Indian &
Federal Gaming Law

Materials available at www.federalgaminglaw.com

Sports Wagering in General

Sports wagering has held a special place in gaming law and gaming law policy for centuries. Even when other forms of gaming were prohibited in Roman Times, wagering on sporting events and races was permitted. In U.S. gaming law history, sports and race wagering have taken two distinct and opposite paths. Horse race wagering, while experiencing a short period of prohibition, has generally been permitted under federal law and the laws of many states. However, sports wagering has been, with rare exception, prohibited under federal law and the laws of most states.

The materials for sports wagering will start with the most direct law addressing sports wagering, namely, the Professional and Amateur Sports Protection Act and recent efforts by Delaware and New Jersey to determine the scope and constitutionality of the Act.

In Nevada

Nevada has long had broad based commercial sports wagering. In Nevada, a non-restricted gaming license is required for operating a sports pool. What is not always obvious is that a sports pool license is separate and distinct from a casino operator's license and a race book operator's license.

Nevada is the only state in the Nation that has a long history of regulated legal sports wagering. The regulations regarding sports wagering can be found in Nevada Gaming Commission Regulation 22,

The Professional and Amateur Sports Protection Act

The Professional and Amateur Sports Protection Act of 1992 ("PASPA") was an act to limit sports wagering in the United States. The Act was introduced by Senator Deconcini of Arizona as a measure in response to the impending threat of state-sponsored sports lotteries. As one might expect, there was strong opposition from states that currently had sports wagering and sports lotteries and thus there is a grandfathering clause to exempt such activities.

In 2018, the U.S. Supreme Court held that PASPA was unconstitutional because it violated the anti-commandeering principles of the U.S. Constitution. In essence the anti-commandeering principles are founded in the separation of powers between the federal government and state governments. It seeks to balance the 10th Amendment and the supremacy clause of Article VI paragraph 2 of the U.S. Constitution.

Amendment X

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.

Article VI – Paragraph 2

…

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

In essence the U.S. Supreme Court held that because the federal government did not implement a ban on sports betting, it could not compel the states to maintain their bans on sports betting. In other words, in the absence of clear federal policy expressed in statute, the federal government cannot compel states to implement a policy that the federal government is not willing to implement.

A copy of the court opinion is as follows:

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MURPHY, GOVERNOR OF NEW JERSEY, ET AL. *v.* NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 16–476. Argued December 4, 2017—Decided May 14, 2018*

The Professional and Amateur Sports Protection Act (PASPA) makes it unlawful for a State or its subdivisions "to sponsor, operate, adver- tise, promote, license, or authorize by law or compact . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on" competitive sporting events, 28 U. S. C. §3702(1), and for "a person to sponsor, operate, advertise, or promote" those same gambling schemes if done "pursuant to the law or compact of a governmental entity," §3702(2). But PASPA does not make sports gambling itself a federal crime. Instead, it allows the Attorney General, as well as professional and amateur sports organizations, to bring civil actions to enjoin violations. §3703. "Grandfather" provisions allow existing forms of sports gambling to continue in four States, §3704(a)(1)–(2), and another provision would have permitted New Jersey to set up a sports gambling scheme in Atlantic City within a year of PASPA's enactment, §3704(a)(3).

New Jersey did not take advantage of that option but has since had a change of heart. After voters approved an amendment to the State Constitution giving the legislature the authority to legalize sports gambling schemes in Atlantic City and at horseracing tracks, the legislature enacted a 2012 law doing just that. The NCAA and three major professional sports leagues brought an action in federal court against New Jersey's Governor and other state officials (hereinafter New Jersey), seeking to enjoin the law on the ground that it violates

---

*Together with No. 16–477, *New Jersey Thoroughbred Horsemen's Assn., Inc.* v. *National Collegiate Athletic Assn. et al.*, also on certiorari to the same court.

PASPA. New Jersey countered that PASPA violates the Constitution's "anticommandeering" principle by preventing the State from modifying or repealing its laws prohibiting sports gambling. The District Court found no anticommandeering violation, the Third Circuit affirmed, and this Court denied review.

In 2014, the New Jersey Legislature enacted the law at issue in these cases. Instead of affirmatively authorizing sports gambling schemes, this law repeals state-law provisions that prohibited such schemes, insofar as they concerned wagering on sporting events by persons 21 years of age or older; at a horseracing track or a casino or gambling house in Atlantic City; and only as to wagers on sporting events not involving a New Jersey college team or a collegiate event taking place in the State. Plaintiffs in the earlier suit, respondents here, filed a new action in federal court. They won in the District Court, and the Third Circuit affirmed, holding that the 2014 law, no less than the 2012 one, violates PASPA. The court further held that the prohibition does not "commandeer" the States in violation of the Constitution.

Held:

1. When a State completely or partially repeals old laws banning sports gambling schemes, it "authorize[s]" those schemes under PASPA. Pp. 9–14.

(a) Pointing out that one accepted meaning of "authorize" is "permit," petitioners contend that any state law that has the effect of permitting sports gambling, including a law totally or partially repealing a prior prohibition, amounts to authorization. Respondents maintain that "authorize" requires affirmative action, and that the 2014 law affirmatively acts by empowering a defined group of entities and endowing them with the authority to conduct sports gambling operations. They do not take the position that PASPA bans all modifications of laws prohibiting sports gambling schemes, but just how far they think a modification could go is not clear. Similarly, the United States, as *amicus*, claims that the State's 2014 law qualifies as an authorization. PASPA, it contends, neither prohibits a State from enacting a complete repeal nor outlaws all partial repeals. But the United States also does not set out any clear rule for distinguishing between partial repeals that constitute the "authorization" of sports gambling and those that are permissible. Pp. 10–11.

(b) Taking into account the fact that all forms of sports gambling were illegal in the great majority of States at the time of PASPA's enactment, the repeal of a state law banning sports gambling not only "permits" sports gambling but also gives those now free to conduct a sports betting operation the "right or authority to act." The interpretation adopted by the Third Circuit and advocated by respondents

and the United States not only ignores the situation that Congress faced when it enacted PASPA but also leads to results that Congress is most unlikely to have wanted. Pp. 11–13.

(c) Respondents and the United States cannot invoke the canon of interpretation that a statute should not be held to be unconstitutional if there is any reasonable interpretation that can save it. Even if the law could be interpreted as respondents and the United States suggest, it would still violate the anticommandeering principle. Pp. 13–14.

2. PASPA's provision prohibiting state authorization of sports gambling schemes violates the anticommandeering rule. Pp. 14–24.

(a) As the Tenth Amendment confirms, all legislative power not conferred on Congress by the Constitution is reserved for the States. Absent from the list of conferred powers is the power to issue direct orders to the governments of the States. The anticommandeering doctrine that emerged in *New York* v. *United States,* 505 U. S. 144, and *Printz* v. *United States,* 521 U. S. 898, simply represents the recognition of this limitation. Thus, "Congress may not simply 'commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program.'" *New York, supra*, at 161. Adherence to the anticommandeering principle is important for several reasons, including, as significant here, that the rule serves as "one of the Constitution's structural safeguards of liberty," *Printz, supra*, at 921, that the rule promotes political accountability, and that the rule prevents Congress from shifting the costs of regulation to the States. Pp. 14–18.

(b) PASPA's anti-authorization provision unequivocally dictates what a state legislature may and may not do. The distinction be- tween compelling a State to enact legislation and prohibiting a State from enacting new laws is an empty one. The basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event. Pp. 18–19.

(c) Contrary to the claim of respondents and the United States, this Court's precedents do not show that PASPA's anti-authorization provision is constitutional. *South Carolina* v. *Baker*, 485 U. S. 505; *Reno* v. *Condon*, 528 U. S. 141; *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264; *FERC* v. *Mississippi*, 456 U. S. 742, distinguished. Pp. 19–21.

(d) Nor does the anti-authorization provision constitute a valid preemption provision. To preempt state law, it must satisfy two requirements. It must represent the exercise of a power conferred on Congress by the Constitution. And, since the Constitution "confers upon Congress the power to regulate individuals, not States," *New York*, *supra*, at 177, it must be best read as one that regulates private

actors. There is no way that the PASPA anti-authorization provision can be understood as a regulation of private actors. It does not confer any federal rights on private actors interested in conducting sports gambling operations or impose any federal restrictions on private actors. Pp. 21–24.

3. PASPA's provision prohibiting state "licens[ing]" of sports gambling schemes also violates the anticommandeering rule. It issues a direct order to the state legislature and suffers from the same defect as the prohibition of state authorization. Thus, this Court need not decide whether New Jersey's 2014 law violates PASPA's anti-licensing provision. Pp. 24–25.

4. No provision of PASPA is severable from the provisions directly at issue. Pp. 26–30.

(a) Section 3702(1)'s provisions prohibiting States from "operat[ing]," "sponsor[ing]," or "promot[ing]" sports gambling schemes cannot be severed. Striking the state authorization and licensing provisions while leaving the state operation provision standing would result in a scheme sharply different from what Congress contemplated when PASPA was enacted. For example, had Congress known that States would be free to authorize sports gambling in privately owned casinos, it is unlikely that it would have wanted to prevent States from operating sports lotteries. Nor is it likely that Congress would have wanted to prohibit such an ill-defined category of state conduct as sponsorship or promotion. Pp. 26–27.

(b) Congress would not want to sever the PASPA provisions that prohibit a private actor from "sponsor[ing]," "operat[ing]," or "promot[ing]" sports gambling schemes "pursuant to" state law. §3702(2). PASPA's enforcement scheme makes clear that §3702(1) and §3702(2) were meant to operate together. That scheme—suited for challenging state authorization or licensing or a small number of private operations—would break down if a State broadly decriminalized sports gambling. Pp. 27–29.

(c) PASPA's provisions prohibiting the "advertis[ing]" of sports gambling are also not severable. See §§3702(1)–(2). If they were allowed to stand, federal law would forbid the advertising of an activity that is legal under both federal and state law—something that Congress has rarely done. Pp. 29–30.

832 F. 3d 389, reversed.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, KAGAN, and GORSUCH, JJ., joined, and in which BREYER, J., joined as to all but Part VI–B. THOMAS, J., filed a concurring opinion. BREYER, J., filed an opinion concurring in part and dissenting in part. GINSBURG, J., filed a dissenting opinion, in which SOTOMAYOR, J., joined, and in which BREYER, J., joined in part.

SUPREME COURT OF THE UNITED STATES

Nos. ~~16–476 and~~ 16–477

PHILIP D. MURPHY, GOVERNOR OF NEW JERSEY, ET AL., PETITIONERS

16–476 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., PETITIONER

16–477 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May 14, 2018]

JUSTICE ALITO delivered the opinion of the Court.

The State of New Jersey wants to legalize sports gambling at casinos and horseracing tracks, but a federal law, the Professional and Amateur Sports Protection Act, generally makes it unlawful for a State to "authorize" sports gambling schemes. 28 U. S. C. §3702(1). We must decide whether this provision is compatible with the system of "dual sovereignty" embodied in the Constitution.

I

A

Americans have never been of one mind about gambling,

and attitudes have swung back and forth. By the end of the 19th century, gambling was largely banned throughout the country,[1] but beginning in the 1920s and 1930s, laws prohibiting gambling were gradually loosened.

New Jersey's experience is illustrative. In 1897, New Jersey adopted a constitutional amendment that barred all gambling in the State.[2] But during the Depression, the State permitted parimutuel betting on horse races as a way of increasing state revenue,[3] and in 1953, churches and other nonprofit organizations were allowed to host bingo games.[4] In 1970, New Jersey became the third State to run a state lottery,[5] and within five years, 10 other States followed suit.[6]

By the 1960s, Atlantic City, "once the most fashionable resort of the Atlantic Coast," had fallen on hard times,[7] and casino gambling came to be seen as a way to revitalize the city.[8] In 1974, a referendum on statewide legalization failed,[9] but two years later, voters approved a narrower measure allowing casino gambling in Atlantic City alone.[10] At that time, Nevada was the only other State with legal

---

[1] See Nat. Gambling Impact Study Comm'n, Final Report, p. 2–1 (1999) (Final Report); S. Durham & K. Hashimoto, The History of Gambling in America 34–35 (2010).

[2] See *Atlantic City Racing Assn.* v. *Attorney General*, 98 N. J. 535, 539–541, 489 A. 2d 165, 167–168 (1985).

[3] See Note, The Casino Act: Gambling's Past and the Casino Act's Future, 10 Rutgers-Camden L. J. 279, 287 (1979) (The Casino Act).

[4] *Id.*, at 288; see also N. J. Const., Art. 4, §7, ¶2(A); Bingo Licensing Law, N. J. Stat. Ann. §5:8–24 *et seq.* (West 2012).

[5] See State Lottery Law, N. J. Stat. Ann. §5:9–1 *et seq.*; The Casino Act, at 288; N. J. Const., Art. 4, §7, ¶2(C); Final Report, at 2–1.

[6] *Id.*, at 2–1.

[7] T. White, The Making of the President 1964, p. 275 (1965).

[8] See D. Clary, Gangsters to Governors 152–153 (2017) (Clary).

[9] See The Casino Act, at 289.

[10] See *ibid.*; N. J. Const., Art. 4, §7, ¶2(D).

casinos,[11] and thus for a while the Atlantic City casinos had an east coast monopoly. "With 60 million people living within a one-tank car trip away," Atlantic City became "the most popular tourist destination in the United States."[12] But that favorable situation eventually came to an end.

With the enactment of the Indian Gaming Regulatory Act in 1988, 25 U. S. C. §2701 *et seq.*, casinos opened on Indian land throughout the country. Some were located within driving distance of Atlantic City,[13] and nearby States (and many others) legalized casino gambling.[14] But Nevada remained the only state venue for legal sports gambling in casinos, and sports gambling is immensely popular.[15]

Sports gambling, however, has long had strong opposition. Opponents argue that it is particularly addictive and especially attractive to young people with a strong interest in sports,[16] and in the past gamblers corrupted and seriously damaged the reputation of professional and amateur sports.[17] Apprehensive about the potential effects of

---

[11] Clary 146.

[12] *Id.*, at 146, 158.

[13] *Id.*, at 208–210.

[14] Casinos now operate in New York, Pennsylvania, Delaware, and Maryland. See American Gaming Assn., 2016 State of the States, p. 8, online at https://www.americangaming.org/sites/default/files/2016%20State%20of%20the%20States_FINAL.pdf (all Internet materials as last visited May 4, 2018).

[15] See, *e.g.*, Brief for American Gaming Assn. as *Amicus Curiae* 1–2.

[16] See, *e.g.*, Final Report, at 3–10; B. Bradley, The Professional and Amateur Sports Protection Act—Policy Concerns Behind Senate Bill 474, 2 Seton Hall J. Sport L. 5, 7 (1992); Brief for Stop Predatory Gambling et al. as *Amici Curiae* 22–23.

[17] For example, in 1919, professional gamblers are said to have paid members of the Chicago White Sox to throw the World Series, an episode that was thought to have threatened baseball's status as the Nation's pastime. See E. Asinof, Eight Men Out: The Black Sox and

sports gambling, professional sports leagues and the National Collegiate Athletic Association (NCAA) long opposed legalization.[18]

B

By the 1990s, there were signs that the trend that had brought about the legalization of many other forms of gambling might extend to sports gambling,[19] and this sparked federal efforts to stem the tide. Opponents of sports gambling turned to the legislation now before us, the Professional and Amateur Sports Protection Act (PASPA). 28 U. S. C. §3701 *et seq.* PASPA's proponents argued that it would protect young people, and one of the bill's sponsors, Senator Bill Bradley of New Jersey, a former college and professional basketball star, stressed that the law was needed to safeguard the integrity of sports.[20] The Department of Justice opposed the bill,[21] but it was passed and signed into law.

PASPA's most important provision, part of which is directly at issue in these cases, makes it "unlawful" for a State or any of its subdivisions[22] "to sponsor, operate,

---

the 1919 World Series 5, 198–199 (1963). And in the early 1950s, the Nation was shocked when several college basketball players were convicted for shaving points. S. Cohen, The Game They Played 183–238 (1977). This scandal is said to have nearly killed college basketball. See generally C. Rosen, Scandals of '51: How the Gamblers Almost Killed College Basketball (1978).

[18] See Professional and Amateur Sports Protection, S. Rep. No. 102–248, p. 8 (1991); Hearing before the Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary, 102d Cong., 1st Sess., 21, 39, 46–47, 59–60, 227 (1991) (S. Hrg. 102–499) (statements by representatives of major sports leagues opposing sports gambling).

[19] S. Rep. No. 102–248, at 5.

[20] S. Hrg. 102–499, at 10–14.

[21] App. to Pet. for Cert. in No. 16–476, p. 225a.

[22] The statute applies to any "governmental entity," which is defined

advertise, promote, license, or authorize by law or compact . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on" competitive sporting events. §3702(1). In parallel, §3702(2) makes it "unlawful" for "a person to sponsor, operate, advertise, or promote" those same gambling schemes[23]—but only if this is done "pursuant to the law or compact of a governmental entity." PASPA does not make sports gambling a federal crime (and thus was not anticipated to impose a significant law enforcement burden on the Federal Government).[24] Instead, PASPA allows the Attorney General, as well as professional and amateur sports organizations, to bring civil actions to enjoin violations. §3703.

At the time of PASPA's adoption, a few jurisdictions allowed some form of sports gambling. In Nevada, sports gambling was legal in casinos,[25] and three States hosted sports lotteries or allowed sports pools.[26] PASPA contains "grandfather" provisions allowing these activities to continue. §3704(a)(1)–(2). Another provision gave New Jersey the option of legalizing sports gambling in Atlantic City—provided that it did so within one year of the law's

---

as "a State, a political subdivision of a State, or an entity or organization . . . that has governmental authority within the territorial boundaries of the United States." 28 U. S. C. §3701(2).

[23] PASPA does not define the term "scheme." The United States has not offered a definition of the term but suggests that it encompasses only those forms of gambling having some unspecified degree of organization or structure. See Brief for United States as *Amicus Curiae* 28–29. For convenience, we will use the term "sports gambling" to refer to whatever forms of sports gambling fall within PASPA's reach.

[24] The Congressional Budget Office estimated that PASPA would not require the appropriation of any federal funds. S. Rep. No. 102–248, at 10.

[25] *Ibid.*

[26] *Ibid.*; 138 Cong. Rec. 12973.

effective date. §3704(a)(3).[27]

New Jersey did not take advantage of this special option, but by 2011, with Atlantic City facing stiff competition, the State had a change of heart. New Jersey voters approved an amendment to the State Constitution making it lawful for the legislature to authorize sports gambling, Art. IV, §7, ¶2(D), (F), and in 2012 the legislature enacted a law doing just that, 2011 N. J. Laws p. 1723 (2012 Act).

The 2012 Act quickly came under attack. The major professional sports leagues and the NCAA brought an action in federal court against the New Jersey Governor and other state officials (hereinafter New Jersey), seeking to enjoin the new law on the ground that it violated PASPA. In response, the State argued, among other things, that PASPA unconstitutionally infringed the State's sovereign authority to end its sports gambling ban. See *National Collegiate Athletic Assn.* v. *Christie*, 926 F. Supp. 2d 551, 561 (NJ 2013).

In making this argument, the State relied primarily on two cases, *New York* v. *United States*, 505 U. S. 144 (1992), and *Printz* v. *United States*, 521 U. S. 898 (1997), in which we struck down federal laws based on what has been dubbed the "anticommandeering" principle. In *New York*, we held that a federal law unconstitutionally ordered the State to regulate in accordance with federal standards, and in *Printz*, we found that another federal statute unconstitutionally compelled state officers to enforce federal law.

