Gaming Law Basics for Business Lawyers I

PRESENTED BY THE GAMING LAW COMMITTEE

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September 15, 2018

8:30-10:00 AM
### Table of Contents of Materials in Order of Presentation

“Gaming Law Basics for Business Lawyers II”

Gaming Law Committee

March 28, 2018

1. Karl Rutledge and Glenn Light
2. Tamara Malvin
3. Steven Light and Kathryn Rand (to be submitted separately)
Gaming Law Basics for Business Lawyers II: Sports Betting, Online Gaming & Tribal Casinos

Gaming Law Committee

March 28, 2019

Abstract:

Lawyers with a gaming law practice typically represent clients before regulatory bodies that monitor compliance with a broad range of requirements imposed by statute and through regulations. But gaming attorneys necessarily have to develop expertise in other areas of law. One of the notable characteristics of a gaming law practice is its intersection with other areas of business law: tax law, bankruptcy, corporate finance, and intellectual property, to name just a few. A gaming attorney must have considerable familiarity with these and other areas of business law, including business torts.

Correspondingly, many business lawyers who do not represent clients in the gaming industry may come up against issues that in some way or another implicate gaming law. Client transactions that, even indirectly, affect gaming interests may be impacted by the heavily regulated nature of gaming. A business lawyer who says, “I don’t handle gaming law issues,” may be surprised when issues arise that require a knowledge of some aspects of gaming law. For example, a client who conducts business with a gaming property can in some instances be called forward before a regulatory body for a determination of suitability. In such a setting, an awareness of fundamental concepts of gaming law may be an important base of knowledge for the business lawyer.

With these considerations in mind, the Gaming Law Committee has undertaken a book project titled, “What Every Business Lawyer Needs to Know About Gaming Law.” The book, due to be published in the fall of 2019, will set out the basic structure of the gaming industry and the elaborate framework of regulation and licensing that is characteristic of the industry. It will also cover topics such as: dealings with Indian tribes, issues of corporate financing and restructuring, anti-money laundering requirements, social gaming, enforceability of gaming debts, internet gaming, and problem gambling. The book will also offer background on gaming issues that have a high public profile such as sports betting and lotteries. We expect our primary audience to be business lawyers who don’t specialize in gaming but who represent clients with business interests that may occasionally involve gaming law.

Our program is a preview of sorts of a portion of what we intend the book to cover. Our program at the fall 2018 meeting addressed issues of gambling disorders, currency reporting and anti-money laundering laws, exclusions of persons from gaming properties, and the special considerations attendant to corporate restructuring in the gaming industry. For this session, we
will have the following presenters on the topics of sports betting, online gaming, and tribal casinos:

**Tamara Savin Malvin**, Partner, Akerman LLP, Fort Lauderdale, FL. A commercial and civil litigator with extensive experience in federal and state court, Tammy Malvin represents casino and pari-mutuel operators in litigation, appellate, and regulatory matters. She will cover the basics of sports betting, including the recent U.S. Supreme Court decision in *Murphy v. NCAA* and the subsequent proliferation of state legislation to legalize sports betting.

**Karl F. Rutledge**, Partner and Chair, Commercial Gaming Group, and **Glenn J. Light**, Partner, Gaming Practice Group, Lewis Roca Rothgerber Christie, Las Vegas, NV. Karl Rutledge and Glenn Light are experienced gaming attorneys. Karl’s practice focuses on promotional marketing and land-based and Internet gaming, with a particular emphasis on eSports, skill-based contests, sweepstakes, official rules, sports betting, privacy policies, and website terms and conditions. Glenn’s practice focuses on land-based and interactive casinos, horse racing, sports betting, sweepstakes and contests, particularly guiding clients through licensing processes. They will cover online gaming, including the federal Unlawful Internet Gambling Enforcement Act of 2006 and the recent U.S. Department of Justice memo regarding online gaming and the federal Wire Act.

**Steven A. Light**, Professor of Political Science and Public Administration, and **Kathryn R.L. Rand**, Professor of Law, University of North Dakota, Grand Forks, ND. Steve Light and Kathryn Rand co-direct the Institute for the Study of Tribal Gaming Law and Policy at the University of North Dakota. Together, they have authored three books and nearly 60 additional publications on Indian gaming law and policy. They will cover the basics of Indian gaming regulation, along with specific issues related to Indian land acquisitions, tribal-state gaming compacts, management contracts, labor and employment, and tribal sovereign immunity.

The Gaming Law Committee believes that this material and programming will provide useful insights to business lawyers. We look forward to feedback regarding the program and suggestions of topics of interest to business lawyers that could be addressed in our forthcoming book. Please direct questions, comments, or suggestions to Keith Miller, vice-chair of the Gaming Law Committee at keith.miller@drake.edu
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This guide is a publication of Lewis Roca Rothgerber Christie LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact Lewis Roca Rothgerber Christie.
Introduction

The internet has become one of the most efficient mediums for operators to disseminate online gaming, sweepstakes, and contests to participants worldwide. Opposing moral viewpoints, conflicting statutory interpretations and legal challenges have emerged in response to the unbridled growth of these online activities in the United States (U.S.). This guide outlines and discusses the types of online activities that can be lawfully offered over the internet to U.S. users.

Overview of the U.S. Gambling Prohibitions

The U.S. operates under a dual-sovereign system with both federal and state governance. Under this framework, the U.S. Constitution and federal law are the supreme law of the land and thus generally circumscribe the laws in the 50 U.S. states. The federal government, however, has not traditionally played a major role in the regulation of gaming. Instead, gaming regulation has been viewed as most appropriate for state and local jurisdictions with enforcement responsibilities primarily left to the individual states.

With the notable exception of laws governing sports wagering1, federal criminal law serves to assist individual states in enforcing state gambling laws by giving concurrent jurisdiction to federal law enforcement to police and prosecute multi-state and international gambling operations. Most federal restrictions, therefore, merely prohibit offering gambling activities in states where such activities are illegal under state law.

State gambling violations can take several forms, including lotteries, unlawful wagering and bookmaking. Pay-for-play games of chance with attendant prizes represent the most prevalent state gambling violation. Illegal games of chance fall under lottery laws that prohibit any activities where the following elements are present: a person (1) pays consideration—usually cash—directly or indirectly, (2) for the opportunity to win a prize, (3) as the result of a chance-based activity. If any of these three elements is missing, then the activity is generally, but not always, permitted under both state and federal law. Nevertheless, as the discussion below illustrates, analysis of these three elements is not consistent in all jurisdictions.

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Removal of Consideration

Removing the element of consideration from a prohibited gambling activity generally creates a lawful activity within the U.S. The resulting activity is referred to as a sweepstakes. A sweepstakes always contains the elements of chance and the award of a prize, but the element of consideration is absent to avoid violating various state or federal lottery prohibitions.

States typically fall into one of three general categories when evaluating whether the element of consideration is satisfied:

- pecuniary/economic value jurisdictions,
- traditional contract principals jurisdictions, and
- any consideration jurisdictions.

Most states follow a pecuniary/economic value analysis as it relates to consideration. Only a small number of states use the other two tests. The rationale under the pecuniary/economic value analysis is that consideration requires some measurable economic value flowing from the participant to the promoter, usually the transfer of money. A promotion that requires participants to buy a product or pay a monetary amount to participate in the promotion presents a clear example of consideration. Generally, the participant does not provide consideration where some nominal amount is paid to a third party, such as the cost of postage or fees for internet service, to enter a sweepstakes. But disguising entry fees as telephone or text message charges that accrue to the benefit of the sweepstakes promoter may be problematic.

A less clear situation arises when a promotion requires participants to expend some degree of effort that ultimately benefits the promoter (e.g., completing a questionnaire on consumer demographics or product preference). Unfortunately, neither federal nor state law specifies how much effort the consumer must expend before the activity is deemed consideration. Generally, the more effort required, the greater the likelihood it will be deemed consideration.

Two methods of removing consideration are common. Under the first method, the operator does not charge any participants to enter the sweepstakes. Here, an operator’s revenues are derived from the increased sales of goods created by the advertising value of the sweepstakes or collecting fees from third parties, such as sweepstakes sponsors.

A permanent sweepstakes website where the prizes for the chance-based games are provided by sponsors who advertise on the site are common on the internet. The underlying idea behind
these sites is that the sweepstakes will help build a sponsor’s brand. The sweepstakes can be a traditional raffle or an instant-win promotion but also can extend to any game of chance, including casino-style gaming. Caution should be exercised, as a state may have restrictions on the number or type of promotional sweepstakes that a promoter may offer.

A second sweepstakes model allows participants to enter by paying indirect consideration through the purchase of a good or service while providing a free alternative method for anyone to enter the promotion. A common example is a promotion at a fast food restaurant, where participants receive game pieces in exchange for purchasing hamburgers or soft drinks. These game pieces, either by themselves or in combination, provide an opportunity for the purchaser to win valuable prizes in lottery-type games. The key feature of this type of promotion distinguishing it from illegal gambling is the alternative opportunity to participate without having to purchase anything.

This second sweepstakes model is commonly referred to as having a free Alternative Method of Entry (AMOE). AMOEs are common in every state, even though most participants enter the sweepstakes by purchasing the product being promoted. Common examples of popular AMOEs include distribution at point-of-purchase, mail-in entries, or entries through a toll-free telephone number.

Most state sweepstakes laws require operators to disclose the no purchase method of entry in a clear and conspicuous manner. Often the phrases “no purchase necessary” and “purchase will not increase your chances of winning” are displayed prominently on the online sweepstakes site and all accompanying sweepstakes materials.

The AMOE also must have “equal dignity” with the purchase method of entry. This means that non-paying participants must have an equal opportunity to enter and win the sweepstakes. They should not face lesser odds or greater obstacles and should have an equal chance to win any of the prizes offered. For example, a person who enters by paying consideration cannot receive a disproportionate number of entries compared to a non-paying participant. Moreover, paying customers cannot have the opportunity to win different or more expensive prizes. Any material disparity (actual or perceived) between paying and non-paying entrants can invalidate the AMOE and render the sweepstakes illegal.

Operators should be cautioned that the AMOE sweepstakes model cannot be implemented to merely disguise what in substance constitutes gambling. Higher scrutiny is applied to AMOE sweepstakes because operators may attempt to make money from paying customers desiring to
win prizes, as opposed to promoting a product unrelated to the sweepstakes. This is a very real
distinction in some courts and requires special legal caution and consideration.

**Removal of Chance**

Removing the element of chance is another common and effective way to ensure an activity is
legal under current law. When the element of chance is removed, it generally creates a lawful
skill game or contest.

Skill games have long been distinguished from games of chance. From carnival midways to
bowling tournaments, the opportunity to win prizes based on the demonstration of skill has
continually drawn the interest of the young and old alike. In recent years, the internet has
exploded with hundreds of pay-for-play skill game sites. Leading games of this type are fantasy
sports and casual games such as solitaire, checkers, Tetris, and other puzzle or strategy
games. The genre of “hardcore” games, which require more complex interaction, skills and
training by participants, is growing in popularity, especially among teenagers. These games
include sports simulation, first-person shooter and role-playing games.

Whether a pay-for-play skill game for prizes is a permitted game as opposed to a prohibited
game of chance is typically based on the relative degrees of skill and chance present in the
game. Although varying by state, the tests used to analyze skill versus chance include:

- predominance test,
- material element test, and
- any chance test.

Most states use the predominance test. That is, if the element of skill in a particular game
predominates over chance, then the game is permitted.

Several other states, however, prohibit a game if chance plays a material element in
determining a win or loss. Some courts interpret the more subjective material element test as a
lesser standard than the predominance test. The reason is that chance does not need to
predominate in order for the game to be considered a game of chance. Hence, in states that
apply the material element test, it may be difficult to offer skill based games that resort to a
chance component in determining the outcome.

A few states adhere to the “any chance” test. This means that a game is considered chance-
based if any element of chance affects the outcome. As virtually every game has some element of chance, most skill games will not survive scrutiny in these states.

Finally, some states simply prohibit pay-for-play skill games regardless of skill level, unless the game is specifically exempted by state law.

In any jurisdiction that distinguishes games of chance from skill contests, the determination as to whether a game is one of skill or chance is not a question of law, but one of fact. The operator would need to prove through expert witnesses or other evidence that the game’s skill levels meet the requisite test in the applicable state. A judge or juror would then decide the outcome after reviewing the evidence (usually in the form of expert mathematical testimony). Apart from the merits of the games themselves, the ultimate results of any court case are determined by all of the facts presented to the court, including the quality of each side’s evidence and experts and/or the leanings of the judge or jury.

**Types of Chance**

When evaluating a contest on the basis of skill versus chance, it is important to know that there are several types of chance. The most common type is systemic chance. Systemic chance occurs where the game itself has random elements created either by a random number generator in a computer program or some other random event, such as a dice throw, ball draw, or card shuffle. In Scrabble, for example, systemic chance is the random selection of tiles. In poker, it is the shuffle and deal of the cards.

A second type of chance is imperfect knowledge or information. This phenomenon occurs where the outcome of a game is not solely determined by skill, but is also influenced by having incomplete information of all factors that can impact game results. This type of chance could occur even where the players have identical “draws,” but otherwise have imperfect knowledge – particularly where they need to make decisions based on unexposed icons, symbols or an absence of information. Take, for example, the game of rock, paper and scissors. While the game does not have systemic chance, imperfect information is present since players need to make decisions based on the absence of information, e.g., each player must act simultaneously and thus acts without knowledge as to the other player’s choice of rock, paper or scissors. This is in contrast to chess, where players move sequentially and have complete information regarding the factors that can impact outcome, e.g., after one’s opponent moves in chess, the game board is instantaneously updated to allow a skilled response. If the unknown factors in the game are such that the imperfect information has an impact on who wins, there is a greater
likelihood that the game will be considered one of chance.

Still other forms of chance may exist. One example is where a game is designed to negate skill by making the skill levels beyond the capabilities of the participants. For example, imagine administering a multiple-choice test on quantum physics to ordinary 8-year-olds. Would the test results be based on skill or chance? Likely, most 8-year-olds would simply resort to guessing at the correct answer.

Accordingly, when reviewing the skill levels of their games, operators should ask themselves the following questions:

- Does the game have defined rules without predetermined odds of success?
- Are there genuine skill elements whereby persons possessing the requisite skills have a consistent and decided advantage over non-skilled competitors?
- Does the format of the games allow the skilled competitor to exercise these traits?
- Is the competitor’s skill the determining factor in the outcome of the game, as opposed to fortunate circumstances resulting in an easier game or draw?
- Does every stage of the game meet the requisite skill levels including tie breakers?
- Has the designer removed as many random events in the game as possible?
- Has or can the company develop sufficient evidence to support a position that the game meets the requisite skill levels under the tests described above?

Ultimately, an operator must be able to establish that their games satisfy the requisite skill levels in each state where they are offered.

**Removal of Prize**

If the elements of consideration and chance are present but the award of a prize is eliminated, then the activity will be legal in most, if not all, states. While many states do not define what constitutes a “prize” within their statutes and have no case law on the matter, prizes traditionally have been considered to be things such as money and tangible items. In recent years, non-traditional prizes have become increasingly popular. Non-traditional prizes include offering extended play, avatars, the accumulation of points or poker chips for bragging rights and similar items. No court has addressed whether awarding virtual chips or other virtual items to the winners of a game constitutes a prize. Two issues arise when considering whether something has value. The first is whether the item awarded has a market value. While non-cash prizes
such as cars or vacations are common, courts generally require prizes to have a reasonably
determined value. Therefore, a difference exists between an honor and a prize (i.e., merely
being crowned a champion or receiving an acknowledgment in the form of a virtual item versus
receiving goods or services that have a defined market value). The same distinction could apply
to a virtual item that has functional utility only in the game in which it is awarded. This could
include the award of a virtual tractor that can only be used in a farm game. Accordingly,
operators must avoid assigning a value to these virtual goods. The second issue is whether the
item, despite having no market value, can be exchanged for cash or an item of value. An
example would be tickets from arcade games that can be exchanged for prizes.

Operators should take precaution that the virtual objects awarded cannot be purchased, sold, or
transferred in the game or via secondary markets outside the game. Secondary markets, even if
operated by independent third parties, can create a reasonably determinable value for the
items. Even in the absence of an operator’s authorization or support, a prosecutor could argue
that the company knowingly profits from the secondary market.

A key factor in the analysis of potential liability is an operator’s efforts to stop the secondary
markets. Companies need to be diligent and aggressive in eradicating such markets. An
effective method to limit these secondary markets is to bind the virtual items to a player. If the
virtual items are bound to the player, the ability to transfer or exchange the items is eradicated
and, consequently, so is the secondary market. Eliminating a secondary market for these virtual
items supports the argument that they are merely bragging rights with no market value.

