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Breaking the Ban: Sports Gambling, Anti-Commandeering, and Lots and Lots of Money

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NOTE

Breaking the Ban: Sports Gambling, Anti-Commandeering, and Lots and Lots of Money

Murphy v. National Collegiate Athletic Association, 138 S. Ct. 1461 (2018).

George R. Brand*

I. INTRODUCTION

While Las Vegas is now commonly considered the pinnacle of modern American gambling, this has not always been the case.¹ In the late 1970s, Atlantic City, New Jersey, set out to challenge Las Vegas' standing as America's top gambling destination.² The first Atlantic City casino opened in 1978,³ and between 1978 and 1985 the city's casinos generated an average annual revenue growth rate of 55 percent.⁴ By contrast, Las Vegas' first seven years of legalized gambling from 1970 to 1977 only saw an average annual growth rate of 15.6 percent among its casinos.⁵ In 1985, Atlantic City's total gambling revenue was almost fifty percent greater than that of the Las Vegas strip's.⁶ However, modern-day Atlantic City does not hold a candle to Las Vegas when it

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1. James Kilsby, et. al., *State of the States 2018*, AM. GAMBLING ASS'N 17 (2018), https://www.americangaming.org/sites/default/files/AGA%202018%20State%20of%20the%20States%20Report_FINAL.pdf [perma.cc/ZHD7-7J6M]. In 2017, the Las Vegas strip generated \$6.4 billion in revenue. *Id.* The next closest locale, Atlantic City, only generated \$2.4 billion. *Id.*

2. Mark Dent, *Why Atlantic City Never Became the Next Las Vegas, and Went Broke Instead*, BILLYPENN (Jul. 31, 2015, 8:42 AM), <https://billypenn.com/2015/07/31/why-atlantic-city-never-became-the-next-las-vegas-and-went-broke-instead/> [perma.cc/Q8J6-GKVX].

3. *A Brief History of the Casino Control Commission*, N.J. CASINO CONTROL COMM., <https://www.state.nj.us/casinos/about/history/> [perma.cc/NGY7-7CFB].

4. *Atlantic City Gaming Revenue*, CTR. FOR GAMING RES. 1 (Jan. 2019), https://gaming.unlv.edu/reports/ac_hist.pdf [perma.cc/6H3L-ZW3F].

5. Dent, *supra* note 2.

6. In 1985, the total casino revenue in Atlantic City was \$2,138,651,000. *Atlantic City Gaming Revenue*, *supra* note 4, at 2. For the same year, the total casino revenue

comes to gambling revenues. In 2017, the Las Vegas strip brought in almost five times the gambling revenue of Atlantic City.⁷

While there are myriad factors impacting historical trends in gambling revenues across America, this Note will focus specifically on the legal treatment of sports gambling. In 1992, Congress passed the Professional and Amateur Sports Protection Act (“PASPA”),⁸ which banned sports gambling nationwide, with a few exceptions such as Las Vegas.⁹ Under PASPA, all states had a one-year grace period after the statute went into effect where they could legalize sports gambling within their state and escape PASPA’s pending ban.¹⁰ Although New Jersey failed to take advantage of this loophole during the grace period, state legislators attempted to legalize sports gambling twenty years later when voters approved an amendment to the state constitution in 2012.¹¹ After a three-year legal battle with the National Collegiate Athletic Association (“NCAA”) and the National Football League, National Basketball Association, National Hockey League, and Major League Baseball (“the Leagues”), that progressed all the way to the Supreme Court of the United States, New Jersey ultimately lost its initial attempt to legalize sports gambling.¹²

After the failed attempt to legalize sports betting via constitutional amendment, New Jersey tried a different route in 2014 when it repealed provisions of state law that had previously prohibited sports gambling (“2014 Act”).¹³ The opponents from the prior litigation again filed a federal suit challenging the constitutionality of the 2014 Act.¹⁴ After losing at the state and circuit level, New Jersey ultimately prevailed when, in 2018, the Supreme Court determined in *Murphy v. National Collegiate Athletic Association* that PASPA’s ban of sports gambling was unconstitutional because it violated the well-established anti-commandeering doctrine.¹⁵

for the Las Vegas Strip was \$1,459,145,000. *Nevada Gambling Revenues*, CTR. FOR GAMING RES. 3 (Feb. 2019), https://gaming.unlv.edu/reports/NV_1984_present.pdf [perma.cc/SLP8-SZGV].

7. In 2017, the total casino revenue in Atlantic City was \$2,659,014,000. *Atlantic City Gaming Revenue*, *supra* note 4, at 2. For the same year, the total casino revenue for the Las Vegas Strip was \$6,460,473,000. *Nevada Gambling Revenues*, *supra* note 6, at 3.

8. 28 U.S.C. §§ 3701–3704 (2012).

9. § 3702.

10. § 3704.

11. N.J. CONST. art. IV, § 7, ¶ 2.

12. *Christie v. Nat’l Collegiate Athletic Ass’n*, 573 U.S. 391 (2014), *denying cert. to Nat’l Collegiate Athletic Ass’n v. Governor of N.J.*, 730 F.3d 208 (3d Cir. 2013).

13. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1472 (2018).

14. *See generally Nat’l Collegiate Athletic Assn v. Christie*, 61 F. Supp. 3d 488 (D.N.J. 2014).

15. This is the case at hand. *Murphy*, 138 S. Ct. at 1461. The only reason “Christie” became “Murphy” in the case title is because Phil Murphy replaced Chris Christie as governor of New Jersey on January 16, 2018. Dustin Racioppi,

This decision marked only the third time the Court had struck down a state law for violating the anti-commandeering doctrine.¹⁶ While we are still very much in the wake of the *Murphy* ruling, its constitutional implications for other clashes between state and federal law are yet to be determined. Within a few months after the *Murphy* decision, four states joined New Jersey in passing legislation to fully legalize sports gambling, and many other states have since passed limited legalization of certain types of sports gambling.¹⁷ More than a dozen other states have legislation pending to legalize sports gambling in whole or in part.¹⁸ As revenues from legalized sports gambling continue to rise, stakeholders are well entrenched in quibbles over dividing the earnings appropriately. The *Murphy* ruling will undoubtedly go down as a watershed moment in the narrative of American sports gambling, and its implications for federalism, state power, and the Constitution loom just as large.

