



Constitutional Stakes Are High In New Jersey's Sports-Gambling Case

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Against all odds, Americans elected Donald Trump—a casino mogul, among other things—as its 45th President. In the aftermath of this surprising election, the Supreme Court is being asked to take a gamble of its own: to review the Constitutionality of the national ban on sports gambling; a decision that could be a game-changer for state autonomy, political accountability, and rule of law.

With the exception of Nevada, sports gambling is mostly banned in the United States. But this hasn't stopped millions of Americans, 47 million during the Super Bowl alone, from engaging in the activity illegally. In the wake of an economic recession and a flurry of casino closures in Atlantic City, New Jersey sought to bridge revenue gaps and fulfill the wishes of its voters by repealing its sports gambling prohibitions.

Its efforts, however, have been blocked by a little-known federal law, the Professional and Amateur Sports Protection Act (PASPA) of 1992, which prevents states (except Nevada) from authorizing bets on sporting events. Usually, when the federal government wants to ban something, it does so directly. PASPA departs from this norm, forcing states to implement the ban.

This approach is uncommon, but not unprecedented. Congress has twice tried to impose its will on states by requiring them to adopt and implement federal policy. Each time, the Supreme Court has declared the laws unconstitutional, explaining that our Constitution does not permit the federal government to use the states as puppets.

This is an often ignored, but essential feature of representative government: If the federal government can compel states to do its bidding, federal officials can escape political accountability for their decisions. When unpopular, costly, or poorly designed policies are enacted and enforced through the states, voters will understandably blame and punish state politicians, not realizing that state politicians are powerless to change things. Few voters will have the time or energy to discover that federal officials are actually responsible. Thus, federal

officials could shift the costs of federal policies, and the blame if they prove unpopular, to hapless state officials.

New Jersey's reform effort is an excellent example of this. New Jersey voters made their views clear in 2011, when they approved a state constitutional amendment calling for the repeal of the state's sports gambling prohibitions. That amendment was approved by a whopping two-to-one margin. This overwhelming public support is understandable as the prohibition has created a huge black market with more than \$100 billion a year pouring into the illegal sports betting market, creating lucrative opportunities for organized crime, but depriving states of billions of dollars in tax revenues.

Responding to this strong expression of political opinion, New Jersey politicians have twice attempted to reform the state's sports gambling laws. Initially, the state tried to license sports gambling, but later settled for repealing the state prohibitions for adults placing bets in casinos or racetracks.

But New Jersey voters were mistaken in assuming they had a say in their state's gambling laws. Before either of these reforms could go into effect, sports leagues, including the NFL and the N.C.A.A., brought lawsuits challenging the reform under PASPA. Federal courts, siding with the leagues, interpreted that law to forbid states from "authorizing" sports gambling either explicitly or implicitly, by relaxing state law.

New Jersey has now taken its defense of its latest reform effort to the doors of the Supreme Court. Its petition asking the Court to take the case highlights the grave threat that federal commandeering of state governments poses for our Constitution and our democracy. Pacific Legal Foundation, joined by the Competitive Enterprise Institute and the Cato Institute, has filed a friend-of-the-court brief supporting New Jersey.

If the federal government gets away with what it has done in this case, the consequences could extend far beyond sports gambling. Many efforts to reform unpopular policies begin at the state level, where there is a greater willingness and ability to experiment with new approaches to vexing problems. The recent wave of states legalizing medical or recreational marijuana, including seven more states this week, is just one example of this important phenomenon. However, all of this experimentation, and its potential to spur further reform, could be stopped in its tracks if federal politicians are allowed to dictate to states what their own laws must be.

The Declaration of Independence recognizes that governments only obtain legitimacy through the consent of the governed. That's why elections are so essential. In the wake of this year's political horse race, the Supreme Court has an opportunity to vindicate an important constitutional principle and safeguard political accountability. It should seize that opportunity.