



PROGRAM MATERIALS

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What the Supreme Court's *Murphy v. NCAA* Decision Means for Fantasy Sports

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Arent Fox

What the Supreme Court's *Murphy v. NCAA* Decision Means for Fantasy Sports

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Roadmap:

- Wire Act
- Illegal Gambling Business Act
- Unlawful Internet Gambling Enforcement Act
- Professional and Amateur Sports Protection Act
- Supreme Court decision *Murphy vs. NCAA*
- Why Maintain the Difference Between Fantasy Sports and Traditional Sports Gambling
- Opportunities for the Future

Wire Act

- In general, The Wire Act makes it illegal for those in the gambling business to use telephone or telecommunications to transmit bets or gambling-related information involving sporting events or contests
- Caution: Limited decisional law and some recent upheaval
- Scope
 - Applies to senders and receivers
 - Applies to non-sports betting (at least according to recent DOJ opinion)
 - Applies to “those in the gambling business”
 - Does not apply to simple bettors (but note accomplice liability)

Illegal Gambling Business Act

- IGBA makes it illegal to conduct, finance, supervise, direct, or own all or part of an illegal gambling business
- Under the IGBA, a gambling business is illegal if it:
 - Is in violation of state or local law
 - Involves at least 5 people
 - Has a gross revenue of \$2,000
 - Continues for more than 30 days (absolute continuity is not required)



Other Federal Statutes



- Travel Act
- Racketeer Influenced and Corrupt Organizations (RICO)
- Money Laundering Provisions of 18 U.S.C. 1956 and 1957

Unlawful Internet Gambling Enforcement Act

- UIGEA explicitly regulates online gambling
- Makes it illegal for those in the business of betting or wagering to knowingly accept credit, electronic funds, checks, or other payments involving financial institutes to settle unlawful internet gambling bets or wagers



Fantasy Sports Safe Harbor of the Unlawful Internet Gambling Enforcement Act

- Outlines the difference between fantasy sports and traditional sports betting
- “Bet or Wager” excludes participation in any “fantasy or simulation sports game,” if:
 - No fantasy or simulation team is based on the current membership of an actual team that is a member of an amateur or professional sports organization
 - No winning outcome is based:
 - 1) On the score, point spread, or any performance or performances of any single real world team or any combination of such teams; or
 - 2) Solely on any single performance of an individual athlete in any single real world sporting or other event
 - All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events
 - All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by participants

Unlawful Internet Gambling Enforcement Act

- The UIGEA does not override state law
- The fantasy sports industry should point out to state lawmakers and regulators the judgment inherent in Federal Law that fantasy sports **is not** gambling and urge that the state decision-makers follow the Federal lead



The World Before *Murphy vs. NCAA*: What the Professional and Amateur Sports Protection Act (“PASPA”) Was

- PASPA prohibited states from facilitating or authorizing betting on amateur or professional sports games.
- PASPA did not make sports gambling a federal crime, but allowed the Attorney General and professional and amateur sports organizations to bring civil action
- PASPA contained grandfather provisions that allowed a state’s then-current gambling activities to continue
- PASPA gave states the option of legalizing sports gambling within 1 year of the law’s enactment

Murphy vs. NCAA: Background

- The New Jersey legislature passed a law legalizing sports gambling
 - The Third Circuit found the law to be a violation of PASPA
- The New Jersey legislature repealed old state laws that prohibited sports gambling
 - The Third Circuit found the repeal to be a violation of PASPA
- The New Jersey legislature repealed old state laws prohibited sports gambling, stating that the repeal was not an authorization of sports gambling in violation of PASPA

Murphy vs. NCAA: Supreme Court Decision

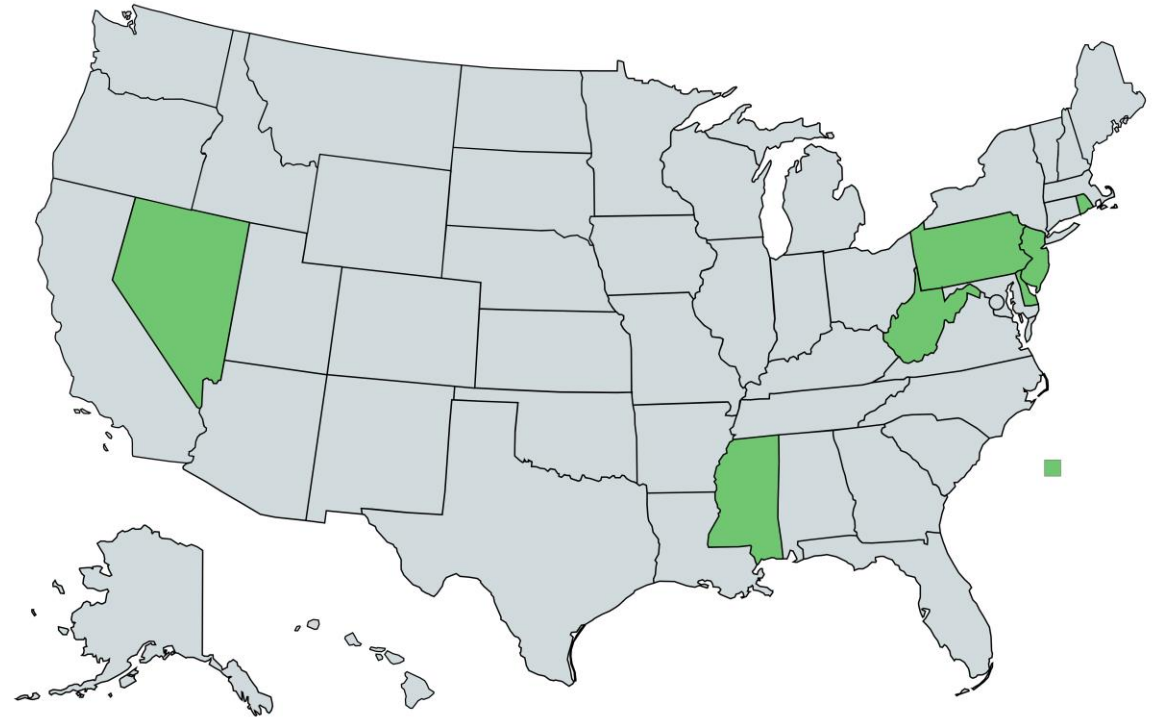
- PASPA violates state sovereignty
- Anti-commandeering Doctrine
 - Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents
 - PASPA unequivocally dictates what a state legislature may and may not do, violating the anti-commandeering rule
 - Whether federal law compels or prohibits State action is irrelevant
- Supremacy Clause
 - For a federal law to preempt a state law, it must:
 - 1) represent the exercise of a power conferred on Congress by the Constitution (the Supremacy Clause alone is insufficient); and
 - 2) since the Constitution only confers upon Congress the power to regulate individuals, not states, the law must be “best read as one that regulates private actors”
 - 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

Murphy vs. NCAA: What does it mean?

- The decision does not mean that sports gambling is now legal
- It does mean that states can legalize sports gambling and fantasy sports within their own borders, if they comply with other existing federal laws

State Legislation: States that have Legalized Sports Gambling

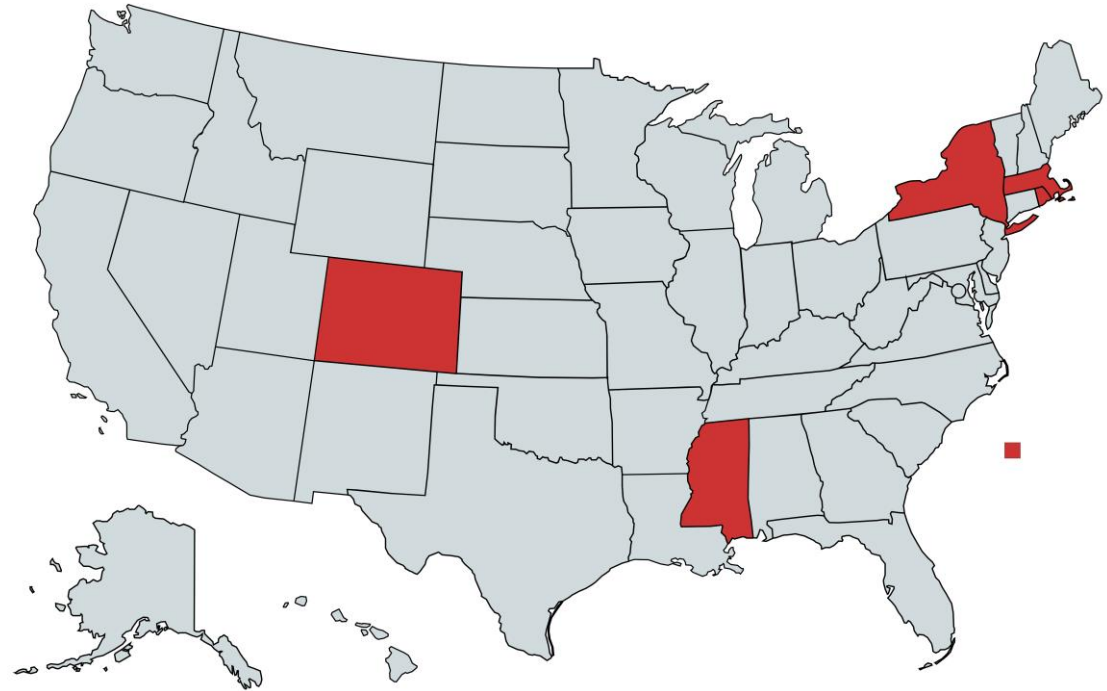
- Nevada
- Delaware
- New Jersey
- Mississippi
- West Virginia
- Pennsylvania
- Rhode Island



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State Legislation – States that have Reaffirmed Legality of Fantasy Sports include:

- Colorado
- Massachusetts
- Mississippi
- New York
- Rhode Island



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Why Maintain the Difference Between Fantasy Sports and Traditional Sports Gambling: Avoid Onerous Regulation

- There is serious risk that state regulators will pursue the easy road, pass a set of “one size fits all” regulations, group fantasy sports businesses together with traditional gambling businesses and thereby subject fantasy sports businesses to onerous regulation well-suited to traditional gambling but ill-suited to fantasy sports
- The fantasy sports industry must continue to work hard to educate regulators and lawmakers so that they resist the temptation to pass only one set of regulations and rather pass two – one properly suited for traditional gambling and one properly suited for fantasy sports

Why Maintain the Difference Between Fantasy Sports and Traditional Sports Gambling: Integrity of the Game

- Traditional Sports Gambling - risk that a gambler with a substantial bet on a game will attempt to bribe or extort a player or referee in order to affect the result of the game
- Fantasy Sports – there is little, if any, risk that fantasy sports contestants could, even if they wanted to, “fix” a fantasy sports contest by bribing or extorting a player or official
- Onerous regulation designed to insure the integrity of sporting events is inappropriate for fantasy sports contests

Why Maintain the Difference Between Fantasy Sports and Traditional Sports Gambling: Skill vs. Chance Continuum

- Fantasy Sports - There is a substantial element of skill and control which fantasy sports contestants can exert over the players selected and composition of fantasy teams
- Onerous regulation would likely fail to recognize the skill involved in fantasy sports as the UIGEA properly recognized contests



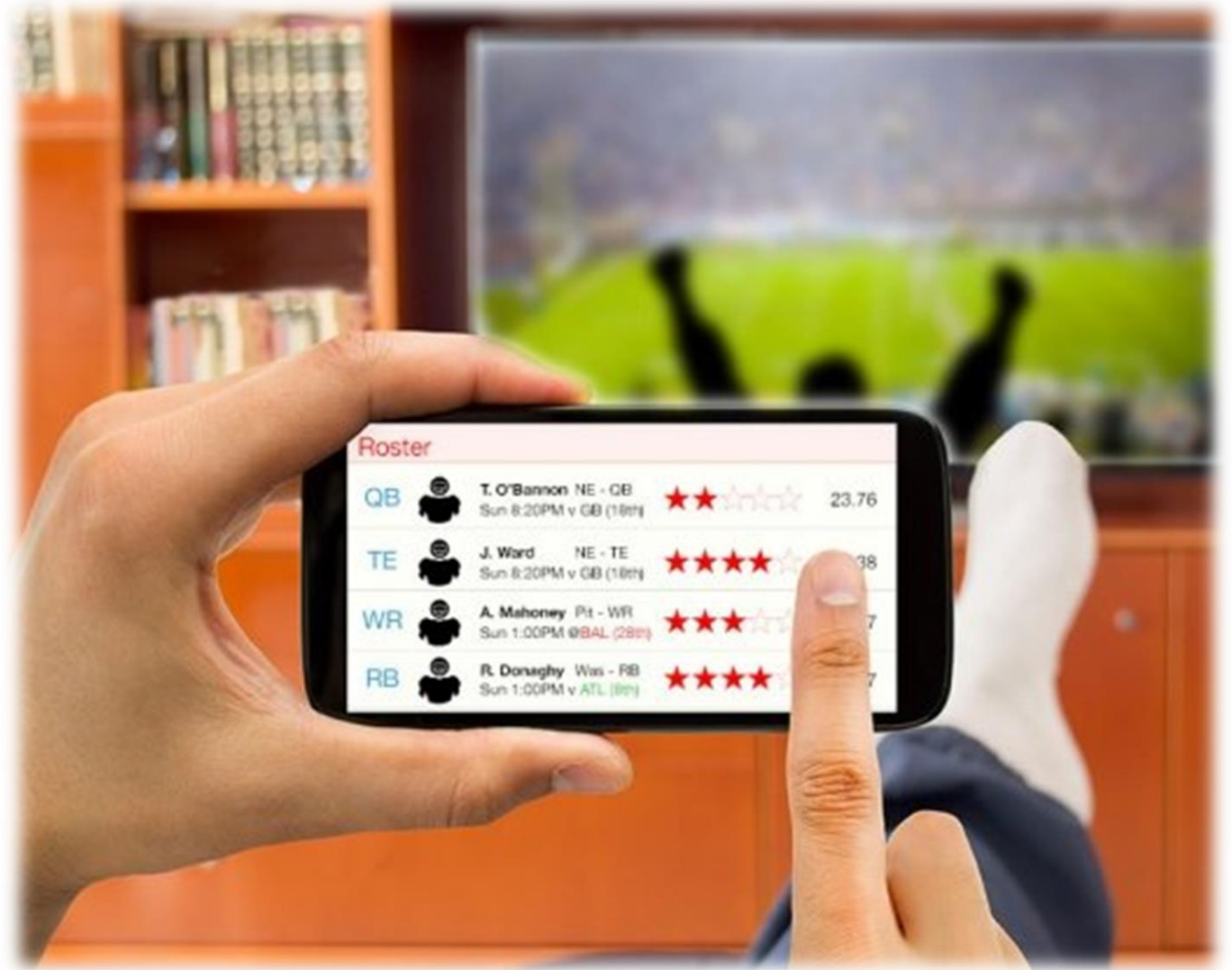
Opportunities for the Future of Fantasy Sports: Legalization

- The risk that fantasy sports will be considered illegal gambling will be reduced if traditional gambling that was previously deemed illegal is in fact legalized



Opportunities for the Future: What Can Fantasy Sports Companies Do?

- Religiously adhere to the “safe harbor” requirements in the UIGEA
 - Ensuring that their contests have prizes that are set in advance
 - Involve multiple real world events
 - Not depend on any single athlete



Opportunities for the Future: What Can Fantasy Sports Companies Do?

- Refrain from using careless nomenclature that appears to equate traditional gambling with a fantasy sports contest
 - “Bet” and “wager” should be replaced by “contest entry fee”
 - “Rake” or “vig” should be replaced by “service fee” when referring to what a company charges to run a fantasy sports game

Opportunities for the Future: Non-sports Gambling



- Things to Potentially Bet on Online Which are Not Sports
 - Politics/Elections
 - X-Factor/America's Got Talent/Dancing with the Stars/Bachelor
 - The Oscars/Baftas/Emmy's
 - Snow at Christmas
 - Chess/Scrabble/Other Board Games

Questions?



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WEBINAR: What the Supreme Court's Murphy v. NCAA Decision Means for Fantasy Sports – OUTLINE

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- Roadmap
 - This webinar will review the history and nature of the following laws and analyze how these laws affect the gaming and fantasy sports industries from a business perspective.
 - Wire Act
 - Illegal Gambling Business Act
 - Unlawful Internet Gambling Enforcement Act
 - Professional and Amateur Sports Protection Act, including the Supreme Court decision to strike down the federal ban on state sponsored sports betting in Murphy v. NCAA.
 - This webinar will also offer specific do's and don'ts for fantasy sports executives.
- Walkthrough the world before the Supreme Court Decision
 - Illicit Internet gambling implicates at least 7 federal criminal statutes.
 - Wire Act, 18 U.S.C. 1084
 - In the 1960s, the federal government enacted the Wire Act.
 - Under the law, "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."
 - Put simply, under the Act, it is illegal for those in the gambling business to use telephone or telecommunications to transmit bets or gambling-related information involving sporting events or contests.
 - Caution: Limited decisional law and some recent upheaval
 - Scope
 - Courts have concluded that the Act implicates both those who send and those who receive transmissions. *United States v. Pezzino*, 535 F.2d 483, 484 (9th Cir. 1976).
 - While the vast majority of cases involve sporting events and contests, violators of other forms of gambling have been prosecuted under the Wire Act.
 - However, in 2011 the Department of Justice concluded that "interstate transmissions of wire communications that do not relate to a sporting event or contest, fall outside the reach of the Wire Act."
 - The DOJ has since reconsidered its position and determined that all but one of the Wire Act's prohibitions "sweep beyond sports gambling."
 - After evaluating the statutory cannons of construction, the DOJ concluded that the Wire Act prohibits:
 - 1) the transmission of all kinds of bets or wagers

- 2) transmissions that entitle the recipient to receive money or credit as a result of all kinds of bets or wagers
 - 3) transmissions that entitles the recipient to receive money or credit for information assisting in the placing of all kinds of bets or wagers
 - 4) the transmission of information assisting in bets or wagers concerning sports
 - Thus, the transmission of information assisting in bets or wagers concerning non-sports activities is permitted.
- In its inquiry into why Congress would only limit one of these prohibitions to sports gambling, the DOJ determined that unlike lotteries, numbers games, or other kinds of non-sports gambling, sports gambling depends on real-time transmissions of information like point spreads, odds or the results of horse races.
- Because the Act specifically addresses those in the gambling business, it probably cannot be used to prosecute “simple bettors.” *United States v. Scavo*, 593 F.2d 837, 843 (8th Cir. 1979)
 - However, it is important to note that an accomplice liability is still applicable. For example, the DOJ advised the National Association of Broadcasters that its members risked prosecution for aiding and abetting when they provided advertising for online gambling operations. Advertising for Internet Gambling and Offshore Sportsbook Operations, Letter from United States Deputy Attorney General John G. Malcolm to the National Association of Broadcasters dated June 11, 2003, filed as Exhibit A with the complaint in *Casino City, Inc. v. United States Department of Justice*, Civil Action No. 04-557-B-M3 (M.D.La.),
- **Illegal Gambling Business Act, 18 U.S.C. 1955**
 - In 1970, as part of the Organized Crime Control Act, Congress passed the Illegal Gambling Business Act.
 - Under the law “whoever conducts, finances, 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.”
 - An illegal gambling business is defined as a gambling business which:
 - 1) is in violation of state or local law where it is conducted.
 - 2) involves five or more persons that conduct, finance, manage, supervise, direct or own all or part of the business "regardless of how minor their roles, and whether they be labeled agents, runners, independent contractors or the like."
 - 3) remains in substantially continuous operation for more than thirty days or has a gross revenue of \$2,000 in any given day. Absolute or total continuity is not required.
 - This statute significantly cracked down on large scale illegal gambling operations, such as casinos.

- o It is also a federal crime to:
 - Use the facilities of interstate commerce to conduct an illegal gambling business under the Travel Act, 18 U.S.C. 1952;
 - Conduct the activities of an illegal gambling business involving either the collection of an unlawful debt or a pattern of gambling offenses, under the Racketeer Influenced and Corrupt Organizations (RICO) provisions, 18 U.S.C. 1962;
 - Launder the proceeds from an illegal gambling business or to plow them back into such a business under money laundering provisions of 18 U.S.C. 1956;
 - Spend more than \$10,000 of the proceeds from an illegal gambling operation at any one time and place under the money laundering provisions, 18 U.S.C. 1957.
- o Unlawful Internet Gambling Enforcement Act, 31 U.S.C. 5361-5367
 - The previous statutes all implicitly outlaw online gambling.
 - In 2006, the federal government enacted the Unlawful Internet Gambling Enforcement Act, which explicitly regulates online gambling
 - Although, the UIGEA does not alter the scope of the Wire Act
 - Under the law, “No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful internet gambling:
 - Credit, or the proceeds of credit, extended to or on behalf of such other person;
 - An electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;
 - Any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution;
 - The proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.”
 - Put simply, under the Act, those in the business of betting or wagering are prohibited from knowingly accepting credit, electronic fund transfers, checks, or any other payment involving a financial institution to settle unlawful internet gambling bets or wagers.
 - It is important to note that Congress chose the term "business of betting or wagering" rather than the term "illegal gambling business," found in the Illegal Gambling Business Act. This implies that UIGEA covers businesses regardless of whether they meet the threshold requirements of Illegal Gambling Business Act: 1) five participants and 2) continuous operations for at least thirty days or gross revenues in excess of \$2,000 a day.
 - The Act also outlines difference between fantasy sports and traditional sports betting, providing a fantasy sports safe harbor
 - The UIGEA defines “unlawful internet gambling” to mean “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet.” See 31 U.S.C. §§ 5362, 5363.

- “Bet or Wager” specifically excludes participation in any “fantasy or simulation sports game,” provided that the following criteria are met:
 - No fantasy or simulation team is based on the current membership of an actual team that is a member of an amateur or professional sports organization.
 - No winning outcome is based:
 - 1) On the score, point spread, or any performance or performances of any single real world team or any combination of such teams; or
 - 2) Solely on any single performance of an individual athlete in any single real world sporting or other event.
 - All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.
 - All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by participants.
 - See 31 U.S.C § 5362(1)(E)(ix)
 - While the UIGEA by its terms does not override state law, the fantasy sports industry should still do all they can to point out to state lawmakers and regulators the judgment inherent in Federal Law that fantasy sports is not gambling and urge that the state decision-makers follow the Federal lead.
- Professional and Amateur Sports Protection Act 28 U.S. Code § 3701 et seq.
 - The Professional and Amateur Sports Protection Act of 1992, prohibited states from facilitating betting on amateur or professional sports games.
 - Under the Act, it was “unlawful for a governmental entity to sponsor, operate, advertise, promote, license or authorize by law or compact, or a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.”
 - PASPA did not make sports gambling itself a federal crime. Rather it allowed the Attorney General and professional and amateur sports organizations to bring civil action to enjoin violations. § 3703
 - PASPA contained “grandfather” provisions allowing a state’s gambling activities to continue. § 3704(a)(1)-(2). And gave states the option of legalizing sports gambling; provided that it does so within one year of the law's effective date. § 3704(a)(3).²⁷
- The Supreme Court Decision - Murphy v. NCAA
 - In May, United States Supreme Court issued a decision striking down the federal ban on state sponsored sports betting in the Professional and Amateur Sports Protection Act
 - Facts of the Case
 - Because New Jersey did not take advantage of the grandfather provision or provision to legalize gambling within one year of PASPA, in 2012, voters approved

an amendment to the New Jersey State Constitution giving the legislature the authority to legalize sports gambling schemes in Atlantic City and at horseracing tracks. The legislature subsequently enacted such legislation.

- The NCAA, NBA, NFL, NHL and MLB brought action in federal court against New Jersey seeking to enjoin the law on the ground that it violated PASPA.
- New Jersey countered that PASPA was an encroachment on state sovereignty, violating the Constitution's anti-commandeering principle.
- The District Court found no anti-commandeering violation.
- The Third Circuit affirmed.
- Supreme Court denied review.
- In 2014, the New Jersey Legislature enacted a law that instead of affirmatively authorizing sports gambling schemes, repealed 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 New Jersey college team or a collegiate event taking place in the state.
 - The plaintiffs filed a new action.
 - In response, New Jersey argued that PASPA unconstitutionally infringed the State's exercise of its lawmaking power and sovereign authority to modify or repeal its law prohibiting sports gambling.
 - New Jersey relied on two cases:
 - New York v US, in which the court held that a federal law unconstitutionally ordered the State to regulate in accordance with federal standards.
 - Printz v US, in which the court found that a federal statute unconstitutionally compelled state officers to enforce federal law.
 - Plaintiffs countered that PASPA is "critically different" from the commandeering cases because it does not command the States to take any affirmative act.
 - The District Court again found no anti-commandeering violation.
 - The Third Circuit affirmed, stating that a repeal would not amount to "authorization" and thus would fall outside the scope of PASPA.
 - The Supreme Court denied review.
- New Jersey then enacted 2014 N.J. Laws p. 602 (2014 Act), which declared that it is not to be interpreted as causing the State to authorize, license, sponsor, operate, advertise, or promote sports gambling. Instead, it was a repealer, specifically repealing 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 casino or gambling house in Atlantic City.
 - The same plaintiffs files a new action.
 - The District Court found no anti-commandeering violation.
 - The Third Circuit affirmed, declaring that by selectively removing the prohibition on sports wagering the new law, despite acting as a repealer, authorized sports gambling in violation of PASPA.
 - Supreme Court granted review.

- Ruling
 - The Supreme Court declared that 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. However, when a State completely or partially repeals old laws banning sports gambling, it “authorizes” that activity.
 - The court then turned to whether PASPA violated State sovereignty.
 - The anti-commandeering doctrine outlines the fundamental structural decision incorporated into the Constitution to withhold from Congress the power to issue orders directly to the States.
 - 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
 - “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.”
 - The rule serves as one of the Constitution's structural protections of liberty, promotes political accountability, and prevents Congress from shifting the costs of regulation to the States.
 - The Supreme Court held that PASPA unequivocally dictates what a state legislature may and may not do, violating the anti-commandeering rule. Whether federal law compels or prohibits State action is irrelevant.
 - The Supremacy Clause holds that when federal and state laws conflict, the federal law prevails and the state law is preempted.
 - The Supremacy Clause is not an independent grant of legislative power, but a rule of decision.
 - For a federal law to preempt a state law, it must:
 - 1) represent the exercise of a power conferred on Congress by the Constitution (the Supremacy Clause alone is insufficient); and
 - 2) since the Constitution only confers upon Congress the power to regulate individuals, not states, the law must be “best read as one that regulates private actors.”
 - There are three types of preemption: conflict, express, field.
 - The Supreme Court declared that “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.”
 - Further, because Congress likely did not intend any one provision of PASPA to stand alone without the others, the entire act is invalid.
 - Therefore, States have the right to decide whether or not they want to legalize sports gambling.
- What does this mean?
 - The decision does not mean that sports gambling is now legal throughout the United States.
 - It does mean that absent further Federal legislation, States can legalize gambling within their borders so long as the resulting legal framework complies with existing federal laws

including the Unlawful Internet Gambling Enforcement Act (31 U.S.C. § 5361 et seq.) and the Wire Act (18 U.S.C. § 1084).

- State Legislation: States that have Legalized Sports Gambling
 - Nevada
 - Delaware
 - New Jersey
 - Mississippi
 - West Virginia
 - Pennsylvania
 - Rhode Island
- States that have passed statutes or have pending legislation that clarify fantasy sports is legal
 - Colorado
 - On June 10, 2016, the governor of Colorado signed legislation to specifically permit daily fantasy contests in the state. Fantasy contests involving college sports are not allowed.
 - Massachusetts
 - In March 2016, the governor of Massachusetts signed legislation to formally permit fantasy sports, however no fantasy contests can be based on athlete performances in college or high school sports.
 - Mississippi
 - In March 2017, Mississippi passed a bill that allows the state to regulate sports betting under fantasy sports law.
 - New York – legalizing of sports betting pending.
 - In August 2016, the New York Governor signed into law legislation explicitly permitting daily fantasy sports in the Empire State. "This legislation strikes the right balance that allows this activity to continue with oversight from state regulators, new consumer protections and more funding for education."
- Post-Decision- Why maintain the difference between fantasy sports and traditional gambling?
 - Emphasize the Critical Distinction Between Fantasy Sports and Traditional Gambling to Avoid Onerous Regulation
 - There is serious risk that state regulators will pursue the easy road, pass a set of "one size fits all" regulations, group fantasy sports businesses together with traditional gambling businesses and thereby subject fantasy sports businesses to onerous regulation well-suited to traditional gambling but ill-suited to fantasy sports.
 - Integrity of the game
 - Opponents of sports gambling often point to the risk to the integrity of the game (i.e., the risk that a gambler will attempt to "fix" a game).
 - They highlight the risk that a gambler with a substantial bet on a game will attempt to bribe or extort a player or referee in order to affect the result of the game.
 - Clearly, a player who purposefully misses shots or makes mistakes can hinder his team's chances to win one game in which he or she plays.
 - Similarly, a referee could easily change the result of a game by making calls that favor one team over another.