II. FACTS AND HOLDING

On October 16, 2014, the New Jersey Senate repealed portions of state law prohibiting betting on professional, collegiate, or amateur sporting events in Atlantic City or at horseracing tracks throughout the state.¹⁹ The 2014 Act only repealed gambling restrictions for people twenty-one or older and qualified that the sports activity to which the act applied “shall not include a collegiate sport contest or collegiate athletic event that takes place in New Jersey or . . . in which any New Jersey college team participates regardless of where the event takes place.” Casinos and individuals in Atlantic City or at horseracing tracks in New Jersey were allowed to facilitate and participate in sports betting as long as the betting event took place outside of New Jersey and did not involve the participation of a New Jersey collegiate team.²⁰

Phil Murphy Becomes Governor of New Jersey, Plans New Direction for State, NORTHJERSEY.COM (Jan. 16, 2018), <https://www.northjersey.com/story/news/new-jersey/governor/2018/01/16/phil-murphy-becomes-plans-new-direction-new-jersey/1026568001/> [perma.cc/D2SB-33BL].

16. For the previous two instances where the Court took action under the anti-commandeering doctrine, see *Printz v. United States*, 521 U.S. 898, 935 (1997), and *New York v. United States*, 505 U.S. 144, 188 (1992).

17. After *Murphy* legalized sports gambling in New Jersey, the following states have followed suit with full-scale legalization: Delaware, Mississippi, West Virginia, New Mexico, and Pennsylvania, and Rhode Island. See Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (May 25, 2019), https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization [perma.cc/C46W-PTQ7].

18. *Id.*

19. Matt Friedman, *N.J. Sports Betting Bill Headed to Christie's Desk*, NJ.COM (Oct. 16, 2014), https://www.nj.com/politics/2014/10/nj_sports_betting_bill_headed_to_christies_desk.html#incart_river [perma.cc/36XJ-K6MP].

20. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1472 (2018).

This 2014 Act is the impetus behind the instant case. In response to the 2014 Act, the NCAA and the Leagues collectively filed suit against New Jersey governor Chris Christie in federal court, seeking to invalidate the 2014 Act.²¹ During the four years between the initial lawsuit and the issuance of the opinion at hand, Phil Murphy replaced Chris Christie as the governor of New Jersey.²² Although the party's name changed over time, the instant case is an appeal from the original 2014 suit filed against then-governor Chris Christie in his elected capacity.²³

The Leagues alleged the 2014 Act conflicted with PASPA which, for over twenty years, had outlawed sports betting almost everywhere in America except for a few specialized locations.²⁴ The relevant portion of PASPA made it unlawful for state governments to “authorize . . . betting, gambling, or wagering scheme[s] based . . . on one or more competitive games in which amateur or professional athletes participate.”²⁵ The Leagues focused on the word “authorize” as it appeared in PASPA.²⁶ Citing Black's Law Dictionary, they alleged the word “permit” should fall under the umbrella of the word “authorize” as used in PASPA.²⁷ The logical flow, according to the Leagues, was that the 2014 Act violated PASPA because it “permitted” sports gambling to take place in New Jersey.²⁸

New Jersey countered and urged the Court to read an affirmative act requirement into the word “authorize” as used in PASPA.²⁹ Because the 2014 Act repealed a state statute, New Jersey argued it lacked the affirmative act required to violate PASPA's ban. Also, referencing Black's Law Dictionary, New Jersey asked the court to define “authorize” as “to empower; to give a right or authority to act; to endow with authority.”³⁰ Lastly, it asked the Court to interpret the 2014 Act as a piece of legislation that “empowers a defined

21. Nat'l Collegiate Athletic Ass'n v. Christie, 61 F. Supp. 3d 488, 490–91 (D.N.J. 2014).

22. Dustin Racioppi, *Phil Murphy Becomes Governor of New Jersey, Plans New Direction for State*, NORTHJERSEY.COM (Jan. 16, 2018), <https://www.northjersey.com/story/news/new-jersey/governor/2018/01/16/phil-murphy-becomes-plans-new-direction-new-jersey/1026568001/> [perma.cc/2R8R-26P9].

23. *See generally* Nat'l Collegiate Athletic Ass'n v. Christie 61 F. Supp. 3d 488 (D. N.J. 2014).

24. *Id.* at 495.

25. 28 U.S.C. § 3702 (2012).

26. Brief for Petitioner at 31, *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018) (No. 16-476), 2017 WL 3774488, at *31.

27. *Id.* at 31–32.

28. *Id.* at 32.

29. Brief for Respondent at 2, *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018) (No. 16-476), 2017 WL 4684747, at *2.

30. *Id.* at 39

group of entities, and . . . endows them with the authority to conduct sports gambling operations.”³¹

In addition to disagreeing over the interpretation of the word “authorize,” the litigants disagreed over the extent to which PASPA and the 2014 Act conflicted with the anti-commandeering doctrine.³² New Jersey argued that the 2014 Act should be upheld “in order to avoid any anti-commandeering problem that would arise if [PASPA] were construed to require States to maintain their laws prohibiting sports gambling.” Conversely, the Leagues saw no anti-commandeering problems arising from PASPA’s restrictions against sports gambling legalization.³³

The Court distilled the anti-commandeering doctrine as “the decision to withhold from Congress the power to issue orders directly to the States.”³⁴ Under the dual sovereignty system, both the federal government and individual state governments hold separate powers over specified legal jurisdictions.³⁵ The anti-commandeering doctrine typifies this central tenet of dual-sovereignty: neither the federal government nor an individual state government can attempt to commandeer the other by enacting or enforcing legislation that encroaches beyond each entity’s designated realm of control.³⁶ Effectively, the doctrine prevents either a state or federal government from explicitly commanding the other to act in a specific way.³⁷

The trial court agreed with the petitioners and invalidated the 2014 Act because it was preempted by PASPA.³⁸ Governor Christie, who held office until January 2018, appealed the trial court’s ruling, and a panel of judges for the U.S. Court of Appeals for the Third Circuit affirmed the trial court’s decision in a two to one vote.³⁹ Judge Julio M. Fuentes wrote a dissenting opinion in which he argued the 2014 Act’s partial repeal of laws banning sports betting in New Jersey did not amount to an “authorization by law” sufficient enough to run afoul of PASPA’s comprehensive ban.⁴⁰

The panel ruling was later vacated upon approval of New Jersey’s petition for a rehearing en banc.⁴¹ Upon rehearing, the Third Circuit, en banc, also

31. *Murphy v. Nat’l Collegiate Athletic Assn.*, 138 S. Ct. 1461, 1473 (2018).

