

Nova Law Review

Volume 43, Issue 1

2019

Article 3

Supreme Court Makes It Easier for People to Win Big

Alexandra Eichner*

*Nova Southeastern University, Shepard Broad College of Law, ae740@mynsu.nova.edu

Copyright ©2019 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <https://nsuworks.nova.edu/nlr>

SUPREME COURT MAKES IT EASIER FOR PEOPLE TO WIN BIG

ALEXANDRA EICHNER*

I.	INTRODUCTION.....	21
II.	HISTORY OF PASPA.....	24
	A. <i>Legislative Objectives</i>	24
	B. <i>Cultural Roots</i>	25
	C. <i>Precursors to the Law</i>	27
III.	GENERAL IMPACTS OF THE SUPREME COURT DECISION	30
	A. <i>No More Commandeering</i>	30
	1. Obvious Effect on States.....	34
	2. Broader Implications.....	35
	B. <i>Legalized Sports Betting Benefits</i>	38
IV.	SPECIFIC IMPACTS OF SUPREME COURT DECISION IN FLORIDA	42
	A. <i>The Polls May Play a Role</i>	42
	B. <i>A Third Negotiator in the Mix</i>	44
	C. <i>Why It Should Be Legal in Florida</i>	45
V.	CONCLUSION	46

I. INTRODUCTION

Enacted in 1992, the Professional and Amateur Sports Protection Act (“PASPA”) barred all but a small handful of states from legalizing sports betting.¹ Sports betting had come to be so disfavored by so many members of the public, and of the federal government, that Congress took matters into

* Alexandra Eichner earned her bachelor’s degree in Political Science and Criminology at Florida State University. She is currently a Juris Doctor Candidate for May 2020 at Nova Southeastern University, Shepard Broad College of Law. Alexandra would like to thank her family and friends for their constant support and encouragement throughout law school. She would also like to give special thanks to her colleagues of the *Nova Law Review*, Volume 43, for all of the time and hard work spent on refining and improving this Comment.

1. Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2, 106 Stat. 4227, 4227 (1992), *declared unconstitutional* by *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018); Amy Howe, *The 10th Amendment, Anti-Commandeering and Sports Betting: In Plain English*, SCOTUSBLOG (Aug. 14, 2017, 12:19 PM), <http://www.scotusblog.com/2017/08/10th-amendment-anti-commandeering-sports-betting-plain-english/>.

their own hands with this federal legislation.² PASPA stood as federal law until May 14, 2018, which is when the Supreme Court of the United States declared it unconstitutional in its entirety due to the commandeering effect it had on the states.³ The reasoning behind this Supreme Court opinion stands to not only affect legalized sports betting, but also subjects not related to gambling at all.⁴ Debates on sanctuary cities, gun control, and marijuana possession will likely feel the repercussions of this Supreme Court decision.⁵

While many people and organizations are in opposition to legalized sports betting—including a number of critical athletes, the National Collegiate Athletic Association (“NCAA”), and other sports leagues—many benefits are likely to follow sports gambling legalization efforts of the states.⁶ Sports gambling is a multi-billion dollar industry in the United States today, and the recent Supreme Court decision to allow states to decide for themselves if they will allow sports betting will benefit both state and national economies by greatly increasing tax revenues.⁷ And that is not the only benefit.⁸ A safer market will be created for sports bettors, jobs will be created, a bigger economic impact will be felt, the integrity of sporting events will be better protected, people with a gambling addiction may receive treatment faster, and the games will be more exciting for the leagues and viewers.⁹

Many state legislatures are quickly reacting to this decision and are beginning to discuss possible legalization in their own states.¹⁰ A small handful have already enacted full-scale sports gambling, while another handful have recently passed bills.¹¹ Fifteen others have introduced sports

2. See Professional and Amateur Sports Protection Act, § 2, 106 Stat. at 4227.

3. See *Murphy*, 138 S. Ct. at 1461, 1485.

4. Ilya Somin, *Sports Gambling Decision Is a Major Victory for Federalism*, REASON.COM (May 14, 2018, 12:49 PM), <http://www.reason.com/volokh/2018/05/14/sports-gambling-decision-is-a-major-vict/>.

5. *Id.*; Ilya Somin, *Federalism, The Constitution, and Sanctuary Cities*, WASH. POST (Nov. 26, 2016), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/11/16/federalism-the-constitution-and-sanctuary-cities/>.

6. Adam Edelman, *College Sports Warn Against Moves to Legalize Betting*, NBC NEWS (Mar. 20, 2018, 1:08 PM), <http://www.nbcnews.com/politics/politics-news/college-sports-warn-against-moves-legalize-betting-n848856>; Brett Smiley, *7 of the Biggest Potential Benefits of Legal, Regulated Sports Betting*, SPORTS HANDLE (Aug. 23, 2017, 11:50 AM), <http://www.sportshandle.com/sports-betting-laws-regulation-benefits/>.

7. Smiley, *supra* note 6.

8. See *id.*

9. *Id.*

10. Ryan Rodenberg, *State-by-State Sports Betting Bill Tracker*, ESPN: CHALK, http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states (last updated Dec. 17, 2018).

11. See *id.*

gambling bills that are awaiting passage.¹² Almost half of the states have reacted to this news in some way and are engaged in efforts to move their state towards legalized sports gambling.¹³

The State of Florida, specifically, has laws that prohibit sports gambling.¹⁴ These “laws would need to be repealed or amended before . . . sports [betting] would be [legal in the state].”¹⁵ These actions have not been taken by the Florida Legislature yet.¹⁶ But that is not to say that Florida will not legalize sports gambling in the future.¹⁷ However, if Florida does, those legalization efforts may prove to be more challenging in that state than in some of the other states.¹⁸ For one, there are seven Indian-owned and operated casinos in Florida.¹⁹ This throws a third party—one not too keen on adding sports gambling to the casinos—into the mix of negotiators for legalization.²⁰ Second, a ballot initiative stood as an obstacle.²¹ Florida had an amendment on the ballot in November of 2018 that passed requiring voter approval to expand casino gambling.²² It is no longer left to the Legislature.²³ So, the future of legal sports gambling in Florida is still *an open question*.²⁴

12. *See id.*

13. *See id.*

14. *Id.*

15. Rodenberg, *supra* note 10.

16. *Id.*

17. *See id.*

18. Craig Davis & Gray Rohrer, *State May Embrace Sports Bets — Casinos, Tracks Weigh Court Ruling*, SUN SENTINEL, May 15, 2018, at 1; *see also* Jim Saunders & Dara Kam, *Scott, Tribe Reach Deal on Gambling Money*, BRADENTON HERALD: ST. POL. (Apr. 18, 2018, 7:43 PM), <http://www.bradenton.com/news/politics-government/state-politics/article209287724.html>.

19. *Florida Casinos*, 500 NATIONS: INDIAN CASINOS, http://www.500nations.com/Florida_casinos.asp (last visited Dec. 17, 2018).

20. Shannon Green, *Sports Betting Ruling: The Good, Bad and the Ugly for Florida*, ORLANDO SENTINEL (May 15, 2018, 2:35 PM), <http://www.orlandosentinel.com/opinion/audience/shannon-green/os-ae-sports-betting-ruling-consequences-20180515-story.html>.

21. *See* Davis & Rohrer, *supra* note 18.

22. David Fucillo, *Florida Voters Pass Amendment 3, Increase Difficulty of Implementing Sports Betting*, SB NATION: NFL (Nov. 7, 2018, 7:04 AM), <http://www.sbnation.com/nfl/2018/11/6/18070474/florida-midterm-election-results-2018-amendment-3-gambling>; *see also* Davis & Rohrer, *supra* note 18.

