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NFL asks court to block move to allow sports betting

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The National Football League, in what could be a precursor to a lawsuit against Delaware Gov. Jack Markell over sports betting, has filed a legal brief against the measure with the state Supreme Court.

The league, in papers filed by a Wilmington law firm, argues that skill "plays an impermissible" role in sports betting, disqualifying such games as a lottery determined mainly by chance.

If the high court rules that sports betting as envisioned by Markell and the legislature is more skill than chance, the proposal could fail to pass constitutional muster.

America's most prominent sports league has long opposed sports betting as a threat to "the integrity" of its games, a phrase repeated in papers made public Tuesday.

Commissioner Roger Goodell had written Markell in March, expressing his displeasure with the gambit that Markell said he took to help balance the state's ailing budget. Markell responded that the league was being hypocritical because ESPN and other networks that broadcast games promote gambling on air and on Web sites. ESPN currently has an eight-year \$8.8 billion contract with the NFL for the rights to "Monday Night Football."

The league unsuccessfully sued the state in 1976 when Delaware briefly ran a sports lottery and has suggested it will again go to great lengths to stop Delaware from becoming the only state east of the Mississippi River to allow sports betting.

"The court has been invited by the governor to offer an advisory opinion in an unprecedented and delicate situation -- indeed, a dynamic and ongoing debate over fundamental fiscal and policy issues confronting the state," attorneys for the NFL argue. Urging the Supreme Court not to render an opinion on sports betting at this point, the NFL argues instead that the court should invalidate the law and require the development of "clear standards" about how the sports lottery would work.

"In doing so, the court will help protect the integrity of the Legislature and the legislative process. Otherwise, legislators can avoid taking political responsibility for the implementation of a form of sports betting that may prove illegal, unconstitutional, unprofitable, or unpopular -- at the expense of the institutional stature of the Legislature."

The NFL's 21-page document was filed with the Supreme Court in conjunction with two others sought from outside attorneys by Chief Justice Myron T. Steele -- arguments in favor and against the proposal. The justices will hear oral arguments on the issue on May 21 as they weigh whether the new law passes constitutional muster. Markell said he plans to sign the bill into law this week.

The governor, who took office in January, has said a sports lottery and "crossover betting" by those gamblers while at the casinos could generate \$55 million next year -- money he calls critical to helping solve the state's \$700 million-plus deficit expected for the fiscal year that starts July 1. Other aspects of Markell's plan include 8 percent pay cuts for state employees and a mix of fee and tax hikes.

For sports betting to generate money next year, Markell pushed hard to get the legislation passed so casinos can get sports betting operations up and running by the start of the football season.

More money is gambled on football, both college and professional, than any other team sport. The National Collegiate Athletic Association also fought the sports betting legislation and has threatened to prevent Delaware schools from hosting bowl games if the state proceeded.

Markell countered that betting on college games in Delaware would be banned and pointed out that the NCAA let the University of Montana host a football bowl game even though that state has sports betting.

Steele last month sought "affirmative" and "negative" legal briefs from two Wilmington attorneys on the issue, after Markell asked for a high court opinion on the constitutionality of his legislation.

The Delaware constitution bans all forms of gambling except lotteries under state control for the purpose of raising money. The slot machines at the casinos are considered video lotteries.

Delaware was one of four states -- the others are Nevada, Montana and Oregon -- exempted from a 1992 federal law banning sports betting because they had previously authorized sports betting. Delaware's first attempt to have sports betting, with games like "Scoreboard" and "Touchdown," was abandoned after one season amid low revenues and complaints that its point spreads differed markedly from those given by Las Vegas oddsmakers. Also known as betting lines, point spreads are the points by which one team is favored to win.

Markell has said he wants casinos to have the flexibility to let gamblers bet on individual games as well as parlay bets on multiple contests or "over-under" wagers of the total points scored by both teams. All bets on the outcome of a game would have a point spread -- a method used by illegal bookies and legal sports parlors that tries to ensure an equal number of bettors on each side.

The briefs submitted to the court focused in large part on whether skill or chance determines the winner of a sports bet.

Andre Bouchard and colleagues at Bouchard Margules and Friedlander argued that sports betting would be constitutional as a lottery because chance, not skill, is the dominant factor in who wins or loses a sports wager.

"Chance does not mean pure chance," wrote Bouchard, adding that industry-standard betting lines have prevented gamblers from winning "consistently on the basis of skill against such betting lines."

If too many people bet on one team, the lines can be adjusted to lure gamblers to bet on the other team, he wrote.

Arguing the "negative" were Lawrence C. Ashby and colleagues at Ashby & Geddes, who wrote that sporting events are not "games based entirely or purely on chance" but are games of speed, skill and endurance and betting on them "is itself a game of skill."

That skill can be substantial, Ashby argued, making all bettors unequal.

"The bettor must bring his or her knowledge of the sport to bear in evaluating which team or outcome to select," he wrote. "Setting a point spread might make it more difficult for a bettor to decide which outcome to select, but does not render the game one of chance."

The NFL expounded on that notion in the brief by attorney Kenneth J. Nachbar and colleagues at Morris Nichols Arsht & Tunnell.

"If a game is predominantly one of chance," Nachbar wrote, "it will not matter who is doing the picking

-- a skilled expert, or a monkey choosing at random."

Attorney Michael Houghton, who helped Nachbar prepare the brief and unsuccessfully lobbied against Markell's measure in Legislative Hall, said Tuesday that the NFL is moving deliberately on the issue.

"We're taking this step by step," he said.