- Fantasy sports contests pose no such integrity risk.
 - By their very nature, fantasy sports teams are made up of players from a variety of different real world teams playing in a variety of real world events.
 - Thus, there is little, if any, risk that fantasy sports contestants could, even if they wanted to, “fix” a fantasy sports contest by bribing or extorting a player or official.
 - Thus, onerous regulation designed to insure the integrity of sporting events is inappropriate for fantasy sports contests.
 - The fantasy sports industry must continue to work hard to educate regulators and lawmakers so that they resist the temptation to pass only one set of regulations and rather pass two – one properly suited for traditional gambling and one properly suited for fantasy sports.
- Skill vs chance continuum
 - Fantasy Sports - There is a substantial element of skill and control which fantasy sports contestants can exert over the players selected and composition of fantasy teams
 - Onerous regulation would likely fail to recognize the skill involved in fantasy sports as the UIGEA properly recognized contests.
- Opportunities for the Future
 - The risk that fantasy sports will be considered illegal gambling will be reduced if traditional gambling that was previously deemed illegal is in fact legalized.
 - There are some simple things that fantasy sports companies can do to maximize the chances for properly tailored regulations.
 - First, they should religiously adhere to the “safe harbor” requirements in the UIGEA including but not limited to insuring that their contests have prizes that are set in advance, involve multiple real world events, and are not dependent on any single athlete.
 - Fantasy sports companies should also refrain from using careless nomenclature that appears to equate traditional gambling with a fantasy sports contest. Gambling terms like “bet” and “wager” should be replaced by “contest entry fee” or something similar. Similarly, fantasy sports companies should avoid terms like “rake” or “vig” and instead use “service fee” or something similar when referring to what a company charges to run a fantasy sports game.
- Non-sports gambling
 - Things to Potentially Bet on Online Which are Not Sports
 - Politics/Elections – via 5Dimes and Bookmaker
 - X-Factor/America’s Got Talent/Dancing with the Stars/ Bachelor
 - The Oscars/Baftas/Emmy’s
 - Snow at Christmas
 - Chess/ Scrabble/Other Board Games

ATTACHMENTS



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 95. Racketeering (Refs & Annos)

18 U.S.C.A. § 1956

§ 1956. Laundering of monetary instruments

Effective: October 7, 2016

[Currentness](#)

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of [section 7201](#) or [7206 of the Internal Revenue Code](#) of 1986; or

(B) knowing that the transaction is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.--

(1) In general.--Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or [section 1957](#), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) Jurisdiction over foreign persons.--For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and--

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.--A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.--

(A) In general.--A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under [section 981](#) or [982](#), or a criminal sentence under [section 1957](#) or [subsection \(a\)](#) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.--A Federal Receiver described in subparagraph (A)--

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in [section 754 of title 28, United States Code](#); and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant--

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section--

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes--

(A) any financial institution, as defined in [section 5312\(a\)\(2\) of title 31, United States Code](#), or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in [section 1¹ of the International Banking Act of 1978 \(12 U.S.C. 3101\)](#);

(7) the term “specified unlawful activity” means--

(A) any act or activity constituting an offense listed in [section 1961\(1\)](#) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in [section 16](#));

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));²

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving--

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act ([22 U.S.C. 2778](#)); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act ([21 U.S.C. 848](#));

(D) an offense under [section 32](#) (relating to the destruction of aircraft), [section 37](#) (relating to violence at international airports), [section 115](#) (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), [section 152](#) (relating to concealment of assets; false oaths and claims; bribery), [section 175c](#) (relating to the variola virus), [section 215](#) (relating to

commissions or gifts for procuring loans), [section 351](#) (relating to congressional or Cabinet officer assassination), any of [sections 500](#) through [503](#) (relating to certain counterfeiting offenses), [section 513](#) (relating to securities of States and private entities), [section 541](#) (relating to goods falsely classified), [section 542](#) (relating to entry of goods by means of false statements), [section 545](#) (relating to smuggling goods into the United States), [section 549](#) (relating to removing goods from Customs custody), [section 554](#) (relating to smuggling goods from the United States), [section 555](#) (relating to border tunnels), [section 641](#) (relating to public money, property, or records), [section 656](#) (relating to theft, embezzlement, or misapplication by bank officer or employee), [section 657](#) (relating to lending, credit, and insurance institutions), [section 658](#) (relating to property mortgaged or pledged to farm credit agencies), [section 666](#) (relating to theft or bribery concerning programs receiving Federal funds), [section 793](#), [794](#), or [798](#) (relating to espionage), [section 831](#) (relating to prohibited transactions involving nuclear materials), [section 844\(f\)](#) or [\(i\)](#) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), [section 875](#) (relating to interstate communications), [section 922\(l\)](#) (relating to the unlawful importation of firearms), [section 924\(n\)](#) (relating to firearms trafficking), [section 956](#) (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), [section 1005](#) (relating to fraudulent bank entries), 1006³ (relating to fraudulent Federal credit institution entries), 1007³ (relating to Federal Deposit Insurance transactions), 1014³ (relating to fraudulent loan or credit applications), [section 1030](#) (relating to computer fraud and abuse), 1032³ (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), [section 1111](#) (relating to murder), [section 1114](#) (relating to murder of United States law enforcement officials), [section 1116](#) (relating to murder of foreign officials, official guests, or internationally protected persons), [section 1201](#) (relating to kidnaping), [section 1203](#) (relating to hostage taking), [section 1361](#) (relating to willful injury of Government property), [section 1363](#) (relating to destruction of property within the special maritime and territorial jurisdiction), [section 1708](#) (theft from the mail), [section 1751](#) (relating to Presidential assassination), [section 2113](#) or [2114](#) (relating to bank and postal robbery and theft), [section 2252A](#) (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, [section 2260](#) (production of certain child pornography for importation into the United States), [section 2280](#) (relating to violence against maritime navigation), [section 2281](#) (relating to violence against maritime fixed platforms), [section 2319](#) (relating to copyright infringement), [section 2320](#) (relating to trafficking in counterfeit goods and services), [section 2332](#) (relating to terrorist acts abroad against United States nationals), [section 2332a](#) (relating to use of weapons of mass destruction), [section 2332b](#) (relating to international terrorist acts transcending national boundaries), [section 2332g](#) (relating to missile systems designed to destroy aircraft), [section 2332h](#) (relating to radiological dispersal devices), [section 2339A](#) or [2339B](#) (relating to providing material support to terrorists), [section 2339C](#) (relating to financing of terrorism), or [section 2339D](#) (relating to receiving military-type training from a foreign terrorist organization) of this title, [section 46502 of title 49, United States Code](#), a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 ([19 U.S.C. 1590](#)) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), [section 38\(c\)](#) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 [[7 U.S.C.A. § 2024](#)] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [[42 U.S.C.A. § 1490s\(a\)\(1\)](#)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, section 92 of the

Atomic Energy Act of 1954 ([42 U.S.C. 2122](#)) (relating to prohibitions governing atomic weapons), or section 104(a) of the North Korea Sanctions Enforcement Act of 2016 (relating to prohibited activities with respect to North Korea);

ENVIRONMENTAL CRIMES

(E) a felony violation of the Federal Water Pollution Control Act ([33 U.S.C. 1251 et seq.](#)), the Ocean Dumping Act ([33 U.S.C. 1401 et seq.](#)), the Act to Prevent Pollution from Ships ([33 U.S.C. 1901 et seq.](#)), the Safe Drinking Water Act ([42 U.S.C. 300f et seq.](#)), or the Resources Conservation and Recovery Act ([42 U.S.C. 6901 et seq.](#));

(F) any act or activity constituting an offense involving a Federal health care offense; or

(G) any act that is a criminal violation of subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1) of section 9(a) of the Endangered Species Act of 1973 ([16 U.S.C. 1538\(a\)\(1\)](#)), section 2203 of the African Elephant Conservation Act ([16 U.S.C. 4223](#)), or section 7(a) of the Rhinoceros and Tiger Conservation Act of 1994 ([16 U.S.C. 5305a\(a\)](#)), if the endangered or threatened species of fish or wildlife, products, items, or substances involved in the violation and relevant conduct, as applicable, have a total value of more than \$10,000;

(8) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c) (7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if--

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

(g) **Notice of conviction of financial institutions.**--If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, [section 1957](#) or [1960](#) of this title, or [section 5322](#) or [5324 of title 31](#), the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or [section 1957](#) shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) **Venue.**--(1) Except as provided in paragraph (2), a prosecution for an offense under this section or [section 1957](#) may be brought in--

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or [section 1957](#) may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

CREDIT(S)

(Added [Pub.L. 99-570, Title I, § 1352\(a\)](#), Oct. 27, 1986, 100 Stat. 3207-18; amended [Pub.L. 100-690, Title VI, §§ 6183, 6465, 6466, 6469\(a\)\(1\), 6471\(a\), \(b\)](#), Title VII, § 7031, Nov. 18, 1988, 102 Stat. 4354, 4375, 4377, 4378, 4398; [Pub.L. 101-647, Title I, §§ 105 to 108](#), Title XII, § 1205(j), Title XIV, §§ 1402, 1404, Title XXV, § 2506, Title XXXV, § 3557, Nov. 29, 1990, 104 Stat. 4791, 4792, 4831, 4835, 4862, 4927; [Pub.L. 102-550, Title XV, §§ 1504\(c\), 1524, 1526\(a\), 1527\(a\), 1530, 1531, 1534, 1536](#), Oct. 28, 1992, 106 Stat. 4055, 4064 to 4067; [Pub.L. 103-322, Title XXXII, § 320104\(b\)](#), Title XXXIII, §§ 330008(2), 330011(l), 330012, 330019, 330021(1), Sept. 13, 1994, 108 Stat. 2111, 2142, 2145, 2146, 2149, 2150; [Pub.L. 103-325, Title IV, §§ 411\(c\) \(2\)\(E\), 413\(c\)\(1\), \(d\)](#), Sept. 23, 1994, 108 Stat. 2253-2255; [Pub.L. 104-132, Title VII, § 726](#), Apr. 24, 1996,

110 Stat. 1301; [Pub.L. 104-191, Title II, § 246](#), Aug. 21, 1996, 110 Stat. 2018; [Pub.L. 104-294, Title VI, §§ 601\(f\)\(6\), 604\(b\)\(38\)](#), Oct. 11, 1996, 110 Stat. 3499, 3509; [Pub.L. 106-569, Title VII, § 709\(a\)](#), Dec. 27, 2000, 114 Stat. 3018; [Pub.L. 107-56, Title III, §§ 315, 317, 318, 376](#), Title VIII, § 805(b), Title X, § 1004, Oct. 26, 2001, 115 Stat. 308, 310, 311, 342, 378, 392; [Pub.L. 107-273](#), Div. B, Title IV, §§ 4002(a)(11), (b)(5), (c)(2), 4005(d)(1), (e), Nov. 2, 2002, 116 Stat. 1807, 1809, 1812, 1813; [Pub.L. 108-458, Title VI, § 6909](#), Dec. 17, 2004, 118 Stat. 3774; [Pub.L. 109-164, Title I, § 103\(b\)](#), Jan. 10, 2006, 119 Stat. 3563; [Pub.L. 109-177, Title III, § 311\(c\), Title IV, §§ 403\(b\), \(c\)\(1\)](#), 405, 406(a)(2), 409, Mar. 9, 2006, 120 Stat. 242-244, 246; [Pub.L. 110-234, Title IV, §§ 4002\(b\)\(1\)\(B\), \(D\), \(2\)\(M\)](#), 4115(c)(1)(A)(i), (B)(ii), May 22, 2008, 122 Stat. 1096, 1097, 1109; [Pub.L. 110-246, § 4\(a\)](#), Title IV, §§ 4002(b)(1)(B), (D), (2)(M), 4115(c)(1)(A)(i), (B)(ii), June 18, 2008, 122 Stat. 1664, 1857, 1858, 1870; [Pub.L. 110-358, Title II, § 202](#), Oct. 8, 2008, 122 Stat. 4003; [Pub.L. 111-21, § 2\(f\)\(1\)](#), May 20, 2009, 123 Stat. 1618; [Pub.L. 112-127, § 6](#), June 5, 2012, 126 Stat. 371; [Pub.L. 114-122, Title I, § 105\(c\)](#), Feb. 18, 2016, 130 Stat. 101; [Pub.L. 114-231, Title V, § 502](#), Oct. 7, 2016, 130 Stat. 956.)

Notes of Decisions (699)

Footnotes

- 1 So in original. Probably should read “[section 1\(b\)](#)”.
- 2 So in original. The second closing parenthesis probably should not appear.
- 3 So in original. Probably should be preceded by “section”.

18 U.S.C.A. § 1956, 18 USCA § 1956

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or PreemptedHeld Unconstitutional as Not Severable [Murphy v. National Collegiate Athletic Ass'n](#), U.S., May 14, 2018



KeyCite Yellow Flag - Negative TreatmentProposed Legislation

[United States Code Annotated](#)
[Title 28. Judiciary and Judicial Procedure \(Refs & Annos\)](#)
[Part VI. Particular Proceedings](#)
[Chapter 178. Professional and Amateur Sports Protection](#)

28 U.S.C.A. § 3701

§ 3701. Definitions

[Currentness](#)

For purposes of this chapter--

(1) the term “amateur sports organization” means--

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(2) the term “governmental entity” means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act ([25 U.S.C. 2703\(5\)](#)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act ([25 U.S.C. 2703\(4\)](#)),

(3) the term “professional sports organization” means--

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(4) the term “person” has the meaning given such term in [section 1 of title 1](#), and

(5) the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

CREDIT(S)

(Added [Pub.L. 102-559](#), § 2(a), Oct. 28, 1992, 106 Stat. 4227.)

VALIDITY

<The United States Supreme Court has held the Professional and Amateur Sports Protection Act ([Pub.L. 102-559](#), Oct. 28, 1992, 106 Stat. 4227, 28 U.S.C.A. § 3701 et seq.), unconstitutional as not severable. [Murphy v. National Collegiate Athletic Assn.](#), U.S.2018, 138 S.Ct. 1461, 200 L.Ed.2d 854.>

28 U.S.C.A. § 3701, 28 USCA § 3701

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 95. Racketeering (Refs & Annos)

18 U.S.C.A. § 1957

§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity

Effective: October 5, 2012

[Currentness](#)

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both. If the offense involves a pre-retail medical product (as defined in [section 670](#)) the punishment for the offense shall be the same as the punishment for an offense under [section 670](#) unless the punishment under this subsection is greater.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are--

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in [section 3077](#) of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of

Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section--

(1) the term “monetary transaction” means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in [section 1956\(c\)\(5\)](#) of this title) by, through, or to a financial institution (as defined in [section 1956](#) of this title), including any transaction that would be a financial transaction under [section 1956\(c\)\(4\)\(B\)](#) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the terms “specified unlawful activity” and “proceeds” shall have the meaning given those terms in [section 1956](#) of this title.

CREDIT(S)

(Added [Pub.L. 99-570, Title I, § 1352\(a\)](#), Oct. 27, 1986, 100 Stat. 3207-21; amended [Pub.L. 100-690, Title VI, §§ 6182, 6184, 6469\(a\)\(2\)](#), Nov. 18, 1988, 102 Stat. 4354, 4377; [Pub.L. 102-550, Title XV, §§ 1526\(b\), 1527\(b\)](#), Oct. 28, 1992, 106 Stat. 4065; [Pub.L. 103-322, Title XXXIII, § 330020](#), Sept. 13, 1994, 108 Stat. 2149; [Pub.L. 103-325, Title IV, § 413\(c\)\(2\)](#), Sept. 23, 1994, 108 Stat. 2255; [Pub.L. 109-177, Title IV, § 403\(c\)\(2\)](#), Mar. 9, 2006, 120 Stat. 243; [Pub.L. 111-21, § 2\(f\)\(2\)](#), May 20, 2009, 123 Stat. 1618; [Pub.L. 112-186, § 4\(b\)\(2\)](#), Oct. 5, 2012, 126 Stat. 1429.)

[Notes of Decisions \(155\)](#)

18 U.S.C.A. § 1957, 18 USCA § 1957

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.



KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or PreemptedHeld Unconstitutional by [Murphy v. National Collegiate Athletic Ass'n](#), U.S., May 14, 2018



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[Title 28. Judiciary and Judicial Procedure \(Refs & Annos\)](#)

[Part VI. Particular Proceedings](#)

[Chapter 178. Professional and Amateur Sports Protection](#)

28 U.S.C.A. § 3702

§ 3702. Unlawful sports gambling

[Currentness](#)

It shall be unlawful for--

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

CREDIT(S)

(Added [Pub.L. 102-559](#), § 2(a), Oct. 28, 1992, 106 Stat. 4228.)

VALIDITY

<The United States Supreme Court has held 28 U.S.C.A. § 3702(1) and (2), prohibiting state authorization of sports gambling schemes and prohibiting state licensing of sports gambling schemes, respectively, unconstitutional in violation of the anticommandeering rule, and has held the Professional and Amateur Sports Protection Act ([Pub.L. 102-559](#), Oct. 28, 1992, 106 Stat. 4227, 28 U.S.C.A. § 3701 et seq.), unconstitutional as not severable. [Murphy v. Nat'l Collegiate Athletic Ass'n](#), U.S.2018, 138 S.Ct. 1461, 200 L.Ed.2d 854.>

[Notes of Decisions \(8\)](#)

28 U.S.C.A. § 3702, 28 USCA § 3702

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part VI. Particular Proceedings
Chapter 178. Professional and Amateur Sports Protection

28 U.S.C.A. § 3703

§ 3703. Injunctions

Currentness

A civil action to enjoin a violation of [section 3702](#) may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

CREDIT(S)

(Added [Pub.L. 102-559](#), § 2(a), Oct. 28, 1992, 106 Stat. 4228.)

VALIDITY

<The United States Supreme Court has held held the Professional and Amateur Sports Protection Act ([Pub.L. 102-559](#), Oct. 28, 1992, 106 Stat. 4227, [28 U.S.C.A. § 3701 et seq.](#)), unconstitutional as not severable. [Murphy v. National Collegiate Athletic Assn.](#), U.S.2018, 138 S.Ct. 1461, 200 L.Ed.2d 854.>

Notes of Decisions (1)

28 U.S.C.A. § 3703, 28 USCA § 3703

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or PreemptedHeld Unconstitutional as Not Severable [Murphy v. National Collegiate Athletic Ass'n](#), U.S., May 14, 2018



KeyCite Yellow Flag - Negative TreatmentProposed Legislation

[United States Code Annotated](#)
[Title 28. Judiciary and Judicial Procedure \(Refs & Annos\)](#)
[Part VI. Particular Proceedings](#)
[Chapter 178. Professional and Amateur Sports Protection](#)

28 U.S.C.A. § 3704

§ 3704. Applicability

[Currentness](#)

(a) [Section 3702](#) shall not apply to--

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both--

(A) such scheme was authorized by a statute as in effect on October 2, 1991; and

(B) a scheme described in [section 3702](#) (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that--

(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and

(B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

(4) parimutuel animal racing or jai-alai games.

(b) Except as provided in subsection (a), [section 3702](#) shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act ([25 U.S.C. 2703\(4\)](#)).

CREDIT(S)

(Added [Pub.L. 102-559](#), § 2(a), Oct. 28, 1992, 106 Stat. 4228.)

VALIDITY

<The United States Supreme Court has held the Professional and Amateur Sports Protection Act ([Pub.L. 102-559](#), Oct. 28, 1992, 106 Stat. 4227, [28 U.S.C.A. § 3701 et seq.](#)), unconstitutional as not severable. [Murphy v. National Collegiate Athletic Assn.](#), U.S.2018, 138 S.Ct. 1461, 200 L.Ed.2d 854.>

[Notes of Decisions \(5\)](#)

28 U.S.C.A. § 3704, 28 USCA § 3704

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 50. Gambling

18 U.S.C.A. § 1084

§ 1084. Transmission of wagering information; penalties

Currentness

(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.

CREDIT(S)

(Added [Pub.L. 87-216](#), § 2, Sept. 13, 1961, 75 Stat. 491; amended [Pub.L. 100-690, Title VII, § 7024](#), Nov. 18, 1988, 102 Stat. 4397; [Pub.L. 101-647, Title XII, § 1205\(g\)](#), Nov. 29, 1990, 104 Stat. 4831; [Pub.L. 103-322, Title XXXIII, § 330016\(1\)\(L\)](#), Sept. 13, 1994, 108 Stat. 2147.)

[Notes of Decisions \(163\)](#)

18 U.S.C.A. § 1084, 18 USCA § 1084

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 95. Racketeering (Refs & Annos)

18 U.S.C.A. § 1952

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

Effective: December 18, 2014

[Currentness](#)

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to--

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform--

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) “unlawful activity” means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under [section 1956](#) or [1957](#) of this title and (ii) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

(d) If the offense under this section involves an act described in paragraph (1) or (3) of subsection (a) and also involves a pre-retail medical product (as defined in [section 670](#)), the punishment for the offense shall be the same as the punishment for an offense under [section 670](#) unless the punishment under subsection (a) is greater.

(e)(1) This section shall not apply to a savings promotion raffle conducted by an insured depository institution or an insured credit union.

(2) In this subsection--

(A) the term “insured credit union” shall have the meaning given the term in section 101 of the Federal Credit Union Act ([12 U.S.C. 1752](#));

(B) the term “insured depository institution” shall have the meaning given the term in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#)); and

(C) the term “savings promotion raffle” means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest being subject to regulations that may from time to time be promulgated by the appropriate prudential regulator (as defined in section 1002 of the Consumer Financial Protection Act of 2010 ([12 U.S.C. 5481](#))).

CREDIT(S)

(Added [Pub.L. 87-228](#), § 1(a), Sept. 13, 1961, 75 Stat. 498; amended [Pub.L. 89-68](#), July 7, 1965, 79 Stat. 212; [Pub.L. 91-513](#), Title II, § 701(i)(2), Oct. 27, 1970, 84 Stat. 1282; [Pub.L. 99-570](#), Title I, § 1365(a), Oct. 27, 1986, 100 Stat. 3207-35; [Pub.L. 101-647](#), Title XII, § 1205(i), Title XVI, § 1604, Nov. 29, 1990, 104 Stat. 4831, 4843; [Pub.L. 103-322](#), Title XIV, § 140007(a), Title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2033, 2147; [Pub.L. 107-296](#), Title XI, § 1112(h), Nov. 25, 2002, 116 Stat. 2277; [Pub.L. 112-186](#), § 4(b)(1), Oct. 5, 2012, 126 Stat. 1429; [Pub.L. 113-251](#), § 5(1), Dec. 18, 2014, 128 Stat. 2890.)

[Notes of Decisions \(1004\)](#)

18 U.S.C.A. § 1952, 18 USCA § 1952

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 95. Racketeering (Refs & Annos)

18 U.S.C.A. § 1955

§ 1955. Prohibition of illegal gambling businesses

Effective: December 18, 2014

[Currentness](#)

(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) “insured credit union” shall have the meaning given the term in section 101 of the Federal Credit Union Act ([12 U.S.C. 1752](#)).

(3) “insured depository institution” shall have the meaning given the term in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#)).

(4) “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.

(5) “savings promotion raffle” means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest

being subject to regulations that may from time to time be promulgated by the appropriate prudential regulator (as defined in section 1002 of the Consumer Financial Protection Act of 2010 ([12 U.S.C. 5481](#))).

(6) “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--

(1) 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, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity; or

(2) any savings promotion raffle.

CREDIT(S)

(Added [Pub.L. 91-452, Title VIII, § 803\(a\)](#), Oct. 15, 1970, 84 Stat. 937; amended [Pub.L. 99-514, § 2](#), Oct. 22, 1986, 100 Stat. 2095; [Pub.L. 103-322, Title XXXIII, § 330016\(1\)\(N\)](#), Sept. 13, 1994, 108 Stat. 2148; [Pub.L. 113-251, § 5\(3\)](#), Dec. 18, 2014, 128 Stat. 2891.)

[Notes of Decisions \(593\)](#)

18 U.S.C.A. § 1955, 18 USCA § 1955

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle IV. Money
Chapter 53. Monetary Transactions
Subchapter IV. Prohibition on Funding of Unlawful Internet Gambling

31 U.S.C.A. § 5361

§ 5361. Congressional findings and purpose

Effective: October 13, 2006

[Currentness](#)

(a) Findings.--Congress finds the following:

(1) Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers.

(2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites.

(3) Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.

(4) New mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.

(b) Rule of construction.--No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

CREDIT(S)

(Added [Pub.L. 109-347, Title VIII, § 802\(a\)](#), Oct. 13, 2006, 120 Stat. 1952.)

[Notes of Decisions \(2\)](#)

31 U.S.C.A. § 5361, 31 USCA § 5361

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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United States Code Annotated

Title 31. Money and Finance (Refs & Annos)

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Subchapter IV. Prohibition on Funding of Unlawful Internet Gambling

31 U.S.C.A. § 5362

§ 5362. Definitions

Effective: October 13, 2006

[Currentness](#)

In this subchapter:

(1) Bet or wager.--The term “bet or wager”--

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in [section 3702 of title 28](#);

(D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering; and

(E) does not include--

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934¹ for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any other transaction that--

(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;

(vii) any deposit or other transaction with an insured depository institution;

(viii) participation in any game or contest in which participants do not stake or risk anything of value other than--

(I) personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

(II) points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or

(ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in [section 3701 of title 28](#)) and that meets the following conditions:

(I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(III) No winning outcome is based--

(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or

(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

(2) Business of betting or wagering.--The term “business of betting or wagering” does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service.

(3) Designated payment system.--The term “designated payment system” means any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

(4) Financial transaction provider.--The term “financial transaction provider” means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

(5) Internet.--The term “Internet” means the international computer network of interoperable packet switched data networks.

(6) Interactive computer service.--The term “interactive computer service” has the meaning given the term in section 230(f) of the Communications Act of 1934 ([47 U.S.C. 230\(f\)](#)).

(7) Restricted transaction.--The term “restricted transaction” means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of [section 5363](#) which the recipient is prohibited from accepting under [section 5363](#).

(8) Secretary.--The term “Secretary” means the Secretary of the Treasury.

(9) State.--The term “State” means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

(10) Unlawful internet gambling.--

(A) In general.--The term “unlawful Internet gambling” means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such

bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.

(B) Intrastate transactions.--The term “unlawful Internet gambling” does not include placing, receiving, or otherwise transmitting a bet or wager where--

- (i) the bet or wager is initiated and received or otherwise made exclusively within a single State;
- (ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include--
 - (I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and
 - (II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and
- (iii) the bet or wager does not violate any provision of--
 - (I) the Interstate Horseracing Act of 1978 ([15 U.S.C. 3001 et seq.](#));
 - (II) chapter 178 of title 28 (commonly known as the “Professional and Amateur Sports Protection Act”);
 - (III) the Gambling Devices Transportation Act ([15 U.S.C. 1171 et seq.](#)); or
 - (IV) the Indian Gaming Regulatory Act ([25 U.S.C. 2701 et seq.](#)).

(C) Intratribal transactions.--The term “unlawful Internet gambling” does not include placing, receiving, or otherwise transmitting a bet or wager where--

- (i) the bet or wager is initiated and received or otherwise made exclusively--
 - (I) within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act); or
 - (II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of--

(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(II) with respect to class III gaming, the applicable Tribal-State Compact;

(iii) the applicable tribal ordinance or resolution or Tribal-State Compact includes--

(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(iv) the bet or wager does not violate any provision of--

(I) the Interstate Horseracing Act of 1978 ([15 U.S.C. 3001 et seq.](#));

(II) chapter 178 of title 28 (commonly known as the “Professional and Amateur Sports Protection Act”);

(III) the Gambling Devices Transportation Act ([15 U.S.C. 1171 et seq.](#)); or

(IV) the Indian Gaming Regulatory Act ([25 U.S.C. 2701 et seq.](#)).

(D) Interstate horseracing.--

(i) **In general.**--The term “unlawful Internet gambling” shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 ([15 U.S.C. 3001 et seq.](#)).

(ii) **Rule of construction regarding preemption.**--Nothing in this subchapter may be construed to preempt any State law prohibiting gambling.

(iii) Sense of Congress.--It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of the enactment of this subchapter. This subchapter is not intended to change that relationship. This subchapter is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.

(E) Intermediate routing.--The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

(11) Other terms.--

(A) Credit; creditor; credit card; and card issuer.--The terms “credit”, “creditor”, “credit card”, and “card issuer” have the meanings given the terms in section 103 of the Truth in Lending Act ([15 U.S.C. 1602](#)).

(B) Electronic fund transfer.--The term “electronic fund transfer”--

(i) has the meaning given the term in section 903 of the Electronic Fund Transfer Act ([15 U.S.C. 1693a](#)), except that the term includes transfers that would otherwise be excluded under section 903(6)(E) of that Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) Financial institution.--The term “financial institution” has the meaning given the term in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(D) Insured depository institution.--The term “insured depository institution”--

(i) has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act ([12 U.S.C. 1813\(c\)](#)); and

(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

(E) Money transmitting business and money transmitting service.--The terms “money transmitting business” and “money transmitting service” have the meanings given the terms in [section 5330\(d\)](#) (determined without regard to any regulations prescribed by the Secretary thereunder).

CREDIT(S)

(Added [Pub.L. 109-347, Title VIII, § 802\(a\)](#), Oct. 13, 2006, 120 Stat. 1953.)

[Notes of Decisions \(2\)](#)

Footnotes

[1](#) So in original. Probably should be followed by a closing parenthesis.

31 U.S.C.A. § 5362, 31 USCA § 5362

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

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United States Code Annotated

Title 31. Money and Finance (Refs & Annos)

Subtitle IV. Money

Chapter 53. Monetary Transactions

Subchapter IV. Prohibition on Funding of Unlawful Internet Gambling

31 U.S.C.A. § 5363

§ 5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling

Effective: October 13, 2006

[Currentness](#)

No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling--

- (1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);
- (2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;
- (3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or
- (4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

CREDIT(S)

(Added [Pub.L. 109-347, Title VIII, § 802\(a\)](#), Oct. 13, 2006, 120 Stat. 1957.)

[Notes of Decisions \(4\)](#)

31 U.S.C.A. § 5363, 31 USCA § 5363

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

United States Code Annotated

Title 31. Money and Finance (Refs & Annos)

Subtitle IV. Money

Chapter 53. Monetary Transactions

Subchapter IV. Prohibition on Funding of Unlawful Internet Gambling

31 U.S.C.A. § 5364

§ 5364. Policies and procedures to identify and prevent restricted transactions

Effective: October 13, 2006

[Currentness](#)

(a) Regulations.--Before the end of the 270-day period beginning on the date of the enactment of this subchapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate) requiring each designated payment system, and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions in any of the following ways:

(1) The establishment of policies and procedures that--

(A) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and

(B) block restricted transactions identified as a result of the policies and procedures developed pursuant to subparagraph (A).

(2) The establishment of policies and procedures that prevent or prohibit the acceptance of the products or services of the payment system in connection with a restricted transaction.

(b) Requirements for policies and procedures.--In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal Reserve System shall--

(1) identify types of policies and procedures, including nonexclusive examples, which would be deemed, as applicable, to be reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of the products or services with respect to each type of restricted transaction;

(2) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing or prohibiting the acceptance of the products or services of the payment system or participant in connection with, restricted transactions;

(3) exempt certain restricted transactions or designated payment systems from any requirement imposed under such regulations, if the Secretary and the Board jointly find that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions; and

(4) ensure that transactions in connection with any activity excluded from the definition of unlawful internet gambling in subparagraph (B), (C), or (D)(i) of section 5362(10) are not blocked or otherwise prevented or prohibited by the prescribed regulations.

(c) Compliance with payment system policies and procedures.--A financial transaction provider shall be considered to be in compliance with the regulations prescribed under subsection (a) if--

(1) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to--

(A) identify and block restricted transactions; or

(B) otherwise prevent or prohibit the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

(2) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (a).

(d) No liability for blocking or refusing to honor restricted transactions.--A person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction--

(1) that is a restricted transaction;

(2) that such person reasonably believes to be a restricted transaction; or

(3) as a designated payment system or a member of a designated payment system in reliance on the policies and procedures of the payment system, in an effort to comply with regulations prescribed under subsection (a),

shall not be liable to any party for such action.

(e) Regulatory enforcement.--The requirements under this section shall be enforced exclusively by--

(1) the Federal functional regulators, with respect to the designated payment systems and financial transaction providers subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act and section 5g of the Commodities Exchange Act; and

(2) the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (1).

CREDIT(S)

(Added [Pub.L. 109-347, Title VIII, § 802\(a\)](#), Oct. 13, 2006, 120 Stat. 1958.)

[Notes of Decisions \(1\)](#)

31 U.S.C.A. § 5364, 31 USCA § 5364

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle IV. Money
Chapter 53. Monetary Transactions
Subchapter IV. Prohibition on Funding of Unlawful Internet Gambling

31 U.S.C.A. § 5365

§ 5365. Civil remedies

Effective: October 13, 2006

[Currentness](#)

(a) Jurisdiction.--In addition to any other remedy under current law, the district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain restricted transactions by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.

(b) Proceedings.--

(1) Institution by Federal government.--

(A) In general.--The United States, acting through the Attorney General, may institute proceedings under this section to prevent or restrain a restricted transaction.

(B) Relief.--Upon application of the United States under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with [rule 65 of the Federal Rules of Civil Procedure](#).

(2) Institution by State attorney general.--

(A) In general.--The attorney general (or other appropriate State official) of a State in which a restricted transaction allegedly has been or will be initiated, received, or otherwise made may institute proceedings under this section to prevent or restrain the violation or threatened violation.

(B) Relief.--Upon application of the attorney general (or other appropriate State official) of an affected State under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with [rule 65 of the Federal Rules of Civil Procedure](#).

(3) Indian lands.--

(A) In general.--Notwithstanding paragraphs (1) and (2), for a restricted transaction that allegedly has been or will be initiated, received, or otherwise made on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)--

(i) the United States shall have the enforcement authority provided under paragraph (1); and

(ii) the enforcement authorities specified in an applicable Tribal-State Compact negotiated under section 11 of the Indian Gaming Regulatory Act ([25 U.S.C. 2710](#)) shall be carried out in accordance with that compact.

(B) Rule of construction.--No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

(c) Limitation relating to interactive computer services.--

(1) In general.--Relief granted under this section against an interactive computer service shall--

(A) be limited to the removal of, or disabling of access to, an online site violating [section 5363](#), or a hypertext link to an online site violating such section, that resides on a computer server that such service controls or operates, except that the limitation in this subparagraph shall not apply if the service is subject to liability under this section under [section 5367](#);

(B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

(C) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this subchapter;

(D) specify the interactive computer service to which it applies; and

(E) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled.

(2) Coordination with other law.--An interactive computer service that does not violate this subchapter shall not be liable under [section 1084\(d\) of title 18](#), except that the limitation in this paragraph shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and--

(A) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(B) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(d) Limitation on injunctions against regulated persons.--Notwithstanding any other provision of this section, and subject to [section 5367](#), no provision of this subchapter shall be construed as authorizing the Attorney General of the United States, or the attorney general (or other appropriate State official) of any State to institute proceedings to prevent or restrain a restricted transaction against any financial transaction provider, to the extent that the person is acting as a financial transaction provider.

CREDIT(S)

(Added [Pub.L. 109-347, Title VIII, § 802\(a\)](#), Oct. 13, 2006, 120 Stat. 1959.)

31 U.S.C.A. § 5365, 31 USCA § 5365

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle IV. Money
Chapter 53. Monetary Transactions
Subchapter IV. Prohibition on Funding of Unlawful Internet Gambling

31 U.S.C.A. § 5366

§ 5366. Criminal penalties

Effective: October 13, 2006

[Currentness](#)

(a) In general.--Any person who violates [section 5363](#) shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) Permanent injunction.--Upon conviction of a person under this section, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

CREDIT(S)

(Added [Pub.L. 109-347, Title VIII, § 802\(a\)](#), Oct. 13, 2006, 120 Stat. 1961.)

[Notes of Decisions \(2\)](#)

31 U.S.C.A. § 5366, 31 USCA § 5366

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

End of Document

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United States Code Annotated

Title 31. Money and Finance (Refs & Annos)

Subtitle IV. Money

Chapter 53. Monetary Transactions

Subchapter IV. Prohibition on Funding of Unlawful Internet Gambling

31 U.S.C.A. § 5367

§ 5367. Circumventions prohibited

Effective: October 13, 2006

[Currentness](#)

Notwithstanding [section 5362\(2\)](#), a financial transaction provider, or any interactive computer service or telecommunications service, may be liable under this subchapter if such person has actual knowledge and control of bets and wagers, and--

(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

CREDIT(S)

(Added [Pub.L. 109-347, Title VIII, § 802\(a\)](#), Oct. 13, 2006, 120 Stat. 1961.)

[Notes of Decisions \(1\)](#)

31 U.S.C.A. § 5367, 31 USCA § 5367

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-333, and 115-335 to 115-338. Title 26 current through P.L. 115-338.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST COURT
MIDDLE DIST. OF LA

2004 AUG -9 A 11:13

SIGN
BY DEPUTY CLERK

CASINO CITY, INC.

*

CIVIL ACTION

*

VERSUS

*

NO. 04-557-B-M3

*

UNITED STATES DEPARTMENT
OF JUSTICE

*

SECTION

*

*

COMPLAINT

Plaintiff, Casino City, Inc., complains of defendant, United States Department of Justice,
as follows:

1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. Section 1331, as this action involves a federal question.
2. Venue properly rests with this Court, pursuant to 28 U.S.C. Section 1391(e), as the Defendant is an agency of the United States and the Plaintiff resides in this judicial district.

PARTIES

3. The Plaintiff Casino City, Inc., (hereinafter "Casino City"), is a for profit corporation organized under the laws of the State of Louisiana.
4. Casino City operates the Casino City Network, a collection of portal sites, including www.CasinoCity.com and <http://Online.CasinoCity.com>, which disseminate information about land based and online casinos, casino style games and sports betting.

INITIALS	DOCKET#
BP	1

JSL, Summons

5. The Defendant is the United States Department of Justice, (hereinafter “DOJ”), an agency of the United States.

NATURE OF ACTION

6. Pursuant to 28 U.S.C. Sections 2201 and 2202, Casino City seeks a declaration as to its constitutional rights to engage in lawful commercial speech.

FACTS

7. The DOJ has conducted and continues to conduct an active investigation into United States businesses that sell and place advertisements for legal overseas online casino and sports book companies.

8. In June 2003 the DOJ sent a letter to the National Association of Broadcasters (“NAB Letter”, copy attached as Exhibit A), and other similar advertising associations, wherein the DOJ warned that entities and individuals placing advertisements for offshore sports books and online casinos may be violating various state and federal laws, including 18 U.S.C. §§ 1084, 1952 and 1955, and further warned that the entities or individuals that accept and run such advertisements may be *aiding and abetting* illegal activities, a Class E felony, pursuant to 18 U.S.C. § 2.

9. The statutes cited by the DOJ impose severe penalties consisting of substantial fines and imprisonment.

10. Based upon information and belief, several months after the NAB Letter, numerous subpoenas were issued by the DOJ to media outlets, internet portals, public relations companies and technology companies seeking commercial and financial information in relation to advertisements purchased and placed by online casinos and sports book companies.

11. The aforesaid subpoenas and the NAB Letter have been the subject matter of numerous media reports.

12. Prior to the foregoing actions by the DOJ, the advertising industry was selling and running advertisements for online casino and sports book businesses that legally operate in the jurisdictions in which they are located. The NAB Letter and subpoenas, however, have created a fear of prosecution within the advertising community resulting in a chilling effect upon the exercise of free speech. On information and belief, as a direct result of the DOJ threats, a number of internet advertising portals based in the United States have ceased to accept advertising of legal casino and sports betting.

13. Casino City is a United States company that disseminates information on its internet sites such as interviews with professional gamblers, advice and expert columns, directories, playing strategies and tips, weekly news publications and news clips.

14. A portion of Casino City's revenues are derived from the sale and running of advertisements on its informational internet sites for lawful overseas companies that offer online casino or sports book gambling. The sale and placement of the advertisements is not contrary to the law of Louisiana.

15. The advertisements are not misleading and concern lawful activity.

16. Casino City does not conduct or participate in online casino or sports book activities. Casino City does not knowingly accept, in payment for running online casino or sports book advertisements, proceeds that come from illegal bets, deposits or wagers placed by persons located in the United States or anywhere world-wide, and the company has taken reasonable steps to ensure that such proceeds are not received.

17. The advertisements that Casino City sells and runs are of the same content and nature as those that the DOJ warned may constitute the offense of aiding and abetting a violator of 18 U.S.C. Sections 1084, 1952 and/or 1955. Thus, a reasonable and imminent threat of prosecution exists if Casino City continues to sell and run advertisements for overseas online casino and sports book operations.

18. Application of the aforesaid criminal statutes against the plaintiff and others similarly situated, as threatened by the DOJ, would constitute a violation of such entities' rights under the First Amendment to the United States Constitution in that:

(a) The United States does not have a substantial interest sufficient to justify the imposition upon the exercise of free expression resulting from such application and the threat of such application;

(b) The threatened application would not effectively serve any purported government interest; and

(c) The application is not narrowly drawn to effectuate any purported government interest.

WHEREFORE, for the above and foregoing reasons, Casino City prays for a judgment declaring:

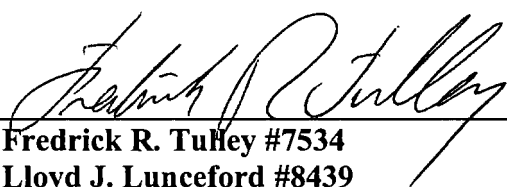
1. That the application of 18 U.S.C. Sections 1084, 1952 and/or 1955 to Casino City and others similarly situated violates the First Amendment to the United States Constitution;

2. That the application of 18 U.S.C. Section 2 to Casino City and others similarly situated, as aiding and abetting a violator of 18 U.S.C. sections 1084, 1952 and/or 1955, violates the First Amendment to the United States Constitution; and

3. The actions of DOJ in threatening Casino City and others similarly situated with criminal prosecution as detailed above, violate the First Amendment to the United States Constitution.

Casino City further prays for any other necessary or proper relief.

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

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ATTORNEYS FOR CASINO CITY, INC.



U.S. Department of Justice
Criminal Division



Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

June 11, 2003

National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

Re: Advertising for Internet Gambling and Offshore Sportsbook Operations

Dear Sir or Madam:

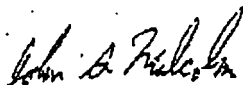
As you are no doubt aware, advertisements for Internet gambling and offshore sportsbook operations are ubiquitous on the Internet, in print ads, and over the radio and television. The sheer volume of advertisements for offshore sports books and online casinos is troubling because it misleads the public in the United States into believing that such gambling is legal, when in fact, it is not. Because of the possibility that some of your organization's members may be accepting money to place such advertisements, the Department of Justice, as a public service, would like you to be aware that the entities and individuals placing these advertisements may be violating various state and federal laws, and that, entities and individuals that accept and run such advertisements may be aiding and abetting these illegal activities.

With very few exceptions limited to licensed sportsbook operations in Nevada, state and federal laws prohibit the operation of sportsbooks and Internet gambling within the United States, whether or not such operations are based offshore. United States Attorneys' Offices in several districts have successfully prosecuted offshore sportsbookmaking and Internet gambling operations, and the Department of Justice will continue to pursue such cases.

Notwithstanding their frequent claims of legitimacy, Internet gambling and offshore sportsbook operations that accept bets from customers in the United States violate Sections 1084, 1952, and 1955 of Title 18 of the United States Code, each of which is a Class E felony. Additionally, pursuant to Title 18, United States Code, Section 2, any person or entity who aids or abets in the commission of any of the above-listed offenses is punishable as a principal violator of those statutes. The Department of Justice is responsible for enforcing these statutes, and we reserve the right to prosecute violators of the law.

Broadcasters and other media outlets should know of the illegality of offshore sportsbook and Internet gambling operations since, presumably, they would not run advertisements for illegal narcotics sales, prostitution, child pornography or other prohibited activities. We'd appreciate it if you would forward this public service message to all of your member organizations which may be running such advertisements, so that they may consult with their counsel or take whatever other actions they deem appropriate.

Very truly yours,



JOHN G. MALCOLM
Deputy Assistant Attorney General
Criminal Division
United States Department of Justice

cc: Ms. Lori Sharpe-Day, Director, OIPL

138 S.Ct. 1461
Supreme Court of the United States

Philip D. MURPHY, Governor
of New Jersey, et al., Petitioners

v.

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION, et al.
New Jersey Thoroughbred Horsemen's
Association, Inc., Petitioner

v.

National Collegiate Athletic Association, et al.

Nos. 16–476, 16–477.

|

Argued Dec. 4, 2017.

|

Decided May 14, 2018.

Synopsis

Background: Professional and amateur sports leagues brought action to enjoin New Jersey from giving effect to state law partially repealing state's prohibitions against sports gambling. The United States District Court for the District of New Jersey, [Michael A. Shipp, J.](#), 61 F.Supp.3d 488, entered summary judgment in leagues' favor and issued permanent injunction, based on determination that state law violated federal Professional and Amateur Sports Protection Act (PASPA). State appealed. The United States Court of Appeals for the Third Circuit, [Rendell](#), Circuit Judge, 799 F.3d 259, affirmed, and on rehearing en banc, the Court of Appeals, [Rendell](#), Circuit Judge, 832 F.3d 389, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice [Alito](#), held that:

[1] Act's provision generally making it unlawful for a State to authorize sports gambling violates the anticommandeering doctrine, abrogating *National Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208;

[2] Act's provision generally making it unlawful for a State to license sports gambling violates the anticommandeering doctrine;

[3] Act's provision prohibiting state operation of sports gambling was not severable;

[4] Act's provision making it unlawful for a private actor to sponsor, operate, advertise, or promote sports gambling pursuant to state law was not severable; and

[5] Act's provisions prohibiting the advertising of sports gambling were not severable.

Reversed.

Justice [Thomas](#) filed a concurring opinion.

Justice [Breyer](#) filed an opinion concurring in part and dissenting in part.

Justice [Ginsburg](#) filed a dissenting opinion, in which Justice [Sotomayor](#) joined, and in which Justice [Breyer](#) joined in part.

West Headnotes (30)

[1] Gaming and Lotteries

🔑 Repeal or modification

When a State completely or partially repeals old laws banning sports gambling, it “authorizes” that activity, within meaning of provision of federal Professional and Amateur Sports Protection Act (PASPA) generally making it unlawful for a State to authorize sports gambling. 28 U.S.C.A. § 3702(1).

1 Cases that cite this headnote

[2] Constitutional Law

🔑 Presumptions and Construction as to Constitutionality

A statute should not be held to be unconstitutional if there is any reasonable interpretation that can save it.

Cases that cite this headnote

[3] States

🔑 [Surrender of state sovereignty and coercion of state](#)

The anticommandeering doctrine 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.

[4 Cases that cite this headnote](#)

[4] [States](#)

🔑 [Status under Constitution of United States, and relations to United States in general](#)

The Constitution limited but did not abolish the sovereign powers of the States, which retained a residuary and inviolable sovereignty, and 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.

[2 Cases that cite this headnote](#)

[5] [States](#)

🔑 [Preemption in general](#)

Under the Supremacy Clause, when federal and state law conflict, federal law prevails and state law is preempted. [U.S.C.A. Const. Art. 6, cl. 2.](#)

[6 Cases that cite this headnote](#)

[6] [States](#)

🔑 [Powers of United States and Infringement on State Powers](#)

[United States](#)

🔑 [Legislative Authority, Powers, and Functions](#)

The legislative powers granted to Congress are sizable, but they are not unlimited, because the Constitution confers on Congress not plenary legislative power but only certain enumerated powers, and therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms. [U.S.C.A. Const.Amend. 10.](#)

[2 Cases that cite this headnote](#)

[7] [States](#)

🔑 [Surrender of state sovereignty and coercion of state](#)

The anticommandeering doctrine simply represents the recognition of the limit on congressional authority under the Tenth Amendment, since the Constitution confers on Congress not plenary legislative power but only certain enumerated powers, with all other legislative power reserved for the States, and since conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. [U.S.C.A. Const.Amend. 10.](#)

[3 Cases that cite this headnote](#)

[8] [States](#)

🔑 [Federal laws invading state powers](#)

[United States](#)

🔑 [Legislative Authority, Powers, and Functions](#)

The Constitution confers upon Congress the power to regulate individuals, not States.

[1 Cases that cite this headnote](#)

[9] [States](#)

🔑 [Surrender of state sovereignty and coercion of state](#)

[United States](#)

🔑 [Legislative Authority, Powers, and Functions](#)

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, and Congress may not simply commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.

[2 Cases that cite this headnote](#)

[10] States**🔑 Surrender of state sovereignty and coercion of state**

Under the anticommandeering doctrine, 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.

[2 Cases that cite this headnote](#)

[11] States**🔑 Surrender of state sovereignty and coercion of state**

The Federal Government may not command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program, and this rule applies not only to state officers with policymaking responsibility but also to those assigned more mundane tasks.

[1 Cases that cite this headnote](#)

[12] States**🔑 Surrender of state sovereignty and coercion of state**

The anticommandeering doctrine serves as one of the Constitution's structural protections of liberty, because the Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, and to the contrary, the Constitution divides authority between federal and state governments for the protection of individuals; a healthy balance of power between the States and the Federal Government reduces the risk of tyranny and abuse from either front.

[2 Cases that cite this headnote](#)

[13] States**🔑 Surrender of state sovereignty and coercion of state**

The anticommandeering doctrine promotes political accountability, because when

Congress itself regulates, the responsibility for the benefits and burdens of the regulation is apparent, and voters who like or dislike the effects of the regulation know who to credit or blame, while by contrast, if a State imposes regulations only because it has been commanded to do so by Congress, responsibility is blurred.

[Cases that cite this headnote](#)

[14] States**🔑 Surrender of state sovereignty and coercion of state**

The anticommandeering doctrine prevents Congress from shifting the costs of regulation to the States, because if Congress enacts a law and requires enforcement by the Executive Branch, it must appropriate the funds needed to administer the program, and 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.

[1 Cases that cite this headnote](#)

[15] Gaming and Lotteries**🔑 Validity****States****🔑 Surrender of state sovereignty and coercion of state**

Provision of federal Professional and Amateur Sports Protection Act (PASPA), generally making it unlawful for a State to authorize sports gambling, violates the anticommandeering doctrine, and thus, the provision is unconstitutional; the provision unequivocally dictates what a state legislature may and may not do, with state legislatures put under the direct control of Congress, 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; abrogating *National Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208, 28 U.S.C.A. § 3702(1).

4 Cases that cite this headnote

[16] States

🔑 Surrender of state sovereignty and coercion of state

The anticommandeering doctrine does not apply when Congress evenhandedly regulates an activity in which both States and private actors engage.

3 Cases that cite this headnote

[17] States

🔑 Preemption in general

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. [U.S.C.A. Const. Art. 6, cl. 2.](#)

Cases that cite this headnote

[18] States

🔑 Preemption in general

In order for a federal law to preempt state law, it must satisfy two requirements: first, it must represent the exercise of a power conferred on Congress by the Constitution, because pointing to the Supremacy Clause will not do, and second, since the Constitution confers upon Congress the power to regulate individuals, not States, the federal law at issue must be best read as one that regulates private actors. [U.S.C.A. Const. Art. 6, cl. 2.](#)

2 Cases that cite this headnote

[19] States

🔑 Preemption in general

The three different types of preemption, i.e., conflict preemption, express preemption, and field preemption, all 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. [U.S.C.A. Const. Art. 6, cl. 2.](#)

8 Cases that cite this headnote

[20] States

🔑 Congressional intent

Congress is not required to employ a particular linguistic formulation when preempting state law. [U.S.C.A. Const. Art. 6, cl. 2.](#)

Cases that cite this headnote

[21] States

🔑 Occupation of field

Field preemption occurs when federal law occupies a field of regulation so comprehensively that it has left no room for supplementary state legislation. [U.S.C.A. Const. Art. 6, cl. 2.](#)

4 Cases that cite this headnote

[22] States

🔑 Occupation of field

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. [U.S.C.A. Const. Art. 6, cl. 2.](#)

Cases that cite this headnote

[23] States

🔑 Preemption in general

Every form of preemption is based on a federal law that regulates the conduct of private actors, not the States. [U.S.C.A. Const. Art. 6, cl. 2.](#)

1 Cases that cite this headnote

[24] Gaming and Lotteries

🔑 Validity

States

🔑 Surrender of state sovereignty and coercion of state

Provision of federal Professional and Amateur Sports Protection Act (PASPA), generally making it unlawful for a State to authorize sports gambling, is not a valid preemption provision, because there is no way in which the provision can be understood as a regulation of private actors, and thus, there is simply no way to understand the provision as anything other than a direct command to the States, which is exactly what the anticommandeering doctrine does not allow. U.S.C.A. Const. Art. 6, cl. 2; 28 U.S.C.A. § 3702(1).

[Cases that cite this headnote](#)

[25] Gaming and Lotteries

🔑 Validity

States

🔑 Surrender of state sovereignty and coercion of state

Provision of federal Professional and Amateur Sports Protection Act (PASPA), generally making it unlawful for a State to license sports gambling, violates the anticommandeering doctrine, and thus, the provision is unconstitutional; the provision issues a direct order to state legislatures to refrain from enacting laws licensing sports gambling. 28 U.S.C.A. § 3702(1).

[Cases that cite this headnote](#)

[26] Statutes

🔑 Effect of Partial Invalidity;Severability

When federal statutory provisions in an Act are found unconstitutional, in order for other provisions in the Act to fall, as not being severable, it must be evident that Congress would not have enacted those provisions which are within its power, independently of those which are not.

[1 Cases that cite this headnote](#)

[27] Constitutional Law

🔑 Judicial rewriting or revision

Statutes

🔑 Effect of Partial Invalidity;Severability

In conducting the severability analysis when federal statutory provisions in an Act are found unconstitutional, the court asks whether the law remains fully operative without the invalid provisions, but the court cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole.

[1 Cases that cite this headnote](#)

[28] States

🔑 Surrender of state sovereignty and coercion of state

Statutes

🔑 Government property, facilities, and funds

Statutes

🔑 Trade or business

Upon determining that provisions of federal Professional and Amateur Sports Protection Act (PASPA), generally making it unlawful for a State to authorize or license sports gambling, violated the anticommandeering doctrine and therefore were unconstitutional, the Act's prohibition of state operation of sports gambling was not severable, because if that prohibition was left standing, the result would be a scheme sharply different from what Congress contemplated when the Act was enacted; at that time, Congress knew that New Jersey was considering the legalization of sports gambling in privately owned Atlantic City casinos and that other States were thinking about instituting state-run sports lotteries, the Act addressed both of those potential developments, and it seemed unlikely that if Congress had known that States would be free to authorize sports gambling in privately owned casinos, it would have nevertheless wanted to prevent States from running sports lotteries. 28 U.S.C.A. § 3702(1); N.J.S.A. 5:12A-7.

2 Cases that cite this headnote

something that Congress had rarely done. 28 U.S.C.A. § 3702(1, 2).

Cases that cite this headnote

[29] Statutes

🔑 Government property, facilities, and funds

Statutes

🔑 Trade or business

Upon determining that provisions of federal Professional and Amateur Sports Protection Act (PASPA), generally making it unlawful for a State to authorize or license sports gambling, violated the anticommandeering doctrine and therefore were unconstitutional, another provision of the Act, making it unlawful for a private actor to sponsor, operate, advertise, or promote sports gambling pursuant to state law, was not severable; the two sets of provisions were meant to be deployed in tandem to stop what the Act aimed to prevent, i.e., state legalization of sports gambling, and because Congress lacked authority to prohibit a State from legalizing sports gambling, the prohibition of private conduct ceased to implement any coherent federal policy, and allowing that prohibition would implement a perverse policy that undermined whatever policy was favored by the people of a State. 28 U.S.C.A. § 3702(1, 2).

2 Cases that cite this headnote

[30] Statutes

🔑 Trade or business

Upon determining that provisions of federal Professional and Amateur Sports Protection Act (PASPA), generally making it unlawful for a State to authorize or license sports gambling, violated the anticommandeering doctrine and therefore were unconstitutional, other provisions of the Act, prohibiting the advertising of sports gambling, were not severable; if those provisions were allowed to stand, federal law would forbid the advertising of an activity that was legal under both federal and state law, and that was

West Codenotes

Held Unconstitutional

28 U.S.C.A. § 3702(1)

Held Unconstitutional as Not Severable

28 U.S.C.A. §§ 3701–3704

Negative Treatment Reconsidered

N.J.S.A. 5:12A-7

1465 Syllabus

The Professional and Amateur Sports Protection Act (PASPA) makes it unlawful for a State or its subdivisions “to sponsor, operate, advertise, 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 *1466 that it violates 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. 1472 – 1476.

(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. 1473 – 1474.

(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. 1473 – 1475.

(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. 1474 – 1475.

2. PASPA's provision prohibiting state authorization of sports gambling schemes violates the anticommandeering rule. Pp. 1475 – 1481.

(a) As the Tenth Amendment confirms, all legislative power not conferred on Congress by the Constitution is reserved for the States. Absent from the *1467 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, 112 S.Ct. 2408, 120 L.Ed.2d 120, and *Printz v. United States*, 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914, 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, 112 S.Ct. 2408. 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, 117 S.Ct. 2365, that the rule promotes political accountability, and that the rule prevents Congress from shifting the costs of regulation to the States. Pp. 1475 – 1478.

