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Gambling Away Federalism

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Pennsylvania legalized online gambling in late October, becoming the fourth state to allow online betting. Some lawmakers in Washington, however, would like the federal government to override those states' laws and prohibit online gambling nationwide. The Restoration of America's Wire Act (RAWA), which has been floating around Congress since 2015 but is receiving renewed attention, is an attempt to assert federal control over states that have legalized online gambling. Just as states have been allowed to experiment with marijuana legalization, Congress should resist attempts to override state experiments in online gambling.

The story goes back to a 2011 Department of Justice memo that clarified the interpretation of the 1961 Federal Wire Act, which was passed to give federal officials the authority to go after the mafia. When asked by the states of New York and Illinois whether intrastate online lotteries would violate the Federal Wire Act, the DOJ clarified that the 1961 law applied only to sports betting and not to other forms of online gambling, freeing states to legalize online gambling, as Pennsylvania and others have. Since that time various lawmakers have been trying to either convince the DOJ to revisit that interpretation or to amend the Federal Wire Act—"restore" it, as the bill's title says—to cover online gambling.

Seemingly spurred along by Pennsylvania's law, in November Senators Feinstein (D-CA) and Graham (R-SC) wrote a letter to the DOJ asking for reconsideration of the 2011 interpretation of the Federal Wire Act. They cite the usual concerns: the children, society's most vulnerable, and organized crime as a reason to revisit the interpretation. Yet, even if such concerns were valid, the Federal Wire Act clearly does not apply to non-sports related gambling, as CEI's Michelle Minton has conclusively shown.

All of this arises as New Jersey is at the Supreme Court challenging a federal law, the Professional and Amateur Sports Protection Act (PASPA), which prohibits states from authorizing "a lottery, sweepstakes, or other betting, gambling, or wagering scheme based" "on

one or more competitive games in which amateur or professional athletes participate.” The law, which was passed in 1992, carved out exceptions for four states—Delaware, Montana, Nevada, and Oregon—and gave New Jersey the option to legalize sports betting at casinos as long as it did so within a year after the law went into effect. New Jersey didn’t do so at the time but now it would like to. It tried twice to legalize sports betting, but each time federal courts have said that PASPA prohibits it. Now at the Supreme Court (the case was argued December 4th), the state is arguing that such a prohibition violates the Tenth Amendment by “commandeering” states to enforce federal law. The Cato Institute has filed multiple briefs in the case, arguing that PASPA’s prohibition violates the Tenth Amendment.

More broadly, as a voluntary activity between consenting adults, gambling should of course be legal. Ironically, gambling is legal in nearly every state in the form of state lotteries. This is an absurd paradox that doesn’t get enough attention: if the government can profit from it, then apparently it’s not gambling. In 2014, Americans spent \$70 billion on lotteries, more than their spending on sports tickets, books, video games, movie tickets, and recorded music sales *combined*. What’s more, the poorest third of American households purchase half of all lottery tickets.

Prohibitions on gambling demonstrate a deep disconnect between our laws and the behavior of most people. Millions of Americans participate in annual NCAA March Madness office pools, to the tune of over \$10 billion per year. According to the American Gaming Association, only 3 percent of that betting is legal. Certain types of home poker games, which have greatly increased in popularity in the past 20 years, may be illegal in your state. And approximately 75 million people play fantasy football every year, often for money, and daily fantasy sports leagues are of uncertain legal status in over a dozen states.

There is now a danger that RAWA may be surreptitiously inserted into an appropriations bill, as has been tried before. The bill has received heavy support from billionaire casino owner Sheldon Adelson, who has said he’s “willing to spend whatever it takes” to stop online gambling. It’s odd that a man who has made billions off of gambling would call online gambling “a societal train wreck waiting to happen.” Perhaps his concerns are genuine, but a cynic might think he’s trying to eliminate competition.

Either way, the bill’s co-sponsors are almost all Republicans, purportedly the party of federalism. As we’ve seen many times, however, federalism has many fair-weather fans. Like many political ideals, commitments to federalism are often abandoned when given the opportunity to use the federal government to combat disfavored state policies. Yet anyone who has lauded the trend of “marijuana federalism” that is moving through the states, should support “gambling federalism” for the same reasons.

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