Nos. 16-476 & 16-477

IN THE

Supreme Court of the United States

GOVERNOR CHRISTOPHER J. CHRISTIE, *et al.*,
Petitioners,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*,
Respondents.

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

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF THE AMERICAN GAMING ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The American Gaming Association (AGA) is a non-profit trade association whose members participate in the U.S. commercial and tribal gaming industry, a highly regulated, $240 billion industry that supports 1.7 million jobs and provides $38 billion in tax revenue across 40 States. On behalf of its members, the AGA works with law enforcement, elected officials, regulatory agencies, and tribal leaders to combat illegal gambling and to promote next-generation regulatory regimes.

A significant part of that effort concerns sports betting—the target of the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. § 3701 *et seq.*, at issue in this case. Hoping to "stop the spread of State-sponsored sports gambling," S. Rep. No. 102-248, at 4 (1991), this federal law prohibits all but four States from authorizing or licensing sports betting in any form, and prohibits all States but Nevada and most sovereign tribal governments from allowing traditional, single-game sports betting.

It has failed. Americans continue to bet on sports, but, thanks to PASPA, most of that betting occurs illegally. The AGA estimates that Americans illegally bet over $150 billion *per year* on U.S. sporting events. Earlier this year, Americans bet an estimated $15 billion on the Super Bowl and NCAA Men's Basketball Tournament alone, and 97% of those bets were made

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[1] No counsel for a party authored this brief in whole or in part, and no one other than the AGA, its members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Letters from all parties consenting to the filing of *amicus curiae* briefs in support of either or neither party have been filed with the Clerk of the Court.

illegally. See Am. Sports Betting Coal., *The One Issue that Unites All American Voters: End the Federal Sports Betting Ban*, *available at* https://perma.cc/5JWP-UXW7.

PASPA has thus had the perverse effect of pushing an enormous market underground by way of federal decree while stamping out state and local efforts to adapt their own laws pursuant to their own citizens' wishes. States like New Jersey are compelled, at the federal government's direction, to keep their antiquated sports-betting laws and regulations effectively frozen in place at a federal standard. That result is irreconcilable with the constitutional system of dual sovereignty and dangerous in its own right.

Regulation of sports betting needs to be accomplished in a sensible manner that promotes, rather than thwarts, the strictures and principles of federalism. Because PASPA fails to do so, the AGA submits this brief.

SUMMARY OF ARGUMENT

The Third Circuit erroneously concluded that Congress can ossify state law by enjoining a state legislature from amending or repealing its sports-betting laws. This decision is incompatible with this Court's anti-commandeering jurisprudence and is severely detrimental to State efforts to combat sprawling black markets for illegal sports gambling.

I. The federal government may not "compel the States to require or prohibit" certain acts, *New York* v. *United States*, 505 U.S. 144, 166 (1992), nor "control or influence the manner in which States regulate private parties," *South Carolina* v. *Baker*, 485 U.S 505, 514 (1988), nor "require the States … to regulate their own citizens," *Reno* v. *Condon*, 528 U.S. 141,

151 (2000). The reason for this principle is that the Constitution "contemplates that a State's government will represent *and remain accountable to* its own citizens." *Printz* v. *United States*, 521 U.S. 898, 920 (1997) (emphasis added). But when the federal government tries to regulate *States*, rather than individuals, democratic accountability is lost. *New York*, 505 U.S. at 169. Congressional attempts to coercively define state law have therefore been consistently struck down as "overstep[ping] the boundary between federal and state authority." *Id.* at 159.

PASPA warrants the same treatment. Rather than directly regulating sports betting, the federal government has prohibited States and tribal governments[2] from changing their laws to "sponsor, operate, advertise, promote, license, or authorize" sports betting. 28 U.S.C. §§ 3702(1), 3704(a). States and tribes thus have no say in the ongoing content of their own laws but are required to do the federal government's bidding—all while Congress "remain insulated from the electoral ramifications." *New York*, 505 U.S. at 169. Congress cannot commandeer the States in this manner and demand that they maintain laws and enforcement mechanisms that their citizens may prefer to abolish. See, *e.g.*, *Printz*, 521 U.S. at 904–05; *New York*, 505 U.S. at 168–69.

