

Wisconsin Institute of Law & Liberty: Supreme Court rules Congress can't require states to prohibit sports betting

Posted on Monday, May 14, 2018

>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)

Cameron Sholty | WILL Communications Director
cameron@will-law.org | 414-727-7416 | 262-409-9816

Adopts anti-commandeering argument advanced by WILL in amicus brief

Milwaukee – In an opinion released Monday morning, the United States Supreme Court struck down a federal law prohibiting states from authorizing sports gambling. In finding that the law unconstitutionally commandeered the operation of state legislatures, the Court adopted reasoning advanced in an amicus brief filed by the Wisconsin Institute for Law & Liberty, the Cato Institute, the Competitive Enterprise Institute, and the Pacific Legal Foundation.

"This is a victory for competitive federalism," said Rick Esenberg, President and General Counsel of WILL. "The founders envisioned a system where States were beholden to the Constitution, but could not be hijacked by Congress to enact policies the federal government has no authority to enact itself." Passed in 1992, the Professional and Amateur Sports Protection Act made it illegal for any state (except Nevada, which was grandfathered) to "sponsor, operate, advertise, promote, license, or authorize by law or compact" any form of gambling on competitive sporting events. New Jersey partially repealed its prohibitions on sports betting in 2014, prompting the NCAA and three professional sports leagues to challenge the law.

After New Jersey repealed certain of its prohibitions on sports wagering in specific venues in 2014, the Third Circuit interpreted PASPA as making it "unlawful" for New Jersey to repeal its prohibitions. In so holding, the court essentially declared it constitutional for federal law to dictate the extent to which states must maintain prohibitions on sports wagering.

The United States Supreme Court today held PASPA unconstitutional, ruling that the federal government cannot tell state legislatures they cannot repeal laws banning certain behavior. Because Congress cannot "commandeer" states to enact a federal policy, it cannot tell state legislatures what laws must be on the books. Writing for a 7-2 majority on this issue, Justice Alito wrote that "It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine."

Because no federal law directly bans sports gambling, states are now free to choose whether to permit that activity.

More information about the case, *Murphy v. NCAA*, including the opinion and our amicus brief, can be found [here](#).