Nos. 16-476 and 16-477

In the Supreme Court of the United States

CHRISTOPHER J. CHRISTIE,
GOVERNOR OF NEW JERSEY, ET AL.,
v.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

NEW JERSEY THOROUGHBRED HORSEMEN'S
ASSOCIATION, INC.,
v.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.

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

BRIEF OF STOP PREDATORY GAMBLING, CENTER FOR POPULAR DEMOCRACY, CHRISTIAN COALITION OF AMERICA, CONCERNED WOMEN FOR AMERICA, FAITH & FREEDOM COALITION, ISLAMIC SOCIETY OF NORTH AMERICA, NATIONAL ASSOCIATION OF EVANGELICALS, PUBLIC GOOD LAW CENTER, PUBLIC HEALTH ADVOCACY INSTITUTE, UNITED FOR A FAIR ECONOMY, ALABAMA CITIZENS ACTION PROGRAM, LOUISIANA BAPTIST CONVENTION, THE LUTHERAN CHURCH – MISSOURI SYNOD, AND SEVENTEEN STATE FAMILY POLICY COUNCILS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are a diverse and broad coalition of organizations from across the country and the political spectrum. They include some of the nation's largest and most prominent Christian and Muslim religious groups and national advocacy groups that focus on issues ranging from public health to economic justice. Although they come to the issue from varied perspectives, they file this brief together because they are united in their opposition to the exploitation of American communities through commercial gambling. Some of the *amici* have experience combatting the impact of predatory commercial gambling throughout the nation, and have seen firsthand how state legalization of gambling undermines communities and leads to the capture of state governments by gambling organizations. They have a strong interest in the continued strength of federal limitations on state-sanctioned commercialized gambling.

Amici file this brief to illustrate, with empirical evidence, the importance of Congress's efforts to prohibit state-sanctioned sports gambling. This brief counters the representations made by petitioners and their *amici*—and by the American Gaming Association in particular—that PASPA is a failure and state-sanctioned sports gambling would benefit society.[2] Permitting states to implement legal sports gambling regimes would cause significant financial, health, and social problems for many citizens. The prohibitions of the Professional and

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[1] No counsel for a party authored this brief in whole or in part and no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of amicus briefs are on file with the Clerk.

[2] *See, e.g.*, Pet. Br. At 7–8; Br. of the American Gaming Association (AGA Br.) at 10–20; Br. of Pacific Legal Foundation et al. at 17.

Amateur Sports Protection Act (PASPA)—very few of which are challenged by the petitioners in this case—do not violate the Constitution's anti-commandeering doctrine, and *amici* encourage the Court to reject the petitioners' invitation to invalidate PASPA in part or in whole.

Stop Predatory Gambling is a national government-reform network that advocates to improve the lives of the American people by stopping the practice of state-sanctioned gambling. Stop Predatory Gambling believes that no government agency should actively encourage citizens to gamble nor depend on gambling to fund its activities. It coordinates campaigns across the country to persuade officials to contain the effects of gambling.

The Center for Popular Democracy works to create equity, opportunity, and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions. CPD strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda. Legalized predatory gambling is contrary to CPD's mission and values, as it undermines vulnerable communities and entrenches exploitation in state and local government.

The Christian Coalition of America is a tax-exempt organization and one of the largest grassroots political groups in the country with over 2 million members. The organization is involved in educating public officials and members of the community on important, pro-family issues of national concern. The Christian Coalition has played a particularly active role to promote state and federal efforts to combat the harms of gambling.

Concerned Women for America is the largest Christian public policy women's organization in the

United States, with half-a-million participants and supporters from all 50 states. Through its grassroots organization, CWA protects and promotes Biblical values and constitutional principles through prayer, education, and advocacy. CWA is made up of people whose voices are often overlooked—average, middle-class American women whose views are not represented by the powerful or the elite. CWA is profoundly committed to the protection of the family as the bedrock institution of society.

The Faith & Freedom Coalition is a pro-family organization with over 1.5 million members and supporters nationwide. It believes that the greatness of America lies not in government but in the character of its people—the simple virtues of faith, hard work, marriage, family, personal responsibility, and helping the least among us. The Coalition is committed to educating, equipping, and mobilizing people of faith and like-minded individuals to be effective citizens. The Coalition aims to influence public policy and enact legislation that strengthens families, promotes time-honored values, protects the dignity of life and marriage, lowers the tax burden on small business and families, and requires government to tighten its belt and live within its means.

The Islamic Society of North America and its Office for Interfaith and Community Alliances seek a more equitable, just, and faith-filled America and work with interfaith allies to push for prosperity for all. State-sponsored predatory gambling destroys families by prying on the economically downtrodden, capitalizing on gimmicks and deceit, and generating addiction. ISNA has stood publicly against state-sponsored predatory gambling for nearly a decade, and is concerned that a ruling for petitioners would be a dangerous precedent for our country.

The National Association of Evangelicals is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 40 member denominations, as well as numerous evangelical associations, missions, nonprofits, colleges, seminaries, and independent churches. NAE serves as the collective voice of evangelical churches, their religious ministries, and separately-organized evangelical ministries. It strongly believes that gambling is socially, morally and economically destructive to individuals, families and communities. NAE members see gambling as a social evil that feeds upon greed and sells a set of fantasy values. It especially harms the poor, who can least afford to forfeit their financial resources on the promise of instant wealth.

The Public Good Law Center is a public interest organization dedicated to the idea that the law exists to serve everyone, not just those with means and ready access to the courts. Public Good seeks to influence the development of the law in order to protect the rights of ordinary people. State-sanctioned gambling has proved a quiet scourge in states across the nation, with the most economically vulnerable communities hit the hardest. To expand predatory gambling at a time when levels of household debt are again on the rise would worsen an already critical situation.

Public Health Advocacy Institute is a nonprofit organization incorporated in Massachusetts in 1979 and based at Northeastern University School of Law in Boston, Massachusetts. PHAI is a legal research and advocacy center focused primarily on public health issues, including state-sponsored gambling. It is committed to research in public health law, public health policy development; legal technical assistance; and collaborative work at the intersection of law and public health including litigation. This case is of great concern to PHAI because widespread state-sponsored sports gambling poses a substantial risk of devastating public health consequences associated with addiction, crime, and poverty.

United for a Fair Economy challenges economic inequality in the United States. UFE uses popular economics education, trainings, creative communications and coalition building to support social movements working for a resilient, sustainable, and equitable economy. UFE believes that a fair economy is built around: jobs with dignity and living wages, where workers have the democratic right to organize and share the wealth produced by their labor; a robust public sector that works for the common good, funded through progressive taxes and accountable to the people; equal opportunity and equal justice for people who have been marginalized in society based on gender, sexual orientation, race, nationality, and social class; and sustainability and equity, where individuals do not accumulate excesses of wealth to the detriment of others and the planet.

The Alabama Citizens Action Program is an interdenominational organization representing most Southern Baptist, Free Will Baptist and Nazarene churches in Alabama, and many Presbyterian Churches of America (PCA), Methodist, Assemblies of God, Churches of God and other smaller denominations and independent churches within the state of Alabama. Southern Baptist churches in Alabama total over 3,100 and represent 1.1 million people (almost one fourth of the entire population of the state). ALCAP has lobbied the Alabama Legislature for over 40 years, opposing the expansion of state-sanctioned gambling in Alabama.

The Louisiana Baptist Convention is a fellowship of 1,650 churches and 500,000 baptized members who cooperate in bringing persons to God throughout the world. The Convention maintains an Office of Public Policy to represent Louisiana Baptists in public policy matters pertaining to moral and social concerns, including state-sponsored gambling—a practice that Louisiana Baptists oppose.

The Lutheran Church—Missouri Synod has some 6,100 member congregations with 2,100,000 baptized members throughout the United States. The Synod has 35 districts, two auxiliaries, two seminaries, 10 universities, numerous related Synod-wide corporate entities, hundreds of recognized service organizations, and the largest Protestant parochial school system in America. The Synod steadfastly adheres to orthodox Lutheran theology and practice and has serious moral concerns with the proliferation of gambling and its harmful consequences. It therefore fully supports federal law limiting state-sanctioned gambling.

The **seventeen state family policy councils** listed below work within their respective states to promote policies that foster stable families, responsible parenting, and individual virtue. They are nonprofits that recognize the broad deleterious economic and social effects of gambling on society, especially as it relates to the communities, families, and lives of individuals who are victimized by problem and pathological gambling. They are concerned that the loss of PASPA protections would lead to a significant increase in legalized sports gambling in the United States and would result in immeasurable harm to communities, families and citizens across our nation.