23. Fucillo, *supra* note 22; *see also* Davis & Rohrer, *supra* note 18.

24. Davis & Rohrer, *supra* note 18.

II. HISTORY OF PASPA

A. *Legislative Objectives*

As set out in the 1991 Senate Report, the intent of PASPA is clear: “[T]o prohibit sports gambling conducted by, or authorized under the law of, any State or other governmental entity.”²⁵ Those who testified in favor of the legislation, including commissioners of the major sporting leagues and professional athletes, argued that gambling posed a threat to the *character of team sports*.²⁶ They maintained that legalized sports gambling takes healthy, clean competition, and a great symbol of teamwork, and turns it into something that represents a *fast buck* and “the desire to get something [from] nothing.”²⁷ They believed that legal sports gambling would change the sports games that “stand for success through preparation and honest effort” for the worse.²⁸ Those who testified were also concerned with the effect that legalized sports gambling would have on the teenagers in America.²⁹ The newly developed technologies—designed to make gambling more convenient for adults—would make it easier for children to gamble, and many believed that “[g]overnments should not be in the business of encouraging people, especially young people, to gamble.”³⁰

Paralleled with the above concerns from those who work in the sports world were the federal government’s own concerns.³¹ It is clear from the Senate Report that the government itself believed this bill served the important public purpose of stopping the spread of “sports gambling and to maintain the integrity of our national pastime.”³² Congress feared that “[s]ports gambling threaten[ed] to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling.”³³ Congress additionally believed that legal sports gambling would encourage gambling among young people and further, would undermine the public’s confidence in the character of sports, both amateur and professional.³⁴ The government determined that if states controlled their own legalization of sports betting, the effects of state legalization would be felt throughout the country, as it

25. S. REP. NO. 102-248, at 1 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553.

26. S. REP. NO. 102-248, at 4; Edelman, *supra* note 6.

27. S. REP. NO. 102-248, at 4.

28. *Id.* at 4–5.

29. *Id.* at 5.

30. *Id.*

31. *See id.* at 6.

32. S. REP. NO. 102-248, at 4.

33. *Id.*

34. *Id.* at 4–5.

would be “difficult for other States to resist the lure.”³⁵ Furthermore, the conclusion was drawn that *illegal entrepreneurs* who ran illegal gambling markets would always aim to beat their legal counterpart, meaning that legal sports gambling would surely increase illegal sports gambling.³⁶

To combat the public’s and Congress’s many concerns regarding this national problem of sports betting, the Federal Government chose to enact federal legislation that made it unlawful for state governments to “sponsor, operate, advertise, promote, license, or authorize by law” any type of wagering or betting scheme on games in which amateur or professional athletes are participating in, or on the performances of the athletes themselves.³⁷

This bill received not only support from the Federal Government, as evidenced by its birth as federal law, but also overwhelming national support.³⁸ The National Football League (“NFL”), National Basketball Association (“NBA”), Major League Baseball (“MLB”), NCAA, as well as at least eight other major groups and many individuals supported this legislation.³⁹ And on January 1, 1993, PASPA became federal law.⁴⁰

B. *Cultural Roots*

A study into the history of gambling in the United States, and how it came to have such a negative stigma surrounding it, helps to reveal a more complete motivation behind the passing of PASPA.⁴¹

Gambling in America started in the 1600s.⁴² “All [thirteen] original colonies [had] established lotteries . . . [in order] to raise revenue.”⁴³ Playing the lottery became so embedded into society and played such an important role in raising revenue, that gambling was regarded as a civic duty.⁴⁴ Revenue generated from lotteries was “used to build churches and libraries,”

35. *Id.*

36. *Id.* at 7.

37. S. REP. NO. 102-248, at 2.

38. *Id.* at 8.

39. *Id.*

40. Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 3, 106 Stat. 4227, 4229 (1992), *declared unconstitutional* by *Murphy v. Nat’l Collegiate Athletics Ass’n*, 138 S. Ct. 1461 (2018); *Professional and Amateur Sports Protection Act — PASPA*, ONLINEGAMBLINGSITES.COM, <http://www.onlinegamblingsites.com/law/paspa/> (last visited Dec. 17, 2018).

41. ROGER DUNSTAN, *GAMBLING IN CALIFORNIA II-1* (1997); *see also* Professional and Amateur Sports Protection Act, § 3704, 106 Stat. at 4228.

42. DUNSTAN, *supra* note 41, at II-1.

43. *Id.* at II-2.

44. *Id.*

and even established the country's oldest and *most prestigious universities*.⁴⁵ Lotteries were so accepted that, in 1823, a private lottery was passed by Congress to raise money “for the beautification of Washington, D.C.”⁴⁶

During the 1800s, “[l]otteries were not the only form of gambling.”⁴⁷ Because gambling was so popular and customary, betting on “horse racing [became] a popular form of gambling.”⁴⁸ Additionally, casinos began their rise in popularity.⁴⁹ Gambling continued to spread as the country began to grow and expand westward.⁵⁰

However, exploitation of the system was inevitable.⁵¹ Just one illustration of the abuse was the outcome of the 1823 lottery approved by Congress “for the beautification of Washington, D.C.”⁵² Those who organized that lottery escaped “with the proceeds and the winner [of the lottery] was never paid.”⁵³ Opposition to lotteries and gambling started to increase.⁵⁴ “[T]he prevalence of scandal[] and the belief that the poor were being targeted” was just one source of opposition that was starting to surround gambling.⁵⁵ This opposition grew with religious disapproval and also a large social climate reform.⁵⁶ Thus, gambling legislation became more complicated with the countervailing interests of raising revenue for the newly developing country, and the public's newfound perception and understanding of the “[i]ncreasing evidence of fraud and dishonesty” associated with gambling.⁵⁷ What once was an acceptable and encouraged practice in the early 1800s became prohibited by most states in the 1840s.⁵⁸

But after the Great Depression, *[t]he antigambling mood changed* tremendously.⁵⁹ Legalized gambling was once again looked at as a way to raise much needed revenue for the economy that was in need of major stimulation.⁶⁰ Massachusetts decriminalized bingo, and “[h]orse racing . . . wagering began to make a comeback.”⁶¹ “During the 1930s, [twenty-one]

-
45. *Id.*
 46. *Id.*
 47. DUNSTAN, *supra* note 41, at II-3.
 48. *See id.*
 49. *Id.*
 50. *Id.*
 51. *See id.* at II-4.
 52. DUNSTAN, *supra* note 41, at II-2, II-4.
 53. *Id.* at II-2.
 54. *Id.* at II-4.
 55. *Id.*
 56. *Id.*
 57. DUNSTAN, *supra* note 41, at II-2, II-4.
 58. *See id.* at II-2 to II-4.
 59. *Id.* at II-7.
 60. *Id.*
 61. *Id.*

states brought back [horse] racetracks” that had been outlawed and brought back with them “[n]ew laws and automated systems” to combat the dishonesty that came with them in the 1800s.⁶² Along with the reemergence of legal gambling was an attack on the illegal gambling that had run so rampant during the prohibition.⁶³ Since then, states have been progressively legalizing forms of gambling once again, and today, almost every state allows some form of legal gambling.⁶⁴ However, the negative stigma surrounding gambling never disappeared.⁶⁵

C. *Precursors to the Law*

While the cultural roots noted above are regarding gambling in the form of lotteries, racetracks, and the famously known casino atmosphere, sports gambling has specifically received its own negative criticism.⁶⁶ Sports gambling was also popular in the 1800s, at the same time that “professional baseball began to gain popularity.”⁶⁷ As baseball gained popularity, so did betting on it.⁶⁸ As noted above, the fraud, dishonesty, and crookedness that came to be associated with gambling by some people in the 1800s, also attached to gambling on sports.⁶⁹ The negative stigma that surrounded gambling in general during this time was worsened by the *Black Sox Scandal* in the 1919 World Series.⁷⁰ “Some players from the favored [team], Chicago White Sox, were found to have fixed games at the request of gamblers,” causing their team to lose the World Series.⁷¹ This scandal was heard around the nation and gave the public the impression that sports bettors were criminals “trying to ruin the sanctity of the game for their own monetary [investment].”⁷² While gambling was technically illegal at this time, many people considered illegal sports gambling to be victimless before the news of this scandal broke.⁷³ Illegal sports gambling continued to grow through the

62. DUNSTAN, *supra* 41, at II-7.

63. *Id.*

64. See *Complete Guide to USA Casino Gambling*, CASINO.ORG, <http://www.casino.org/local/guide/> (last visited Dec. 17, 2018).

65. See Shawn Waters, *6 Arguments People Make Against Gambling*, LEGITGAMBLINGSITES.COM: BLOG (Feb. 10, 2017, 9:03 PM), <http://www.legitgamblingsites.com/blog/6-arguments-people-make-against-gambling/>.