Relying on these cases, New Jersey argued that PASPA is similarly flawed because it regulates a State's exercise

---

[27] Although this provision did not specifically mention New Jersey or Atlantic City, its requirements—permitting legalization only "in a municipality" with an uninterrupted 10-year history of legal casino gaming—did not fit anyplace else.

of its lawmaking power by prohibiting it from modifying or repealing its laws prohibiting sports gambling. See *National Collegiate Athletic Assn.* v. *Christie*, 926 F. Supp. 2d, at 561–562. The plaintiffs countered that PASPA is critically different from the commandeering cases because it does not command the States to take any affirmative act. *Id.*, at 562. Without an affirmative federal command to *do* something, the plaintiffs insisted, there can be no claim of commandeering. *Ibid.*

The District Court found no anticommandeering violation, *id.*, at 569–573, and a divided panel of the Third Circuit affirmed, *National Collegiate Athletic Assn.* v. *Christie*, 730 F. 3d 208 (2013) (*Christie I*). The panel thought it significant that PASPA does not impose any affirmative command. *Id.*, at 231. In the words of the panel, "PASPA does not require or coerce the states to lift a finger." *Ibid.* (emphasis deleted). The panel recognized that an affirmative command (for example, "Do not repeal") can often be phrased as a prohibition ("Repeal is prohibited"), but the panel did not interpret PASPA as prohibiting the repeal of laws outlawing sports gambling. *Id.*, at 232. A repeal, it thought, would not amount to "authoriz[ation]" and thus would fall outside the scope of §3702(1). "[T]he lack of an affirmative prohibition of an activity," the panel wrote, "does not mean it is affirmatively authorized by law. The right to do that which is not prohibited derives not from the authority of the state but from the inherent rights of the people." *Id.*, at 232 (emphasis deleted).

New Jersey filed a petition for a writ of certiorari, raising the anticommandeering issue. Opposing certiorari, the United States told this Court that PASPA does not require New Jersey "to leave in place the state-law prohibitions against sports gambling that it had chosen to adopt prior to PASPA's enactment. To the contrary, New Jersey is free to repeal those prohibitions in whole or in

part." Brief for United States in Opposition in *Christie* v. *National Collegiate Athletic Assn.*, O. T. 2013, No. 13–967 etc., p. 11. See also Brief for Respondents in Opposition in No. 13–967 etc., p. 23 ("Nothing in that unambiguous language compels states to prohibit or maintain any existing prohibition on sports gambling"). We denied review. *Christie* v. *National Collegiate Athletic Assn.*, 573 U. S. ___ (2014).

Picking up on the suggestion that a partial repeal would be allowed, the New Jersey Legislature enacted the law now before us. 2014 N. J. Laws p. 602 (2014 Act). The 2014 Act declares that it is not to be interpreted as causing the State to authorize, license, sponsor, operate, advertise, or promote sports gambling. *Ibid.* Instead, it is framed as a repealer. Specifically, it repeals the provisions of state law prohibiting sports gambling insofar as they concerned the "placement and acceptance of wagers" on sporting events by persons 21 years of age or older at a horseracing track or a casino or gambling house in Atlantic City. *Ibid.* The new law also specified that the repeal was effective only as to wagers on sporting events not involving a New Jersey college team or a collegiate event taking place in the State. *Ibid.*

Predictably, the same plaintiffs promptly commenced a new action in federal court. They won in the District Court, *National Collegiate Athletic Assn.* v. *Christie,* 61 F. Supp. 3d 488 (NJ 2014), and the case was eventually heard by the Third Circuit sitting en banc. The en banc court affirmed, finding that the new law, no less than the old one, violated PASPA by "author[izing]" sports gambling. *National Collegiate Athletic Assn.* v. *Governor of N. J.*, 832 F. 3d 389 (2016) (case below). The court was unmoved by the New Jersey Legislature's "artful[]" attempt to frame the 2014 Act as a repealer. *Id.*, at 397. Looking at what the law "actually does," the court concluded that it constitutes an authorization because it

"selectively remove[s] a prohibition on sports wagering in a manner that permissively channels wagering activity to particular locations or operators." *Id.*, at 397, 401. The court disavowed some of the reasoning in the *Christie I* opinion, finding its discussion of "the relationship between a 'repeal' and an 'authorization' to have been too facile." 832 F. 3d, at 401. But the court declined to say whether a repeal that was more complete than the 2014 Act would still amount to an authorization. The court observed that a partial repeal that allowed only "*de minimis* wagers between friends and family would not have nearly the type of authorizing effect" that it found in the 2014 Act, and it added: "We need not . . . articulate a line whereby a partial repeal of a sports wagering ban amounts to an authorization under PASPA, *if indeed such a line could be drawn*." *Id.*, at 402 (emphasis added).

Having found that the 2014 Act violates PASPA's prohibition of state authorization of sports gambling schemes, the court went on to hold that this prohibition does not contravene the anticommandeering principle because it "does not command states to take affirmative actions." *Id.*, at 401.

We granted review to decide the important constitutional question presented by these cases, *sub nom. Christie* v. *National Collegiate Athletic Assn.*, 582 U. S. ___ (2017).

II

Before considering the constitutionality of the PASPA provision prohibiting States from "author[izing]" sports gambling, we first examine its meaning. The parties advance dueling interpretations, and this dispute has an important bearing on the constitutional issue that we must decide. Neither respondents nor the United States, appearing as an *amicus* in support of respondents, contends that the provision at issue would be constitutional if petitioners' interpretation is correct. Indeed, the United

States expressly concedes that the provision is unconstitutional if it means what petitioners claim. Brief for United States 8, 19.

A

Petitioners argue that the anti-authorization provision requires States to maintain their existing laws against sports gambling without alteration. One of the accepted meanings of the term "authorize," they point out, is "permit." Brief for Petitioners in No. 16–476, p. 42 (citing Black's Law Dictionary 133 (6th ed. 1990); Webster's Third New International Dictionary 146 (1992)). They therefore contend that any state law that has the effect of permitting sports gambling, including a law totally or partially repealing a prior prohibition, amounts to an authorization. Brief for Petitioners in No. 16–476, at 42.

Respondents interpret the provision more narrowly. They claim that the *primary* definition of "authorize" requires affirmative action. Brief for Respondents 39. To authorize, they maintain, means "'[t]o empower; to give a right or authority to act; to endow with authority.'" *Ibid.* (quoting Black's Law Dictionary, at 133). And this, they say, is precisely what the 2014 Act does: It empowers a defined group of entities, and it endows them with the authority to conduct sports gambling operations.

Respondents do not take the position that PASPA bans all modifications of old laws against sports gambling, Brief for Respondents 20, but just how far they think a modification could go is not clear. They write that a State "can also repeal or enhance [laws prohibiting sports gambling] without running afoul of PASPA" but that it "cannot 'partially repeal' a general prohibition for only one or two preferred providers, or only as to sports-gambling schemes conducted by the state." *Ibid.* Later in their brief, they elaborate on this point:

"If, for example, a state had an existing felony prohi-

> bition on all lotteries, it could maintain the law, it could repeal the law, it could downgrade the crime to a misdemeanor or increase the penalty . . . . But if the state modified its law, whether through a new authorization or through an amendment partially repealing the existing prohibition, to authorize the state to conduct a sports lottery, that modified law would be preempted." *Id.*, at 31.

The United States makes a similar argument. PASPA, it contends, does not prohibit a State from enacting a complete repeal because "one would not ordinarily say that private conduct is 'authorized by law' simply because the government has not prohibited it." Brief for United States 17. But the United States claims that "[t]he 2014 Act's selective and conditional permission to engage in conduct that is generally prohibited certainly qualifies" as an authorization. *Ibid.* The United States does not argue that PASPA outlaws *all* partial repeals, but it does not set out any clear rule for distinguishing between partial repeals that constitute the "authorization" of sports gambling and those that are permissible. The most that it is willing to say is that a State could "eliminat[e] prohibitions on sports gambling involving wagers by adults or wagers below a certain dollar threshold." *Id.*, at 29.

B

In our view, petitioners' interpretation is correct: When a State completely or partially repeals old laws banning sports gambling, it "authorize[s]" that activity. This is clear when the state-law landscape at the time of PASPA's enactment is taken into account. At that time, all forms of sports gambling were illegal in the great majority of States, and in that context, the competing definitions offered by the parties lead to the same conclusion. The repeal of a state law banning sports gambling not only "permits" sports gambling (petitioners' favored definition);

it also gives those now free to conduct a sports betting operation the "right or authority to act"; it "empowers" them (respondents' and the United States's definition).

The concept of state "authorization" makes sense only against a backdrop of prohibition or regulation. A State is not regarded as authorizing everything that it does not prohibit or regulate. No one would use the term in that way. For example, no one would say that a State "authorizes" its residents to brush their teeth or eat apples or sing in the shower. We commonly speak of state authorization only if the activity in question would otherwise be restricted.[28]

The United States counters that, even if the term "authorize," standing alone, is interpreted as petitioners claim, PASPA contains additional language that precludes that reading. The provision at issue refers to "authoriz[ation] *by law*," §3702(1) (emphasis added), and the parallel provision governing private conduct, §3702(2), applies to conduct done "pursuant to the law . . . of a governmental entity." The United States maintains that one "would not naturally describe a person conducting a sports-gambling operation that is merely left unregulated as acting 'pursuant to' state law." Brief for United States 18. But one might well say exactly that if the person previously was prohibited from engaging in the activity. ("Now that the State has legalized the sale of marijuana, Joe is able to sell the drug pursuant to state law.")

The United States also claims to find support for its interpretation in the fact that the authorization ban ap-

---

[28] See, *e.g.*, A. McCullum, Vermont's legal recreational marijuana law: What you should know, USA Today Network (Jan. 23, 2018), online at https://www.usatoday.com/story/news/nation-now/2018/01/23/vermont-legal-marijuana-law-what-know/1056869001/ ("Vermont . . . bec[ame] the first [State] in the country to *authorize* the recreational use of [marijuana] by an act of a state legislature." (emphasis added)).

plies to all "governmental entities." It is implausible, the United States submits, to think that Congress "commanded every county, district, and municipality in the Nation to prohibit sports betting." *Ibid.* But in making this argument, the United States again ignores the legal landscape at the time of PASPA's enactment. At that time, sports gambling was generally prohibited by state law, and therefore a State's political subdivisions were powerless to legalize the activity. But what if a State enacted a law enabling, but not requiring, one or more of its subdivisions to decide whether to authorize sports gambling? Such a state law would not itself authorize sports gambling. The ban on legalization at the local level addresses this problem.

The interpretation adopted by the Third Circuit and advocated by respondents and the United States not only ignores the situation that Congress faced when it enacted PASPA but also leads to results that Congress is most unlikely to have wanted. This is illustrated by the implausible conclusions that all of those favoring alternative interpretations have been forced to reach about the extent to which the provision permits the repeal of laws banning sports gambling.

The Third Circuit could not say which, if any, partial repeals are allowed. 832 F. 3d, at 402. Respondents and the United States tell us that the PASPA ban on state authorization allows complete repeals, but beyond that they identify no clear line. It is improbable that Congress meant to enact such a nebulous regime.

C

The respondents and United States argue that even if there is some doubt about the correctness of their interpretation of the anti-authorization provision, that interpretation should be adopted in order to avoid any anti-commandeering problem that would arise if the provision

were construed to require States to maintain their laws prohibiting sports gambling. Brief for Respondents 38; Brief for United States 19. They invoke the canon of interpretation that a statute should not be held to be unconstitutional if there is any reasonable interpretation that can save it. See *Jennings* v. *Rodriguez*, 583 U. S. ___, ___(2018) (slip op., at 12). The plausibility of the alternative interpretations is debatable, but even if the law could be interpreted as respondents and the United States suggest, it would still violate the anticommandeering principle, as we now explain.

III

A

The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, *i.e.*, the decision to withhold from Congress the power to issue orders directly to the States. When the original States declared their independence, they claimed the powers inherent in sovereignty—in the words of the Declaration of Independence, the authority "to do all . . . Acts and Things which Independent States may of right do." ¶32. The Constitution limited but did not abolish the sovereign powers of the States, which retained "a residuary and inviolable sovereignty." The Federalist No. 39, p. 245 (C. Rossiter ed. 1961). Thus, both the Federal Government and the States wield sovereign powers, and that is why our system of government is said to be one of "dual sovereignty." *Gregory* v. *Ashcroft*, 501 U. S. 452, 457 (1991).

The Constitution limits state sovereignty in several ways. It directly prohibits the States from exercising some attributes of sovereignty. See, *e.g.*, Art. I, §10. Some grants of power to the Federal Government have been held to impose implicit restrictions on the States. See, *e.g.*, *Department of Revenue of Ky.* v. *Davis*, 553 U. S. 328

(2008); *American Ins. Assn.* v. *Garamendi*, 539 U. S. 396 (2003). And the Constitution indirectly restricts the States by granting certain legislative powers to Congress, see Art. I, §8, while providing in the Supremacy Clause that federal law is the "supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding," Art. VI, cl. 2. This means that when federal and state law conflict, federal law prevails and state law is preempted.

The legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms. And conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. The anticommandeering doctrine simply represents the recognition of this limit on congressional authority.

Although the anticommandeering principle is simple and basic, it did not emerge in our cases until relatively recently, when Congress attempted in a few isolated instances to extend its authority in unprecedented ways. The pioneering case was *New York* v. *United States*, 505 U. S. 144 (1992), which concerned a federal law that required a State, under certain circumstances, either to "take title" to low-level radioactive waste or to "regulat[e] according to the instructions of Congress." *Id.*, at 175. In enacting this provision, Congress issued orders to either the legislative or executive branch of state government (depending on the branch authorized by state law to take the actions demanded). Either way, the Court held, the provision was unconstitutional because "the Constitution does not empower Congress to subject state governments to this type of instruction." *Id.*, at 176.

Justice O'Connor's opinion for the Court traced this rule

to the basic structure of government established under the Constitution. The Constitution, she noted, "confers upon Congress the power to regulate individuals, not States." *Id.*, at 166. In this respect, the Constitution represented a sharp break from the Articles of Confederation. "Under the Articles of Confederation, Congress lacked the authority in most respects to govern the people directly." *Id.*, at 163. Instead, Congress was limited to acting "'only upon the States.'" *Id.*, at 162 (quoting *Lane County* v. *Oregon*, 7 Wall. 71, 76 (1869)). Alexander Hamilton, among others, saw this as "'[t]he great and radical vice in . . . the existing Confederation.'" 505 U. S., at 163 (quoting The Federalist No. 15, at 108). The Constitutional Convention considered plans that would have preserved this basic structure, but it rejected them in favor of a plan under which "Congress would exercise its legislative authority directly over individuals rather than over States." 505 U. S., at 165.

As to what this structure means with regard to Congress's authority to control state legislatures, *New York* was clear and emphatic. The opinion recalled that "no Member of the Court ha[d] ever suggested" that even "a particularly strong federal interest" "would enable Congress to command a state government to enact *state* regulation." *Id.*, at 178 (emphasis in original). "We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *Id.*, at 166. "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" *Id.*, at 161 (quoting *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264, 288 (1981)). "Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents." 505 U. S., at 178.

Five years after *New York*, the Court applied the same principles to a federal statute requiring state and local law enforcement officers to perform background checks and related tasks in connection with applications for handgun licenses. *Printz*, 521 U. S. 898. Holding this provision unconstitutional, the Court put the point succinctly: "The Federal Government" may not "command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Id.*, at 935. This rule applies, *Printz* held, not only to state officers with policymaking responsibility but also to those assigned more mundane tasks. *Id.*, at 929–930.

B

Our opinions in *New York* and *Printz* explained why adherence to the anticommandeering principle is important. Without attempting a complete survey, we mention several reasons that are significant here.

First, the rule serves as "one of the Constitution's structural protections of liberty." *Printz*, *supra*, at 921. "The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities." *New York*, *supra*, at 181. "To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals." *Ibid.* "'[A] healthy balance of power between the States and the Federal Government [reduces] the risk of tyranny and abuse from either front.'" *Id.*, at 181–182 (quoting *Gregory*, 501 U. S., at 458).

Second, the anticommandeering rule promotes political accountability. When Congress itself regulates, the responsibility for the benefits and burdens of the regulation is apparent. Voters who like or dislike the effects of the regulation know who to credit or blame. By contrast, if a State imposes regulations only because it has been commanded to do so by Congress, responsibility is blurred.

See *New York*, *supra*, at 168–169; *Printz*, *supra*, at 929–930.

Third, the anticommandeering principle prevents Congress from shifting the costs of regulation to the States. If Congress enacts a law and requires enforcement by the Executive Branch, it must appropriate the funds needed to administer the program. It is pressured to weigh the expected benefits of the program against its costs. But if Congress can compel the States to enact and enforce its program, Congress need not engage in any such analysis. See, *e.g.*, E. Young, Two Cheers for Process Federalism, 46 Vill. L. Rev. 1349, 1360–1361 (2001).

IV

A

The PASPA provision at issue here—prohibiting state authorization of sports gambling—violates the anticommandeering rule. That provision unequivocally dictates what a state legislature may and may not do. And this is true under either our interpretation or that advocated by respondents and the United States. In either event, state legislatures are put under the direct control of Congress. It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine.

Neither respondents nor the United States contends that Congress can compel a State to enact legislation, but they say that prohibiting a State from enacting new laws is another matter. See Brief for Respondents 19; Brief for United States 12. Noting that the laws challenged in *New York* and *Printz* "told states what they must do instead of what they must not do," respondents contend that commandeering occurs "only when Congress goes beyond precluding state action and affirmatively commands it." Brief for Respondents 19 (emphasis deleted).

This distinction is empty. It was a matter of happenstance that the laws challenged in *New York* and *Printz* commanded "affirmative" action as opposed to imposing a prohibition. The basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event.

Here is an illustration. PASPA includes an exemption for States that permitted sports betting at the time of enactment, §3704, but suppose Congress did not adopt such an exemption. Suppose Congress ordered States with legalized sports betting to take the affirmative step of criminalizing that activity and ordered the remaining States to retain their laws prohibiting sports betting. There is no good reason why the former would intrude more deeply on state sovereignty than the latter.

B

Respondents and the United States claim that prior decisions of this Court show that PASPA's anti-authorization provision is constitutional, but they misread those cases. In none of them did we uphold the constitutionality of a federal statute that commanded state legislatures to enact or refrain from enacting state law.

In *South Carolina* v. *Baker*, 485 U. S. 505 (1988), the federal law simply altered the federal tax treatment of private investments. Specifically, it removed the federal tax exemption for interest earned on state and local bonds unless they were issued in registered rather than bearer form. This law did not order the States to enact or maintain any existing laws. Rather, it simply had the indirect effect of pressuring States to increase the rate paid on their bearer bonds in order to make them competitive with other bonds paying taxable interest.

In any event, even if we assume that removal of the tax exemption was tantamount to an outright prohibition of the issuance of bearer bonds, see *id.*, at 511, the law would

simply treat state bonds the same as private bonds. The anticommandeering doctrine does not apply when Congress evenhandedly regulates an activity in which both States and private actors engage.

That principle formed the basis for the Court's decision in *Reno* v. *Condon*, 528 U. S. 141 (2000), which concerned a federal law restricting the disclosure and dissemination of personal information provided in applications for driver's licenses. The law applied equally to state and private actors. It did not regulate the States' sovereign authority to "regulate their own citizens." *Id.*, at 151.