32. *Id.*

33. *Id.* at 1475 (internal citations omitted).

34. *Id.*

35. *Id.* (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991)).

36. *Id.* at 1475–76.

37. *Id.*

38. *Nat’l Collegiate Athletic Ass’n v. Christie*, 61 F. Supp. 3d 488, 504 (D.N.J. 2014).

39. *Nat’l Collegiate Athletic Ass’n v. Governor of N.J.*, 799 F.3d 259, 268 (3d Cir. 2015).

40. *Id.* at 270 (Fuentes, J., dissenting).

41. *Nat’l Collegiate Athletic Ass’n v. Governor of N.J.*, 832 F.3d 389, 392 (3d Cir. 2016).

affirmed the trial court with a nine to three vote and held “the 2014 Law violates PASPA because it authorized by law sports gambling.”⁴² The Third Circuit further held that PASPA did not violate the anti-commandeering doctrine because the law “includes no coercive direction by the federal government” that would command or require states to take any affirmative steps.⁴³ Yet again, Judge Fuentes wrote a dissenting opinion, this time joined by Judge Felipe Restrepo, which refuted the assertion that the 2014 Act met the “authorizing by law” requirement of PASPA.⁴⁴ In essence, the dissent argued that repealing a prior law was not tantamount to a wholehearted “authorization” of sports betting in New Jersey. Judge Thomas I. Vanaskie wrote a second dissenting opinion in which he argued PASPA’s core provision that states “maintain an anti-sports wagering scheme” was, in and of itself, a violation of the anti-commandeering doctrine.⁴⁵

The Court granted certiorari and, in a six to three decision, ruled in favor of New Jersey and adopted Judge Vanaskie’s dissent.⁴⁶ Although the Court agreed with the petitioners’ interpretation that the repeal instituted by the 2014 Act constituted an “authorization” of sports betting as articulated in PASPA, it held the entire spirit of PASPA violated the anti-commandeering doctrine.⁴⁷ The Court applied its test for severability to determine which parts, if any, of PASPA it could retain in order to remove any portion of the act that violated the anti-commandeering doctrine. But, because the Court failed to find any severable components of PASPA, it invalidated the statute entirely.⁴⁸ Justice Thomas wrote a concurrence in which he expressed his “growing discomfort with our modern severability precedents” that require judges to attempt to interpret legislative intent.⁴⁹ Additionally, Justices Ginsburg authored a dissent, joined by Justice Sotomayor and joined in part by Justice Breyer, in which she argued that part of PASPA was severable and that the statute could have been revised and retained without running afoul of the anti-commandeering doctrine.⁵⁰

In its entirety, the Court’s holding declared that when a federal statute issues a command regulating the conduct of a state government, the statute violates the anti-commandeering principle and, in accordance with standard severability procedure, all statutory components in violation of this doctrine should be invalidated.⁵¹

42. *Id.* at 396.

43. *Id.* at 402.

44. *Id.* at 403 (Fuentes, J., dissenting).

45. *Id.* at 406–07 (Vanaskie, J., dissenting).

46. *Murphy v. Nat’l Collegiate Athletic Assn.*, 138 S. Ct. 1461, 1468 (2018).

47. *Id.* at 1481.

48. *Id.* at 1484.

49. *Id.* at 1485 (Thomas, J., dissenting).

50. *Id.* at 1490 (Ginsburg, J., dissenting).

51. *Id.* at 1481–84.

III. LEGAL BACKGROUND

The legislative and litigation history leading up to *Murphy* is quite complex. Exploring the groundswell that led to PASPA's initial ban against sports betting helps explain the strong opposition to New Jersey's attempt to repeal the ban. Furthermore, a timeline and summary of the extended legal battle behind the 2014 Act further fleshes out the decision ultimately reached by the Court.

A. Sports Gambling Legislation Timeline

States started passing legislation banning gambling in the nineteenth century, and by 1900, gambling of all kinds was largely banned throughout the country.⁵² New Jersey adopted a constitutional amendment in 1897 that banned all gambling within the state.⁵³ However, starting in the 1920s and 1930s, states across the country began to gradually loosen gambling restrictions.⁵⁴ New Jersey started allowing betting on horse races during the Depression era, began allowing churches and nonprofits to host bingo games in the 1950s, and instituted a state-run lottery in 1970.⁵⁵

However, as it gradually loosened its ban on gambling, New Jersey, like every other state besides Nevada, still did not allow casinos to operate as legal gambling institutions. Although a 1974 statewide referendum to legalize casino gambling across New Jersey failed,⁵⁶ just two years later, New Jersey voters approved a stricter referendum that allowed casino gambling only in Atlantic City.⁵⁷ Consequently, in 1976, Atlantic City joined Las Vegas as one of the only locations in America with legal casinos. Yet, even in Atlantic City's casinos, sports gambling was still banned because of fears surrounding its addic-

52. See generally Virgil W. Peterson, *History of Legalized Gambling in the United States*, in *GAMBLING: SHOULD IT BE LEGALIZED* 46–75 (1951).

53. See *Atl. City Racing Ass'n v. Att'y Gen.*, 489 A.2d 165, 167–68 (N.J. 1985).

54. *Murphy*, 138 S. Ct. at 1468–69.

55. N.J. STAT. ANN. § 5:9–1 (West 2019); Jay M. Gutierrez, *The Casino Act: Gambling's Past and the Casino Act's Future*, 10 RUTGERS-CAMDEN L.J. 279, 287–88 (1979); N.J. CONST., art. 4, § 7, ¶ 2.