Respondents, the government, and the Third Circuit emphasize that PASPA does not require the States to *enact* any affirmative law, but the statute's constitutionality cannot turn on that formality. As

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[2] PASPA's definition of covered "governmental entit[ies]" incorporates Section 4(5) of the Indian Gaming Regulatory Act. 28 U.S.C. § 3701(2). Thus, while this case deals specifically with matters of *state* sovereignty, PASPA also conscripts sovereign tribal governments into service of a failed federal policy.

construed by the Third Circuit, PASPA prevents States from repealing or amending laws that their citizens no longer support. Just as Congress cannot force a State to regulate its own citizens, Congress cannot prohibit a State from deregulating its own citizens. It is commandeering either way.

II. PASPA's constitutional defects are confirmed by the fact that the statute undermines core federalism principles. Federalism is supposed to "allow[] States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times," and to permit "innovation and experimentation." *Bond* v. *United States*, 564 U.S. 211, 221 (2011). But PASPA binds States (and their citizens) to outdated views that are decidedly not "of their own times," and it binds States to a failed federal regime with no room for State-level experimentation.

Far from stopping sports betting, PASPA has just moved it into the shadows, all while Americans' views on the matter have evolved. This is precisely the type of problem for which States should be encouraged to experiment, consistent with their citizens' views, on a better approach to regulation. PASPA forbids them from doing so.

ARGUMENT

PASPA forces States and sovereign tribal governments to regulate their own citizens pursuant to stale and static federal standards, and simultaneously allows Congress to sidestep the accountability consequences that accompany direct regulation. That is unconstitutional and undermines many of the core protections that the federalist system is designed to uphold. Recognizing PASPA for what it is—an unlawful takeover of State sovereignty—would return the

federal-state balance to its proper place, while making room for legitimate and sensible regulation of sports betting.

I. PASPA VIOLATES CORE PRINCIPLES OF FEDERALISM AND THE ANTI-COMMANDEERING DOCTRINE.

A State's ability to decide what its law is (and is not) is a "quintessential attribute of sovereignty" and precisely "what gives the State its sovereign nature." *FERC* v. *Mississippi*, 456 U.S. 742, 761 (1982). As a sovereign, a State "must stand in need of no intermediate legislations" to regulate its own citizens, but rather must "possess all the means, and have a right to resort to all the methods, of executing the powers with which it is intrusted." *The Federalist* No. 16, at 116 (Alexander Hamilton) (Clinton Rossiter ed., 1961). PASPA violates these principles and, in the process, insulates the federal government that enacted it from the political consequences of enforcing it. See *New York*, 505 U.S. at 168–69, 181–82.

A. The Anti-commandeering Doctrine Safeguards Democratic Accountability.

The Framers rejected a "'central government that would act upon and through the States' in favor of 'a system in which the State and Federal Governments would exercise *concurrent* authority *over the people*.'" *Alden* v. *Maine*, 527 U.S. 706, 714 (1999) (emphasis added). The Constitution thus divides power "between the National Government and the States" and, in doing so, "protect[s] the people, from whom all governmental powers are derived." *Bond*, 564 U.S. at 221.

This foundational structure delimits what the federal government can and cannot do when it decides to regulate within the areas of its designated authority.

On the one hand, the federal government has plenty of regulatory options. Because the Framers "opted for a Constitution in which Congress would exercise its legislative authority directly over individuals rather than over States," Congress may regulate those individuals directly and may preempt contrary State regulation. *New York*, 505 U.S. at 165, 173–74, 188. Congress can also "hold out incentives to the States as a means of encouraging them to adopt suggested regulatory schemes." *Id.* at 188.

On the other hand, however, the federal government's regulatory choices must not "overstep[ ] the boundary between federal and state authority." *Id.* at 159. The clearest way to do so is to try to regulate States themselves, rather than the people. See, *e.g.*, *The Federalist* No. 15, at 109 (Alexander Hamilton) (the people are "the only proper objects of government"). The federal government does not, for example, "have a general right to review and veto state enactments before they go into effect." *Shelby Cty.* v. *Holder*, 133 S. Ct. 2612, 2623 (2013). Nor can the federal government "conscript state governments as its agents," or "compel the States to require or prohibit" certain acts or to "govern according to Congress' instructions." *New York*, 505 U.S. at 162, 166, 178; see also, *e.g.*, *Coyle* v. *Smith*, 221 U.S. 559, 574–75 (1911) (Congress may not prohibit State from changing location of its capitol). When the "federal interest is sufficiently strong to cause Congress to legislate, it must do so *directly*." *New York*, 505 U.S. at 178 (emphasis added).

