PASPA: An Unconstitutional Patent

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21st Century Revolutionary

The views conveyed herein are solely those of the author and do not reflect the views of Dinsmore & Shohl LLP or any of its clients.
18th Century Revolutionary

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Why are we talking about Thomas Jefferson?

1. Father of U.S. Patent System

2. Fan of sports betting (horse races)

3. Not a fan of monopolies

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Statute of Monopolies (1624)

Be it enacted that all monopolies heretofore or hereafter be granted to any persons, bodies politic or corporate ... shall be utterly void and of no effect and in no wise be put into execution.

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The Patent Clause

The Constitution of the United States of America
Article 1, Section 8, Clause 8

The Congress shall have the power...

to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

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Why Did Jefferson Accept Patent Monopolies For Inventors?

The Federal Government had no money:

“As to those monopolies, which, by way of premiums, are granted for certain years to ingenious discoveries in countries, and more necessary in this, as the government has no resources to reward extraordinary merit.”

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Professional & Amateur Sports Protection Act, 28 USC 1701, et seq.
PASPA Is a Patent

1. PASPA imitates the Crown’s practice of allocating markets by patent (e.g., the Stationers Company’s monopoly on printing)

2. PASPA functions like a patent issued under the United States Patent Code.

3. PASPA imposes monopoly-like costs on the public.

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Congress’ Constitutional Power to Grant a Patent Monopoly Is Limited

Congress can grant a patent monopoly *ONLY* to an inventor in exchange for the public receiving a device or method that it did not have before.

In other words, Congress can *BET* a patent monopoly on an inventor in order to finance innovation without committing cash up front.

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PASPA Violates the Patent Clause

PASPA’s patent monopoly does not encourage innovation as PASPA is not a bet on a new sport or new sports financing device or method.

Rather, PASPA is designed to do just the opposite: discourage pre-existing methods of wagering beyond Nevada on pre-existing sports.

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The “Game” of Commerce

Pre-Game: The Patent Clause regulates the instant before the Game of Commerce kicks off.

In-Game: The Commerce Clause itself regulates the Game of Commerce in-game from start to finish.


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The “Game” of Commerce

The Constitution simply does not empower Congress to make an “in-game” patent monopoly bet after the Game of Commerce kicks off.

Because the commercial game of sports betting kicked off in Nevada years before Congress enacted PASPA, the statute is an illegal patent and not a valid exercise of the commerce power.

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What Is The Future of Sports Betting Beyond Nevada?

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What Thomas Jefferson Did Not Foresee: Electronic Trading

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Sell Risk & Share Revenue Equally So Profits Driven Solely By Volume

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Don’t Get “Napstered”

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Seize Future Earnings:
The NYSE Model

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Genuine Public Financing Based On Voluntary League Participation

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