56. Gutierrez, *supra* note 55, at 289.

57. *Id.*; N.J. CONST., art. 4 § 7, ¶ 2.

tive nature for gamblers and its possibility of influencing the behavior of athletes.⁵⁸ In addition to professional sports leagues, the NCAA especially opposed legalizing sports gambling because of the potential for corruption and bribery among its amateur athletes.⁵⁹

To quash the momentum surrounding sports gambling in the late twentieth century, New Jersey Senator Bill Bradley, a former collegiate and professional basketball player, pushed PASPA through Congress in 1992.⁶⁰ PASPA made it unlawful for a person, state, or other governmental entity “to sponsor, operate, advertise, promote, license, or authorize . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on competitive sporting events.”⁶¹ PASPA did not criminalize sports gambling; rather, it gave the attorney general and the Leagues themselves the ability to bring civil actions against people or organizations that violated the ban against sports gambling.⁶²

When Congress enacted PASPA in 1992, it included a grandfather provision allowing the few jurisdictions that had previously legalized sports gambling, like Nevada, to continue their operations.⁶³ PASPA also allowed a one-year grace period for states to legalize sports gambling on their own before the ban became permanent.⁶⁴ New Jersey did not take advantage of this one-year provision then, but later passed legislation that legalized sports gambling in 2012 – a full twenty years after PASPA took effect.⁶⁵

58. *Murphy*, 138 U.S. at 1469–70; see also Sean Crawford, *You Think You Know the Story of the 1919 Black Sox? Think Again*, NPR ILL. (Mar. 27, 2019), <https://www.nprillinois.org/post/you-know-story-1919-black-sox-think-again#stream/0> [perma.cc/B7E2-PR7T]; Albert J. Figone, *Gambling and College Basketball: The Scandal of 1951*, 16 J. OF SPORT HIST. 44 (1989) (detailing the convictions of several college basketball players in the 1950s for accepting bribes to shave points during games).

59. *Prohibiting State-Sanctioned Sports Gambling: Hearing Before the Subcomm. on Patents, Copyrights, and Trademarks of the Comm. on the Judiciary*, 102d Cong. 21, 39, 46–47, 59–60, 227 (1991) (statements by representatives of major sports leagues opposing sports gambling).

60. Dave Zirin, “*Athletes Aren’t Roulette Chips: Bill Bradley Speaks Out on Gambling in Sports*,” THE NATION (June 12, 2018), <https://www.thenation.com/article/athletes-arent-roulette-chips-bill-bradley-speaks-gambling-sports/> [perma.cc/NB6Y-8TSN].

61. 28 U.S.C. § 3702 (2012).

62. *Murphy*, 138 S. Ct. at 1465

63. § 3704(a).

64. *Id.*

65. Matt Friedman, *Gov. Christie Signs Bill Allowing Gamblers to Place Bets on Pro, College Sports Teams*, NJ.COM (Jan. 17, 2012), https://www.nj.com/news/2012/01/gov_christie_signs_bill_allow_4.html [perma.cc/D7QT-M6DZ].

B. *Christie I*

After voters approved a 2011 state constitutional amendment that made it lawful for the state legislature to authorize sports gambling,⁶⁶ the New Jersey legislature enacted a law in 2012 that legalized sports gambling in the state (“2012 Act”).⁶⁷ In response to the 2012 Act, the NCAA and the Leagues filed a federal suit against New Jersey governor Chris Christie and two other state gaming executives in the District Court of New Jersey.⁶⁸ The plaintiffs sought to enforce PASPA’s ban against states’ authorization of sports betting, whereas the defendants argued PASPA violated the Commerce Clause, the Tenth Amendment, the due process clause, equal protection principles, the anti-commandeering doctrine, and the equal footing doctrine.⁶⁹ While the court acknowledged that some of the defendant’s qualms with PASPA were “novel,” it ruled in favor of the plaintiffs and held that “to the extent the people of New Jersey disagree with PASPA, their remedy is not through the passage of a state law or through the judiciary, but through the repeal or amendment of PASPA in Congress.”⁷⁰

Upon New Jersey’s appeal, the Third Circuit affirmed the District Court’s judgment in favor of the Leagues.⁷¹ The Third Circuit acknowledged the nuances posed by the anti-commandeering doctrine violations asserted by New Jersey but declined to rule in favor of the 2012 Law because “doing so would result in an undue expansion of the anti-commandeering doctrine.”⁷² Judge Vanaskie wrote a dissenting opinion in which he argued PASPA violated the anti-commandeering doctrine because it “regulate[s] state governments’ regulation” of sports gambling protocol within New Jersey.⁷³

After losing at the circuit level, New Jersey petitioned the Supreme Court for a writ of certiorari to rule on the anti-commandeering doctrine issues acknowledged by the Third Circuit, but the Court denied review.⁷⁴ However, the United States intervened and wrote a brief opposing certiorari in which it argued, “PASPA does not even obligate New Jersey to leave in place the state-law prohibitions against sports gambling that it had chosen to adopt prior to

66. N.J. CONST., art. IV, § 7, ¶ 2.

67. Friedman, *supra* note 65.

68. Nat’l Collegiate Athletic Ass’n v. Christie, 926 F. Supp. 2d 551, 553 (D.N.J. 2013).

69. *Id.* at 554.

70. *Id.* at 555.

71. Nat’l Collegiate Athletic Ass’n v. Governor of N.J., 730 F.3d 208, 240–41 (3d Cir. 2013).

72. *Id.* at 237.

73. *Id.* at 251 (Vanaskie, J., dissenting) (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)).

74. *Christie v. Nat’l Collegiate Athletic Ass’n*, 573 U.S. 931 (2014).

PASPA's enactment. To the contrary, New Jersey is free to repeal those prohibitions in whole or in part."⁷⁵

In response to the advice given by the United States' brief, the New Jersey Legislature enacted the 2014 Act. Unlike the 2012 Law, which affirmatively legalized gambling, the 2014 Act repealed prior provisions of New Jersey state law that prohibited sports gambling within the state.⁷⁶ The 2014 Act specifically stated it was not intended to violate PASPA – it simply repealed New Jersey's own ban against gambling on sporting events not involving a New Jersey collegiate team or a collegiate sporting event taking place in New Jersey.⁷⁷ The 2014 Act further specified it only repealed sports gambling bans for people twenty-one or over who attempted to gamble at horseracing tracks or casinos in Atlantic City.⁷⁸ While the 2012 Law affirmatively legalized sports gambling in New Jersey, the 2014 Act effectively allowed sports gambling by removing the prior restrictions.⁷⁹ Although the end is basically the same, the sticky legal issues surrounding this case presented plenty of opportunities to distinguish New Jersey's 2014 attempt to legalize sports gambling from the failed 2012 attempt. The lawsuit over the 2014 attempt eventually reached the Court in 2018.