Finally, operators need to understand the risks of awarding extended play without offering free
play to potential participants. Some state laws provide that an extension of a service is
something of value and, therefore, conforms to/satisfies the definition of a prize. The basis for
prohibiting extended play stems from crafty entrepreneurs placing poker machines in bars that
only accumulated additional credits, which ostensibly could be used only for additional plays.
Ordinarily this would not pose a problem. Certain operators, however, instituted a procedure
where players, when ready to leave the bar, would notify the bartender, who would verify the
credits left on the machine, pay the player the remaining credits in equivalent cash, and “knock
off” or remove the credits by a reset button or simply unplugging and replugging the machine,
thereby resetting it for the next customer. In essence, this is gambling using hand pays.

Upon learning of these business ventures, legislatures subsequently passed laws specifying
that extended play constitutes a prize. Consequently, in states that outlaw extended play, a
game would likely be considered unlawful if players risk something of value (consideration), on the outcome of a game of chance, with the understanding that they will receive extended play (prize).

In short, a properly constructed virtual prize model should have few problems being defended. An award of such virtual objects should not be considered a prize (for the purposes of gambling law) if it is non-refundable and is not exchangeable, replaceable, redeemable, or transferable for any real-world funds or prizes. For example, if a player who wins virtual chips has absolutely no way to redeem them for cash, tangible objects, or other items of value during game play or via secondary markets outside the game, the items won have no independent market value, and therefore, do not constitute a prize for the purposes of gambling law.

Goals: Adequate Preparation to Avoid Legal Problems

Current laws offer opportunities for operators to disseminate their online games to citizens in the U.S. Nevertheless, those seeking to use the internet to conduct contests or sweepstakes must recognize they are entering an intricate and specialized industry. As such, existing and aspiring operators must understand and operate within these complex legal boundaries.

The goal is adequate preparation to avoid legal problems. Operators must comply with federal law and the laws of all the states where they accept participants. Complying with the laws where the company has its offices or houses its servers is insufficient. Accordingly, a 50-state review should be conducted to individually analyze the case law, statutes, attorney general opinions, and other available legal materials for each state in order to categorize the states by level of risk. Doing this will help an operator determine the states from which the site will accept participants and those from which it will not.

Finally, operators need to adopt a compliance program designed to prevent prohibited persons from utilizing the site. While no specific procedures are mandated, many sites have implemented several measures to meet the legal requirements. These include:

- geo-blocking software,
- address verification services,
- credit verification services,
- proof of government identification before issuing prizes.

Moreover, the program needs to be regularly audited and tested for exceptions. Maintaining
established practices for immediately implementing new or remedying old procedures is advisable.

**Conclusion**

There are many opportunities for operators to develop business and build their brands with games and sweepstakes on the internet, but consideration must be given to the legal complexities of doing so. Gambling laws vary from state to state and operators would be wise to conduct thorough research on each before initiating contests, sweepstakes, or games in any given location.
Lewis Roca Rothgerber Christie LLP has one of the largest dedicated gaming law practices in the world. The attorneys in our practice group have extensive experience in gaming law that spans several decades, which includes experience in casino gaming (commercial and tribal), Internet gaming, sports betting, pari-mutuel racing, sweepstakes, lottery, bingo and compliance.

Our gaming practice group is nationally recognized across the industry and has been at the forefront of all major gaming developments for the past quarter century. We represent casino operators, gaming manufacturers and distributors, management companies, tribes, entrepreneurs, investors, and governments in a variety of matters including licensing, compliance, transactions, restructuring, and regulatory adoption.

As legalized gaming continues to proliferate across the United States and the world, the laws governing the gaming industry continue to evolve. Lewis Roca Rothgerber Christie’s gaming practice group closely monitors activity in this unique industry to provide our clients with sound and timely advice.
When your opponent hands you its playbook, read it.

On January 14, 2019, the U.S. Department of Justice issued a memorandum on its new interpretation of the Wire Act. The memorandum is a complete reversal by the DOJ from its 2011 memorandum on the same subject. Though the memorandum was anticipated, its breadth and scope nonetheless have taken gaming industry participants and regulators by surprise. Lest there be any doubt, the new position adopted by the DOJ concludes that the Wire Act, a federal law enacted in 1961, makes online gambling an illegal activity across state lines. The memorandum’s dramatic shift from the interpretation provided less than eight years prior will likely have a chilling effect on the rapidly developing, burgeoning online industry. This new guidance makes it clear that the federal government – or at least, the executive branch – now perceives the ban on interstate online gaming as not just a sports betting issue; rather, all forms of gambling on the Internet are subject to the Wire Act’s restrictions.

In its opinion, the DOJ goes so far as to single out the online lotteries currently being offered as a consequence of the 2011 interpretation. Indeed, some states have entered into liquidity pools offering interstate online gaming opportunities in other arenas as well. Such interstate activity may very likely be the subject of investigation, prosecution, and/or litigation in the near future.
Companies that operate or support online gaming and the jurisdictions that authorize and regulate them, however, can take comfort in that the DOJ's reinterpretation of the Wire Act is not necessarily the law. The memorandum is quite simply an insight into the federal government's position and approach to all forms of wagering and betting that occur on the Internet.

Thus, with the publication of this memorandum, the DOJ has left its playbook wide open. And, courts of law are not required to blindly apply the DOJ's latest analysis either. In fact, the case law interpreting the Wire Act finds otherwise. In the only Circuit Court case law on the scope of the Wire Act, both the Fifth Circuit and the First Circuit concluded that the Wire Act applies solely to sports betting. This precedent is binding law within those circuits and highly persuasive throughout the remainder of the country where no binding Circuit Court precedent holding one way or the other on the scope of the Wire Act exists.

Those looking to the Supreme Court's recent repeal of PASPA in the Murphy case for help will be disappointed. Murphy turned on the Tenth Amendment's anti-commandeering principle. The language of the Wire Act does not appear to present the same constitutional violation. While Murphy was a boon for states' rights, it does not confer upon the states exclusivity over online gaming authorization and regulation.

Instead, online gaming industry participants should take this memorandum for what it effectively is: the federal government's legal brief in support of its case. While litigants normally have mere weeks to respond to the adverse party during litigation, in this case, at least 90 days has been provided as a grace period before any action is taken. It is very likely an insufficient amount of time to determine with certainty the widespread reach of this new memorandum opinion and to effect the changes deemed necessary in order to come into compliance, but this is the time to get legal affairs in order and to strategize with litigation counsel.
Though the government is changing course and attempting to undo decades of law, the good news for states and operators alike is that they can come prepared for the inevitable legal battle. Online gaming industry participants should develop a game plan with their legal teams and discuss the appropriate steps to take to protect their interests while continuing to advance and effectively regulate this dynamic industry.

This Akerman Practice Update is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.
GAMING LAW BASICS FOR BUSINESS LAWYERS:
TRIBAL GAMING

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Prepared for the ABA Business Law Section Spring Meeting, Vancouver BC (Mar. 28, 2019)
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Abstract

The $73 billion U.S. casino gaming industry is comprised of two major markets: the commercial sector and the tribal sector. Commercial casinos are subject to state law and regulation, and casinos owned and operated by American Indian tribal governments are subject to tribal, federal, and state law and regulation with distinct policy goals. For the 460 commercial casinos in 24 states, and the nearly 500 tribal gaming operations in 28 states, determining the exact legal and regulatory requirements for a specific issue requires careful and thorough research.
Our Goals Today

I. U.S. Casino Industry
II. Overview of Commercial Casino Regulation
III. Overview of Tribal Casino Regulation
IV. Key Issues for Business Lawyer:
   a. Indian Lands
   b. Tribal-State Compacts
   c. Management Contracts
   d. Labor & Employment
   e. Tribal Sovereign Immunity
Indian Gaming is Serious Business

- Consulting & research
- Education
- Outreach

Institute for the Study of Tribal Gaming Law & Policy
@ the University of North Dakota
Part I

THE U.S. CASINO INDUSTRY
• $73B in 2017

• Two major sectors: Commercial & Tribal

• Commercial sector
  – 460 casinos in 24 states
  – $40.3B in gross gaming revenue; highest amount to date
  – 3.4% increase over prior year

• Tribal sector
  – 494 casinos in 28 states operated by 242 tribes
  – $32.4B in gross gaming revenue; highest amount to date
  – 3.9% increase over prior year
Law & Policy Drive Growth

- Market expansion through further state legalization in 2017
  - Sports betting, online gaming
  - Increased casino licenses, locations
  - Expanded games, machine limits
- Continuation of policy shift from prohibition to legalization
Laws & Regulations

• **State policy generally determines legality**
  – Exceptions: Some federal prohibitions (PASPA, Wire Act) & areas of authority (tribal gaming)

• **Tension between economic growth & morality**
  – Limits on location, games, licenses, etc.

• **Varies significantly by jurisdiction**
  – Nevada vs. Utah; California vs. Alabama
  – 50 different sets of laws & regulations (more with tribal jurisdictions)
OVERVIEW OF COMMERCIAL CASINO REGULATION
Two Regulatory Models

- **Nevada (1931) & New Jersey (1976)**
  - Next generation of state legalization in 1990s; states typically drew on each model (hybrid models) with local customization (i.e., riverboat casinos)

- **Common policy goals**
  - Ensure integrity of games, fairness to players
  - Protect public against crime, problem gambling
  - Generate economic development, tax revenue
• **Market demand as driver**
  – “Wide Open Gambling Bill”
  – Authorizes commercial gaming across state (215 casinos in 2017)
  – Maximize economic growth (and state tax revenue)
  – Most aspects (number of licenses, location, size, amenities, etc.) left to industry
  – Few restrictions, but aggressive enforcement of integrity regulations
  – Comprehensive, cohesive regulatory scheme considered “gold standard”
New Jersey Model

• **Public protection as driver**
  – “Casino Control Act”
  – Casinos allowed only in Atlantic City, and only as part of hotel resort (7 casinos in 2017)
  – Limits on square footage, slots & high-stakes games
  – Extensive restrictions (though expanded gambling in recent years), required investment & higher taxes
  – Stunted economic growth, operator bankruptcies
  – Dramatically different industry than Nevada despite population center & unlimited licenses
OVERVIEW OF TRIBAL CASINO REGULATION
Roots of Indian Gaming

- States expand legalized gaming by ‘80s
- Tribes in California & Florida open bingo halls
- Tribal sovereignty
  - Pre-constitutional right of self-determination
  - U.S. government both recognized & undercut
  - High-stakes bingo & card games on reservation
  - Gaming is outgrowth of tribal sovereignty
  - If state did not prohibit, could not regulate
1. Promote **tribal economic development, self-sufficiency, and strong tribal governments**
   - Tribal communities poorest in US, many with 50% or higher unemployment
   - Most reservations located in rural, isolated areas with few economic development options
   - Cuts in federal aid to tribes increase need for self-sufficiency

2. **Regulate** to ensure legality & tribal interests
   - Continued concern about organized crime & gambling
   - Tribes seen as needing legal protection

3. Establish **federal authority**
Regulates gaming conducted by “Indian tribe” on “Indian lands”

- Tribe can game if not prohibited by state law

- Regulatory scheme according to game type
  - **Class I**: Traditional tribal games
  - **Class II**: Bingo, pull-tabs, some non-banked card games
  - **Class III**: Everything else—slot machines, casino games, house-banked card games

REQUIRES TRIBAL-STATE COMPACT
Class I: IGRA does not apply

Class II: Bingo, etc.; regulated by tribe with federal oversight (NIGC), including MICS

Class III: Casino games; regulated according to tribal-state compact

- Hundreds of Class III compacts & amendments in operation
- Role of state/tribal regulation varies
- Restrictions built in—number & type of games, facilities, etc.
- Revenue sharing (in lieu of taxes) for legal exclusivity in state
Part IV

KEY ISSUES FOR BUSINESS LAWYERS
Newly Recognized Tribes

- *Carcieri v. Salazar* (2009): Under IRA, Interior Secretary authority to take land into trust limited to tribes “under federal jurisdiction” in 1934
- Fact intensive inquiry: Examination of historical evidence, necessarily case-by-case (or tribe-by-tribe)
- Interior Dep’t Office of the Solicitor memo (2014): 2-part inquiry
  - Evidence that tribe under federal jurisdiction by or before 1934 (treaty negotiations, fed administration of reservation, enforcement of fed laws, fed provision of services, etc.)
  - Evidence specific to the year 1934
Indian Lands

• Newly Acquired Lands
  – IGRA § 2719 generally prohibits gaming on Indian lands taken into trust after 1988, but several exceptions
    • Within or contiguous to reservation
    • For tribes without reservations in 1988, within tribe’s last reservation & within state tribe currently resides
    • Oklahoma: within former reservation or contiguous to current trust or restricted lands
    • Settlement of land claim, initial reservation, or restoration of lands for restored tribe
    • “Best interests” or “2-part determination” exception: best interests of tribe & not detrimental to surrounding community; governor veto
• **Provisions**
  - IGRA § 2710(d)(3)(C) restricts compacts to:
    • Application of state/tribal civil laws “directly related to, and necessary for, the licensing and regulation” of Class III gaming
    • Allocation of state/tribal civil/criminal jurisdiction “necessary for enforcement of such laws and regulations”
    • Payments to state to cover state regulatory costs
    • Tribal taxation of Class III gaming (comparable to state taxation)
    • Breach of contract remedies
    • Operating and facility maintenance standards
    • “any other subjects that are directly related to the operation of gaming activities”
Revenue Sharing

IGRA § 2710(d)(4) prohibits states from imposing direct “tax, fee, charge, or other assessment” on tribes/tribal casinos.

Revenue sharing allowed in return for additional benefits beyond right to operate Class III gaming:

- State must offer significant/meaningful concessions
- State’s concessions must result in substantial/quantifiable benefits to tribe that justify amount of payments to state

- In re Indian Gaming Related Cases, 331 F.3d 1094 (9th Cir. 2003)
- Rincon Band v. Schwarzenegger, 602 F.3d 1019 (9th Cir. 2010)
Management Contracts

• Must be approved by the NIGC
  – IGRA §§ 2711 (Class II), 2710(d)(9) (Class III)
  – 25 C.F.R. pts. 531 (Content), 533 (Approval), 535 (Post-Approval), 537 (Background Investigations)
  – Any contract, subcontract, or collateral agreement between tribe & contractor if provides for management of all or part of tribe’s gaming operation
  – Collateral agreement = any contract, written or not, directly or indirectly related to management contract or tribe’s relationship with management contractor
  – Wells Fargo Bank v. Lake of the Torches Econ. Dev. Corp., 658 F.3d 684 (7th Cir. 2011)
• Not all federal laws apply to tribe
  – Ex. Title VII of 1964 Civil Rights Act, 42 U.S.C. § 2000e(b)

• National Labor Relations Act
  – San Manuel Indian Bingo & Casino v. NLRB, 475 F.3d 1306 (D.C. Cir. 2007)
  – Little River Band of Ottawa Indians v. NLRB, 788 F.3d 537 (6th Cir. 2015) & Soaring Eagle Casino & Resort v. NLRB, 791 F.3d 648 (6th Cir. 2015)
  – Pauma Band of Missions Indians v. NLRB, 888 F.3d 1066 (9th Cir. 2018)
• Generally
  – Lewis v. Clarke, 581 U.S. ___, 137 S. Ct. 1285 (2017): driver employed by tribal gaming authority not entitled to immunity for personal injury suit against him in personal capacity
Take-Aways

- Commercial casinos subject to state law & regulation; rules vary by state
- Tribal casinos subject to IGRA; general rules in federal law & regulation, but specifics vary by tribe and by state
- Federal Indian law may deviate from general rules of federal and state law
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 Memoran-
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). 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 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. 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,
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 (KMOV), 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 contest.” United States v. Lyons, 740 F.3d 702, 718 (1st Cir. 2014).
Department had advanced that position in court and before Congress. 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”). 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. But our 2011 Opinion represented a marked shift in...
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).
Reconsidering Whether the Wire Act Applies to Non-Sports Gambling

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
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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”).

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

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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.” \textit{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.

\textbf{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. \textit{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.”), \textit{aff’d}, 136 S. Ct. 958 (2016); \textit{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,

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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 Aveco 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-
Reconsidering Whether the Wire Act Applies to Non-Sports Gambling

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

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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.
Reconsidering Whether the Wire Act Applies to Non-Sports Gambling

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. 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. We have, for exam-

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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. And we have revisited precedents that themselves had reversed established positions of the Executive Branch.

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


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. But in light of our conclusion about the plain language of

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the statute, we do not believe that such reliance interests are sufficient to justify continued adherence to the 2011 opinion. 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

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.
115TH CONGRESS
2d Session

S. 3793

To acknowledge the rights of States with respect to sports wagering and to maintain a distinct Federal interest in the integrity and character of professional and amateur sporting contests, and for other purposes.

IN THE SENATE OF THE UNITED STATES

December 19, 2018

Mr. HATCH (for himself and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To acknowledge the rights of States with respect to sports wagering and to maintain a distinct Federal interest in the integrity and character of professional and amateur sporting contests, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

5 (a) Short Title.—This Act may be cited as the “Sports Wagering Market Integrity Act of 2018”.

