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 anticommandeering 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.
Murphy v. NCAA

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.”

• PASPA’s anti-authorization provision does not constitute valid federal preemption 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.”

• The remaining provision of the PASPA are not severable from the provisions at issue in this case
Murphy v. NCAA

Xs and Os: The 10th 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.”
**Murphy v. NCAA**

**Xs and Os: The Anticommandeering Principle**

- Congress does not have the power to issue direct orders to governments of the States
  - 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

- Anticommandeering principle represents the recognition of this limit on congressional authority

- Anticommandeering principle does not apply when Congress evenly regulates activity in which both States and private actors engage

- This principle did not begin to emerge in case law until the 1990s
Xs and Os: The Anticommandeering Principle


- 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.
Murphy v. NCAA

Xs and Os: The Anticommandeering Principle

  • 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.”
Murphy v. NCAA

Xs and Os: The Anticommandeering Principle

- 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).
  - 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.”
Murphy v. NCAA: Place Your Bets

Map of the United States with states color-coded:
- **Green**: Live Legal Single Game Sports Betting (12 states)
- **Lt. Green**: Authorized Sports Betting, but Not Yet Operational (6 states + DC)
- **Blue**: Active 2019 Sports Betting Legislation/Ballot (6 states)
- **Lt. Blue**: Dead Sports Betting Legislation in 2019 (18 states)
- **Gray**: No Sports Betting Bills in 2019 (8 states)

Legend:
- VT, NH, MA, RI, NJ, CT, MD, DE, DC

Sources:
- American Gaming Association

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Map showing states with varying degrees of sports betting legalization.
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?