C. Anti-Commandeering Doctrine

New Jersey's main argument for upholding the 2014 Act was that PASPA's command against states' authorization of sports gambling violated the anti-commandeering doctrine.⁸⁰ Although this doctrine stems from the Constitution, it has been developed and elucidated by common law.⁸¹ While the Constitution enumerates certain powers that Congress has over the states, the Tenth Amendment reserves all legislative power not enumerated in the Constitution for the states.⁸² Absent from the enumerated Constitutional powers is the ability for Congress to issue direct orders to state governments. This

75. Brief for United States in Opposition at 11, *Christie v. Nat'l Collegiate Athletic Ass'n*, 573 U.S. 931 (2014) (No. 13-967), 2014 WL 1989100, at *11; *see also* Brief in Opposition at 23 *Christie v. Nat'l Collegiate Athletic Ass'n*, 573 U.S. 931 (2014) (No. 13-967), 2014 WL 1989124, at *23 (stating, "Nothing in that unambiguous language compels states to prohibit or maintain any existing prohibition on sports gambling.").

76. S.B. 2460, 216 Leg. (N.J. 2014) [hereinafter 2014 Act].

77. *Id.*

78. *Id.*

79. *Id.*

80. *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 730 F.3d 208, 215 (3d Cir. 2013).

81. *Id.* at 227–32.

82. U.S. CONST. amend. X.

absence undergirds the anti-commandeering doctrine.⁸³ Prior to *Murphy*, the Court had only twice utilized the anti-commandeering doctrine to strike down federal statutes.⁸⁴

The 1992 case, *New York v. United States*, involved the Low-Level Radioactive Waste Policy Amendments Act of 1985.⁸⁵ In an effort to combat the growing problem of collecting and disposing of radioactive waste, the Act forced specified states to either take title to radioactive waste or regulate the treatment of the waste in accordance with Congressional instruction.⁸⁶ After much explanation of the Tenth Amendment and the federalist division of state and national power as designed by the drafters of the Constitution, the Court invalidated the federal law because it compelled the states to enact or administer the federal regulatory program.⁸⁷ The Court clarified that the key issue was that the Act “enable[d] Congress to command a state government to enact *state* regulation.”⁸⁸ The Court did not dispute Congress’ ability to regulate radioactive waste removal, but, because the regulation subjected states to the regulatory whims of a federal principal, the Act was deemed unconstitutional.⁸⁹

Five years later, in *Printz v. United States*, the Court again invalidated a federal law that violated the anti-commandeering doctrine.⁹⁰ The law at issue in *Printz* was the 1993 Brady Handgun Violence Prevention Act which “command[ed] state and local law enforcement officers to conduct background checks on prospective handgun purchasers and to perform certain related tasks” when transferring ownership of handguns from dealers to buyers.⁹¹ The Court held the law in *Printz* violated the anti-commandeering doctrine because it “command[ed] the States’ officers . . . to administer or enforce a federal regulatory program.”⁹² The Court in *Printz* wrote that the anti-commandeering doctrine was important because it served as “one of the Constitution’s structural protections of liberty,” that states’ regulatory authority cannot be subject to

83. *Id.*; see also *Reno v. Condon*, 528 U.S. 141, 149 (2000) (quoting *New York v. United States*, 505 U.S. 144, 162 (1992) (“While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the states to govern according to Congress’ instructions.”)).

84. *Nat’l Collegiate Athletic Ass’n*, 730 F.3d at 215.

85. *New York v. United States*, 505 U.S. 144, 149 (1992).

86. *Id.* at 151–54.

87. *Id.* at 188.

88. *Id.* at 178.

89. *Id.* (“Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.”).

90. 521 U.S. 898, 933 (1997).

91. *Id.* at 902–03.

92. *Id.* at 935.

federal control.⁹³ In *Printz*, the Court decided that if Congress wanted to regulate handgun registration procedures, it could not do so by compelling state governments to enforce federal policy.⁹⁴

D. Severability Procedure

When a court determines that all or part of a federal statute is unconstitutional, it must go through a severability process to determine whether to invalidate the statute in its entirety or remove only specific components of the statute and leave the remaining statutory authority intact.⁹⁵ Over the years, the Court has created a series of steps and considerations to guide lower courts through the severability process.

In *Regan v. Time, Inc.*, the Court considered the constitutionality of a statute that barred magazines from reprinting images of United States currency.⁹⁶ Although the Court determined the statute was unconstitutional because it abridged free press rights afforded to magazines by the First Amendment, the Court still had to determine how to handle the statute at issue.⁹⁷ The *Regan* Court decided that when reviewing statutes with unconstitutional components, the Court should “refrain from invalidating more of the statute than is necessary” to effect legal compliance within the statute.⁹⁸ In *Regan*, the Court revised the statute to keep its legislative intent intact but removed the unconstitutional components.⁹⁹ In fact, courts are required to retain portions of a statute that are constitutionally valid,¹⁰⁰ capable of functioning independently,¹⁰¹ and consistent with Congress’ original intent.¹⁰² This third parameter sometimes presents a challenging task that Justice Thomas has criticized for asking courts to make “a nebulous inquiry into hypothetical congressional intent.”¹⁰³

IV. INSTANT DECISION

Ultimately, the Court in *Murphy* struck down all of PASPA because it violated the anti-commandeering doctrine, finding no part of the statute was severable.¹⁰⁴ Because PASPA prevented states from sponsoring, operating,

93. *Id.* at 921.

94. *Id.* at 935.

95. *See, e.g.*, *New York v. United States*, 505 U.S. 144, 186–87 (1992).

96. 468 U.S. 641, 647–48 (1984).

97. *Id.* at 641–42.

98. *Id.* at 652.

99. *Id.* at 652–59.

100. *Id.* at 652–53.

101. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987).

102. *Regan*, 468 U.S. at 653.

103. *United States v. Booker*, 543 U.S. 220, 320 n. 7 (2005) (Thomas, J., dissenting in part).

104. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 135 S. Ct. 1461, 1484 (2018).

advertising, promoting, licensing, or authorizing sports gambling, the Court determined that “state legislatures [were] put under the direct control of Congress[ional]” instruction, which violated the anti-commandeering doctrine.¹⁰⁵

The United States attempted to distinguish PASPA from previous anti-commandeering cases by highlighting the statute’s converse nature. While the statutes at issue in *New York* and *Printz* were affirmative commands from Congress that states must assist in regulatory efforts, PASPA was a Congressional command that states *refrain* from legalizing sports gambling.¹⁰⁶ However, the Court determined “this distinction [was] empty. It was a matter of happenstance that the laws challenged in *New York* and *Printz* commanded ‘affirmative’ action as opposed to imposing a prohibition. The basic principle – that Congress cannot issue direct orders to state legislatures – applies in either event.”¹⁰⁷

The Court did not sever any component of PASPA that could remain lawful; it invalidated PASPA entirely.¹⁰⁸ The Court considered each distinct activity that PASPA forbade regarding sports gambling – sponsoring, operating, advertising, promoting, licensing, or authorizing – and determined that each of these commands equally violated the anti-commandeering doctrine.¹⁰⁹ In aggregation of each violation, the Court declared the entire statute unconstitutional.¹¹⁰

Justice Thomas agreed with the decision to invalidate all of PASPA but wrote a separate concurrence in which he “expressed growing discomfort” with the Court’s severability procedure.¹¹¹ Thomas’ concurrence contains two main critiques of the procedure. First, he argued the severability procedure “does not follow basic principles of statutory interpretation” because it requires courts to make subjective guesses at legislative intent.¹¹² “Without any actual evidence of [congressional] intent,” Thomas argued, “the severability doctrine invites courts to rely on their own views about what the best statute would be.”¹¹³ Thomas claimed this guessing game invites judges to impart their own subjective desires rather than adhere to traditional judicial norms of objective statutory interpretation.¹¹⁴

Second, Justice Thomas fears that modern severability procedure often violates traditional norms of legal standing.¹¹⁵ Because modern severability procedure asks courts to evaluate an entire statute when the case at hand may

105. *Id.* at 1478.

106. *Id.* at 1481–82.

107. *Id.* at 1478.

108. *Id.* at 1484.

109. *Id.* at 1481–84.

110. *Id.*

111. *Id.* at 1484 (Thomas, J., concurring).

112. *Id.* at 1486.

113. *Id.* at 1487.

114. *Id.*

115. *Id.*

only confront subsections, Justice Thomas cautioned that the procedure “bring[s] courts dangerously close to issuing advisory opinions.”¹¹⁶ Justice Thomas called the severability doctrine “an unexplained exception to the normal rules of standing” because it allows courts to evaluate an entire statute when the case before it may only interact with specific statutory components.¹¹⁷

Justice Ginsburg wrote a dissenting opinion, joined by Justice Sotomayor and joined in part by Justice Breyer, which also critiqued the severability procedure as displayed by the majority opinion.¹¹⁸ The dissent took issue with the decision to invalidate all of PASPA and allow states to legalize sports gambling because this was clearly contrary to PASPA’s original intent.¹¹⁹ The dissenting justices did not dispute that Congress maintained the power to regulate sports gambling nationwide.¹²⁰ Neither did they dispute that *some* of the methods used in PASPA violated the anti-commandeering doctrine.¹²¹ However, the dissenters asked to strike only the PASPA provisions against “authorizing” and “licensing” sports gambling schemes because they argued only those actions indicated direct commands to states.¹²² With this narrowed revision, PASPA would still ban states and private parties from “sponsoring, operating, advertising, or promoting” sports gambling, which, the dissent argued, would not violate anti-commandeering principles.¹²³ The dissent’s main critique was that “the Court wield[ed] an ax to cut down [PASPA] instead of using a scalpel to trim the statute.”¹²⁴

V. COMMENT

As we are still in a nascent state of widespread legalization of sports gambling, many of the repercussions from *Murphy* have not yet been realized. However, the ruling will undoubtedly yield development in two massive spheres of impact. From a legal standpoint, the expansion of the anti-commandeering doctrine and challenges to severability procedure could prompt legislative changes or further statutory challenges. From an economic standpoint, repealing the federal ban against sports gambling opens the floodgates to massive amounts of new revenue streams. There are plenty of stakeholders in this post-PASPA society, and various factions throughout the country will scrutinize, condemn, applaud, or attempt to expand the Court’s decision in *Murphy*.

116. *Id.*

117. *Id.*

118. *Id.* at 1488 (Ginsburg, J., dissenting).

119. *Id.* at 1490.

120. *Id.* at 1489.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 1490.

A. Legal Significance

Murphy represents only the third time the Court has utilized the anti-commandeering doctrine to invalidate a federal law.¹²⁵ This decision will have a tremendous impact on future confrontations between state and federal law because it adds teeth to looming threats posed by the anti-commandeering doctrine.¹²⁶ However, as the concurring and dissenting opinion articulate, the real lasting legal significance of the majority opinion in *Murphy* may likely be its implications on severability procedure. Hopefully, this case will prompt a long-overdue revision of the Court's antiquated and unusual severability process that calls into question traditional judicial norms of standing and objective statutory interpretation and application.

As Justice Thomas' concurrence argued, standard severability procedure allows the Court to evaluate an entire statute when a case at hand may challenge only specific statutory sections.¹²⁷ This step in the severability process is a product of federal common law.¹²⁸ Perhaps the theory is one of providence: if the Court must edit and revise one section of a statute, it might as well examine the whole law to preempt future challenges. While this practice raises questions as to a court's standing, federal common law has created a version of supplemental standing when it comes to severability procedures.¹²⁹ Under this regime, even when faced with a limited attack on a distinct segment of a statute, the Court reviews the entire statute as a whole.

While the modified standing position affiliated with severability procedure is a logical solution to the problems at hand, the critiques espoused by Justice Thomas' concurrence and Justices Ginsburg's dissent also warrant careful consideration. If the Court is going to have such broad editorial power, it needs to be more prudent. In this instance, when the Court reviews entire

125. *Id.* at 1471; *New York v. United States*, 505 U.S. 144 (1992); *Printz v. United States*, 521 U.S. 898 (1997).