These limits are rooted in democratic accountability. Representative government derives its power from the people, and its proper functioning therefore depends upon the people's ability to hold lawmakers accountable for their decisions. But when "the Feder-

al Government compels States to regulate, the accountability of both state and federal officials is diminished." *Id.* at 168. Direct federal regulation ensures that "federal officials … suffer the consequences if the decision turns out to be detrimental or unpopular." *Id.* Compelling States to carry out federal law, by contrast, means that state officials may "bear the brunt of political disapproval, while federal officials who devised the regulatory program may remain insulated from the electoral ramifications." *Id.* at 169. And it allows Congress to "take credit for 'solving' problems without having to … pay for the solutions with higher federal taxes [or to] tak[e] the blame for its burdensomeness and for its defects." *Printz*, 521 U.S. at 930.

The anti-commandeering doctrine in particular and federalism principles more broadly thus guarantee that a State's government remains "accountable to its own citizens," *id.* at 920, and that the federal government remains accountable to its own. Any other result would "threaten the political accountability key to our federal system." *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 578 (2012) (plurality opinion); see also *id.* at 678 (Scalia, Kennedy, Thomas, & Alito, J.J., dissenting) ("When Congress compels the States to do its bidding, it blurs the lines of political accountability."). The Constitution's system of dual sovereignty simply does not allow the federal government to regulate only halfway by crafting federal standards and then foisting those standards onto the States without undertaking the burdens and costs that come with regulation.

B. PASPA Forces States To Enforce A Failed Federal Standard.

Gaming regulation has traditionally been a matter of state and local concern. Federal policy in this area

is generally limited to supporting or supplementing the States' own laws—"to defer to, and even promote, differing gambling policies in different States." *Greater New Orleans Broad. Ass'n* v. *United States*, 527 U.S. 173, 187 (1999). Consistent with that approach, the Illegal Gambling Business Act, for example, authorizes federal prosecution of multi-state illegal gambling conspiracies but prohibits only activities that operate in violation of *state* anti-gambling laws. 18 U.S.C. § 1955(b)(1)(i). There is no freestanding federal definition of illegal gambling. Similarly, the federal Wire Act, 18 U.S.C. § 1084, seeks only to supplement State laws by authorizing prosecution of illegal sports betting activities beyond the reach of any one State.

In 1992, with the passage of PASPA, Congress decided to wade more affirmatively into the regulation of sports betting, but it stopped short of fully embracing the task. Rather than accept the responsibility of directly prohibiting *individuals* alone from engaging in sports betting, PASPA goes further and forbids *States* from "sponsor[ing], operat[ing], advertis[ing], promot[ing], licens[ing], or authoriz[ing]" sports betting. 28 U.S.C. § 3702(1). As the Third Circuit, Respondents, and the government see it, moreover, that provision precludes both legislation authorizing sports betting *and* any State's attempt to repeal laws that prohibit the practice short of a complete repeal. The practical effect is a federal command to freeze the sovereign States' sports-betting laws in place and to leave the States unable to revisit those laws in the face of changing circumstances or constituent preferences.

That unconstitutionally commandeers the States to regulate their citizens pursuant to federal standards. In no uncertain terms, PASPA tells States what to do

and it controls how they do it. PASPA thus ensures that it is "[a state official] and not some federal official who stands between the [would-be bettor] and [wagering on sports]." *Printz*, 521 U.S. at 930. When the "citizens of New [Jersey] … d[id] not consider that [prohibiting sports betting] [wa]s in their best interest"—nearly two-thirds of voters supported repealing the sports-betting ban, Pet. App. 4a—the Constitution allowed them to "elect state officials who share their view." *New York*, 505 U.S. at 168. And New Jersey citizens did precisely that, with large majorities in both houses approving bills to authorize and repeal prohibitions of sports betting. Pet. App. 82a, 84a. PASPA, however, has quietly erased all of this from behind the scenes, leaving New Jersey's lawmakers exposed but powerless to do anything about it. That is unconstitutional.