66. Jeremy Martin, *History of Sports Betting and the Point Spread*, DOC’S SPORTS SERV. (May 30, 2017), <http://www.docsports.com/sports-betting-history.html>.

67. *Id.*

68. *Id.*

69. DUNSTAN, *supra* note 41, at II-4; Martin, *supra* note 66.

70. Martin, *supra* note 66.

71. *Id.*

72. *Id.*

73. *Id.*

1920s, the *Golden Era of [S]ports*.⁷⁴ College football, college basketball, and boxing were all gaining huge popularity among gamblers, “and baseball was [just] as . . . liked as ever.”⁷⁵

The growing illegal sports gambling marketplace—a “problem that simply would not go away”—warranted governmental intervention.⁷⁶ Congress enacted a series of anti-racketeering laws to help combat the illegal underground gambling that was so prevalent.⁷⁷ In 1950, the “Johnson Act prohibit[ed] interstate transportation of gambling devices.”⁷⁸ Then in 1961, the Wire Act was passed.⁷⁹ It prohibits interstate transmission of gaming information via wire communications facilities.⁸⁰ This law “sought to target the mob’s most profitable racket” by prohibiting gambling on the nation’s communication systems.⁸¹ This law helped regulate interstate gambling activity, but did not specifically regulate intrastate activity—which would change later in 1992 with the enacting of PASPA.⁸² Also, in 1961, 18 U.S.C. § 1953 “limit[ed] interstate transportation of betting slips and paraphernalia,” 18 U.S.C. § 1952 prohibited “interstate travel or transportation in furtherance of racketeering,” and the Johnson Act was strengthened.⁸³ Next, the Bribery in Sporting Contests Act of 1964 was passed.⁸⁴ This related to sports gambling indirectly.⁸⁵ “It [made] it a crime to bribe or attempt to bribe an individual . . . to influence the outcome of a sporting event.”⁸⁶ This law is important in understanding the backdrop of regulating sports gambling because a scheme to influence a sporting contest many times involves money and “bets placed on the outcome of [the game].”⁸⁷ Subsequently, in 1970, “[the] Organized Crime Control Act enacts or modifies 18 U.S.C. §§ 1511,

74. *Id.*

75. Martin, *supra* note 66.

76. DAVID G. SCHWARTZ, CUTTING THE WIRE: GAMBLING PROHIBITION AND THE INTERNET 53–54 (William R. Eadington ed., 2005).

77. *Id.* at 230.

78. *Id.*; *see also* Johnson Act of 1951, ch. 1194, § 2, 64 Stat. 1134, 1134 (codified as amended at 15 U.S.C. §§ 1171–1178 (2012)).

79. Act of Sept. 13, 1961, Pub. L. No. 87-216, § 1084, 75 Stat. 491, 491.

80. *Id.*

81. Michelle Minton, *The Original Intent of the Wire Act and Its Implications for State-Based Legalization of Internet Gambling*, CTR. FOR GAMING RES., Sept. 2014, at 1, 1.

82. 18 U.S.C. § 1084 (2012); *see also* Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2, 106 Stat. 4227, 4228 (1992), *declared unconstitutional* by *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

83. SCHWARTZ, *supra* note 76, at 230; *see also* 18 U.S.C. §§ 1952–53 (2012); Johnson Act of 1951, § 1, 64 Stat. at 1134.

84. Act of June 6, 1964, Pub. L. No. 88-316, § 224, 78 Stat. 203, 203–04.

85. Paul Anderson, *No Gambling Allowed: The Ban on Sports Gambling in the United States*, GLOBAL SPORTS L. & TAX’N REP., Sept. 2012, at 24, 24–25.

86. *Id.*; *see also* Act of June 6, 1964, § 224, 78 Stat. at 203.

87. Anderson, *supra* note 85, at 25.

1955, 1961, and 2516, [which] prohibit[s] an illegal gambling business, make[s] obstruction of state law enforcement” by one or more person involved in an illegal gambling business “unlawful, include[s] syndicated gambling as a racketeering activity, and permit[s] wiretapping for suspected syndicated gambling.”⁸⁸

In March of 1989, another scandal was heard around the world which further exacerbated the negative stigma surrounding those who gambled on sports.⁸⁹ The MLB announced that famous athlete and then Cincinnati Reds’ manager, Pete Rose, was being investigated for *serious allegations*.⁹⁰ It was revealed the next day, by Sports Illustrated, that the investigation into Rose had to do with ties he had to sports betting.⁹¹ John Dowd, as Special Counsel to Commissioner A. Bartlett Giamatti, led the investigation into Rose’s sports betting allegations and produced the Dowd Report, which detailed the findings of Rose’s betting on baseball games.⁹² In August 1989, Commissioner Giamatti concluded that Rose bet on baseball and was banned from baseball for life for gambling.⁹³

Just two months after Rose was banned from baseball, the government tried to intervene once again to help combat betting in the country, this time as an amendment to the Lanham Trademark Act, which was proposed with the aim of prohibiting state sanctioned lotteries.⁹⁴ In 1990, another amendment was proposed, this time to the Comprehensive Crime Control Act, with the aim of prohibiting states from operating sports-related lotteries.⁹⁵ The federal government was unsuccessful with both additional interventions into the gambling world as neither bill became law.⁹⁶

88. SCHWARTZ, *supra* note 76, at 230; *see also* Organized Crime Control Act of 1970, Pub. L. No. 91-452, §§ 802–03, 901–02, 84 Stat. 922, 936–37, 941, 947.

89. *See* Rory Glynn, *The Rose Investigation*, CIN. ENQUIRER, Mar. 10, 2014, at C6.

90. *Pete Rose Chronology*, MIDLAND DAILY NEWS (Dec. 10, 2002, 8:00 PM), <http://www.ourmidland.com/news/article/Pete-Rose-Chronology-7148714.php>.

91. Glynn, *supra* note 89.

92. Joe Trinacria, *Judge: Pete Rose’s Lawsuit over Sex Crime Allegations Can Proceed*, PHILA. MAG. (July 19, 2017, 3:07 PM), <http://www.phillymag.com/news/2017/07/19/pete-rose-sex-crime-lawsuit-john-dowd/>; *Pete Rose Chronology*, *supra* note 90.

93. *Pete Rose Chronology*, *supra* note 90.

94. Sports Service Mark Protection Act of 1989, S. 1772, 101st Cong. (1989); *see also* Lanham (Trademark) Act, ch. 540, § 1, 60 Stat. 427, 427 (1946) (codified as amended at 15 U.S.C. §§ 1051–1141n (2012)).

95. S. REP. NO. 102-248, at 4 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553; *see also* Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 203, 98 Stat. 1976, 1976.

96. S. REP. NO. 102-248, at 4; *see also* Sports Service Mark Protection Act of 1989, S. 1772; Comprehensive Crime Control Act of 1984, § 203, 98 Stat. at 1976.

All of these precursors led up to February 1991 when the Senate Bill that would eventually become PASPA was introduced.⁹⁷ Through this law, Congress stepped into the realm of intrastate sports gambling regulation, something it had not done before.⁹⁸ It became illegal for states to authorize any type of sports gambling, with the exception of four states which were grandfathered in.⁹⁹

III. GENERAL IMPACTS OF THE SUPREME COURT DECISION

A. *No More Commandeering*

Most Americans know that federal law is the “supreme law of the land.”¹⁰⁰ They believe that no one can refuse its directives or *question its dictates*.¹⁰¹ After all, the Constitution says this.¹⁰² But, that is not entirely true.¹⁰³ Federal laws passed pursuant to “the Constitution do stand as . . . supreme law.”¹⁰⁴ But that does not mean that the federal government rules over everyone and everything in the country.¹⁰⁵

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹⁰⁶ The Tenth Amendment coupled with judicial interpretation of the Constitution has produced the conclusion that it is unconstitutional for the federal government to commandeer the state governments or to encroach upon their autonomy.¹⁰⁷ In the recent case of *Murphy v. NCAA*,¹⁰⁸ it was argued that PASPA violated this anti-commandeering principle by

97. S. REP. NO. 102-248, at 4; *see also* Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2, 106 Stat. 4227, 4227 (1992), *declared unconstitutional* by *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

98. *See* Professional and Amateur Sports Protection Act, § 2, 106 Stat. at 4227; Howe, *supra* note 1.