(b) PASPA's anti-authorization provision unequivocally dictates what a state legislature may and may not do. The distinction between 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. 1477 – 1478.

(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, 108 S.Ct. 1355, 99 L.Ed.2d 592; *Reno v. Condon*, 528 U.S. 141, 120 S.Ct. 666, 145 L.Ed.2d 587; *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 101 S.Ct. 2352, 69 L.Ed.2d 1; *FERC v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532, distinguished. Pp. 1478 – 1480.

(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, 112 S.Ct. 2408, 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. 1479 – 1481.

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. 1481 – 1482.

4. No provision of PASPA is severable from the provisions directly at issue. Pp. 1482 – 1484.

(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 *1468 wanted to prohibit such an ill-defined category of state conduct as sponsorship or promotion. Pp. 1482 – 1483.

(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. 1482 – 1484.

(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. 1483 – 1484.

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.

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Opinion

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 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 *1470 corrupted and seriously damaged the reputation of professional and amateur sports.¹⁷ Apprehensive about the potential effects of 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 subdivisions²² “to sponsor, operate, 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 schemes²³—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 *1471 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 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 (D.N.J.2013).

In making this argument, the State relied primarily on two cases, *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), and *Printz v. United States*, 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (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 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 *1472 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. —, 134 S.Ct. 2866, 189 L.Ed.2d 806 (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 (N.J.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 *1473 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. —, 137 S.Ct. 2327, 198 L.Ed.2d 754 (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 prohibition 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.

***1474** 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

[1] 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 applies to all “governmental entities.” It is implausible, the United States submits, to think that Congress “commanded every county, district, *1475 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

[2] 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 anticommandeering 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. —, —, 138 S.Ct. 830, 841–842, 200 L.Ed.2d 122 (2018). 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

[3] [4] 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, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991).

[5] 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 *1476 restrictions on the States. See, *e.g.*, *Department of Revenue of Ky. v. Davis*, 553 U.S. 328, 128 S.Ct. 1801, 170 L.Ed.2d 685 (2008); *American Ins. Assn. v. Garamendi*, 539 U.S. 396, 123 S.Ct. 2374, 156 L.Ed.2d 376 (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.

[6] [7] 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, 112 S.Ct. 2408, 120 L.Ed.2d 120 (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, 112 S.Ct. 2408. 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, 112 S.Ct. 2408.

[8] 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, 112 S.Ct. 2408. 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, 112 S.Ct. 2408. Instead, Congress was limited to acting “‘only upon the States.’” *Id.*, at 162, 112 S.Ct. 2408 (quoting *Lane County v. Oregon*, 7 Wall. 71, 76, 19 L.Ed. 101 (1869)). Alexander Hamilton, among others, saw this as “‘[t]he great and radical vice in ... the existing Confederation.’” 505 U.S., at 163, 112 S.Ct. 2408 (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, 112 S.Ct. 2408.

[9] [10] 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, 112 S.Ct. 2408 (emphasis in original). “We have *1477 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, 112 S.Ct. 2408. “Congress may not simply ‘commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.’” *Id.*, at 161, 112 S.Ct. 2408 (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288, 101 S.Ct. 2352, 69 L.Ed.2d 1 (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, 112 S.Ct. 2408.

[11] 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, 117 S.Ct. 2365, 138 L.Ed.2d 914. 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, 117 S.Ct. 2365. 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, 117 S.Ct. 2365.

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.

[12] First, the rule serves as “one of the Constitution's structural protections of liberty.” *Printz*, *supra*, at 921, 117 S.Ct. 2365. “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, 112 S.Ct. 2408. “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, 112 S.Ct. 2408 (quoting *Gregory*, 501 U.S., at 458, 111 S.Ct. 2395).

[13] 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, 112 S.Ct. 2408; *Printz*, *supra*, at 929–930, 117 S.Ct. 2365.

[14] 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).

*1478 IV

A

[15] 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, 108 S.Ct. 1355, 99 L.Ed.2d 592 (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.

[16] 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, 108 S.Ct. 1355, 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 *1479 *Reno v. Condon*, 528 U.S. 141, 120 S.Ct. 666, 145 L.Ed.2d 587 (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, 120 S.Ct. 666.

In *Hodel*, 452 U.S., at 289, 101 S.Ct. 2352, 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, 101 S.Ct. 2352. 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, 102 S.Ct. 2126, 72 L.Ed.2d 532 (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, 102 S.Ct. 2126. 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, 102 S.Ct. 2126. *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, 117 S.Ct. 2365 (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

[17] [18] 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. —, —, 135 S.Ct. 1378, 1383, 191 L.Ed.2d 471 (2015). 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, 112 S.Ct. 2408, the PASPA provision at issue must be best read as one that regulates private actors.

*1480 [19] 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, 110 S.Ct. 2270, 110 L.Ed.2d 65 (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, 133 S.Ct. 2466, 186 L.Ed.2d 607 (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, 133 S.Ct. 2466. 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, 133 S.Ct. 2466.

“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, 112 S.Ct. 2031, 119 L.Ed.2d 157 (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, 112 S.Ct. 2031, 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.).

[20] 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. —, —, —, 137 S.Ct. 1190, 1199, 197 L.Ed.2d 572 (2017). 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.

[21] [22] “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, 107 S.Ct. 499, 93 L.Ed.2d 449 (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. —, —, 135 S.Ct. 1591, 1595, 191 L.Ed.2d 511 (2015) (“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, 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000).

The Court's decision in *Arizona v. United States*, 567 U.S. 387, 132 S.Ct. 2492, 183 L.Ed.2d 351 (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, 132 S.Ct. 2492. 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.

[23] 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.

[24] 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.*

[25] 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 *1482 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

[26] [27] 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 [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, 107 S.Ct. 1476, 94 L.Ed.2d 661 (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, 130 S.Ct. 3138, 177 L.Ed.2d 706 (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, 55 S.Ct. 758, 79 L.Ed. 1468 (1935). We will consider each of the provisions at issue separately.

1

[28] 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 ***1483** 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

[29] Nor do we think that Congress would have wanted 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). 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 ***1484** 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

[30] 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 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, 113 S.Ct. 2696, 125 L.Ed.2d 345 (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, 119 S.Ct. 1923, 144 L.Ed.2d 161 (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 *1485 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, 112 S.Ct. 2408. The Constitution gives Congress no such power.

The judgment of the Third Circuit is reversed.

It is so ordered.

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 p. 1489 (opinion of GINSBURG, J.); see *License Tax Cases*, 5 Wall. 462, 470–471, 18 L.Ed. 497 (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, 115 S.Ct. 1624, 131 L.Ed.2d 626 (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, 112 S.Ct. 2408, 120 L.Ed.2d 120 (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, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005) (THOMAS, J., dissenting). Commandeering the States, as PASPA does, subverts those principles. See *Printz v. United States*, 521 U.S. 898, 923–924, 117 S.Ct. 2365, 138 L.Ed.2d 914 (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, 125 S.Ct. 738, 160 L.Ed.2d 621 (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, 125 S.Ct. 738 (quoting *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 767, 116 S.Ct. 2374, 135 L.Ed.2d 888 (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 byproduct of that process. See generally P. Hamburger, *Law and Judicial Duty* (2008); Prakash & Yoo, *1486 *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, 2 L.Ed. 60 (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, 126 S.Ct. 961, 163 L.Ed.2d 812 (2006); *Booker*, *supra*, at 245, 125 S.Ct. 738; *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 686, 107 S.Ct. 1476, 94 L.Ed.2d 661 (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, 43 S.Ct. 597, 67 L.Ed. 1078 (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, 125 S.Ct. 738 (THOMAS, J., dissenting in part). It requires judges to determine what Congress would have intended had it known that part of its statute was *1487

unconstitutional.* But 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 Congress' hypothetical intentions, intentions do not count unless they are enshrined in a text that makes it through the constitutional processes of bicameralism and presentment. See [Wyeth v. Levine](#), 555 U.S. 555, 586–588, 129 S.Ct. 1187, 173 L.Ed.2d 51 (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 especially not legislators' *hypothetical* intentions. [Zuni Public School Dist. No. 89 v. Department of Education](#), 550 U.S. 81, 119, 127 S.Ct. 1534, 167 L.Ed.2d 449 (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 standing 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 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, 132 S.Ct. 2566, 183 L.Ed.2d 450 (2012) (joint dissent) (citing, as an example, [Williams v. Standard Oil Co. of La.](#), 278 U.S. 235, 242–244, 49 S.Ct. 115, 73 L.Ed. 287 (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, 128 S.Ct. 2759, 171 L.Ed.2d 737 (2008); [DaimlerChrysler Corp. v. Cuno](#), 547 U.S. 332, 346,

350–353, 126 S.Ct. 1854, 164 L.Ed.2d 589 (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, 118 S.Ct. 1003, 140 L.Ed.2d 210 (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.

*1488 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 “threaten [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, 112 S.Ct. 2408, 120 L.Ed.2d 120 (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.

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 *1489 conduct impermissibly commandeer the regulatory power of States in contravention of *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (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 "authoriz[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, 125 S.Ct. 2195, 162 L.Ed.2d 1 (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, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). If States themselves and private parties may not 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, 130 S.Ct. 3138, 177 L.Ed.2d 706 (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 *1490 *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, 112 S.Ct. 2408 (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. —, —, 134 S.Ct. 2165, 2173, 189 L.Ed.2d 83 (2014), 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. 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 1482. In so reasoning, the Court shuts § 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 Pp. 1482 – 1483. 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 Pp. 1482 – 1483. And it strikes Congress' prohibition on “advertis[ing]” sports-gambling schemes because it has struck everything else. See *ante*, at Pp. 1483 – 1484.

* * *

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 not prohibit States from authorizing or licensing such schemes. Deleting the alleged “commandeering” directions would free the statute to accomplish just what Congress 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.

All Citations

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Footnotes

- * 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, 26 S.Ct. 282, 50 L.Ed. 499.
- 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).
- 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% 20 State% 20of% 20the% 20States_FINAL.pdf](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 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 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.
- 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 anywhere else.
- 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)).
- 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 anticommandeering principle, but it provides no explanation for its position.
- 31 See Clary 84–102.
- 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, 55 S.Ct. 758, 79 L.Ed. 1468 (1935).

- * The first court to engage in this counterfactual exploration of legislative intent was the Massachusetts Supreme Judicial Court in *Warren 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, 26 L.Ed. 318 (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, 12 S.Ct. 511, 36 L.Ed. 226 (1892); *United States v. Moore*, 95 U.S. 760, 763, 24 L.Ed. 588 (1878).
- 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.
- 3 Notably, in the two decisions marking out and applying the anticommandeering 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, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992); *Printz v. United States*, 521 U.S. 898, 935, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997).
- 4 As earlier indicated, see *supra*, at 1489, 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, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). Indeed, according to the Court, direct regulation is precisely what the anticommandeering doctrine requires. *Ante*, at Pp. 1475 – 1478.

(Slip Opinion)

Reconsidering Whether the Wire Act Applies to Non-Sports Gambling

This Office concluded in 2011 that the prohibitions of the Wire Act in 18 U.S.C. § 1084(a) are limited to sports gambling. Having been asked to reconsider, we now conclude that the statutory prohibitions are not uniformly limited to gambling on sporting events or contests. Only the second prohibition of the first clause of section 1084(a), which criminalizes transmitting “information assisting in the placing of bets or wagers on any sporting event or contest,” is so limited. The other prohibitions apply to non-sports-related betting or wagering that satisfy the other elements of section 1084(a).

The 2006 enactment of the Unlawful Internet Gambling Enforcement Act did not alter the scope of section 1084(a).

November 2, 2018

MEMORANDUM OPINION FOR THE ACTING ASSISTANT ATTORNEY GENERAL CRIMINAL DIVISION

In 2010, the Criminal Division asked whether the Wire Act, 18 U.S.C. § 1084, prohibits New York and Illinois from using the Internet and out-of-state transaction processors to sell lottery tickets to in-state adults. That request arose from a potential conflict between the Wire Act and the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. §§ 5361–5367 (“UIGEA”). In the Criminal Division’s view, the Wire Act prohibits such transactions, but UIGEA might permit the interstate routing of certain state lottery transactions.

We answered that request by challenging its underlying premise: that the Wire Act prohibits transmissions unrelated to sports gambling. Instead of analyzing the interplay between the Wire Act and UIGEA, we concluded, more broadly, that the prohibitions of the Wire Act are limited to sports gambling and thus do not apply to state lotteries at all. *See Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, 35 Op. O.L.C. __ (2011) (“2011 Opinion”). Our opinion departed from the position of the Department of Justice, which had successfully brought Wire Act prosecutions for offenses not involving sports gambling.

The Criminal Division has asked us to reconsider the 2011 Opinion’s conclusion that the Wire Act is limited to sports gambling. *See Memorandum*

dum for Curtis E. Gannon, Acting Assistant Attorney General, Office of Legal Counsel, from Kenneth A. Blanco, Acting Assistant Attorney General, Criminal Division (May 26, 2017).¹ We do not lightly depart from our precedents, and we have given the views expressed in our prior opinion careful and respectful consideration. Based upon the plain language of the statute, however, we reach a different result. While the Wire Act is not a model of artful drafting, we conclude that the words of the statute are sufficiently clear and that all but one of its prohibitions sweep beyond sports gambling. We further conclude that that the 2006 enactment of UIGEA did not alter the scope of the Wire Act.

I.

The Wire Act prohibits persons involved in the gambling business from transmitting several types of wagering-related communications over the wires. The prohibitions, located at 18 U.S.C. § 1084, were originally enacted in 1961.² Section 1084(a) sets them out:

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,

¹ We address this opinion to John Cronan, as the Acting Assistant Attorney General for the Criminal Division, because Assistant Attorney General Brian Benczkowski is recused from this matter.

² Pub. L. No. 87-216, § 2, 75 Stat. 491. The provision has been amended three times, although none of those amendments is material to our analysis. See Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7024, 102 Stat. 4181, 4397 (adding section 1084(e), which defines “State”; making conforming amendments; and adding the term “foreign country” to section 1084(b), so that the Wire Act now includes an exception 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 such betting is legal *into* a state or “foreign country” in which such betting is also legal); Crime Control Act of 1990, Pub. L. No. 101-647, § 1205(g), 104 Stat. 4789, 4831 (amending the definition of “State” in section 1084(e)); Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 330016(1)(L), 108 Stat. 1796, 2147 (altering the statutory penalty in section 1084).

shall be fined under this title or imprisoned not more than two years, or both.

Section 1084(a) consists of two general clauses, each of which prohibits two kinds of wire transmissions, creating four prohibitions in total. The first clause bars anyone in the gambling business from knowingly using a wire communication facility to transmit “bets or wagers” or “information assisting in the placing of bets or wagers on any sporting event or contest.” *Id.*³ The second clause bars any such person from transmitting wire communications that entitle the recipient to “receive money or credit” either “as a result of bets or wagers” or “for information assisting in the placing of bets or wagers.” *Id.*⁴

The Wire Act’s interpretive difficulties arise from the phrase “on any sporting event or contest,” which appears immediately after the second prohibition in the first clause. Those words narrow the prohibition on transmitting “information assisting in the placing of bets or wagers” to bets or wagers “on a sporting event or contest.” That phrase is not otherwise repeated in section 1084(a). The other three prohibitions thus appear to be naturally read to apply to wire transmissions involving all forms of gambling, not just “bets or wagers on any sporting event or contest.” But if that reading is correct, our 2011 Opinion asked, then why would Congress, “having forbidden the transmission of *all* kinds of bets or wagers . . . prohibit only the transmission of information assisting in bets or wagers concerning sports”? 35 Op. O.L.C. ___, at *5. Why permit transmissions of information that assists gambling on non-sporting events, but then prohibit transmissions “entitling the recipient to receive money” for

³ The phrase “wire communication facility” is defined to include “any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.” 18 U.S.C. § 1081.

⁴ As our 2011 Opinion explained, the second clause prohibits “the transmission of a wire communication which entitles the recipient to *receive money or credit*” either “as a result of bets or wagers[] *or* for information assisting in the placing of bets or wagers.” 35 Op. O.L.C. ___, at *4 n.5 (emphases and alterations in original). Reading the second clause to prohibit “the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers” or “the transmission of a wire communication . . . for information assisting in the placing of bets or wagers” would be awkward and would duplicate the second prohibition, which covers “information assisting in the placing of bets or wagers on any sporting event or contest.”

providing information that assists “in the placing of those lawfully-transmitted bets”? *Id.* at *8. In short, why would Congress have limited just one of the four prohibitions to sports gambling?

Absent any obvious answer to these questions, our 2011 Opinion concluded that the statutory text was ambiguous, and that the “more logical result” was to read section 1084(a)’s prohibitions as parallel in scope and therefore as all limited to sports gambling. *Id.* at *5. In so doing, we recognized that our reading of the statute departed from that of the Criminal Division and of some courts that had addressed the statute. *See id.* at *3. Several district courts had upheld prosecutions involving non-sports gambling, reasoning that the limitation to “sporting event or contest” did not apply to all of section 1084(a)’s prohibitions.⁵ On the other hand, the Fifth Circuit had affirmed a district court opinion that found that the “plain reading of the statutory language clearly requires that the object of the gambling be a sporting event or contest.” *In re Mastercard Int’l, Inc., Internet Gambling Litig.*, 132 F. Supp. 2d 468, 480 (E.D. La. 2001), *aff’d*, 313 F.3d 257 (5th Cir. 2001).⁶

Those prosecutions, of course, were brought by the Department of Justice. In requesting our opinion, the Criminal Division had advised that “[t]he Department has uniformly taken the position that the Wire Act is not limited to sports wagering and can be applied to other forms of interstate gambling[.]” Memorandum for David Barron, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, from Lanny A. Breuer, Assistant Attorney General, Criminal Division, Department of Justice (July 12, 2010). In the years before our opinion, the

⁵ *See United States v. Lombardo*, 639 F. Supp. 2d 1271, 1281 (D. Utah. 2007) (holding that the “sporting event or contest” qualifier does not apply to section 1084(a)’s second clause; noting that this conclusion “aligns with the Tenth Circuit’s *Criminal Pattern Jury Instructions*”); Report and Recommendation of United States Magistrate Judge Regarding Gary Kaplan’s Motion to Dismiss Counts 3–12, at 4–7, *United States v. Kaplan*, No. 06-CR-337CEJ-2 (E.D. Mo. Mar. 20, 2008) (concluding that the “sporting event or contest” qualifier applies only to the second prohibition in section 1084(a)’s first clause); *see also United States v. Ross*, No. 98 CR. 1174-1 (KMV), 1999 WL 782749, at *2 (S.D.N.Y. Sept. 16, 1999) (suggesting that the term “sporting event or contest” modifies only the second prohibition in section 1084(a)’s first clause); *Vacco v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844, 847, 851–52 (N.Y. Sup. Ct. 1999) (suggesting same).

⁶ Since our 2011 Opinion, the First Circuit has observed in dictum that the Wire Act is limited to betting and wagering on “any sporting event or context.” *United States v. Lyons*, 740 F.3d 702, 718 (1st Cir. 2014).

Department had advanced that position in court and before Congress.⁷ And on several prior occasions, the Criminal Division had prosecuted defendants whose wire communications involved non-sports gambling, including a 1971 prosecution of “a business enterprise involving gambling in the form of numbers writing.” *United States v. Manetti*, 323 F. Supp. 683, 687 (D. Del. 1971); *see also United States v. Vinaithong*, No. 97-6328, 1999 WL 561531, at *1 (10th Cir. Apr. 9, 1999) (order and judgment affirming the sentences of defendants who pleaded guilty under the Wire Act for transmission of “gambling information” related to a “gambling enterprise which has been referred to as a mirror lottery”).⁸ In two congressional hearings in 1998 and 2000, the Criminal Division had acknowledged some uncertainty concerning the scope of the Wire Act and urged Congress to amend the statute to confirm its application to non-sports gambling.⁹ But our 2011 Opinion represented a marked shift in

⁷ See Letter for Dennis K. Neilander, Chairman, Nevada Gaming Control Board, from Michael Chertoff, Acting Assistant Attorney General, Criminal Division (Aug. 23, 2002) (“[T]he Department of Justice believes that federal law prohibits gambling over the Internet, including casino-style gambling.”); *Unlawful Internet Gambling Funding Prohibition Act and the Internet Gambling Licensing and Regulation Commission Act: Hearing Before the Subcomm. on Crime, Terrorism, & Homeland Security of the H. Comm. on the Judiciary*, 108th Cong. 70 (2003) (response of John G. Malcolm, Deputy Assistant Attorney General, Criminal Division, to questions for written submission from Rep. Goodlatte) (“The Department of Justice has long held, and continues to hold, the position that 18 U.S.C. § 1084 applies to all types of gambling, including casino-style gambling, not just sports betting.”); Letter for Carolyn Adams, Superintendent, Illinois Lottery, from Laura H. Parsky, Deputy Assistant Attorney General, Criminal Division (May 13, 2005) (explaining that if Illinois permitted online purchase of state lottery tickets it would be in violation of federal law—so long as the “transmission [were] routed outside of the state”); *Establishing Consistent Enforcement Policies in the Context of Online Wagers: Hearing Before the H. Comm. on the Judiciary*, 110th Cong. 13 (2007) (statement of Catherine Hanaway, U.S. Attorney) (“It is the Department’s view, and that of at least one federal court (the E.D. Mo.), that [the Wire Act] applies to both sporting events and other forms of gambling, and that it also applies to those who send or receive bets in interstate or foreign commerce, even if it is legal to place or receive bets in both the sending jurisdiction and the receiving jurisdiction.”).

⁸ The Criminal Division advises that the Department secured at least seventeen Wire Act convictions between Fiscal Years 2005 and 2011 that involved non-sports betting.

⁹ Compare, e.g., *Internet Gambling Prohibition Act of 1997: Hearings on H.R. 2380 Before the Subcomm. on Crime of the H. Comm. on the Judiciary*, 105th Cong. 78 (1998) (statement of Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division) (“That being said, [section 1084] currently prohibits someone in the business of betting and wagering from using a wire communication facility for the transmission in interstate

how the Department interpreted the statute, including with respect to some successful prosecutions.

II.

The Criminal Division has asked us to reconsider our 2011 Opinion. We do not lightly depart from our precedent. But having reconsidered our conclusion, we now reach a different result. The 2011 Opinion, in our view, incorrectly interpreted the limitation “on any sporting event or contest” (the “sports-gambling modifier”) to apply beyond the second prohibition that it directly follows: the prohibition on transmitting “information assisting in the placing of bets or wagers.”

A.

Section 1084(a)’s first clause makes it a crime to use the wires “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.” Our 2011 Opinion concluded that this clause was ambiguous on whether the sports-gambling modifier applies to both prohibitions in the first clause. 35 Op. O.L.C. ___, at *5. We reasoned that “[t]he text itself

or foreign commerce of bets or wagers on any sporting event or contest. . . . [T]he statute may relate only to sports betting and not to the type of real-time, interactive gambling that the Internet now makes possible for the first time. Therefore, we generally support the idea of amending the Federal gambling statutes by clarifying that the Wire Communications Act applies to interactive casino betting[.]”); *Internet Gambling Prohibition Act of 1999: Hearing Before the Subcomm on Telecommunications, Trade, & Consumer Protection of the H. Comm. on Commerce*, 106th Cong. 35 (2000) (statement of Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division) (“We urge you to consider a proposal that we have made, and I will highlight what that proposal would do. It would clarify that [section] 1084 applies to all betting and not just betting on sporting events or contests. . . . Our proposed amendment, Mr. Chairman and members of the committee, would not prohibit any gambling currently permitted nor would our proposal permit anything that is currently prohibited.”), *with id.* at 88 (answering question from Rep. Tauzin and explaining that “[s]ection 1084 applies to sports betting but not to contests like a lottery”). In a 1962 speech shortly following the passage of the Wire Act, then-Assistant Attorney General for the Office of Legal Counsel Nicholas deB. Katzenbach explained that, under the Wire Act, “gamblers, bookies and related members of their fraternity are barred from using the phones for the interstate transmission of wagers on sporting events or contests,” without addressing whether the statute was limited to such wagering. Nicholas deB. Katzenbach, Assistant Attorney General, Office of Legal Counsel, Address on Federal and Local Cooperation in Fighting Crime (Jan. 25, 1962).

can be read either way” because section 1084(a) lacks “a comma after the first reference to ‘bets or wagers’”; we thought that such a comma would have made it “plausible” that the first prohibition in the first clause was not limited to sports-based gambling. *Id.* “By the same token,” we continued, “the text does not contain commas after *each* reference to ‘bets or wagers,’” which we would have considered evidence that the sports-gambling modifier qualified each prohibition in the first clause. In light of this perceived ambiguity, we interpreted both prohibitions in the first clause as confined to sports gambling because that reading “produce[d] the more logical result” and was supported by the legislative history. *Id.* at *5–7.

We do not believe that the first clause is ambiguous, however. “It is well established that ‘when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.’” *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)); see also *Sebelius v. Cloer*, 569 U.S. 369, 381 (2013) (same). There was no need for Congress to add a comma to clarify that the sports-gambling modifier applies only to the second prohibition in the first clause, because the grammar of the provision itself accomplishes that task. The sports-gambling modifier comes at the end of a complex modifier that defines the type of “information” reached by section 1084(a)’s second prohibition: “information assisting in the placing of bets or wagers on any sporting event or contest.” 18 U.S.C. § 1084(a) (emphasis added). Since “assisting in the placing of bets or wagers” modifies only the prohibition on transmitting information, it follows that “on any sporting event or contest”—a component of the same modifier—is similarly limited.

Traditional canons of statutory construction confirm that conclusion. In construing the reach of modifiers like “on any sporting event or contest,” the default rule is that “‘a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.’” *Lockhart v. United States*, 136 S. Ct. 958, 962 (2016) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)); see also *Barnhart*, 540 U.S. at 26 (“Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent”) (quoting 2A Norman J. Singer, *Statutes and Statutory Construction* § 47.33, at 369 (6th rev. ed. 2000)); *United States v. Loyd*, 886 F.3d 686, 688 (8th Cir. 2018) (describing the rule as “a rebuttable presumption in statutory interpretation”); *In*

re Sanders, 551 F.3d 397, 399 (6th Cir. 2008) (similar). That rule, the “last-antecedent rule,” “reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it.” *Lockhart*, 136 S. Ct. at 963; *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 152 (2012) (“Scalia & Garner”).¹⁰

In *Lockhart*, for example, the Court applied this rule to a statute that subjected a criminal defendant to increased penalties if the defendant had “‘a prior conviction . . . under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward.’” 136 S. Ct. at 962 (quoting 18 U.S.C. § 2252(b)(2)). The Court held that the phrase “involving a minor or ward” modified only the one item on this list that immediately preceded it. *Id.* at 961. Similarly, in *Barnhart*, the Court considered the meaning of a statutory reference to circumstances in which someone “‘is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.’” 540 U.S. at 23 (quoting 42 U.S.C. § 423(d)(2)(A)). The Court applied the rule of the last antecedent to conclude that the qualifier “which exists in the national economy” could reasonably be read to modify only its closest referent: “any other kind of substantial gainful work.” *Id.* at 26. And in *Loyd*, the Eighth Circuit applied the last-antecedent rule to a statute that made a mandatory minimum sentence applicable to anyone with a prior conviction under enumerated federal laws “‘or under the laws of any State relating to’” certain types of sexual misconduct. 886 F.3d at 687 (quoting 18 U.S.C. § 2251(e)). The court held that the sexual misconduct language “modifies only the phrase that immediately precedes it: ‘the laws of any State.’” *Id.* at 688 (quoting 18 U.S.C. § 2251(e)). As in the examples discussed in those cases, the Wire Act’s reference to gambling “on any sporting event or contest” modifies only the phrase it immediately follows: “information assisting in the placing of bets or wagers.”

We have considered whether the series-qualifier rule might rebut the last-antecedent presumption. The series-qualifier rule provides that a modifying phrase used to qualify one element of a list of nouns or verbs

¹⁰ Courts commonly refer to this canon as the “last-antecedent rule,” although the more precise term where, as here, the modifier is an adjectival or adverbial phrase is the “nearest reasonable referent” canon. Scalia & Garner at 152–53.

may sweep beyond the nearest referent if the list “contain[s] items that readers are used to seeing listed together or a concluding modifier that readers are accustomed to applying to each of them.” *Lockhart*, 136 S. Ct. at 963. Importantly, that principle is generally limited to lists of items that are “simple and parallel without unexpected internal modifiers or structure.” *Id.*; see Scalia & Garner at 147 (canon applies where “there is a straightforward, parallel construction that involves all nouns or verbs in a series”). The series-qualifier rule thus may support applying a modifier beyond its nearest referent and across multiple, simple, parallel phrases.