Having eschewed formalism when interpreting PASPA—holding that a repeal is the same thing as an authorization—the Third Circuit nevertheless believed it to be constitutionally critical that PASPA does not compel States to *enact* positive law but instead forbids them from *repealing* an unpopular law. Pet. App. 12a–16a, 23a–25a. But that is like saying shackles are not coercive because they do not require the wearer to move. It makes absolutely no difference that PASPA locks a federal standard into existing law rather than requiring its passage anew: "in either case, the state is being forced to regulate conduct that it prefers to leave unregulated," or to regulate in a different and more sensible manner. *Conant* v. *Walters*, 309 F.3d 629, 646 (9th Cir. 2002) (Kozinski, J., concurring).

Nor does it matter that PASPA, as interpreted by the Third Circuit, prohibits only partial repeals of sports-betting laws and leaves States free to deregu-

late sports betting entirely. No reform-minded State would want to permit sports betting in any place in any amount on any event by any person—including minors or those with the ability to affect the outcome of the event. The "choice" between complete prohibition and complete deregulation would thus force States to choose between "two unconstitutionally coercive regulatory techniques," and that is "no choice at all." *New York*, 505 U.S. at 176.

The government and the Third Circuit attempt to salvage PASPA by claiming that it is really just a preemption statute in a different garb. But preemptive statutes make clear that "it is the Federal Government that makes the decision in full view of the public, and it will be federal officials that suffer the consequences if the decision turns out to be detrimental or unpopular." *Id.* at 168. In other words, whether through preemption or other direct regulation of sports betting, the Constitution requires that Congress either takes responsibility for an area of law or does not. But with PASPA, Congress has tried to have it both ways, propounding a federal standard and then compelling *States* to regulate their citizens accordingly. That violates the Tenth Amendment. *Id.* at 166.

II. PASPA UNDERMINES THE VALUES THAT FEDERALISM IS SUPPOSED TO PROMOTE.

"Federalism is more than an exercise in setting the boundary between different institutions of government for their own integrity"; it also "secures to citizens the liberties that derive from the diffusion of sovereign power." *Bond*, 564 U.S. at 221. This Court has regularly reiterated those benefits, including "'innovation and experimentation,' enabl[ing] greater citizen 'involvement in democratic processes,' and

mak[ing] government 'more responsive.'" *Id.*; see also *New State Ice Co.* v. *Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."). PASPA is antithetical to these values, whereas striking the law down would allow them to flourish.

A. PASPA And The Regulatory Regime It Has Spawned Frustrate Federalism's Core Principles.

In several respects, PASPA has engendered a failed regulatory landscape that erodes federalism's boundaries and protections.

1. Federalism "allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny *of their own times* without having to rely solely upon the political processes that control a remote central power." *Bond*, 564 U.S. at 221 (emphasis added). PASPA, however, binds States and their citizens to outdated views from times past. In 1989, most Americans supported a ban on sports betting, Pew Research Ctr., *Gambling: As the Take Rises, So Does Public Concern* 12–13 (May 23, 2006), *available at* https://perma.cc/4BXU-5TDS, but the opposite is true today. Most Americans (55%) now support repealing the federal prohibition on sports betting, with just 35% opposed, and those percentages are even stronger among sports fans. See Mem. from Greenberg Quinlan Rosner Research to AGA, Legalizing Sports Betting: A Winning Wager 2, 5 (Apr. 24, 2017), *available at* https://perma.cc/4A68-TE33; see also, *e.g.*, Mem. from the Mellman Grp. to the Am. Gaming Ass'n, Executive Summary of Our Recent Super Bowl Polling 2

(Feb. 2, 2016) (66% of Super Bowl viewers favored allowing States to decide whether to permit sports betting, while only 25% opposed such a change), *available at* https://perma.cc/YM5J-XWN4.[3]

These opinion trends have also coincided with dramatic growth in the gaming industry. Since PASPA's enactment, for example, the number of States with commercial casinos has tripled from eight in 1992 to 24 today. Tribal gaming has also surged, from just a handful of States in 1992 to 28 States across the country (and revenues of nearly $30 billion) a quarter-century later. See *Gross Annual Wager*, Int'l Gaming & Wagering Bus. Mag., Aug. 5, 1994.