99. Howe, *supra* note 1.

100. *Id.*; U.S. CONST. art. VI.

101. Mike Maharrey, *States Don’t Have to Comply: The Anti-Commandeering Doctrine*, TENTH AMEND. CTR. (Dec. 28, 2013), <http://www.tenthamentmentcenter.com/2013/12/28/states-dont-have-to-comply-the-anti-commandeering-doctrine/>.

102. U.S. CONST. art. VI.

103. Maharrey, *supra* note 101.

104. *Id.*

105. *Id.*

106. U.S. CONST. amend. X.

107. *See id.*; Mike Maharrey, *Supreme Court’s Sports Gambling Opinion Is a Rare and Major Win for the Tenth Amendment*, TENTH AMEND. CTR. (May 14, 2018), <http://www.tenthamentmentcenter.com/2018/05/14/supreme-courts-sports-gambling-opinion-is-a-rare-and-major-win-for-the-tenth-amendment/>.

108. 138 S. Ct. 1461 (2018).

preventing a state from being able to modify or appeal “its laws prohibiting sports gambling.”¹⁰⁹

When PASPA was enacted in 1992, an exception was *carved out* specifically for the state of New Jersey.¹¹⁰ New Jersey was given one year to set up sports betting schemes in the state’s casinos.¹¹¹ At the time, New Jersey did not act upon that exception and they fell under the general ban.¹¹² Nearly two decades later, the state changed their mind.¹¹³ The Legislature conducted hearings discussing the possibility of legalizing sports betting in an effort to help the state’s struggling casinos and racetracks.¹¹⁴ In 2011, the New Jersey Legislature asked voters via referendum whether sports gambling should be permitted.¹¹⁵ The results of the referendum showed that sixty-four percent of New Jersey voters voted in favor of an amendment to the New Jersey Constitution that would allow sports gambling.¹¹⁶ The New Jersey Legislature enacted a law that authorized certain kinds of sports wagering in New Jersey casinos and racetracks.¹¹⁷ The NCAA, NBA, NFL, MLB, and National Hockey League (“NHL”) sued the state of New Jersey under PASPA to enjoin the state law.¹¹⁸ New Jersey’s argument was that PASPA was unconstitutional because it violated the anti-commandeering principle by preventing New Jersey from being autonomous and amending its own laws.¹¹⁹ Conversely, the sports leagues argued that PASPA did not commandeer the states because no affirmative action on the states’ part was

109. *Id.* at 1471; *see also* Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2, 106 Stat. 4227, 4228 (1992), *declared unconstitutional* by *Murphy v. Nat’l Collegiate Athletics Ass’n*, 138 S. Ct. 1461 (2018).

110. Howe, *supra* note 1; *see also* Professional and Sports Protection Act § 2, 106 Stat. at 4228.

111. John Brennan, *Imega: How a Small Non-Profit Group Helped Spark Legal Sports Betting Efforts in NJ*, NJ ONLINE GAMBLING (June 11, 2018), <http://www.njonlinegambling.com/imega-sets-ball-rolling-nj-sports-betting/>.

112. *Id.*; Howe, *supra* note 1.

113. Howe, *supra* note 1.

114. *Id.*

115. Brennan, *supra* note 111.

116. *Id.*

117. Matt Friedman, *Gov. Christie Signs Bill Allowing Gamblers to Place Bets on Pro, College Sports Teams*, NJ.COM: NJ REAL-TIME NEWS (Jan. 17, 2012), http://www.nj.com/news/index.ssf/2012/01/gov_christie_signs_bill_allowi_4.html; *see also* S.B. 3113, 214th Leg., Reg. Sess. (N.J. 2011); Brennan, *supra* note 111.

118. Howe, *supra* note 1; *see also* Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2, 106 Stat. 4227, 4227 (1992), *declared unconstitutional* by *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

119. *Murphy*, 138 S. Ct. at 1471; Howe, *supra* note 1; *see also* Professional and Amateur Sports Protection Act, § 2, 106 Stat. at 4227.

required.¹²⁰ The states only had to leave the existing law in place—in other words, sit back and do nothing.¹²¹

The lower courts rejected New Jersey’s argument, siding with the sports leagues that the concept of anti-commandeering was not applicable in that instance because the states were not required to affirmatively do anything.¹²² “The Supreme Court [rejected] review of that decision.”¹²³

While the line between what constitutes commandeering and not commandeering can be thin, the Supreme Court of the United States has offered some guidance in the past.¹²⁴ First, laws that are of general applicability—not directed at the states specifically—must be followed by the states.¹²⁵ Second, incentives given to states for doing what the federal government wants are acceptable.¹²⁶ And third, cooperative federalism—the “you do it or I will” approach—is acceptable.¹²⁷ What is not allowed is telling the states or the state officials what they must do and invading their autonomy.¹²⁸ The federal government has no power to force states into cooperating or implementing its own acts.¹²⁹

In 2014, New Jersey tried to help their casinos and racetracks again.¹³⁰ This time, the state did not affirmatively legalize any kind of sports betting.¹³¹ Instead, it merely repealed the state prohibitions that existed regarding sports betting.¹³² The state *artfully couched* the legalizing sports gambling law simply as a *repealer*, even though the statute nonetheless made sports gambling in the state’s casinos and racetracks legal.¹³³ Once again, the NCAA, NFL, NBA, MLB, and NHL challenged New Jersey’s actions in federal court.¹³⁴ And the lower courts once again ruled in favor of the sports

120. *Murphy*, 138 S. Ct. at 1471; Howe, *supra* note 1; *see also* Professional and Amateur Sports Protection Act, § 2, 106 Stat. at 4227.

121. *See* Howe, *supra* note 1.

122. *Id.*

123. *Id.*

124. *See* *Printz v. United States*, 521 U.S. 898, 935 (1997); *New York v. United States*, 505 U.S. 144, 161 (1992) (citing *Hodel v. Va. Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 288 (1981)); *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 556 (1985).

125. *See* *New York*, 505 U.S. at 177.

126. *Id.* at 185.

127. *See id.* at 173–74.

128. *See id.* at 175.

129. Maharrey, *supra* note 101.

130. *See* Howe, *supra* note 1.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

leagues.¹³⁵ However, this time, the Supreme Court granted review of the decision.¹³⁶ New Jersey made the same argument in front of the Supreme Court that it had made before: PASPA unconstitutionally commandeers states by preventing them from repealing or amending their own state laws.¹³⁷ The sports leagues also made the same argument that it was not commandeering because no affirmative action by the state was required.¹³⁸

On May 14, 2018, the Supreme Court agreed with New Jersey's argument and struck down the federal law that infringed upon the reserved powers of the states.¹³⁹ It was held that PASPA unconstitutionally "directs . . . state legislatures by telling them [that] they cannot repeal . . . state law."¹⁴⁰ Justice Alito, delivering the opinion of the Court, acknowledged that the legalization of sports gambling is a controversial issue.¹⁴¹ Important policy choices must be made regarding sports gambling, but the Court believed that they were not the proper people to make the decision.¹⁴² The federal government is free to regulate sports gambling directly if it wishes, but if it does not, then the decision is to be left to the individual states.¹⁴³ The Supreme Court opinion states that PASPA *regulates state government regulation*, it does not regulate sports gambling directly.¹⁴⁴ Thus, "each [s]tate is free to act on its own" regarding legalizing sports gambling because the Constitution "gives Congress no such power" to regulate state regulation.¹⁴⁵ "[F]or the first time, the Court . . . included a constitutional basis for the anti-commandeering doctrine in [its] opinion" by stating that the anti-commandeering doctrine is:

[T]he expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the [s]tates . . . [c]onspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the

-
135. Howe, *supra* note 1.
 136. *Id.*
 137. Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1471–73 (2018).
 138. *Id.* at 1471.
 139. *Id.* at 1461, 1484–85.
 140. *See id.* at 1481; Maharrey, *supra* note 107.
 141. *Murphy*, 138 S. Ct. at 1468, 1484.
 142. *Id.* at 1484.
 143. *Id.* at 1484–85.
 144. *Id.* at 1485 (quoting New York v. United States, 505 U.S. 144, 166 (1992)).
 145. *Id.* at 1484–85.