But the structure of section 1084(a)’s first clause is not straightforward. The sports-gambling modifier is embedded within a longer modifier: “assisting in the placing of bets or wagers on any sporting event or contest.” Reading “on any sporting event or contest” alone to carry backward to modify the prohibition on “bets or wagers” would “take[] more than a little mental energy” and be a “heavy lift.” *Lockhart*, 136 S. Ct. at 963 (rejecting the applicability of the series-qualifier rule to the phrase “aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward”). Nor is there any other textual evidence that would justify departing from the usual presumption that modifiers apply only to their closest referents. See *United States v. Hayes*, 555 U.S. 415, 425 (2009) (declining to apply that rule because it would introduce superfluity and would require accepting the ungrammatical premises “that Congress employed the singular ‘element’ to encompass two distinct concepts, and that it adopted the awkward construction ‘commi[t] a ‘use’”); see also *Paroline v. United States*, 572 U.S. 434, 447 (2014) (declining to apply the rule of the last antecedent because it was overcome by other indicia of meaning). We therefore do not believe that the series-qualifier rule warrants extending the sport-gambling modifier across both prohibitions in the first clause.

This conclusion is confirmed by comparing the structure of the sports-gambling modifier with other phrases in section 1084(a)’s first clause that do apply across multiple phrases. For instance, in speaking of “information assisting in the placing of *bets or wagers* on any sporting event or contest” (emphasis added), Congress employed a structure making clear that both “bets” and “wagers” were modified by the phrases that come before and after those items. “Bets” and “wagers” are two like items in the series, and it is straightforward to modify them with the phrases that immediately precede (“information assisting in the placing of”) and follow (“on any sporting event or contest”) those terms. Applying the last-

antecedent rule so that the prohibition would instead cover “information assisting in the placement of bets” and “wagers on sporting events or contests” would also introduce superfluity, since section 1084(a)’s first prohibition already extends to wire transmissions of “bets or wagers.” To take another example, the phrase “sporting event or contest” is a textbook example of a simple, parallel structure where “sporting” modifies both “event” and “contest.” See Scalia & Garner at 147–48 (providing similar examples and citing authorities); cf. 2011 Opinion, 35 Op. O.L.C. ___, at *12 n.11 (concluding the same, although for different reasons). In contrast with such simple constructions, the sports-gambling modifier is embedded in a more complex structure that does not easily allow that modifier to extend beyond its immediate referent.

Section 1084(a) similarly limits both prohibitions in the first clause to interstate wire transmissions. Congress prefaced both prohibitions with the phrase “*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.*” 18 U.S.C. § 1084(a) (emphasis added). In context, the “transmission” must be “of” what is mentioned in the following phrase. By placing the interstate-commerce requirement before the word “of,” Congress made clear that the entire phrase preceding “of”—“the transmission in interstate or foreign commerce”—would apply to the first two prohibitions. Otherwise, the second prohibition would be missing a preposition: “for the transmission . . . information assisting in the placing of bets or wagers on any sporting event or contest.” But there are no similar indicators that would support rebutting the last-antecedent presumption and applying the sports-gambling modifier to the first prohibition.

The road not taken is also illuminating. Simply by adding two commas, Congress could have unambiguously extended both prohibitions in the first clause to sports-related gambling: “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.” See 2011 Opinion, 35 Op. O.L.C. ___, at *5 (recognizing that if the text contained “commas after *each* reference to ‘bets or wagers,’” it would have made the opinion’s interpretation “much more certain”). Congress “could have easily” crafted text that would have carried that meaning, but did not. *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 384 (2013). The absence of these commas is particularly significant because it leaves “nothing in the statute to rebut the last-antecedent presumption.” *In re Sanders*, 551 F.3d

at 400. Because “Congress no doubt could have worked around this grammatical rule had it wished . . . we see nothing in the section to justify dispensing with this default rule of interpretation.” *Id.* The sports-gambling modifier therefore does not limit the first prohibition of section 1084(a)’s first clause, which makes it a crime to transmit “bets or wagers,” including those unrelated to sports gambling.

B.

We likewise conclude that section 1084(a)’s second clause is not limited to sports gambling. The second clause prohibits the use of a wire communication facility “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.” 18 U.S.C. § 1084(a). That clause, on its face, applies to bets or wagers of any kind, even those unrelated to sports.

We do not think it tenable to read into the second clause the qualifier “on any sporting event or contest” that appears in the first clause. Carrying that qualifier forward to the second clause is even less textually plausible than carrying it backward to the first prohibition of the first clause. As a matter of basic grammar, section 1084(a)’s first clause is distinct from the second clause; the two clauses are separated not only by a comma, but also by an introductory determiner that repeats the beginning of the first clause (“for the transmission of”). There is no reference to “any sporting event or contest” in that clause and no apparent textual reason why the modifier in the first clause would extend to the second clause.

Nor does any canon of construction support reading the sports-gambling modifier transitively across the two clauses. As our analysis of the first clause demonstrates, the series-qualifier principle would appear the most natural candidate to justify such a reading. But here, the sports-gambling modifier appears after the second of four statutory prohibitions. It would take a considerable leap for the reader to carry that modifier both backward to the first prohibition of the first clause, then forward across the entire second clause. *See, e.g., United States v. Lockhart*, 749 F.3d 148, 152–53 (2d Cir. 2014) (“[T]his is not the prototypical situation in which the series qualifier canon is applied, since . . . the modifier does not end the list in its entirety.”), *aff’d*, 136 S. Ct. 958 (2016); *Wong v. Minn. Dep’t of Human Servs.*, 820 F.3d 922, 928 (8th Cir. 2016) (“[T]he series-qualifier canon generally applies when a modifier precedes or follows a

list, not when the modifier appears in the middle.”); *cf. Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 61–62 (2004) (applying a qualifier at the end of the second item on a list to the first item as well, based in part on specific textual evidence that the second item modified the first item).

Other portions of the Wire Act support this reading. Section 1084(b) uses the phrase “sporting event[s] or contest[s]” three times to define the scope of exceptions to section 1084(a)’s prohibitions. Subsection (b) exempts the transmission “of information for use in news reporting of *sporting events or contests*,” then exempts “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” (emphases added). That language illustrates that Congress repeated the sports-gambling modifier when applying that term beyond its nearest, and most natural, referent. “When Congress includes particular language in one section of a statute but omits it in another,” we presume “that Congress intended a difference in meaning.” *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 777 (2018) (quoting *Loughrin v. United States*, 134 S. Ct. 2384, 2390 (2014) (internal quotation marks and alteration omitted)); *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 826 (2018) (rejecting a proposed reading of a statutory provision on the ground that if Congress wanted the provision to have the claimed effect “it knew how to say so”).

By contrast, section 1084(d) creates a notice-and-disconnect regime for common carriers, which must discontinue services to subscribers upon notice that the subscribers are using, or will use, their facilities “for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law.” Section 1084(d), however, contains none of the sports-gambling qualifiers that appear in section 1084(a) or (b), and section 1084(d) contains no indication that it is limited to gambling information involving sporting events or contests. The absence of that modifier in section 1084(d) was presumably intentional. We thus cannot regard Congress’s decision to omit the modifier from the second clause of section 1084(a) as an accident.

Our 2011 Opinion concluded that the sports-gambling modifier applied to section 1084(a)’s second clause, reasoning that Congress had used “shortened phrases in the second clause to refer back to terms spelled out more completely in the first clause.” 35 Op. O.L.C. ___, at *7. We ob-

served that the first clause prohibits the use of a wire communication facility for “the transmission *in interstate or foreign commerce*” of the prohibited bets or information, but that the second clause prohibits the use of the facility just for “the transmission of a wire communication” without repeating again the words “in interstate or foreign commerce.” *Id.* Citing the views of the Criminal Division and the legislative history, we concluded that Congress “presumably intended *all* the prohibitions in the Wire Act, including those in the second clause, to be limited to interstate or foreign (as opposed to intrastate) wire communications.” *Id.* Because the interstate-commerce qualifier could apply to both clauses, we concluded that the second clause used the phrase “for the transmission of a wire communication” as shorthand for both the interstate-commerce modifier and the sports-gambling modifier. *Id.*

We disagree with this inference, however, because the interstate-commerce modifier and the sports-gambling modifier are not parallel phrases. Within the grammar of the statute, the interstate-commerce element reaches beyond its nearest referent to modify at least the second prohibition as well as the first. See 18 U.S.C. § 1084(a) (“for the transmission *in interstate or foreign commerce* of bets or wagers or information assisting in the placing of bets or wagers”) (emphases added). Both prohibitions are tied by prepositional phrases to the “transmission in interstate or foreign commerce.” By contrast, there is no similar textual indication that the sports-gambling modifier ranges beyond its nearest referent: “information assisting in the placing of bets or wagers.” In addition, the interstate-commerce modifier appears at the beginning of a list of four prohibitions, and so there is precedent to support carrying the modifier forward to modify the prohibitions in the second clause. See *United States v. Bass*, 404 U.S. 336, 339–40 (1971) (“Since ‘in commerce or affecting commerce’ undeniably applies to at least one antecedent, and since it makes sense with all three, the more plausible construction here is that it in fact applies to all three.”). By contrast, the sports-gambling modifier appears midway through the list, which does not support the shorthand reference suggested by our 2011 Opinion. In view of these textual differences, we do not believe that the interstate-commerce modifier helps us to interpret the sports-gambling modifier. If anything, the textual differences underscore why the sports-gambling modifier does not apply across the statute.

In sum, the linguistic maneuvers that are necessary to conclude that the sports-gambling modifier sweeps both backwards and forwards to reach

all four of section 1084(a)'s prohibitions are too much for the statutory text to bear. *See Lockhart*, 749 F.3d at 152–53; *Wong*, 820 F.3d at 928. For these reasons, we conclude that the phrase “on any sporting event or contest” does not extend beyond the second prohibition in section 1084(a)'s first clause to qualify section 1084(a)'s second clause.

C.

Having concluded the text was ambiguous, our 2011 Opinion reasoned that reading the Wire Act's prohibitions as limited to sports gambling “produce[d] the more logical result.” 35 Op. O.L.C. __, at *5; *see also id.* at *7 (applying the sports-gambling modifier across all four prohibitions “made[] functional sense of the statute”). We found it “difficult to discern why Congress, having forbidden the transmission of *all* kinds of bets or wagers, would have wanted to prohibit only the transmission of information assisting in bets or wagers concerning sports.” *Id.* at *5. There is a logic to this reasoning, but unlike the 2011 Opinion, we view the statutory language as plain, and, absent a patent absurdity, we must apply the statute as written. *See Dunn v. CFTC*, 519 U.S. 465, 470 (1997).

We do not think that applying the Wire Act as written would result in an interpretation “where it is quite impossible that Congress could have intended the result . . . and where the alleged absurdity is so clear as to be most obvious to most anyone.” *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 470–71 (1989) (Kennedy, J., concurring in judgment); *see* Scalia & Garner at 237 (“The absurdity must consist of a disposition that no reasonable person could intend.”). Congress may well have had reasons to target the transmission of information assisting in sports gambling. Unlike lotteries, numbers games, or other kinds of non-sports gambling, sports gambling has long depended on the real-time transmission of information like point spreads, odds, or the results of horse races. Indeed, in concluding that the Wire Act was limited to sports gambling, our 2011 Opinion quoted the legislative history in which Senator Eastland, the Chairman of the Judiciary Committee, emphasized that illegal bookmaking required the use of the wires, because bookmakers and betters needed real-time results of horse “races at about 20 major racetracks throughout the country.” 35 Op. O.L.C. __, at *9 (quoting 107 Cong. Rec. 13,901 (1961)). Moreover, Congress might have been worried that an unfocused prohibition on transmitting any information that “assisted” in any sort of gambling whatsoever would criminalize a range of speech-related con-

duct—concerns that Congress evidently had in mind when it narrowed section 1084(a)’s prohibitions by excepting transmissions made “for use in news reporting of sporting events or contests.” 18 U.S.C. § 1084(b). We need not speculate further. It is sufficient that Congress targeted the transmission of information assisting in sports gambling in the text, and that applying the Wire Act as written does not produce an obviously absurd result.

In our 2011 Opinion, we found it improbable that Congress would have failed to prohibit “the transmission of information assisting in the placing of bets or wagers on non-sporting events,” but then, in section 1084(a)’s second clause, prohibited transmissions “entitling the recipient to receive money or credit for the provision of information assisting in the placing of those lawfully-transmitted bets.” 35 Op. O.L.C. ___, at *8.¹¹ But improbable is not absurd, and that anomaly largely falls away if, as we have concluded, transmitting bets or wagers of any kind is indeed unlawful under section 1084(a)’s first clause. *See supra* Part II.A. It was not absurd for Congress to supplement a broad prohibition on transmitting information that assists sports gambling in the first clause with another prohibition on a particular species of transmissions concerning all forms of gambling: those that entitle a recipient to money or credit for information that assists in the placing of unlawfully transmitted bets and wagers. Even if these prohibitions were anomalous, however, that result would simply reflect the statutory text. It is the job of the Executive to faithfully execute those words, and that of Congress to fix or improve those laws as it sees fit. *See Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 565 (2005) (If there is an “unintentional drafting gap,” “it is up to Congress rather than the courts to fix it. The omission may seem odd, but it is not absurd.”).

Our 2011 Opinion also relied heavily upon the legislative history of the 1961 Wire Act. Citing the many references in the legislative history to sports gambling and the dearth of references to other forms of gambling,

¹¹ Similar results would follow even if section 1084(a) were limited to sports gambling. If it were so limited, section 1084(a)’s first clause would allow people to relay sports bets and wagers so long as they did not use the wires to do so—yet the second clause would prohibit wire transmissions entitling the recipients to receive money or credit for those bets and wagers. The primary conduct of betting would not be prohibited under the Wire Act, yet the wire transmission entitling the bettor to payment would be a criminal offense under that statute.

the opinion concluded that “Congress’s overriding goal in the Act was to stop the use of wire communications for sports gambling in particular.” 35 Op. O.L.C. ___, at *8; see *id.* at *8–10. That may well have been true. But “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998); see also *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142, 1143 (2018) (declining to attach significance to the fact that the legislative history of the Fair Labor Standards Act “discusses ‘automobile salesmen, partsmen, and mechanics’ but never discusses service advisors,” because “[e]ven if Congress did not foresee all of the applications of the statute, that is no reason not to give the statutory text a fair reading”).

Our 2011 Opinion also emphasized the drafting history of the Wire Act. As we explained it, an earlier draft of the bill was unequivocally limited to sports gambling. When the Senate Judiciary Committee substantially redrafted the provision to change it to its current form, the Committee removed the commas that had so clearly limited the initial prohibitions to sporting events and contests. Our 2011 Opinion could not identify evidence in the legislative history that when Congress reworked the provision, it intended “to expand dramatically the scope of prohibited transmissions from ‘bets or wagers . . . on any sporting event or contest’ to *all* ‘bets or wagers,’ or to introduce a counterintuitive disparity between the scope of the statute’s” different prohibitions. 35 Op. O.L.C. ___, at *6. The committee reports, for instance, did not suggest that these changes dramatically expanded the Wire Act’s coverage. Given that such substantial changes “would have significantly altered the scope of the statute,” our 2011 Opinion read the “absence of comment” to be significant. *Id.* at *7.

But we do not share the 2011 Opinion’s confidence that silence in the legislative history on those revisions is so probative. As the Supreme Court recently observed, “if the text is ambiguous, silence in the legislative history cannot lend any clarity,” and “if the text is clear, it needs no repetition in the legislative history.” *Encino Motorcars*, 138 S. Ct. at 1143; see also *Avco Corp. v. U.S. Dep’t of Justice*, 884 F.2d 621, 625 (D.C. Cir. 1989) (“[S]ilence in legislative history is almost invariably ambiguous. If a statute is plain in its words, the silence may simply mean that no one in Congress saw any reason to restate the obvious.”). Here, the text is clear, and thus, even if so inclined, we would not have a justifica-

tion for delving into the Congressional Record to ascertain what individual Members of Congress may have thought at the time. It is the words of the statute that the President signs into law, and in so doing, “it is not to be supposed that . . . the President endorses the whole Congressional Record.” *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 396 (1951) (Jackson, J., concurring). As the Supreme Court recently emphasized, “[i]t is the business of Congress to sum up its own debates in its legislation,’ and once it enacts a statute, ‘we do not inquire what the legislature meant; we ask only what the statute means.’” *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018) (quoting *Schwegmann Bros.*, 341 U.S. at 396 (Jackson, J., concurring) (some internal quotation marks omitted)). Congress left the authoritative record of its deliberations in the text of the statute, and we rely solely upon its plain meaning to govern our interpretation here.¹²

III.

In view of our conclusion that the Wire Act applies to non-sports gambling, the Criminal Division has asked us to revisit the question that our 2011 Opinion did not need to answer, namely whether the 2006 enactment

¹² Even if we were to consider the legislative history, there are multiple inferences one could reasonably draw from the progression of the legislation through Congress. The 2011 Opinion quoted concerns expressed by Senator Kefauver (the leader of the Senate’s 1950s investigation into organized crime), who pressed a Department of Justice witness on why the draft Wire Act did not reach numbers games and other forms of non-sports-based gambling. 35 Op. O.L.C. ___, at *10 n.7. Shortly after that hearing, the Judiciary Committee added the new language to change the prohibitions of the bill to their enacted form; in so doing, it removed the commas that had limited the draft prohibitions to sporting events and contests. Our 2011 Opinion concluded from this chain of events that Congress did not intend that change to extend the Wire Act’s prohibitions to non-sports gambling. *Id.* at *6–7. But one might just as well speculate that the Judiciary Committee made such changes to respond to Senator Kefauver’s urging that the Wire Act reach non-sports gambling. Here then, as in other instances, the legislative record provides grounds for alternative interpretations of what the Members may have intended. *See Exxon Mobil*, 545 U.S. at 568 (The “investigation of legislative history has a tendency to become, to borrow Judge Leventhal’s memorable phrase, an exercise in ‘looking over a crowd and picking out your friends.’” (quoting Patricia Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 Iowa L. Rev. 195, 214 (1983)); *see also* Scalia & Garner at 377 (“With major legislation, the legislative history has something for everyone.”). Rather than relying upon suppositions concerning Members’ intent, however, we view the relevant record to be the unambiguous words of the statute.

of UIGEA modifies the scope of the Wire Act. See Memorandum for John P. Cronan, Principal Deputy Assistant Attorney General, Criminal Division, from David C. Rybicki, Deputy Assistant Attorney General, Criminal Division, *Re: The Interaction Between UIGEA and the Wire Act* at 2 (Aug. 28, 2018). Specifically, the Criminal Division has asked whether, in excluding certain activities from UIGEA’s definition of “unlawful Internet gambling,” UIGEA excludes those same activities from the prohibitions under other federal gambling laws. *Id.* We conclude that it does not.

Congress enacted UIGEA to strengthen the enforcement of existing prohibitions against illegal gambling on the Internet. 31 U.S.C. § 5361(4). UIGEA prohibits anyone “engaged in the business of betting or wagering” from “knowingly accept[ing]” various kinds of payments “in connection with the participation of another person in unlawful Internet gambling.” *Id.* § 5363. UIGEA defines “unlawful Internet gambling” as follows:

IN GENERAL.—The term “unlawful Internet gambling” means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.

Id. § 5362(10)(A). That term, however, “does not include” certain enumerated activities. *Id.* § 5362 (10)(B)–(D). For instance, UIGEA excludes from coverage certain bets or wagers that are “initiated and received or otherwise made exclusively within a single State” and done so in accordance with the laws of such State, even if the routing of those wire transmissions was done in a manner that involved interstate commerce. *Id.* § 5362(10)(B).

UIGEA’s definition of “unlawful Internet gambling” simply does not affect what activities are lawful under the Wire Act. This definition applies only to the “subchapter” in which UIGEA is contained, 31 U.S.C. § 5362, and the Wire Act does not use the term “unlawful Internet gambling” in any event. Our conclusion follows from the plain meaning of the statutory definition, and Congress has confirmed it with a reservation clause stating that “[n]o provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.” *Id.* § 5361(b). UIGEA therefore in no way “alter[s], limit[s], or extend[s]” the existing prohibitions under the Wire Act.

IV.

For the reasons explained, we conclude that our 2011 Opinion conflicts with the plain language of the Wire Act. We emphasize, however, that we employ considerable caution in departing from our prior opinions, and we therefore think it appropriate to explain in detail why reconsideration is warranted here. This Office, exercising authority delegated by the Attorney General, provides binding legal advice within the Executive Branch. See 28 U.S.C. § 511; 28 C.F.R. § 0.25(a); Memorandum for the Attorneys of the Office, from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Best Practices for OLC Legal Advice and Written Opinions* at 1 (July 16, 2010) (“2010 Best Practices Memo”), <https://www.justice.gov/sites/default/files/pages/attachments/2014/07/11/olc-best-practices-2010.pdf>; Memorandum for the Attorneys of the Office, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Best Practices for OLC Opinions* at 1 (May 16, 2005) (“2005 Best Practices Memo”), <https://www.justice.gov/sites/default/files/pages/attachments/2014/07/11/olc-best-practices-2005.pdf>. Although the Judicial Branch’s doctrine of *stare decisis* does not itself apply to the Executive Branch, we embrace the long tradition of general adherence to executive branch legal precedent, reflecting strong interests in efficiency, institutional credibility, and the reasonable expectations of those who have relied on our prior advice. This tradition of respect for Department precedent predates the establishment of this Office and reflects the longstanding practice of Attorneys General in providing legal advice.¹³

¹³ See, e.g., *Import Duties—Warehoused Goods*, 21 Op. Att’y Gen. 23, 24 (1894) (“A [definitional] question once definitely answered by one of my predecessors and left at rest for a long term of years should be reconsidered by me only in a very exceptional case,” and “reconsideration” would only be appropriate if predicate assumptions on which the past advice relied were no longer correct); *Camel’s Hair Noils—Drawback*, 24 Op. Att’y Gen. 53, 55 (1902) (“[Attorney General] Olney’s opinion, although brief, is evidently based on careful consideration of all aspects of the case. It is not perhaps accurate, . . . but I concur in the principle of my predecessor’s ruling, and perceive no sufficient reason to revise the same. A question once definitely answered by one of my predecessors and left at rest for a long term of years should be reconsidered by me only in a very exceptional case.” (internal citations omitted)); see also Trevor W. Morrison, *Stare Decisis in the Office of Legal Counsel*, 110 Colum. L. Rev. 1448, 1471–74 (2010) (discussing the historical practice of *stare decisis* within the Department of Justice).

Reconsidering past opinions without considering these interests “could easily lead to requests for reconsideration of earlier Opinions on other subjects,” thereby undermining the value of our legal advice. Memorandum for the Attorney General, from Malcolm R. Wilkey, Assistant Attorney General, Office of Legal Counsel, *Re: Gifts from Foreign Governments*, CP-58-80 of May 14, 1958, at 3 (May 15, 1958). Accordingly, we “should not lightly depart from such past decisions, particularly where they directly address and decide a point in question.” 2010 Best Practices Memo at 2; *accord* 2005 Best Practices Memo at 2.

We nevertheless have recognized that, “as with any system of precedent, past decisions” of our Office “may be subject to reconsideration and withdrawal in appropriate cases and through appropriate processes.” 2010 Best Practices Memo at 2. We have departed from our prior advice for a range of reasons. In many instances, we have withdrawn precedents when intervening developments in the law appear to cast doubt upon our conclusions.¹⁴ We have also modified earlier advice where the factual predicates have shifted or we have come to a better understanding of them. *See, e.g., Scope of Treasury Department Purchase Rights with Respect to Financing Initiatives of the U.S. Postal Service*, 19 Op. O.L.C. 238, 238, 243, 244 (1995) (upon being asked to “reconsider and rescind” a 1993 opinion, we “reaffirmed and clarified” that opinion but, after gathering information from the agencies and learning that one agency was not operating in the manner anticipated by the statute or by us, we modified one of its conclusions).

In other instances, however, we have reconsidered our advice after identifying errors in the supporting legal reasoning.¹⁵ We have, for exam-

¹⁴ *See, e.g.,* Memorandum for the Files, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, *Re: Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001*, at 2 (Jan. 15, 2009) (“Bradbury Memo on 9/11 Opinions”) (withdrawing certain post-9/11 opinions because, among other things, their legal reasoning had “been overtaken by subsequent decisions of the Supreme Court and by legislation passed by Congress and supported by the President”); *Authority of the Department of the Interior to Provide Historic Preservation Grants to Historic Religious Properties Such as the Old North Church*, 27 Op. O.L.C. 91, 117 (2003) (“Perhaps more important, recent Supreme Court decisions have brought the demise of the ‘pervasively sectarian’ doctrine that comprised the basis . . . the 1995 Opinion of this Office.”).

¹⁵ *See, e.g., Application of Anti-Nepotism Statute to Presidential Appointment in White House*, 41 Op. O.L.C. ___, at *9–14 (Jan. 20, 2017) (describing our past opinions as legally erroneous as an initial matter and overtaken by subsequent developments in the law);

ple, modified our position regarding whether the Appointments Clause applies to private entities who perform functions on behalf of the federal government.¹⁶ And we have revisited precedents that themselves had reversed established positions of the Executive Branch.¹⁷

Several factors justify reconsideration here. Although the 2011 Opinion directly addressed the question now before us, we believe that the 2011 Opinion devoted insufficient attention to the statutory text and applicable canons of construction, which we believe compel the conclusion that the prohibitions of the Wire Act are not uniformly limited to sports gambling. Furthermore, the 2011 Opinion is of relatively recent vintage and departed

Definition of Torture under 18 U.S.C. §§ 2340–2340A, 28 Op. O.L.C. 297, 304 n.17 (2004) (“We do not believe [these statutory sources] provide a proper guide for interpreting ‘severe pain’ in the very different context of the prohibition against torture in sections 2340–2340A.”); *Reconsideration of Applicability of the Davis-Bacon Act to the Veteran Administration’s Lease of Medical Facilities*, 18 Op. O.L.C. 109 (1994) (reversing the conclusions reached in *Applicability of the Davis-Bacon Act to the Veterans Administration’s Lease of Medical Facilities*, 12 Op. O.L.C. 89 (1988)); *Authority of the Federal Bureau of Investigation To Override International Law In Extraterritorial Law Enforcement Activities*, 13 Op. O.L.C. 163 (1989) (disapproving the conclusion reached in *Extraterritorial Apprehension by the Federal Bureau of Investigation*, 4B Op. O.L.C. 543 (1980), that the FBI lacked authority to apprehend a fugitive in a foreign state in a manner contrary to customary international law).

¹⁶ Compare *The Constitutional Separation of Powers Between the President and Congress*, 20 Op. O.L.C. 124, 146 n.65 (1996) (“disapprov[ing of] the Appointments Clause analysis and conclusion of an earlier opinion of this Office,” and finding that the Appointments Clause does not apply to private entities), with *Officers of the United States Within the Meaning of the Appointments Clause*, 31 Op. O.L.C. 73, 121 (2007) (reversing the 1996 opinion’s conclusion that the Appointments Clause does not apply to private entities).

¹⁷ See, e.g., *Validity of Statutory Rollbacks as a Means of Complying with the Ineligibility Clause*, 33 Op. O.L.C. ___, at *1 (May 20, 2009) (reconsidering 1987 OLC opinion that “was not in accord with the prior interpretations of this Clause by the Department of Justice and has not consistently guided subsequent practice of the Executive Branch” and did not “reflect[] the best reading of the Ineligibility Clause” of the Constitution); Memorandum for the Files, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: *October 23, 2001 OLC Opinion Addressing the Domestic Use of Military Force to Combat Terrorist Activities* at 2 (Oct. 6, 2008) (overturning post-9/11 precedent that had departed from “the longstanding interpretation of the Executive Branch,” under which “any particular application of the Insurrection Act to authorize the use of the military for law enforcement purposes would require the presence of an actual obstruction of the execution of federal law or a breakdown in the ability of state authorities to protect federal rights”).

from established Department practice, which included successful prosecutions under a broader understanding of the Wire Act and repeated representations to Congress about the Department's views. *See supra* Part I. The Department's position prior to our 2011 Opinion, indeed, may have informed Congress's action in 2006 in enacting the UIGEA, which prohibited the acceptance of payment in connection with "unlawful Internet gambling," but expressly declined to alter, limit, or extend any federal laws "prohibiting, permitting, or regulating gambling within the United States." 31 U.S.C. § 5361(b).

Reaching a contrary conclusion from our prior opinion will also make it more likely that the Executive Branch's view of the law will be tested in the courts. We have sometimes relied on that likelihood in considering whether the Executive should decline to enforce or defend unconstitutional statutes. *See Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 Op. O.L.C. 199, 201 (1994); *Recommendation that the Department of Justice Not Defend the Constitutionality of Certain Provisions of the Bankruptcy Amendments and Federalist Judgeship Act of 1984*, 8 Op. O.L.C. 183, 193–94 (1984). We likewise believe it relevant in determining whether to depart from our precedent. Under our 2011 Opinion, the Department of Justice may not pursue non-sports-gambling-related prosecutions under the Wire Act. But under the conclusion we adopt today, such prosecutions may proceed where appropriate, and courts may entertain challenges to the government's view of the statute's scope in such proceedings. While the possibility of judicial review cannot substitute for the Department's independent obligation to interpret and faithfully execute the law, that possibility does provide a one-way check on the correctness of today's opinion, which weighs in favor of our change in position.

