
PASPA, adopted in 1992, makes it unlawful for states and local governments to authorize gambling. New Jersey first amended its constitution to allow some sports gambling. The Third Circuit held that doing so violated PASPA as an “authorization” of gambling but concluded that repealing restrictions on sports gambling would be okay. New Jersey then passed a law repealing restrictions on sports gambling. The Third Circuit changed course ruling the repeal violates PASPA. It reasoned that the repeal “authorizes sports gambling by selectively dictating where sports gambling may occur, who may place bets in such gambling, and which athletic contests are permissible subjects for such gambling.”

Per the anti-commandeering doctrine, “Congress ‘lacks the power directly to compel the States to require or prohibit’ acts which Congress itself may require or prohibit.” In both cases Christie argued that PASPA unconstitutionally commandeers states in violation of the Tenth Amendment. The Third Circuit concluded PASPA is constitutional reasoning that it “does not command states to take affirmative actions, and it does not present a coercive choice.”

The SLLC *amicus* brief argues that, regarding sports gambling, the Third Circuit decision leaves states with only one viable option: freeze bans in place enacted before PASPA. But, “Congress cannot, on the one hand, fail to preempt the field by way of enacting a federal regime for the regulation of sports wagering and, on the other hand, prevent states from taking any meaningful action to revise their laws to reflect constituent opinion.”

Beyond sports gambling, the SLLC *amicus* brief also argues that “rationale of the Third Circuit’s decision upholding its reading of PASPA would permit Congress to order state and local governments to freeze state and local law . . . on other issues of critical importance,” ranging from issues such as physician-assisted death for the terminally ill to self-driving cars.

Richard A. Simpson [4], Tara Ward [5], and Emily Hart [6], Wiley Rein [7], wrote the SLLC *amicus* brief which was joined by the National Governors Association [8], the National Conference of State Legislatures [9], the Council of State Governments [10], National League of Cities [11], and the International Municipal Lawyers Association [12].

By: Wednesday, September 6, 2017 at 03:26 PM

Tags:

