



The Supreme Court and sports betting: Will the busybodies lose this bet?

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I often drive to Trenton on Interstate 195, otherwise known as the James J. Howard Interstate Highway. Every time I do so, I think of that classic Sammy Hagar song "I Can't Drive 55." (See video below)

I recall meeting Howard back when he was a congressman representing central New Jersey. He was a nice guy. But he was also a busybody.

After the oil embargo of 1974, Howard pushed through a bill mandating a 55-mph speed limit. Not just for New Jersey, but for the entire country.

The dread "double nickel" plagued us till 1995, seven years after its sponsor was in heaven, safe from speed traps.

It was perhaps the worst idea since Prohibition, though another busybody from New Jersey gave it a run. The late Sen. Frank Lautenberg was responsible for the mandate that all states raise their drinking ages to 21 - even though most of the civilized world does fine with lower age limits.

And then there's Bill Bradley. Like his fellow Jersey pols, all Democratic by the way, I'm sure Bradley had the best of intentions when he pushed through the Professional and Amateur Sports Protection Act, PASPA for short. But it was a law that seemed better designed to please his former employers in the National Basketball Association than his constituents here in New Jersey.

The effect of PASPA was to curb sports betting in states that had not adopted it by 1993, when the law took effect.

The Atlantic City casinos were still booming back then, so it didn't seem like such a big deal to deprive them of a source of revenue that the Las Vegas casinos were already exploiting by then.

But after Bradley was safely back in private life, the casino business began to crash. Once a cash cow, Atlantic City is now a ward of the state.

The smart money says sports betting is the best way to bring the bettors back. But how do we reverse the work of that busybody?

With an even busier body, that's how.

Ray Lesniak fills the bill. Lesniak is a Democratic state senator from Union County who is as much of a liberal do-gooder as you will encounter in this state of do-gooders.

Yet on Tuesday, Lesniak was celebrating a giant step toward reversing Bradley's ban on sports betting.

That came when the U.S. Supreme Court agreed to take up New Jersey's appeal of a lower court ruling throwing out a Lesniak-crafted statute that would have allowed sports betting at the casinos and racetracks. The high court takes up only a tiny fraction of such appeals, and generally only in cases where the judges have found issue that interest them.

The 71-year-old Lesniak, who will be leaving the Senate next year after an unsuccessful run for his party's gubernatorial nomination, was saying "I told you so" when I called him.

"I've been fighting for this for seven years years and everyone said, 'You're wasting your time,'" he said.

But now the state is in a very strong position, he said. The sports leagues, who are on the other side of the suit, might even decide to settle out of court, he said.

"It would not surprise me if I get a call from Roger Goodell," he said.

The National Football League commissioner might want to make a deal to get a piece of the action, he said.

This case represents a classic case of strange bedfellows. The Supreme Court justices most likely to side with the senator are the strict constitutionalists who would line up on the opposite side of him on just about any issue you could name, from animal rights to same-sex marriage.

That was not lost on Lesniak. He noted that the recent addition of conservative Neal Gorsuch to the nine-member court might well swing the balance in a fight over state vs. federal powers.

"He's a super conservative and I'm a super liberal," said Lesniak.

Not only that, but the argument Lesniak put forward in pushing the betting bill was one usually associated with conservatives. This is the "anti-commandeering" argument. It's a contention that the constitution prevents the federal government from forcing states to take actions to advance federal goals.

This is where the fun begins, at least for legal scholars. Bradley's PASPA law is unusual in that it does not make sports betting a federal violation. It simply says that the states cannot permit such gambling.

Lesniak's bill does not actually permit sports betting. It simply revokes the state ban on sports betting.

That makes this case unique - and uniquely interesting, said Ilya Shapiro, an expert on constitutional law at the free-market Cato Institute in Washington. He said the Christie administration (which has been on both sides of the issue) has a strong case when it comes to the federalism issue.

"The issue as framed by Chris Christie's lawyers is that the federal government is requiring New Jersey to keep a law on its books that it doesn't want to keep," said Shapiro. "Under federal Supreme Court precedent, the federal government can't force states to do so."

Will the sports betting ban go the way of the 55 mph speed limit?

I'm betting against the busybodies.

PLUS: Every once in a while I'll slow down to 55 just to recall how stupid the federal government can be. It feels like you're hardly moving.

The 21-year drinking age is almost as ill-conceived. As I noted here, before that ban many states had inventive approaches to drinking. I had friends who went to college in Ohio and in Colorado. Both states permitted 18-year-olds to drink, but only beer with 3.2 percent alcohol.

That meant the college kids would be drinking weak beer in the college pub instead of what they're now doing - swilling vodka in their rooms in secret.

Lautenberg got away with that by tying adoption of the 21-year drinking age to federal highway funds.

That's an obvious end-run around the constitution. Maybe the current conservative court will reverse that as well.

Let's hope so.