We acknowledge that some may have relied on the views expressed in our 2011 Opinion about what federal law permits. Some States, for example, began selling lottery tickets via the Internet after the issuance of our 2011 Opinion.¹⁸ But in light of our conclusion about the plain language of

¹⁸ *See, e.g.*, John Byrne, *Quinn Says Online Lottery Sales Could Start in Spring*, Chi. Tribune (Dec. 27, 2011), <http://www.chicagotribune.com/news/local/politics/chi-quinn-says-online-lottery-sales-could-start-in-spring-20111227-story.html> (explaining that "following a U.S. Justice Department ruling that the Internet sales [of state lottery tickets] are legal," the Governor of Illinois planned to move forward with plans to sell lottery tickets on the Internet); State of Illinois, Office of Management and Budget, Illinois

the statute, we do not believe that such reliance interests are sufficient to justify continued adherence to the 2011 opinion.¹⁹ Moreover, if Congress finds it appropriate to protect those interests, it retains ultimate authority over the scope of the statute and may amend the statute at any time, either to broaden or narrow its prohibitions.

V.

We conclude that the prohibitions of 18 U.S.C. § 1084(a) are not uniformly limited to gambling on sporting events or contests. Only the second prohibition of the first clause of section 1084(a), which criminalizes transmitting “information assisting in the placing of bets or wagers on any sporting event or contest,” is so limited. The other prohibitions apply to non-sports-related betting or wagering that satisfy the other elements of section 1084(a). We also conclude that section 1084(a) is not modified by UIGEA. This opinion supersedes and replaces our 2011 Opinion on the subject.

STEVEN A. ENGEL
Assistant Attorney General
Office of Legal Counsel

Performance Reporting System, Agency Performance Metric Reports FY18 Quarter 4 (Aug. 14, 2018 3:53 PM), https://www.illinois.gov/gov/budget/IPRS%20Reports/458_Department_of_the_Lottery.pdf (“Internet sales” of Illinois lottery tickets were about \$20 million in FY 2017 and in FY 2018).

¹⁹ An individual who reasonably relied upon our 2011 Opinion may have a defense for acts taken in violation of the Wire Act after the publication of that opinion and prior to the publication of this one. *See, e.g., United States v. Pa. Indus. Chem. Corp.*, 411 U.S. 655, 673–74 (1973); *Cox v. Louisiana*, 379 U.S. 559, 568–69 (1965). The reliance interest implicit in any such defense, however, does not bear upon our reconsideration of the 2011 Opinion.

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C.R.S.A. T. 12, Art. 15.5, Refs & Annos
[Currentness](#)

Editors' Notes

REPEAL

<For repeal of this article, see [§ 12-15.5-112](#).>

C. R. S. A. T. 12, Art. 15.5, Refs & Annos, CO ST T. 12, Art. 15.5, Refs & Annos
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Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-101

§ 12-15.5-101. Short title

Effective: August 10, 2016

[Currentness](#)

The short title of this article is the “Fantasy Contests Act”.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-101, CO ST § 12-15.5-101

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C.R.S.A. § 12-15.5-102

§ 12-15.5-102. Definitions

Effective: August 10, 2016

[Currentness](#)

As used in this article, unless the context otherwise requires:

- (1) “Confidential information” means information related to the play of a fantasy contest by fantasy contest players obtained as a result of or by virtue of a person's employment.
- (2) “Director” means the director of the division of professions and occupations within the department of regulatory agencies or his or her designee.
- (3) “Entry fee” means cash or cash equivalents that are required to be paid by a fantasy contest player to a fantasy contest operator in order to participate in a fantasy contest.
- (4) “Fantasy contest” means a fantasy or simulated game or contest in which:
 - (a) The value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest;
 - (b) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of athletes in fully completed sporting events; except that a sporting event that has been called or suspended due to weather or any other natural or unforeseen event is considered fully completed; and
 - (c) Winning outcomes are not based on randomized or historical events or on the score, point spread, or any performance of any single actual sports team or combination of such teams or solely on any single performance of an individual athlete in any single actual sporting event.
- (5) “Fantasy contest operator” means a person or entity that offers fantasy contests with an entry fee for a cash prize to members of the public.

(6) “Fantasy contest player” means a person who participates in a fantasy contest with an entry fee offered by a fantasy contest operator.

(7) “Small fantasy contest operator” means a fantasy contest operator that has no more than seven thousand five hundred fantasy contest players in Colorado with active accounts who participate in fantasy contests with an entry fee.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-102, CO ST § 12-15.5-102

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C.R.S.A. § 12-15.5-103

§ 12-15.5-103. Fantasy contests--director--rules

Effective: August 10, 2016

[Currentness](#)

(1) The director shall promulgate reasonable rules for the identification, licensing, and fingerprinting of applicants for licensure.

(2) The director may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings.

Credits

Added by [Laws 2016, Ch. 358, § 1](#), eff. Aug. 10, 2016.

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-103, CO ST § 12-15.5-103

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C.R.S.A. § 12-15.5-104

§ 12-15.5-104. Registration

Effective: August 10, 2016

[Currentness](#)

(1) On and after July 1, 2017, an entity shall not operate as a small fantasy contest operator unless the entity is registered with the director. On and after July 1, 2017, an individual who is not operating through an entity shall not operate as a small fantasy contest operator unless the individual is registered with the director.

(2) A small fantasy contest operator is subject to all of the provisions of this article; except that:

(a) A small fantasy contest operator need only be registered, not licensed, in order to offer fantasy contests for a fee, a small fantasy contest operator is not subject to the requirements of [section 12-15.5-106\(2\)](#) regarding an annual audit, and a small fantasy operator is subject to [section 12-15.5-105\(3\)](#); and

(b) The director shall:

(I) Establish a registration process for small fantasy contest operators; and

(II) Not initiate an investigation of a potential violation of this article by a small fantasy contest operator except upon the filing of a complaint with the director that the director reasonably believes warrants investigation.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-104, CO ST § 12-15.5-104

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C.R.S.A. § 12-15.5-105

§ 12-15.5-105. Licensing

Effective: August 10, 2016

[Currentness](#)

(1) On and after July 1, 2017, an entity shall not operate as a fantasy contest operator unless the entity is licensed by the director. On and after July 1, 2017, an individual who is not operating through an entity shall not operate as a fantasy contest operator unless the individual is licensed as a fantasy contest operator by the director. An applicant for licensure must pay license, renewal, and reinstatement fees established by the director consistent with [section 24-34-105, C.R.S.](#), and other authorities. The fees must be sufficient to cover the division's direct and indirect costs in administering this article. A licensee must renew the license in accordance with a schedule established by the director pursuant to [section 24-34-102\(8\), C.R.S.](#) If a licensee fails to renew the license pursuant to the schedule established by the director, the license expires and the entity shall not practice under this article until the reinstatement fees are paid and the director reinstates the license. A person that continues to practice once a license has expired is subject to the penalties provided in this article and [section 24-34-102\(8\), C.R.S.](#)

(2) Applications for licensure as a fantasy contest operator must:

(a) Be verified by the oath or affirmation of such person or persons as the director may prescribe;

(b) Be made to the director on forms prepared and furnished by the director; and

(c) Set forth such information as the director may require to enable the director to determine whether an applicant meets the requirements for licensure under this article. The information must include:

(I) The name and address of the applicant;

(II) If a partnership, the names and addresses of all of the partners, and if a corporation, association, or other organization, the names and addresses of the president, vice president, secretary, and managing officer, together with all other information deemed necessary by the director; and

(III) A designation of the responsible party who is the agent for the licensee for all communications with the director.

(3)(a) An applicant may not be eligible for licensure or registration as a fantasy contest operator or licensure renewal if the applicant or any of its officers, directors, or general partners has been convicted of or has entered a plea of nolo contendere or guilty to a felony.

(b) The director is governed by [section 24-5-101, C.R.S.](#), in considering the conviction or plea of nolo contendere to a felony for any individual subject to a criminal history record check pursuant to subsection (4) of this section.

(4) With the submission of an application for a license granted pursuant to this section, each applicant and its officers, directors, and general partners shall submit a complete set of his or her fingerprints to the Colorado bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The director may acquire a name-based criminal history record check for a person who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. A person who has previously submitted fingerprints for state or local licensing purposes may request the use of the fingerprints on file. The director shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a license pursuant to this section. The director may verify the information an applicant is required to submit. The applicant shall pay the costs associated with the fingerprint-based criminal history record check to the Colorado bureau of investigation.

(5) A fantasy contest operator shall not conduct, operate, or offer a fantasy contest that:

(a) Utilizes:

(I) Video or mechanical reels or symbols or any other depictions of slot machines, poker, blackjack, craps, or roulette; or

(II) Any device that qualifies as or replicates games that constitute limited gaming under [section 9 of article XVIII of the Colorado constitution](#); or

(b) Includes a university, college, high school, or youth sporting event.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-105, CO ST § 12-15.5-105

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

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West's Colorado Revised Statutes Annotated
Title 12. Professions and Occupations (Refs & Annos)
General
Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-106

§ 12-15.5-106. Consumer protections

Effective: August 10, 2016

[Currentness](#)

(1) A fantasy contest operator, including a small fantasy contest operator, shall implement commercially reasonable procedures for fantasy contests with an entry fee, which procedures are designed to:

(a) Prevent employees of the fantasy contest operator, including a small fantasy contest operator, and relatives living in the same household as such employees, from competing in any fantasy contests offered by any fantasy contest operator in which the operator offers a cash prize;

(b) Prevent sharing of confidential information that could affect such fantasy contest play with third parties until the information is made publicly available;

(c) Verify that a fantasy contest player in such a fantasy contest is eighteen years of age or older;

(d) Ensure that individuals who participate or officiate in a game or contest that is the subject of such a fantasy contest will be restricted from entering such a fantasy contest that is determined, in whole or in part, on the accumulated statistical results of a team of individuals in the game or contest in which they are a player or official;

(e) Allow individuals to restrict themselves from entering such a fantasy contest upon request and provide reasonable steps to prevent the person from entering such fantasy contests offered by the fantasy contest operator, including a small fantasy contest operator;

(f) Disclose the number of entries that a fantasy contest player may submit to each such fantasy contest, provide reasonable steps to prevent players from submitting more than the allowable number, and, in any contest involving at least one hundred one entries, not allow a player to submit more than the lesser of three percent of all entries or one hundred fifty entries;

(g) Segregate fantasy contest player funds from operational funds and maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination thereof, in the amount of the deposits made to the accounts of fantasy contest players for the benefit and protection of the funds held in such accounts;

(h) Distinguish highly experienced players and beginner players and ensure that highly experienced players are conspicuously identified as such to all players;

(i) Prohibit the use of scripts in fantasy contests that give a player an unfair advantage over other players and make all authorized scripts readily available to all fantasy contest players;

(j) Clearly and conspicuously disclose all rules that govern its contests, including the material terms of each promotional offer at the time the offer is advertised; and

(k) Use technologically reasonable measures to limit each fantasy contest player to one active account with that operator.

(2) A fantasy contest operator offering fantasy contests in this state shall:

(a) Contract with a third party to annually perform an independent audit, consistent with the standards established by the public company accounting oversight board, to ensure compliance with this article; and

(b) Submit the results of the audit to the director.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-106, CO ST § 12-15.5-106

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

West's Colorado Revised Statutes Annotated
Title 12. Professions and Occupations (Refs & Annos)
General
Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-107

§ 12-15.5-107. Duty to maintain records

Effective: August 10, 2016

[Currentness](#)

Each fantasy contest operator shall keep daily records of its operations and shall maintain the records for at least three years. The records must sufficiently detail all financial transactions to determine compliance with the requirements of this article and must be available for audit and inspection by the director during the fantasy contest operator's regular business hours.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-107, CO ST § 12-15.5-107

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

West's Colorado Revised Statutes Annotated
Title 12. Professions and Occupations (Refs & Annos)
General
Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-108

§ 12-15.5-108. Authorization to conduct fantasy contests

Effective: October 1, 2018

[Currentness](#)

(1) Fantasy contests are authorized and may be conducted by a fantasy contest operator at a licensed gaming establishment, as that term is defined in [section 44-30-103\(18\)](#). A gaming retailer, as that term is defined in [section 44-30-103\(27\)](#), may conduct fantasy contests if the gaming retailer is licensed as a fantasy contest operator.

(2) Fantasy contests are authorized and may be conducted by a fantasy contest operator at a licensed facility at which pari-mutuel wagering, as that term is defined in [section 44-32-102\(18\)](#), may occur. An operator of a class B track, as that term is defined in [section 44-32-102\(3\)](#), may conduct fantasy contests if the operator is licensed as a fantasy contest operator.

(3) A fantasy contest conducted in compliance with this article does not violate article 10 or 10.5 of title 18, C.R.S.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#). Amended by [Laws 2018, Ch. 14, § 7, eff. Oct. 1, 2018](#); [Laws 2018, Ch. 26, § 5, eff. Oct. 1, 2018](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-108, CO ST § 12-15.5-108

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

West's Colorado Revised Statutes Annotated
Title 12. Professions and Occupations (Refs & Annos)
General
Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-109

§ 12-15.5-109. Grounds for discipline

Effective: August 10, 2016

[Currentness](#)

(1) The director may deny, suspend, or revoke a license or registration or place on probation or issue a letter of admonition to a licensee or registrant if the fantasy contest operator, including a small fantasy contest operator:

(a) Violates any order of the director or any provision of this article or the rules established under this article;

(b) Fails to meet the requirements for licensure under this article; or

(c) Uses fraud, misrepresentation, or deceit in applying for or attempting to apply for licensure or registration or otherwise in operating or offering to operate a fantasy contest.

(2) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person is operating or offering to operate a fantasy contest without having obtained a registration or license, the director may issue an order to cease and desist the activity. The director shall set forth in the order the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unauthorized practices immediately cease. Within ten days after service of the order to cease and desist pursuant to this subsection (2), the person may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearing shall be conducted pursuant to [section 24-4-105, C.R.S.](#)

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-109, CO ST § 12-15.5-109

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West's Colorado Revised Statutes Annotated
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Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-110

§ 12-15.5-110. Civil fines

Effective: August 10, 2016

[Currentness](#)

In addition to any other remedy provided by law, a fantasy contest operator, or an employee or agent thereof, who violates this article is subject to a civil fine of not more than one thousand dollars for each such violation, which the state treasurer shall credit to the general fund. The director may file a civil action to collect the fine.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-110, CO ST § 12-15.5-110

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West's Colorado Revised Statutes Annotated
Title 12. Professions and Occupations (Refs & Annos)
General
Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-111

§ 12-15.5-111. Applicability

Effective: August 10, 2016

[Currentness](#)

This article applies to conduct occurring on or after July 1, 2017.

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016](#).

Editors' Notes

REPEAL

<For repeal of this section, see [§ 12-15.5-112](#).>

C. R. S. A. § 12-15.5-111, CO ST § 12-15.5-111

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

West's Colorado Revised Statutes Annotated
Title 12. Professions and Occupations (Refs & Annos)
General
Article 15.5. Fantasy Contests (Refs & Annos)

C.R.S.A. § 12-15.5-112

§ 12-15.5-112. Repeal of article

Effective: August 10, 2016

[Currentness](#)

This article is repealed, effective September 1, 2020. Before its repeal, this article is scheduled for review in accordance with [section 24-34-104, C.R.S.](#)

Credits

Added by [Laws 2016, Ch. 358, § 1, eff. Aug. 10, 2016.](#)

Editors' Notes

REPEAL

<For repeal of this section, see its own provisions.>

C. R. S. A. § 12-15.5-112, CO ST § 12-15.5-112

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts

CMR T. 940, Ch. 34.00, Refs & Annos

REGULATORY AUTHORITY

940 CMR 34.00: [M.G.L. c. 93A, § 2.](#)

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.01

34.01: Purpose

940 CMR 34.00 is intended to protect Massachusetts consumers who play Daily Fantasy Sports contests for prizes from unfair and deceptive acts and practices that may arise in the gaming process. 940 CMR 34.00 is also intended to protect the families of persons who play Daily Fantasy Sports to the extent that they may be affected by unfair and deceptive practices that lead to unaffordable losses.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.01, 940 MA ADC 34.01

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.02

34.02: Scope

940 CMR 34.00 defines unfair or deceptive acts or practices that violate [M.G.L. c. 93A, § 2\(a\)](#), but is not intended to define all Daily Fantasy Sports activities that violate the statute. Daily Fantasy Sports acts or practices not specifically proscribed in 940 CMR 34.00 are not to be treated, by implication, as permitted under M.G.L. c. 93A or other applicable law. Nor shall 940 CMR 34.00 be interpreted to limit claims available under M.G.L. c. 93A and other law prior to April 8, 2016.

940 CMR 34.00 applies to acts or practices of Daily Fantasy Sports Operators doing business in Massachusetts.

Nothing in 940 CMR 34.00 may be interpreted as authorizing a wager, bet, or gambling activity that is prohibited by law.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.02, 940 MA ADC 34.02

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.03

34.03: Definitions

AGO. The Commonwealth of Massachusetts Office of the Attorney General.

Beginner. Any DFS player who has entered fewer than 51 contests offered by a single DFSO who does not meet the definition of Highly-experienced Player by virtue of having won three DFS contest Prizes of \$1,000 or more.

Daily Fantasy Sports or DFS. Any contest in which the offer or award of a Prize is connected to the statistical performance or finishing position of one or more persons participating in an underlying amateur or professional competition, but does not include offering or awarding a Prize to the winner of or participants in the underlying competition itself.

Daily Fantasy Sports Operator or DFSO. Any Enterprise that offers, by means of the Internet or smart phone application (or via other electronic or digital media or communication technologies), more than ten Daily Fantasy Sports contests each month to persons who include residents of Massachusetts. An Enterprise is not a Daily Fantasy Sports Operator if it offers only Exempt Contests.

DFS Consumer. Any individual or corporate resident of the Commonwealth of Massachusetts with an account to enter contests on a DFS Contest Platform.

DFS Contest Platform. Any website, smart phone application or other portal providing access to a DFS contest.

DFSO Contractor. Any person or corporate entity who works pursuant to an independent contract with a DFSO and who has regular access to non-public portions of the DFSO's office, to information on the DFSO's computer network that is not publicly available, or to DFSO proprietary, information that may affect gameplay.

DFSO Promoter. Any person or corporate entity, who is not a DFSO Contractor as that term is defined herein, that regularly provides advice on gameplay to other DFS players pursuant to an agreement with a DFSO or pursuant to a DFSO's sponsorship.

Enterprise. Any business organization including, without limitation, its subsidiaries and parent entities, its owners, officers, partners and employees as individuals, as well as other related entities that share common ownership, control or management.

Exempt Contests. A DFS contest is an Exempt Contest if it meets one or more of the following criteria:

- (a) No Prize is awarded other than game-based virtual currency that cannot be redeemed for cash, merchandise or something else that has value outside the context of gameplay;
- (b) The contest is free to all participants;
- (c) The Enterprise offering the contest receives no compensation in connection with the contest regardless of the outcome of the contest;
- (d) The Prize or Prizes offered are of no greater value than the lowest individual fee charged to a single participant for entering or participating in the contest; or
- (e) The contest encompasses an entire season of the activity in which the underlying competition is being conducted, consists of at least 150 underlying competitions, and the Prize or Prizes awarded, if any, are determined by agreement of the participants only in order to distribute fully the participants' contributions to a fund established to award a Prize or Prizes for the contest.

Highly-experienced Player. Any DFS player who has:

- (a) entered more than 1,000 contests offered by a single DFSO; or
- (b) has won more than three DFS contest Prizes valued at \$1,000 or more.

Once a DFS player is classified as Highly-experienced Player, a player will remain classified as such.

Minors. Persons younger than 21 years old.

Prize. Anything of monetary value, including but not limited to, money, contest credits, merchandise, or admission to another contest in which a Prize may be awarded.

Prominently Publish. Material will be considered prominently published within the meaning of this regulation if it is placed, directly or *via* link, on one or more dashboards or on similar visualization tools that are properly labeled and clearly accessible from the home page of each of a DFSO's Contest Platforms.

Script. Commands that a DFS-related computer program can execute that are created by DFS players (or by third parties for the use of DFS players) to automate processes on a DFS Contest Platform.

Segregated Account. A financial account that segregates funds that are owned by DFS Consumers and that, by its terms, is restricted to funds owned by DFS players in the United States, such that the DFSO's operational funds may not be commingled.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.03, 940 MA ADC 34.03

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.04

34.04: Gameplay by Minors: Prohibition of Games Based on Student Sporting Events

With respect to DFS Consumers and to any other person present in Massachusetts:

(1) No Gameplay by Minors. A DFSO shall not allow a Minor to participate in any DFS contest, whether or not a Prize is offered in that contest.

(2) Refunds of Deposits by Minors. A DFSO shall promptly refund any money held in a Minor's account, whether or not the Minor has engaged in or attempted to engage in gameplay. A DFSO may refuse to award a Prize to a Minor upon a good-faith determination, following reasonable investigation, that the Minor misrepresented his or her age in order to enter the DFS contest, provided, however, that such Prize must then be awarded to another participant in the contest who would have won the Prize had the Minor not participated.

(3) No DFS Games Based on Amateur Sporting Events. DFSOs shall not permit entry in DFS contests that include amateur, college, high school or student sporting events.

(4) Parental Controls. DFSOs shall make available, Prominently Publish and facilitate parental control procedures to allow parents or guardians to exclude Minors from access to any DFS Contest Platform.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.04, 940 MA ADC 34.04

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Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.05

34.05: Protection of Consumer Funds on Deposit and Compliance with Data Security Requirements

(1) Data Security. DFSOs shall comply with all applicable state and federal requirements for data security.

(2) Protections for DFS Accounts.

(a) Funds in DFS Consumer accounts must either be held:

1. in trust for the DFS Consumer in a Segregated Account; or

2. in a special purpose Segregated Account that is maintained and controlled by a properly constituted corporate entity that is not the DFSO and whose governing board includes one or more corporate directors who are independent of the DFSO and of any corporation related to or controlled by the DFSO. Said corporate entity must require a unanimous vote of all corporate directors to file bankruptcy and must have articles of incorporation that prohibit commingling of funds with those of the DFSO except as necessary to reconcile the accounts of DFS Consumers with sums owed by those Consumers to the DFSO. Said special purpose corporate entity must also be:

a. Restricted from incurring debt other than to DFS players pursuant to the rules that govern their accounts as consumers of DFS contests;

b. Restricted from taking on obligations of the DFSO other than obligations to DFS players pursuant to the rules that govern their accounts as consumers of DFS contests; and

c. Prohibited from dissolving, merging or consolidating with another company (other than a special purpose corporate entity established by another DFSO that meets the requirements of this section) while there are unsatisfied obligations to DFS players including, without limitation, to DFS Consumers.

(b) DFSOs shall implement and Prominently Publish procedures that:

1. Prevent unauthorized withdrawals from DFS Consumer accounts by DFSOs or others;

2. Make clear that the funds in the Segregated Account do not belong to the DFSO and are not available to creditors other than the DFS Consumer whose funds are being held;

3. Prevent commingling of funds in the Segregated Account with other funds including, without limitation, funds of the DFSO;

4. Establish a protocol, consistent with [940 CMR 34.16](#), for responding to and reporting on complaints by DFS Consumers that their accounts have been misallocated, compromised or otherwise mishandled; and

5. Establish a protocol by which DFS Consumers can withdraw funds maintained in their accounts, whether such accounts are open or closed. Such requests for withdrawals must be honored by the later of five business days of the request or ten business days of submission of any tax reporting paperwork required by law, unless the DFSO believes in good faith that the DFS Consumer engaged in either fraudulent conduct or other conduct that would put the DFSO in violation of this regulation, in which case the DFSO may decline to honor the request for withdrawal for a reasonable investigatory period until its investigation is resolved if it provides notice of the nature of the investigation to the DFS Consumer. For the purposes of [940 CMR 34.05\(2\)\(b\)5.](#), a request for withdrawal will be considered honored if it is processed by the DFSO but delayed by a payment processor, credit card issuer or by the custodian of a financial account.

(3) Procedures for Closing Accounts at the Request of a DFS Consumer. DFSOs shall implement and Prominently Publish procedures that allow any DFS Consumer to permanently close an account at any time and for any reason. The procedures will allow for cancellation by any means including, without limitation, by a DFS Consumer on any DFS Platform used by that DFS Consumer to make deposits into a DFS account.

(4) Payment of Prizes on Closed Accounts. If a Prize is awarded to a DFS Consumer with a closed account, that Prize, to the extent it consists of funds, shall be distributed by the DFSO within five business days, provided, however, if an account is closed based on the DFSO's good faith belief, after investigation, that the DFS Consumer has engaged in fraud or has attempted to engage in contest play that would put the DFSO in violation of [940 CMR 34.00](#), such Prize may be withheld, provided that the Prize is then awarded to another participant in the contest who would have won the Prize had that DFS Consumer not participated.

(5) Unclaimed Funds in DFS Consumer Accounts.

(a) Subject to the provisions of [M.G.L. c. 200A, §§ 7 and 8A](#), and [960 CMR 4.00: Procedures for the Administration of Abandoned Property](#), if a DFSO Consumer account remains unclaimed for three years after the balances are payable or deliverable to the DFS Consumer, the DFSO shall presume the account to be abandoned.

(b) The DFSO shall report and deliver all DFS Consumer accounts presumed abandoned to the Treasurer of the Commonwealth as provided for by [M.G.L. c. 200A, §§ 7 and 8A](#), and [960 CMR 4.03: Reporting Abandoned Property](#).

(c) Subject to M.G.L. c. 200A, 7A and [960 CMR 4.03: Reporting Abandoned Property](#), at least 60 days prior to reporting any DFS Consumer accounts to the Treasurer, the DFSO shall provide notice to the Consumer's last known address and conduct due diligence to locate the DFS Consumer.

(6) Publication of Terms, Conditions, and Rules. A DFSO shall Prominently Publish all contractual terms and conditions and rules of general applicability that affect a DFS Consumer's account. Presentation of such terms, conditions, and rules at the time of on-boarding a new DFS Consumer will not suffice.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.05, 940 MA ADC 34.05

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.06

34.06: Limitation to One Account per DFS Player

(1) One Account per Player. DFSOs shall not allow a DFS player to establish more than one username or more than one account.

(2) Identification of Players. DFSOs shall take commercially and technologically reasonable measures to verify DFS players' true identities and addresses and shall use such information, at a minimum, to enforce 940 CMR 34.06(1).

(3) Termination of Players that Establish More than One Account. DFSOs shall implement and Prominently Publish procedures to terminate all accounts of any DFS player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as proxy. Such procedures may allow a DFS player that establishes or seeks to establish more than one username or more than one account to retain one account provided that the DFSO investigates and makes a good-faith determination that the DFS player's conduct was not intended to obtain a competitive advantage.

(4) No Proxy Servers. DFSOs shall not allow DFS players to use a proxy server for the purpose of misrepresenting their location in order to engage in DFS contest play.

(5) No Proxy Players. DFSOs shall take commercially and technologically reasonable measures to prevent one DFS player from acting as a proxy for another. Such measures shall include, without limitation, use of geolocation technologies to prevent simultaneous logins to a single account from geographically inconsistent locations.

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Mass. Regs. Code tit. 940, § 34.06, 940 MA ADC 34.06

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.07

34.07: Requirements for Fair and Truthful Advertising

(1) Compliance with Existing Advertising Regulations. DFSOs shall comply with the following regulations promulgated by the AGO to the extent they concern advertising and apply to the DFS business model: 940 CMR 3.00: *General* and 6.00: *Retail Advertising*.

(2) No Depiction of Minors. DFSO advertisements shall not depict:

(a) Minors (other than professional athletes who may be Minors);

(b) students;

(c) schools or colleges; or

(d) school or college settings, provided, however, that incidental depiction of non-featured Minors (*e.g.*, as a face in a crowd) will not be a violation of 940 CMR 34.07(2).

(3) No Endorsement by Minors, College Athletes, Colleges, or College Athletic Associations. DFSO advertisements shall not state or imply endorsement by:

(a) Minors (other than professional athletes who may be Minors);

(b) collegiate athletes;

(c) colleges; or

(d) college athletic associations.

(4) Advertisements to Include Information to Promote Responsible Gaming. DFSO advertisements in published media (*e.g.*, print, television, radio, Internet and smartphone applications) shall include information concerning assistance available to problem gamblers or shall direct consumers to a reputable source for such information. If an advertisement is not of sufficient size or duration to reasonably

permit inclusion of such information, that advertisement shall refer to a website or application that does prominently include such information.

(5) Limitation on Representations about Winnings. Any representation concerning winnings shall be accurate, not misleading, and capable of substantiation at the time the representation is made. Under 940 CMR 34.00, a DFSO advertisement is misleading if it makes representations about average winnings without equally prominently representing the average net winnings of all players.