5 (b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
TITL E I—SPORTS WAGERING

Sec. 101. General prohibition on sports wagering.
Sec. 102. State sports wagering program.
Sec. 103. State sports wagering program standards.
Sec. 104. Anti-money laundering provisions.
Sec. 105. Interstate sports wagering compacts.
Sec. 106. National Sports Wagering Clearinghouse.
Sec. 107. Law enforcement coordination.

TITL E II—WAGERING TRUST FUND

Sec. 201. Findings.

TITL E III—WIRE ACT AND SPORTS BRIBERY ACT AMENDMENTS

Sec. 301. Wire Act clarification and authorization of civil enforcement.
Sec. 302. Sports Bribery Act improvements.

TITL E IV—GAMBLING ADDICTION PREVENTION AND TREATMENT

Sec. 401. Authority to address gambling in Department of Health and Human Services authorities.
Sec. 402. Advisory committee.
Sec. 403. Surveillance of gambling addiction.

TITL E V—GENERAL PROVISIONS

Sec. 501. State and Tribal authority.
Sec. 502. Severability.

1 SEC. 2. FINDINGS.

2 Congress makes the following findings:

3 (1) In 1992, Congress enacted the Professional and Amateur Sports Protection Act (Public Law 102–559; 106 Stat. 4227) to ban sports wagering in most States, finding that “sports gambling conducted pursuant to State law threatens the integrity and character of, and public confidence in, professional and amateur sports, instills inappropriate values in the Nation’s youth, misappropriates the goodwill and popularity of professional and amateur
sports organizations, and dilutes and tarnishes the
service marks of such organizations.”.

(2) On May 14, 2018, the Supreme Court of
the United States held in Murphy v. NCAA, 138 S.
Ct. 1461 (2018), that the prohibition of State au-
thorization and licensing of sports wagering schemes
under the Professional and Amateur Sports Protec-
tion Act (Public Law 102–559; 106 Stat. 4227) vio-
lates the 10th Amendment to the Constitution of the
United States.

(3) After the decision in Murphy v. NCAA, 138
S. Ct. 1461 (2018), any State may legalize and reg-
ulate sports wagering, as determined by the State,
consistent with section 1084 of title 18, United
States Code (commonly known as the “Wire Act”),
section 1955 of that title (commonly known as the
“Illegal Gambling Business Act”), subchapter IV of
title 31, United States Code (commonly known as
the “Unlawful Internet Gambling Enforcement Act
of 2006”), and other Federal law.

(4) Since the decision in Murphy v. NCAA, 138
S. Ct. 1461 (2018), the States of Delaware, Mis-
sissippi, New Jersey, New Mexico, Pennsylvania,
Rhode Island, and West Virginia have joined the
State of Nevada in accepting sports wagers, and
more than 2 dozen other States are considering legis-
lation to legalize sports wagering.

(5) Even before the decision in Murphy v. NCAA, 138 S. Ct. 1461 (2018), there was a signifi-
cant legal sports wagering market in the United States, with $4,870,000,000 wagered on sports in the State of Nevada in 2017. The legal sports wa-
gering market will continue to grow as legal sports wagering becomes more widely available.

(6) Overshadowing the legal sports wagering market is a much larger illegal sports wagering mar-
et that circumvents the taxation, anti-money laun-
dering controls, and other regulations of the legal sports wagering market. The American Gaming As-

(7) The estimated size of the illegal sports wa-
gering market suggests that the laws and enforce-
ment efforts that for decades have sought to curtail illegal sports wagering have come up short.

(8) The expansion of legal sports wagering after the decision in Murphy v. NCAA, 138 S. Ct. 1461 (2018), presents an opportunity to significantly re-
duce the illegal sports wagering market by pairing
enhanced authority for law enforcement to shut
down the illegal sports wagering market with policies
that incentivize participants in the illegal sports wa-
gering market to shift their activity into the legal
sports wagering market, as available, so that such
activity can be appropriately regulated and taxed.

(9) All forms of gaming have historically been
regulated predominantly at the State level, but
sports wagering, which often involves individuals
across numerous States placing sports wagers on a
sporting event that takes place in yet another State,
affects interstate commerce more than other forms
of gaming that are generally contained within the
walls of a gaming establishment.

(10) While each State may decide whether to
permit sports wagering and how to regulate sports
wagering, there is an important role for Congress to
set standards for sports wagering and provide law
enforcement with additional authority to target the
illegal sports wagering market and bad actors in the
growing legal sports wagering market.

SEC. 3. DEFINITIONS.

In this Act:

(1) AMATEUR ATHLETIC COMPETITION.—The
term “amateur athletic competition” has the mean-
ing given the term in section 220501 of title 36, United States Code.

(2) **ANONYMIZED SPORTS WAGERING DATA.**—

With respect to a sports wager accepted by a sports wagering operator, the term “anonymized sports wagering data” means—

(A) a unique identifier for the transaction and, if available, the individual who placed the sports wager, except that such identifier shall not include any personally identifiable information of such individual;

(B) the amount and type of sports wager;

(C) the date and time at which the sports wager was accepted;

(D) the location at which the sports wager was placed, including the internet protocol address, if applicable; and

(E) the outcome of the sports wager.

(3) **GAMBLING DISORDER.**—The term “gambling disorder” means—

(A) gambling disorder, as the term is used by the American Psychiatric Association in the publication entitled “Diagnostic and Statistical Manual of Mental Disorders, 5th Edition” (or a successor edition);
(B) pathological gambling;
(C) gambling addiction; and
(D) compulsive gambling.

(4) GOVERNMENTAL ENTITY.—The term “governmental entity” means—

(A) a State;
(B) a political subdivision of a State; and
(C) an entity or organization, including an Indian Tribe, that has governmental authority within the territorial boundaries of the United States, including Indian lands (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)).

(5) INDIAN TRIBE.—The term “Indian Tribe” has the meaning given the term “Indian tribe” in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703).

(6) INTERACTIVE SPORTS WAGERING PLATFORM.—The term “interactive sports wagering platform” means a person or entity that offers licensed sports wagering over the internet, including through an internet website and mobile devices, on behalf of a licensed gaming facility.

(7) INTERNATIONAL REGULATORY ENTITY.— The term “international regulatory entity” means
any entity responsible for the regulation of sports
wagering outside the United States.

(8) INTERNATIONAL SPORTS WAGERING OPER-
ATOR.—

(A) IN GENERAL.—Except as provided in
subparagraph (B), the term “international
sports wagering operator” means any person
that—

(i) accepts sports wagers; and

(ii) is located outside the United
States.

(B) EXCEPTION.—The term “international
sports wagering operator” does not include a
sports wagering operator.

(9) INTERSTATE SPORTS WAGERING COM-
PACT.—The term “interstate sports wagering com-
pact” means a compact to offer sports wagering in
accordance with this Act between—

(A) 2 or more States with a State sports
wagering program;

(B) 1 or more States with a State sports
wagering program and 1 or more Indian Tribes;
or

(C) 2 or more Indian Tribes.
(10) LICENSED GAMING FACILITY.—The term “licensed gaming facility” means a person licensed by a State regulatory entity or an Indian Tribe licensed by a State regulatory agency.

(11) NATIONAL EXCLUSION LIST.—The term “national exclusion list” means the list maintained by the National Sports Wagering Clearinghouse, in cooperation with State regulatory entities and sports organizations, under section 106(c)(13).

(12) NATIONAL SELF-EXCLUSION LIST.—The term “national self-exclusion list” means the list maintained and administered by the National Sports Wagering Clearinghouse, in cooperation with State regulatory entities, under sections 103(b)(6)(A)(ii) and 106(c)(12).

(13) NATIONAL SPORTS WAGERING CLEARINGHOUSE.—The term “National Sports Wagering Clearinghouse” means the entity designated by the Attorney General under section 106(b).

(14) OFFICIAL.—The term “official” means a referee, umpire, judge, reviewer, or any other individual authorized to administer the rules of a sporting event.

(15) SPORTING EVENT.—The term “sporting event” means any athletic competition.
(16) **Sports Organization.**—The term “sports organization” means—

(A) a person or governmental entity that—

(i) sponsors, organizes, schedules, or conducts a sporting event; and

(ii) with respect to the sporting event and the participants in the sporting event—

(I) prescribes final rules; and

(II) enforces a code of conduct;

and

(B) a league or association of 1 or more persons or governmental entities described in subparagraph (A).

(17) **Sports Wager.**—

(A) In general.—Except as provided in subparagraph (C), the term “sports wager” means the staking or risking by any person of something of value upon the outcome of a sporting event, including the outcome of any portion or aspect thereof, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.
(B) INCLUSION.—With respect to an amateur or professional sporting event, the term “sports wager” includes—

(i) a straight bet;

(ii) a teaser;

(iii) a variation of a teaser;

(iv) a parlay;

(v) a total or over-under;

(vi) a moneyline;

(vii) a betting pool;

(viii) exchange wagering;

(ix) in-game wagering, including in-game wagering on—

(I) a final or interim game score;

(II) statistics; or

(III) a discrete in-game event;

(x) a sports lottery; and

(xi) a proposition bet.

(C) EXCEPTIONS.—The term “sports wager” does not include—

(i) any activity excluded from the definition of the term bet or wager under section 5362 of title 31, United States Code; or
(ii) any activity that does not violate
a provision of the Interstate Horseracing

(18) **Sports Wagering.**—The term “sports
wagering” means the acceptance of a sports wager
by a sports wagering operator.

(19) **Sports Wagering Operator.**—The term
“sports wagering operator” means—

(A) a licensed gaming facility that offers
sports wagering; and

(B) an interactive sports wagering plat-
form.

(20) **Sports Wagering Opt-In State.**—The
term “sports wagering opt-in State” means a State
that administers a State sports wagering program.

(21) **State.**—The term “State” means—

(A) a State;

(B) the District of Columbia; and

(C) any commonwealth, territory, or pos-
session of the United States.

(22) **State Regulatory Entity.**—The term
“State regulatory entity” means the governmental
entity—
(A) established or designated by a sports
wagering opt-in State under section
102(a)(2)(A)(ii); and

(B) responsible, solely or in coordination
with 1 or more other governmental entities, for
the regulation of sports wagering in the applica-
ble sports wagering opt-in State.

(23) State social gambling law.—The term
“State social gambling law” means a State law that
allows sports wagering that—

(A) is not conducted as a business;

(B) involves 2 or more players who com-
pete on equal terms; and

(C) does not provide a benefit to—

(i) a player, other than the winnings
of the player; or

(ii) a person who is not involved in a
sports wager.

(24) State sports wagering program.—
The term “State sports wagering program” means a
program administered and overseen by a State pur-
suant to an application approved by the Attorney
General under subsection (b) or (e) of section 102.

(25) Suspicious transaction.—The term
“suspicious transaction” means a transaction or an
arrangement that a sports wagering operator or the
National Sports Wagering Clearinghouse, as applica-
bile, knows or has reason to know, as determined by
a director, officer, employee, or agent of the sports
wagering operator or National Sports Wagering
Clearinghouse, is or would be if completed—

(A) a violation of, or part of a plan to vio-
late or evade, any Federal, State, or local law
(including regulations); or

(B) sports wagering by or on behalf of an
individual described in clause (iii), (iv), or (v) of
section 103(b)(4)(A).

(26) SUSPICIOUS TRANSACTION REPORT.—The
term “suspicious transaction report” means a report
submitted to a State regulatory entity, the National
Sports Wagering Clearinghouse, or a sports organi-
ization under section 103(b)(13).

(27) TRIBAL-STATE COMPACT.—The term
“Tribal-State compact” has the meaning given the
term in section 11(d) of the Indian Gaming Regu-
latory Act (25 U.S.C. 2710(d)).
TITLE I—SPORTS WAGERING

SEC. 101. GENERAL PROHIBITION ON SPORTS WAGERING.

(a) IN GENERAL.—Except as provided in subsection (b), it shall be unlawful for any person to knowingly accept a sports wager.

(b) EXCEPTIONS.—It shall not be a violation of subsection (a) for—

(1) a sports wagering operator located in a sports wagering opt-in State to accept a sports wager in accordance with State law; or

(2) a person to accept a sports wager in accordance with an applicable State social gambling law.

(c) INJUNCTIONS.—

(1) IN GENERAL.—If the Attorney General believes a person has violated, is violating, or will violate subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States or the appropriate United States court of a territory or possession of the United States, which shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin a violation of subsection (a).

(2) JURY TRIAL.—In the case of an alleged violation of an injunction or restraining order issued under paragraph (1), trial shall be, on demand of
the accused, by a jury in accordance with the Federal Rules of Civil Procedure.

(d) CIVIL PENALTIES.—

(1) IN GENERAL.—Any person who violates this subsection (a) shall be, with respect to any such violation, subject to a civil penalty of not more than the greater of $10,000 or 3 times the amount of the applicable sports wager.

(2) SEPARATE VIOLATIONS.—A separate violation occurs for each sports wager accepted in violation of subsection (a).

(3) JURISDICTION.—The district courts of the United States and appropriate United States courts of the territories and possessions of the United States shall have jurisdiction to enforce this subsection in accordance with section 1355 of title 28, United States Code.

(4) EFFECT OF LAW.—A violation of subsection (a) shall not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

(c) CIVIL PENALTY NOT EXCLUSIVE OF CRIMINAL PENALTY.—A civil penalty, injunction, or temporary re-
straining order imposed under this section shall be inde-
pendent of, and not in lieu of, criminal prosecutions or
any other proceedings under any other law of the United
States, including sections 1084 and 1955 of title 18,
United States Code.

(f) **EFFECTIVE DATE.**—Subsection (a) shall take ef-
fect on the date that is 18 months after the date of enact-
ment of this Act.

**SEC. 102. STATE SPORTS WAGERING PROGRAM.**

(a) **INITIAL APPLICATION.**—

(1) **IN GENERAL.**—To request approval to ad-
minister a State sports wagering program, a State
shall submit an application to the Attorney General
at such time, in such manner, and accompanied by
such information as the Attorney General may re-
quire.

(2) **CONTENTS.**—An application under para-
graph (1) shall include—

(A) a full and complete description of the
State sports wagering program the State pro-
poses to administer under State law, includ-
ing—

(i) each applicable State law relating
to sports wagering; and

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(ii) an identification of the State regulatory entity; and

(B) an assurance from the attorney general or chief legal officer of the State that the laws of the State provide adequate authority to carry out the proposed State sports wagering program.

(b) Approval by Attorney General.—

(1) In General.—Not later than 180 days after the date on which the Attorney General receives a complete application under this section, the Attorney General shall approve the application unless the Attorney General determines that the proposed State sports wagering program does not meet the standards set forth in section 103.

(2) Denial of Application.—A decision of the Attorney General to deny an application submitted under this section shall—

(A) be made in writing; and

(B) specify the 1 or more standards under section 103 that are not satisfied by the proposed State sports wagering program.

(c) Notice of Material Changes.—In the case of a material change to a State law relating to sports wagering, the State regulatory entity, or other information in-
cluded in an application submitted pursuant to subsection (a) or (e), not later than 30 days after the date on which the change is made, the State shall submit to the Attorney General a notice of such change.

(d) **Duration.**—A State sports wagering program shall be valid for a fixed 3-year period beginning on the date on which the Attorney General approves the application of the applicable State under subsection (a) or (e).

(e) **Renewal Application and Approval.**—Not later than the date on which the 3-year period referred to in subsection (d) ends, a State seeking to renew the approval of the State sports wagering program may submit to the Attorney General a renewal application that—

1. includes the information described in subsection (a); and

2. shall be subject to the approval process under subsection (b).

(f) **Revocation and Review.**—

1. **Emergency Revocation of Approval.**—The Attorney General shall promulgate regulations that provide procedures by which the Attorney General may revoke the approval of a State to administer a State sports wagering program before the date on which the 3-year term described in subsection (d) expires if the Attorney General finds that
the sports wagering program does not meet 1 or more standards set forth in section 103.

(2) **Administrative Review.**—The Attorney General shall promulgate regulations that provide procedures by which a State may seek administrative review of any decision by the Attorney General—

(A) to deny an application under subsection (b);

(B) to deny a renewal application under subsection (e); or

(C) to revoke an approval under paragraph (1).

**Sec. 103. State Sports Wagering Program Standards.**

(a) **In General.**—The Attorney General shall approve an application under section 102 unless the Attorney General determines that the proposed State sports wagering program does not meet the standards set forth in subsection (b).

(b) **Standards for State Sports Wagering Programs.**—A State sports wagering program shall meet each of the following standards:

(1) **State Regulatory Entity.**—Establish or designate a public entity in the applicable State as
the State regulatory entity for the purposes of regulating sports wagering operators and enforcing sports wagering laws in the State.