[s]tates. The anti-commandeering doctrine simply represents the recognition of this limit on congressional authority.¹⁴⁶

PASPA unconstitutionally commandeers states regarding regulation of legal sports gambling.¹⁴⁷

The Supreme Court went even further than deeply cementing this anti-commandeering doctrine further into law.¹⁴⁸ They expanded it.¹⁴⁹ “[T]he [Supreme] Court went on to invalidate all of PASPA, even [after only finding that] part of the law [was] unconstitutional.”¹⁵⁰ By acknowledging that the other provisions cannot be severed from the unconstitutional ban on authorization of sports betting, the Supreme Court is further reinforcing this state sovereignty principle into law that will make it harder in the future “for the federal government to coerce states to bend to its will.”¹⁵¹

1. Obvious Effect on States

The most obvious result of this victory for federalism is that now states are free to decide for themselves if they will legalize sports gambling or not.¹⁵² Nevada, Delaware, and New Jersey have already legalized full scale sports betting, with the latter two states having legalized it after the Supreme Court struck down PASPA in May.¹⁵³ Recent bills have passed in four other states and at least twelve states have introduced bills that are awaiting passage.¹⁵⁴ With almost half of the states moving forward so quickly after the Supreme Court decision, it is clear that the political environment regarding sports gambling is changing dramatically and quickly.¹⁵⁵

The other half of the states appear to have no activity regarding sports betting legalization efforts—yet.¹⁵⁶ It is possible that those states will make moves to amend or repeal existing laws they have in the future.¹⁵⁷ The only state in which legalized sports betting is classified as highly unlikely is

146. Maharrey, *supra* note 107; *see also* *Murphy*, 138 S. Ct. at 1475–76.

147. *Murphy*, 138 S. Ct. at 1485.

148. Maharrey, *supra* note 107.

149. *Id.*

150. Mikosra, *The Implications of Murphy v. NCAA for State Marijuana Reforms*, VAND. U. (May 17, 2018), <http://my.vanderbilt.edu/marijuanalaw/2018/05/the-implications-of-murphy-v-ncaa-for-state-marijuana-reforms/>.

151. Maharrey, *supra* note 107; *see also* *Murphy*, 138 S. Ct. at 1484.

152. *See* *Murphy*, 138 S. Ct. at 1484–85.

153. Rodenberg, *supra* note 10.

154. *Id.*

155. *See id.*

156. *Id.*

157. *See id.*

Utah.¹⁵⁸ This is because Utah has an anti-gambling provision written into its state constitution.¹⁵⁹ A change to the state's decades long opposition to gambling is likely too big of a departure from existing state policy for legalized sports gambling to be included in their future.¹⁶⁰

2. Broader Implications

A not-so-obvious result of this anti-commandeering decision is the impact it may have in the realm of other highly debated topics today—those not related to sports gambling at all.¹⁶¹

One widely debated topic currently is the subject of *sanctuary cities*.¹⁶² Section 1373 of the United States Code is a federal statute that prohibits a government entity from restricting any other government entity or official from communicating with the Immigration and Naturalization Service regarding the lawful or unlawful immigration status of an individual.¹⁶³ This statute “is at the heart of the . . . federal effort to . . . penalize” these areas that limit cooperation with federal immigration officers in order to protect illegal immigrants.¹⁶⁴ Most sanctuary policies are instructions by state and local governments to not turn over information about immigrants.¹⁶⁵ The Justice Department argues that these orders violate the statute.¹⁶⁶ But after the recent anti-commandeering court decision, it is clear that the federal government cannot tell the states what to do.¹⁶⁷ This includes telling the states that they cannot not follow federal tune either, i.e., they cannot not follow 8 U.S.C. § 1373.¹⁶⁸ Now that the *anti-commandeering principle* has been further cemented into law, it is clear that the federal government will have a more challenging time claiming that sanctuary city policies should be enjoined.¹⁶⁹

Numerous cities have sanctuary policies, including New York, Seattle, Los Angeles, Chicago, and others with large immigrant

158. Rodenberg, *supra* note 10.

159. *Id.*; UTAH CONST. art. VI, § 27.

160. Rodenberg, *supra* note 10.

161. Somin, *supra* note 4.

162. Garrett Epps, *The Supreme Court Says Congress Can't Make States Dance to Its Tune*, ATLANTIC (May 14, 2018), <http://www.theatlantic.com/politics/archive/2018/05/paspa-sanctuary-cities/560369/>.

163. 8 U.S.C. § 1373(a) (2012).

164. Epps, *supra* note 162.

165. *Id.*

166. *Id.*

167. *See id.*

168. *Id.*; *see also* 8 U.S.C. § 1373.

169. *See* Epps, *supra* note 162.

populations.¹⁷⁰ President Trump has made it clear that he intends to defund these sanctuary cities in order to break their resistance to deportation of illegal immigrants.¹⁷¹ If this recent anti-commandeering decision begins to impact the topic of sanctuary cities, another constitutional issue may rise to the surface in regards to sanctuary cities—a taxing and spending issue.¹⁷² The Supreme Court has made it clear that, in order for Congress to impose a condition on their spending, the condition must be unambiguous so that states are fully informed of the consequences of accepting the federal funding.¹⁷³ If a condition on federal funding meets the requirements, it is okay for the federal government to revoke the funding to the state and local governments if they do not comply with the condition that they agreed to upon accepting the money.¹⁷⁴ What this means for Trump’s plan to defund the sanctuary cities is that his administration cannot cut off funding to sanctuary cities, unless they can show that the funding was specifically conditioned on cooperating with the federal government in efforts to deport illegal immigrants.¹⁷⁵ If they are successful in showing that funding was conditional, then it is within the federal government’s power to take back the funding.¹⁷⁶ However, this may pose a challenge to the Trump Administration because “[f]ew, if any, federal grants to state and local governments are conditioned on cooperation with federal deportation efforts.”¹⁷⁷

Additionally, this recent decision may be significant for state laws that wish to legalize “possession of some types of firearms” that the federal government may oppose.¹⁷⁸ The federal government may no longer be able to block such legalization efforts “by passing laws that require states to continue to” ban firearm possession activities under their own laws.¹⁷⁹

Moreover, this recent decision may “give[] states the green light to legalize marijuana under state law.”¹⁸⁰ “If a state is constitutionally [allowed] to repeal its . . . ban on sports gambling,” then the same logic can

170. Somin, *supra* note 5.

171. *Id.*

172. *See id.*

173. *See id.*; *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

174. *See* Edward T. Waters, *Holding Federal Funds Hostage — Can They Do That?*, FELDESMAN TUCKER LEIFER FIDELL LLP (Jan. 30, 2017), <http://www.feldesmantucker.com/holding-federal-funds-hostage-can/>.

175. Somin, *supra* note 5.

176. Waters, *supra* note 174.

177. Somin, *supra* note 5.

178. Somin, *supra* note 4.

179. *Id.*

180. Mikosra, *supra* note 150.

be applied to marijuana laws—the state is constitutionally allowed to repeal its ban on possession, manufacturing, or distributing marijuana.¹⁸¹ In the start of 2018, the Justice Department withdrew an Obama-era memo regarding deprioritizing “federal marijuana prosecutions in states that have legalized [the use of] the drug.”¹⁸² Attorney General Jeff Sessions wrote a one page memo instructing United States Attorneys to disregard the Obama-era direction that “resources should be limited in criminal prosecution[s] of marijuana users” in states that have legalized marijuana usage.¹⁸³ Currently, “[t]en states and Washington D.C. have legalized marijuana for recreational use,” even though it is still considered illegal under federal law.¹⁸⁴ The conflict between state and federal law, in theory, results in state laws being preempted by federal law by way of the Constitution’s Supremacy Clause, which reads: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the land.”¹⁸⁵ One question raised by the revocation of the 2013 memo is the availability of resources the federal government has access to in order “to conduct direct enforcement of marijuana laws.”¹⁸⁶ Any large widespread federal attempt to enforce federal marijuana laws would likely need the assistance of local law enforcement officers.¹⁸⁷ This raises a Tenth Amendment anti-commandeering issue.¹⁸⁸ The Supreme Court made it clear in *Printz v. United States*¹⁸⁹ that the federal government cannot command state officers to administer or enforce a federal program.¹⁹⁰ Thus, it is unclear how this Supreme Court decision will thwart the Justice Department’s efforts to control marijuana under the Controlled Substances Act.¹⁹¹

181. *Id.*

182. Scott Bomboy, *Federal Marijuana Policy Change Raises Significant Questions*, NAT’L CONST. CTR.: CONST. DAILY (Jan. 4, 2018), <http://www.constitutioncenter.org/blog/federal-marijuana-policy-change-raises-significant-questions/>.