Alaska Family Action

Christian Civic League of Maine
Colorado Family Action
Cornerstone Action (New Hampshire)
Family Policy Alliance of Idaho
Family Policy Alliance of North Dakota
Family Policy Council of West Virginia
Family Policy Institute of Washington
Hawaii Family Forum
Louisiana Family Forum
Minnesota Family Council
Nebraska Family Alliance
New Yorker's Family Research Foundation
North Carolina Family Policy Council
Palmetto Family Council
The Family Foundation (KY)
Wisconsin Family Council

INTRODUCTION AND SUMMARY OF ARGUMENT

State regulation of gambling is unlike the regulation of other industries. Driven by revenue goals, state "regulation" often becomes state promotion of gambling. State agencies end up running lotteries, operating casinos, partnering with private gambling corporations, and expending millions of dollars to advertise gambling to their own citizens. Unlike informal social gambling (such as an office pool or a poker game between friends), this state-sanctioned gambling involves large commercial enterprises that seek profit by preying on the vulnerable: youth, low-income households, and gamblers who become addicted.

In the wake of a massive wave of gambling legalization and sponsorship by state governments, Congress passed the Professional and Amateur Sports Protection Act (PASPA) to tackle the specific ill of state-sanctioned sports gambling. Congress was not merely concerned with sports gambling in isolation. Instead, Congress sought to combat the normalization of sports gambling that comes with government promotion. In so doing, Congress responded to a particular set of forces that necessitate federal intervention in states' involvement with gambling. States have had trouble resisting the pull of legalized gambling once their neighbors have legalized it; they have had trouble getting rid of legalized gambling once they have it; and they have had trouble controlling it in a way that benefits and protects the public, including citizens in other states. Despite claims that legalizing gambling is good for tax revenue, studies that examine the net effect of state-sanctioned gambling find that when states legalize casinos they lose money just like the patrons inside.

Congress enacted PASPA because it saw sports gambling as a national problem and believed state-sanctioned sports gambling would only make matters worse. Sports gambling threatens to promote gambling among the nation's youth and undermines the public's confidence in and enjoyment of sports. These harms are worsened when state governments put their imprimatur on gambling and promote it to the populace. PASPA thus not only mitigates the problems of sports gambling generally but also forestalls the distinct aspects of those problems that arise when states sponsor, operate, and promote sports gambling schemes.

This federal statute, as important now as when it was passed, is constitutionally valid and should remain in effect. PASPA's prohibition on state "authoriz[ation]" of sports gambling does not run afoul of this Court's anti-commandeering doctrine. The animating concern of the doctrine is that the federal government should not be able to "commandeer" state resources for the implementation of federal policy. But PASPA contains no provision requiring affirmative action by state governments: It does not require the states to do anything at all.

In any event, regardless of what the Court concludes with respect to PASPA's "authorize" and "license" terms, it should decline the petitioners' invitation to strike down PASPA in its entirety. Petitioners are wrong to speculate that, absent the challenged terms, Congress would have wanted robust state regulation of sports gambling. To the contrary, as discussed above, Congress sought specifically to limit state endorsement of state gambling in addition to restricting the practice of sports gambling *per se*. The Court should therefore decline the petitioners' invitation to invalidate all of PASPA's restrictions.

ARGUMENT

I. PASPA addresses the national problem of state-sanctioned sports gambling by recognizing the unique harms that come from leaving state governments to address gambling alone.

This Court has long recognized that when the "mischiefs" of gambling are carried out through "the agency of interstate commerce," Congress is empowered to protect the public through "effective regulation." *Champion v. Ames*, 188 U.S. 321, 357–58 (1903). In the early 1990s, Congress confronted a wave of state gambling legislation that transformed our nation from one in which legal gambling was a rarity to one in which it was suddenly commonplace. Observing the rapidity of this trend, federal legislators noted that state governments were unable to contain the harms of gambling, and determined that national legislation was needed. Concerned in particular with state sponsorship of sports gambling and the effect it would have on the nation's youth, Congress passed PASPA in 1992.

As explained in the respondents' brief, PASPA does not violate the anti-commandeering doctrine. Under that doctrine, "Congress cannot compel the States to enact or enforce a federal regulatory program," nor can it "circumvent that prohibition by conscripting the State's officers directly." *Printz v. United States*, 521 U.S. 898, 935 (1997). PASPA does no such thing. It contains no provision requiring a state to adopt a set of laws, regulations, or practices. *Cf. New York v. United States*, 505 U.S. 144, 153–54 (1992). Nor does it require state officers to perform any actions whatsoever. *Cf. Printz*, 521 U.S. at 903. No state is required to "expend any funds, or participate in any federal program." *New York*, 505 U.S.

at 174. PASPA, in short, does not require any state to undertake any action at all.