(2) **Permissible sports wagering.**—

(A) **In-person sports wagering.**—Provide that in-person sports wagering may be offered only by a sports wagering operator.

(B) **Internet sports wagering.**—

(i) **In general.**—With respect to any authorization of sports wagering on an interactive sports wagering platform, provide that such sports wagering, as available, is available only to—

(I) individuals located in the State; or

(II) in the case of an interstate sports wagering compact approved by the Attorney General pursuant to section 105, individuals located in States and on Indian lands (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)) of Indian Tribes that are party to the compact.
(ii) LOCATION VERIFICATION.—Include location verification requirements reasonably designed to prevent an individual from placing a sports wager on an interactive sports wagering platform from a location other than a location described in clause (i).

(C) SPORTS WAGER APPROVAL.—

(i) IN GENERAL.—Provide that a sports wagering operator shall not accept a sports wager unless such sports wager or class of sports wagers is expressly approved by the State regulatory entity.

(ii) APPROVAL CRITERIA.—Direct the State regulatory entity to establish criteria for decisions with respect to the approval of a sports wager or a class of sports wagers, such as whether the outcome of the event or contingency on which the sports wager is placed is—

(1) verifiable;

(2) generated by a reliable and independent process; and

(3) unlikely to be affected by any sports wager placed.
(D) Prohibition of sports wagering on certain amateur sports.—

(i) In general.—Except as provided in clause (ii), prohibit the State regulatory entity from approving or a sports wagering operator from accepting a sports wager on any amateur athletic competition.

(ii) Exceptions.—A State regulatory entity may approve, and a sports wagering operator may accept, a sports wager, as approved by the applicable State regulatory entity, on—

(I) the Olympic Games;

(II) the Paralympic Games;

(III) the Pan-American Games;

or

(IV) any intercollegiate sport (as defined in the Sports Agent Responsibility and Trust Act (15 U.S.C. 7801)).

(3) Restrictions on sports wagering to protect contest integrity.—

(A) Definition of necessary to maintain contest integrity.—In this paragraph,
rity” means that, in the absence of a restriction, there is a reasonably foreseeable risk that the outcome of the sporting event or contingency on which the wager is placed would be affected by the wager.

(B) CONTEST INTEGRITY.—Prohibit a sports wagering operator from accepting a sports wager in violation of a notice of restriction received by the sports wagering operator under subparagraph (E)(i).

(C) REQUEST TO RESTRICT SPORTS WAGERING.—

(i) IN GENERAL.—With respect to a sporting events sponsored, organized, or conducted by a sports organization, permit the sports organization to submit to the State regulatory entity a request to restrict, limit, or exclude wagers on 1 or more sporting events, including by restricting, limiting, and excluding sports wagers on 1 or more performances of an athlete in 1 or more sporting events in which such athlete participates, if the applicable sports organization determines that such restric-
tion is necessary to maintain contest integ-

(ii) **Deadlines for Submission.**—

Provide that the State regulatory entity

shall establish reasonable deadlines for the

submission of a request under clause (i) in

advance of the applicable sporting event.

(D) **Determination by the State Reg-

ulatory Entity.**—Provide that the State reg-

ulatory entity shall promptly—

(i) approve a request described in sub-

paragraph (C)(i) unless the State regu-

latory entity determines, considering any

information provided by the sports organi-

zation and any other relevant information,

that a restriction is not necessary to main-

tain contest integrity;

(ii) provide a written explanation of a
determination under clause (i) to approve

or deny a request;

(iii) make such written explanation

available to the public; and

(iv) provide a process by which the

sports organization that submitted the re-
quest may seek review of such determina-
tion.

(E) NOTICE OF RESTRICTION.—Provide
that the State regulatory entity shall establish
a process—

(i) to provide to sports wagering oper-
ators prompt notice of any restriction ap-
proved by the State regulatory entity; and

(ii) to make such notice publicly avail-
able.

(4) PREVENTION OF SPORTS WAGERING BY
PROHIBITED INDIVIDUALS.—

(A) PROHIBITED INDIVIDUALS.—Prohibit
a sports wagering operator from accepting
sports wagers from any—

(i) individual younger than 21 years
of age;

(ii) individual on the national self-ex-
cclusion list;

(iii) athlete, coach, official, or em-
ployee of a sports organization or any club
or team of a sports organization, with re-
spect to a sporting event sponsored, orga-
nized, or conducted by the sports organiza-
tion;
(iv) employee of a player or an official union of a sports organization, with respect to a sporting event sponsored, organized, or conducted by the sports organization;

(v) individual who, with respect to a sporting event sponsored, organized, or conducted by a sports organization, is—

(I) credentialed or accredited by the sports organization; and

(II) prohibited from placing a sports wager by the terms of such credential or accreditation; or

(vi) individual convicted of an offense under subsection (a) or (b) of section 224 of title 18, United States Code.

(B) NATIONAL EXCLUSION LIST.—

(i) IN GENERAL.—Provide that sports wagering operators shall have access to the national exclusion list maintained by the National Sports Wagering Clearinghouse.

(ii) REVIEW.—Establish procedures by which a resident of the State may seek review by the State regulatory entity of a
decision to include the individual on the national exclusion list.

(iii) Reasonable steps required.—Provide that a sports wagering operator shall take reasonable steps to prevent the sports wagering operator from accepting a sports wager from an individual on the national exclusion list.

(5) Authorized data.—

(A) Result of a sports wager.—

(i) Market transition period.—

With respect to any sports wager accepted on or before December 31, 2024, provide that a sports wagering operator shall determine the result of a sports wager only with data that is licensed and provided by—

(I) the applicable sports organization; or

(II) an entity expressly authorized by the applicable sports organization to provide such information.

(ii) Post-transition period.—With respect to any sports wager accepted after December 31, 2024, provide that a sports
wagering operator shall determine the result of a sports wager only with data that is obtained from a source that the State regulatory entity has—

(I) found to provide—

(aa) data of substantially similar speed, accuracy, and consistency to the data available under clause (i); and

(bb) only data that is—

(AA) legally obtained;

and

(BB) in full compliance with the terms of any applicable contract or license;

(II) expressly authorized to provide such data to sports wagering operators; and

(III) identified in the application of the State regulatory entity under section 102.

(B) OTHER PURPOSES.—Provide that the statistics, result, outcome, or other data used by a sports wagering operator for a purpose other than to determine the result of a sports
wager shall be in the public domain or otherwise legally obtained.

(6) **CONSUMER PROTECTIONS.**—

(A) **SELF-EXCLUSION.**—

(i) **STATE SELF-EXCLUSION LIST.**—
Provide a process by which an individual may restrict himself or herself from placing a sports wager with a sports wagering operator located in the State, including by imposing sports wager limits.

(ii) **NATIONAL SELF-EXCLUSION LIST.**—Provide, through the State regulatory entity acting in cooperation with the National Sports Wagering Clearinghouse, a process by which an individual may restrict himself or herself from placing a sports wager with a sports wagering operator located in any sports wagering opt-in State, including by imposing sports wager limits, and placing himself or herself on the national self-exclusion list.

(iii) **REASONABLE STEPS REQUIRED.**—Provide that a sports wagering operator shall take reasonable steps to pre-
vent from placing a sports wager an individual who is—

(I) described in clause (i); or

(II) included on the national self-exclusion list.

(B) WITHDRAWAL RESTRICTIONS.—Prohibit a sports wagering operator from—

(i) requiring an individual engaged in sports wagering to participate in a publicity or an advertising activity of the sports wagering operator as a condition of withdrawal of the winnings of the individual; and

(ii) imposing on any individual engaged in sports wagering—

(I) a minimum or maximum withdrawal limit for the account of the individual;

(II) any restriction on the right of the individual to make a withdrawal from the account of the individual based on the extent of the sports wagering by the individual;

(III) an unreasonable deadline for the provision of information relat-
ing to the identity of the individual as
a condition of withdrawal from the ac-
count of the individual; or

(IV) a dormancy charge for an
account of the individual that is not
used to place a sports wager.

(C) Disclosure.—

(i) Restrictions or Conditions.—
Provide that a sports wagering operator
shall provide an individual with adequate
and clear information relating to any appli-
cable restriction or condition before the in-
dividual opens an account with the sports
wagering operator.

(ii) Bonuses Offered.—Provide
that a sports wagering operator shall pro-
vide to an individual engaged in sports wa-
gering clear information relating to any
bonus offered, including the terms of with-
drawal of the bonus.

(iii) Public Availability.—Provide
that the information described in clauses
(i) and (ii) be available to the public.

(D) Treatment and Education Fund-
ing.—Provide that a sports wagering operator
shall allocate an appropriate percentage of the
revenue from sports wagering to—

(i) treatment for gambling disorder;
and

(ii) education on responsible gaming.

(E) Reserve requirement.—Provide
that a sports wagering operator shall maintain
a reserve in an amount not less than the sum
of—

(i) the amounts held by the sports wa-
gering operator for the account of patrons;

(ii) the amounts accepted by the
sports wagering operator as sports wagers
on contingencies the outcomes of which
have not been determined; and

(iii) the amounts owed but unpaid by
the sports wagering operator on winning
wagers during the period for honoring win-
ning wagers established by State law or
the sports wagering operator.

(7) Advertising.—Provide that advertise-
ments for a sports wagering operator—

(A) shall—

(i) disclose the identity of the sports
wagering operator; and
(ii) provide information about how to
access resources relating to gambling ad-
diction; and

(B) shall not recklessly or purposefully tar-
get—

(i) problem gamblers;

(ii) individuals suffering from gam-
bling disorder; or

(iii) individuals who are ineligible to
place a sports wager, including individuals
younger than 21 years of age.

(8) Licensing Requirement.—

(A) In general.—Provide that a sports
wagering operator located in the State shall be
licensed by the State regulatory entity.

(B) Suitability for Licensing.—

(i) In general.—Provide that before
granting a license to a prospective sports
wagering operator, the State regulatory en-
tity shall, make a determination, based on
a completed background check and inves-
tigation, with respect to whether the pro-
spective sports wagering operator and any
person considered to be in control of the
prospective sports wagering operator is
suitable for license in accordance with suit-
ability standards established by the State
regulatory entity.

(ii) ASSOCIATES OF APPLICANTS.—
Provide that if a prospective sports wager-
ing operator is a corporation, partnership,
or other business entity, a background
check and investigation shall occur with re-
spect to—

(I) the president or other chief
executive of the corporation, partner-
ship, or other business entity; and

(II) any other partner or senior
executive and director of the corpora-
tion, partnership, or other business
entity, as determined by the State
regulatory entity.

(iii) BACKGROUND CHECK AND INVES-
tIGATION.—Establish standards and pro-
cedures for conducting the background
checks and investigations described in this
subparagraph.

(C) UNSUITABILITY FOR LICENSING.—
With respect to the suitability standards under
in subparagraph (B)(1), provide that a prospec-
tive sports wagering operator shall not be deter-
mined to be suitable for licensing as a sports
wagering operator if the prospective sports wa-
gering operator—

   (i) has failed to provide information

   and documentary material for a determina-

   tion of suitability for licensing as a sports

   wagering operator;

   (ii) has supplied information which is

       untrue or misleading as to a material fact

       pertaining to any such determination;

   (iii) has been convicted of an offense

       punishable by imprisonment of more than

       1 year;

   (iv) is delinquent in—

   (I) filing any applicable Federal

       or State tax returns; or

   (II) the payment of any taxes,

       penalties, additions to tax, or interest

       owed to the United States or a State;

   (v) on or after October 13, 2006—

   (I) has knowingly participated in,

   or should have known the prospective

   sports wagering operator was partici-
pating in, an illegal internet gambling activity, including—

(aa) taking an illegal internet wager;

(bb) payment of winnings on an illegal internet wager;

(ce) promotion through advertising of an illegal internet gambling website or service; or

(dd) collection of any payment on behalf of an entity operating an illegal internet gambling website; or

(II) has knowingly been owned, operated, managed, or employed by, or should have known the prospective sports wagering operator was owned, operated, managed, or employed by, any person who was knowingly participating in, or should have known the person was participating in, an illegal internet gambling activity, including a activity described in items (aa) through (dd) of subclause (I);

(vi) has—
(I) received any assistance, financial or otherwise, from a person who has, before the date of enactment of this Act, knowingly accepted bets or wagers from any other person who is physically present in the United States in violation of Federal or State law; or

(II) provided any assistance, financial or otherwise, to a person who has, before the date of enactment of this Act, knowingly accepted bets or wagers from any other person who is physically present in the United States in violation of Federal or State law;

(vii) with respect to any other entity that has accepted a bet or wager from any individual in violation of United States law, has purchased or otherwise obtained—

(I) such entity;

(II) a list of the customers of such entity; or

(III) any other part of the equipment or operations of such entity; or
(viii) fails to certify in writing, under
penalty of perjury, that the applicant or
other such person, and all affiliated busi-
ness entities (including all entities under
common control), during the entire history
of such applicant or other such person and
all affiliated business entities—

(I) have not committed an inten-
tional felony violation of Federal or
State sports wagering law; and

(II) have used diligence to pre-
vent any United States person from
placing a sports wager on an internet
site in violation of Federal or State
sports wagering laws.

(D) REVOCATION AND SUSPENSION.—Es-
establish standards and procedures for sus-
pending or revoking the license of a sports wa-
gering operator.

(9) EMPLOYEE BACKGROUND CHECKS.—Pro-
vide that a sports wagering operator—

(A) shall ensure that each existing and
newly hired employee or contractor of the
sports wagering operator undergo an annual
criminal history background check; and
(B) shall not employ or enter into a contract with any individual who has been convicted of a Federal or State crime relating to sports wagering.

(10) **RECORDKEEPING REQUIREMENTS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), with respect to each sports wager accepted by a sports wagering operator or attempted to be placed by an individual with a sports wagering operator, provide that the sports wagering operator shall secure and maintain a record of the following:

(i) The name, permanent address, date of birth, and social security number or passport number of the individual who placed, or attempted to place, the sports wager, which the sports wagering operator shall verify in accordance with the requirements for verification of identity in parts 1010.312 and 1021.312 of title 31, Code of Federal Regulations (or successor regulations).

(ii) The amount and type of the sports wager.
(iii) The date and time at which the
sports wager was placed or attempted to
be placed.

(iv) The location at which the sports
wager was placed or attempted to be
placed, including the internet protocol ad-
dress, if applicable.

(v) The outcome of the sports wager.

(B) Exception.—Provide that a sports
wagering operator shall not be required to
maintain a record of the information described
in subparagraph (A) if—

(i) the sports wager is not placed by
an individual through an account with the
sports wagering operator;

(ii) the amount of the sports wager
does not exceed $10,000;

(iii) the sports wagering operator and
any officer, employee, or agent of the
sports wagering operator does not have
knowledge, or would not in the ordinary
course of business have reason to have
knowledge, that the sports wager is one of
multiple sports wagers placed by an indi-
vidual or on behalf of an individual during
one day that are, in the aggregate, in excess of $10,000; and

(iv) the sports wagering operator is not required, pursuant to section 31.3402(q)-1 of title 26, Code of Federal Regulations (or a successor regulation), to furnish a Form W-2G to the individual who placed the sports wager with respect to winnings from the sports wager.

(C) Records relating to suspicious transactions.—Provide that, in addition to the records required to be maintained pursuant paragraph (A), a sports wagering operator shall be required to maintain any other records relating to a suspicious transaction, including video recordings, in the possession, custody, or control of the sports wagering operator.

(D) Duration of recordkeeping obligation.—Provide that a sports wagering operator shall be required to maintain each record required under this paragraph for not less than 5 years after the date on which the record is created.

(11) Data security.—Provide that a sports wagering operator and the State regulatory entity
shall take reasonable steps to prevent unauthorized
access to, or dissemination of, sports wagering and
customer data.

(12) **Real-time information sharing.**—Provide
that a sports wagering operator shall provide to
the National Sports Wagering Clearinghouse
anonymized sports wagering data in real-time or as
soon as practicable, but not later than 24 hours,
after the time at which a sports wager is accepted
by the sports wagering operator.

(13) **Suspicious transaction reporting.**—

(A) **Reporting to state regulatory
entity.**—Provide that each sports wagering
operator located in the State shall promptly re-
port the information described in paragraph
(10)(A) for any suspicious transaction to the
State regulatory entity, in such manner and ac-
 companied by such additional information as
the State regulatory entity may require.

(B) **Reporting to the national sports
wagering clearinghouse and sports orga-
nizations.**—

(i) **In general.**—Subject to clause
(ii), provide that a sports wagering oper-
ator shall simultaneously transmit to the
National Sports Wagering Clearinghouse, applicable sports organization, and any component of the Department of Justice or other Federal law enforcement entity designated by the Attorney General to receive such reports, any suspicious transaction report submitted to a State regulatory entity under subparagraph (A).