183. *Id.*

184. Jeremy Berke & Skye Gould, *Michigan Is the 10th State to Legalize Recreational Marijuana. This Map Shows Every US State Where Pot Is Legal*, BUS. INSIDER, <http://www.businessinsider.com/legal-marijuana-states-2018-1> (last updated Nov. 7, 2018 10:35 AM).

185. U.S. CONST. art. VI; *see also* Bomboy, *supra* note 182.

186. Bomboy, *supra* note 182.

187. *Id.*

188. *Id.*

189. 521 U.S. 898 (1997).

190. *Id.* at 935.

191. Scott Bomboy, *Talk Grows About Sports Betting Decision’s Impact on Cannabis Laws*, NAT’L CONST. CTR.: CONST. DAILY (May 21, 2018), <http://www.constitutioncenter.org/blog/talk-grows-about-sports-betting-decisions-impact-on->

In many cases, the federal government would have the power to ban things that it opposes—like “possession of some types of firearms” or marijuana—“by making them directly illegal under federal law.”¹⁹² However, this could be very *expensive and difficult*.¹⁹³ Unless the federal government bars activities it opposes directly under their own laws, it can no longer rely on state assistance in cooperating and supporting the enforcement of federal law through the state’s own laws.¹⁹⁴ If a state wants to deny the federal government assistance in opposing certain activities by amending its own laws, it appears now that it can.¹⁹⁵

B. *Legalized Sports Betting Benefits*

A number of athletes with prominent names in sports—including NFL Commissioner Roger Goodell—and sports leagues across the country are opposed to the nationwide efforts being made to legalize sports gambling.¹⁹⁶ They fear the integrity of sports games will be undermined.¹⁹⁷ Additionally, they have expressed concern that increased legalized sports betting will “turn fans away from their sports [due to] fear[] of fixed games.”¹⁹⁸ However, this concern is misguided.¹⁹⁹ “[P]eople are already legally betting on . . . sports in Nevada, and [there has been] no known evidence [of negative] impact[s] on the games.”²⁰⁰ Additionally, it is beneficial to those in opposition that “the Supreme Court’s decision [came] so late in the Court’s calendar” when many state legislatures are out of session for the summer.²⁰¹ This puts the leagues “in an ideal position to work with . . . individual state legislation when they return for the [next] session” to ensure that the leagues help address their concerns by helping develop the new sports gambling laws.²⁰²

cannabis-laws; *see also* Controlled Substances Act, Pub. L. No. 91-513, § 101, 84 Stat. 1242, 1242–43 (1970) (codified as amended in scattered sections of §§ 21, 42 U.S.C. (2012)).

192. Somin, *supra* note 4.

193. *Id.*

194. *Id.*

195. *Id.*

196. Edelman, *supra* note 6; John Wolohan, *How Legal Sports Betting Could Benefit the Pro Leagues*, FORTUNE: COMMENTARY (May 21, 2018), <http://www.fortune.com/2018/05/21/supreme-court-sports-betting-legal-leagues/>.

197. Wolohan, *supra* note 196.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. Wolohan, *supra* note 196.

The legalization of sports gambling appears to not only hold benefits for individuals, but also for the nation as a whole.²⁰³ “From the 1940s to the 1960s, the mafia . . . took control of the [illegal] sports betting market” and pushed it offshore.²⁰⁴ “Organized crime is [not] known for its customer service or propriety.”²⁰⁵ But still, millions of Americans continue to gamble illegally in this *completely unregulated market*.²⁰⁶ Americans were left with *little or no recourse* in these markets that were subject to the rules of other countries.²⁰⁷ States have no way to regulate online gambling sites and thus are unable to “ensure the fairness of the games, conduct background checks on company employees, or audit the financial records of the company.”²⁰⁸ That is just one problem associated with illegal gambling.²⁰⁹ Additionally, there is the risk and fear of credit card and other fraud due to online gambling popularity.²¹⁰ Local bookies engage in *shady* operations because they function without rules and regulations.²¹¹ Billionaire and Dallas Mavericks owner Mark Cuban publicly acknowledged that everyone has been gambling on sports for a long time.²¹² If Americans have illegally gambled on sports, and will continue to gamble illegally on sports, legal sports gambling markets in the United States would provide much needed protection to those bettors.²¹³ In-state operated sports gambling environments would provide the much needed “rules and regulations [that] can ensure honest, secure, and safe transactions.”²¹⁴

Another benefit legalized sports gambling would provide is increased tax revenue.²¹⁵ There are “casinos in over [forty] U.S. states [that provide 2] million jobs [and] generat[e] approximately \$38 billion in tax revenue” each year.²¹⁶ While those statistics of legal gambling are

203. Smiley, *supra* note 6.

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. PUB. SECTOR GAMING STUDY COMM’N, FINAL REPORT 25 (1999), http://www.nclgs.org/PDFs/Public_Sector_Gaming_Study.pdf; *see also* Smiley, *supra* note 6.

209. *See* Smiley, *supra* note 6.

210. *Id.*

211. *Id.*

212. Tyler Lauletta, *Mark Cuban: The Top Sports Teams Just Saw Their Values Double After the Supreme Court’s Huge Decision on Sports Betting*, BUS. INSIDER (May 14, 2018, 1:16 PM), <http://www.businessinsider.com/mark-cuban-supreme-court-sports-betting-2018-5>; *see also* #190 Mark Cuban, FORBES, <http://www.forbes.com/profile/mark-cuban/> (last visited Dec. 17, 2018).

213. *See* Lauletta, *supra* note 212; Smiley, *supra* note 6.

214. Smiley, *supra* note 6.

215. *Id.*

216. *Id.*

impressive, the statistics for illegal gambling are even more so.²¹⁷ “Americans illegally [bet] roughly \$148 to \$500 billion on sports.”²¹⁸ State government taxing on that money would create a huge new influx of money into the country from a source not currently being taxed at all.²¹⁹ “That can close a lot of budget deficits and support scores of schools, health clinics, bridges, tunnels, and so on.”²²⁰

Not only will tax revenue increase with legalized sports betting, but the number of jobs supported would increase also.²²¹ “State-licensed sports books [would] generate more job[s] . . . at the existing casinos” through the need of more “odds makers, analysts, security, cashiers, etc.”²²² And also, depending on how the states would implement their own regulating laws, it may even create new free standing sports betting locations which would need to be staffed.²²³ Additionally, increased traffic into casinos and around possible free standing sports betting locations from those bettors engaging in sports wagering, would lead to “more revenue for [the] restaurants, retail shops and other businesses [nearby].”²²⁴ This *ancillary effect* could have a broad and beneficial economic impact.²²⁵

A regulated environment would likely have a positive impact on the games themselves that people are wagering on.²²⁶ Even NBA Commissioner, Adam Silver, agrees.²²⁷ In countries “[o]utside of the United States, sports betting” is legal, popular, and highly regulated.²²⁸ Adopting a framework that allows state governments to authorize and strictly regulate betting on sports has proven to be effective in other markets, like what has been done in Australia.²²⁹ The Australian state of Victoria created a sports betting regulatory regime that “contains a number of features critical to ensuring that sports gambling is channeled in appropriate ways and that

217. *See id.*

218. *Id.*

219. *See* Smiley, *supra* note 6.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. Smiley, *supra* note 6.

225. *Id.*

226. *Id.*

227. *See* Adam Silver, *Legalize Sports Betting*, N.Y. TIMES, Nov. 14, 2014, at A27.

228. *Id.*; Smiley, *supra* note 6; *see also* Stephen F. Ross & Adrian Anderson, *Strong Regulation Could Inject Integrity into Sports Gambling*, SPORTSBUSINESS J. (Feb. 16, 2015), <http://www.sportsbusinessdaily.com/journal/issues/2015/02/16/opinion/Ross-Anderson.aspx>.

