Insights: Alerts

U.S. Supreme Court Opens Door to Sports Betting

MAY 15, 2018

Yesterday, in a watershed decision, the United States Supreme Court struck down a federal law – the Professional and Amateur Sports Protection Act ("PASPA"), 28 U.S.C. § 3701 *et seq.* – which governed gambling on sports nationwide. The net effect of the ruling in *Murphy v. the National Collegiate Athletic Association*, is to permit each state to determine whether and to what extent it will allow sports betting in that state. For tribes, this decision offers both potential opportunities and challenges.

Justice Samuel Alito, writing for the Court, concluded that PASPA violates the constitutional "anti-commandeering principle." The anti-commandeering principle, as the Court explained, prevents Congress from issuing "direct orders to the governments of the States" because the "Constitution confers on Congress … only certain enumerated powers" and "all other legislative power is reserved for the States" as provided for in the Tenth Amendment. PASPA was enacted in 1992 to combat the potential negative effects of sports gambling, but provided exceptions for a small number of states. PASPA essentially, in the Court's words, prohibited state legislatures from authorizing sports gambling. PASPA did not make sports gambling a federal crime (which Congress arguably could have done), but allowed the Attorney General and sports organizations to bring civil actions to enjoin violations of the statute.

While PASPA allowed the State of New Jersey to legalize sports gambling within one year from the date of enactment, New Jersey did not act until 2012. In response, the NCAA and others filed suit against New Jersey to enjoin the State's new law claiming that it violated *New York v. United States*, 505 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997) — the Supreme Court's seminal decisions on anti-commandeering principle — the State argued that "PASPA unconstitutionally infringed the State's sovereign authority to end its sports gambling ban." Initially, the NCAA prevailed in the first round of litigation. However, in 2014, New Jersey changed tactics. Rather than directly authorizing sports gambling, the State repealed, in part, the State's sports gambling ban which essentially legalized sports gambling to occur in certain instances. The lower courts issued an injunction against the State, but the Supreme Court granted certiorari and reversed. The Supreme Court recognized that the "legalization of sports gambling is a controversial subject" that requires an "important policy choice," but also recognized that "the choice is not ours to make." What the Court could and would determine is that PASPA unconstitutionally "commandeers" states' authority to regulate sports gambling because it "unequivocally dictates what a state legislature may and may not do."

The American Gaming Association estimates that at least $150 billion a year is gambled on sports in the United States. Precisely how this decision will be implemented by each state will necessarily provide both opportunities and challenges for Indian Tribes. On the one hand, there is the potential that tribes

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