(ii) **Personally Identifiable Information.**—

(I) **In General.**—Except as provided in subclause (II), a suspicious transaction report submitted to the National Sports Wagering Clearinghouse or a sports organization shall not contain any personally identifiable information relating to any individual who placed, or attempted to place, a sports wager.

(II) **Exception.**—A suspicious transaction report submitted to the National Sports Wagering Clearinghouse or a sports organization shall include any available personally identifiable information relating to an indi-
vidual described in clause (iii), (iv), or
(v) of paragraph (4)(A).

(14) MONITORING AND ENFORCEMENT.—

(A) IN GENERAL.—Provide that the State
regulatory entity, in consultation with law en-
forcement, shall develop and implement a stra-
 tegy to enforce the sports wagering laws of the
State.

(B) AUTHORITY TO MONITOR AND EN-
FORCEMENT.—Provide adequate authority to
the State regulatory entity and law enforce-
ment, as appropriate, to monitor compliance
with and enforce the sports wagering laws of
the State, including—

(i) the authority and responsibility to
conduct periodic audits and inspect the
books and records of each sports wagering
operator located or operating in the State;
and

(ii) a requirement that the State regu-
latory entity shall refer evidence of poten-
tial criminal violations to the appropriate
law enforcement entity.

(15) COOPERATION WITH INVESTIGATIONS.—
(A) **Sports Wagering Operators.**—Provide that any sports wagering operator located or operating in the State shall cooperate with any lawful investigation conducted by—

(i) the State regulatory entity;

(ii) Federal or State law enforcement;

or

(iii) a sports organization, with respect to a sports wager—

(I) on a sporting event sponsored, organized, or conducted by the sports organization;

(II) placed by or on behalf of an individual described in clause (iii), (iv), or (v) of paragraph (4)(A); and

(III) accepted by the sports wagering operator.

(B) **State Regulatory Entity.**—Provide that the State regulatory entity shall cooperate with any lawful investigation conducted by—

(i) Federal or State law enforcement;

or

(ii) a sports organization, with respect to a sports wager—
(I) on a sporting event sponsored, organized, or conducted by the 
sports organization; and

(II) accepted by a sports wagering operator located or operating in 
the State.

(16) INTERNAL CONTROLS.—

(A) IN GENERAL.—Provide that each 
sports wagering operator shall devise and main-
tain a system of internal controls sufficient to 
provide reasonable assurances that sports wa-
gers are accepted in accordance with all appli-
ciable laws, regulations, and policies.

(B) MINIMUM STANDARDS.—Provide that 
the State regulatory entity shall adopt and pub-
lish minimum standards for internal control 
procedures.

(C) REPORT.—Provide that each sports 
wagering operator shall submit to the State reg-
ulatory entity not less frequently than annually 
the written system of internal controls of the 
sports wagering operator.

(D) AUDIT.—Provide that system of inter-
national controls of a sports wagering operator shall 
be evaluated on a periodic basis, but not less
frequently than every 3 years, by the State reg-
ulatory entity or an independent third-party
auditor.

4 SEC. 104. ANTI-MONEY LAUNDERING PROVISIONS.

(a) BANK SECRECY ACT.—Section 5312(a)(2)(X) of
title 31, United States Code, is amended—

(1) in the matter preceding clause (i), by insert-
ing “sports wagering operator (as defined in section
3 of the Sports Wagering Market Integrity Act of
2018),” after “gambling casino,”; and

(2) in clause (i), by inserting “‘sports wagering
operator,’” after “gambling casino,”.

(b) RULES FOR SPORTS WAGERING OPERATORS.—
Not later than 180 days after the date of enactment of
this Act, the Secretary of the Treasury shall amend—

(1) part 1021 of title 31, Code of Federal Reg-
ulations, to provide that sports wagering operators
shall be treated the same as casinos with respect to
any requirement under that part; and

(2) sections 1010.312, 1021.311, and 1021.312
of title 31, Code of Federal Regulations, to specifi-
cally address the means by which a sports wagering
operator shall, under each such section, verify the
identity of an individual who conducts a transaction
described in that section over the internet.
(c) APPLICATION.—

(1) DEFINITION.—In this subsection, the term “Bank Secrecy Act” means subchapter II of chapter 53 of title 31, United States Code.

(2) EFFECT OF COMPLIANCE WITH STATE REQUIREMENTS.—The submission of a suspicious transaction report to a State regulatory entity, the National Sports Wagering Clearinghouse, or a sports organization shall not be considered to violate—

(A) any provision of the Bank Secrecy Act;

or

(B) any regulation promulgated under the Bank Secrecy Act that limits the disclosure of information that would reveal the existence of a suspicious activity report filed with the Financial Crimes Enforcement Network under chapter X of title 31, Code of Federal Regulations.

SEC. 105. INTERSTATE SPORTS WAGERING COMPACTS.

(a) IN GENERAL.—Each sports wagering opt-in State may enter into such interstate sports wagering compact as may be necessary to provide for sports wagering on an interactive sports wagering platform between and among individuals located in any State that is party to such compact.
(b) **Effective Date.**—The effective date of an interstate sports wagering compact entered into under subsection (a), or any amendment of such interstate sports wagering compact, shall be not earlier than 90 days after the date on which such interstate sports wagering compact or amendment is approved by the Attorney General under subsection (e).

(c) **Attorney General Review.**—

(1) **In General.**—The parties to an interstate sports wagering compact shall submit to the Attorney General a copy of the interstate sports wagering compact at such time, in such manner, and accompanied by such information as the Attorney General may require.

(2) **Effect on State Sports Wagering Programs.**—In addition to any other information required by the Attorney General, each party to an interstate sports wagering compact submitted to the Attorney General under paragraph (1) shall provide to the Attorney General a full and complete description of any changes or proposed changes to be made to the sports wagering program of the State to comply with the terms of the interstate sports wagering compact.
(3) APPROVAL BY ATTORNEY GENERAL.—Not later than 180 days after the Attorney General receives an interstate sports wagering compact and any other information required under this subsection, the Attorney General shall approve the interstate sports wagering compact unless the Attorney General determines that—

(A) the terms of such interstate sports wagering compact conflict with this Act or any other Federal law;

(B) any change to a State sports wagering program submitted to the Attorney General under paragraph (2) does not meet the standards set forth in section 103; or

(C) such interstate sports wagering compact would permit a sports wagering operator or an individual located in any State party to the compact to accept or place a sports wager from or in another State through an interactive sports wagering platform that the sports wagering operator or individual would have been prohibited from accepting or placing in the State in which the individual is located, but for the interstate sports wagering compact.
(4) **DENIAL BY ATTORNEY GENERAL.**—A decision of the Attorney General not to approve an interstate sports wagering compact submitted under paragraph (3) shall—

(A) be made in writing; and

(B) specify the reason that the interstate sports wagering compact was not approved.

(5) **MODIFICATION.**—Any proposed amendment to an interstate sports wagering compact shall be submitted by the parties and reviewed by the Attorney General in the same manner as an interstate sports wagering compact under this subsection.

(6) **ADMINISTRATIVE REVIEW.**—The Attorney General shall promulgate regulations that provide procedures by which a party to an interstate sports wagering compact may seek administrative review of any decision by the Attorney General not to approve an interstate sports wagering compact or amendment under this subsection.

**SEC. 106. NATIONAL SPORTS WAGERING CLEARINGHOUSE.**

(a) **IN GENERAL.**—An entity designated as the National Sports Wagering Clearinghouse shall—

(1) be a nonprofit organization that—

(A) is not owned by any other entity; and
(B) is established for the purpose of carrying out the activities described in subsection (c);

(2) have articles of incorporation, a constitution, bylaws, or any other governing document that establishes and maintains provisions with respect to the governance and conduct of the affairs of the National Sports Wagering Clearinghouse for reasonable representation of—

(A) sports wagering operators;

(B) sports organizations;

(C) State regulatory entities;

(D) Federal and State law enforcement;

and

(E) 1 or more individuals not affiliated or associated with an entity described in subparagraphs (A) through (D) who, in the judgment of the Attorney General, represent the interests of the United States public in the activities of the National Sports Wagering Clearinghouse;

(3) demonstrate to the Attorney General that the National Sports Wagering Clearinghouse has or will have the administrative and technological capabilities to carry out the activities described in subsection (c); and
(4) be designated by the Attorney General in accordance with subsection (b).

(b) Designation of National Sports Wagering Clearinghouse.—

(1) Initial designation.—

(A) Solicitation of information.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall publish in the Federal Register a notice soliciting information to assist in identifying an appropriate entity to serve as the National Sports Wagering Clearinghouse.

(B) Designation.—Not later than 270 days after the date of enactment of this Act and after reviewing the information requested under subparagraph (A), the Attorney General shall make an initial designation of the National Sports Wagering Clearinghouse.

(C) Publication.—Not later than 300 days after the date of enactment of this Act, the Attorney General shall publish in the Federal Register a notice setting forth the identity of, and contact information for, the National Sports Wagering Clearinghouse designated under subparagraph (B).
(2) Periodic review of designation.—

(A) In general.—Not less frequently than every fifth January beginning in the fifth calendar year after the initial designation under paragraph (1)(B), the Attorney General shall publish in the Federal Register a notice soliciting information relating to whether—

(i) the existing designation should be continued; or

(ii) a different entity meeting the criteria described in paragraphs (1) through (3) of subsection (a) should be designated as the National Sports Wagering Clearinghouse.

(B) Publication.—After the publication of the notice under subparagraph (A), a review of the information submitted pursuant to the notice, and any additional proceedings as the Attorney General considers appropriate, the Attorney General shall publish in the Federal Register a notice—

(i) continuing the existing designation;

or

(ii) designating another entity as the National Sports Wagering Clearinghouse.
(C) Effective date of new designation.—A new designation under subparagraph
(B)(ii) shall be effective as of the first day of
the month that is not less than 180 days and
not more than 270 days after the date of pub-
lication of the notice under subparagraph (B), as
specified by the Attorney General.

c) Authorities and Functions.—The National
Sports Wagering Clearinghouse shall—

(1) operate the official national resource center
and information clearinghouse for sports wagering
integrity;

(2) coordinate public and private programs and
resources relating to—

(A) sports wagering integrity;

(B) practices for responsible betting; and

(C) addressing gambling disorder;

(3) contribute to and disseminate, on a national
basis, information relating to best practices and
model programs and resources that benefit—

(A) sports wagering integrity;

(B) responsible betting; and

(C) responses to gambling disorder;
(4) operate a national repository of anonymized sports wagering data and suspicious transaction reports;

(5) receive from sports wagering operators anonymized sports wagering data and suspicious transaction reports;

(6) promptly make available to State regulatory entities anonymized sports wagering data and suspicious transaction reports received from sports wagering operators;

(7) with respect to sporting events sponsored, organized, or conducted by a sports organization, promptly make available to the applicable sports organization anonymized sports wagering data and suspicious transaction reports received from sports wagering operators;

(8) enter into memoranda of understanding or such other agreements with public or private third parties as may be necessary to provide for the sharing of anonymized sports wagering data and suspicious transaction reports under paragraphs (5) through (7) and other information between the National Sports Wagering Clearinghouse and—

(A) sports wagering operators;

(B) sports organizations;
(C) State regulatory entities;

(D) Federal and State law enforcement;

and

(E) an international regulatory entity or international law enforcement, with respect to anonymized sports wagering data and suspicious transaction reports relating to sporting events that occur—

(i) outside the United States; and

(ii) within the jurisdiction of the international regulatory entity or international law enforcement;

(9) receive from international sports wagering operators, international regulatory entities, or international law enforcement any information such entities make available to the National Sports Wagering Clearinghouse;

(10) analyze anonymized sports wagering data received under paragraph (5) for the purpose of identifying patterns, trends, and irregularities that may indicate potential violations of Federal or State law, which shall be referred to the appropriate sports organization, State regulatory entity, and Federal or State law enforcement;
provide technical assistance and consultation to sports wagering operators, sports organizations, State regulatory entities, and Federal and State law enforcement to assist in—

(A) the identification of suspicious sports wagering activity; and

(B) the prevention, investigation, and prosecution of cases relating to unlawful sports wagering or any other activity relating to sports wagering that may threaten the integrity of sporting events;

(12) in cooperation with State regulatory entities, maintain and administer—

(A) the national self-exclusion list; and

(B) the process by which an individual may add or remove himself or herself from the national self-exclusion list;

(13) in cooperation with State regulatory entities and sports organizations, maintain and make available to sports wagering operators the national exclusion list, which shall include any individual—

(A) identified to the National Sports Wagering Clearinghouse by an appropriate sports organization as an individual described in clause (iii), (iv), or (v) of section 103(b)(4)(A);
(B) included on the national self-exclusion list; or

(C) identified to the National Sports Wagering Clearinghouse by the Attorney General as having been convicted of any offense under section 224(a) or (b) of title 18, United States Code;

(14) establish procedures by which any individual may determine—

(A) whether the individual is included on the national exclusion list; and

(B) the reason the individual is included on the national exclusion, including, as applicable, the sports organization or State regulatory entity that provided the name of the individual for inclusion on the national exclusion list;

(15) coordinate with the National Council on Problem Gambling and other organizations, as appropriate, to develop and disseminate information relating to best practices and model programs and resources for—

(A) ensuring appropriate consumer protections; and
(B) the prevention of, intervention and
treatment for, and recovery from gambling dis-
order; and

(16) any other activity considered by the Na-
tional Sports Wagering Clearinghouse to be nec-
essary to carry out an activity described in this sub-
section.

(d) PERMITTED DISCLOSURES BY THE NATIONAL
SPORTS WAGERING CLEARINGHOUSE.—The National
Sports Wagering Clearinghouse may only disclose infor-
mation received under subsection (c)(5) to—

(1) a State regulatory entity;

(2) a Federal or State law enforcement agency;

(3) with respect to sporting events sponsored,
organized, or conducted by a sports organization,
the sports organization; and

(4) an international regulatory entity or inter-
national law enforcement, with respect to
anonymized sports wagering data and suspicious
transaction reports relating to sporting events that
occur—

(A) outside the United States; and

(B) within the jurisdiction of the inter-
national regulatory entity or international law
enforcement.
(c) Annual Report.—

(1) In General.—Not less frequently than annually, the National Sports Wagering Clearinghouse shall submit to the Attorney General, the Committee on the Judiciary and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on the Judiciary and the Committee on Energy and Commerce of the House of Representatives a report on the operations of the National Sports Wagering Clearinghouse that includes a description of the activities of the National Sports Wagering Clearinghouse with respect to each function and authority under subsection (c).

(2) Public Availability.—The reports required under paragraph (1) shall be made available to the public.

(f) Annual Grant to National Sports Wagering Clearinghouse.—

(1) In General.—Not less frequently than annually, the Attorney General shall make a grant to the National Sports Wagering Clearinghouse for the purposes described in this section.

(2) Funds.—The grants required under paragraph (1) shall be made with amounts made avail-
able under section 9511(c)(3)(A) of the Internal

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) In general.—There are authorized to be
appropriated for each of fiscal years 2019 through
2021, such sums as may be necessary to carry out
this section, but not more than the amount that is
the lesser of—

(A) $3,000,000; and

(B) the revenue collected during the pre-
ceding fiscal year pursuant to the Federal ex-
cise tax on sports wagering under sections 4401
and 4411 of the Internal Revenue Code of
1986.

(2) Sense of Congress.—It is the sense of
Congress that—

(A) any funds appropriated to carry out
this section shall not be the sole or primary
source of funding to operate the National
Sports Wagering Clearinghouse; and

(B) the National Sports Wagering Clear-
inghouse should primarily be funded through
voluntary contributions by, or reasonable fees
assessed by the National Sports Wagering
Clearinghouse to participating entities, such as
sports wagering operators, sports organizations, and State regulatory entities.

SEC. 107. LAW ENFORCEMENT COORDINATION.

The Attorney General, in coordination with the Secretary of the Treasury and appropriate Federal law enforcement agencies, shall establish procedures to ensure coordination among Federal law enforcement, State law enforcement, State regulatory entities, and the National Sports Wagering Clearinghouse to identify and respond to illegal or suspicious activity in the sports wagering market nationwide.

TITLE II—WAGERING TRUST FUND

SEC. 201. FINDINGS.

Congress makes the following findings:

(1) A Federal excise tax on sports wagering was established in 1951.

(2) Over time, the Federal excise tax has ranged from a high of 10 percent of total handle for State-authorized wagers to a low of 0.25 percent, at which level the Federal excise tax has remained since 1982.

(3) Revenue from the Federal excise tax—
(A) is estimated to be $12,000,000 annually and is expected to increase as legal sports wagering becomes more widely available; and

(B) on sports wagering should be dedicated to purposes relating to sports wagering, specifically to—

(i) the enforcement of Federal law relating to sports wagering; and

(ii) programs for the prevention and treatment of gambling disorder.

SEC. 202. WAGERING TRUST FUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 9511. WAGERING TRUST FUND.

“(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the ‘Wagering Trust Fund’, consisting of such amounts as may be apportioned or credited to such Trust Fund as provided in this section or section 9602(b).