229. *See* Ross & Anderson, *supra* note 228; Silver, *supra* note 227.

threats to sporting integrity can be promptly identified.”²³⁰ One critical feature is *special regulations* that allow for the sharing of information among “bookmakers, law enforcement, and . . . sports leagues,” even in situations where the information would ordinarily be confidential.²³¹ “Access to . . . betting records is crucial” in order to track down any “match-fixing [or] abuse of inside information.”²³² It also provides a means to make sure the athletes are not wagering on themselves.²³³ Access to betting records, like those available in Australia, are nonexistent “in the illegal [sports] betting market.”²³⁴ This means that they are unavailable to the sports leagues who would greatly benefit from the devices that could locate *unusual activity* that threatens the integrity of sporting events.²³⁵

Another benefit of legalized sports gambling is detection of individuals who have a gambling problem.²³⁶ It is reported that almost ten million Americans have a gambling addiction.²³⁷ Detection of addict-like behavior can help guide people towards treatment.²³⁸ Moreover, many illegal gambling sites do not have limits on the amount of money people can wager.²³⁹ Lack of a wagering limit can get people into major trouble, but if state-regulated legalized sports gambling was available, Americans’ interests would be protected.²⁴⁰

An additional benefit of legalized sports betting includes a “more exciting game[] for viewers.”²⁴¹ Millions of people turn on sports games, some watching because they enjoy it, but most watching because they have money on the game and want to see if they will win or lose their bets.²⁴² If more people start legally betting on sports, more people will tune into the games they have wagers on, and the viewers will be more interested and engaged in every game.²⁴³

230. Ross & Anderson, *supra* note 228.

231. *Id.*

232. *Id.*

233. *Id.*

234. Smiley, *supra* note 6.

235. *See id.*; Ross & Anderson, *supra* note 228.

236. Smiley, *supra* note 6.

237. *Statistics of Gambling Addiction 2016*, N. AM. FOUND. FOR GAMBLING ADDICTION HELP, <http://www.nafgah.org/statistics-gambling-addiction-2016/> (last visited Dec. 17, 2018).

238. Smiley, *supra* note 6.

239. PUB. SECTOR GAMING STUDY COMM’N, *supra* note 208, at 25.

240. Smiley, *supra* note 6.

241. *Id.*

242. *Id.*

243. *See id.*

“Finally, there has always been a relationship between professional sports and gambling.”²⁴⁴ All while battling sports betting legalization attempts, the sports leagues are actually clearly accepting and promoting sports betting.²⁴⁵

[O]ver the past [twenty] years, . . . sports teams have willingly accepted money from state lotteries for the use of logos, accepted money for in-stadium casino signage, invested in Daily Fantasy Sports companies like FanDuel and Draft Kings, played games in casinos, and have even allowed franchises to move to Las Vegas.²⁴⁶

Legalization of sports betting would end the blatant hypocrisy by the sports leagues.²⁴⁷ They should embrace another taboo about keeping gambling out of their games “to reengage their fans and help create a new fan experience.”²⁴⁸

IV. SPECIFIC IMPACTS OF SUPREME COURT DECISION IN FLORIDA

A. *The Polls May Play a Role*

Florida law does not currently permit any form of sports betting.²⁴⁹ But with this recent Supreme Court decision and a number of states already quickly moving to legalize sports betting in their states, the pressure is up for Florida lawmakers.²⁵⁰

Florida lawmakers have been trying to agree if and how to update and expand gambling laws in the state—a topic of debate in Tallahassee even before the recent Supreme Court decision regarding sports betting.²⁵¹ After weeks of negotiations, the legislative leaders could not come to an agreement.²⁵² The leaders were trying to agree upon a way to update the state’s gaming laws before the November 2018 election, where voters had “a

244. Wolohan, *supra* note 196.

245. Smiley, *supra* note 6.

246. Wolohan, *supra* note 196.

247. Smiley, *supra* note 6.

248. Wolohan, *supra* note 196.

249. Mary Ellen Klas, *Sports Betting in Play*, TAMPA BAY TIMES, May 15, 2018, at 1.

250. *Id.*

251. *Id.*; Mary Ellen Klas, *Expand Gambling in Florida? Lawmakers Fold, Will Let Voters Decide*, TAMPA BAY TIMES: THE BUZZ (Apr. 26, 2018), <http://www.tampabay.com/florida-politics/buzz/2018/04/26/expand-gambling-in-florida-lawmakers-fold-will-let-voters-decide/>.

252. Klas, *supra* note 251.

chance to complicate the Legislature’s role with a constitutional amendment [that was] on the . . . ballot.”²⁵³ But, the decision was in the hands of the voters.²⁵⁴ Amendment 3, Voter Approval of Casino Gambling Initiative, required voter approval to authorize casino gambling in the state.²⁵⁵ While “[t]he amendment specific[d] only the expansion of casino card games, slot-like games and anything classified as a Class 3 game under federal law,” it is assumed by many that sports gambling will now fall under this category.²⁵⁶

The anti-casino amendment has received overwhelming support, particularly by Disney Worldwide Services—donating \$9.655 million to the support campaign—and the Seminole Tribe of Florida, which has contributed \$6.775 million to the support campaign.²⁵⁷ Disney has long opposed expanding casino gambling in Florida.²⁵⁸ And the Seminole Tribe, while operating casinos of its own, oppose expansion of gambling that could allow bettors to visit gambling sites other than those owned and operated by the tribe.²⁵⁹ The amendment was approved by sixty percent of voters, thereby changing the Florida Constitution and giving voters “the exclusive right to decide whether to authorize casino gambling by requiring that in order for casino gambling to be authorized under Florida law, it must be approved by Florida voters.”²⁶⁰ According to a recent poll, it is likely that seventy-six percent of Florida voters supported this amendment.²⁶¹ According to one law professor, including sports gambling in the category with other gambling that is on Amendment 3 would hurt the amendment.²⁶² It is clear that many Floridians oppose expanding gambling, and want to be the ones to make that decision.²⁶³ But “even if [many] people are against

253. *Id.*

254. *Id.*

255. *Florida Amendment 3, Voter Approval of Casino Gambling Initiative* (2018), http://www.ballotpedia.org/Florida_Amendment_3_Voter_Approval_of_Casino_Gambling_Initiative (2018) (last visited Dec. 17, 2018).

256. Davis & Rohrer, *supra* note 18.

257. *Disney, Seminoles Sink \$10m into Gambling Issue*, FOX 51: NEWS (May 10, 2018, 8:15 PM), <http://www.wogx.com/news/disney-seminoles-sink-10m-into-gambling-issue/>.

258. *Id.*

259. *See id.*

260. *Florida Amendment 3, Voter Approval of Casino Gambling Initiative* (2018), *supra* note 255 (quoting FLA. CONST. art. X, § 29 (proposed)).

261. *Poll: 76% of Likely Florida Voters Support Amendment 3*, BUS. WIRE (Feb. 8, 2018, 11:39 AM), <http://www.businesswire.com/news/home/20180208006014/en/poll-76-Florida-Voters-Support-Amendment-3>.

262. Davis & Rohrer, *supra* note 18.

263. *See Poll: 76% of Likely Florida Voters Support Amendment 3*, *supra* note 261.

casino gambling, most people are OK with sports betting.”²⁶⁴ So many people are used to betting in office pools on sporting events like the Super Bowl and March Madness.²⁶⁵ “If they think Amendment 3 would stop sports betting after the [Supreme Court of the United States] has approved it, . . . they’re going to think twice about voting for Amendment 3.”²⁶⁶

B. *A Third Negotiator in the Mix*

The State of Florida has a compact with the Seminole Tribe that gives the tribe a monopoly to offer card games—like blackjack—at its casinos and operate slot machines outside of the Miami-Dade and Broward counties.²⁶⁷ In exchange for this exclusivity, the Seminole Tribe pays a portion of its casino money to the state.²⁶⁸ An agreement like this has been in place between the Tribe and the State since 2010.²⁶⁹ With the anti-gambling amendment in the hands of voters, and the Seminole Tribe being a large contributor to support the campaign, the future of sports betting in Florida is still an *open question*.²⁷⁰ If sports gambling is included in the category of gambling in the November amendment, as noted above, then it is likely that sports betting will not come to Florida quickly—if at all.²⁷¹

Had the November 2018 amendment not passed, the Florida Legislature would have held the future of sports gambling in their hands, and the large presence of Indian owned and operated casinos in the State—eight to be exact—could have posed a challenge to legalization of sports betting efforts that many other states are not facing.²⁷² Because there is no legalization activity in the State yet, it is unclear how Florida would decide to implement a regulated sports betting environment—such as, sports books in the casinos themselves or stand-alone sports betting locations.²⁷³ But if legalization efforts begin, the Indian tribes—as another negotiator in the mix—insert some added difficulty to the negotiations.²⁷⁴

264. Davis & Rohrer, *supra* note 18.

265. *Id.*

266. *Id.*

267. Saunders & Kam, *supra* note 18.

268. *Id.*

269. *Id.*

270. Davis & Rohrer, *supra* note 18.

271. *See id.*

272. *See id.*; Green, *supra* note 20; *Florida Casinos*, *supra* note 19.