In *Hodel*, 452 U. S., at 289, the federal law, which involved what has been called "cooperative federalism," by no means commandeered the state legislative process. Congress enacted a statute that comprehensively regulated surface coal mining and offered States the choice of "either implement[ing]" the federal program "or else yield[ing] to a federally administered regulatory program." *Ibid.* Thus, the federal law *allowed* but did not *require* the States to implement a federal program. "States [were] not compelled to enforce the [federal] standards, to expend any state funds, or to participate in the federal regulatory program in any manner whatsoever." *Id.*, at 288. If a State did not "wish" to bear the burden of regulation, the "full regulatory burden [would] be borne by the Federal Government." *Ibid.*

Finally, in *FERC* v. *Mississippi*, 456 U. S. 742 (1982), the federal law in question issued no command to a state legislature. Enacted to restrain the consumption of oil and natural gas, the federal law directed state utility regulatory commissions to consider, but not necessarily to adopt, federal "'rate design' and regulatory standards." *Id.*, at 746. The Court held that this modest requirement did not infringe the States' sovereign powers, but the Court warned that it had "never . . . sanctioned explicitly a federal command to the States to promulgate and enforce

laws and regulations." *Id.*, at 761–762. *FERC* was decided well before our decisions in *New York* and *Printz*, and PASPA, unlike the law in *FERC*, does far more than require States to *consider* Congress's preference that the legalization of sports gambling be halted. See *Printz*, 521 U. S., at 929 (distinguishing *FERC*).

In sum, none of the prior decisions on which respondents and the United States rely involved federal laws that commandeered the state legislative process. None concerned laws that directed the States either to enact or to refrain from enacting a regulation of the conduct of activities occurring within their borders. Therefore, none of these precedents supports the constitutionality of the PASPA provision at issue here.

V

Respondents and the United States defend the anti-authorization prohibition on the ground that it constitutes a valid preemption provision, but it is no such thing. Preemption is based on the Supremacy Clause, and that Clause is not an independent grant of legislative power to Congress. Instead, it simply provides "a rule of decision." *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U. S. ___, ___(2015) (slip op., at 3). It specifies that federal law is supreme in case of a conflict with state law. Therefore, in order for the PASPA provision to preempt state law, it must satisfy two requirements. First, it must represent the exercise of a power conferred on Congress by the Constitution; pointing to the Supremacy Clause will not do. Second, since the Constitution "confers upon Congress the power to regulate individuals, not States," *New York*, 505 U. S., at 166, the PASPA provision at issue must be best read as one that regulates private actors.

Our cases have identified three different types of preemption—"conflict," "express," and "field," see *English* v. *General Elec. Co.*, 496 U. S. 72, 78–79 (1990)—but all of

them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.

This mechanism is shown most clearly in cases involving "conflict preemption." A recent example is *Mutual Pharmaceutical Co.* v. *Bartlett*, 570 U. S. 472 (2013). In that case, a federal law enacted under the Commerce Clause regulated manufacturers of generic drugs, prohibiting them from altering either the composition or labeling approved by the Food and Drug Administration. A State's tort law, however, effectively required a manufacturer to supplement the warnings included in the FDA-approved label. *Id.*, at 480–486. We held that the state law was preempted because it imposed a duty that was inconsistent—*i.e.*, in conflict—with federal law. *Id.,* at 493.

"Express preemption" operates in essentially the same way, but this is often obscured by the language used by Congress in framing preemption provisions. The provision at issue in *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374 (1992), is illustrative. The Airline Deregulation Act of 1978 lifted prior federal regulations of airlines, and "[t]o ensure that the States would not undo federal deregulation with regulation of their own," *id.*, at 378, the Act provided that "no State or political subdivision thereof . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any [covered] air carrier." 49 U. S. C. App. §1305(a)(1) (1988 ed.).

This language might appear to operate directly on the States, but it is a mistake to be confused by the way in which a preemption provision is phrased. As we recently explained, "we do not require Congress to employ a particular linguistic formulation when preempting state law." *Coventry Health Care of Mo., Inc.* v. *Nevils*, 581 U. S. ___,

___–___(2017) (slip op., at 10–11). And if we look beyond the phrasing employed in the Airline Deregulation Act's preemption provision, it is clear that this provision operates just like any other federal law with preemptive effect. It confers on private entities (*i.e.*, covered carriers) a federal right to engage in certain conduct subject only to certain (federal) constraints.

"Field preemption" operates in the same way. Field preemption occurs when federal law occupies a "field" of regulation "so comprehensively that it has left no room for supplementary state legislation." *R. J. Reynolds Tobacco Co.* v. *Durham County*, 479 U. S. 130, 140 (1986). In describing field preemption, we have sometimes used the same sort of shorthand employed by Congress in express preemption provisions. See, *e.g.*, *Oneok, Inc.* v. *Learjet, Inc.,* 575 U. S. ___, ___ (2015) (slip op., at 2) ("Congress has forbidden the State to take action in the *field* that the federal statute pre-empts"). But in substance, field preemption does not involve congressional commands to the States. Instead, like all other forms of preemption, it concerns a clash between a constitutional exercise of Congress's legislative power and conflicting state law. See *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 372, n. 6 (2000).

The Court's decision in *Arizona* v. *United States*, 567 U. S. 387 (2012), shows how this works. Noting that federal statutes "provide a full set of standards governing alien registration," we concluded that these laws "reflect[] a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards." *Id.*, at 401. What this means is that the federal registration provisions not only impose federal registration obligations on aliens but also confer a federal right to be free from any other registration requirements.

In sum, regardless of the language sometimes used by Congress and this Court, every form of preemption is

based on a federal law that regulates the conduct of private actors, not the States.

Once this is understood, it is clear that the PASPA provision prohibiting state authorization of sports gambling is not a preemption provision because there is no way in which this provision can be understood as a regulation of private actors. It certainly does not confer any federal rights on private actors interested in conducting sports gambling operations. (It does not give them a federal right to engage in sports gambling.) Nor does it impose any federal restrictions on private actors. If a private citizen or company started a sports gambling operation, either with or without state authorization, §3702(1) would not be violated and would not provide any ground for a civil action by the Attorney General or any other party. Thus, there is simply no way to understand the provision prohibiting state authorization as anything other than a direct command to the States. And that is exactly what the anticommandeering rule does not allow.

In so holding, we recognize that a closely related provision of PASPA, §3702(2), *does* restrict private conduct, but that is not the provision challenged by petitioners. In Part VI–B–2, *infra*, we consider whether §3702(2) is severable from the provision directly at issue in these cases.

VI

Having concluded that §3702(1) violates the anticommandeering doctrine, we consider two additional questions: first, whether the decision below should be affirmed on an alternative ground and, second, whether our decision regarding the anti-authorization provision dooms the remainder of PASPA.

A

Respondents and the United States argue that, even if we disagree with the Third Circuit's decision regarding

the constitutionality of the anti-authorization provision, we should nevertheless affirm based on PASPA's prohibition of state "licens[ing]" of sports gambling. Brief for Respondents 43, n. 10; Brief for United States 34–35. Although New Jersey's 2014 Act does not expressly provide for the licensing of sports gambling operations, respondents and the United States contend that the law effectively achieves that result because the only entities that it authorizes to engage in that activity, *i.e.*, casinos and racetracks, are already required to be licensed. *Ibid.*

We need not decide whether the 2014 Act violates PASPA's prohibition of state "licens[ing]" because that provision suffers from the same defect as the prohibition of state authorization. It issues a direct order to the state legislature.[29] Just as Congress lacks the power to order a state legislature not to enact a law authorizing sports gambling, it may not order a state legislature to refrain from enacting a law licensing sports gambling.[30]

B

We therefore turn to the question whether, as petitioners maintain, our decision regarding PASPA's prohibition of the authorization and licensing of sports gambling operations dooms the remainder of the Act. In order for other PASPA provisions to fall, it must be "evident that

---

[29] Even if the prohibition of state licensing were not itself unconstitutional, we do not think it could be severed from the invalid provision forbidding state authorization. The provision of PASPA giving New Jersey the option of legalizing sports gambling within one year of enactment applied only to casinos operated "pursuant to a comprehensive system of State regulation." §3704(a)(3)(B). This shows that Congress preferred tightly regulated sports gambling over total deregulation.

[30] The dissent apparently disagrees with our holding that the provisions forbidding state authorization and licensing violate the anticommandering principle, but it provides no explanation for its position.

[Congress] would not have enacted those provisions which are within its power, independently of [those] which [are] not." *Alaska Airlines, Inc.* v. *Brock,* 480 U. S. 678, 684 (1987) (internal quotation marks omitted). In conducting that inquiry, we ask whether the law remains "fully operative" without the invalid provisions, *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 509 (2010) (internal quotation marks omitted), but "we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole," *Railroad Retirement Bd.* v. *Alton R. Co.*, 295 U. S. 330, 362 (1935). We will consider each of the provisions at issue separately.

1

Under 28 U. S. C. §3702(1), States are prohibited from "operat[ing]," "sponsor[ing]," or "promot[ing]" sports gambling schemes. If the provisions prohibiting state authorization and licensing are stricken but the prohibition on state "operat[ion]" is left standing, the result would be a scheme sharply different from what Congress contemplated when PASPA was enacted. At that time, Congress knew that New Jersey was considering the legalization of sports gambling in the privately owned Atlantic City casinos and that other States were thinking about the institution of state-run sports lotteries. PASPA addressed both of these potential developments. It gave New Jersey one year to legalize sports gambling in Atlantic City but otherwise banned the authorization of sports gambling in casinos, and it likewise prohibited the spread of state-run lotteries. If Congress had known that States would be free to authorize sports gambling in privately owned casinos, would it have nevertheless wanted to prevent States from running sports lotteries?

That seems most unlikely. State-run lotteries, which sold tickets costing only a few dollars, were thought more

benign than other forms of gambling, and that is why they had been adopted in many States. Casino gambling, on the other hand, was generally regarded as far more dangerous. A gambler at a casino can easily incur heavy losses, and the legalization of privately owned casinos was known to create the threat of infiltration by organized crime, as Nevada's early experience had notoriously shown.[31] To the Congress that adopted PASPA, legalizing sports gambling in privately owned casinos while prohibiting state-run sports lotteries would have seemed exactly backwards.

Prohibiting the States from engaging in commercial activities that are permitted for private parties would also have been unusual, and it is unclear what might justify such disparate treatment. Respondents suggest that Congress wanted to prevent States from taking steps that the public might interpret as the endorsement of sports gambling, Brief for Respondents 39, but we have never held that the Constitution permits the Federal Government to prevent a state legislature from expressing its views on subjects of public importance. For these reasons, we do not think that the provision barring state operation of sports gambling can be severed.

We reach the same conclusion with respect to the provisions prohibiting state "sponsor[ship]" and "promot[ion]." The line between authorization, licensing, and operation, on the one hand, and sponsorship or promotion, on the other, is too uncertain. It is unlikely that Congress would have wanted to prohibit such an ill-defined category of state conduct.

2

Nor do we think that Congress would have wanted to

---

[31] See Clary 84–102.

sever the PASPA provisions that prohibit a private actor from "sponsor[ing]," "operat[ing]," or "promot[ing]" sports gambling schemes "pursuant to" state law. §3702(2). These provisions were obviously meant to work together with the provisions in §3702(1) that impose similar restrictions on governmental entities. If Congress had known that the latter provisions would fall, we do not think it would have wanted the former to stand alone.

The present cases illustrate exactly how Congress must have intended §3702(1) and §3702(2) to work. If a State attempted to authorize particular private entities to engage in sports gambling, the State could be sued under §3702(1), and the private entity could be sued at the same time under §3702(2). The two sets of provisions were meant to be deployed in tandem to stop what PASPA aimed to prevent: state legalization of sports gambling. But if, as we now hold, Congress lacks the authority to prohibit a State from legalizing sports gambling, the prohibition of private conduct under §3702(2) ceases to implement any coherent federal policy.

Under §3702(2), private conduct violates federal law only if it is permitted by state law. That strange rule is exactly the opposite of the general federal approach to gambling. Under 18 U. S. C. §1955, operating a gambling business violates federal law only if that conduct is illegal under state or local law. Similarly, 18 U. S. C. §1953, which criminalizes the interstate transmission of wagering paraphernalia, and 18 U. S. C. §1084, which outlaws the interstate transmission of information that assists in the placing of a bet on a sporting event, apply only if the underlying gambling is illegal under state law. See also 18 U. S. C. §1952 (making it illegal to travel in interstate commerce to further a gambling business that is illegal under applicable state law).

These provisions implement a coherent federal policy: They respect the policy choices of the people of each State

on the controversial issue of gambling. By contrast, if §3702(2) is severed from §3702(1), it implements a perverse policy that undermines whatever policy is favored by the people of a State. If the people of a State support the legalization of sports gambling, federal law would make the activity illegal. But if a State outlaws sports gambling, that activity would be lawful under §3702(2). We do not think that Congress ever contemplated that such a weird result would come to pass.

PASPA's enforcement scheme reinforces this conclusion. PASPA authorizes civil suits by the Attorney General and sports organizations but does not make sports gambling a federal crime or provide civil penalties for violations. This enforcement scheme is suited for challenging state authorization or licensing or a small number of private operations, but the scheme would break down if a State broadly decriminalized sports gambling. It is revealing that the Congressional Budget Office estimated that PASPA would impose "no cost" on the Federal Government, see S. Rep. No. 102–248, p. 10 (1991), a conclusion that would certainly be incorrect if enforcement required a multiplicity of civil suits and applications to hold illegal bookies and other private parties in contempt.[32]

3

The remaining question that we must decide is whether the provisions of PASPA prohibiting the "advertis[ing]" of sports gambling are severable. See §§3702(1)–(2). If these provisions were allowed to stand, federal law would forbid the advertising of an activity that is legal under both

[32] Of course, one need not rely on the Senate Report for the commonsense proposition that leaving §3702(2) in place could wildly change the fiscal calculus, "giv[ing] it an effect altogether different from that sought by the measure viewed as a whole." *Railroad Retirement Bd.* v. *Alton R. Co.*, 295 U. S. 330, 362 (1935).

federal and state law, and that is something that Congress has rarely done. For example, the advertising of cigarettes is heavily regulated but not totally banned. See Federal Cigarette Labeling and Advertising Act, 79 Stat. 282; Family Smoking Prevention and Tobacco Control Act, §§201–204, 123 Stat. 1842–1848.

It is true that at one time federal law prohibited the use of the mail or interstate commerce to distribute advertisements of lotteries that were permitted under state law, but that is no longer the case. See *United States* v. *Edge Broadcasting Co.*, 509 U. S. 418, 421–423 (1993). In 1975, Congress passed a new statute, codified at 18 U. S. C. §1307, that explicitly *exempts* print advertisements regarding a lottery lawfully conducted by States, and in *Greater New Orleans Broadcasting Assn., Inc.* v. *United States*, 527 U. S. 173, 176 (1999), we held that the First Amendment protects the right of a radio or television station in a State with a lottery to run such advertisements. In light of these developments, we do not think that Congress would want the advertising provisions to stand if the remainder of PASPA must fall.

For these reasons, we hold that no provision of PASPA is severable from the provision directly at issue in these cases.

* * *

The legalization of sports gambling is a controversial subject. Supporters argue that legalization will produce revenue for the States and critically weaken illegal sports betting operations, which are often run by organized crime. Opponents contend that legalizing sports gambling will hook the young on gambling, encourage people of modest means to squander their savings and earnings, and corrupt professional and college sports.

The legalization of sports gambling requires an important policy choice, but the choice is not ours to make.

Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own. Our job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not. PASPA "regulate[s] state governments' regulation" of their citizens, *New York*, 505 U. S., at 166. The Constitution gives Congress no such power.

The judgment of the Third Circuit is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. ~~16–476 and~~ 16–477

PHILIP D. MURPHY, GOVERNOR OF NEW JERSEY, ET AL., PETITIONERS

16–476 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., PETITIONER

16–477 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May 14, 2018]

JUSTICE THOMAS, concurring.

I join the Court's opinion in its entirety. I write separately, however, to express my growing discomfort with our modern severability precedents.

I agree with the Court that the Professional and Amateur Sports Protection Act (PASPA) exceeds Congress' Article I authority to the extent it prohibits New Jersey from "authoriz[ing]" or "licens[ing]" sports gambling, 28 U. S. C. §3702(1). Unlike the dissent, I do "doubt" that Congress can prohibit sports gambling that does not cross state lines. *Post,* at 2 (opinion of GINSBURG, J.); see *License Tax Cases*, 5 Wall. 462, 470–471 (1867) (holding that Congress has "no power" to regulate "the internal commerce or domestic trade of the States," including the intrastate sale of lottery tickets); *United States* v. *Lopez*,

514 U. S. 549, 587–601 (1995) (THOMAS, J., concurring) (documenting why the Commerce Clause does not permit Congress to regulate purely local activities that have a substantial effect on interstate commerce). But even assuming the Commerce Clause allows Congress to prohibit intrastate sports gambling "directly," it "does not authorize Congress to regulate state governments' regulation of interstate commerce." *New York* v. *United States*, 505 U. S. 144, 166 (1992). The Necessary and Proper Clause does not give Congress this power either, as a law is not "proper" if it "subvert[s] basic principles of federalism and dual sovereignty." *Gonzales* v. *Raich*, 545 U. S. 1, 65 (2005) (THOMAS, J., dissenting). Commandeering the States, as PASPA does, subverts those principles. See *Printz* v. *United States*, 521 U. S. 898, 923–924 (1997).

Because PASPA is at least partially unconstitutional, our precedents instruct us to determine "which portions of the . . . statute we must sever and excise." *United States* v. *Booker*, 543 U. S. 220, 258 (2005) (emphasis deleted). The Court must make this severability determination by asking a counterfactual question: "'Would Congress still have passed' the valid sections 'had it known' about the constitutional invalidity of the other portions of the statute?" *Id.,* at 246 (quoting *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC*, 518 U. S. 727, 767 (1996) (plurality opinion)). I join the Court's opinion because it gives the best answer it can to this question, and no party has asked us to apply a different test. But in a future case, we should take another look at our severability precedents.

Those precedents appear to be in tension with traditional limits on judicial authority. Early American courts did not have a severability doctrine. See Walsh, Partial Unconstitutionality, 85 N. Y. U. L. Rev. 738, 769 (2010) (Walsh). They recognized that the judicial power is, fundamentally, the power to render judgments in individual

cases. See *id.*, at 755; Baude, The Judgment Power, 96 Geo. L. J. 1807, 1815 (2008). Judicial review was a by-product of that process. See generally P. Hamburger, Law and Judicial Duty (2008); Prakash & Yoo, The Origins of Judicial Review, 70 U. Chi. L. Rev. 887 (2003). As Chief Justice Marshall famously explained, "[i]t is emphatically the province and duty of the judicial department to say what the law is" because "[t]hose who apply the rule to particular cases, must of necessity expound and interpret that rule." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). If a plaintiff relies on a statute but a defendant argues that the statute conflicts with the Constitution, then courts must resolve that dispute and, if they agree with the defendant, follow the higher law of the Constitution. See *id.,* at 177–178; The Federalist No. 78, p. 467 (C. Rossiter ed. 1961) (A. Hamilton). Thus, when early American courts determined that a statute was unconstitutional, they would simply decline to enforce it in the case before them. See Walsh 755–766. "[T]here was no 'next step' in which courts inquired into whether the legislature would have preferred no law at all to the constitutional remainder." *Id.*, at 777.