“(b) Transfers to Trust Fund.—There are hereby appropriated to the Wagering Trust Fund amounts equivalent to the taxes received in the Treasury under sections 4401 and 4411 for taxable years beginning after December 31, 2017.
“(c) Expenditures.—

“(1) Surveillance of gambling addiction.—There shall be available without further appropriation an amount not to exceed $5,000,000 for each of fiscal years 2019 through 2029 to the Secretary of Health and Human Services to carry out section 317U of the Public Health Service Act, to remain available until expended.

“(2) Department of Justice.—

“(A) National sports wagering clearinghouse.—There shall be available without further appropriation an amount not to exceed $3,000,000 for each of fiscal years 2019 through 2021 to the Attorney General for the purpose of making grants to the National Sports Wagering Clearinghouse established under section 106(b) of the Sports Wagering Market Integrity Act of 2018, to remain available until expended.

“(B) Other purposes.—Amounts in the Wagering Trust Fund not appropriated under paragraph (1) or (2) or subparagraph (A) shall be available, as provided in appropriation Acts, only for use by the Attorney General for the investigation or prosecution of—
“(i) violations of the standards for the acceptance of sports wagers under section 101 of the Sports Wagering Market Integrity Act of 2018,

“(ii) bribery to which section 224 of title 18, United States Code, applies,

“(iii) illegal transmission of wagering information to which section 1084 of such title applies,

“(iv) activities to which section 1955 of such title applies,

“(v) violation of any provision of subchapter IV of chapter 53 of title 31, United States Code,

“(vi) violations under the Bank Secrecy Act (Public Law 91–508; 84 Stat. 1114) which involve sports wagering, and

“(vii) any other crime which is committed incident to or is part of a scheme involving any crime or violation described in the preceding clauses.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“Sec. 9511. Wagering Trust Fund.”.
TITLE III—WIRE ACT AND
SPORTS BRIBERY ACT
AMENDMENTS

SEC. 301. WIRE ACT CLARIFICATION AND AUTHORIZATION
OF CIVIL ENFORCEMENT.

Section 1084 of title 18, United States Code, is
amended—

(1) in subsection (b)—

(A) by striking “for the transmission of in-
formation assisting” and inserting “for the
transmission of a sports wager accepted pursu-
ant to an interstate sports wagering compact
(as defined in section 3 of the Sports Wagering
Market Integrity Act of 2018), layoff bet or
wager, or information assisting”; and

(B) by adding at the end the following:
“For purposes of this section, the intermediate
routing of electronic data shall not determine
the location or locations in which a bet or
wager, or information assisting in the placing of
a bet or wager, is initiated, received, or other-
wise made.”;

(2) by redesignating subsection (e) as sub-
section (g);
(3) by inserting after subsection (d) the fol-
lowing:
“(e) **STATE CAUSE OF ACTION.**—

“(1) **IN GENERAL.**—In any case in which a
State has reason to believe that an interest of the
residents of the State has been or is being threat-
ened or adversely affected by the conduct of a per-
son that violates this section, the State may bring a
civil action on behalf of those residents in an appro-
priate district court of the United States to enjoin
the conduct.

“(2) **SERVICE, INTERVENTION.**—

“(A) **SERVICE.**—

“(i) **PRIOR SERVICE.**—Before filing a
complaint under paragraph (1), the State
shall serve a copy of the complaint upon
the Attorney General and the United
States Attorney for the judicial district in
which the complaint is to be filed.

“(ii) **CONCURRENT SERVICE.**—If prior
service under clause (i) is not feasible, the
State shall serve the complaint on the At-
torney General and the appropriate United
States Attorney on the day on which the
State files the complaint in an appropriate
district court of the United States.

“(iii) Relation to criminal pro-
cceedings.—A proceeding under para-
graph (1) shall be independent of, and not
in lieu of, a criminal prosecution or any
other proceeding under this section or any
other law of the United States.

“(B) Intervention.—The United States
may—

“(i) intervene in a civil action brought
by a State under paragraph (1); and

“(ii) upon intervening—

“(I) be heard on all matters aris-
ing in the civil action; and

“(II) file petitions for appeal of a
decision in the civil action.

“(C) Federal Rules of Civil Proce-
dure.—The Federal Rules of Civil Procedure
shall apply to service of a complaint on the
United States under this paragraph.

“(3) Powers conferred by state law.—
For purposes of a civil action brought under para-
graph (1), nothing in this chapter shall prevent an
attorney general of a State from exercising the pow-
ers conferred on the attorney general by the laws of
the State to—

“(A) conduct investigations;

“(B) administer oaths or affirmations; or

“(C) compel—

“(i) the attendance of witnesses; or

“(ii) the production of documentary or
other evidence.

“(4) Venue; service of process.—

“(A) Venue.—A civil action brought
under paragraph (1) may be brought in—

“(i) the district court of the United
States for the judicial district in which the
defendant—

“(I) is found;

“(II) is an inhabitant; or

“(III) transacts business; or

“(ii) any judicial district in which
venue is proper under section 1391 of title
28.

“(B) Service of process.—In an action
brought under paragraph (1), process may be
served in any judicial district in which the de-
fendant—

“(i) is an inhabitant; or
“(ii) may be found.

“(5) No private right of action.—Nothing in this subsection shall be construed to create any private right of action.

“(6) Limitation.—A civil action may not be brought under paragraph (1) against—

“(A) the United States; or

“(B) any employee or agent of the United States if the employee or agent is acting—

“(i) in the usual course of business or employment; and

“(ii) within the scope of the official duties of the employee or agent.

“(f) Enhancing enforcement against unlicensed, offshore sports wagering websites.—

“(1) Commencement of an action.—

“(A) In personam.—The Attorney General may bring an action against—

“(i) a registrant of a nondomestic domain name used by an internet site dedicated to unlicensed sports wagering; or

“(ii) an owner or operator of an internet site dedicated to unlicensed sports wagering accessed through a nondomestic domain name.
“(B) IN REM.—If through due diligence the Attorney General is unable to find a person described in clause (i) or (ii) of subparagraph (A), or no such person found has an address within a judicial district of the United States, the Attorney General may bring an in rem action against a nondomestic domain name used by an internet site dedicated to unlicensed sports wagering.

“(C) IDENTIFICATION OF ENTITIES.—In an action brought under this paragraph, the Attorney General shall, in the complaint or an amendment thereto, identify the entities that may be required to take actions under paragraph (4) if an order issues under paragraph (2).

“(2) ORDERS OF THE COURT.—

“(A) IN GENERAL.—On application of the Attorney General following the commencement of an action under paragraph (1), the court may issue a temporary restraining order, a preliminary injunction, or an injunction, in accordance with rule 65 of the Federal Rules of Civil Procedure, against the nondomestic domain name used by an internet site dedicated to unli-
licensed sports wagering, or against a registrant
of that domain name, or the owner or operator
of the internet site dedicated to unlicensed
sports wagering, to cease and desist from un-
dertaking any further activity as an internet
site dedicated to unlicensed sports wagering,
if—

“(i) the domain name is used within
the United States to access the internet
site; and

“(ii) the internet site—

“(I) conducts business directed to
residents of the United States; and

“(II) violates this section.

“(B) DETERMINATION BY THE COURT.—
For purposes of determining whether an inter-
net site conducts business directed to residents
of the United States under subparagraph
(A)(ii)(I), a court may consider, among other
indicia, whether—

“(i) there is evidence that the internet
site is not intended to provide unlicensed
sports wagering to users located in the
United States;
“(ii) the internet site has reasonable measures in place to prevent unlicensed sports wagering from being accessed from the United States; and

“(iii) the internet site offers unlicensed sports wagering on sporting events that take place in the United States.

“(3) NOTICE AND SERVICE OF PROCESS.—

“(A) IN GENERAL.—Upon commencing an action under paragraph (1), the Attorney General shall send a notice of the alleged violation and intent to proceed under this subsection to the registrant of the domain name of the internet site—

“(i) at the postal and e-mail address appearing in the applicable publicly accessible database of registrations, if any and to the extent those addresses are reasonably available;

“(ii) via the postal and e-mail address of the registrar, registry, or other domain name registration authority that registered or assigned the domain name, to the extent those addresses are reasonably available; and
“(iii) in any other such form as the court finds necessary, including as may be required by rule 4(f) of the Federal Rules of Civil Procedure.

“(B) Rule of Construction.—For purposes of this subsection, the actions described in subparagraph (A) shall constitute service of process.

“(C) Other Notice.—Upon commencing an action under paragraph (1), the Attorney General shall also provide notice to entities identified in the complaint, or any amendments thereto, that may be required to take action under paragraph (4).

“(4) Required Actions Based on Court Orders.—

“(A) Service.—

“(i) In General.—A Federal law enforcement officer, with the prior approval of the court, may serve a copy of a court order issued under paragraph (2) on similarly situated entities within each class described in that paragraph, that have been identified in the complaint, or any amendments thereto, filed under paragraph (1).
“(ii) **Proof of Service.**—Proof of service made under clause (i) shall be filed with the court.

“(B) **Reasonable Measures.**—

“(i) **Operators.**—

“(I) **In General.**—After being served with a copy of an order under this paragraph, an operator of a non-authoritative domain name system server shall take the least burdensome technically feasible and reasonable measures designed to prevent the domain name described in the order from resolving to that domain name’s internet protocol address, except that—

“(aa) the operator shall not be required—

“(AA) other than as directed under this subclause, to modify its network, software, systems, or facilities;

“(BB) to take any measures with respect to domain name lookups not per-
formed by its own domain
name server or domain
name system servers located
outside the United States; or

“(CC) to continue to
prevent access to a domain
name to which access has
been effectively disabled by
other means; and

“(bb) nothing in this sub-
clause shall affect the limitation
on the liability of such an oper-
ator under section 512 of title
17.

“(II) Text of notice.—

“(aa) In general.—The
Attorney General shall prescribe
the text of the notice displayed to
users or customers of an operator
taking an action under this para-
graph.

“(bb) Requirement.—The
text prescribed under item (aa)
shall specify that the action is
being taken pursuant to a court
order obtained by the Attorney General.

“(ii) **FINANCIAL TRANSACTION PROVIDERS.**—After being served with a copy of an order under this paragraph, a financial transaction provider shall take reasonable measures, as expeditiously as possible, designed to prevent, prohibit, or suspend its service from completing payment transactions involving customers located within the United States and the internet site associated with the domain name set forth in the order.

“(iii) **INTERNET ADVERTISING SERVICES.**—After being served with a copy of an order under this paragraph, an internet advertising service that contracts with the internet site associated with the domain name set forth in the order to provide advertising to or for that site, or that knowingly serves advertising to or for that site, shall take technically feasible and reasonable measures, as expeditiously as possible, designed to—
“(I) prevent its service from providing advertisements to the internet site associated with the domain name; or

“(II) cease making available advertisements for that site, or paid or sponsored search results, links or other placements that provide access to the domain name.

“(iv) INFORMATION LOCATION TOOLS.—After being served with a copy of an order under this paragraph, a service provider of an information location tool shall take technically feasible and reasonable measures, as expeditiously as possible, to—

“(I) remove or disable access to the internet site associated with the domain name set forth in the order; or

“(II) not serve a hypertext link to the internet site described in subclause (I).

“(C) COMMUNICATION WITH USERS.—Except as provided under subparagraph (B)(i)(II),
an entity taking an action described in this
paragraph shall determine whether and how to
communicate the action to the entity’s users or
customers.

“(D) RULE OF CONSTRUCTION.—For pur-
poses of an action brought under paragraph
(1)—

“(i) the obligations of an entity de-
scribed in this paragraph shall be limited
to the actions set out in each clause of
subparagraph (B) of this paragraph that
applies to the entity; and

“(ii) an order issued under paragraph
(2) may not impose any additional obliga-
tion on, or require any additional action
by, the entity.

“(E) ACTIONS PURSUANT TO COURT
ORDER.—

“(i) IMMUNITY FROM SUIT.—No cause
of action shall lie in any Federal or State
court or administrative agency against any
entity served with a copy of an order under
this paragraph, or against any director, of-
ficer, employee, or agent thereof, for any
act reasonably designed to comply with
this subsection or reasonably arising from the order, other than in an action under paragraph (5).

“(ii) IMMUNITY FROM LIABILITY.— Any entity served with a copy of an order under this paragraph, and any director, officer, employee, or agent thereof, shall not be liable to any party for any acts reasonably designed to comply with this subsection or reasonably arising from the order, other than in an action under paragraph (5), and any actions taken by customers of the entity to circumvent any restriction on access to the internet domain instituted pursuant to this subsection or any act, failure, or inability to restrict access to an internet domain that is the subject of a court order issued under paragraph (2) despite good faith efforts to do so by the entity shall not be used by any person in any claim or cause of action against the entity, other than in an action under paragraph (5).

“(5) ENFORCEMENT OF ORDERS.—
“(A) IN GENERAL.—In order to compel compliance with this subsection, the Attorney General may bring an action for injunctive relief against any party served with a copy of a court order under paragraph (4) that knowingly fails to comply with the order.

“(B) RULE OF CONSTRUCTION.—The authority granted the Attorney General under subparagraph (A) shall be the sole legal remedy for enforcing the obligations under this subsection of any entity described in paragraph (4).

“(C) DEFENSE.—

“(i) IN GENERAL.—It shall be an affirmative defense in an action under subparagraph (A) that—

“(I) the defendant does not have the technical means to comply with the order without incurring an unreasonable economic burden; or

“(II) the order is inconsistent with this section.

“(ii) SCOPE.—A showing under subclause (I) or (II) of clause (i) shall serve as a defense only to the extent of such in-
ability to comply or inconsistency, respectively.

“(6) Modification or vacation of orders.—

“(A) In general.—At any time after the issuance of an order under paragraph (2), a motion to modify, suspend, or vacate the order may be filed by—

“(i) any person, or owner or operator of property, bound by the order;

“(ii) any registrant of the domain name, or the owner or operator of the internet site subject to the order;

“(iii) any domain name registrar or registry that has registered or assigned the domain name of the internet site subject to the order; or

“(iv) any entity that has received a copy of an order under paragraph (4) requiring the entity to take action prescribed under that paragraph.

“(B) Relief.—Relief under this paragraph shall be proper if the court finds that—

“(i) the internet site associated with the domain name subject to the order is no
longer, or never was, an internet site dedi-
cated to unlicensed sports wagering; or

“(ii) the interests of justice require
that the order be modified, suspended, or
vacated.

“(C) CONSIDERATION.—In making a relief
determination under subparagraph (B), a court
may consider whether the domain name has ex-
pired or has been reregistered by a different
party.

“(D) INTERVENTION.—

“(i) IN GENERAL.—An entity identi-
fied under paragraph (1) as an entity that
may be required to take action under para-
graph (4) if an order issues under para-
graph (2) may intervene at any time in
any action brought under paragraph (1),
or in any action to modify, suspend, or va-
cate an order under this paragraph.