273. *See* Klas, *supra* note 251; Saunders & Kam, *supra* note 18.

274. Davis & Rohrer, *supra* note 18; Green, *supra* note 20.

C. *Why It Should Be Legal in Florida*

As noted above, an array of benefits follow from the legalization of sports betting.²⁷⁵ Some of the most notable are increased tax revenue, increased jobs, and broad economic support.²⁷⁶ Sports gambling could be especially beneficial to “destination states like Florida and could result in a significant boo[m] for the [S]tate’s tourism economy.”²⁷⁷ “Because the margins from sports betting wagers are narrower than other forms of gaming, it is the ancillary spending from gamblers who flock to hotels and gaming venues where the money is made”²⁷⁸ As the State’s number one industry, tourism would be greatly benefited from legalized sports gambling, which would only be more beneficial for the citizens of the State.²⁷⁹

Additional benefits include financial support for “dog tracks and casinos that have struggled to retain younger [customers],” and increased attendance and participation in some of Florida’s sports leagues who are not “considered among the upper echelon of franchises”—like the Tampa Bay Rays.²⁸⁰

According to the Florida Council on Compulsive Gambling, it is estimated that around “181,000 Florida residents have [a] gambling problem[] and another 770,000 are at-risk” for developing a gambling problem.²⁸¹ While those opposed to legalized sports gambling in the state argue that those numbers will only increase if legal sports betting came to Florida, they are overlooking a huge hidden benefit to regulated sports gambling.²⁸² People have been illegally gambling on sports for so long, and they will continue to do so even if Florida does not legalize it.²⁸³ Unregulated gambling is what will cause the gambling problem to increase—not regulated sports gambling.²⁸⁴ As noted above, a state-sanctioned, regulated gambling environment could impose limits on wagering amounts

275. See Smiley, *supra* note 6.

276. *Id.*

277. Klas, *supra* note 249.

278. *Id.*

279. See *id.*; Justin Walton, *Florida’s Economy: The 6 Industries Driving GDP Growth*, INVESTOPEDIA,

<http://www.investopedia.com/articles/investing/011316/floridas-economy-6-industries-driving-gdp-growth.asp> (last updated Oct. 24, 2018, 6:41 PM).

280. Green, *supra* note 20.

281. *After the Supreme Court Ruling, Florida Needs to Gamble Carefully on Sports Betting*, MIAMI HERALD: EDITORIALS (May 16, 2018, 1:23 AM), <http://www.miamiherald.com/opinion/editorials/article211228394.html>.

282. See *id.*; Smiley, *supra* note 6.

283. Davis & Rohrer, *supra* note 18; Lauletta, *supra* note 212.

284. See Smiley, *supra* note 6.

and even screen users for signs of problem gambling.²⁸⁵ If state-operated sports books extended to online, pop-ups could appear to help direct people towards resources to get help, or even inform others who know someone in need of help of resources available.²⁸⁶ State-regulated sports gambling would not increase problem gambling like many fear—it would help.²⁸⁷

V. CONCLUSION

The recent Supreme Court decision to rule PASPA unconstitutional was a *major victory for federalism*.²⁸⁸ By strengthening the support behind the anti-commandeering doctrine rooted in the Tenth Amendment, the Supreme Court has not only affected sports betting, but has likely also produced an ancillary effect that will impact a plethora of topics, including gun control, marijuana laws, and sanctuary cities.²⁸⁹

Although many are in opposition to legal sports betting, many benefits stand to come from state regulated sports gambling.²⁹⁰ Those include: A safer market for people already illegally betting on sports; increased tax revenue; job creation and positive economic impact; protection of sports games integrity; detection of people with problem gaming; an “[e]nd [to] sports leagues’ blatant hypocrisy;” and more exciting games for the fans.²⁹¹ People have been gambling on sports in Nevada for years, and there has been no known evidence of it affecting the integrity of games—a concern of so many.²⁹² The states that have not taken steps towards legalization should follow the lead of almost half of the country that have taken steps quickly forward to legalize sports betting, including Florida.²⁹³

Florida has no movement in legalizing sports betting yet, and while it is possible in the future that the legislature would want to legalize sports betting, it may be harder than in other states.²⁹⁴ For one, the legislature may not be the one to make the decision for Florida.²⁹⁵ The decision may be up to

285. *Id.*

286. *Id.*

287. *See id.*

288. Somin, *supra* note 4; *see also* Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2, 106 Stat. at 4228 (1992), *declared unconstitutional by* Murphy v. Nat’l Collegiate Athletic Ass’n, 138 S. Ct. 1461 (2018).

289. Somin, *supra* note 4; *see also* U.S. CONST. amend. X.

290. Smiley, *supra* note 6.

291. *Id.*

292. Wolohan, *supra* note 196.

293. *See* Rodenberg, *supra* note 10.

294. *See id.*; Davis & Rohrer, *supra* note 18.

295. Davis & Rohrer, *supra* note 18.

the citizens now that Amendment 3 has passed.²⁹⁶ The decision to expand gambling is left to the citizens and it is likely that sports gambling will fall into the category of gambling that the citizens will now have control over.²⁹⁷ There was wide support for passage of this Amendment, known as the anti-casino amendment, because so many people were opposed to expanding gambling in the state.²⁹⁸ It is likely that sports gambling will not be legal in Florida quickly, if at all.²⁹⁹

This amendment was not the only obstacle in legalizing sports betting in Florida.³⁰⁰ Had the anti-gambling amendment not passed in November, the decision would have been left to the Legislature.³⁰¹ They would have had to deal with the Native American Tribes in Florida, who own and operate their own casinos and who are against legalizing sports gambling, which would affect the crowds that go to their casinos to gamble.³⁰² This third negotiator in the mix might pose a challenge to the Florida Legislature if they wish to legalize sports gambling in the future.³⁰³

In the end, sports gambling should be legal in all states, including Florida.³⁰⁴ A number of benefits flow from the legalization of sports gambling, benefits that help those individuals gambling and the public as a whole.³⁰⁵ As Mark Cuban and so many others have acknowledged, sports gambling has been going on for years and people will continue to do it whether it is legal or not.³⁰⁶ States should take action to help protect their citizens while they gamble on sports and make some money that will benefit the public in the process.³⁰⁷

296. Klas, *supra* note 251.

297. Davis & Rohrer, *supra* note 18.

298. *Id.*; see also Disney, *Seminole Sink \$10m into Gambling Issue*, *supra* note 257.

299. See Davis & Rohrer, *supra* note 18; Klas, *supra* note 249.

300. See Disney, *Seminole Sink \$10m into Gambling Issue*, *supra* note 257; Florida Amendment 3, *Voter Approval of Casino Gambling Initiative (2018)*, *supra* note 255; Klas, *supra* note 251.

301. See Florida Amendment 3, *Voter Approval of Casino Gambling Initiative (2018)*, *supra* note 255.

302. See Davis & Rohrer, *supra* note 18; Disney, *Seminole Sink \$10m into Gambling Issue*, *supra* note 257.

303. See Davis & Rohrer, *supra* note 18; Disney, *Seminole Sink \$10m into Gambling Issue*, *supra* note 257.

304. See Smiley, *supra* note 6.

305. See *id.*

306. Lauletta, *supra* note 212; see also Silver, *supra* note 227.

307. See Smiley, *supra* note 6.