

CLIENT ALERT

New Jersey's Sports Betting Gamble Pays Off

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On Monday, the Supreme Court issued a long-awaited opinion in *Murphy v. NCAA*, No. 16-476, striking down the Professional and Amateur Sports Protection Act ("PASPA"), and opened the door for States to pass their own legislation deciding whether and how residents can bet on sports. In the process, the Court clarified the limits of the legislative powers granted to Congress and paved the way for challenges in a variety of different contexts where there are tensions between state laws and federal policy.

The heart of the Court's decision ended a long-running dispute after the four major professional sports leagues and the NCAA decided to sue New Jersey for passing laws that repealed certain state-law restrictions on sports betting. Following a severe decline in gambling revenues in Atlantic City, voters in New Jersey voted to amend the State's Constitution in 2011 to permit the legislature to pass laws authorizing sports gambling. So in 2012, New Jersey did just that and passed a law permitting sports betting. Quickly thereafter, the sports leagues and the NCAA filed a lawsuit to stop the new law from going into effect, claiming that the law violated PASPA's prohibition against laws that "authorized" sports gambling. The leagues won and the Supreme Court declined to review the case. So in 2014, New Jersey passed a new law that "repealed" certain restrictions on sports gambling. This time, the Supreme Court decided to hear the case after the lower courts again sided with the sports leagues.

Reversing the lower court decision stopping New Jersey's latest law from going into effect, the Supreme Court emphasized that PASPA was unconstitutional because it regulated how the States regulated their own citizens—as opposed to regulating sports gambling directly. Central to the Court's holding was the Court's decision to breathe life into what is known as the anti-commandeering doctrine—a doctrine rooted in the Tenth Amendment and not used to strike down a law since the Court's decisions in *New York v. United States*, 505 U. S. 144 (1992), and *Printz v. United States*, 521 U. S. 898 (1997). Relying on the anti-commandeering doctrine, the Court explained that the "legislative powers granted to Congress are sizable, but they are not unlimited." And under the doctrine, the Court emphasized that Congress does not have "the power to issue orders directly to the States." Thus, according to the Court, PASPA was unconstitutional because it "commandeered the state legislative process" and "directed the States either to enact or to refrain from enacting a regulation of the conduct of activities of activities occurring within their borders." In other words, the Court struck down PASPA because it regulated New Jersey's regulation of its own citizens.

Though the decision in *Murphy* was a big decision, the Court did not foreclose Congress taking up, passing, and enforcing a new law that directly prohibits sports gambling by telling individuals that they cannot place sports bets. It is also worth noting that the Court said that there is nothing wrong with the myriad of other laws that prevent certain gambling activity like the interstate transmission of wagering paraphernalia (18 U. S. C. §1953); the interstate transmission of information that assists in the placing of a bet on a sporting event (18 U. S. C. §1084); operating a gambling business if it is illegal under state or local law (18 U. S. C. §1955); or traveling in interstate commerce to further a gambling business that is illegal under applicable state law (18 U. S. C. §1952).

Indeed, the Court reiterated that the scope of the Federal Government's power remains expansive and that the only limitation is that Congress cannot carry out federal policy preferences by passing laws saying how the states must regulate their citizens. That principle is sure to be put to the test in contexts where the Federal Government has passed laws based on federal policy preferences that are nearly impossible to enforce without the cooperation of State and Local Governments.

In the meantime, when it comes to the monopoly of sports gambling in Las Vegas, all bets are off.

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