Despite this historical practice, the Court's modern cases treat the severability doctrine as a "remedy" for constitutional violations and ask which provisions of the statute must be "excised." See, *e.g., Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 329 (2006); *Booker*, *supra*, at 245; *Alaska Airlines, Inc.* v. *Brock*, 480 U. S. 678, 686 (1987). This language cannot be taken literally. Invalidating a statute is not a "remedy," like an injunction, a declaration, or damages. See Harrison, Severability, Remedies, and Constitutional Adjudication, 83 Geo. Wash. L. Rev. 56, 82–88 (2014) (Harrison). Remedies "operate with respect to specific parties," not "on legal rules in the abstract." *Id.*, at 85; see also *Massachusetts* v. *Mellon*, 262 U. S. 447, 488 (1923) (explaining that

the power "to review and annul acts of Congress" is "little more than the negative power to disregard an unconstitutional enactment" and that "the court enjoins . . . not the execution of the statute, but the acts of the official"). And courts do not have the power to "excise" or "strike down" statutes. See 39 Op. Atty. Gen. 22, 22–23 (1937) ("The decisions are practically in accord in holding that the courts have no power to repeal or abolish a statute"); Harrison 82 ("[C]ourts do not make [nonseverable] provisions inoperative . . . . Invalidation by courts is a figure of speech"); Mitchell, The Writ-of-Erasure Fallacy, 104 Va. L. Rev. (forthcoming 2018) (manuscript, at 4) ("The federal courts have no authority to erase a duly enacted law from the statute books"), online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3158038 (as last visited May 11, 2018).

Because courts cannot take a blue pencil to statutes, the severability doctrine must be an exercise in statutory interpretation. In other words, the severability doctrine has courts decide how a statute operates once they conclude that part of it cannot be constitutionally enforced. See Fallon, As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L. Rev. 1321, 1333–1334 (2000); Harrison 88. But even under this view, the severability doctrine is still dubious for at least two reasons.

First, the severability doctrine does not follow basic principles of statutory interpretation. Instead of requiring courts to determine what a statute means, the severability doctrine requires courts to make "a nebulous inquiry into hypothetical congressional intent." *Booker*, *supra*, at 320, n. 7 (THOMAS, J., dissenting in part). It requires judges to determine what Congress would have intended had it known that part of its statute was unconstitutional.* But

---

*The first court to engage in this counterfactual exploration of legislative intent was the Massachusetts Supreme Judicial Court in *Warren*

it seems unlikely that the enacting Congress had any intent on this question; Congress typically does not pass statutes with the expectation that some part will later be deemed unconstitutional. See Walsh 740–741; Stern, Separability and Separability Clauses in the Supreme Court, 51 Harv. L. Rev. 76, 98 (1937) (Stern). Without any actual evidence of intent, the severability doctrine invites courts to rely on their own views about what the best statute would be. See Walsh 752–753; Stern 112–113. More fundamentally, even if courts could discern Con- gress' hypothetical intentions, intentions do not count unless they are enshrined in a text that makes it through the constitutional processes of bicameralism and present- ment. See *Wyeth* v. *Levine*, 555 U. S. 555, 586–588 (2009) (THOMAS, J., concurring in judgment). Because we have "'a Government of laws, not of men,' " we are governed by "legislated text," not "legislators' intentions"—and espe- cially not legislators' *hypothetical* intentions. *Zuni Public School Dist. No. 89* v. *Department of Education*, 550 U. S.
81, 119 (2007) (Scalia, J., dissenting). Yet hypothetical intent is exactly what the severability doctrine turns on, at least when Congress has not expressed its fallback position in the text.

Second, the severability doctrine often requires courts to weigh in on statutory provisions that no party has stand- ing to challenge, bringing courts dangerously close to issuing advisory opinions. See Stern 77; Lea, Situational Severability, 103 Va. L. Rev. 735, 788–803 (2017) (Lea). If one provision of a statute is deemed unconstitutional, the severability doctrine places every other provision at risk of

---

v. *Mayor and Aldermen of Charlestown*, 68 Mass. 84, 99 (1854). This Court adopted the *Warren* formulation in the late 19th century, see *Allen* v. *Louisiana*, 103 U. S. 80, 84 (1881), an era when statutory interpretation privileged Congress' unexpressed "intent" over the enacted text, see, *e.g., Church of Holy Trinity* v. *United States*, 143
U. S. 457, 472 (1892); *United States* v. *Moore*, 95 U. S. 760, 763 (1878).

being declared nonseverable and thus inoperative; our precedents do not ask whether the plaintiff has standing to challenge those other provisions. See *National Federation of Independent Business* v. *Sebelius*, 567 U. S. 519, 696–697 (2012) (joint dissent) (citing, as an example, *Williams* v. *Standard Oil Co. of La.*, 278 U. S. 235, 242–244 (1929)). True, the plaintiff had standing to challenge the unconstitutional part of the statute. But the severability doctrine comes into play only *after* the court has resolved that issue—typically the only live controversy between the parties. In every other context, a plaintiff must demonstrate standing for each part of the statute that he wants to challenge. See Lea 789, 751, and nn. 79–80 (citing, as examples, *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 733–734 (2008); *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 346, 350–353 (2006)). The severability doctrine is thus an unexplained exception to the normal rules of standing, as well as the separation-of-powers principles that those rules protect. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 101 (1998).

In sum, our modern severability precedents are in tension with longstanding limits on the judicial power. And, though no party in this case has asked us to reconsider these precedents, at some point, it behooves us to do so.

SUPREME COURT OF THE UNITED STATES

Nos. ~~16–476 and~~ 16–477

PHILIP D. MURPHY, GOVERNOR OF NEW JERSEY, ET AL., PETITIONERS

16–476 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., PETITIONER

16–477 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May 14, 2018]

JUSTICE BREYER, concurring in part and dissenting in part.

I agree with JUSTICE GINSBURG that 28 U. S. C. §3702(2) is severable from the challenged portion of §3702(1). The challenged part of subsection (1) prohibits a State from "author[izing]" or "licens[ing]" sports gambling schemes; subsection (2) prohibits individuals from "sponsor[ing], operat[ing], advertis[ing], or promot[ing]" sports gambling schemes "pursuant to the law . . . of a governmental entity." The first says that a State cannot authorize sports gambling schemes under state law; the second says that (just in case a State finds a way to do so) sports gambling schemes that a State authorizes are unlawful under federal law regardless. As JUSTICE GINSBURG makes clear, the latter section can live comfortably on its

own without the first.

Why would Congress enact both these provisions? The obvious answer is that Congress wanted to "keep sports gambling from spreading." S. Rep. No. 102–248, pp. 4–6 (1991). It feared that widespread sports gambling would "threate[n] to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling." *Id.,* at 4. And it may have preferred that state authorities enforce state law forbidding sports gambling than require federal authorities to bring civil suits to enforce federal law forbidding about the same thing. Alternatively, Congress might have seen subsection (2) as a backup, called into play if subsection (1)'s requirements, directed to the States, turned out to be unconstitutional—which, of course, is just what has happened. Neither of these objectives is unreasonable.

So read, the two subsections both forbid sports gambling but §3702(2) applies federal policy directly to individuals while the challenged part of §3702(1) forces the States to prohibit sports gambling schemes (thereby shifting the burden of enforcing federal regulatory policy from the Federal Government to state governments). Section 3702(2), addressed to individuals, standing alone seeks to achieve Congress' objective of halting the spread of sports gambling schemes by "regulat[ing] interstate commerce directly." *New York* v. *United States*, 505 U. S. 144, 166 (1992). But the challenged part of subsection (1) seeks the same end indirectly by "regulat[ing] state governments' regulation of interstate commerce." *Ibid.* And it does so by addressing the States (not individuals) directly and telling state legislatures what laws they must (or cannot) enact. Under our precedent, the first provision (directly and unconditionally telling States what laws they must enact) is unconstitutional, but the second (directly telling individuals what they cannot do) is not. See *ibid.*

As so interpreted, the statutes would make New Jersey's

victory here mostly Pyrrhic. But that is because the only problem with the challenged part of §3702(1) lies in its means, not its end. Congress has the constitutional power to prohibit sports gambling schemes, and no party here argues that there is any constitutional defect in §3702(2)'s alternative means of doing so.

I consequently join JUSTICE GINSBURG's dissenting opinion in part, and all but Part VI–B of the Court's opinion.

SUPREME COURT OF THE UNITED STATES

Nos. 16–476 and 16–477

PHILIP D. MURPHY, GOVERNOR OF NEW JERSEY, ET AL., PETITIONERS

16–476 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., PETITIONER

16–477 *v.*

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[May 14, 2018]

JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR joins, and with whom JUSTICE BREYER joins in part, dissenting.

The petition for certiorari filed by the Governor of New Jersey invited the Court to consider a sole question: "Does a federal statute that prohibits modification or repeal of state-law prohibitions on private conduct impermissibly commandeer the regulatory power of States in contravention of *New York* v. *United States*, 505 U. S. 144 (1992)?" Pet. for Cert. in No. 16–476, p. i.

Assuming, *arguendo*, a "yes" answer to that question, there would be no cause to deploy a wrecking ball destroying the Professional and Amateur Sports Protection Act (PASPA) in its entirety, as the Court does today. Leaving out the alleged infirmity, *i.e.,* "commandeering" state

regulatory action by prohibiting the States from "author-iz[ing]" and "licens[ing]" sports-gambling schemes, 28 U. S. C. §3702(1), two federal edicts should remain intact. First, PASPA bans States themselves (or their agencies) from "sponsor[ing], operat[ing], advertis[ing], [or] promot[ing]" sports-gambling schemes. *Ibid.* Second, PASPA stops private parties from "sponsor[ing], operat[ing], advertis[ing], or promot[ing]" sports-gambling schemes if state law authorizes them to do so. §3702(2).[1] Nothing in these §3702(1) and §3702(2) prohibitions commands States to do anything other than desist from conduct federal law proscribes.[2] Nor is there any doubt that Congress has power to regulate gambling on a nationwide basis, authority Congress exercised in PASPA. See *Gonzales* v. *Raich*, 545 U. S. 1, 17 (2005) ("Our case law firmly establishes Congress' power to regulate purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce.").

Surely, the accountability concern that gave birth to the anticommandeering doctrine is not implicated in any federal proscription other than the bans on States' authorizing and licensing sports-gambling schemes. The concern triggering the doctrine arises only "where the Federal Government compels States to regulate" or to enforce federal law, thereby creating the appearance that state officials are responsible for policies Congress forced them to enact. *New York* v. *United States*, 505 U. S. 144, 168 (1992). If States themselves and private parties may not

---

[1] PASPA was not designed to eliminate any and all sports gambling. The statute targets sports-gambling *schemes*, *i.e.,* organized markets for sports gambling, whether operated by a State or by a third party under state authorization.

[2] In lieu of a flat ban, PASPA prohibits third parties from operating sports-gambling schemes only if state law permits them to do so. If a state ban is in place, of course, there is no need for a federal proscription.

operate sports-gambling schemes, responsibility for the proscriptions is hardly blurred. It cannot be maintained credibly that state officials have anything to do with the restraints. Unmistakably, the foreclosure of sports-gambling schemes, whether state run or privately operated, is chargeable to congressional, not state, legislative action.

When a statute reveals a constitutional flaw, the Court ordinarily engages in a salvage rather than a demolition operation: It "limit[s] the solution [to] severing any problematic portions while leaving the remainder intact." *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 508 (2010) (internal quotation marks omitted). The relevant question is whether the Legislature would have wanted unproblematic aspects of the legislation to survive or would want them to fall along with the infirmity.[3] As the Court stated in *New York*, "[u]nless it is evident that the Legislature would not have enacted those provisions which are within its power, . . . the invalid part may be dropped if what is left is fully operative as a law." 505 U. S., at 186 (internal quotation marks omitted). Here, it is scarcely arguable that Congress "would have preferred no statute at all," *Executive Benefits Ins. Agency* v. *Arkison*, 573 U. S. ___, ___ (2014) (slip op., at 10), over one that simply stops States and private parties alike from operating sports-gambling schemes.

The Court wields an ax to cut down §3702 instead of using a scalpel to trim the statute. It does so apparently in the mistaken assumption that private sports-gambling schemes would become lawful in the wake of its decision.

---

[3] Notably, in the two decisions marking out and applying the anti-commandeering doctrine to invalidate federal law, the Court invalidated only the offending provision, not the entire statute. *New York* v. *United States*, 505 U. S. 144, 186–187 (1992); *Printz* v. *United States*, 521 U. S. 898, 935 (1997).

In particular, the Court holds that the prohibition on state "operat[ion]" of sports-gambling schemes cannot survive, because it does not believe Congress would have "wanted to prevent States from running sports lotteries" "had [it] known that States would be free to authorize sports gambling in privately owned casinos." *Ante,* at 26. In so reasoning, the Court shutters §3702(2), under which private parties are prohibited from operating sports-gambling schemes *precisely when state law authorizes them to do so*.[4]

This plain error pervasively infects the Court's severability analysis. The Court strikes Congress' ban on state "sponsor[ship]" and "promot[ion]" of sports-gambling schemes because it has (mistakenly) struck Congress' prohibition on state "operat[ion]" of such schemes. See *ante,* at 27. It strikes Congress' prohibitions on private "sponsor[ship]," "operat[ion]," and "promot[ion]" of sports-gambling schemes because it has (mistakenly) struck those same prohibitions on the States. See *ante,* at 27–28. And it strikes Congress' prohibition on "advertis[ing]" sports-gambling schemes because it has struck everything else. See *ante,* at 29–30.

* * *

In PASPA, shorn of the prohibition on modifying or repealing state law, Congress permissibly exercised its authority to regulate commerce by instructing States and private parties to refrain from operating sports-gambling schemes. On no rational ground can it be concluded that Congress would have preferred no statute at all if it could

---

[4] As earlier indicated, see *supra,* at 2, direct federal regulation of sports-gambling schemes nationwide, including private-party schemes, falls within Congress' power to regulate activities having a substantial effect on interstate commerce. See *Gonzales* v. *Raich*, 545 U. S. 1, 17 (2005). Indeed, according to the Court, direct regulation is precisely what the anticommandeering doctrine requires. *Ante,* at 14–18.

b

r

tions would free the statute to accomplish just what Con- gress legitimately sought to achieve: stopping sports- gambling regimes while making it clear that the stoppage is attributable to federal, not state, action. I therefore dissent from the Court's determination to destroy PASPA rather than salvage the statute.

NEVADA – SPORTS WAGERING

In Nevada, sports wagering is legally defined as a sports pool:

NRS 463.0193 "Sports pool" defined. "Sports pool" means the business of accepting wagers on sporting events or other events by any system or method of wagering.

To operate a sports pool in Nevada, one must operate slots, table games or mobile gaming in the same location or have a primary book at another location in which slots, table games or mobile gaming are operated by the same licensee as the sports pool business. See the statute below:

NRS 463.245 Single establishment not to contain more than one licensed operation; exceptions; certain agreements for sharing of revenue prohibited.

1. Except as otherwise provided in this section:

(a) All licenses issued to the same person, including a wholly owned subsidiary of that person, for the operation of any game, including a sports pool or race book, which authorize gaming at the same establishment must be merged into a single gaming license.

(b) A gaming license may not be issued to any person if the issuance would result in more than one licensed operation at a single establishment, whether or not the profits or revenue from gaming are shared between the licensed operations.

2. A person who has been issued a nonrestricted gaming license for an operation described in subsection 1, 2 or 5 of NRS 463.0177 may establish a sports pool or race book on the premises of the establishment only after obtaining permission from the Commission.

3. A person who has been issued a license to operate a sports pool or race book at an establishment may be issued a license to operate a sports pool or race book at a second establishment described in subsection 1 or 2 of NRS 463.0177 only if the second establishment is operated by a person who has been issued a nonrestricted license for that establishment. A person who has been issued a license to operate a race book or sports pool at an establishment is prohibited from operating a race book or sports pool at:

(a) An establishment for which a restricted license has been granted; or

NRS 463.0177 "Nonrestricted license" and "nonrestricted operation" defined. *"Nonrestricted license" or "nonrestricted operation" means:*

1. A state gaming license for, or an operation consisting of, 16 or more slot machines;

2. A license for, or operation of, any number of slot machines together with any other game, gaming device, race book or sports pool at one establishment;

3. A license for, or the operation of, a slot machine route;

4. A license for, or the operation of, an inter-casino linked system; or

5. A license for, or the operation of, a mobile gaming system.

(b) An establishment at which only a nonrestricted license has been granted for an operation described in subsection 3 or 4 of NRS 463.0177.

4. A person who has been issued a license to operate a race book or sports pool shall not enter into an agreement for the sharing of revenue from the operation of the race book or sports pool with another person in consideration for the offering, placing or maintaining of a kiosk or other similar device not physically located on the licensed premises of the race book or sports pool, except:

(a) An affiliated licensed race book or sports pool; or

(b) The licensee of an establishment at which the race book or sports pool holds or obtains a license to operate pursuant to this section. This subsection does not prohibit an operator of a race book or sports pool from entering into an agreement with another person for the provision of shared services relating to advertising or marketing.

5. Nothing in this section limits or prohibits an operator of an inter-casino linked system from placing and operating such a system on the premises of two or more gaming licensees and receiving, either directly or indirectly, any compensation or any percentage or share of the money or property played from the linked games in accordance with the provisions of this chapter and the regulations adopted by the Commission. An inter-casino linked system must not be used to link games other than slot machines, unless such games are located at an establishment that is licensed for games other than slot machines.

6. For the purposes of this section, the operation of a race book or sports pool includes making the premises available for any of the following purposes:

(a) Allowing patrons to establish an account for wagering with the race book or sports pool;

(b) Accepting wagers from patrons;

(c) Allowing patrons to place wagers;

(d) Paying winning wagers to patrons; or

(e) Allowing patrons to withdraw cash from an account for wagering or to be issued a ticket, receipt, representation of value or other credit representing a withdrawal from an account for wagering that can be redeemed for cash, whether by a transaction in person at an establishment or through mechanical means such as a kiosk or other similar device, regardless of whether that device would otherwise be considered associated equipment.

7. The provisions of this section do not apply to a license to operate a mobile gaming system or to operate interactive gaming.

NRS 463.245 started out as an effort to avoid a tax loophole exploited in the 1980s. While many believe Nevada taxes gross gaming revenue at 6.75%, it doesn't. Nevada actually has a graduated tax that starts at 3.5% (See NRS 463.370). A few clever operators realized that if each bank of slot machines was owned by a separate entity and space was leased to each bank by the casino owner, no bank would earn enough to reach the top tax level and the overall tax profile of the establishment would be reduced. In response, the legislature enacted NRS 463.245, known as the "one licensee rule." The one licensee rule essentially deems the entire gaming premises to be operated by one licensee and limits third-party gaming operations to a few exceptions.

In 2012, a new form of sports kiosk was regulatorily approved. Sports kiosks had been tried earlier, but were never that popular. In the early 2000s, the kiosk became more sophisticated and they evolved. At first it allowed players to access their accounts and see lines, then they

evolved to add placing wagers, then they evolved to add accepting deposits, then they evolved to add account creation, finally, they evolved to add ticket out. In addition, these new kiosks were being placed at restricted gaming locations in Clark County, Nevada.

In 2013, the Nevada Resort Association sought a legislative fix to address this "book-in-a-box" system that they believed blurred the line between restricted and non-restricted gaming. As part of this effort NRS 463.425 was changed into its current form.