The fact that New Jersey may not adopt its preferred set of laws and regulations—including the detailed regulatory scheme it stylizes as a "repeal" in this case—does not mean that its regulatory process has been "commandeered" any more than in a typical federal preemption case. *Cf.* 49 U.S.C. § 41713(b)(1) (providing that "a State . . . may not enact or enforce a law, regulation, or other provision . . . related to a price, route, or service of an air carrier"); *Northwest, Inc. v. Ginsberg*, 134 S. Ct. 1422 (2014) (discussing preemption under 49 U.S.C. § 41713(b)(1)). Nor may New Jersey extract an anti-commandeering violation from the district court's unremarkable injunction against the enforcement of the state law. *See* Pet. Br. at 36–37. Construing a federal court injunction to stop enforcement of a preempted state law as impermissible "commandeering" would be a vast expansion of *New York* and *Printz* with extensive and troubling implications for many federal laws.

Rather than requiring action by the states, PASPA acts as a prohibition on both states and private individuals. PASPA prohibits the creation and operation of legal sports gambling regimes like those under which lotteries and casinos have spread throughout the country. Our nation's experience with these forms of state-sponsored gambling, as well as the experience of other countries that have legalized sports gambling, proves that PASPA's protections continue to be necessary. State-sanctioned gambling regimes target and exploit the financially desperate, exacerbate crime, cultivate addiction, and force even those citizens who rarely or never gamble to foot the bill for the enormous social costs and state budget problems they leave behind.

A. Interstate competition incentivizes states to legalize gambling in a nationwide race to the bottom, requiring federal intervention.

PASPA was passed in the midst of a rapid, uncontrolled spread in state-sponsored gambling. In 1988, only Nevada and New Jersey permitted casino gambling within their borders. By 1996, 27 states had legalized casino gambling, and around 500 casinos were in operation.[3] Concerned with this dramatic shift, Congress created a national commission to study the impact of gambling. In 1999, the commission reported that "the United States has been transformed," and called for a moratorium on the expansion of gambling. National Gambling Impact Study Commission, *Final Report*, 1-1, 1-7 (1999) (National Gambling Impact Study).

There was no moratorium.[4] By 2003, one study concluded, Americans were spending a record $73 billion on state-sanctioned gambling—mostly on casino gambling and state lotteries.[5] In 2016, Americans lost an estimated $117 billion on state-sanctioned gambling.[6] Americans now spend more just on state lotteries than they do on sports tickets, music, video games, and books combined.[7]

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[3] John Donahue, *The Devil in Devolution*, The American Prospect (May 1997), https://goo.gl/dN6ptZ.

[4] Laurence Arnold, *Two years after federal report, gambling continues to spread*, Las Vegas Sun (Aug. 16, 2001), https://goo.gl/GWmh5h.

[5] Melissa S. Kearney, *The Economic Winners and Losers of Legalized Gambling*, National Bureau of Economic Research (2005), https://goo.gl/yGwDsi.

[6] *The World's Biggest Gamblers*, The Economist (Feb. 9, 2017), https://goo.gl/Aibyu2.

[7] Jonathan D. Cohen, *The U.S. has a lottery problem. But it's not the people buying tickets*, The Washington Post (Sept. 13, 2017),

State-sanctioned gambling spread so rapidly because interstate competition leaves state and local governments with a Hobson's choice. State-sanctioned gambling brings with it massive costs, which often fall on the public fisc. *See infra* Section I. B. But states cannot effectively limit their own citizens' access to gambling in other states. A 2003 study by the Kentucky State Legislature, for instance, found that 460,000 Kentucky residents—over 15% of the state—had left Kentucky to gamble on other states' riverboat casinos at least once in the past year. *Compulsive Gambling in Kentucky*, Kentucky Legislative Research Commission, 30 (2003). And a 2006 study of Boston residents found that 26%—over one million individuals—had gambled at casinos during the prior year, despite a complete absence of legal casinos in Massachusetts.[8] When casinos locate themselves near borders to lure citizens in nearby states, there is little the neighboring state government can do.