“(ii) PRESERVATION OF RIGHTS.—
Failure to intervene in an action shall not
prohibit an entity notified of the action
from subsequently seeking an order to
modify, suspend, or terminate an order
issued by the court under paragraph (2).
“(7) RELATED ACTIONS.—The Attorney General, if alleging that an internet site previously adjudicated to be an internet site dedicated to unlicensed sports wagering is accessible or has been reconstituted at a different domain name, may bring a related action under paragraph (1) against the additional domain name in the same judicial district as the previous action.”; and

(4) in subsection (g), as so redesignated—

(A) by striking “as used in this section, the term ‘State’ means” and inserting the following: “DEFINITIONS.—As used in this section—

“(11) the term ‘State’ means”; and

(B) by inserting before paragraph (11), as so designated, the following:

“(1) the term ‘domain name’ has the meaning given the term in section 45 of the Trademark Act of 1946 (15 U.S.C. 1127);

“(2) the term ‘domain name system server’ means a server or other mechanism used to provide the internet protocol address associated with a domain name;
“(3) the term ‘financial transaction provider’
has the meaning given the term in section 5362 of
title 31, United States Code;

“(4) the term ‘internet information location
tool’ has the meaning given the term in section
231(e) of the Communications Act of 1934 (47
U.S.C. 231(e));

“(5) the term ‘internet advertising service’
means a service that for compensation sells, pur-
chases, brokers, serves, inserts, verifies, or clears the
placement of an advertisement, including a paid or
sponsored search result, link, or placement that is
rendered in viewable form for any period of time on
an internet site;

“(6) the term ‘internet site’ means the collec-
tion of digital assets, including links, indexes, or
pointers to digital assets, accessible through the
internet that are addressed relative to a common do-
main name;

“(7) the term ‘internet site dedicated to unli-
censed sports wagering’ means an internet site that,
with respect to its business directed toward residents
of the United States—
“(A) has no significant use other than engaging in, enabling, or facilitating sports wagering in violation of this section; or

“(B) is designed, operated, or marketed by its operator or persons operating in concert with the operator, and facts or circumstances suggest is used, primarily as a means for engaging in, enabling, or facilitating sports wagering in violation of this section;

“(8) the term ‘layoff bet or wager’ means a sports wager (as defined in section 3 of the Sports Wagering Market Integrity Act of 2018) placed by a sports wagering operator (as defined in such section) with another sports wagering operator;

“(9) the term ‘nondomestic domain name’ means a domain name for which the domain name registry that issued the domain name and operates the relevant top level domain, and the domain name registrar for the domain name, are not located in the United States;

“(10) the term ‘owner’ or ‘operator’, when used in connection with an internet site, include, respectively, any owner of a majority interest in, or any person with authority to operate, the internet site; and”.
SEC. 302. SPORTS BRIBERY ACT IMPROVEMENTS.
(a) In General.—Section 224 of title 18, United
States Code, is amended—
(1) in the section heading, by striking “Brib-
ery in sporting contests” and inserting
“Bribery, extortion, and blackmail in
sporting contests; sports wagers based on
nonpublic information”;
(2) in subsection (a)—
(A) by striking “Whoever” and inserting
“Bribery, Extortion, and Blackmail in
Sporting Contests.—Whoever”; and
(B) by inserting “, extortion, or blackmail”
after “bribery” each places it appears;
(3) by redesignating subsections (b) and (c) as
subsections (c) and (g), respectively;
(4) by inserting after subsection (a) the fol-
lowing:
“(b) Sports Wagers Based on Nonpublic In-
formation.—
“(1) In General.—It shall be unlawful for any
person, directly or indirectly, to place or accept, at-
tempt to place or accept, or conspire with any other
person to place or accept through any scheme in
commerce a sports wager if the person—
“(A) is in possession of material nonpublic information relating to the sports wager or the market for the sports wager; and

“(B) knows, or recklessly disregards, that—

“(i) the material nonpublic information has been obtained wrongfully; or

“(ii) the placement or acceptance would constitute a wrongful use of the material nonpublic information.

“(2) PENALTY.—Any person who violates paragraph (1) shall be fined under this title, imprisoned for not more than 5 years, or both.

“(3) OBTAINED WRONGFULLY OR WRONGFUL USE.—For purposes of this subsection, material nonpublic information is obtained wrongfully or wrongfully used only if the information has been obtained by, or its use would constitute, directly or indirectly—

“(A) theft, bribery, misrepresentation, or espionage;

“(B) a violation of any Federal law protecting computer data or the intellectual property or privacy of computer users;
“(C) conversion, misappropriation, or other unauthorized or deceptive taking or use of such information; or

“(D) a breach of any fiduciary duty or any other personal or other relationship of trust and confidence.”;

(5) in subsection (e), as so redesignated, by striking “This section” and inserting “RULE OF CONSTRUCTION.—This section’’;

(6) by inserting after subsection (c), as so redesignated, the following:

“(d) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

“(e) VENUE.—A prosecution under this section may be brought in the judicial district in which the sporting contest (including the sporting contest to which a sports wager relates) occurred or was scheduled to occur, or in which the conduct constituting the alleged offense occurred.

“(f) CIVIL ACTION TO PROTECT AGAINST RETALIATION.—

“(1) WHISTLEBLOWER PROTECTION.—A sports wagering operator or sports organization may not discharge, demote, suspend, threaten, harass, or in
any other manner discriminate against an employee because of any lawful act done by the employee to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the individual reasonably believes constitutes a violation of this section, if the information or assistance is provided to or the investigation is conducted by—

“(A) a Federal law enforcement agency;

“(B) any Member of Congress or any committee of Congress; or

“(C) a person with supervisory authority over the employee, or such other person working for the sports wagering operator or sports organization, as applicable, who has the authority to investigate, discover, or terminate misconduct.

“(2) ENFORCEMENT ACTION.—

“(A) IN GENERAL.—A person who alleges action or conduct by any person in violation of paragraph (1) may seek relief under paragraph (3), by bringing an action at law or equity in the appropriate district court of the United States, which shall have jurisdiction over such
an action without regard to the amount in controversy.

“(B) PROCEDURE.—

“(i) BURDENS OF PROOF.—In an action under subparagraph (A), a district court may find that a violation of paragraph (1) occurred and award judgment for the plaintiff only if—

“(I) the employee demonstrates by a preponderance of the evidence that the actions of the employee to provide information or assist in an investigation were a contributing factor to the discharge or other discrimination; and

“(II) the employer does not demonstrate, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of behavior.

“(ii) STATUTE OF LIMITATIONS.—An action under subparagraph (A) shall be commenced not later than 180 days after the later of—
“(I) the date on which the violation occurs; or

“(II) the date on which the employee became aware of the violation.

“(iii) JURY TRIAL.—A party to an action brought under subparagraph (A) shall be entitled to trial by jury.

“(3) REMEDIES.—

“(A) IN GENERAL.—An employee prevailing in an action under paragraph (2) shall be entitled to all relief necessary to make the employee whole.

“(B) COMPENSATORY DAMAGES.—Relief for any action under paragraph (2) shall include—

“(i) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

“(ii) the amount of back pay, with interest; and

“(iii) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.
“(4) Rights retained by employee.—Nothing in this subsection shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

“(5) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes.—

“(A) Waiver of rights and remedies.—The rights and remedies provided for in this subsection may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

“(B) Predispute arbitration agreements.—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this subsection.”; and

(7) in subsection (g), as so redesignated—

(A) in the matter preceding paragraph (1), by striking “As used in this section—” and inserting “DEFINITIONS.—As used in this section:”;

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(B) by redesignating paragraphs (1), (2), and (3) as paragraphs (3), (4), and (2), respectively;

(C) by transferring paragraph (2), as so redesignated, to appear before paragraph (3), as so redesignated;

(D) by inserting before paragraph (2), as redesignated and transferred, the following:

“(1) The term ‘employee’ includes—

“(A) an employee of a sports wagering operator or sports organization; and

“(B) an athlete, coach, or official of a sports organization.”; and

(E) by adding at the end the following:

“(5) The terms ‘sports organization’, ‘sports wager’, and ‘sports wagering operator’ have the meaning given those terms in section 3 of the Sports Wagering Market Integrity Act of 2018.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 1961(1) of title 18, United States Code, is amended by striking “sports bribery” and inserting “bribery, extortion, and blackmail in sporting contests and sports wagers based on nonpublic information”.
(2) Section 2516(1)(c) of title 18, United States Code, is amended by striking “bribery in sporting contests” and inserting “bribery, extortion, and blackmail in sporting contests and sports wagers based on nonpublic information”.

(3) The table of sections for chapter 11 of title 18, United States Code, is amended by striking the item relating to section 224 and inserting the following:

“224. Bribery, extortion, and blackmail in sporting contests; sports wagers based on nonpublic information.”.

TITLE IV—GAMBLING ADDICTION PREVENTION AND TREATMENT

SEC. 401. AUTHORITY TO ADDRESS GAMBLING IN DEPARTMENT OF HEALTH AND HUMAN SERVICES AUTHORITIES.

Section 501(d) of the Public Health Service Act (42 U.S.C. 290aa(d)) is amended—

(a) by striking “and” at the end of paragraph (24);
(b) by striking the period at the end of paragraph (25) and inserting “; and”; and
(c) by adding at the end the following:

“(26) establish and implement programs for prevention and treatment of gambling addiction.”.
SEC. 402. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services may establish a Gambling Research Advisory Committee (in this section referred to as the “Committee”) within the National Institutes of Health to coordinate research conducted or supported by the Department of Health and Human Services on gambling addiction.

(b) MEMBERSHIP.—The Committee shall include representatives of the National Institute on Drug Abuse, the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, the Indian Health Service, the Substance Abuse and Mental Health Services Administration, and the Centers for Disease Control and Prevention.

(c) ANNUAL REPORT.—The Committee shall prepare, make available to the public, and submit to the Secretary of Health and Human Services an annual report on the research described in subsection (a).

SEC. 403. SURVEILLANCE OF GAMBLING ADDICTION.

Title III of the Public Health Service Act is amended by inserting after section 317T (42 U.S.C. 247b–22) the following:

“SEC. 317U. SURVEILLANCE OF GAMBLING ADDICTION.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Pre-
vention and in coordination with other appropriate agencies, shall, as appropriate—

“(1) enhance and expand infrastructure and activities to track the epidemiology of gambling addiction; and

“(2) incorporate information obtained through such infrastructure and activities into an integrated surveillance system, which may consist of or include a registry, to be known as the National Gambling Addiction Surveillance System.

“(b) RESEARCH.—The Secretary shall ensure that the National Gambling Addiction Surveillance System, if established, is designed in a manner that facilitates further research on gambling addiction.

“(c) PUBLIC ACCESS.—Subject to subsection (d), the Secretary shall ensure that information and analysis in the National Gambling Addiction Surveillance System, if established, are available, as appropriate, to the public, including researchers.

“(d) PRIVACY.—The Secretary shall ensure that information and analysis in the National Gambling Addiction Surveillance System, if established, are made available only to the extent permitted by applicable Federal and State law, and in a manner that protects personal
privacy, to the extent required by applicable Federal and
State privacy law, at a minimum.”

TITLE V—GENERAL PROVISIONS

SEC. 501. STATE AND TRIBAL AUTHORITY.

(a) Relation to Indian Gaming Regulatory
Act.—

(1) In general.—For purposes of the Indian
Gaming Regulatory Act (25 U.S.C. 2701 et seq.)
only, a sports wager made through an interactive
sports wagering platform shall be deemed to be
made at the physical location of the server or other
equipment used to accept the sports wager.

(2) Server on Indian lands.—With respect
to a sports wager described in paragraph (1) accept-
ed through a server or other equipment located on
Indian lands (as defined in section 4 of the Indian
Gaming Regulatory Act (25 U.S.C. 2703)), the
sports wager shall be considered to be exclusively oc-
curring on Indian lands if—

(A) the sports wager and the server are in
the same State; and

(B) the applicable State and Indian Tribe
have entered into a Tribal-State compact au-
thorizing the placing of sports wagers through
interactive sports wagering platforms.
(b) **No Preemption.**—Nothing in this Act preempts or limits the authority of a State or an Indian Tribe to enact, adopt, promulgate, or enforce any law, rule, regulation, or other measure with respect to sports wagering that is in addition to, or more stringent than, the requirements of this Act.

(c) **Taxation of Sports Wagering.**—Nothing in this Act limits or otherwise affects the taxation of sports wagering by a State, an Indian Tribe, or a locality.

**SEC. 502. SEVERABILITY.**

If a provision of this Act, an amendment made by this Act, a regulation promulgated under this Act or under an amendment made by this Act, or the application of any such provision, amendment, or regulation to any person or circumstance, is held to be invalid, the remaining provisions of this Act, amendments made by this Act, regulations promulgated under this Act or under an amendment made by this Act, or the application of such provisions, amendments, and regulations to any person or circumstance—

(1) shall not be affected by the invalidity; and

(2) shall continue to be enforced to the maximum extent practicable.
Syllabus

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

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

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

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

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

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

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

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

Held:

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

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

(b) Taking into account the fact that all forms of sports gambling were illegal in the great majority of States at the time of PASPA’s enactment, the repeal of a state law banning sports gambling not only “permits” sports gambling but also gives those now free to conduct a sports betting operation the “right or authority to act.” The interpretation adopted by the Third Circuit and advocated by respondents
and the United States not only ignores the situation that Congress faced when it enacted PASPA but also leads to results that Congress is most unlikely to have wanted. Pp. 11–13.

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


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

(b) PASPA’s anti-authorization provision unequivocally dictates what a state legislature may and may not do. The distinction 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. 18–19.


(d) Nor does the anti-authorization provision constitute a valid preemption provision. To preempt state law, it must satisfy two requirements. It must represent the exercise of a power conferred on Congress by the Constitution. And, since the Constitution “confers upon Congress the power to regulate individuals, not States,” New York, supra, at 177, it must be best read as one that regulates private
actors. There is no way that the PASPA anti-authorization provision can be understood as a regulation of private actors. It does not confer any federal rights on private actors interested in conducting sports gambling operations or impose any federal restrictions on private actors. Pp. 21–24.

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


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

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

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

832 F. 3d 389, reversed.

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

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


\(^{6}\) Id., at 2–1.


\(^{8}\) 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, ¶2(D).
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casinos,\textsuperscript{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.”\textsuperscript{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 \textit{et seq.}, casinos opened on Indian land throughout the country. Some were located within driving distance of Atlantic City,\textsuperscript{13} and nearby States (and many others) legalized casino gambling.\textsuperscript{14} But Nevada remained the only state venue for legal sports gambling in casinos, and sports gambling is immensely popular.\textsuperscript{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,\textsuperscript{16} and in the past gamblers corrupted and seriously damaged the reputation of professional and amateur sports.\textsuperscript{17} Apprehensive about the potential effects of

\textsuperscript{11}Clary 146.
\textsuperscript{12}Id., at 146, 158.
\textsuperscript{13}Id., at 208–210.
\textsuperscript{15}See, e.g., Brief for American Gaming Assn. as \textit{Amicus Curiae} 1–2.
\textsuperscript{17}For example, in 1919, professional gamblers are said to have paid members of the Chicago White Sox to throw the World Series, an episode that was thought to have threatened baseball’s status as the Nation’s pastime. See E. Asinof, Eight Men Out: The Black Sox and
sports gambling, professional sports leagues and the National Collegiate Athletic Association (NCAA) long opposed legalization.18

B

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

PASPA’s most important provision, part of which is directly at issue in these cases, makes it “unlawful” for a State or any of its subdivisions22 “to sponsor, operate,
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advertise, promote, license, or authorize by law or compact . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on” competitive sporting events. §3702(1). In parallel, §3702(2) makes it “unlawful” for “a person to sponsor, operate, advertise, or promote” those same gambling schemes—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).

At the time of PASPA’s adoption, a few jurisdictions allowed some form of sports gambling. In Nevada, sports gambling was legal in casinos, and three States hosted sports lotteries or allowed sports pools. 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

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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).

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.

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

Ibid.

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

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

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

Relying on these cases, New Jersey argued that PASPA is similarly flawed because it regulates a State’s exercise of effective date. §3704(a)(3).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.
of its lawmaking power by prohibiting it from modifying or 
repealing its laws prohibiting sports gambling. See Na-
tional 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 fed-
eral command to do something, the plaintiffs insisted, there 
can be no claim of commandeering. Ibid.

The District Court found no anticommandeering viola-
tion, id., at 569–573, and a divided panel of the Third 
Circuit affirmed, National Collegiate Athletic Assn. v. 
Christie, 730 F. 3d 208 (2013) (Christie I). The panel 
thought it significant that PASPA does not impose any 
affirmative command. Id., at 231. In the words of the 
panel, “PASPA does not require or coerce the states to lift 
a finger.” Ibid. (emphasis deleted). The panel recognized 
that an affirmative command (for example, “Do not re-
peal”) 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 (em-
phasis deleted).

New Jersey filed a petition for a writ of certiorari, rais-
ing 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 prohi-
bitions 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

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

Predictably, the same plaintiffs promptly commenced a new action in federal court. They won in the District Court, National Collegiate Athletic Assn. v. Christie, 61 F. Supp. 3d 488 (NJ 2014), and the case was eventually heard by the Third Circuit sitting en banc. The en banc court affirmed, finding that the new law, no less than the old one, violated PASPA by “author[izing]” sports gambling. National Collegiate Athletic Assn. v. Governor of N. J., 832 F. 3d 389 (2016) (case below). The court was unmoved by the New Jersey Legislature’s “artful[]” attempt to frame the 2014 Act as a repealer. Id., at 397. Looking at what the law “actually does,” the court concluded that it constitutes an authorization because it
“selectively remove[s] a prohibition on sports wagering in a manner that permissively channels wagering activity to particular locations or operators.” *Id.*, at 397, 401. The court disavowed some of the reasoning in the *Christie I* opinion, finding its discussion of “the relationship between a ‘repeal’ and an ‘authorization’ to have been too facile.” 832 F. 3d, at 401. But the court declined to say whether a repeal that was more complete than the 2014 Act would still amount to an authorization. The court observed that a partial repeal that allowed only “de minimis wagers between friends and family would not have nearly the type of authorizing effect” that it found in the 2014 Act, and it added: “We need not . . . articulate a line whereby a partial repeal of a sports wagering ban amounts to an authorization under PASPA, *if indeed such a line could be drawn.*” *Id.*, at 402 (emphasis added).

