# WICKPHY V.

#### 2019 MSATA ANNUAL CONFERENCE

GREG MATSON, MULTISTATE TAX COMMISSION

JOE HUDDLESTON, ERNST & YOUNG, LLP



#### THE BOX SCORE

- MURPHY, GOVERNOR OF NEW JERSEY, ET AL. v. NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL., No. 16-476 (May 14, 2018)
  - In 2014 New Jersey enacted legislation repealing old statutory provisions prohibiting sports betting on sporting events meeting certain criteria
  - NCAA and three professional sports leagues brought suit to enjoin the law in violation of the PASPA
  - New Jersey argued that PASPA violates the U.S. Constitution's anticommandering principle
  - Lower courts found New Jersey's law violated PASPA
  - U.S. Supreme Court reversed, held that the PASPA provision prohibiting state authorized sports betting violates the anticommandeering rule
    - Justice Alito wrote the opinion in which C.J. Roberts, and J.J. Kennedy,
       Thomas, Kagan and Gorsuch joined



## Breaking it Down: Professional and Amateur Sports Protection Act

- PASPA (28 U.S.C. §3701 ET SEQ, EFFECTIVE JANUARY 1, 1993)
   MADE IT UNLAWFUL FOR:
  - STATES AND THEIR SUBDIVISIONS TO SPONSOR, OPERATE, ADVERTISE, PROMOTE, LICENSE, OR AUTHORIZE BY LAW OR COMPACT BETTING, GAMBLING, WAGERING, ETC. ON COMPETITIVE SPORTS (COLLECTIVELY, "SPORTS BETTING"), AND
  - FOR A PERSON TO SPONSOR, OPERATE, ADVERTISE, OR PROMOTE SUCH ACTIVITIES PURSUANT TO A GOVERNMENT LAW OR COMPACT
- GRANDFATHER PROVISIONS ALLOWS SPORTS BETTING IN FOUR STATES
- PASPA ALLOWS THE ATTORNEY GENERAL AND PROFESSIONAL AND AMATEUR SPORTS ORGANIZATIONS TO BRING CIVIL ACTIONS ENJOINING THE SPORTS BETTING ACTIVITY



#### Breaking it Down: Court's Ruling on PASPA

- PASPA ANTI-AUTHORIZATION PROVISION "UNEQUIVOCALLY DICTATES WHAT A
  STATE LEGISLATURE MAY AND MAY NOT DO."
- Basic principle that Congress cannot issue direct orders to state legislatures applies to both compelling a State to enact legislation and prohibiting a State from enacting new law
- U.S. Supreme Court precedent does not show that PASPA's antiauthorization provision is constitutional
- Anticommandeering doctrine does not apply when Congress evenly regulates activity in which both States and private actors engage



#### Breaking it Down: Court's Ruling on PASPA

- PASPA'S ANTI-AUTHORIZATION PROVISION DOES NOT CONSTITUTE A VALID PREEMPTION PROVISIONS BECAUSE
- It does not represent the exercise of a power conferred on Congress by the Constitution
- IT CANNOT BE READ AS A REGULATION OF PRIVATE ACTORS AS "[I]T DOES NOT CONFER ANY FEDERAL RIGHTS ON PRIVATE ACTORS INTERESTED IN CONDUCTING SPORTS GAMBLING OPERATIONS OR IMPOSE ANY FEDERAL RESTRICTIONS ON PRIVATE ACTORS."



#### Breaking it Down: Court's Ruling on PASPA

- FOR THE SAME REASONS MENTIONED ABOVE, PASPA PROHIBITION ON LICENSING SPORTS BETTING VIOLATES THE ANTICOMMANDEERING RULE
- Court said it did not need to rule on whether New Jersey's 2014 LAW VIOLATES PASPA'S ANTI-LICENSING PROVISION
- THE REMAINING PROVISION OF THE PASPA ARE NOT SEVERABLE FROM THE PROVISIONS AT ISSUE IN THIS CASE



#### XS AND OS: THE 10<sup>TH</sup> AMENDMENT

"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."



