

IN THE SUPREME COURT OF THE UNITED STATES

No. 16-476

CHRISTOPHER J. CHRISTIE, GOVERNOR OF NEW JERSEY, ET AL.,
PETITIONERS

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

No. 16-477

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

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

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

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court,
the Solicitor General, on behalf of the United States,
respectfully moves that the United States be granted leave to
participate in the oral argument in these cases as amicus curiae

supporting respondents and that the United States be allowed ten minutes of argument time. Respondents have agreed to cede ten minutes of argument time to the United States and therefore consent to this motion.

1. These cases present a constitutional challenge to a provision of the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. 3701 et seq. PASPA makes it unlawful for States and other governmental entities to "sponsor, operate, advertise, promote, license, or authorize by law or compact" sports-gambling schemes. 28 U.S.C. 3702(1). PASPA also prohibits private persons from operating sports-gambling schemes pursuant to state law. 28 U.S.C. 3702(2).

2. In 2012, New Jersey enacted a law authorizing the State's casinos and racetracks to conduct sports gambling. Respondents, the Nation's principal professional sports leagues and the National Collegiate Athletic Association, filed a suit contending that the law was preempted by PASPA. New Jersey conceded that the law violated PASPA, but argued that PASPA is unconstitutional. The United States intervened to defend PASPA's constitutionality. The lower courts rejected New Jersey's constitutional challenges, and this Court denied review. See NCAA v. Governor of N.J., 730 F.3d 208 (2013), cert. denied, 134 S. Ct. 2866 (2014).

In 2014, New Jersey enacted a new law "partially repealing" the State's prohibitions on sports gambling, but only to the extent those prohibitions apply to certain sports gambling that is conducted at a casino or racetrack. S. 2460, 216th Leg. (N.J. 2014) (2014 Act). Respondents sued again, arguing that the 2014 Act is preempted by Section 3702(1) because it "license[s]" and "authorize[s] by law" sports-gambling schemes. The United States filed a statement of interest likewise arguing that Section 3702(1) preempts the 2014 Act. (The United States did not intervene because New Jersey did not challenge PASPA's constitutionality.) After the district court and a divided panel of the court of appeals rejected New Jersey's statutory arguments, the court of appeals granted rehearing en banc. The en banc court agreed with respondents and the United States that the 2014 Act is preempted by PASPA and reaffirmed the court's prior holding that PASPA does not violate the Tenth Amendment's anti-commandeering rule. Pet. App. 1a-46a. This Court granted review of that constitutional question.

3. The United States has filed a brief as amicus curiae supporting respondents and arguing that Section 3702(1) validly preempts the 2014 Act. The brief contends that Section 3702(1) does not violate the Tenth Amendment's anti-commandeering rule because it neither compels States to maintain federally prescribed regulations nor conscripts state officials to

administer federal law. Instead, the brief argues, Section 3702(1) prohibits States from adopting laws with specified features. The brief argues that preventing States from adopting policies that conflict with federal law is not commandeering in violation of the Tenth Amendment -- it is routine preemption rooted in the Supremacy Clause.

4. The United States has a substantial interest in these cases because they involve a challenge to the constitutionality of a federal statute. At the Court's invitation, the Acting Solicitor General filed an amicus brief on behalf of the United States at the petition stage. We therefore believe that oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

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