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The most scientific of polls are often flawed. New York Governor Thomas Dewey learned that the hard way when incumbent President Harry S. Truman defied virtually every poll and handily defeated him in 1948.

Many polls are so hopelessly unscientific that it is obvious they are conducted simply with the ulterior motive of justifying a stated position.

Ask people if their state government should provide more funding to elementary education and the number of “Yes” votes will be staggering.

Yet, if you tell these same people an extra 3% in taxes would be assessed for this purpose, the numbers would assuredly flip towards a resounding “No.” Consider the hypothetical question: “Should everybody who goes to the track get a free program and hotdog?” While any 100,000 bettors surveyed would probably vote “Yes”, the top 25 track operators would probably, with conviction, vote, “No.” And the point is? Obviously, polls lend themselves quite nicely to the statement attributed to Mark Twain and others about there being three kinds of lies: Lies, Damn Lies and Statistics.

Then there are those polls that may or may not be scientific, but are in any event completely pointless. In light of a referendum question appearing on this year’s New Jersey ballot, a poll was conducted by The Fairleigh Dickinson University of 800 registered New Jersey voters statewide during the month of September. The main question posed mirrored the ballot referendum; “Do you favor or oppose making sports-betting legal in New Jersey at Atlantic City casinos and racetracks?” A lukewarm majority of 52% of those surveyed said yes; 31% were opposed and the remaining 17% were unsure. Remarkably, however, a whopping 44% of all those surveyed said they had no interest at all in the issue.<sup>1</sup>

The curious results of the survey and the question of whether an 800-member cross-section of over 5 million registered voters can be viewed as scientific aside, the poll is pointless for one very important reason: Federal law prohibits New Jersey from conducting sports betting of any type. In fact, only four states in the nation are legally permitted to conduct sports wagering: Nevada, Delaware, Oregon and Montana. How did all this happen, and was New Jersey specifically banned from conducting permissive sports wagering?

As the result of public hearings held in 1991 by a subcommittee of the U.S. Senate’s Judiciary Committee, a consensus in Congress deemed sports betting to be a “national problem” with, “The harms it inflicts [are] felt beyond the borders of those States that sanction it.”<sup>2</sup> In 1992, Congress debated whether a complete ban on all sports wagering of any type in all states was fair and legal. Ironically, the main proponent of the complete federal ban was none other than one of New Jersey’s own United States Senators at the time, Bill Bradley.

Bradley, a Rhodes Scholar, champion player for Princeton University and later the New York Knicks, was inducted into Basketball's Hall of Fame in 1982. Bradley knew well the dangers sports betting presented. He vividly recounted a Knicks' home game early in his career where his team was leading by 5 points with only a few seconds left in the contest. When the opposing team made a basket for 2 points, cheers erupted at Madison Square Garden. Puzzled by the home crowd applause for the opponent's seemingly meaningless basket, Bradley was told that the guest team had just beaten the point spread.

The indignation Bradley developed that night carried all the way into the halls of the Senate. Yet, he met fierce resistance from states like Nevada with existing legalized sports books, and his own Garden State, where Atlantic City casino interests viewed sports wagering as a lucrative prospect. In the end, a compromise was reached.

The negotiation led to The Professional and Amateur Sports Protection Act of 1992<sup>3</sup> (PASPA). In essence, the Act banned all wagering on amateur and professional sports with three general exceptions. One exception permitted the continuation of pari-mutuel wagering on horse racing, greyhound racing and jai-alai. A second exception "grandfathered" existing sports wagering. This exempted from the ban sports lotteries in Delaware and Oregon, sports tab games in Montana, and the sports books in Nevada.

The third PASPA exception permitted sports wagering in casinos within a municipality where a "commercial casino gaming scheme" was up and running for at least ten years, provided that sports wagering was authorized in that municipality within one year of PASPA's effective date. The only non-Nevada municipality that qualified in the United States, of course, was Atlantic City, New Jersey.

If the State of New Jersey had authorized sports wagering in Atlantic City casinos before January 1, 1994, that activity would have been exempted from the federal ban. While the casino interests lobbied hard for a referendum, the four major professional team sports leagues lobbied harder against it, as did Senator Bradley. In the end, the authorization referendum for New Jersey sports betting never made it to the ballot. Thus, Senator Bradley's home state wasn't excluded from sports wagering; it, in fact, excluded itself by failing to exercise the option specifically fashioned for it in PASPA to legalize sports wagering within the one-year window period. New Jersey's attempt via referendum this November is about 18 years too late.

PASPA has already been upheld by a federal appeals court, and its exemption language has been strictly construed, much to the chagrin of the State of Delaware who tried to hide behind the limited exemption it enjoys when it unsuccessfully tried to modify its previously conducted NFL lottery. <sup>4</sup>Despite this, a New Jersey Senator, Thoroughbred horsemen and an online gaming group attempted to get a federal judge to rule PASPA unconstitutional. The judge dismissed the action last March, stating that none of the plaintiffs had the right (known as "standing") to challenge the law's constitutionality.<sup>5</sup>

While some legislators in states like Missouri, Iowa and Rhode Island have recently made rumblings about how unfair they consider PASPA to be, there appears to be no traction for a congressional repeal of PASPA anytime soon. While congress has recently held some hearings regarding a proposed lifting of a federal ban on Internet poker, the silence regarding a PASPA reversal is deafening.

Even in the event of a positive vote by New Jersey voters on the referendum and a subsequent repeal of PASPA by congress, can such a circumstance be considered a positive for the racing industry? In Pennsylvania, table game revenue is not shared with horsemen or breeders. In New York, a constitutional amendment permitting table games and slot machines at racetracks is being promoted. Nobody on the pro side is even hinting that revenue from this casino-style gambling be dedicated to purses or breeding funds, as the state's present video lottery terminal program mandates. So, if sports betting ever comes to New Jersey, or elsewhere, it's not at all a sure thing that our industry benefits, even if the wagering is conducted at the very racetracks where harness racing is conducted.

On the morning of November 9, we'll wake up and learn if New Jersey's sports betting referendum passed. Whether passed or not, we can then roll over and go back to sleep, confident that sports betting won't be appearing in New Jersey anytime soon.

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