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

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

II

Before considering the constitutionality of the PASPA provision prohibiting States from “author[izing]” sports gambling, we first examine its meaning. The parties advance dueling interpretations, and this dispute has an important bearing on the constitutional issue that we must decide. Neither respondents nor the United States, appearing as an *amicus* in support of respondents, contends that the provision at issue would be constitutional if petitioners’ interpretation is correct. Indeed, the United
States expressly concedes that the provision is unconstitutionsal 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 afoot of PASPA” but that it “cannot ‘partially repeal’ a general prohibition for only one or two preferred providers, or only as to sports-gambling schemes conducted by the state.” Ibid. Later in their brief, they elaborate on this point:

“If, for example, a state had an existing felony prohi-
bition on all lotteries, it could maintain the law, it could repeal the law, it could downgrade the crime to a misdemeanor or increase the penalty . . . . But if the state modified its law, whether through a new authorization or through an amendment partially repealing the existing prohibition, to authorize the state to conduct a sports lottery, that modified law would be preempted.” Id., at 31.

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

B

In our view, petitioners’ interpretation is correct: When a State completely or partially repeals old laws banning sports gambling, it “authorize[s]” that activity. This is clear when the state-law landscape at the time of PASPA’s enactment is taken into account. At that time, all forms of sports gambling were illegal in the great majority of States, and in that context, the competing definitions offered by the parties lead to the same conclusion. The repeal of a state law banning sports gambling not only “permits” sports gambling (petitioners’ favored definition);
it also gives those now free to conduct a sports betting operation the “right or authority to act”; it “empowers” them (respondents’ and the United States’s definition).

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

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

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

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

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

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

C

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

III

A

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

The Constitution limits state sovereignty in several ways. It directly prohibits the States from exercising some attributes of sovereignty. See, *e.g.*, Art. I, §10. Some grants of power to the Federal Government have been held to impose implicit restrictions on the States. See, *e.g.*, *Department of Revenue of Ky. v. Davis*, 553 U. S. 328
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(2008); *American Ins. Assn. v. Garamendi*, 539 U. S. 396 (2003). And the Constitution indirectly restricts the States by granting certain legislative powers to Congress, see Art. I, §8, while providing in the Supremacy Clause that federal law is the “supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding,” Art. VI, cl. 2. This means that when federal and state law conflict, federal law prevails and state law is preempted.

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

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

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

As to what this structure means with regard to Congress’s authority to control state legislatures, New York was clear and emphatic. The opinion recalled that “no Member of the Court ha[d] ever suggested” that even “a particularly strong federal interest” “would enable Congress to command a state government to enact state regulation.” Id., at 178 (emphasis in original). “We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.” Id., at 166. “Congress may not simply ‘commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.’” Id., at 161 (quoting Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U. S. 264, 288 (1981)). “Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.” 505 U. S., at 178.
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Five years after New York, the Court applied the same principles to a federal statute requiring state and local law enforcement officers to perform background checks and related tasks in connection with applications for handgun licenses. Printz, 521 U. S. 898. Holding this provision unconstitutional, the Court put the point succinctly: “The Federal Government” may not “command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.” Id., at 935. This rule applies, Printz held, not only to state officers with policymaking responsibility but also to those assigned more mundane tasks. Id., at 929–930.

B

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

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

Second, the anticommandeering rule promotes political accountability. When Congress itself regulates, the responsibility for the benefits and burdens of the regulation is apparent. Voters who like or dislike the effects of the regulation know who to credit or blame. By contrast, if a State imposes regulations only because it has been commanded to do so by Congress, responsibility is blurred.
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See New York, supra, at 168–169; Printz, supra, at 929–930.

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

IV
A

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

Neither respondents nor the United States contends that Congress can compel a State to enact legislation, but they say that prohibiting a State from enacting new laws is another matter. See Brief for Respondents 19; Brief for United States 12. Noting that the laws challenged in New York and Printz “told states what they must do instead of what they must not do,” respondents contend that commandeering occurs “only when Congress goes beyond precluding state action and affirmatively commands it.” Brief for Respondents 19 (emphasis deleted).
This distinction is empty. It was a matter of happen­stance that the laws challenged in New York and Printz commanded “affirmative” action as opposed to imposing a prohibition. The basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event.

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

B

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

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

In any event, even if we assume that removal of the tax exemption was tantamount to an outright prohibition of the issuance of bearer bonds, see id., at 511, the law would
simply treat state bonds the same as private bonds. The anticommandeering doctrine does not apply when Congress evenhandedly regulates an activity in which both States and private actors engage.

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

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

Finally, in *FERC v. Mississippi*, 456 U. S. 742 (1982), the federal law in question issued no command to a state legislature. Enacted to restrain the consumption of oil and natural gas, the federal law directed state utility regulatory commissions to consider, but not necessarily to adopt, federal “‘rate design’ and regulatory standards.” *Id.*, at 746. The Court held that this modest requirement did not infringe the States’ sovereign powers, but the Court warned that it had “never . . . sanctioned explicitly a federal command to the States to promulgate and enforce
laws and regulations.” *Id.*, at 761–762. *FERC* was decided well before our decisions in *New York* and *Printz*, and PASPA, unlike the law in *FERC*, does far more than require States to consider Congress’s preference that the legalization of sports gambling be halted. See *Printz*, 521 U. S., at 929 (distinguishing *FERC*).

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

V

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

Our cases have identified three different types of preemption—“conflict,” “express,” and “field,” see *English v. General Elec. Co.*, 496 U. S. 72, 78–79 (1990)—but all of
them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.

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

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

This language might appear to operate directly on the States, but it is a mistake to be confused by the way in which a preemption provision is phrased. As we recently explained, “we do not require Congress to employ a particular linguistic formulation when preempting state law.” *Coventry Health Care of Mo., Inc. v. Nevils*, 581 U. S. ___,
And if we look beyond the phrasing employed in the Airline Deregulation Act’s preemption provision, it is clear that this provision operates just like any other federal law with preemptive effect. It confers on private entities (i.e., covered carriers) a federal right to engage in certain conduct subject only to certain (federal) constraints.

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

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

In sum, regardless of the language sometimes used by Congress and this Court, every form of preemption is
based on a federal law that regulates the conduct of private actors, not the States.

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

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

VI

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

A

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

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

B

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

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

30 The dissent apparently disagrees with our holding that the provisions forbidding state authorization and licensing violate the anticommandering principle, but it provides no explanation for its position.
[Congress] would not have enacted those provisions which are within its power, independently of [those] which [are] not.” Alaska Airlines, Inc. v. Brock, 480 U. S. 678, 684 (1987) (internal quotation marks omitted). In conducting that inquiry, we ask whether the law remains “fully operative” without the invalid provisions, Free Enterprise Fund v. Public Company Accounting Oversight Bd., 561 U. S. 477, 509 (2010) (internal quotation marks omitted), but “we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole,” Railroad Retirement Bd. v. Alton R. Co., 295 U. S. 330, 362 (1935). We will consider each of the provisions at issue separately.

1

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

That seems most unlikely. State-run lotteries, which sold tickets costing only a few dollars, were thought more
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benign than other forms of gambling, and that is why they had been adopted in many States. Casino gambling, on the other hand, was generally regarded as far more dangerous. A gambler at a casino can easily incur heavy losses, and the legalization of privately owned casinos was known to create the threat of infiltration by organized crime, as Nevada’s early experience had notoriously shown. 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.

Nor do we think that Congress would have wanted to

31 See Clary 84–102.
sever the PASPA provisions that prohibit a private actor from “sponsor[ing],” “operat[ing],” or “promot[ing]” sports gambling schemes “pursuant to” state law. §3702(2). These provisions were obviously meant to work together with the provisions in §3702(1) that impose similar restrictions on governmental entities. If Congress had known that the latter provisions would fall, we do not think it would have wanted the former to stand alone.

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

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

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

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

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

32 Of course, one need not rely on the Senate Report for the commonsense proposition that leaving §3702(2) in place could wildly change the fiscal calculus, “giv[ing] it an effect altogether different from that sought by the measure viewed as a whole.” Railroad Retirement Bd. v. Alton R. Co., 295 U. S. 330, 362 (1935).
federal and state law, and that is something that Congress has rarely done. For example, the advertising of cigarettes is heavily regulated but not totally banned. See Federal Cigarette Labeling and Advertising Act, 79 Stat. 282; Family Smoking Prevention and Tobacco Control Act, §§201–204, 123 Stat. 1842–1848.

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

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

* * *

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

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

The judgment of the Third Circuit is reversed.

It is so ordered.
THOMAS, J., concurring

SUPREME COURT OF THE UNITED STATES

Nos. 16–476 and 16–477

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

16–476

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

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

16–477

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

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

[May 14, 2018]

JUSTICE THOMAS, concurring.

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

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


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

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

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.

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

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

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

*The first court to engage in this counterfactual exploration of legislative intent was the Massachusetts Supreme Judicial Court in Warren
it seems unlikely that the enacting Congress had any intent on this question; Congress typically does not pass statutes with the expectation that some part will later be deemed unconstitutional. See Walsh 740–741; Stern, Separability and Separability Clauses in the Supreme Court, 51 Harv. L. Rev. 76, 98 (1937) (Stern). Without any actual evidence of intent, the severability doctrine invites courts to rely on their own views about what the best statute would be. See Walsh 752–753; Stern 112–113. More fundamentally, even if courts could discern 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 (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 (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

v. Mayor and Aldermen of Charlestown, 68 Mass. 84, 99 (1854). This Court adopted the Warren formulation in the late 19th century, see Allen v. Louisiana, 103 U. S. 80, 84 (1881), an era when statutory interpretation privileged Congress’ unexpressed “intent” over the enacted text, see, e.g., Church of Holy Trinity v. United States, 143 U. S. 457, 472 (1892); United States v. Moore, 95 U. S. 760, 763 (1878).
being declared nonseverable and thus inoperative; our precedents do not ask whether the plaintiff has standing to challenge those other provisions. See National Federation of Independent Business v. Sebelius, 567 U. S. 519, 696–697 (2012) (joint dissent) (citing, as an example, Williams v. Standard Oil Co. of La., 278 U. S. 235, 242–244 (1929)). True, the plaintiff had standing to challenge the unconstitutional part of the statute. But the severability doctrine comes into play only after the court has resolved that issue—typically the only live controversy between the parties. In every other context, a plaintiff must demonstrate standing for each part of the statute that he wants to challenge. See Lea 789, 751, and nn. 79–80 (citing, as examples, Davis v. Federal Election Comm’n, 554 U. S. 724, 733–734 (2008); DaimlerChrysler Corp. v. Cuno, 547 U. S. 332, 346, 350–353 (2006)). The severability doctrine is thus an unexplained exception to the normal rules of standing, as well as the separation-of-powers principles that those rules protect. See Steel Co. v. Citizens for Better Environment, 523 U. S. 83, 101 (1998).

In sum, our modern severability precedents are in tension with longstanding limits on the judicial power. And, though no party in this case has asked us to reconsider these precedents, at some point, it behooves us to do so.
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 “spon-sor[ing], operat[ing], advertis[ing], or promot[ing]” sports gambling schemes “pursuant to the law . . . of a govern-mental 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[] 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 “regulating[] interstate commerce directly.” New York v. United States, 505 U. S. 144, 166 (1992). But the challenged part of subsection (1) seeks the same end indirectly by “regulating[] 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 conduct impermissibly commandeering the regulatory power of States in contravention of New York v. United States, 505 U. S. 144 (1992)?” Pet. for Cert. in No. 16–476, p. i.

Assuming, arguendo, a “yes” answer to that question, there would be no cause to deploy a wrecking ball destroying the Professional and Amateur Sports Protection Act (PASPA) in its entirety, as the Court does today. Leaving out the alleged infirmity, i.e., “commandeering” state
regulatory action by prohibiting the States from “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 (2005) (“Our case law firmly establishes Congress’ power to regulate purely local activities that are part of an economic ‘class of activities’ that have a substantial effect on interstate commerce.”).

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

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

\(^2\) In lieu of a flat ban, PASPA prohibits third parties from operating sports-gambling schemes only if state law permits them to do so. If a state ban is in place, of course, there is no need for a federal proscription.
operate sports-gambling schemes, responsibility for the proscriptions is hardly blurred. It cannot be maintained credibly that state officials have anything to do with the restraints. Unmistakably, the foreclosure of sports-gambling schemes, whether state run or privately operated, is chargeable to congressional, not state, legislative action.

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

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

3Notably, in the two decisions marking out and applying the anti-commandeering doctrine to invalidate federal law, the Court invalidated only the offending provision, not the entire statute. New York v. United States, 505 U. S. 144, 186–187 (1992); Printz v. United States, 521 U. S. 898, 935 (1997).
In particular, the Court holds that the prohibition on state “operat[ion]” of sports-gambling schemes cannot survive, because it does not believe Congress would have “wanted to prevent States from running sports lotteries” “had [it] known that States would be free to authorize sports gambling in privately owned casinos.” Ante, at 26. In so reasoning, the Court 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 27. It strikes Congress’ prohibitions on private “sponsor[ship],” “operat[ion],” and “promot[ion]” of sports-gambling schemes because it has (mistakenly) struck those same prohibitions on the States. See ante, at 27–28. And it strikes Congress’ prohibition on “advertis[ing]” sports-gambling schemes because it has struck everything else. See ante, at 29–30.

*   *   *

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

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

BIOGRAPHIES OF PANELISTS

Karl Rutledge is Chair of Lewis Roca Rothgerber Christie LLP’s Commercial Gaming group and a partner in the firm’s Las Vegas office. He focuses his practice on promotional marketing and land-based and Internet gaming, with a particular emphasis on eSports, skill-based contests, sweepstakes, official rules, sports betting, privacy policies, and website terms and conditions. Karl is the current chair of the Gaming Law Committee of the American Bar Association Business Law Section as well as an adjunct professor at the University of Nevada, Las Vegas, William F. Harrah College of Hotel Administration, where he teaches “Gaming Industry Regulation.” A widely-published author, Karl recently co-authored a chapter for the Nevada Gaming Law Practice and Procedure Manual published by the State Bar of Nevada. Karl received his J.D. from the University of Nevada, Las Vegas, William S. Boyd School of Law in 2006. Before becoming a lawyer, Karl worked as a rodeo clown and bullfighter and now raises bucking bulls and commercial cattle with his family.

Glenn Light is a partner in Lewis Roca Rothgerber Christie’s Gaming Practice Group in the firm’s Las Vegas Office. He focuses his practice on land-based and interactive casinos, horse racing, sports betting, sweepstakes and contests. In particular, Glenn guides individuals, operators, manufacturers, distributors and service providers through the licensing process -- from advising clients on how to best structure operations from a licensing standpoint to working with the regulators to obtain the necessary licenses.

Glenn is licensed in Nevada and New York and regularly appears before the Nevada State Gaming Control Board and Nevada Gaming Commission. He has also participated in regulatory and licensing matters in numerous tribal, state, and foreign jurisdictions including Australia, the Bahamas, Colorado, the Dominican Republic, Iowa, Mississippi, Ontario, the Philippines, and Singapore.

Glenn was born and raised in Romsey, England. He now resides in Las Vegas with his wife, daughter, and son. He enjoys watching English Premier League soccer and is an avid supporter of Southampton F.C.

Tamara Malvin is a partner with the firm Akerman LLP in Fort Lauderdale, FL. Tammy is a commercial and civil litigator with extensive experience in federal and state court. She represents businesses and individuals in a variety of sectors, including lodging, gaming, insurance, banking, and international entities sued in Florida. She represents clients in matters involving contract disputes, fiduciary duty claims, employment non-competes, fraudulent
transfers, and premises liability defense. Tammy also represents casino and pari-mutuel operators in litigation, appellate, and regulatory matters.

Notably, Tammy has routinely litigated at the trial level and on appeal forum non conveniens dismissals and enforcement of forum selection clauses for her international clients, as well as advised on best practices to limit exposure and litigation expense related to premises liability personal injury cases.

**Steve Light** is Professor of Political Science and past Dean of the College of Business & Public Administration at the University of North Dakota, where he co-directs the Institute for the Study of Tribal Gaming Law & Policy, the first university research institute dedicated to advancing knowledge and understanding of Indian gaming. His current focus highlights legal, regulatory, and practical opportunities and barriers for the exploding markets in eSports and sports betting.

Light and Tribal Gaming Institute co-director Kathryn Rand have authored nearly 60 publications exploring how tribally owned casinos came to be and have remade the legal, political, and regulatory landscape for gaming and economic development across the U.S. Their books include INDIAN GAMING LAW: CASES AND MATERIALS (2d ed. forthcoming 2019), INDIAN GAMING LAW AND POLICY, and INDIAN GAMING AND TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE, which was featured on C-SPAN’s BOOK TV.

Light has testified before the U.S. Senate Committee on Indian Affairs, serves on the Editorial Board of the GAMING LAW REVIEW, is a member of the International Masters of Gaming Law and the American Bar Association Business Law Section’s Gaming Law Committee, and has been a featured speaker at numerous university and gaming industry events throughout the world. He has been quoted in such outlets as the NEW YORK TIMES, WASHINGTON POST, WALL STREET JOURNAL, BLOOMBERG, and INDIAN COUNTRY TODAY.

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