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Mass. Regs. Code tit. 940, § 34.07, 940 MA ADC 34.07

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Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.08

34.08: Restrictions on Advertising to Minors or at Schools or School Sporting Events

(1) No Advertisements Targeted to Minors. DFSOs shall not advertise in publications or other media in Massachusetts that are aimed exclusively or primarily at Minors.

(2) No Promotional Activities at Schools or Colleges. DFSOs shall not advertise or run promotional activities at elementary or secondary schools or on college campuses in Massachusetts.

(3) No Promotion in Massachusetts of DFS Contests that Include Amateur, College, High School or Student Sporting Events. DFSOs shall not run promotional activities in Massachusetts for games based on amateur, college, high school or student sporting events.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.08, 940 MA ADC 34.08

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.09

34.09: Promotional Offers

(1) Compliance with Existing Law on Promotional Offers. A DFSO's promotional offers shall comply with [940 CMR 3.13\(3\): Deceptive Use of "Loss Leaders"](#) and 6.08: *Prizes* excepting 6.08(3)(b) and (c), (5)(b) and (c) and (6).

(2) Pre-disclosure of Terms of Promotional Offers. DFSOs shall fully and accurately disclose the material terms of all promotional offers at the time such offers are advertised and provide full disclosures of the terms of and limitations on the offer before the DFS Consumer provides anything of value in exchange for the offer. If the material terms of a promotional offer cannot be fully and accurately disclosed within the constraints of a particular advertising medium (*e.g.*, on a billboard), the promotional offer may not be advertised in that medium.

(3) Limitation of Delay of Implementation of Promotional Offers Available to New Customers. No promotional offer available to new DFS Consumers may contain terms that delay its full implementation by the DFSO for a period of longer than 90 days, regardless of the amount of gameplay in that period by the DFS Consumer.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.09, 940 MA ADC 34.09

Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.10

34.10: Protections for Problem Gamers

(1) Self-exclusion. DFSOs shall honor requests from DFS Consumers to self-exclude from all contests, to set DFS Contest entry limits, to limit play to contests with contest fees below an established limit, or to set self-imposed deposit limits.

(a) DFSOs shall implement and Prominently Publish procedures for DFS Consumers to implement such restrictions.

(b) Such procedures must include, at a minimum, opportunities to self-exclude or to set limits on any DFS Platform used by that DFS Consumer to make deposits into a DFS account and must also include options to set pop-up warnings concerning excessive DFS Contest entries and options to implement DFSO enforced timeouts.

(c) DFS Consumers shall have the option to adjust these limits to make them more restrictive of gameplay as often as they like, but shall not have the option to make limits less restrictive of gameplay within 90 days of setting such limits.

(2) Restriction on Direct Marketing to Excluded DFS Consumers. DFSOs shall not market a contest by phone or email, or by knowingly directing any form of individually targeted advertisement or marketing material to a DFS Consumer if the player is self-excluded or otherwise barred from playing in that contest.

(3) Publication of Sources of Assistance to Problem Gamers. DFSOs shall Prominently Publish a description of opportunities for problem gamers to receive assistance or which direct players to a reputable source, accessible in Massachusetts, for such information.

(4) Employee Training on Problem Gaming. DFSOs shall train employees on problem gaming. Such training shall include training on DFSO policies and best practices for identifying and assisting customers who may be problem gamers.

(5) Requests for Exclusion Made by Third Parties. DFSOs shall develop and Prominently Publish procedures for honoring requests made by third parties to exclude or set deposit or loss limits for DFS Consumers.

(a) These procedures shall include provisions for honoring requests to exclude DFS Consumers for whom the requestor can provide documentary evidence of sole or joint financial responsibility for the source of any funds deposited with a DFSO for gameplay, including:

1. proof that the requestor is jointly obligated on the credit or debit card associated with the DFS Consumer's account;
2. proof of legal dependency of the DFS Consumer on the requestor under state or federal law; and
3. proof of the existence of a court order that makes the requestor wholly or partially obligated for the debts of the person for whom exclusion is requested.

(b) The procedures established under this subsection shall also provide for exclusion in situations in which the requestor can establish the existence of a court order requiring the DFS Consumer to pay unmet child support obligations.

(6) Limitations on Consumer Deposits. A DFSO shall not allow a DFS Consumer to deposit more than \$1,000 in any calendar month, provided however that a DFSO may establish and Prominently Publish procedures for temporarily or permanently increasing a DFS Consumer's deposit limit, at the request of the DFS Consumer, above \$1,000 per calendar month.

(a) If established by a DFSO, such procedures shall include evaluation of information, including income or asset information, sufficient to establish that the player can afford losses that might result from gameplay at the deposit limit level requested.

(b) When a temporary or permanent deposit level limit increase is approved, the DFSO's procedures shall provide for annual evaluation of information, including income or asset information, sufficient to establish a player's financial ability to afford losses at the deposit limit level in place. Absent such evaluation, the temporary or permanent deposit level increase shall not be extended.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.10, 940 MA ADC 34.10

Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.11

34.11: Prohibition on Extensions of Credit

DFSOs shall not extend credit to DFS Consumers.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.11, 940 MA ADC 34.11

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.12

34.12: Fairness of DFS Contests

(1) No Game Play by Employees and Others Affiliated with a DFSO. No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO Contractor may play on any DFS Contest Platform of any DFSO. Nor may such person play through another person as a proxy. However, such individuals may play in a private contest on a DFS Contest Platform in which the individual's relevant affiliation with a DFSO is fully disclosed to each player. DFSO employees may also use clearly marked test accounts for testing purposes including evaluating a DFS Contest Platform. DFSO employees using test accounts shall not be eligible to win Prizes, provided however, that if a DFSO employee wins a DFS contest, the Prize in that contest must be awarded to a participant in that contest who would have won the Prize if the DFSO employee had not participated. DFSOs shall make these restrictions known to all affected individuals and corporate entities.

(2) Disclosures Required of DFSO Promoters. No DFSO Promoter may enter any DFS contest on any DFS Contest Platform unless such DFSO Promoter has disclosed the following in connection with any public recommendation concerning DFS gameplay to other DFS players:

- (a) That the DFSO Promoter is also a DFS player;
- (b) The user name that the DFSO Promoter uses for gameplay on any DFS Contest Platform;
- (c) That the DFSO Promoter may play, in connection with a personal account, in the games on which recommendations are offered;
- (d) That the DFSO Promoter may engage in DFS gameplay, in connection with a personal account, using players or strategies different from the recommendations made by the DFSO Promoter; and
- (e) That the DFSO Promoter's recommendations do not necessarily reflect the view of the DFSO.

(3) No Disclosure of Proprietary Information. No DFSO employee, DFSO principal, DFSO officer, DFSO director, or DFSO Contractor may disclose proprietary or non-public information that may affect DFS gameplay to any person permitted to engage in DFS gameplay. DFSOs shall make these restrictions known to all affected individuals and corporate entities.

(4) No Gameplay by Athletes and Others Connected with DFS Contest Outcomes. No DFSO shall allow a professional or amateur athlete, or a sports agent, team employee, referee or a league official associated with any competition which is the subject of DFS contests, to enter DFS contests in the sport in which they participate. Nor may such athlete, sports agent, team official, team representative, referee or league official play through another person as a proxy. A DFSO will not be held liable for a violation of 940 CMR 34.12(4) if:

(a) The DFSO makes commercially reasonable efforts to obtain lists of such persons for the purpose of implementing this provision by monitoring for and excluding accounts of such persons;

(b) The DFSO makes these restrictions known to all affected individuals and corporate entities;

(c) The governing body for the sport in which the athlete, sports agent, team official, team representative, referee or league official participates, maintains and enforces a policy that excludes such individuals from entering DFS contests in that sport; and

(d) The DFSO, upon learning of a violation of 940 CMR 34.00, immediately bars the individual committing the violation from playing in any DFS contest by suspending such individual's account and banning such individual from further play, terminates any existing promotional agreements with such individual and refuses to make any new promotional agreements that compensate such individual.

(5) Restriction on Sharing Non-public Information that May Affect DFS Gameplay. No DFSO shall knowingly permit an athlete, sports agent, team employee, referee or league official to provide proprietary or non-public information to any DFS player, or to provide such information to a DFS player before such information is made public.

(a) A DFSO, upon learning of a violation of 940 CMR 34.00, shall bar the individual(s) committing the violation as well as the person(s) receiving such information from playing in any DFS contest by suspending the affected account(s) and banning such individual(s) from further play. The DFSO shall also terminate any existing individual promotional agreements with any athlete, sports agent, team employee, referee or league official that violates 940 CMR 34.00 and shall refuse to make any new individual promotional agreements that compensate such individual.

(b) DFSOs shall make these restrictions known to all affected individuals and corporate entities.

(6) Beginner Games. All DFSOs shall develop games that are limited to Beginners and shall keep non-Beginner players from participating, either directly or through another person as a proxy, in those games. A DFSO shall suspend the account of any non-Beginner DFS player that enters a Beginner game directly or through another person as a proxy and shall ban such individual from further play. A DFSO may allow a non-Beginner who is not a Highly-experienced Player to enter up to ten Beginner contests in any sport in which that player has not already entered 20 DFS contests.

(7) Games that Exclude Highly-experienced Players. All DFSOs shall develop games in which Highly-experienced Players cannot, either directly or through another person as a proxy, participate. A DFSO shall suspend the account of any Highly-experienced Player who enters a game which excludes Highly-experienced Players, directly or through another person as a proxy, and shall ban such individual from further play.

(8) On-boarding Procedures for New Players. On-boarding procedures for new players shall explain opportunities to learn about contest play and how to identify Highly-experienced Players, and shall recommend beginner contests and low-cost private contests with friends for their value as a learning experience.

(9) Prohibition of Scripts.

(a) A DFSO shall not permit unauthorized Scripts to be used on DFS Contest Platforms and shall use commercially reasonable efforts to monitor for and to prevent use of such Scripts.

(b) A DFSO shall bar any individual or corporation found to be using an unauthorized Script from playing in any DFS contest by terminating such individual or corporate account and by banning that individual or corporation from further play.

(c) A DFSO shall not authorize Scripts that provide a player with a competitive advantage over another player.

1. For the purpose of 940 CMR 34.12(9) a Script will be treated as offering a competitive advantage for reasons including, but not limited to, its potential use to:

a. facilitate entry of multiple contests with a single line-up;

b. facilitate changes in many line-ups at one time;

c. facilitate use of commercial products designed and distributed by third parties to identify advantageous game strategies; or

d. gather information about the performance of others for the purpose of identifying or entering contests against DFS players who are less likely to be successful.

(d) Authorized Scripts shall either be incorporated as a game feature or be Prominently Published and thereby made available to all DFS players.

(10) Rules on When DFS Contests Lock.

(a) As of the time a DFS contest locks, no further entries or substitution of participants shall be accepted in connection with that contest. Nor shall participants be allowed to make further alterations or substitutions in connection with their entry or entries.

(b) DFSOs shall Prominently Publish rules that govern when each DFS contest shall lock that may include rules for multiple lock times in situations in which underlying competitions begin at different times. No lock times may occur after the commencement of the competition to which that lock time applies.

(c) DFSOs shall prominently disclose contest-specific information about the time that each contest locks in connection with each contest offered.

(d) A DFSO shall strictly enforce all disclosed lock times.

(11) Identification of Highly-experienced Players. DFSOs shall identify Highly-experienced Players by a symbol attached to their username, or by other easily visible means, on all DFS Contest Platforms.

(12) Restrictions on Number of Entries by Contest.

(a) DFSOs shall not allow a DFS player to submit more than one entry in any DFS contest involving 12 entries or less.

(b) DFSOs shall not allow a DFS player to submit more than two entries in any DFS contest involving 13 through 36 entries.

(c) DFSOs shall not allow a DFS player to submit more than three entries in any DFS contest involving 37 through 100 entries.

(d) In any contest involving more than 100 entries, DFSOs shall not allow a DFS player to submit more than the lesser of:

1. 3% of all entries; or

2. 150 entries.

(e) For all advertised DFS contests, the DFSO shall prominently include information about the maximum number of entries that may be submitted for that contest.

(f) DFSOs may establish DFS contests, representing less than 2% of the total number of contests it offers, in which there is no restriction on the number of entries, provided that:

1. the DFSO clearly discloses that there are no limits on the number of entries by each player in such contest; and
2. that the cost of participating in such contest is \$50 or more per entry.

(13) DFSOs shall promptly, accurately and regularly update the “fill rate” for any DFS contest it offers on each of its DFS Contest Platforms. For the purpose of 940 CMR 34.12(13), the term “fill rate” shall mean the number of entries that have been submitted for that DFS contest at a given time.

(14) DFSOs shall not offer free or discounted entries to fill a contest in the three hour period prior to the earliest lock time for that contest, unless such free or discounted entries are made available pursuant to a plan that does not unreasonably disadvantage the players that have already entered that contest. For the purposes of 940 CMR 34.12(14), an entry shall be considered “free” or “discounted” if it is less than the full entry fee for the contest or if the full entry fee is collected subject to refund, account credit, offset or reimbursement on any basis.

The Massachusetts Administrative Code titles are current through Register No. 1381, dated December 28, 2019

Mass. Regs. Code tit. 940, § 34.12, 940 MA ADC 34.12

Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.13

34.13: DFSOs That Run Both DFS Contests and Season-long Fantasy Sports Games

(1) If a DFSO has run 1,000 or more Exempt Contests annually for a period of at least two years, 940 CMR 34.00 shall apply only to its DFS contest business or businesses provided that:

- (a) The Enterprise's DFS contests are segregated from its non-DFS contests and Exempt Contests;
- (b) The Enterprise applies this regulation to all of its DFS contests on any game platform;
- (c) Entry into the Enterprise's DFS contests and its Exempt Contests requires separate input of personal and financial information in the on-boarding process, separate age-verification routines and a separate login process to access the account, including separate passwords or separate account authentication processes; and
- (d) The DFSO does not target individual promotional activities or individual advertising for its DFS contests to Minors who participate in its Exempt Contests.

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Mass. Regs. Code tit. 940, § 34.13, 940 MA ADC 34.13

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Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.14

34.14: Tax Laws and Disclosures

(1) Obligation to Comply with Applicable Tax Laws Including Disclosures. DFSOs shall comply with all applicable tax laws and regulations including, without limitation, laws and regulations applicable to tax withholding and laws and regulations applicable to providing information about winnings and withholdings to taxing authorities and to DFS Consumers.

(2) Disclosure of Potential Tax Liabilities. DFSOs shall disclose potential tax liabilities to DFS Consumers in the on-boarding process and again at the time of award of any prize in excess of \$600. Such disclosures will include a statement that the obligation to pay applicable taxes on winnings is the responsibility of the DFS Consumer and that failure to pay applicable tax liabilities may result in civil penalties or criminal liability.

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Mass. Regs. Code tit. 940, § 34.14, 940 MA ADC 34.14

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Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.15

34.15: Data Retention

- (1) Consumer Account Information. DFSOs shall retain information sufficient to trace the deposits into and out of a DFS Consumer's account for at least ten years from the date of deposit or withdrawal.
- (2) Prize Information. DFSOs shall retain data about the winner(s) of each DFS contest and the amount of any Prizes awarded to the winner(s) for at least ten years from the date of the DFS contest.
- (3) Advertising: DFSOs shall retain copies of all advertisements for at least four years from the date of the last use of that advertisement and shall retain records sufficient to identify where such advertisements were placed. To the extent that an advertisement cannot be maintained in its original form (*e.g.*, billboards), the advertising copy shall be retained.

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Code of Massachusetts Regulations Currentness

Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.16

34.16: Consumer Complaint Procedures

(1) Opportunities for Consumer Complaints. DFSOs shall develop and Prominently Publish procedures by which a DFS Consumer may file a complaint with the DFSO by internet chat, in writing, or by other means, about any aspect of DFS operation.

(2) Responses to Complaints. DFSOs shall respond to such complaints in writing within ten business days. If the relief requested in the complaint will not be granted, the response to the complaint shall state the reasons with specificity.

(3) Complaints Requiring Additional Information. If the response to a complaint is that more information is needed, the form and nature of the necessary information shall be specifically stated. When additional information is received, further response shall be required within seven days.

(4) Retention of Complaints. All complaints received by a DFSO from a DFS Consumer and the DFSO's responses to complaints shall be retained for at least four years and made available to the AGO within seven days of any request by the AGO.

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Mass. Regs. Code tit. 940, § 34.16, 940 MA ADC 34.16

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Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.17

34.17: Severability

If any provision of 940 CMR 34.00 or the application of such provision to any person, entity or circumstances is held to be invalid, the validity of the remainder of 940 CMR 34.00 and the applicability of such provision to other persons, entities or circumstances shall not be affected.

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Mass. Regs. Code tit. 940, § 34.17, 940 MA ADC 34.17

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Title 940: Office of the Attorney General

Chapter 34.00: Daily Fantasy Sports Contest Operators in Massachusetts (Refs & Annos)

940 CMR 34.18

34.18: Implementation Period

DFSOs shall implement 940 CMR 34.00 as soon as practicable, but in no event later than July 1, 2016. This implementation period will not affect the AGO's ability to enforce existing law.

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Mass. Regs. Code tit. 940, § 34.18, 940 MA ADC 34.18

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West's Annotated Mississippi Code
Title 97. Crimes
Chapter 33. Gambling and Lotteries
Fantasy Contest Act

Miss. Code Ann. T. 97, Ch. 33, Refs & Annos
[Currentness](#)

Editors' Notes

REPEALER

<[Section 97-33-315](#), which was to repeal [Sections 97-33-301](#) through [97-33-315](#) on July 1, 2017, was itself amended by [Laws 2017, Ch. 336 \(H.B. 967\)](#), § 8, to remove the repeal provision, eff. July 1, 2017.>

Miss. Code Ann. T. 97, Ch. 33, Refs & Annos, MS ST T. 97, Ch. 33, Refs & Annos

The Statutes and Constitution are current through the 2018 Regular and First Extraordinary Sessions.

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West's Annotated Mississippi Code
Title 97. Crimes
Chapter 33. Gambling and Lotteries
Fantasy Contest Act (Refs & Annos)

Miss. Code Ann. § 97-33-301

§ 97-33-301. Short title

[Currentness](#)

Sections 97-33-301 through 97-33- 317 shall be known as the “Fantasy Contest Act.”

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\), § 2](#), eff. from and after passage (approved May 12, 2016).

Amended by [Laws 2017, Ch. 336 \(H.B. 967\), § 1](#), eff. July 1, 2017.

Miss. Code Ann. § 97-33-301, MS ST § 97-33-301

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West's Annotated Mississippi Code
Title 97. Crimes
Chapter 33. Gambling and Lotteries
Fantasy Contest Act (Refs & Annos)

Miss. Code Ann. § 97-33-303

§ 97-33-303. Definitions

Currentness

As used in [Sections 97-33-301](#) through 97-33- 317, the following terms shall have the meanings ascribed unless the context requires otherwise:

- (a) “Cash prize” means winnings in the form of cash or cash equivalents and includes credits to a player's account with an operator.
- (b) “Commission” means the Mississippi Gaming Commission created in [Section 75-76-7](#).
- (c) “Confidential information” means information related to the play of a fantasy contest by fantasy contest players obtained as a result of or by virtue of a person's employment.
- (d) “Entry fee” means cash or a cash equivalent that is required to be paid to an operator to participate in a fantasy contest.
- (e) “Executive director” means the Executive Director of the Mississippi Gaming Commission.
- (f) “Fantasy contest” or “contest ” means a simulated game in which:
 - (i) Winning outcomes are determined predominately by accumulated statistical results of the performance of individual athletes in actual sporting events; and
 - (ii) Winning outcomes are not based on the score, point spread, or any performance of any single actual sports team or combination of teams or solely on any single performance of an individual athlete in any single actual sporting event.
- (g) “Highly experienced player” means an individual who has:
 - (i) Entered more than one thousand (1,000) contests offered by a particular operator; or

(ii) Won more than three (3) prizes which are each valued at One Thousand Dollars (\$1,000.00) or more, from a particular operator.

(h) “Operator” or “fantasy contest operator” means a person or entity that offers fantasy contests, requires an entry fee, and offers a cash prize.

(i) “Player” means a person who participates in a fantasy contest offered by an operator.

(j) “Sporting event” means an athletic game or team competition in which an individual athlete's performance is used to accumulate statistical results.

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\), § 3](#), eff. from and after passage (approved May 12, 2016).

Amended by [Laws 2017, Ch. 336 \(H.B. 967\), § 2](#), eff. July 1, 2017.

Miss. Code Ann. § 97-33-303, MS ST § 97-33-303

The Statutes and Constitution are current through the 2018 Regular and First Extraordinary Sessions.

West's Annotated Mississippi Code
Title 97. Crimes
Chapter 33. Gambling and Lotteries
Fantasy Contest Act (Refs & Annos)

Miss. Code Ann. § 97-33-305

§ 97-33-305. Fantasy contests declared legal; procedural requirements; audits; advertising restrictions; prevention of cheating; advance notice of prizes and awards

[Currentness](#)

(1) Fantasy contests are legal in this state. A fantasy contest operator must comply with the provisions of this section if the operator's total player roster for all fantasy contests consists of one hundred (100) or more members of the general public.

(2) A fantasy contest operator must implement commercially reasonable procedures for fantasy contests with an entry fee to:

(a) Prevent employees of the operator, and relatives living in the same household with an employee of an operator, from competing in fantasy contests offered by an operator in which the operator offers a cash prize;

(b) Prevent sharing with third parties of confidential information that could affect fantasy contest play until the information is made publicly available;

(c) Prevent the operator from participating in a fantasy contest offered by the operator;

(d) Verify that a fantasy contest player is eighteen (18) years of age or older except as required in [Section 97-33-307\(5\)](#);

(e) Ensure that individuals who participate or officiate in a sporting event or who own, manage or coach a team or player who participates in a sporting event will not knowingly be allowed to enter a fantasy contest that is determined, in whole or in part, on accumulated statistical results that include a sporting event in which the individual could be involved as an athlete, official, owner, manager or coach;

(f) Allow individuals to restrict themselves from entering a fantasy contest upon request and provide reasonable steps to prevent the person from entering fantasy contests offered by the operator;

(g) Disclose the number of entries that a player may submit to each fantasy contest and provide reasonable steps to prevent players from submitting more than the allowable number;

(h) Restrict the number of entries submitted by a single player for any contest as follows:

(i) An operator shall not allow a player to submit more than one (1) entry in a contest involving twelve (12) or fewer players.

(ii) If the number of players in a contest is more than twelve (12) but fewer than thirty-seven (37), an operator shall not allow a player to submit more than two (2) entries.

(iii) If the number of players in a contest is at least thirty-seven (37) but no more than one hundred (100), an operator shall not allow a player to submit more than three (3) entries.

(iv) In any contest involving more than one hundred (100) players, an operator shall not allow a player to submit more than the lesser of:

1. Three percent (3%) of all entries; or

2. One hundred fifty (150) entries.

(v) For all advertised fantasy contests, the operator must prominently include information about the maximum number of entries that may be submitted for that contest.

(vi) An operator may establish fantasy contests in which there is no restriction on the number of entries, if those contests constitute less than two percent (2%) of the total number of contests it offers, and if the operator clearly discloses:

1. That there are no limits on the number of entries by each player in the contest; and

2. That the cost of participating in such a contest is Fifty Dollars (\$50.00) or more per entry;

(i) Offer introductory procedures for players that are prominently displayed on the main page of the operator's platform to explain contest play and how to identify a highly experienced player;

(j) Identify all highly experienced players in every fantasy contest by a symbol attached to the players' usernames, or by other easily visible means, on all platforms supported by the operator; and

(k) Segregate fantasy contest player funds from operational funds or maintain a reserve in the form of cash, cash equivalents, payment processor reserves and receivables, an irrevocable letter of credit, a bond,

or a combination thereof, in the amount of the total account balances of the fantasy contest players for the benefit and protection of the funds held in the accounts.

(3) An operator shall not offer contests based on the performance of participants in collegiate, high-school or youth sports events.

(4) A fantasy contest operator offering fantasy contests with an entry fee in this state shall comply with audit procedures adopted by the commission to ensure compliance with this section.

(5)(a) Advertisements for contests and prizes offered by an operator shall not target prohibited participants, minors, or self-excluded persons.

(b) Representations or implications about average winnings from contests shall not be unfair or misleading. Such representations shall include, at a minimum:

(i) The median and mean net winnings of all players participating in contests offered by the operator; and

(ii) The percentage of winnings awarded by the operator to highly experienced players participating in contests offered by the operator within the preceding calendar year.

(6) Operators shall prohibit the use of third-party scripts or scripting programs for any contest and ensure that measures are in place to deter, detect and, to the extent reasonably possible, prevent cheating, including collusion, and the use of cheating devices, including use of software programs that submit entry fees or adjust the athletes selected by a player.

(7) The values of all prizes and awards offered to winning players must be established and made known to the players in advance of the contest.

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\), § 4](#), eff. from and after passage (approved May 12, 2016).
Amended by [Laws 2017, Ch. 336 \(H.B. 967\), § 3](#), eff. July 1, 2017.

Miss. Code Ann. § 97-33-305, MS ST § 97-33-305

The Statutes and Constitution are current through the 2018 Regular and First Extraordinary Sessions.

West's Annotated Mississippi Code
Title 97. Crimes
Chapter 33. Gambling and Lotteries
Fantasy Contest Act (Refs & Annos)

Miss. Code Ann. § 97-33-307

§ 97-33-307. Licensing of fantasy contest operators; lawful conduct of business; application requirements; on-premises fantasy contests; fees

[Currentness](#)

- (1) An operator offering fantasy contests to be played by persons in this state must obtain a license from the commission to conduct fantasy contests within this state.
- (2) An operator offering fantasy contests within this state must be lawfully conducting business within this state.
- (3) Application for licensure shall be made to the executive director on forms furnished by the executive director and in accordance with the regulations of the commission. The application shall include:
 - (a) The name of the proposed licensee.
 - (b) The location of his place or places of business.
 - (c) The names of all persons directly or indirectly interested in the business and the nature of such interest.
 - (d) Complete information and details with respect to the applicant's antecedents, habits, character, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of the application.
 - (e) The applicant's criminal history.
 - (f) Evidence of compliance with [Section 97-33-305\(2\)](#).
 - (g) Such other information and details as the commission or the executive director may require in order to discharge their duties properly.
- (4) An application to conduct fantasy contests shall not be granted unless the applicant has satisfied the commission that:

- (a) The applicant has adequate business probity, competence and experience; and
- (b) The proposed financing of the entire operation is:
 - (i) Adequate for the nature of the proposed operation; and
 - (ii) From a suitable source; any lender or other source of money or credit which the commission finds does not meet the standards set forth in this paragraph (b) may be deemed unsuitable.
- (c) An application for a license to conduct fantasy contests constitutes a request for a determination of the general character, integrity and ability to participate or engage in, or be associated with fantasy contests of any individual associated with the applicant. Any written or oral statement made in the course of an official proceeding of the commission or the executive director or any testimony of a witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.
- (d) The commission, in its discretion, may grant a license to a corporation that has complied with the provisions of [Sections 97-33-301](#) through [97-33-317](#).
- (e) The commission, in its discretion, may grant a license to a limited partnership that has complied with the provisions of [Sections 97-33-301](#) through [97-33-317](#).
- (f) No limited partnership, except one whose sole limited partner is a publicly traded corporation that is licensed by the commission, or business trust or organization or other association of a quasi-corporate character is eligible to receive or hold any license under [Sections 97-33-301](#) through [97-33-317](#) unless all persons having any direct or indirect interest therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory, are individually qualified to be licensed under the provisions of [Sections 97-33-301](#) through [97-33-317](#).
- (5) Only a licensee under the Gaming Control Act may offer on-premises fantasy contests in the licensee's licensed gaming establishment. It is illegal to offer on-premises fantasy contests at any other commercial or business establishment. An operator offering on-premises fantasy contests under this subsection (5) must verify that a fantasy contest player is twenty-one (21) years of age or older.
- (6) Each applicant for licensure as a fantasy contest operator shall pay an application fee of Five Thousand Dollars (\$5,000.00). A license is valid for three (3) years.

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\)](#), § 5, eff. from and after passage (approved May 12, 2016).
Amended by [Laws 2017, Ch. 336 \(H.B. 967\)](#), § 4, eff. July 1, 2017.

Miss. Code Ann. § 97-33-307, MS ST § 97-33-307

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West's Annotated Mississippi Code
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Miss. Code Ann. § 97-33-309

§ 97-33-309. Violations; civil penalties

[Currentness](#)

A person, firm, corporation, association, agent or employee violating the Fantasy Contest Act shall be subject to a civil penalty of not more than One Thousand Dollars (\$1,000.00) for each separate violation not to exceed Fifty Thousand Dollars (\$50,000.00), which shall accrue to the state as an administrative remedy as established in [Section 97-33-315](#).

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\)](#), § 6, eff. from and after passage (approved May 12, 2016).
Amended by [Laws 2017, Ch. 336 \(H.B. 967\)](#), § 5, eff. July 1, 2017.