- Congress does not have the power to issue direct orders to governments of the States
- Anticommandeering doctrine represents the recognition of this limit on congressional authority
- This doctrine did not began to emerge in case law until the 1990s.
  - New York v. U.S., 505 U.S. 144 (1992)
  - PRINTZ V. U.S., 521 U.S. 898 (1997)



- NEW YORK V. U.S., 505 U.S. 144 (1992)
  - Court ruled that a federal law requiring a State in Certain instances to either take title to lower-level radioactive waste or to regulate in accordance with federal standards was unconstitutional
  - COURT HELD THAT "THE CONSTITUTION DOES NOT EMPOWER CONGRESS TO SUBJECT STATE GOVERNMENTS TO THIS TYPE OF INSTRUCTION."
  - Congress has the power to regulate individuals, not States
  - CONGRESS HAS THE AUTHORITY TO PASS LAWS REQUIRING OR PROHIBITING
    CERTAIN ACTS, BUT DOES NOT HAVE THE AUTHORITY TO DIRECTLY COMPEL STATES
    TO REQUIRE OR PROHIBIT THOSE ACTS



- Printz v. U.S., 521 U.S. 898 (1997)
  - COURT RULED A FEDERAL STATUTE THAT REQUIRED STATE AND LOCAL LAW ENFORCEMENT OFFICERS TO PERFORM BACKGROUND CHECKS AND RELATED TASKS IN CONNECTION WITH THE APPLICATION FOR A HANDGUN LICENSE WAS UNCONSTITUTIONAL
  - COURT HELD THAT THE FEDERAL GOVERNMENT MAY NOT "COMMAND THE STATES"
     OFFICERS, OR THOSE OF THEIR POLITICAL SUBDIVISIONS, TO ADMINISTER OR
     ENFORCE A FEDERAL REGULATORY PROGRAM."
  - This applies to state officers as well as "those assigned more mundane tasks."



- THE COURT IN MURPHY EXPLAINS WHY ADHERING TO THE ANTI-COMMANDEERING PRINCIPLE IS IMPORTANT
  - It serves as "One of the Constitution's structural protections of liberty" (CITING PRINTZ)
    - "THE CONSTITUTION DIVIDES AUTHORITY BETWEEN FEDERAL AND STATE GOVERNMENTS FOR THE PROTECTION OF INDIVIDUALS" (CITING NEW YORK)
    - "'[A] HEALTHY BALANCE OF POWER BETWEEN THE STATES AND THE FEDERAL
      GOVERNMENT [REDUCES] THE RISK OF TYRANNY AND ABUSE FROM EITHER FRONT."
      (CITING NEW YORK)
  - IT PROMOTES POLITICAL ACCOUNTABILITY (E.G., CLEAR "WHO" TO CREDIT OR BLAME FOR THE EFFECT OF THE REGULATION)
  - IT PREVENTS CONGRESS FROM SHIFTING THE COSTS OF REGULATION TO THE STATES



### WALK-OFF: THE COURT'S PARTING WORDS IN MURPHY

"Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own."



# MONDAY (TUESDAY?) - MORNING QUARTERBACKING: APPLYING MURPHY TO FEDERAL LAWS LIMITING STATES ABILITY TO IMPOSE TAX

- Public Law 86-272
- Internet Tax Freedom Act
- Mobile Telecommunications Sourcing Act (P.L. 106-252)
- Limitation on State income taxation of certain pension income (P.L. 104-95)



# MONDAY (TUESDAY?) - MORNING QUARTERBACKING: APPLYING MURPHY TO FEDERAL LAWS LIMITING STATES ABILITY TO IMPOSE TAX

- POTENTIAL FEDERAL LEGISLATION THAT WOULD IMPACT STATES ABILITY TO IMPOSE TAX
  - SALES AND USE TAX NEXUS AND SIMPLIFICATION BILLS (SIMILAR TO MARKETPLACE FAIRNESS BILL)
  - Business Activity Tax Simplification Act (BASTA) (modernization of P.L. 86-272, uniform nexus standard for state taxes)
  - Mobile workforce legislation (uniform state nonresident withholding)
  - DIGITAL GOODS AND SERVICES TAX FAIRNESS BILLS (SETS OUT A FRAMEWORK FOR WHICH ONE STATE CAN IMPOSE ITS SALES TAX ON A DIGITAL GOOD OR SERVICE)



THE BALL'S IN YOUR COURT: QUESTIONS?