



What Supreme Court victory for sports gambling means for marijuana, sanctuary cities

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Yesterday, the Supreme Court issued a 7-2 decision in *Murphy v. NCAA*, striking down a federal law that blocks states from legalizing sports gambling under their own state laws. The ruling is a major victory for federalism, and has important implications that go beyond the issue of sports gambling.

Murphy invalidates a provision of the federal Professional and Amateur Sports Protection Act (PASPA), which mandates that states may not "sponsor, operate, advertise, promote, license, or authorize by law or compact" sports betting. A coalition of sports leagues, including the NCAA, the NBA, the NFL, and Major League Baseball, filed a lawsuit arguing that New Jersey's laws partially legalizing sports gambling within the state qualifies as "authorization" and thus violates PASPA. New Jersey argued that that PASPA violates the "anti-commandeering" principles of the Tenth Amendment. Under several longstanding Supreme Court precedents, the Tenth Amendment prevents the federal government from compelling the states to enforce federal law, including by forcing state legislatures to enact laws of their own. The Supreme Court majority ruled that PASPA is unconstitutional.

To get around the anti-commandeering rule, the sports leagues and the administration claimed that there is a distinction between commandeering and federal laws blocking "affirmative authorization" of gambling under state law. By this reasoning, PASPA is not "commandeering" because it does not prevent complete legalization of sports gambling. It only bans state laws that affirmatively authorize gambling in some way, as New Jersey supposedly does by restricting it to some types of locations and limiting the range of teams that gamblers can bet on. Writing for a 7-2 Supreme Court majority, Justice Samuel Alito correctly concluded that "this distinction is empty" because laws banning affirmative "authorization" still violate "the basic principle ... that Congress cannot issue direct orders to state legislatures."

Justice Alito is right. The distinction between legalization and "authorization" makes little sense, because virtually any law that legalizes a previously banned activity, but does not completely abolish all restrictions on it, can be described as affirmative authorization. A decision upholding

PASPA would essentially have gutted the anti-commandeering rule, as the federal government could easily get around it by adopting regulations preventing states from legalizing previously forbidden behavior, so long as the legalization law did not completely eliminate all legal constraints on it.

The ruling has obvious implications for sports betting, which states are now largely free to legalize as they see fit. Many may follow New Jersey's example. Murphy is also significant for state policies legalizing other activities that the federal government may oppose, including marijuana, possession of some types of firearms, and others. The federal government can no longer block state legalization by passing laws that require states to continue to bar these activities under their own laws.

The federal government can still ban many such activities by making them directly illegal under federal law. But if it cannot rely on the backing of the states and their own laws, enforcing such federal prohibitions in dissenting states can be expensive and difficult. In practice, federal prohibition of gambling, drugs and other activities relies heavily on state cooperation and support. Today's decision reinforces the constitutional rule that empowers states to deny such assistance by refusing to enact state laws reinforcing federal prohibition. It also prevents the federal government from forcing the states to ban activities that Congress, for political reasons, does not want to forbid directly.

Perhaps most importantly, *Murphy v. NCAA* makes clear that a solid majority of the Court is strongly committed to the anti-commandeering principle. The majority includes both the conservative justices and two liberals (Stephen Breyer and Elena Kagan). That bodes well for state efforts to oppose commandeering (and perhaps other types of federal coercion) in other areas. The most notable current examples are the sanctuary cities cases, in which the Trump administration has been trying to force state and local governments to assist federal efforts to deport undocumented immigrants.

Legal battles over federalism will surely continue. We are still a long way from where we should be on enforcing constitutional constraints on federal power. But today's ruling is an important step in the right direction.

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