None of this should be surprising given the dramatic changes in both sports and society over the last 25 years. At the time of PASPA's adoption, the World Wide Web was just three years old, and no one could have imagined the Internet's growth as the channel for commerce—both legal and illegal—that it has become. New sports (*e.g.*, mixed-martial arts) and new leagues (*e.g.*, Major League Soccer and the WNBA) have also appeared, producing additional events on which to bet. And all the while, sports betting has become far more socially acceptable.

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[3] Even the major sports leagues, who were among the leading supporters of PASPA, have started to change their views. *See, e.g.*, Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. Times, Nov. 13, 2014, (NBA Commissioner favoring a regulatory framework that "allows states to authorize betting on professional sports, subject to strict regulatory requirements and technological safeguards"); Am. Sports Betting Coal., *Sports Betting FAQs* [hereinafter *Sports Betting FAQs*] (MLB and NHL Commissioners recognizing that legal sports betting poses less of a concern to professional sports than once thought), *available at* https://perma.cc/8RK7-KX2T.

Rather than allowing States "to respond … to the initiative of those who seek a voice in shaping the destiny of their own times," *Bond*, 564 U.S. at 221, however, PASPA requires States to ignore those voices. The system of dual sovereignty is supposed to prevent just that sort of stagnation.

2. The "federal structure" also "permits 'innovation and experimentation,'" *id.* (citation omitted), but PASPA binds States to a failed national regime at the expense of more localized innovation and experimentation.

It is easy to see the myriad ways in which PASPA is not working. To begin, the statute has not stopped people from betting on sports; instead, it has just driven bettors to black markets. When PASPA was enacted, the annual market for illegal sports betting was $40 billion. Andrew Beyer, *Betting Bill Hard to Understand*, Wash. Post, Nov. 17, 1991; see also Koleman S. Strumpf, *Illegal Sports Bookmakers* 6 (Univ. of N.C., Feb. 2003) (working paper) (identifying a single New York bookmaker running a $200 million per year illegal gambling operation in the late 1990s). Today, more than 40 million Americans bet on a sporting event each year, Nielsen Sports, *Legal Sports Betting: What It Would Mean for NFL TV Partners & Advertisers* 8 (Sept. 2016), *available at* https://perma.cc/9ATW-HQUT, and their wagers total at least $150 billion, *Sports Betting FAQs*, *supra*; see also, *e.g.*, Steven Titch & Michelle Minton, Competitive Enter. Inst., On Point No. 224, *Time to End the Madness around March Madness* 3 (Mar. 2, 2017) (estimating total market at approximately a half trillion dollars annually), *available at* https://perma.cc/GMT9-XK8L.

Behind these numbers, moreover, there are even bigger problems. Because betting occurs outside law

enforcement's view, for example, match-fixing stays well-hidden. If it is uncovered, it is usually uncovered inadvertently. Take the FBI's discovery that an NBA referee was involved in a point-shaving scheme: it arrived "purely by accident" from wiretaps in an "unrelated organized crime case." Brian Tuohy, *Larceny Games: Sports Gambling, Game Fixing and the FBI* 17 (2013). Another scandal involving players on the University of Michigan basketball team receiving loans and payments from an illegal betting operation was unearthed only as part of an investigation into a car accident involving a player and a recruit. See *Ed Martin, 69, Key Figure in Michigan Basketball Scandal*, N.Y. Times, Feb. 18, 2003; see generally United Nations Office on Drugs & Crime, *Resource Guide on Good Practices in the Investigation of Match-Fixing* 33–34 (2016) (it is "more difficult to investigate allegations of match-fixing where betting is illegal," and law enforcement in countries like China, Russia, and India cannot rely on "crucial" cooperation), *available at* https://perma.cc/4SUU-R69X.

