills we identify with popular athletes from the real world, but with game designers being careful not to violate real-life players’ legal rights with respect to unauthorized use of their image and likeness within the computer-generated games.⁴

Virtual sporting events, unlike their live sporting event counterparts, can occur 24 hours a day, seven days a week.⁵ Operators (be they casinos, lottery retailers, or other authorized vendors) can essentially dictate the start

and stop times for the virtual events they choose to run. For example, an operator can choose for a virtual event to last a fraction of the time that a live version of the same sport would take, thus allowing more frequent bets to be placed and ongoing fan engagement.⁶ The frequency with which virtual sports betting can occur is comparable to Keno and other monitor games frequently offered by lotteries around the United States and may have the effect of attracting bettors who prefer a more fast-paced game of chance, while also catering to the traditional sports bettor's tastes. Flexible delivery options are also an advantage for virtual sports in that, depending on a jurisdiction's policy preferences, consumers may be given the option to bet on virtual sports: (i) through a kiosk, where they can select a match or game on demand; (ii) during pre-scheduled events that the operator shows on one or more central screen(s)/monitor(s); or (iii) via mobile devices.

The ability to control when virtual sports are offered is one of the reasons virtual sports betting has risen in popularity throughout Europe and other jurisdictions with existing frameworks for legalized traditional sports betting.⁷ A commonly cited statistic indicates that virtual sports betting makes up approximately 20 percent of revenue flowing from U.K. "betting shops."⁸ Ed Andrewes, CEO of EA Gaming Consultancy, told the *Virtual Sports Report* last year, "Virtual sports betting in the European market has done particularly well as a 'filler' for live, real events in sports and race betting brick-and-mortar venues."⁹

Virtual Sports Wagering in the U.S.

In the United States, virtual sports are not as widespread as in Europe. Only a few states currently offer virtual sports betting games, including Nevada, New Jersey and Pennsylvania.¹⁰ By way of example, William Hill US offers virtual horse racing at a handful of its land-based sportsbooks in Las Vegas.¹¹

Last year in New Jersey, Rush Street Interactive received approval from regulators to allow customers to bet online on the outcome of virtual computer-generated sporting

"events."¹² There are about two dozen online casinos in New Jersey, but only eight offer virtual sports betting at this time.¹³ Although this type of wagering is only available to people within the borders of New Jersey (in compliance with interstate wagering restrictions), it is also a potential model for other states to follow or to improve upon. Virtual sports available via these sites include horse racing, stock car racing, cycling, soccer, boxing, football, basketball, and tennis.¹⁴

This summer, the Pennsylvania Lottery began running a new game, "Xpress Sports."¹⁵ Inspired Entertainment, Inc. is behind the virtual sports products available for wagering in the state.¹⁶ Initially, customers can wager on football games and racing events at retail locations where Keno is also available.¹⁷ The Pennsylvania Lottery expects Xpress Sports to add an additional \$13 million to its bottom line in 2018.¹⁸

The Oregon Lottery is working with Inspired Entertainment to bring virtual sports to Oregon through brick-and-mortar lottery retailers.¹⁹ The goal is to have the program rolled out to retailers by Fall 2018. The Michigan Lottery is also working with Inspired Entertainment to launch virtual sports betting online within its borders.²⁰ The timeline for rollout has not yet been determined.²¹ In offering higher-frequency games such as virtual sports betting, lottery operators are able to diversify their product portfolio and increase their bottom line.

Is Virtual Sports Betting Legal in the U.S.?

Now that the Supreme Court has cleared the way for states to decide whether to legalize traditional sports betting, several have begun considering regulations. The New Jersey legislature recently passed legislation that defines a "sports event" as "any professional sport or athletic event, any Olympic or international sports competition event and any collegiate sport or athletic event, or any portion thereof."²² West Virginia defines "sporting event" under its new sports wagering legisla-

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>> NEW DEVELOPMENTS: VIRTUAL SPORTS BETTING

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tion to mean “any professional sport or athletic event, any collegiate sport or athletic event, motor race event, or any other special event authorized by the commission.”²³ In Indiana, legislation was proposed during the 2018 legislative session that would have defined “sports wagering” as wagering “on athletic and sporting events involving human competitors.”²⁴ The legislation did not make it out of committee.