126. For example, interested parties have already wondered how *Murphy*'s ruling could be applied to other pending federalism issues such as the ongoing disagreement over sanctuary cities amidst Congressional immigration policies and gun control reform initiatives. See, Ilya Somin, *Federalism Comes Out as the Winner in Murphy v. Nat'l Collegiate Athletic Ass'n*, THE REGULATORY REV. (July 10, 2018), <https://www.theregreview.org/2018/07/10/somin-federalism-comes-out-winner-murphy-v-ncaa/> [perma.cc/Q668-5RW5]; see also, Cory D. Lapin, *The Potentially Far-Reaching Implications of Murphy v. Nat'l Collegiate Athletic Ass'n Outside of Sports Betting*, DEFENSE LITIG. INSIDER (May 30, 2018), <https://www.defenselitigationinsider.com/2018/05/30/the-potentially-far-reaching-implications-of-murphy-v-ncaa-outside-of-sports-betting/> [perma.cc/Z5SY-J89X].

127. *Murphy*, 138 S. Ct. at 1486 (Thomas, J., concurring).

128. See, e.g., Erik R. Zimmerman, *Supplemental Standing for Severability*, 109 NW. U. L. REV. 285 (2015).

129. *Id.* Note the confusion and tension highlighted in the article between supplemental standing as implicitly displayed by common law and as explicitly explained by the Court itself.

statutes even though litigants only challenge specific parts, an optimal editorial process requires the Court to revise the statute while keeping congressional intent in mind. PASPA's obvious intent was to implement a nationwide ban on sports gambling. However, as the majority in *Murphy* articulated, the ban imposed by PASPA violated the anti-commandeering doctrine because it commanded states to regulate sports gambling rather than institute the ban at the federal level.¹³⁰ Congress did not lack the ability to ban sports gambling; it simply violated the Constitution in its attempt to do so with PASPA.¹³¹ Surely, as the dissent argues, the Court in *Murphy* could have revised PASPA while still "accomplish[ing] just what Congress legitimately sought to achieve: stopping sports-gambling regimes while making it clear that the stoppage is attributable to federal, not state, action."¹³² If we retain the supplemental standing regime that has been read into the severability process, the Court needs to do a better job of aligning its statutory revision with obvious legislative intent.

A cornerstone rule in severability procedure is that the Court "cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole."¹³³ As the dissent in *Murphy* argues, the end result of the Court's severability process is sometimes obviously at odds with legislative intent.¹³⁴ To avoid this potential problem, Congress could play a more active role in the severability process in order to assure legislative intent is properly followed.¹³⁵ Such a regime was explored in Mr. Robert L. Nightingale's article, "How to Trim a Christmas Tree: Beyond Severability and Inseparability for Omnibus Statutes."¹³⁶ Mr. Nightingale explored the possibility of a collaborative effort between the Court and Congress to redraft unconstitutional statutes, rather than dismantle them completely.

Mr. Nightingale's scenario essentially adds a grace period under which Congress can redraft statutes the Court has declared unconstitutional.¹³⁷ As long as legislators produce a new statute before the end of the grace period, the old statute gets amended rather than dismantled and replaced.¹³⁸ While Mr. Nightingale's hypothetical situation might better achieve the demonstrated goal of severability reform – that bad statutes get rewritten rather than rejected – enacting such a regime where the federal judicial and legislative branches work so closely together invites a dangerous slippery slope argument about the

130. *Murphy*, 138 S. Ct. at 1484–85.

131. *Id.*

132. *Id.* at 1490 (Ginsburg, J., dissenting).

133. *R.R. Ret. Bd. v. Alton R.R. Co.* 295 U.S. 330, 362 (1935).

134. *Murphy*, 138 S. Ct. at 1490 (Ginsburg, J., dissenting).

135. *Id.*

136. Robert L. Nightingale, *How to Trim a Christmas Tree: Beyond Severability and Inseparability for Omnibus Statutes*, 125 YALE L.J. 1672 (2016) (exploring the possibility of a collaborative effort between the Court and Congress to redraft unconstitutional statutes rather than dismantle them completely).

137. *Id.* at 1680.

138. *Id.* at 1725–26.

division of powers doctrine that would likely cause many Founding Fathers to turn over in their graves. The Court does not issue advisory opinions on statutes still in the drafting process; it only hears cases regarding statutes already enacted by Congress.¹³⁹

Whether Congress and the Court will collaborate on severability issues remains to be seen, but the current process of severability procedure asks the Court to contradict traditional notions of separation of powers and judicial independence. Courts should apply laws – not revise them. The Court needs to redefine severability procedure so that judges do not have to make “a nebulous inquiry into hypothetical congressional intent” when they attempt to refine unconstitutional statutes.¹⁴⁰ Justice Thomas’ concurrence aptly focuses on a significant legal ramification of *Murphy* that demands further revision.¹⁴¹

B. Economic Significance

The economic implications of expanded legalization of sports gambling are nothing short of enormous. In 2017, the last year before sports gambling became legalized in any other state, Nevada set a new record with \$248.8 million in sports gambling revenue.¹⁴² Since the *Murphy* ruling came down in May 2018, New Mexico, Mississippi, West Virginia, and Delaware joined Nevada and New Jersey in passing legislation that legalized sports gambling at casinos and racetracks within the state.¹⁴³ Three other states are in the process of passing bills that will legalize sports gambling, and fifteen more have already introduced bills attempting to do so.¹⁴⁴ Unless something abruptly changes, widespread legalization of sports gambling appears imminent.

New Jersey generated \$3.5 million in sports gambling revenue in just the first seventeen days after legalization.¹⁴⁵ New Jersey sports gambling revenues have also started to skyrocket since the NFL, NBA, and NHL seasons began in the fall of 2018.¹⁴⁶ The month of August saw just over \$6 million in revenue

139. See e.g., *Muskrat v. United States*, 219 U.S. 346, 354–55 (1911).

140. *United States v. Booker*, 543 U.S. 220, 320 (2005). (Thomas, J., dissenting in part).

141. *Murphy*, 138 S. Ct. at 1485–87.

142. Dustin Gouker, *Nevada Sportsbooks Set Record with a Quarter of a Billion Dollars of Revenue in 2017*, LEGAL SPORTS REP. (Jan. 31, 2018, 9:44 AM), <https://www.legalsportsreport.com/18130/nevada-sportsbooks-2017/> [perma.cc/3PY7-XSBR].