Not only does illegal gambling mask sports-related scandals, but it also enables and funds other illicit activity. Illegal sports gambling operations are ordinarily large enterprises that use gambling proceeds to fund serious crimes like money laundering, racketeering, human and drug trafficking, and extortion. Jay S. Albanese, *Illegal Gambling & Organized Crime: An Analysis of Federal Convictions in 2014*, at 4–5 (2015), *available at* https://perma.cc/V6RC-UE8S. The FBI sees "the ties of organized crime to illegal sports betting … every day." Am. Gaming Ass'n Illegal Gambling Advisory Bd., *Law Enforcement Summit on Illegal Sports Betting: After-Action Report* 9 (2015) [hereinafter "*Law Enforcement Summit*"], *available at* https://perma.cc/S8YW-2N68. And there

has been a correlation between PASPA's enactment and an "increase in the involvement of organized crime on sports wagering." Nat'l Gambling Impact Study Comm'n, *Final Report* 2-14 to -15 (1999). Indeed, earlier this year, the leader of "ODOG Enterprise" pleaded guilty to overseeing a criminal conspiracy that involved "vast illegal gambling operation focused on high-stakes wagers placed on sporting events" along with drug trafficking and money laundering. Press Release, U.S. Dep't of Justice, Ring Leader of Violent Drug Trafficking and Illegal Gambling Enterprise Pleads Guilty to Racketeering (Jan. 10, 2017), *available at* https://perma.cc/VA8C-7M23.

In the face of such issues, and with no direct federal regulation in place, States should be able to pursue state-specific "innovation and experimentation." *Bond*, 564 U.S. at 221. New Jersey of course tried to do so, with a primary sponsor of the efforts observing that current laws "give organized crime … a virtual monopoly on sports wagering." Raymond J. Lesniak, *If You Outlaw Sports Betting, Only Outlaws Will Have Profits*, U.S. News & World Report (June 15, 2012). Other States have expressed similar inclinations to experiment with new regulatory regimes. In 2017, for instance, legislators in 14 states have already introduced 27 pieces of legislation relating to sports betting. See, *e.g.*, H.B. 6948 (Conn. 2017) (signed into law Jul. 10, 2017) (allowing the Commissioner of Consumer Protection to adopt regulations to regulate wagering on sporting events to the extent permitted by state and federal law). And local officials are speaking out to say that "sports betting is something for the people of each state to decide, not the federal government," and that state legislatures should be allowed to authorize sports gambling by statute or to prohibit it. Press Release, Am. Gaming

Ass'n, Diverse Coalition Launches to Repeal Failed Federal Sports Betting Ban (June 12, 2017) (statement of Mick Cornett, Mayor of Oklahoma City and President of the U.S. Conference of Mayors), *available at* https://perma.cc/8KAT-ZE9S; Nat'l Conference of State Legislatures, *Adopted Policy Directive and Resolutions* 27 (2016), *available at* https://perma.cc/954Y-GYFC.

PASPA co-opts all of these efforts to remodel sports-betting laws. That is repugnant to the values our federalist system is supposed to encourage and only confirms PASPA's incompatibility with that system.

B. Invalidating PASPA Would Further The Federalism Benefits That This Court Has Consistently Respected.

The anti-commandeering doctrine protects democratic accountability, ensuring that citizens know who is responsible for what and that federal lawmakers stand behind the standards they enact. *Infra* at § I.A. That focus on accountability and knowledge goes hand-in-hand with the far better approach to sports-betting—namely, that it be regulated sensibly and openly rather than through a half-baked federal law that incentivizes illegality. While PASPA undermines federalism's values, finding it unconstitutional would do the opposite.

1. On the government side, there are ample benefits to *proper* regulation of sports-betting. For starters, people will generally choose a legal, regulated market over the black market that PASPA has fostered. See David Forrest & Rick Parry, *The Key to Sports Integrity in the United States: Legalized, Regulated Sports Betting* 15 (Sept. 27, 2016), *available at* https://perma.cc/RYE3-F5MG. ("[S]o long as the legal sector supplies an attractive product, most recreational bet-

tors are likely to take their money there.") (emphasis omitted). Where sports betting is legal—in places like Nevada, the United Kingdom, or Australia—there is simply is "no demand for a black market." *Law Enforcement Summit* at 5. But where sports betting is outlawed, "[g]ambling thrives unregulated …, and corruption … flourishe[s]." Stephen F. Ross et al., *Reform of Sports Gambling in the United States: Lessons from Down Under* 2–3, Penn State Inst. for Sports Law, Policy & Research (2015) (white paper), *available at* https://perma.cc/F9X8-96N6.