New Jersey – SPORTS WAGERING

New Jersey won the hard fought battle to have state regulated sports wagering in New Jersey. It was quick to enact regulations to govern sports wagering as follows (just skim, but review the highlighted sections):

13:69A-9.4 Casino license fees

(a) For the purposes of this section, the following words and terms shall have the meanings herein ascribed to them unless a different meaning clearly appears from the contest:

1. - 6. (No change.)

7. "Sports wagering license fee" means the total fee that is required by the Act and this subchapter to be paid prior to issuance or renewal of a sports wagering license;

(b) (No change.)

(c) [No casino license shall be issued unless the applicant shall first have paid in full an issuance fee of not less than $200,000. No initial Internet gaming permit shall be issued unless the applicant shall first have paid in full a permit fee of not less than $400,000 and a Responsible Internet Gaming Fee of $250,000. No Internet gaming permit shall

be renewed unless the permit holder shall first have paid a renewal fee of not less than

$250,000 and an annual Responsible Internet Gaming Fee of $250,000. The Responsible Internet Gaming Fee shall be deposited into the State General Fund pursuant to the Act.] The following fee amounts shall apply:

1. Not less than $200,000 for a casino license or a casino license resubmission;

2. Not less than $400,000 for an initial Internet gaming permit;

3. Not less than $250,000 for the renewal of an Internet gaming permit;

4. A $250,000 Responsible Internet Gaming Fee upon the filing for an initial or renewal of an Internet gaming permit; and

5. $100,000 for an initial sports wagering license. A minimum of $100,000 for a sports wagering license renewal, with the final cost to be determined after consideration of the costs for renewal, enforcement and gambling addiction. 50% of the initial sports wagering license fee paid by casinos and racetracks shall be deposited into the State General Fund for appropriation by the Legislature to the Department of Health to provide funds for evidence-based prevention, education, and treatment programs for compulsive gambling that meet the criteria developed pursuant to section 2 of P.L.1993, c.229 (C.26:2-169), such as those provided by the Council on Compulsive Gambling of New Jersey, and including the development and implementation of programs that identify and assist problem gamblers. The percentage of the renewal fee to be directed into the State General Fund for appropriation by the Legislature to the Department of Health to provide funds for evidence-based prevention, education, and treatment programs for

compulsive gambling that meet the criteria developed pursuant to section 2 of P.L.1993, c.229 (C.26:2-169), such as those provided by the Council on Compulsive Gambling of New Jersey, and including the development and implementation of programs that identify and assist problem gamblers shall be established by the Director on an annual basis after considering the licensure and enforcement costs of regulating sports wagering, but shall not be less than

$100,000 per licensee.

(d) Pursuant to N.J.S.A. 5:12-141.1, in addition to the license fee for a sports wagering license set forth in (c) above, each initial racetrack and casino sports wagering license applicant shall be required to submit a retainer of $250,000 to the Casino Control Fund to cover initial and start-up costs of the Division for the regulation and enforcement of sports pool and online sports pool operations and for law enforcement functions performed by the Division of State Police and the Division of Criminal Justice. Such retainer shall be segregated within the Casino Control Fund and funds not expended during the initial license period shall be refunded to all licensees on a pro rata basis.

13:69A-9.19 Obligation to pay fees; nonrefundable nature of fees; credits

(a) – (c) (No change.)

(d) Any surplus which exists in the Casino Control Fund, with a separate accounting for sports pool fees, as of the close of a fiscal year which is not due to excess payments of estimated shares collected pursuant to N.J.A.C. 13:69A-9.4(e) shall be credited toward the payment of additional fees by casino licensees. The share for each casino licensee shall be the amount which is in the same proportion to the total surplus subject to this subsection as the proportion of the total amount of fees incurred or paid by the casino licensee with respect to the fiscal year is to the total amount of all fees incurred or paid by all casino licensees with respect to the fiscal year.

(e) (No change.)

13:69D-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Alterable media" means any device that contains software that can be reprogrammed. It does not include erasable programmable read-only memory (EPROM) or one-time programmable devices.

…

"Representation of gaming debt" means a document issued by a casino licensee in a form approved by the Division to evidence a specific amount of money owed to a patron

by the casino licensee as a result of a gaming transaction, and includes gaming vouchers, sports pool vouchers and winning keno and sports wagering tickets, but does not include a gaming chip or plaque, slot token, jackpot payout receipt, receipt for table game, tournament or bad beat payout, winning pari-mutuel ticket, simulcast voucher, or any form of electronic credit.

…

"Wire transfer" means a transfer of funds by means of the Federal Reserve Bank wire system in accordance with the requirements of 12 CFR 210.25 et seq.

13:69D-1.8 Record Retention

(a) – (f) (No change.)

(g) All original books, records, and documents shall be retained in accordance with the following retention schedules unless otherwise authorized by the rules of Division. However, nothing herein shall be construed as relieving a casino licensee or a WAP or MSPS progressive slot system operator from meeting any obligation to maintain any book, record, or document required by any other Federal, State, or local governmental body, authority, or agency.

1. – 2. (No change.)

3. Four-year retention:

i. - ii. (No change.)

iii. Except for poker tournaments, documentation supporting the calculation of poker revenue; [and]

iv. Except for keno tickets, documentation supporting the calculation of keno win; and

v. Except for sports pool tickets, documentation supporting the calculation of sports pool win.

4. - 8. (No change.)

9. No minimum retention and may be destroyed without the notice required by

(e) above:

i. Gaming vouchers, [and] coupons, and sports pool tickets and vouchers redeemed, verified, and electronically cancelled by the gaming voucher or sports pool system.

ii. – xxiv. (No change.)

13:69D-1.10 Closed circuit television system; surveillance department control;

surveillance department restrictions

(a) (No change.)

(b) The CCTV system shall be approved by the Division and shall include, at a minimum, the following:

1. Light sensitive cameras, with lenses of sufficient magnification to allow the operator to read information on gaming chips, playing cards, dice, tiles, slot machine reel symbols, slot machine credit meters, and employee credentials, and with 360 degree pan, tilt and zoom capabilities without camera stops to effectively and clandestinely monitor in detail and from various vantage points, the following:

i. - xi. (No change.)

xii. The operation of automated jackpot payout machines, gaming voucher redemption machines, gaming voucher systems and electronic transfer credit systems; [

and

xiv. Such other areas as the Division designates;

2. - 7. (No change.) (c) (No change.)

(d) A casino licensee's CCTV system shall be required to record, during the times and in the manner indicated below, all transmissions from cameras used to observe the following locations, persons or transactions:

1. – 9. (No change.)

10. Each transaction conducted at an automated bill breaker, voucher/coupon redemption and jackpot payout machine, as well as each replenishment or other servicing of any such machines; [and]

11. The entrances and exits to the casino, casino simulcasting facility, sports wagering lounge, count rooms and all critical locations as defined in N.J.A.C. 13:69D-

2.1; and

12. Each sports pool ticket writer location, kiosk, booth operations and other gaming related areas and activities in a sports wagering lounge.

(e) In addition to any other requirements imposed by this section and in accordance with the time parameters specified herein, a casino licensee's CCTV system shall be required to record transmissions used to observe the face of each patron transacting business at each of its cashiers' cage, [and] satellite cage, and sports pool ticket writer windows from the direction of the cashier.

(f) – (l) (No change.)

13:69D-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of the departments and supervisors required or authorized by this section (a "mandatory" department or supervisor) shall cooperate with, yet perform independently of, all other mandatory departments and supervisors of the casino licensee. Mandatory departments and supervisory positions are as follows:

1. A surveillance department supervised by a person referred to in this section as the director of surveillance. The director of surveillance shall be subject to the reporting requirements specified in (c) below. The surveillance department monitoring room shall be supervised by a casino key employee who shall be present in the room at all times or, if not present, be within immediate contact and at a known location on the premises. The surveillance department shall be responsible for, without limitation, the following:

i. - ii. (No change.)

iii. The clandestine surveillance of the operation of the casino simulcasting [facility] and sports wagering lounge facilities;

iv. - xix. (No change.)

2. (No change.)

3. (No change.)

4. An IT department comprised of at a minimum an IT department manager, and, if the licensee offers Internet and mobile gaming, an Internet and mobile games manager, all of whom shall be located in New Jersey and licensed as a casino key employee.

i. The IT department manager shall be responsible for [the integrity of] all data, as well as the quality, reliability, and accuracy of all computer systems and software used by the casino licensee in accordance with the framework established by the information security officer. This shall apply to the conduct of casino, sports pool and casino simulcasting facility operations, whether such data and software are located within or outside the casino hotel facility, including, without limitation, specification of appropriate computer software, hardware, and procedures for security, physical integrity, audit, and maintenance of:

(1) - (5) (No change.)

ii. The Internet and/or mobile gaming manager shall report to the IT department manager, or other department manager as approved by the Division, and be responsible for ensuring the proper operation and integrity of Internet and/or mobile gaming and online sports pools and reviewing all reports of suspicious behavior;

5. (No change.)

6. A security department supervised by a person referred to in this section as a director of security. The security department shall be responsible for the overall security of the establishment including, without limitation, the following:

i. - vii. (No change.)

viii. The recordation of any and all unusual occurrences within the casino, sports wagering lounge and casino simulcasting facility for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and shall be recorded in an unalterable format which shall include:

(1) - (6) (No change.)

ix. (No change.)

x. The identification and removal of any person who is required to be excluded pursuant to N.J.S.A. 5:12-71, N.J.S.A. 5:12-71.2, or N.J.A.C. 13:69G-

1.7, or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1, or of any person, other than those who are to be detained pursuant to (b)5vi above, who is prohibited from entering a casino, a sports wagering lounge or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119a; and

xi. (No change.)

7. A casino accounting department supervised by a person referred to in this section as a controller. The controller shall be responsible for all casino, sports wagering lounge and casino simulcasting facility accounting control functions including, without limitation, the preparation and control of records and data, the control of stored data, the control of unused forms, the accounting for and comparison of operational data and forms, and the control and supervision of the cashiers' cage, any satellite cages, the soft count room, and the hard count room. The soft count room and hard count room shall each be supervised by a casino key employee, who shall be responsible for the supervision of the soft count or hard count in accordance with

N.J.A.C. 13:69D-1.33 and 1.43, respectively. A casino licensee that operates more than one casino room within its casino hotel facility may be required to maintain a separate main cage in each casino room. A casino key employee referred to herein as a cage manager shall supervise the main cage and any satellite cages within the casino room. The cage manager shall report to the controller and shall be responsible for the control and supervision of cage and slot cashiers, casino clerks and the cage functions set forth in N.J.A.C. 13:69D-1.14 and 1.15. If a casino licensee elects to operate one or more satellite cages, each satellite cage shall be supervised by a casino cage supervisor who shall report to a cage manager. A casino licensee may choose, in its discretion, as to each cashier's cage in its casino hotel facility, to:

i. - iv. (No change.)

8. Establish an independent sports pool department for the sports lounge that shall be supervised by a casino key employee referred to herein as a sports lounge manager who:

i. Shall be responsible for the operation and conduct of the sports wagering lounge;

ii. May be responsible for the operation and conduct of the simulcast counter; and

iii. Shall ensure at least one key employee is present in the sports lounge whenever sports pool wagering is conducted.

(c) - (h) (No change.)

13:69D-1.14 Physical description of cashiers' main cage; satellite cage; master coin bank; coin vault; simulcast booth; slot booth; [and] keno booth; and sports lounge booth

(a) - (g) No change.

(h) Provided that the casino or racetrack has a cashier's main cage which meets the requirements of (b) above, sports pool wagering transactions may be conducted from a sports wagering lounge booth located in the sports wagering lounge. Such booth shall be designed and constructed in accordance with (b)1 through 5 above, and access shall be controlled by a supervisor in the games department or, for a racetrack, a comparable position approved by the Division.

13:69D-1.15 Accounting controls and functions for the cashiers' main cage; satellite cage; master coin bank; coin vault; simulcast booth; slot booth; sports wagering lounge booth; and chipperson

(a) - (e) (No change.)

(f) The assets for which each general cashier is responsible shall be maintained on an imprest basis. A general cashier shall not permit any other person to access his or her imprest inventory. General cashier functions shall include, but are not limited to, the following:

1. – 11. (No change.)

12. Receive gaming vouchers[,] and/or sports wagering tickets or vouchers

from patrons or authorized employees in exchange for cash or slot tokens;

13. – 16. (No change.) (g) – (i) (No change.)

(j) Main bank cashiers' functions shall include, but are not limited to, the following:

1. Receive cash, gaming vouchers, cash equivalents, issuance copies of Slot Counter Checks, original copies of Payout Slips, sports wagering tickets and vouchers, personal checks received for non-gaming purposes, slot tokens, prize tokens, gaming chips, and plaques from general cashiers in exchange for cash;

2. – 20. (No change.)

21. Process exchanges with master coin cashiers, supported by documentation with signatures thereon, for the effective segregation of functions in the cashiers' cage; [and]

22. Exchange funds with hotel cashiering supported by proper documentation[.];

and

23. Exchange currency, coin, slot tokens, gaming chips and coupons with the sports pool booth in exchange for proper documentation.

(k) – (u) (No change.)

13:69D-3.1 Expiration of gaming-related obligations owed to patrons; expiration of sports pool tickets and vouchers; payment to casino revenue fund

(a) - (e) (No change.)

(f) Unclaimed winning sports pool tickets expire one year after the date of the event at which time the obligation of the sports pool operator to pay the winnings shall expire and the funds shall be distributed as follows:

1. For wagers placed with a sports pool operated by or on behalf of a casino, the casino licensee shall retain 50% and remit the remaining 50% to the Casino Revenue Fund;

2. For wagers placed with a sports pool operated by or on behalf of a racetrack, the racetrack licensee shall retain 50% and remit the remaining 50% to the State General Fund; and

3. For wagers placed with a sports pool jointly operated by a casino and a racetrack, the casino and racetrack licensees shall retain a total of 50% which shall be apportioned among them pursuant to the terms of their operation agreement, and the remaining 50% shall be apportioned in the same manner, with the casino percentage being deposited in the Casino Revenue Fund and the racetrack percentage being deposited in the State General Fund.

(g) Each casino and racetrack licensee shall, on or before the 20th day of each calendar month:

1. Report in a format prescribed by the Division, the total value of sports pool winning tickets owed to its patrons that expired during the preceding calendar month; and

2. Submit a check to the Division payable to either the Casino Revenue Fund or the State General Fund, as applicable, equal to 50% of the total value of the gaming debts owed to its patrons that expired during the preceding month, as stated on the report.

(h) Failure to make the payment to the Casino Revenue Fund or State General Fund, as applicable, by the due date shall result in the imposition of penalties and interest as prescribed in the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.

(i) Nothing shall preclude a casino or racetrack licensee from, in its discretion, issuing a cash complimentary to a patron to compensate a patron for a sports pool ticket that has expired.

(j) Unclaimed sports pool vouchers purchased at a racetrack shall be governed by the provisions of N.J.S.A. 5:5-22.2.

13:69E-1.28O Technical standards for kiosks

(a) Kiosk means all aspects of an automated device that may be used for voucher redemption, coupon redemption, slot machine jackpot processing, ATM debit card transactions, credit card transactions, bill breaking, voucher issuance, sports pool voucher and ticket processing, and other automated functions as approved by the Division.

(b) – (h) (No change.)

(i) Kiosks shall be capable of recognizing payment limitations or payment errors such as bill out jams and insufficient funds. When a payment limitation or error occurs, the kiosk shall be designed to electronically record the payout limitation or error and perform the following:

1. For gaming vouchers, sports pool tickets and vouchers or [promotion]

promotional coupons:

i. Reject the transaction; [or]

ii. Issue an error receipt and [change] stack the gaming voucher, sports pool voucher, sports pool ticket or [promotion] promotional coupon [to a redeemed status] in the bill validator and change the status to redeemed; or

iii. Issue a replacement sports pool voucher.

2. - 3. (No change.)

(j) When an error receipt is issued from a kiosk, the [kiosk or] receipt shall advise the patron or employee to see a cashier or sports pool ticket writer for payment. Error receipts shall be designed to include the following, at a minimum:

1. - 5. (No change.) (k) - (r) (No change)

(z) Each kiosk or kiosk computer system shall be capable of generating a "Transaction Report," which documents each attempted and completed transaction. The report shall include, at a minimum:

1. The date and time;

2. A description of the transaction;

3. The value of currency dispensed;

4. The value of gaming vouchers dispensed;

5. The value of currency inserted; [and]

6. The value of gaming vouchers inserted;

7. The value of all sports pool vouchers dispensed;

8. The value of all sports pool vouchers inserted;

9. The value of all sports pool tickets dispensed; and

10. The value of all sports pool tickets inserted.

(aa) [Each kiosk or kiosk computer system shall be capable of generating an "Access Report," which accurately records the number of times any external doors were opened and the number of times the cash door was opened.

(bb) Each kiosk or kiosk computer system shall be capable of generating additional reports which may be required to accurately calculate revenue, reconcile kiosk balances and to research variances when applicable.] When used to redeem sports pool

tickets and voucher, kiosks shall work in conjunction with an approved sports pool system and shall be designed to:

1. Accurately obtain the unique identification number of the item presented for redemption and cause such information to be accurately and securely relayed to the sports pool system for the purpose of redemption;

2. Issue currency and/or a sports pool voucher in exchange for the item presented only if the sports pool system has authorized and recorded the transaction; and

3. Return a sports pool ticket and voucher to the patron when it cannot be validated by the sports pool system or is otherwise unredeemable.

(bb) When used to redeem sports pool vouchers, the kiosk or kiosk computer system shall be capable of generating a "Sports Pool Voucher Redemption Machine Report" for each gaming day. The report shall include the voucher's unique identifier, the date and time of redemption and the value of the voucher.

(cc) When used to redeem sports pool tickets, the kiosk or kiosk computer system shall be capable of generating a "Sports Pool Ticket Redemption Machine Report" for each gaming day. The report shall include the ticket's unique identifier, the date and time of redemption and the value of the ticket.

(dd) When used to issue sports pool vouchers, the kiosk or kiosk computer system shall be capable of generating a "Sports Pool Voucher Issuance Report" for each gaming day. The report shall include the voucher's unique identifier, the date and time of issuance and the value of the voucher.

13:69J-1.1 Definitions

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Gaming equipment" means any mechanical, electrical, or electronic contrivance or machine used in connection with gaming, [or] any game, or sports pool and includes, without limitation, roulette wheels, big six wheels, slot machines, multi-player slot machine systems, slot tokens, prize tokens, cards, dice, chips, plaques, match play coupons, card dealing shoes, drop boxes, and other devices, machines, equipment, items, or articles determined by the Division to be so utilized in gaming as to require licensing of the manufacturers, distributors, or servicers, or as to require Division approval in order to contribute to the integrity of the gaming industry or to facilitate the operation of the Division. "Gaming equipment" shall also include a computer network of both interstate and intrastate interoperable packet switched data networks and the hardware, software, or systems associated therewith, used in connection with Internet gaming or the conduct of any game or sports pool conducted through the Internet.

…

"Security business" or "casino security service" means any non-governmental enterprise providing physical security services to a casino, a casino licensee, to an approved hotel or to any premises located within a casino hotel complex.

(b) (No change.)

13:69J-1.2 Casino service industry enterprise license requirements

(a) No enterprise shall provide goods or services directly related to casino, simulcast wagering, gaming activity, sports pools, online sports pools, or Internet wagering activity to, or otherwise transact business directly related to casino, simulcast wagering, gaming activity, or Internet wagering activity with, a casino applicant or licensee, its employees or agents unless licensed in accordance with N.J.S.A. 5:12-92.a(1) or (2).