143. Rodenberg, *supra* note 17.

144. *Id.*

145. Eric Ramsey, *The First Month of New Jersey Sports Betting: \$16 Million in Wagers, \$3.5 Million in Revenue*, LEGAL SPORTS REP. (July 12, 2018, 12:49 PM), <https://www.legalsportsreport.com/21931/new-jersey-sports-betting-revenue-june-2018/> [perma.cc/KBF6-AY5M].

146. *New Jersey Sports Betting Revenues*, PLAY NJ (June 12, 2019), <https://www.playnj.com/sports-betting/revenue/> [perma.cc/LX9P-D7MU].

generation, and that number almost doubled to \$11.5 million in September.¹⁴⁷ As of October 2018, New Jersey sports gambling generated over \$40 million in revenue in just the first five months after *Murphy*.¹⁴⁸ Based on factors such as high concentrations of wealth, close proximity to New York City, and the growth of online gambling platforms, some wonder if New Jersey will soon eclipse Nevada's stranglehold as the leading gambling market nationwide.¹⁴⁹ However, New Jersey has a long way to go – Nevada sports books hauled in a new single-month record of \$56.3 million in sports gambling revenues in September, almost five times New Jersey's reported figure.¹⁵⁰

The Court's ruling in *Murphy* catalyzed a jolt in sports gambling nationwide. What was previously an illegal activity outside Nevada is now regulated and taxed like any other industry. Although others have much higher expectations, New Jersey Treasurer Elizabeth Muoio expects sports gambling to generate \$13 million in state tax revenue in the first year based on an eight to twelve percent tax rate on casinos.¹⁵¹ By comparison, Nevada drew \$17 million in state tax revenue in 2017 with a 6.75% tax rate on casinos.¹⁵² Most states have between 7–15% tax rates on casinos, but some, like Pennsylvania, plan to tax sports gambling at rates as high as 36%.¹⁵³

While state governments are excited about the potential tax revenues associated with legalized sports gambling, other stakeholders are afraid of missing the party. The NCAA and the Leagues are clamoring to reach deals with states and casinos to guarantee a fair share of the profits generated by their

147. *Id.*

148. *Id.*

149. Roger Aitken, *U.S. Sports Betting Market: Could New Jersey Eclipse Nevada to Become No. 1?*, FORBES (Aug. 12, 2018, 2:49pm), <https://www.forbes.com/sites/rogeraitken/2018/08/12/u-s-sports-betting-market-could-new-jersey-eclipse-nevada-to-become-no-1/#4801238527ca> [perma.cc/PA3K-83KN]; Howard Stutz, *Prediction: New Jersey Sports Betting Revenues to Exceed Nevada by 2021*, CDC GAMING REP. (Sept. 10, 2018, 12:21 AM), <https://www.cdcgamingreports.com/prediction-new-jersey-sports-betting-revenues-to-exceed-nevada-by-2021/> [perma.cc/HR2Y-SAEL]; Samantha Marcus, *N.J. Sports Betting Could Overtake Nevada by 2021*, NJ.COM (Sept. 5, 2018), https://www.nj.com/politics/index.ssf/2018/09/nj_sports_betting_could_overtake_nevada_by_2021.html [perma.cc/T4P5-3CCH].

150. David Purdum, *Nevada Sportsbooks Have Record September*, ESPN (Oct. 30, 2018, 11:12 AM) http://www.espn.com/chalk/story/_/id/25126270/nevada-sportsbooks-record-september [perma.cc/7PC3-29V3].

151. Brent Johnson, *This Is How Much Money Sports Betting is Expected to Bring N.J.*, NJ.COM (May 21, 2018), https://www.nj.com/politics/index.ssf/2018/05/this_is_how_much_money_sports_betting_is_expected.html [perma.cc/5TX9-GG5D].

152. *Id.*

153. Eric Ramsey, *Let's Talk About PA's Insanely High Sports Betting Tax*, PLAY PENN. (May 25, 2018), <https://www.playpennsylvania.com/pa-sports-betting-tax-high/> [perma.cc/27DT-ZEBT].

teams.¹⁵⁴ However, states are already pushing back against calls to share proceeds from legalized sports gambling.¹⁵⁵ For example, New Jersey State Senator Steve Sweeney spoke out against the idea of states forming profit sharing arrangements with sports leagues out of the fear that doing so would taint the purity of the associated athletes, teams, and leagues.¹⁵⁶ Expanded legalization of sports betting will certainly generate massive amounts of revenue, and plenty of potential of stakeholders will continue to squabble over fair divisions of fees. Significant negotiation, litigation, and regulation lie ahead in the near future.

VI. CONCLUSION

The Court's ruling in *Murphy* ended a six-year legal battle between New Jersey and the federal government to legalize sports gambling at the state level. The aftermath of *Murphy* is just beginning and will persist long into the future, as major legal and economic issues will continue to be debated. From a legal perspective, *Murphy* was only the third time the Supreme Court has struck down a federal law using the anti-commandeering doctrine. Yet, in doing so, the majority opinion stoked the fire for the movement to revise the severability process and curtail the lawmaking power of the judicial branch. From an economic standpoint, *Murphy* is a watershed moment. The sports gambling industry has enormous potential, and, prior to *Murphy*, it was strictly concentrated in Nevada. In opening the door for wider legalization of sports gambling, *Murphy* provides Americans with broader access to sports gambling and bountiful new revenue streams for states. The pie is plenty large, but the process of divvying up the pieces to hungry stakeholders is only just beginning.

154. See John Wolohan, *The Potential Impact of the Murphy v. NCAA Decision on Sports Betting in the United States*, L. IN SPORT (May 31, 2018), <https://www.lawinsport.com/topics/articles/item/the-potential-impact-of-the-murphy-v-ncaa-decision-on-sports-betting-in-the-united-states#sdfootnote28sym> [perma.cc/EK3N-V2TN].

155. See Ryan Hutchins, *New Jersey's Top Lawmaker Calls on States to Reject Sports Betting 'Integrity Fees'*, POLITICO (May 23, 2018, 6:51 PM), <https://www.politico.com/states/new-jersey/story/2018/05/23/new-jerseys-top-lawmaker-calls-on-states-to-reject-sports-betting-integrity-fees-435282> [perma.cc/BNV4-EFXZ].

156. *Id.*