The influx of known market participants, moreover, helps government and law enforcement to police crime better. Legal gaming operators can act as "early warning system[s]" of "irregularities," and aggregate data from sportsbooks alerts regulators to potential corruption. *Law Enforcement Summit*, *supra*, at 6. After all, it was the bookmakers who noticed "a sudden and unusually large amount of cash was bet on the underdog" that ultimately brought the infamous Black Sox scandal to light. Alan Solomon, *The Black Sox*, Chi. Trib., Oct. 1, 2008. Governments can also deploy consumer protection measures and other laws to protect people like minors and problem gamblers or even bookmakers. See Forrest & Parry, *supra*, at 11–13 (describing consumer protection laws implemented in regulated sports-betting markets). Surely, that is preferable to a system in which governments stumble upon problems by accident and vulnerable citizens are left unprotected. See *infra* § II.A.

Finally, properly regulated sports betting allows governments to generate substantial revenues to benefit their constituents. A legal sports-betting industry could generate up to $26.6 billion in total economic impact every year though GDP increases, taxes

dollars, and over 150,000 well-paying American jobs. See Oxford Economics, *Economic Impact of Legalized Sports Betting* 5 tbl.ES-1 (May 2017), *available at* http://perma.cc/QH9C-WVS9. More than that, legalized sports betting would create secondary markets for things like data analytics, as has already occurred in other segments of the U.S. gaming industry. See Titch & Minton, *supra*, at 10. Governments should be able to capitalize on these benefits by, for example, directing new revenues to law enforcement, social services, and other matters of vital citizen interest.

2. The private sector, including the AGA's members, likewise has much to offer in a properly regulated sports-betting market. That is because, in a competitive market, bookmakers have a "financial incentive … in protecting the sport …, work[ing] with authorities[,] and protect[ing] vulnerable consumers." *Id.* at 5–7. That benefits everyone.

There are numerous examples of how this happens when state and private actors are free from a blanket prohibition. In Nevada, for example, sportsbook operators, data companies, and the sports leagues constantly share data amongst themselves to monitor trends in betting activity. When someone identifies a potential integrity concern or potential regulatory or statutory violation, they alert the Nevada Gaming Control Board (NGCB). The NGCB has both criminal and civil enforcement powers and can then either work with prosecutors to address criminal violations, impose regulatory sanctions, or alert the leagues to potential integrity concerns.

There is similar evidence from Europe. Leading betting operators in the European Union, for instance, have founded the European Sports Security Association (ESSA) to monitor unusual betting patterns and act as an "early warning system" to alert

sports leagues to suspicious or irregular betting patterns. European Sports Sec. Ass'n, *About ESSA*, http://www.eu-ssa.org/about-essa/ (last visited Aug. 30, 2017). ESSA publishes quarterly reports on the numbers of alerts reported and issues guidelines for both betting operators and athletes. See, *e.g.*, ESSA, *ESSA Q2 2017 Integrity Report* (2017), *available at* https://perma.cc/9AV2-476F.

Sports leagues have also have embraced data's ability to guard against corruption. Soccer's international governing federation (FIFA) recently entered an agreement with another company to "identify and analyse any suspicious betting behaviour or patterns" and alert FIFA to possible corruption. See Press Release, FIFA, FIFA Strengthens Global Football Integrity Programme with Sportradar Agreement (Feb. 3, 2017). The Tennis Integrity Unit (TIU) similarly leverages data to identify suspicious behavior and is empowered to fine, suspend, or even ban professional tennis players from competition. See, *e.g.*, Des Bieler, *Possible Wimbledon Match-Fixing Under Investigation by Tennis Anti-Corruption Body*, Wash. Post, July 19, 2017; see also TIU, *Tennis Integrity Unit Briefing Note* (July 19, 2017) (TIU relies on data provided by "betting regulators and gambling organisations" to identify possible cheating), *available at* https://perma.cc/J7GK-VXD2.

All of this makes clear that PASPA's demise will not produce an unregulated betting market in which anyone can bet on any sport in any place and for any amount. Rather, it will produce a gaming industry just like the ones that exist where Congress has not forced States' hands, with operators and regulators working together under a regulatory regime that citizens actually want. From State to State, it will "permit[ ] 'innovation and experimentation,' enable[ ]

greater citizen 'involvement in democratic processes,' and make[ ] government 'more responsive.'" *Bond*, 564 U.S. at 221. *That*—not PASPA—is what the system of dual sovereignty that the Framers adopted is supposed to look like.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment of the Third Circuit.

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