It is noteworthy that the legislation introduced or passed by these states focuses on sporting events that include either “human competitors” or a “professional” or “athletic” event. Virtual sports would not fit under these definitions, and therefore would not be covered by the legislation or any regulations created as a result.

Because a computer program dictates the results of the virtual sporting event, in the same way that the outcome of a slot machine wager is determined, it may be possible to regulate

virtual sports games without wholesale changes to existing regulatory standards. In fact, virtual sports games may already fit into existing categories of regulated gaming activity as well as the rules and procedures governing slot machines, lottery draw games and other electronic games of chance.

However, the question remains as to whether considering virtual sports betting games to fall under existing regulations is the best way to move forward. As virtual sports betting grows in popularity throughout the country, thanks in part to the legalization of traditional sports betting and the convenience that virtual sports offer, states will need to determine how to regulate the activity.

Potential for Strong Growth in Virtual Sports Market

Because virtual sports betting is still relatively new in the United States, there is a lot of room for growth. This is due in part to the Supreme Court rul-

ing paving the way for states to begin regulating traditional sports wagering. Virtual sports can work in tandem with live sports wagering, filling in the gaps when live sporting events are not available for wagering or in places such as lottery retail locations, where traditional sports betting might not typically be offered or permitted.

Virtual sports may also help to generate a significant amount of revenue for existing casinos and for the states that choose to legalize traditional sports wagering. Ideally, the introduction of virtual and traditional sports betting will attract more customers to visit casinos, taverns, or other locations with virtual sports wagering. For these reasons, states should not overlook virtual sports when considering the future and how sports wagering will impact the overall gaming environment. States should also be aware that existing laws and regulations may already be sufficient for implementation of virtual sports betting even prior to the passage of legislation relating to traditional sports betting. For states looking to be on the forefront of virtual sports betting, what is the best way to classify and regulate virtual sports going forward? Time will soon tell. ♣

¹ *Murphy, Governor of New Jersey, et al v. National Collegiate Athletic Association, et al.*, 16-476

https://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf

² Play New Jersey, *New Jersey Virtual Sports*, <https://www.playnj.com/virtual-sports/> (Accessed June 13, 2018)

³ Id

⁴ Virtual Sports Report, *Virtual Sports Betting is Starting to Find a Home in the United States*, <https://www.legalsportsreport.com/13051/virtual-sports-betting-us/> (Feb. 15, 2017)

⁵ Id

⁶ Id

⁷ See Supra Note 4

⁸ Id

⁹ Id

¹⁰ Legal Sports Report, *Virtual Sports Betting*, <https://www.legalsportsreport.com/virtual-sports-betting/> (accessed June 20, 2018)

¹¹ Id

¹² Wayne Parry, *Firm becomes 1st in U.S. to offer online virtual-sport betting*, USA Today, <https://www.usatoday.com/story/tech/news/2017/11/24/firm-becomes-1st-u-s-offer-online-virtual-sport-betting/892658001/> (November 24, 2017)

¹³ See Supra Note 2

¹⁴ Legal Sports Report, *NJ Virtual Sports Betting*, <https://www.legalsportsreport.com/nj/virtual-sports-betting/> (Accessed June 13, 2018)

¹⁵ Online Poker Report, *PA Online Lottery Review*, <https://www.onlinepokerreport.com/us/pa/online-lottery/> (June 13, 2018)

¹⁶ Id

¹⁷ Id

¹⁸ Id

¹⁹ PlayUSA, *Virtual Sports Might be Splashing Down in Oregon*, <https://www.playusa.com/virtual-sports-oregon-lottery/> (March 30, 2018)

²⁰ PlayMichigan, *Virtual Sports are Coming to Michigan's Online Lottery*, <https://www.playmichigan.com/virtual-sports-michigan-online-lottery/> (May 8, 2017)

²¹ Id

²² State of New Jersey 218th Legislature, Assembly Bill No. 4111 (Passed June 11, 2018), http://www.njleg.state.nj.us/2018/Bills/AL18/33_.PDF

²³ West Virginia Legislature, Senate Bill 415 (Effective from passage March 3, 2018), http://www.wvlegislature.gov/Bill_Text_HTML/2018_SESSIONS/RS/bills/SB415%20SUB1%20ENR.pdf

²⁴ Indiana Senator Jon Ford, Indiana Senate Bill 405 (2018), <http://iga.in.gov/static-documents/c/0/5/3/c0536cb0/SB0405.01.INTR.pdf>