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## LEGAL UPDATES

**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

## SPORTS GAMBLING

**Filed by the United States Supreme Court**

**May 14, 2018**

**Murphy v. National Collegiate Athletic Association**

**No. 16-476**

[www.supremecourt.gov/opinions/17pdf/16-476\\_dbfi.pdf](http://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf)

**Background and Procedure.** In 1992, the United States Congress passed the Professional and Amateur Sports Protection Act (PASPA) prohibiting a state from sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling schemes. Included in PASPA were exceptions for state-sponsored sports wagering in certain jurisdictions as well as a provision that allowed New Jersey to enact a sports gambling scheme within one year of PASPA's enactment, which New Jersey failed to do.

In 2012, New Jersey enacted a law to authorize sports gambling at New Jersey casinos and racetracks and implemented a comprehensive regulatory scheme for licensing casinos and sporting events. The National Collegiate Athletic Association (NCAA) and several major professional sports leagues sued under PASPA to enjoin the New Jersey law, which the state defended by arguing that PASPA was unconstitutional pursuant to the Tenth Amendment of the United States Constitution under the anti-commandeering doctrine. The United States District Court for the District of New Jersey (District Court) held that PASPA was constitutional and enjoined the 2012 Act. As a result, New Jersey, in 2014, enacted a law that repealed the provisions of state law prohibiting sports gambling insofar as those provisions related to wagers by persons over 21 years of age at a gambling facility in Atlantic City and did not involve wagers on a New Jersey college team or collegiate event taking place in the state. The NCAA and several major professional sports leagues sued to enjoin the 2014 Act, and the District Court granted summary judgment in favor of the NCAA and the leagues, which decision was affirmed by the United States Court of Appeals for the Third Circuit (Court of Appeals). The Court of Appeals determined that the 2014 Act, despite purporting to be a repeal of laws prohibiting sports gambling, constituted an authorization of sports gambling and therefore was in violation of PASPA. The United States Supreme Court (Court) granted certiorari.

**Issue on Appeal.** Whether the PASPA provisions prohibiting state authorization or licensing of sports gambling schemes violate the anti-commandeering doctrine of the Tenth Amendment to the United States Constitution.

**Holding.** The Court held that provisions of PASPA that prohibit state authorization and licensing of sports gambling schemes violate the Constitution's anti-commandeering doctrine. PASPA provisions prohibiting state operation of sports gambling schemes, prohibiting the operation of sports gambling schemes by any person pursuant to law, and prohibiting sports gambling advertising are not severable from the unconstitutional provisions of PASPA and are invalid.

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**Analysis.** The anti-commandeering doctrine under the Tenth Amendment provides that Congress does not have the power to compel, i.e. commandeer, states to enact and enforce a federal regulatory program. The Court noted that the anti-commandeering doctrine is important because it serves as one of the Constitution's structural safeguards of liberty, advances political accountability, and prevents Congress from shifting regulatory costs to the states. Despite the fact that PASPA does not require any affirmative action by states to enforce the prohibition on states authorizing or licensing sports gambling schemes, the Court found that the PASPA provision prohibiting state authorization or licensing of sports gambling schemes violates the anti-commandeering doctrine. The Court explained that there was no meaningful difference between directing a state legislature to enact a new law or prohibiting a state legislature from doing so, and PASPA's provision prohibiting state authorization of sports gambling violated the anti-commandeering doctrine because it specifically mandated what a state could and could not do. The Court also rejected the argument that the PASPA provision prohibiting state authorization of sports gambling preempted the ability of a state to enact legislation in contravention of PASPA since the PASPA provision in question regulates states, and not private actors.

After determining that the PASPA provisions prohibiting state authorization and licensing of sports gambling schemes violated the Constitution's anti-commandeering doctrine, the Court considered whether other provisions of PASPA are also invalid or whether they can be severed from those provisions determined unconstitutional and remain legally effective. In determining this question, the Court examined whether the law remained fully operative without the invalid provisions and whether enforcement of those provisions not determined unconstitutional can still implement a coherent federal policy. At issue were PASPA provisions prohibiting state operation of sports gambling schemes, prohibiting the operation of sports gambling schemes by persons pursuant to law, and prohibiting sports gambling advertising. The Court concluded that none of the provisions could be severed from those provisions of PASPA determined to be unconstitutional. The Court noted that it made no rational sense to strike down provisions prohibiting state authorization or licensing of sports gambling while maintaining the prohibition on the state operation of sports gambling. Similarly, the Court concluded that since Congress lacks the authority to prohibit a state from legalizing sports gambling, maintaining the prohibition on private conduct in operating sports gambling under state law ceases to implement any coherent federal policy. Finally, the Court concluded that if state-authorized sports gambling is no longer illegal under federal law, Congress would not want the PASPA provision restricting sports gambling advertising to remain.

**Concurrence and Dissent.** In two separate opinions, three Justices argued that regardless of whether the PASPA provisions prohibiting state authorization or licensing of sports gambling is unconstitutional, the provision of PASPA prohibiting persons from sponsoring, operating, advertising, or promoting sports gambling schemes pursuant to law is severable and can remain valid and be enforced. Both opinions noted that Congress has the power to prohibit sports gambling schemes and that the entirety of PASPA seeking that end does not need to be declared invalid even if the provisions prohibiting state authorization or licensing of sports gambling are deemed invalid under the anti-commandeering doctrine. The provisions of PASPA prohibiting individuals from sponsoring, operating, advertising, or promoting sports gambling schemes can remain and operate to fulfill the intent of the federal legislation.

**Impact on Iowa.** The Court's decision determining the provisions of PASPA invalid removes any federal restriction on the ability of Iowa to authorize and regulate sports gambling within Iowa.

*LSA Monitor:* Ed Cook, Legal Services, 515.281.3994