(b) In determining whether an enterprise shall be licensed pursuant to this section, the Division shall consider, without limitation, whether the enterprise satisfies one or more of the following criteria:

1. Whether the enterprise manufactures, supplies, or distributes devices, machines, equipment, items, or articles that:

i. Are specifically designed for use in the operation of a casino, [or]

casino simulcasting facility, or sports pool;

ii. Are needed to conduct an authorized game, [or] simulcast wagering, sports pool or online sports pool;

iii. Have the capacity to affect the outcome of the play of an authorized game [or simulcast wagering];

iv. - v. (No change.)

2. (No change.)

3. Whether the enterprise provides services directly related to the operation, regulation, or management of a casino, [or] casino simulcasting facility, sports pool or online sports pool;

4. Whether the enterprise manages, controls, or administers Internet games or wagers associated with such games; [or]

5. Whether the enterprise manages, controls, or administers sports pools or online sports pools or wagers associated with such games; or

[5]6. Whether the enterprise provides such other goods or services determined by the Division to be so utilized in or incident to gaming, casino, [or] simulcast wagering, sports pool or online sports pool activity as to require licensing in order to contribute to the public confidence and trust in the credibility and integrity of the gaming industry in New Jersey.

(c) Enterprises required to be licensed in accordance with N.J.S.A. 5:12-92.a(1) and

(2) and (a) above shall include, without limitation, the following:

1. (No change.)

2. Casino credit reporting services, casino simulcasting hub facilities, and suppliers of casino security services; [and]

3. Companies providing Internet gaming software or systems, vendors who manage, control, or administer games and associated wagers conducted through the Internet, and providers of customer lists of persons who have placed wagers through the Internet[.]; and

4. Companies providing sports pool or online sports pool software or systems, sports pool kiosks, or that accept wagers from patrons and vendors who manage, control, or administer associated wagers;

(d) Junket enterprises, junket representatives, and enterprises providing other services including, but not limited to, payment processing and related money- transmitting services with direct contact with patrons' casino gaming or online sports pool accounts or the Internet gaming system itself, customer identity, age verification, [and] geo-location verification used in the conduct of Internet and mobile gaming, and entities that determine what wagers to accept or the odds to be offered for a wager for a sports pool manager or operator, regardless of any such enterprise's contractual relationship with an Internet gaming permit holder, shall be licensed as an ancillary casino service industry enterprise.

(e) (No change.)

(f) An entity which offers information or recommendations to a sports pool manager or operator as to what wagers to accept, the odds to be offered for such wagers, or the results of a wager, when such information is not available to the general public, shall register as a vendor with the Division.

(Recodify (f) as (g)) (No change in text.)

13:69J-1.2B Permission to conduct business prior to issuance of a casino service industry enterprise license

(a) Notwithstanding any other provision contained in this chapter:

1. (No change.)

2. The Division may, upon the petition of an applicant for a casino service industry enterprise license that intends to engage in the manufacture, sale, distribution, testing or repair of slot machines or sports pool kiosk, permit such applicant to conduct a business transaction with persons other than a casino licensee or applicant, provided that the requirements of (a)1i through iii above are satisfied.

(b) – (d) (No change.)

13:69J-1.3B Filing of Resubmission Form every five years

(a) The entity shall demonstrate that it continues to meet the requirements for licensure pursuant to N.J.S.A. 5:12-92a and b and, in furtherance thereof, shall submit, every five years after initial licensure, such information and documentation as the Division may require, including, but not limited to, the information required pursuant to N.J.A.C.

13:69A-5.11A.

(b) Following notification to a licensee or qualifier of such license by the Division of the obligation to file for resubmission and the expiration of five years after the license was issued, the Division may administratively revoke this license or qualification of the licensee or any qualifier of such licensee that fails to timely

file such information and documentation or notifies the Division of its intention to not file.

(c) An entity or individual whose license or qualification is administratively revoked pursuant to (b) above shall not be permitted to reapply for any license or qualification status issued by the division for a period of one year from the date

of administrative revocation, except that the Director may, for good cause shown, permit reapplication at an earlier date.

13:69J-1.14 Persons required to be qualified

(a) – (b) (No change.)

(c) Notwithstanding (a) and (b) above, the Division may require a casino service industry enterprise applicant or licensee to establish the qualifications of any person if the Division determines that the qualification of such person would further the policies of the Act. In making such determination, the Division shall consider, without limitation, the following:

1.- 8. (no change.)

9. Role in compliance and association or affiliation with the applicant company; [and]

10. Role in Internet gaming and association or affiliation with the applicant company[.]; and

11. Role in sports pools or online sports pools and association or affiliation with the applicant company.

(d) (No change.)

13:69J-1.14B Temporary qualification at license issuance; pendent qualifiers during term of license; permission to exercise powers and perform duties prior to Division finding of plenary qualification

(a) Notwithstanding the provisions of N.J.A.C. 13:69J-1.14(a), a casino service industry enterprise license or ancillary casino service industry enterprise license may be issued by the Division without the applicant having first established the plenary qualification of each natural person otherwise required to qualify pursuant to N.J.A.C.

13:69J-1.14(a) or (c) provided that:

1. (No change.)

2. The [applicant does not have more than three temporary qualifiers as of the date of license issuance] number of temporary qualifiers has been approved by the Director of the Division; and

3.- 4. (No change.) (b) - (g) (No change.)

13:69L-1.1 Description of taxes

(a) - (b) (No change.)

(c) Gross revenue from casino sports pool operations, including mobile operations, is subject to an 8.5% annual tax, which shall be paid to the Casino Revenue Fund. The investment alternative tax established by section 3 of P.L.1984, c.218 (C.5:12-144.1) shall apply to such revenue, which tax shall be

used exclusively for tourism and marketing programs for the City of Atlantic City.

(d) Gross revenue from casino online sports pool operations is subject to a 13% annual tax, which shall be paid to the Casino Revenue Fund. The investment alternative tax established by section 3 of P.L.1984, c.218 (C.5:12-144.1) shall apply to such revenue, which tax shall be used exclusively for tourism and marketing programs for the City of Atlantic City.

(e) Gross revenue from racetrack sports pool operations, including mobile operations, is subject to an 8.5% annual tax, which shall be paid to the State

General Fund. An additional 1.25% tax on such revenue shall be paid to the Division of Local Government Services in the Department of Community Affairs for distribution, upon application by a municipality or county, to the municipality and to the county in which the sports wagering lounge is located or to an economic development authority of that municipality and county.

(f) Gross revenue from racetrack online sports pool operations is subject to a

13% annual tax, which shall be paid to the State General Fund. An additional

1.25% tax on such revenue shall be paid to the Division of Local Government Services in the Department of Community Affairs for distribution, upon application by a municipality or county, to the municipality and to the county in which the sports wagering lounge is located or to an economic development authority of that municipality and county.

13:69L-1.4 Tax payer

(a) The obligation to file returns and reports and to pay the gross revenue tax, the Internet gaming gross revenue tax, the casino sports pool gross revenue tax, the racetrack sports pool gross revenue tax, the casino online sports pool gross revenue tax, the racetrack online sports pool gross revenue tax and any

investment alternative taxes shall be upon the casino [operator] or racetrack licensee who shall be primarily liable therefor. In the event of a transfer of operations to a different casino operator, the transferor-operator will be obligated to file a return and to

pay all taxes based upon the revenues derived by the said transferor during the tax year in which the transfer occurred. The appointment of a conservator under the Act shall not be deemed a transfer to a different casino operator but, for the duration of the conservatorship, the conservator shall file all returns and pay all taxes on behalf of the former or suspended casino licensee who shall remain primarily liable therefor.

(b) - (d) (No change.)

13:69L-1.5 Payment of taxes

(a) [In accordance with subsection 148a of the Act, the gross revenue tax] All gaming gross revenue taxes, including casino, internet, sports pool and online sports pool, shall be due and payable annually on or before the 15th calendar day of March except that if the 15th calendar day of March is a Saturday, Sunday or legal holiday, the due date shall be advanced to the next regular business day. The gross revenue tax shall be based upon the gross revenue derived by the casino operator during the previous tax year.

(b) – (e) (No change.)

(f) The Internet gaming gross revenue tax for each month shall be due and payable monthly on or before the 10th calendar day of the next month in such depository as shall be prescribed by the Division except that if the 10th calendar day is a Saturday, Sunday, or legal holiday, the due date shall be advanced to the next regular business day.

(g) The sports pool and or online sports pool gross revenue tax, including for either a casino or racetrack, for each month shall be due and payable monthly on or before the 10th calendar day of the next month in such depository as shall be prescribed by the Division except that if the 10th calendar day is a Saturday, Sunday, or legal holiday, the due date shall be advanced to the next regular business day.

(h) Nothing in this section shall limit the authority of the Division under the "State Tax Uniform Procedure Law," Section 9 of Title 54 of the Revised Statutes, to require payments of penalties and interest on the insufficiency of any Internet gaming, casino sports pool, casino online sports pool, racetrack sports pool and racetrack online sports pool gross revenue tax deposit or to allow or disallow any claim for refund due

to an overpayment of such taxes. Interest shall be calculated from the date the tax was originally due through the actual date of payment provided, however, that if the deficiency is paid within 10 business days from the date of the Division's tax deficiency notice, interest shall be calculated through the date of such notice.

13:69L-1.6 Computation of taxes

(a) - (e) (No change.)

(f) The casino and racetrack online internet sports pool gross revenue tax shall be 13 percent. The casino and racetrack online sports pool gross revenue for the tax year, or portion thereof, shall be the amount obtained from the total of all sums received by a casino or racetrack licensee from online sports pool operations, less only the total of all sums actually paid out as winnings to patrons.

(g) The racetrack sports pool gross revenue tax shall be 8.5 percent. The racetrack sports pool gross revenue for the tax year, or portion thereof, shall be the amount obtained from the total of all sums received by a racetrack licensee from sports pool operations, less only the total of all sums actually paid out as winnings to patrons.

(h) Nothing in this section shall be construed to limit the authority of the Division to re-determine the amount of Internet gaming gross revenue tax liability or any sports pool related tax liability or to require adjustments or corrections to the accounts of the casino operator or racetrack licensee.

13:69L-1.7 Return and reports

(a) - (e) (No change.)

(f) The casino or racetrack licensee shall file with the Division a summary report of the all sports pool and online sports pool gaming revenue for each weekly period of Saturday through Friday no later than the Monday of the succeeding week. If such Monday is a legal holiday, the summary report shall be made on the next business day. In the event that the weekly period includes gaming days from two calendar months, the casino or racetrack licensee shall

report separately the amount of revenue attributable to the gaming days of each month.

(e) On or before the 10th calendar day of each month, the casino or racetrack licensee shall file a monthly sports pool and online sports pool gross revenue tax return with the Division which shall reflect the amount of revenue derived during the preceding month and the associated tax paid.

13:69L-1.8 Examination of accounts and records

(a) The Division may perform audits of the books and records of a casino and racetrack licensee, at such times and intervals as it deems appropriate, in order to certify gross revenue and sports pool gross revenue, [and] Internet gaming and sports pool gross revenue.

(b) The casino or racetrack operator shall permit duly authorized representatives of the Division to examine the operator's accounts and records for the purpose of certifying gross revenue, [and] Internet gaming gross revenue and sports pool gross revenue.

In the event that any records or documents deemed pertinent by a Division examiner are in the possession of another licensee or entity, the casino or racetrack operator shall be responsible for making those records or documents available to the examiner. Further, the casino or racetrack operator shall be individually and severally liable for any relevant accounts, records or documents maintained or required to be maintained by any other licensee or entity with regard to the casino or racetrack licensee.

(c) (No change.)

(d) The Division shall notify the casino or racetrack operator of any gross revenue, [or] Internet gaming gross revenue or sports pool gross revenue tax deficiencies disclosed during the gross revenue certification process.

CHAPTER 69N

SPORTS POOL AND ONLINE SPORTS POOL WAGERING AT CASINOS AND RACETRACKS

13:69N-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Canceled wager” means a wager that has been canceled by the system due to any issue with an event that prevents its completion.

"Event number" means a set of alpha and/or numeric characters that correspond to a sports event or an event ancillary to a sports event.

“Former racetrack” means any former racetrack where a horse race meeting was conducted within 15 years prior to the effective date of P.L.2014, c.62 (C.5:12A-7 et seq.), excluding premises other than the land contained within the racecourse oval.

“Integrity monitoring provider” means a vendor approved by the Division to receive reports of unusual betting activity from sports pool operators for the purpose of assisting them in identifying "suspicious activity".

“Online sports pool” means a sports wagering operation in which wagers on sports events are made through computers or mobile or interactive devices and accepted in Atlantic City through an online gaming system approved by the division or are accepted through an online gaming system that is located within the physical location of a racetrack that has been issued approval by the division to operate an online sports pool.

"Operator" or "sports pool operator" means a casino or a racetrack licensee which has elected to operate a sports pool, either independently or jointly; and any entity with whom a sports wagering licensee contracts to operate a sports pool or online sports pool on its behalf; or a party or parties licensed by the Division to accept parimutuel and non-parimutuel wagers on sports events.

“Prohibited sports event” means any single collegiate sports or athletic event that takes place in New Jersey or a single sports or athletic event in which any New Jersey college or university team participates regardless of where the event takes place. A “prohibited sports event” does not include the other games of a collegiate sports or athletic tournament in which a New Jersey college or university team participates, nor does it include any games of a collegiate

tournament that occur outside New Jersey even though some of the individual games or events are held in New Jersey. A "prohibited sports event" includes all amateur sports events, including all high school sports events but does not include international sports events in which persons under age 18 make up a minority of the participants. A "prohibited sports event" includes all high school sports events, including high school electronic sports events and high school competitive video game events, and any electronic sports event in which any participant is 17 years old or younger.

"Prohibited sport pool participant" means any person who is prohibited pursuant to N.J.A.C. 13:69G, N.J.S.A. 5:12-119 or N.J.S.A. 5:12-100n, any individual whose participation may undermine the integrity of the wagering or the sports event or for other good cause, including but not limited to: any individual placing a wager as an agent or proxy; any person who is an athlete, coach, referee, a player or a referee personnel member, in or on any sports event overseen by that person's sports governing body based on publicly available information; a person who holds a position of authority or influence sufficient to exert influence over the participants in a sporting contest, including but not limited to coaches,

managers, handlers, athletic trainers, or horse trainers; a person with access to certain types of exclusive information on any sports event overseen by that person's sports governing body based on publicly available information, or a person identified by any lists provided by the sports governing body to the division and the racing commission.

"Racetrack" means the physical facility where a permit holder conducts a horse race meeting with pari-mutuel wagering pursuant to a license issued by the New Jersey Racing Commission pursuant to P.L. 1940, c. 17 (N.J.S.A. 5:5-22 et seq.) and includes a former racetrack.

"Racing Commission" means the New Jersey Racing Commission established by section 1 of P.L. 1940, c.17 (C.5:5-22.)

“Sports event” means any sport, athletic contest or athletic event not prohibited by the Director, including all professional electronic sports and competitive video game events that are not sponsored by high schools, do not include high school teams, and do not include any participant under the age of 18 years.

“Sports pool” means the business of accepting wagers on any sports event by any system or method of wagering.

"Sports wagering lounge" means a primary area of at least 1,000 square feet where a sports pool is operated within a casino or racetrack.

“Sports wagering satellite lounge” means one or more secondary areas approved by the Division where a sports pool is operated within a casino or racetrack.

"Sports pool manager" means a key employee of a casino licensee or racetrack permit holder, or a qualified employee of a casino service industry enterprise, responsible for the operations of sports wagering and final approval of all odds established on any wager made pursuant to this chapter.

“Sports pool system” means all equipment and software used in conjunction with the operation of a sports pool.

"Sports pool ticket" means a printed record issued or an electronic record maintained by the sports pool system that evidences a sports wager.

"Sports pool voucher" means a printed record issued by a sports pool system that may be used to fund a sports wager.

“Suspicious betting activity” means unusual betting activity which cannot be explained and is indicative of match fixing, the manipulation of an event, misuse of inside information or other prohibited activity.

"Temporary sports pool facility" means an area approved by the Division for use in sports pool operations during the construction of a sports pool lounge and include the utilization of designated windows at the current casino cage or racetrack betting window for purposes of placing sports betting wagers and also includes self-service wagering machines located at the racetrack or casino hotel complex.

"Unusual betting activity" means abnormal wagering activity exhibited by patrons and deemed by the sports pool operator as a potential indicator of suspicious activity. Abnormal wagering activity may include the size of a patron's wager or increased wagering volume on a particular event or wager type.

"Voided wager" means a wager voided by a ticket writer with supervisor approval for a specific event.

13:69N-1.2 General requirements for sports pools and online sports pools

(a) A racetrack authorized to conduct a sports pool or online sports pool shall comply with all applicable requirements of:

1. N.J.A.C. 13:69D-1.1, 1.8, 1.10, 1.11, 1.14, 1.15, 2.1, 2.2, 2.3, 2.4, 2.5 and 3.1;

2. N.J.A.C. 13:69E-1.28O and 1.28R;

3. N.J.A.C. 13:69J-1.1, 1.2, 1.2B, 1.3B, 1.14, 1.14B;

4. N.J.A.C. 13:69L-1.1, 1.4, 1.5, 1.6, 1.7 and 1.8; and

5. N.J.A.C. 13:69O-1.2, 1.3, 1.4, 1.7 and 1.9.

(b) No casino or racetrack licensee shall operate or accept wagers from either

a sports pool or online sports pool unless the licensee has commenced operation in a sports wagering lounge except that:

1. Online sports wagering may commence for a period not to exceed nine months upon the approval of the Director if the lounge is under construction; and

2. Casino and racetrack sports wagering may commence upon the approval of the Director in a temporary sports pool facility for a period not to

exceed nine months if the lounge is under construction. The Director may extend the use of the temporary facility for good cause.

(c) An internet gaming affiliate may commence online sports wagering if an associated casino has commenced operation in a sports wagering lounge except that online sports wagering may commence in a temporary sports pool facility for a period not to exceed nine months upon the approval of the Director if the

lounge is under construction.

(d) A casino or racetrack offering a sports pool or online sports pool shall maintain a cash reserve of not less than the greater of $500,000 or the amount necessary to ensure the ability to cover the outstanding sports pool and online sports pool liability.

(e) Each sports pool operator shall, prior to commencing operations and annually thereafter, perform a system integrity and security assessment conducted by an independent professional selected by the licensee, subject to the approval of the Division. The independent professional's report on the assessment shall be submitted to the Division and shall include:

1. Scope of review;

2. Name and company affiliation of the individual(s) who conducted the assessment;

3. Date of the assessment;

4. Findings;

5. Recommended corrective action, if applicable; and

6. The operator’s response to the findings and recommended corrective action.

(e) A sports pool operator shall investigate each patron complaint and provide a response to the patron within five calendar days. For complaints that cannot be resolved to the satisfaction of the patron, related to patron accounts, settlement of wagers, and/or illegal activity, a copy of the complaint and licensee's response including all relevant documentation shall be provided to the Division or New Jersey Racing Commission as applicable.

(f) An online sports pool operator shall only accept wagers from patrons that have been affirmatively located as being physically present in the State of New Jersey at the time of their wager.

13:69N-1.3 Sports pool license eligibility and approval

(a) Only a casino licensed by the Casino Control Commission, or operating pursuant to interim casino authorization; a racetrack; or former racetrack shall be eligible to obtain a sports wagering license. Casino sports wagering licenses shall be issued by the Division. Initial sports wagering licenses for racetracks shall be issued by the Racing Commission. Renewals of sports wagering

licenses for racetracks shall be issued by the Division.