Miss. Code Ann. § 97-33-309, MS ST § 97-33-309

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Miss. Code Ann. § 97-33-311

§ 97-33-311. Exemption from Gaming Control Act

Currentness

The Gaming Control Act shall not apply to fantasy contests, except as authorized in [Sections 97-33-301](#) through 97-33- 317.

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\), § 7](#), eff. from and after passage (approved May 12, 2016).
Amended by [Laws 2017, Ch. 336 \(H.B. 967\), § 6](#), eff. [July 1, 2017](#).

Miss. Code Ann. § 97-33-311, MS ST § 97-33-311

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Fantasy Contest Act (Refs & Annos)

Miss. Code Ann. § 97-33-313

§ 97-33-313. Resolution of disputes over winnings; failure to notify executive director or patron

[Currentness](#)

(1) Disputes over winnings shall be resolved under the procedures set forth in [Sections 75-76-157](#) through [75-76-173](#).

(2) Failure to notify the executive director or patron as provided in [Section 75-76-159](#) is grounds for disciplinary action pursuant to [Section 97-33-315](#).

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\)](#), § 8, eff. from and after passage (approved May 12, 2016).

Amended by [Laws 2017, Ch. 336 \(H.B. 967\)](#), § 7, eff. [July 1, 2017](#).

Miss. Code Ann. § 97-33-313, MS ST § 97-33-313

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West's Annotated Mississippi Code
Title 97. Crimes
Chapter 33. Gambling and Lotteries
Fantasy Contest Act (Refs & Annos)

Miss. Code Ann. § 97-33-315

§ 97-33-315. Investigations by executive director; procedure; disciplinary action

Currentness

- (1) The executive director shall make appropriate investigations:
 - (a) To determine whether there has been any violation of [Sections 97-33-301](#) through [97-33-317](#) or of any regulations adopted thereunder.
 - (b) To determine any facts, conditions, practices or matters which it may deem necessary or proper to aid in the enforcement of any such law or regulation.
 - (c) To aid in adopting regulations.
 - (d) To secure information as a basis for recommending legislation relating to [Sections 97-33-301](#) through [97-33-317](#).
 - (e) To determine annual compliance with [Sections 97-33-301](#) through [97-33-317](#).
- (2) If after any investigation the executive director is satisfied that a license should be limited, conditioned, suspended or revoked, he shall initiate a hearing by filing a complaint with the commission and transmit therewith a summary of evidence in his possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the executive director to the licensee.
- (3) Upon receipt of the complaint of the executive director, the commission shall review all matter presented in support thereof and shall appoint a hearing examiner to conduct further proceedings.
- (4) After proceedings required by [Sections 97-33-301](#) through [97-33-317](#), the hearing examiner may recommend that the commission take any or all of the following actions:
 - (a) As to operations at a licensed gaming establishment under [Section 97-33-307\(5\)](#):

(i) Limit, condition, suspend or revoke the license of any licensed gaming establishment or the individual license of any licensee without affecting the license of the establishment; and

(ii) Order an operator to exclude an individual licensee from the operation of the registered business or not to pay the licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment;

(b) Limit, condition, suspend or revoke any license granted to any applicant by the commission;

(c) Fine each licensee for any act or transaction for which commission approval was required or permitted, as provided in [Section 97-33-309](#).

(5) The hearing examiner shall prepare a written decision containing his recommendation to the commission and shall serve it on all parties. Any party disagreeing with the hearing examiner's recommendation may ask the commission to review the recommendation within ten (10) days of service of the recommendation. The commission may hold a hearing to consider the recommendation whether there has been a request to review the recommendation or not.

(6) If the commission decides to review the recommendation, it shall give notice of that fact to all parties within thirty (30) days of the recommendation and shall schedule a hearing to review the recommendation. The commission's review shall be de novo but shall be based upon the evidence presented before the hearing examiner. The commission may remand the case to the hearing examiner for the presentation of additional evidence upon a showing of good cause why the evidence could not have been presented at the previous hearing.

(7) If the commission does not decide to review the recommendation within thirty (30) days, the recommendation becomes the final order of the commission.

(8) If the commission limits, conditions, suspends or revokes any license, or imposes a fine, it shall issue its written order therefor after causing to be prepared and filed the hearing examiner's written decision upon which the order is based.

(9) Any limitation, condition, revocation, suspension or fine is effective until reversed upon judicial review, except that the commission may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

(10) Judicial review of an order or decision of the commission may be had to the Chancery Court of the First Judicial District of Hinds County, Mississippi, as a case in equity.

(11) A license is automatically revoked if the individual is convicted of a felony in any court of this state, another state, or the United States or if the individual is convicted of a crime in any court of another state

or the United States which, if committed in this state, would be a felony. An appeal from the conviction shall not act as a supersedeas to the revocation required by this subsection.

Credits

Added by [Laws 2016, Ch. 488, \(S.B. 2541\), § 9](#), eff. from and after passage (approved May 12, 2016).

Amended by [Laws 2017, Ch. 336 \(H.B. 967\), § 8](#), eff. [July 1, 2017](#).

Miss. Code Ann. § 97-33-315, MS ST § 97-33-315

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Chapter 33. Gambling and Lotteries
Fantasy Contest Act (Refs & Annos)

Miss. Code Ann. § 97-33-317

§ 97-33-317. Licensing fees

Currentness

(1) For the privilege of conducting fantasy sports contests in Mississippi, licensees shall pay to the Department of Revenue a fee equivalent to eight percent (8%) of the operator's net Mississippi revenue.

(2) "Net Mississippi revenue" means the amount equal to the total of all fantasy contest entry fees that an operator collects from all players, less the total of all sums paid out as cash prizes to all fantasy contest players, multiplied by the location percentage for Mississippi. "Location percentage" means, for each fantasy contest, the percentage of the total entry fees collected from players located in Mississippi, divided by the total entry fees collected by that operator from all players in fantasy contests, rounded to the nearest one-hundredth of a percent (0.01%).

(3)(a) The Commissioner of Revenue shall assess and collect all taxes, fees, interest, penalties, damages and fines imposed by this chapter, and is hereby empowered to promulgate rules and regulations to administer collection of the amounts due. Records or other documents submitted by the licensee, or on behalf of the licensee, to the Mississippi Gaming Commission or executive director shall be made available to the Commissioner of Revenue or his authorized agent upon written request.

(b) The license fees levied by this chapter shall be due quarterly for the periods January through March, April through June, July through September and October through December, and payable on or before the twentieth day of the month next succeeding the month in which the fees accrue. The licensee shall make a return showing the net Mississippi revenue and compute the fee due for the period.

(c) All administrative provisions of the sales tax law, and amendments thereto, including those which provide for collection and administrative appeals procedures, fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon any licensee or taxpayer, shall apply to all persons liable for taxes, fees and all other monies imposed under the provisions of this chapter. However, fines or other assessments levied by the Mississippi Gaming Commission or the executive director will not be considered due and payable until thirty (30) days after final determination of the fines or assessments. The Commissioner of Revenue shall exercise all power and authority and perform all duties with respect to licensees or taxpayers under this chapter as are provided in the sales tax law, except where there is conflict, then the provisions of this chapter shall control.

(d) Determination and assessment of taxes, fees, licenses, interest, penalties, damages and fines under this chapter by the Commissioner of Revenue, the Executive Director of the Mississippi Gaming Commission or the Mississippi Gaming Commission shall be prima facie correct.

(e) Fees authorized under this section shall be deposited into the State General Fund as authorized by law.

Credits

Added by [Laws 2017, Ch. 336 \(H.B. 967\)](#), § 9, eff. [July 1, 2017](#).

Miss. Code Ann. § 97-33-317, MS ST § 97-33-317

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[Racing, Pari-Mutuel Wagering and Breeding Law \(Refs & Annos\)](#)
[Chapter 47-a. Of the Consolidated Laws \(Refs & Annos\)](#)
[Article 14. Interactive Fantasy Sports](#)

McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1400

§ 1400. Legislative findings and purpose

Effective: August 3, 2016

[Currentness](#)

1. The legislature hereby finds and declares that:

(a) Interactive fantasy sports are not games of chance because they consist of fantasy or simulation sports games or contests in which the fantasy or simulation sports teams are selected based upon the skill and knowledge of the participants and not based on the current membership of an actual team that is a member of an amateur or professional sports organization;

(b) Interactive fantasy sports contests are not wagers on future contingent events not under the contestants' control or influence because contestants have control over which players they choose and the outcome of each contest is not dependent upon the performance of any one player or any one actual team. The outcome of any fantasy sports contest does not correspond to the outcome of any one sporting event. Instead, the outcome depends on how the performances of participants' fantasy roster choices compare to the performance of others' roster choices.

2. Based on the findings in subdivision one of this section, the legislature declares that interactive fantasy sports do not constitute gambling in New York state as defined in article two hundred twenty-five of the penal law.

3. The legislature further finds that as the internet has become an integral part of society, and interactive fantasy sports a major form of entertainment for many consumers, any interactive fantasy sports enforcement and regulatory structure must begin from the bedrock premise that participation in a lawful and licensed interactive fantasy sports industry is a privilege and not a right, and that regulatory oversight is intended to safeguard the integrity of the games and participants and to ensure accountability and the public trust.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1400, NY RAC PARI-M § 1400

Current through L.2018, chapters 1 to 475, 477 to 521.

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[Article 14. Interactive Fantasy Sports](#)

McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1401

§ 1401. Definitions

Effective: August 3, 2016

[Currentness](#)

As used in this article, the following terms shall have the following meanings:

1. “Authorized player” shall mean an individual located in New York state, who is not a prohibited player, that participates in an interactive fantasy sports contest offered by a registrant.
2. “Collegiate sport or athletic event” shall mean a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers education services beyond the secondary level.
3. “Commission” shall mean the New York state gaming commission.
4. “Entry fee” shall mean cash or cash equivalent that is paid by an authorized player to an operator or registrant to participate in an interactive fantasy sports contest offered by such operator or registrant.
5. “High school sport or athletic event” shall mean a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers education services at the secondary level.
6. “Highly experienced player” shall mean an authorized player who has:
 - (a) entered more than one thousand contests offered by a single operator or registrant; or
 - (b) won more than three prizes valued at one thousand dollars each or more from a single operator or registrant.
7. “Horse racing event” shall mean any sport or athletic event conducted in New York state subject to the provisions of articles two, three, four, five, six, nine, ten and eleven of this chapter, or any sport or athletic

event conducted outside of New York state, which if conducted in New York state would be subject to the provisions of this chapter.

8. “Interactive fantasy sports contest” or “contest” shall mean a game of skill wherein one or more contestants compete against each other by using their knowledge and understanding of athletic events and athletes to select and manage rosters of simulated players whose performance directly corresponds with the actual performance of human competitors on sports teams and in sports events.

9. “Interactive fantasy sports gross revenue” shall mean the amount equal to the total of all entry fees not attributable to New York state prohibited sports events that a registrant collects from all players, less the total of all sums not attributable to New York state prohibited sports events paid out as winnings to all players, multiplied by the resident percentage for New York state; provided, however, that the total of all sums paid out as winnings to players shall not include the cash equivalent value of any merchandise or thing of value awarded as a prize.

10. “Interactive fantasy sports operator” or “operator” shall mean any person or entity that offers any interactive fantasy sports contest to any authorized player through any interactive fantasy sports platform.

11. “Interactive fantasy sports platform” or “platform” shall mean the combination of hardware, software, and data networks used to manage, administer, or control contests and any associated entry fees.

12. “Interactive fantasy sports registrant” or “registrant” shall mean an operator that is registered by the commission. A registrant may utilize multiple interactive fantasy sports platforms and offer multiple contests, provided that each platform and each contest has been reviewed and approved by the commission.

13. “Minor” shall mean any person under the age of eighteen years.

14. “Prohibited player” shall mean:

(a) any member, officer, employee or agent of an operator or registrant;

(b) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any member, officer, employee or agent of an operator or registrant;

(c) any individual with access to non-public confidential information about contests;

(d) any amateur or professional athlete whose performance may be used to determine the outcome of a contest;

(e) any sports agent, team employee, referee, or league official associated with any sport or athletic event on which contests are based;

(f) any individual located in a state where the conduct of contests is expressly prohibited; or

(g) any minor.

15. “Prohibited sports event” shall mean any collegiate sport or athletic event, any high school sport or athletic event or any horse racing event.

16. “Resident percentage” shall mean, for each interactive fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, of the total entry fees collected from players located in New York state, divided by the total entry fees collected from all players in interactive fantasy sports contests not prohibited in New York state.

17. “Sports event” shall mean any amateur or professional sport or athletic event, except a prohibited sports event.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1401, NY RAC PARI-M § 1401
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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1402

§ 1402. Registration

Effective: August 3, 2016

[Currentness](#)

1. (a) No operator shall administer, manage, or otherwise make available an interactive fantasy sports platform to persons located in New York state unless registered with the commission pursuant to [section fourteen hundred three](#) of this article. A registrant may use multiple interactive fantasy sports platforms and offer multiple types of contests, provided that each platform and each type of contest has been reviewed and approved by the commission. This article, and any and all rules and regulations adopted under the authority of this article, shall apply only to interactive fantasy sports contests for which an authorized player pays an entry fee.

(b) Any operator that was offering contests to persons located in New York state prior to the tenth of November, two thousand fifteen, may continue to offer contests to persons located in New York state until such operator's application for registration has been approved or denied in accordance with [section fourteen hundred three](#) of this article, provided that such operator receives a temporary permit pursuant to subdivision two of this section and files an application for registration with the commission within ninety days of the promulgation of regulations to effectuate this article.

2. The commission shall provide a temporary permit to each operator that was offering contests pursuant to paragraph (b) of subdivision one of this section to allow such operator to continue to offer such contests, on a provisional basis, until such operator's application for registration has been approved or denied in accordance with [section fourteen hundred three](#) of this article, provided that such operator meets all the requirements in [section fourteen hundred four](#) of this article.

3. Registrations issued by the commission shall remain in effect for three years. The commission shall establish a process for renewal.

4. Interactive fantasy sports contests offered by a registrant in accordance with the provisions of this article shall not constitute gambling as defined in article two hundred twenty-five of the penal law.

5. The commission shall publish a list of all operators registered in New York state pursuant to this section on the commission's website for public use.

6. The commission shall promulgate regulations to implement the provisions of this article, including the development of the initial form of the application for registration. Such regulations shall provide for the registration and operation of contests in New York state and shall include, but not be limited to, responsible protections with regard to compulsive play and safeguards for fair play.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1402, NY RAC PARI-M § 1402
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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1403

§ 1403. Scope of registration review

Effective: August 3, 2016

[Currentness](#)

1. The commission shall prescribe the initial form of the application for registration which shall require, but not be limited to:

(a) the full name and principal address of the operator;

(b) if a corporation, the name of the state in which incorporated and the full names and addresses of any partner, officer, director, shareholder holding ten percent or more equity, and ultimate equitable owners;

(c) if a business entity other than a corporation, the full names and addresses of the principals, partners, shareholders holding five percent or more equity, and ultimate equitable owners;

(d) whether such corporation or entity files information and reports with the United States Securities and Exchange Commission as required by section thirteen of the Securities Exchange Act of 1934, [15 U.S.C. §§ 78a-78kk](#); or whether the securities of the corporation or entity are regularly traded on an established securities market in the United States;

(e) the type and estimated number of contests to be conducted annually;

(f) a statement of the assets and liabilities of the operator.

2. The commission may require the full names and addresses of the officers and directors of any creditor of the operator, and of those stockholders who hold more than ten percent of the stock of the creditor.

3. Upon receipt of an application for registration for each individual listed on such application as an officer or director, the commission shall submit to the division of criminal justice services a set of fingerprints, and the division of criminal justice services processing fee imposed pursuant to [subdivision eight-a of section eight hundred thirty-seven of the executive law](#) and any fee imposed by the federal bureau of investigation.

Upon receipt of the fingerprints, the division of criminal justice services shall promptly forward a set of the individual's fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check to determine whether such individual has been convicted of a criminal offense in any state other than New York or in a federal jurisdiction. The division of criminal justice services shall promptly provide the requested criminal history information to the commission. For the purposes of this section, the term "criminal history information" shall mean a record of all convictions of crimes and any pending criminal charges maintained on an individual by the division of criminal justice services and the federal bureau of investigation. All such criminal history information sent to the commission pursuant to this subdivision shall be confidential and shall not be published or in any way disclosed to persons other than the commission, unless otherwise authorized by law.

4. Upon receipt of criminal history information pursuant to subdivision three of this section, the commission shall make a determination to approve or deny an application for registration; provided, however, that before making a determination on such application, the commission shall provide the subject of the record with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective applicant seeking to be credentialed of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services. The commission shall deny any application for registration, or suspend, refuse to renew, or revoke any existing registration issued pursuant to this article, upon the finding that the operator or registrant, or any partner, officer, director, or shareholder:

(a) has knowingly made a false statement of material fact or has deliberately failed to disclose any information required by the commission;

(b) has had a registration or license to offer or conduct contests denied, suspended, or revoked in any other state or country for just cause;

(c) has legally defaulted in the payment of any obligation or debt due to any state or political subdivision; or

(d) has at any time knowingly failed to comply with any requirement outlined in [section fourteen hundred four](#) of this article, any other provision of this article, any regulations promulgated by the commission or any additional requirements of the commission.

5. All determinations to approve or deny an application pursuant to this article shall be performed in a manner consistent with [subdivision sixteen of section two hundred ninety-six of the executive law](#) and article twenty-three-A of the correction law. When the commission denies an application, the operator shall be afforded notice and the right to be heard and offer proof in opposition to such determination in accordance with the regulations of the commission.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1403, NY RAC PARI-M § 1403
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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1404

§ 1404. Required safeguards, minimum standards

Effective: August 3, 2016

[Currentness](#)

1. As a condition of registration in New York state, each operator and registrant shall implement the following measures:

(a) limit each authorized player to one active and continuously used account, and prevent prohibited players from maintaining accounts or participating in any contest offered by such operator or registrant;

(b) prohibit minors from participating in any contest, which includes:

(i) if a registrant becomes or is made aware that a minor has participated in one of its contests, such registrant shall promptly, within no more than two business days, refund any deposit received from the minor, whether or not the minor has engaged in or attempted to engage in a contest; provided, however, that any refund may be offset by any prizes already awarded;

(ii) each registrant shall publish and facilitate parental control procedures to allow parents or guardians to exclude minors from access to any contest or platform. Such procedures shall include a toll-free number to call for help in establishing such parental controls; and

(iii) each registrant shall take appropriate steps to confirm that an individual opening an account is not a minor.

(c) when referencing the chances or likelihood of winning in advertisements or upon contest entry, make clear and conspicuous statements that are not inaccurate or misleading concerning the chances of winning and the number of winners;

(d) enable authorized players to exclude themselves from contests and take reasonable steps to prevent such players from entering a contest from which they have excluded themselves;

- (e) permit any authorized player to permanently close an account registered to such player, on any and all platforms supported by such operator or registrant, at any time and for any reason;
- (f) offer introductory procedures for authorized players, that shall be prominently displayed on the main page of such operator or registrant's platform, that explain contest play and how to identify a highly experienced player;
- (g) identify all highly experienced players in any contest by a symbol attached to such players' usernames, or by other easily visible means, on all platforms supported by such operator or registrant;
- (h) disclose the number of entries a single authorized player may submit to each contest;
- (i) disclose the maximum number of total entries allowed for each contest;
- (j) implement measures to protect the privacy and online security of authorized players and their accounts;
- (k) offer all authorized players access to his or her account history and account details;
- (l) ensure authorized players' funds are protected upon deposit and segregated from the operating funds of such operator or registrant and otherwise protected from corporate insolvency, financial risk, or criminal or civil actions against such operator or registrant;
- (m) list on each website, in a prominent place, information concerning assistance for compulsive play in New York state, including a toll-free number directing callers to reputable resources containing further information, which shall be free of charge;
- (n) ensure the value of any prizes and awards offered to authorized players shall be established and made known to such players in advance of the contest, and such value shall not be determined by the number of authorized players or the amount of any entry fees paid by such players;
- (o) ensure all winning outcomes reflect the relative knowledge and skill of the authorized players and shall be determined predominantly by accumulated statistical results of the performance of individuals in sports events;
- (p) ensure no winning outcome shall be based on the score, point spread, or performance of a single sports team, or any combination of such teams;
- (q) ensure no winning outcome shall be based solely on any single performance of an individual athlete in a single sport or athletic event; and

(r) ensure no game or contest shall be based on a prohibited sports event.

2. Each registrant shall restrict the number of entries submitted by a single authorized player for any contest to a maximum of one hundred fifty entries per player per contest, or a maximum of three percent of the total number of entries by all players for any contest, whichever is less, or as determined by the commission. Registrants shall take reasonable steps to prevent authorized players from submitting more than the allowable number of entries per contest. The commission shall promulgate regulations to further effectuate this subdivision to ensure that the number of entries submitted by a single authorized player for any contest will lead to a fair and equitable distribution of number of entries.

3. (a) Operators shall not directly or indirectly operate, promote, or advertise any platform or contest to persons located in New York state unless registered pursuant to this article.

(b) Unless otherwise approved by regulation of the commission, operators and registrants shall not directly or indirectly promote or advertise any online fantasy or simulation sports games or contests with an entry fee during the conduct of any online fantasy or simulation sports games or contests without an entry fee. This paragraph shall not apply to any operator or registrant that prohibits prohibited players from participating in online fantasy or simulation sports games or contests without an entry fee.

4. Registrants shall not offer any contest based on any prohibited sports event.

5. Registrants shall not permit any minor or prohibited participant to enter any contest.

6. Advertisements for contests and prizes offered by a registrant shall not target prohibited participants, minors, or self-excluded persons. Representations or implications about average winnings from contests shall not be unfair or misleading. Such representations shall include, at a minimum:

(a) the median and mean net winnings of all authorized players participating in contests offered by such registrant; and

(b) the percentage of winnings awarded by the registrant to highly experienced players participating in contests offered by such registrant within the preceding calendar year.

7. Registrants shall prohibit the use of third-party scripts or scripting programs for any contest and ensure that measures are in place to deter, detect and, to the extent reasonably possible, prevent cheating, including collusion, and the use of cheating devices, including use of software programs that submit entry fees or adjust the athletes selected by an authorized player.

8. Operators and registrants shall develop and prominently display procedures on the main page of such operator's or registrant's platform for the filing of a complaint by the authorized player against such registrant. An initial response shall be given by such registrant to such player filing the complaint within

forty-eight hours. A complete response shall be given by such registrant to such player filing the complaint within ten business days. An authorized player may file a complaint alleging a violation of the provisions of this article with the commission.

9. Registrants shall maintain records of all accounts belonging to authorized players and retain such records for five years from the date an account was created.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1404, NY RAC PARI-M § 1404
Current through L.2018, chapters 1 to 475, 477 to 521.

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[Chapter 47-a. Of the Consolidated Laws \(Refs & Annos\)](#)
[Article 14. Interactive Fantasy Sports](#)

McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1405

§ 1405. Powers and duties of the commission

Effective: August 3, 2016

[Currentness](#)

1. The commission shall promulgate regulations to implement the provisions of and effectuate the policy and objectives of this article as the commission may deem necessary or advisable, including the development of the initial form of the application for registration. Such regulations shall provide for the registration and operation of contests in New York state and shall include, without limitation, responsible protections with regard to compulsive play and safeguards for fair play. Such regulations may regulate the conduct and operation of contests and platforms, protect contestants and promote the fairness, honesty and integrity of contests.

2. The commission shall have the following powers and duties for purposes of administering, regulating, and enforcing the provisions of this article:

(a) all powers and duties assigned by this article, as well as all powers necessary and proper to fully and effectively execute this article;

(b) to approve and deny applications for registration to conduct contests in New York state, and to suspend, refuse or renew, or revoke any registration issued to a registrant under this article;

(c) to review and approve each platform and each contest offered by an operator or registrant;

(d) to accept and investigate complaints of any kind from an authorized player and attempt to mediate such complaints where appropriate;

(e) to investigate alleged violations of this article;

(f) to initiate proper enforcement proceedings where such action is deemed by the commission to be necessary or appropriate; and

(g) all powers and duties assigned by this chapter.

Credits

(Added [L.2016, c. 237, § 1](#), eff. [Aug. 3, 2016](#).)

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1405, NY RAC PARI-M § 1405
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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1406

§ 1406. Annual report

Effective: August 3, 2016

[Currentness](#)

1. Each registrant shall annually submit a report to the commission no later than the thirtieth of June of each year, which shall include the following information as it shall apply to accounts held by authorized players located in New York state:

(a) the number of accounts held by authorized players on all platforms offered by the registrant, and the number of accounts held by highly experienced players on all platforms offered by the registrant;

(b) the total number of new accounts established in the preceding year, as well as the total number of accounts permanently closed in the preceding year;

(c) the total amount of entry fees received from authorized players;

(d) the total amount of prizes awarded to authorized players;

(e) the total amount of interactive fantasy sports revenue received by the registrant;

(f) the total number of authorized players that requested to exclude themselves from contests;

(g) any additional information that the commission deems necessary to carry out the provisions of this article.

2. Upon the submission of such annual report, to such extent that the commission deems it to be in the public interest, the commission shall be authorized to conduct a financial audit of any registrant, at any time, to ensure compliance with this article.

3. The commission shall annually publish a report based on the aggregate information provided by all registrants pursuant to subdivision one of this section, which shall be published on the commission's website

no later than one hundred eighty days after the deadline for the submission of individual reports as specified in subdivision one of this section.

Credits

(Added [L.2016, c. 237, § 1](#), eff. Aug. 3, 2016.)

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1406, NY RAC PARI-M § 1406

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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1407

§ 1407. State tax

Effective: August 3, 2016

[Currentness](#)

For the privilege of conducting interactive fantasy sports contests in the state, registrants shall pay a tax equivalent to fifteen percent of their interactive fantasy sports gross revenue generated within the state; in addition, registrants shall pay a tax equal to one-half of one percent, but not to exceed fifty thousand dollars annually.

Credits

(Added [L.2016, c. 237, § 1](#), eff. [Aug. 3, 2016](#).)

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1407, NY RAC PARI-M § 1407
Current through L.2018, chapters 1 to 475, 477 to 521.



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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1408

§ 1408. Additional regulatory costs

Effective: August 3, 2016

[Currentness](#)

The commission may assess annually, in arrears, on each registrant proportional to the interactive fantasy sports gross revenue of such registrant in the preceding year compared to the aggregate interactive fantasy sports gross revenue of all registrants in the preceding year actual costs necessary to regulate in accordance with the provisions of this article. Such assessments shall be made only within amounts appropriated therefor.

Credits

(Added [L.2016, c. 237, § 1](#), eff. [Aug. 3, 2016](#).)

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1408, NY RAC PARI-M § 1408
Current through L.2018, chapters 1 to 475, 477 to 521.



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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1409

§ 1409. Disposition of taxes

Effective: August 3, 2016

[Currentness](#)

1. The commission shall pay into the state lottery fund all taxes imposed by this article; any interest and penalties imposed by the commission relating to those taxes; all penalties levied and collected by the commission; and the appropriate funds, cash or prizes forfeited from interactive fantasy sports.
2. The commission shall require at least monthly deposits by the interactive fantasy sports operator of any payments pursuant to [section fourteen hundred seven](#) of this article, at such times, under such conditions, and in such depositories as shall be prescribed by the state comptroller. The deposits shall be deposited to the credit of the state lottery fund. The commission shall require a monthly report and reconciliation statement to be filed with it on or before the tenth day of each month, with respect to gross revenues and deposits received and made, respectively, during the preceding month.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1409, NY RAC PARI-M § 1409
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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1410

§ 1410. Determination of tax liability

Effective: August 3, 2016

[Currentness](#)

The commission may perform audits of the books and records of an interactive fantasy sports operator with a permit or registrant, at such times and intervals as it deems appropriate, for the purpose of determining the sufficiency of tax payments. If a return required with regard to obligations imposed is not filed, or if a return when filed or is determined by the commission to be incorrect or insufficient with or without an audit, the amount of tax due shall be determined by the commission. Notice of such determination shall be given to the interactive fantasy sports operator liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty days after receiving notice of such determination, shall apply to the commission for a hearing in accordance with the regulations of the commission.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1410, NY RAC PARI-M § 1410

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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1411

§ 1411. Contests authorized

Effective: August 3, 2016

[Currentness](#)

Interactive fantasy sports contests registered and conducted pursuant to the provisions of this chapter are hereby authorized.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1411, NY RAC PARI-M § 1411

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McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1412

§ 1412. Contests prohibited

Effective: August 3, 2016

[Currentness](#)

The conduct of unregistered interactive fantasy sports contests is prohibited.

Credits

(Added [L.2016, c. 237, § 1, eff. Aug. 3, 2016.](#))

McKinney's Racing, Pari Mutuel Wagering and Breeding Law § 1412, NY RAC PARI-M § 1412

Current through L.2018, chapters 1 to 475, 477 to 521.