(b) A casino sports wagering license shall be valid for one year.

(c) All agreements to operate a sports pool or online sports pool shall be approved by the Division for a casino licensee and by the Racing Commission for racetrack licensee.

(d) A prohibited sports pool participant shall not be permitted to have any ownership interest in, control of, or otherwise be employed by an operator, a sports wagering licensee, or a facility in which a sports wagering lounge is located. This prohibition shall not apply to any person who is a direct or indirect owner of a specific sports governing body member team and:

1. Has less than 10 percent direct or indirect ownership interest in a casino or racetrack; or

2. The shares of such person are registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. s.781), and the value of the ownership of such team represents less than one percent of the person's total enterprise value, as reflected on the most recent financial statements.

(e) Any person who is a direct or indirect legal or beneficial owner of 10 percent or greater of a sports governing body or any of its member teams, shall not place or accept wagers on a sports event in which any member team of that sports governing body participates.

(f) Any employee of a sports governing body or its member teams who is not prohibited from wagering on a sports event shall, nevertheless, register with the Division prior to placing a wager on a sports event.

13:69N-1.4 Sports pool wagering in a casino or racetrack

To conduct sports pool wagering transactions, a casino or racetrack shall have a cashier's cage which meets the requirements of 13:69D-1.14(b). Sports pool wagering transactions shall be conducted from:

1. A sports wagering lounge booth (lounge booth) located in the sports wagering lounge or other window locations as approved by the Division;

2. Kiosks in locations as approved by the Division; or

3. When the lounge booth is closed, a designated window in the cashier's cage for the redemption of winning tickets only.

13:69N-1.5 Individual license or registration

A person directly involved in sports pool or online sports pool wagering shall either be licensed as a casino key employee or registered by the Division as a casino employee as determined by the Casino Control Commission. All other persons employed by a sports pool operator not directly involved in wagering may also be required to register with the Division as a casino employee, if appropriate, consistent with the registration standards applied to persons not directly involved in casino gaming.

13:69N-1.6 Sports pool and online sports pool integrity; confidential information (a) Sports pool operators shall have controls in place to identify unusual betting activity and report such activity to an integrity monitoring provider.

(b) All integrity monitoring providers shall share information with each other and shall disseminate all reports of unusual activity to all participating sports pool operators. All sports pool operators shall review such reports and notify the integrity monitoring provider of whether or not they have experienced similar activity.

(c) If an integrity monitoring provider finds that previously reported unusual betting activity rises to the level of suspicious activity, they shall immediately notify all other integrity monitoring providers, their member sports pool operators, the Division, the appropriate sports governing authority and all other regulatory agencies as directed by the Division. All integrity monitoring providers receiving a report under this subsection shall share such report with their member sports pool operators.

(d) A sports pool operator receiving a report of suspicious activity shall be permitted to suspend wagering on events related to the report, but may only cancel related wagers after Division approval.

(e) Integrity monitoring providers shall provide the Division with remote access to their monitoring system which shall provide at a minimum:

1. All reports of unusual betting activity;

2. If the activity was determined to be suspicious; and

3. The actions taken by the integrity monitoring provider.

(f) The Division and sports governing bodies shall be authorized to share information regarding the integrity of events conducted on a sports pool or online sports pool.

(g) The Division may require a sports pool or online sports pool operator or licensee to provide any hardware necessary to the Division for evaluation of its sports pool or online sports pool offering or to conduct further monitoring of data provided by its system.

(h) All information and data received pursuant to this chapter by the Division related to unusual or suspicious activity shall be considered confidential and shall not be revealed in whole or in part except upon the lawful order of a court of competent jurisdiction or, with any law enforcement entity, team, sports governing body, or regulatory agency that the Division deems appropriate.

13:69N-1.7 Internal controls; House rules

(a) Sports pool operators shall file with the Division internal controls for all aspects of sports pool and/or online sports pool wagering operations prior to commencing operations.

(b) In the event of a failure of the sports pool system's ability to pay winning wagers, the licensee shall have internal controls detailing the method of paying winning wagers. The licensee shall also file an incident report for each system failure and document the date, time and reason for the failure along with the date and time the system is restored with the Division.

(c) The internal controls shall address the following items regarding the sports pool system, at a minimum:

1. User access controls for all sports pool personnel;

2. Segregation of duties;

3. Automated and manual risk management procedures;

4. Procedures for identifying and reporting fraud and suspicious conduct;

5. Procedures to prevent wagering by patrons prohibited from wagering pursuant to this Chapter;

6. Description of AML compliance standards;

7. Description of all types of wagers available to be offered by the system;

and 8. Description of all integrated third party systems.

(d) The internal controls shall detail the reconciliation of assets and documents contained in a sports wagering lounge ticket writer's drawer and sports pool kiosks pursuant to N.J.A.C. 13:69N-1.17 and N.J.A.C. 13:69N - 1.18 below.

(e) Sports pool and online sports pool operators shall adopt comprehensive house rules which shall be approved by the Division that include the following, at a minimum:

1. Method for calculation and payment of winning wagers;

2. Effect of schedule changes;

3. Method of notifying patrons of odds or proposition changes;

4. Acceptance of wagers at other than posted terms;

5. Expiration of any winning ticket one year after the date of the event;

6. Method of contacting the operator for questions and complaints;

7. Description of prohibited sports pool participants;

8. Method of the process for any employee of a sports governing body or member team who is not prohibited from wagering to register with the Division prior to placing a sports wager; and

9. Method of funding a sports wager.

(f) The house rules, together with any other information the division deems appropriate, shall be conspicuously displayed in the sports wagering lounge, posted on the operator's Internet website, and included in the terms and conditions of the account wagering system, and copies shall be made readily available to patrons.

13:69N-1.8 Sports wagering lounge requirements

(a) The holder of a sports pool license shall be required to establish and maintain a first-class sports wagering lounge as approved by the Division. (b) The sports wagering lounge shall be a single area with, at a minimum,

1,000 square feet of dedicated public space with clearly established walls or clearly defined borders. Satellite lounges shall also be permitted with Division approval.

(c) Each lounge shall include a sports wagering lounge booth that:

1. Shall be designed and constructed to provide maximum security for the materials stored and the activities performed therein. Such design and construction shall be approved by the Division;

2. Includes one or more ticket writer windows, each of which shall contain:

i. A writer's drawer and terminal through which financial transactions related to sports wagering will be conducted;

ii. A permanently affixed number which shall be visible to the CCTV

surveillance system;

iii. Windows, as approved by the Division, which shall be fully enclosed and designed to prevent direct access to the materials stored and activities performed therein if a ticket writer is cashing a winning ticket of more than $20,000. Such windows shall be physically secured from any other ticket writer locations within the booth; and

iv. Manually triggered silent alarm systems, which shall be connected directly to the monitoring rooms of the casino or racetrack surveillance and the casino or racetrack security departments.

3. Includes manually triggered silent alarm systems, which shall be connected directly to the monitoring rooms of the casino or racetrack surveillance and the casino or racetrack security departments;

4. Includes closed circuit television cameras capable of accurate visual monitoring and taping of any activities, including the capturing of the patron's facial image when conducting transactions at the counter;

5. Has an alarm for each emergency exit door that is not a mantrap; and

6. Include a secure location, such as a vault, for the purpose of storing funds issued by a cage to be used in the operation of a sports pool. The vault

shall:

i. Be a fully enclosed room, located in an area not open to the public;

ii. Have a metal door with a locking mechanism that shall be maintained and controlled by the sports wagering lounge booth supervisor;

iii. An alarm device that signals the surveillance department whenever the door to the vault is opened; and

iv. Closed circuit television cameras capable of accurate visual monitoring and taping of any activities in the vault.

(d) A sports wagering lounge booth shall have an operating balance of no more than $1,000,000. Whenever a booth accumulates funds in excess of the

$1,000,000, the excess funds shall be transferred to the cage no later than at the end of each shift. The funds will be transferred with appropriate documentation in a locked container by an employee of the sports wagering lounge booth. The employee and container shall be accompanied by a security officer. Prior to transporting the funds security shall notify surveillance that the transfer will take place. Surveillance shall monitor the transfer.

(e) A sports wagering lounge located in a casino may have slot machines or other authorized games with the approval of the Division. Slot machines within a sports wagering lounge shall be included in the calculation of casino floor space. (f) Nothing shall preclude a casino simulcast cashier or racetrack cashier

from processing sports wagers, provided that the casino licensee is able to distinguish casino simulcast revenue therefrom and accurately report thereon.

(g) A sports pool operator shall include signage in the sports wagering lounge that displays "If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER," or comparable language approved by the division, which language shall include the words "gambling problem" and "call 1-800

GAMBLER,". A sports pool operator shall ensure this language is included on all print, billboard, sign, online, or broadcast advertisements of a sports pool or online sports pool.

13:69N-1.9 Sports Pool System Requirements

(a) Prior to operating a sports pool pursuant to this chapter all equipment and software used in conjunction with its operation shall be submitted to the Division's Technical Services Bureau pursuant to N.J.A.C. 13:69E-1.28R for review and approval.

(b) The server or other equipment to accept wagers at a sports pool shall be located in a racetrack or in any location in Atlantic City which conforms to the requirements of section 20 of P.L.2013, c.27 (C.5:12-95.22). The server or other equipment used by a casino to accept wagers at a sports pool or online sports pool shall conform to the requirements of section 20. In creating wagers which will be offered to the public, a sports pool manager may receive advice and recommendations from any source or entity in other jurisdictions and may take into consideration information regarding odds and wagers placed on sports events.

(c) A sports pool system submission shall contain a description of the risk management framework including but not limited to:

1. User access controls for all sports pool personnel;

2. Information regarding segregation of duties;

3. Information regarding automated risk management procedures;

4. Information regarding fraud detection;

5. Controls ensuring regulatory compliance;

6. Description of AML compliance standards;

7. Description of all software applications that comprise the system;

8. Description of all types of wagers available to be offered by the system;

9. Description of all integrated third party systems; and

10. Description of the method to prevent past posting.

(d) A sports pool system shall maintain all transactional betting data for a period of ten years.

(e) The House Rules that apply to wagers placed on a sports pool system shall be readily available to the patron.

(f) A sports pool system shall be capable of recording the following information for each wager made:

1. Description of event;

2. Event number;

3. Wager selection;

4. Type of wager;

5. Amount of wager;

6. Date and time of wager;

7. Unique wager identifier;

8. An indication of when the ticket expires.

(g) In addition to the information in (f) above, all tickets generated by a cashier or at a kiosk shall include the following:

1. Name and address of the party issuing the ticket;

2. A barcode or similar symbol or marking as approved by the Division , corresponding to the unique wager identifier;

3. Method of redeeming winning ticket via mail; and

4. Cashier or kiosk generating the ticket.

(h) If the sports pool system issues and redeems a sports pool voucher, the system shall be capable of recording the following information for each voucher:

1. Amount of voucher

2. Date, time and location of issuance;

3. Unique voucher identifier;

4. Expiration date of the voucher;

5. Date, time and location of redemption, if applicable.

(i) Sports pool vouchers issued by a sports pool system shall contain the following information:

1. Date, time and location of issuance;

2. Amount of the voucher;

3. Unique voucher identifier;

4. Expiration date of the voucher;

5. Name of permit holder; and

6. An indication that the voucher can only be redeemed in exchange for a sports wager or cash.

(j) A sports pool system that offers in-play wagering shall be capable of the following:

1. The accurate and timely update of odds for in-play wagers;

2. The ability to notify the patron of any change in odds after a wager is attempted;

3. The ability for the patron to confirm the wager after notification of the odds change; and

4. The ability to freeze or suspend the offering of wagers when necessary. (k) A sports pool system shall be capable of performing the following functions:

1. Creating wagers;

2. Settling wagers;

3. Voiding wagers;

4. Cancelling wagers; and

5. Preventing the acceptance of wagers from patrons prohibited from wagering pursuant to this Chapter.

(l) A sports pool system shall be capable of processing lost, destroyed or expired wagering tickets.

(m) When a sports pool wager is voided or cancelled, the system shall clearly indicate that the ticket is voided or cancelled, render it nonredeemable and make an entry in the system indicating the void or cancellation and identity of the cashier or automated process.

(n) A sports pool system shall prevent past posting of wagers and the voiding or cancellation of wagers after the outcome of an event is known.

(o) In the event a patron has a pending sports pool wager and then self-excludes, the wager shall be canceled and the funds returned to the patron according to the licensee's internal controls.

(p) A sports pool system shall, at least once every 24 hours, perform a self- authentication process on all software used to offer, record and process wagers to ensure there have been no unauthorized modifications. In the event of an authentication failure, at a minimum, shall immediately notify the casino licensee's ISO and the Division within 24 hours. The results of all self- authentication attempts shall be recorded by the system and maintained for a period of not less than 90 days.

(q) A sports pool system shall have controls in place to review the accuracy and timeliness of any data feeds used to offer or settle wagers. In the event that an incident or error occurs that results in a loss of communication with data feeds used to offer or redeem wagers, such error shall be recorded in a log capturing the date and time of the error, the nature of the error and a description of its impact on the system's performance. Such information shall be maintained for a period of not less than six months.

(r) The licensee operating a sports pool system shall provide access to wagering transaction and related data as deemed necessary by the Division in a manner approved by the Division.

(s) A sports pool system shall be capable of preventing any sports pool wager in excess of $10,000 or making a payout in excess of $10,000 until authorized by a supervisor.

(t) A sports pool system shall be capable of maintaining the following:

a. Description of the event;

b. Event number;

c. Wager selection;

d. Type of wager;

e. Amount of wager;

f. Amount of potential payout or an indication that it is a pari-mutuel wager;

g. Date and time of wager;

h. Identity of the cashier accepting the wager;

i. Unique ticket identifier;

j. Expiration date of ticket;

k. Patron name, if known;

l. Date, time, amount and description of the settlement;

m. Location where wager was made n. Location of redemption; and

o. Identity of cashier settling the wager if applicable

(u) For all lost tickets that are redeemed, a sports pool system shall record and maintain the following information:

a. Date and time of redemption;

b. Employee responsible for redeeming the ticket;

c. Name of patron redeeming the wager;

d. Unique ticket identifier; and e. Location of the redemption.

13:69N-1.10 Wagering on behalf of another prohibited

No licensee shall accept a wager from a person on the account of or for any other person.

13:69N-1.11 Patron wagers

(a) A sports pool operator shall not accept any wager on a sports event unless it has provided written notification to the Division of the first time that wagering on a category of wagering event (for example, wagering on a particular type of professional sport) or type of wager (for example an in play wager or exchange wager) is offered to the public. Such notice shall be submitted prior to accepting a wager on such category of wagering event and shall include the name of the sports governing body and a description of its policies and procedures regarding event integrity. Notice is not required whenever the odds change on a previously

offered wagering event. The Division reserves the right to prohibit the acceptance of wagers, and may order the cancellation of wagers and require refunds on any event for which wagering would be contrary to the public policies of the State.

(b) A prohibited sports pool participant, or the direct or indirect legal or beneficial owner of ten percent or more of a sports governing body or any of its member teams, shall not be permitted to wager on any event governed by the league or sports governing body with which they are affiliated. Any employee of a sports governing body, or one of its member teams, who is not a prohibited sports pool participant shall register with the Division prior to placing a sports pool wager.

(c) Pursuant to (a) above, a wagering operator shall only accept wagers on wagering events for which:

1. The outcome can be verified;

2. The outcome can be generated by a reliable and independent process;

3. The outcome is not be affected by any wager placed; and

4. The event is conducted in conformity with all applicable laws.

(d) A wagering operator shall not unilaterally rescind any wager pursuant to this chapter without the prior approval of the Division.

(e) Patron wagers pursuant to this chapter shall be made with:

1. Cash;
2. Cash equivalent;
3. Credit or debit card;
4. Promotional funds;
5. Sports pool vouchers;
6. Value gaming chips; and
7. Any other means approved the Division.

(f) The available wagers shall be displayed in a manner visible to the public and the operator's CCTV system. The display shall include the event number, odds, and a brief description of the event.

(g) The maximum wager which may be accepted by any sports pool operator from a patron on any one sports event shall be limited to $5,000,000.

(h) Winning wagering tickets shall be redeemed by a ticket writer or a sports pool kiosk after verifying the validity of the wagering ticket through the sports pool system. The cashier or kiosk shall cause the system to electronically redeem and cancel the wagering ticket upon redemption.

(i) A patron may redeem by mail a winning wagering ticket to the address provided thereon in accordance with the wagering operator's internal controls. (j) A sports pool operator may, in its discretion, accept a layoff wager from another sports pool operator. A sports pool operator placing a layoff wager shall disclose its identity to the sports pool operator accepting the wager.

13:69N-1.12 Wagers and payouts greater than $10,000

(a) Prior to accepting any sports pool wager in excess of $10,000 or making a payout in excess of $10,000 on a sports pool winning wager, the sports pool operator shall:

1. Create a patron identification file and identify the patron in accordance with N.J.A.C. 13:69-1.5A;

2. Obtain and record the patron's social security number in the patron identification file; and

3. Record on a log the following information at a minimum:

i. Date of the wager or payout;

ii. Name of the patron;

iii. Name and signature of the sports pool operator employee authorizing the acceptance of the wager; and

iv. Name and signature of the ticket writer identifying the patron and generating the ticket or making the payout.

(b) A sports pool operator shall monitor all wagering transactions to ensure patrons are not circumventing the identification requirements of (a) above.

13:69N-1.13 Sports pool reports; wagering revenue; reconciliation

(a) The sports pool system shall be designed to generate the following daily reports in a format approved by the Division's Revenue Certification Unit:

1. A Sports Pool Intake Summary Report which includes the following transaction information for each cashiering location:

i. Tickets sold;

ii. Tickets paid;

iii. Tickets voided;

iv. Sports pool voucher issued;

v. Sports pool voucher redeemed; and

vi. Over or short amount to cashier's drawer.

2. A Sports Pool Intake Summary Report which includes totals for each transaction type detailed in (a) above for each cashiering location.

3. A Sports Pool Results Detail Report shall include the following for each event type:

i. Ticket sales;

ii. Tickets paid;

iii. Tickets voided;

iv. Tickets canceled;

v. Expired tickets; and

vi. Net sports pool gross revenue.

4. A Sports Pool Results Summary Report which shall include a summary of the Sports Pool Results Detail Report.

5. A Sports Pool Ticket Expiration Detail Report shall list the following for each expired ticket:

i. Ticket number;

ii. Date and time of issuance;

iii. Event;

iv. Wager description;

v. Bet amount; and vi. Payout amount.

6. A Sports Pool Voucher Expiration Detail Report shall list the following for each expired ticket:

i. Voucher number;

ii. Date and time of issuance; and iii. Amount.

7. A Sports Pool Voided Ticket Report which shall include the following:

i. Ticket number;

ii. Date and time of issuance;

iii. Event;

iv. Wager description;

v. Bet amount;

vi. Cashier name or identification number; and vii. Reason for void.

8. A Sports Pool Canceled Ticket Report which shall include the following:

i. Ticket number;

ii. Date and time of issuance;

iii. Event;

iv. Wager description;

v. Bet amount; and

vi. Reason for cancelation.

9. A Sports Pool Ticket Liability Report shall list the following for each outstanding ticket:

i. Ticket number;

ii. Date and time of issuance;

iii. Event;

iv. Wager description;

v. Amount; and

vi. Status (e.g. pending or complete.)

10. A Sports Pool Voucher Liability Report shall list the following for each unpaid voucher:

i. Voucher number;

ii. Date and time of issuance; and iii. Amount.

(b) Sports pool gross revenue generated pursuant to this chapter shall equal the total of all wagers received less voided or canceled wagers and amounts paid out for winning wagers as reported on the Sports Pool Results Summary Report. (c) An accounting department employee shall reconcile the Sports Pool Results Summary Report to the Sports Pool Intake Summary Report. Any discrepancy shall be reported to the Division's Revenue Certification Unit.

(d) A casino accounting department employee shall increase sports pool revenue for any overages identified on the Sports Pool Intake Summary Report unless otherwise authorized by the Division's Revenue Certification Unit.

13:69N-1.14 Sports pool kiosks

(a) The operator of a sports pool may utilize sports pool kiosks for wagering transactions in conjunction with an approved sports pool system in a location approved by the Division. Each sports pool kiosk shall have signage or a screen display that any employee of a sports governing body or its member teams not

prohibited from sports pool wagering shall register with the Division prior to wagering.

(b) A sports pool kiosk used in accordance with this section shall not:

1. Issue or redeem a sports pool voucher with a value of more than $3,000;

2. Issue a ticket with a potential payout of more than $10,000;

3. Redeem a ticket with a value of more than $3,000.

(c) On a daily basis, an operator of a sports pool shall remove the bill validator boxes in the sports pool kiosks (the sports pool kiosk drop). The sports pool kiosk drop shall be monitored and recorded by surveillance. The operator of a sports pool shall submit the sports pool kiosk drop schedule to the Division which shall include:

1. Time the drop is scheduled to commence; and

2. Number and locations of sports pool kiosks.

(d) A security department member and a cage cashier shall obtain the keys necessary to perform the sports pool kiosk drop and/or currency cassette replacement in accordance with the permit holder's key sign-out and sign-in procedures.

(e) A cage cashier with no incompatible functions shall place empty bill validator boxes needed for the sports pool kiosk drop into a secured cart and prepare a Sports Pool Kiosk Bill Validator drop form which shall include the following:

1. Gaming date;

2. Identification number of the secured cart;

3. Number of empty boxes placed into the secured cart;

4. Signature of the cage cashier documenting that the number of empty boxes equals the number of kiosks utilized by the permit holder.

(f) In the presence of a security department member, a cage cashier shall complete the sports pool kiosk drop at each kiosk as follows:

1. Unlock the cabinet(s) housing the bill validator boxes;

2. Remove the bill validator boxes and place the removed bill validator boxes into a secured cart and insert the empty bill validator boxes and reject bins;

3. Lock the cabinet(s) housing the bill validator boxes; and

4. Transport the secured cart to a count room or other location approved by the Division for the count of the sports pool kiosk drop.

(g) The contents of the bill validator boxes shall be counted by one or more accounting department employees with no incompatible function who shall:

1. Document the contents, by item and amount, for each box on a

Balance Receipt;

2. Prepare or generate a Sports Pool Kiosk Drop Totals report that summarizes the total currency, sports pool tickets and sports pool vouchers counted;

3. Verify that the number of bill validator boxes counted equals the number of empty boxes initially recorded on the Sports Pool Kiosk Bill Validator drop form. Any exceptions encountered during the drop and count process shall be documented on this form;

4. Transfer the currency to a main bank cashier with a copy of the

Sports Pool Kiosk Drop Totals report; and

5. Transport the sports pool tickets and vouchers to a secured location approved by the Division for storage until destroyed pursuant to 13:69D-1.8(g).

6. Transport the Balance Receipts, the Sports Pool Kiosk Drop Totals report and Sports Pool Kiosk Bill Validator drop form to the casino or racetrack accounting department.

(h) On a daily basis, an operator of a sports pool shall replenish the currency cassettes in the sports pool kiosks. A cashier with no incompatible functions shall prepare the currency cassettes to replenish the sports pool kiosks which shall be documented on a two-part Sports Pool Kiosk Cassette Fill form. One copy of the form shall be retained by the cashier and the duplicate shall be used to document the completion of the transaction. The form shall include:

1. Designation of the kiosk to which the fill is to be performed;

2. For each denomination, the number of bills and total value;

3. The total value of all currency cassettes;

4. Date and time prepared; and

5. Signature of the cashier.

(i) An accounting department employee shall place the replacement currency cassettes and empty reject bins into a secured cart.

(j) In the presence of a security department member, the accounting department employee shall complete the sports pool currency cassette replenishment at each sports pool kiosk as follows:

1. Unlock the cabinet(s) housing the currency cassettes and reject

bins;

2. Remove all currency cassettes and reject bin which shall be placed in a secure cart and generate a Credit Receipt that, at a minimum, includes:

i. An identification number of the sports pool kiosk;

ii. The date and time;

iii. The denomination of each currency cassette; and

iv. The total value of the total number of bills per denomination remaining in each currency cassette being replenished and the reject bin;

3. Insert the replacement currency cassettes and currency cassette reject bin; and

4. Enter data into the sports pool kiosk that describes the fill, and generate

Fill Receipt that, at a minimum, includes:

i. An identification number of the sports pool kiosk;

ii. The date and time the fill was performed;

iii. The denomination of currency for each currency cassette inserted into the machine; and

iv. The total value of the total number of bills per denomination, for each currency cassette being inserted into the machine.

5. Lock the cabinet and sign the duplicate copy of the Sports Pool Kiosk Cassette Fill attesting that the fill was completed. The Fill Receipt and the Credit Receipt shall be deposited in a locked accounting box.

6. Return all removed currency cassettes and reject bins in a secured cart to the count room or other location approved by the Division.

(k) One or more accounting department employees with no incompatible function shall count and document the value of the contents of each removed currency cassette and currency cassette reject bin as follows:

1. Document the count of each currency cassette and reject bin on a

Balance Receipt by sports pool kiosk;

2. Prepare or generate a Sports Pool Currency Cassette Replenishment

Totals report that summarizes the total currency counted;

3. Transfer the currency to a main bank cashier with a copy of the

Currency Cassette Replenishment Totals report; and

4. Transport the Balance Receipts and Currency Cassette

Replenishment Totals report to the casino or racetrack accounting department.

(l) The casino or racetrack accounting department shall reconcile the sports pool kiosks on a daily basis pursuant to internal controls. Any variance of $ 500.00 or more shall be documented by the accounting department and reported in writing to the Division within 72 hours of the end of the gaming day during which the variance was discovered. The report shall indicate the cause of the variance and shall contain any documentation required to support the stated explanation.

13:69N- 1.15 Accounting controls for the sports wagering lounge booth

(a) The assets for which each ticket writer is responsible shall be maintained on an imprest basis. A ticket writer shall not permit any other person to access his or her imprest inventory.

(b) A ticket writer shall begin a shift with an imprest amount of currency and coin to be known as the "sports wagering inventory." No funds shall be added to or removed from the sports wagering inventory during such shift except:

1. In collection of sports wagering wagers;

2. In order to make change for a patron buying a sports wagering ticket;

3. In collection for the issuance of sports wagering vouchers;

4. In payment of winning or properly cancelled or refunded sports wagering tickets;

5. In payment for sports wagering vouchers;

6. To process simulcast transactions pursuant to N.J.A.C. 13:72-1.1 et seq. provided that such transactions are separately reconciled; or

7. In exchanges with the cashiers' cage, a satellite cage or sports wagering lounge booth vault supported by proper documentation which documentation shall be sufficient for accounting reconciliation purposes.

(c) A "sports wagering count sheet" shall be completed and signed by the sports wagering shift supervisor, and the following information, at a minimum, shall be recorded thereon at the commencement of a shift:

1. The date, time and shift of preparation;

2. The denomination of currency and coin in the sports wagering inventory issued to the ticket writer;

3. The total amount of each denomination of currency and coin in the sports wagering inventory issued to the ticket writer;

4. The sports wagering window number to which the ticket writer is assigned;

and

5. The signature of the sports wagering shift supervisor.

(d) A ticket writer assigned to a ticket writer window shall count and verify the sports wagering inventory at the sports wagering vault, and shall agree the count to the sports wagering count sheet. The ticket writer shall sign the count sheet attesting to the accuracy of the information recorded thereon. The sports wagering inventory shall be placed in a ticket writer's drawer and transported directly to the appropriate sports wagering lounge booth window by the ticket writer.

(e) At the conclusion of a ticket writer's shift, the ticket writer's drawer and its contents shall be transported directly to a designated area in the sports wagering lounge booth, where the ticket writer shall count the contents of the drawer and record the following information, at a minimum, on the sports wagering count sheet:

1. The date, time and shift of preparation;

2. The denomination of currency, coin, gaming chips where applicable and coupons in the drawer;

3. The total amount of each denomination of currency, coin, gaming chips and coupons in the drawer;

4. The total of any exchanges;

5. The total amount in the drawer; and

6. The signature of the ticket writer.

(f) The sports wagering lounge booth shift supervisor shall compare the ticket writer window net for the shift as generated by the terminal and if it agrees with the sports wagering count sheet total plus the sports wagering inventory, shall agree the count to the sports wagering count sheet and sign the sports wagering count sheet attesting to the accuracy.

(g) If the sports wagering window net for the shift as generated by the system does not agree with the sports wagering count sheet total plus the sports wagering inventory, the sports wagering shift supervisor shall record any overage or shortage. If the count does not agree, the ticket writer and the sports wagering shift supervisor shall attempt to determine the cause of the discrepancy in the count. If the discrepancy cannot be resolved by the ticket writer and the sports wagering shift supervisor, such discrepancy shall be reported in writing to the sports wagering manager, or department supervisor in charge at such time. Any discrepancy in excess of $500 shall be reported to the Division. The report shall include the following:

1. Date;

2. Shift;

3. Name of the ticket writer;

4. Name of the supervisor;

5. Window number; and

6. Amount of the discrepancy.

13:69N-1.16 Limitation on number of sports pools and online sports pools

Each sports wagering licensee may provide no more than three individually branded websites, each of which may have an accompanying mobile application bearing the same brand as the website for an online sports pool, those websites and mobile applications, in the case of a casino being in addition to or, in the discretion of the casino, in conjunction with, any websites and mobile applications that also offer other types of Internet gaming pursuant to P.L.2013, c.27 (C.5:12-95.17 et seq.).

13:69N-1.17 Transactional waiver to immediately commence sports pool or online sports pool operations

(a) A casino may submit a request to the Division for the immediate commencement of sports pool or online sports pool operations. Such request shall include the initial license fee of $100,000, payable to the Casino Control Fund.

(b) Upon receiving a request for a transactional waiver, the Director shall review the request. If the Director determines that the casino requesting the transactional waiver holds a valid casino license, has paid the sports wagering license fee, and is in compliance with this section, the Division shall issue a sports wagering license. Such license shall be valid for one year.

(c) A casino receiving a transactional waiver shall be permitted to commence sports pool wagering or online sports pool wagering operations for a period of

270 days from the date of the enactment of P.L. 2018, c. 33. Any sports pool wagering operation or online sports pool wagering operation not in compliance with all regulations

relating to sports wagering shall cease operations at that time and shall remain inactive until compliance is achieved.

(d) No transactional waiver to commence online sports pool operations shall be granted prior to July 12, 2018.

(e) Any third party operating a sports wagering pool or online sports wagering pool must have a casino service industry enterprise license or have a transactional waiver to conduct business prior to receiving such license.

(f) All sports pool wagering and online sports pool wagering conducted under authority of a transactional waiver shall comply with the operator's House Rules.

13:69O-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Authentication process" means a method used by a system to verify the validity of software. Such method requires the calculation of an output digest, which is compared to a secure embedded value. The output digest shall be of 128-bit complexity, at a minimum. Software shall be deemed to have been authenticated if the calculated digest equals the secure embedded value.

…

"Funds on game" means the sum of all non-online sports pool pending wagers and funds transferred to a game not yet wagered less pending wins.

…

"Internet gaming" means the placing of wagers through a server-based gaming system with a casino licensee at a casino located in Atlantic City using a computer network of both Federal and non-Federal interoperable packet switched data networks through which the casino licensee may offer an online sports pool or authorized Internet games to a patron who has established an Internet gaming account with the casino licensee.

…

"Internet gaming operator" means a party or parties permitted by the Division to operate an Internet gaming system or online sports pool.

"Internet gaming system" means all hardware, software, and communications that comprise an online sports pool a type of server-based gaming system for the purpose of offering authorized Internet games.

"Mobile gaming" means the placing of wagers with a casino licensee through a server- based gaming system at a casino located in Atlantic City using a computer network through which the casino licensee may offer an online sports pool or authorized games to individuals who have established a wagering account with the casino licensee and who are physically present within the property boundaries of an approved hotel facility.

…

"Mobile gaming operator" or "mobile operator" means a party or parties licensed by the

Division to operate a mobile gaming system or online sports pool.

"Mobile gaming system" means all hardware, software, and communications that comprise an online sports pool or a type of server-based gaming system for the purpose of offering electronic versions of authorized casino games to be played on client terminals within the property boundaries of an approved casino facility.

…

["Pending wager account" means the account maintained by a server-based gaming system that holds the total balance of all wagers pending disposition and all other funds attributable to uncompleted games.]

…

"Remote gaming system" (RGS) means hardware and software used to provide an online sports pool or authorized games to patrons in conjunction with an Internet or mobile gaming system, which may be a standalone system or integrated within another part of the Internet or mobile gaming system.

...

"Table game simulcasting system" means all hardware, software, and communications that comprise a system used to simulcast table games.

13:69O-1.3 Internet or mobile gaming accounts

(a) (No change.)

(b) In order to establish an Internet or mobile gaming account, a casino licensee shall:

1. Create an electronic patron file, which shall include at a minimum:

i. - viii. (No change.)

ix. The method used to verify the patron's identity; [and]

x. Date of verification[.] ;and

xi. For sports wagering only, the patron shall disclose if he is an employee of a sports governing body or member team who is not prohibited from wagering .

(c) (No change.)

(d) A patron's Internet or mobile gaming account may be funded through the use of:

1. – 6. (No change.)

7. ACH transfer, provided that the operator has security measures and controls to prevent ACH fraud pursuant to (e) below; [or]

8. A transaction at a sports pool kiosk; or (Recodify existing 8. as 9.) (No change in text)
(e) – (f) (No change.)

(g) Funds may be withdrawn from a patron's Internet or mobile gaming account for the following:

1. - 5. (No change.)

6. A cash-out transfer directly to the patron's individual account with a bank or other financial institution (banking account) provided that the licensee verifies the validity of the account with the financial institution; [or]

7. A cash withdrawal from a sports pool kiosk up to $3,000; or

(Recodify existing 7. as 8.) (No change in text) (h) – (m) (No change.)

13:69O-1.9 Required reports; reconciliation; test accounts

(a) The online gaming system shall be designed to generate the reports required by this section in a format approved by the Division's Revenue Certification Unit.

(b) All required reports shall be generated by the system, even if the period specified contains no data to be presented. The report generated shall indicate all required information and contain an indication of "No Activity" or similar message if no data appears for the period specified.

(c) Gaming systems shall provide a mechanism to export the data generated for any report to a format approved by the Division.

(d) An Internet gaming system and a mobile gaming system shall generate the following daily reports, at a minimum, for each gaming day in order to calculate the taxable revenue or to ensure the integrity of operations:

1. A Patron Account Summary Report, which shall include transaction information for each patron account as follows:

i. – vii. (No change.)

viii. Total amount of sports pool wagers;

ix. Total amount of sports pool winnings;

(Recodify viii. – xi. as x. – xiii.) (No change in text.)

xiv. Sports pool win or loss calculated as the amount of wagers less winnings;

(Recodify xii. – xiii. as xv. – xvi.) (No change in text.)

2. A Wagering Summary Report, which shall include the following by authorized game and poker variation, as applicable:

i. - ii. (No change.)

iii. Total amount of sports pool wagers;

iv. Total amount of sports pool winnings;

(Recodify iii. – vii. as v. – ix.) (No change in text.)

x. Sports pool win or loss calculated as the amount of wagers less winnings;

3. - 4. (No change.) (e) (No change.)

(f) A casino licensee and racetrack online sports wagering permit holder shall utilize the Wagering Summary Report to calculate mobile gaming gross revenue and Internet gaming gross revenue on a daily basis for reporting purposes. In addition, the casino licensee and racetrack online sports wagering permit holder shall:

1. – 4. (No change.) (g) - (k) (No change.)

(l) An Internet gaming system shall generate a report on a weekly basis identifying potential problem gamblers, including those patrons who self-report. The casino licensee and racetrack online sports wagering permit holder shall review the report and document any action taken.

(m) (No change.)

(n) On a monthly basis, a casino licensee and racetrack online sports wagering permit holder shall submit to the Division a copy of the bank statement that reflects the balance of the restricted account maintained to protect patron funds required pursuant

to N.J.A.C. 13:69O-1.3(k). (o) – (p) (No change.)

13:69O-3.1 Remote gaming systems (RGS)

(a) Each RGS that provides game content or a sports pool to another Internet gaming operator or racetrack online sports wagering permit holder shall:

1. – 6. (No change.) (b) - (g) (No change.)

(h) Each RGS shall generate and distribute to each casino licensee; racetrack online sports wagering permit holder; and the Division the following reports in order to verify the taxable revenue reported pursuant to N.J.A.C. 13:69O-1.9:

1. - 3. (No change.)

4. If applicable, a Sports Pool Summary report which shall include total online sports pool wagers, wins and net win or loss.

Comments

Having reviewed the regulations, please comment on the following story:

https://www.cbssports.com/nfl/news/fanduel-nj-sportsbook-refuses-to-pay-bettor-82k-on-winning-ticket-claims-glitch-caused-win/

FanDuel New Jersey sportsbook refuses to pay bettor $82K on winning ticket, claims glitch caused win

The FanDuel Sportsbook in New Jersey is refusing to pay a bettor the $82,000 his ticket said he won

by Will Brinson @WillBrinson Sep 19, 2018 • 3 min read

2018 NFL Season

Expert Picks | Odds | Scores
NFL schedule by team, by week

Where there is gambling, controversy is almost sure to follow. It's happened already in the new FanDuel Sportsbook, where Anthony Prince believes he is owed $82,000. The book is refusing to pay the bet.

Here's what happened, via News 12 in New Jersey: Prince, in the fourth quarter of the Raiders-Broncos game during Week 2, went to place a money-line wager on the Broncos, who were trailing 19-17. Case Keenum had just completed a pass to the Raiders 18-yard line, setting up a Brandon McManus field goal to win the game.

Federal Law

The Federal Wire Act Statute

18 U.S.C. §1084 Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

Discuss

How does the Federal Wire Act impact the rollout of state regulated sports wagering in the United States?

Can a regulated operator in the United Kingdom take sports wagers from Nevada residents?

Can a Nevada bookmaker take wagers from New Jersey residents?

Can a sports book operator in New Jersey and Nevada use a common system for accepting remote account wagers?

Can a sports book operator in New Jersey and Nevada use a Amazon Web Services or similar cloud services for accepting remote account wagers?

The Federal Illegal Gambling Business Statute - 18 U.S.C. §1955

Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in

respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

Discuss

How does the Illegal Gambling Business Act impact the rollout of state regulated sports wagering in the United States?

Can a regulated operator in the United Kingdom take sports wagers from Nevada residents?

Can a Nevada bookmaker take wagers from New Jersey residents?

Can a sports book operator in New Jersey and Nevada use a common system for accepting remote account wagers?

Can a sports book operator in New Jersey and Nevada use a Amazon Web Services or similar cloud services for accepting remote account wagers?