This means that when states legalize a form of gambling, their neighbors have to decide whether to swallow the social costs as their citizens travel next door to gamble or to legalize the same form of gambling themselves and at least recoup some tax dollars. Unsurprisingly, nearly all choose to legalize gambling. The National Gambling Impact Study dubbed this phenomenon a "competitive ripple effect," in which states were "driven more by pressures of the day than by an abstract debate

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https://goo.gl/oagDJe; John Oliver, *The Lottery: Last Week Tonight with John Oliver*, at 1:40, YouTube (Nov. 9, 2014), https://goo.gl/6v3WWX.

[8] *Comprehensive Analysis: Projecting and Preparing for Potential Impact of Expanded Gaming on Commonwealth of Massachusetts*, Spectrum Gaming Group (Aug. 1, 2008), at 50–51, https://goo.gl/jVbiR4.

about the public welfare."[9] As the Governor of Kansas said of the decision to create a state lottery, "[n]ot having one when your neighbor has one is like tying one hand behind your back."[10] And interstate gambling companies have taken the message to the people: legalize gambling, or watch the money pour out of your state. This sales pitch is frequently repeated in industry-funded ads to promote ballot initiatives across the country.[11]

The inability of state governments to stop the spread of gambling has justified federal intervention for over a century. *See, e.g.*, *In re Rapier*, 143 U.S. 110 (1892); *Champion v. Ames*, 188 U.S. 321 (1903); *Federal Regulation of Gambling*, 60 Yale L.J. 1396 (1951) (collecting federal statutes regulating gambling in force in 1951). PASPA was passed specifically to prevent this interstate dynamic from developing in the context of sports gambling, which the Senate concluded was "a national problem." S. Rep. No. 102-248, at 5-6 (1991). The Senate Judiciary Committee Report on PASPA found that "[t]he harms [sports gambling] inflicts are felt beyond the borders of those States that sanction it," and the "moral erosion it produces cannot be limited geographically." *Id.* Citing the pressure all states would begin to feel once any began to legalize sports gambling, the report argued that "[w]ithout Federal legislation, sports gambling is likely to spread on a piecemeal basis and ultimately develop an irreversible momentum." *Id.*

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[9] National Gambling Impact Report at 1-5

[10] Michael Nelson, *Casinos Royale*, The Weekly Standard (June 27, 2016), https://goo.gl/tQ5hUi.

[11] *See, e.g.*, Massachusetts, 2014 https://goo.gl/eJG3GL; Ohio, 2009 https://goo.gl/vr2HeL; Maryland, 2008 https://goo.gl/BneMwz; Maine, 2008 https://goo.gl/Ta6uG5.

History has proved that Congress was right to be concerned. As *amici* show below, the past several decades of state gambling laws have resulted in the widespread rise of state-sponsored predatory gambling. Seeking to out-compete other states and live up to outlandish promises of increased tax revenue, state governments have lavished legal and promotional privileges on powerful gambling interests, which often enjoy outright monopolies and wide latitude to aggressively lure citizens to lose their money. The resulting damage to citizens, families, and communities throughout the country has been enormous.

B. State-sponsored predatory gambling has wreaked enormous damage on individuals and communities in recent years, with the worst effects concentrated on the most vulnerable.

As the congressionally sponsored National Gambling Impact Study Commission noted, gambling is not just "a business like any other."[12] "Unlike other businesses in which the market is the principal determinant," the Commission observed, "the shape and operation of legalized gambling has been largely a product of government decisions."[13] Far from responsible oversight, however, the experience of legalized gambling in the United States has been one of collaboration between local and state governments and powerful corporate gambling interests. State governments have become "enthusiastic purveyors" of gambling, and have shared in the aggressive marketing and profiteering of gambling enterprises.[14] The result has been the development of

[12] National Gambling Impact Report at 1-4.

[13] *Id.*

[14] *Id.*

predatory state policies and widespread financial, health, and social problems for individuals and families.

In recent decades, the harms of state-sanctioned gambling have been most apparent in communities' experience with lotteries and casinos. Research has consistently shown "a steady association between poverty and lottery play." Arthur C. Brooks, *Powerbull: The Lottery Loves Poverty*, Wall Street Journal (Aug. 27, 2017), https://goo.gl/1diT6j. The poorest Americans buy more than half of all lotto tickets. *Id.* While lottery advocates may refer to games of chance as mere "entertainment," a different message is intentionally sent to lower-income Americans. As state lotteries became prominent in recent decades, "state agencies and private companies presented lotteries as reliable means of monetary gain" to appeal to a generation of consumers and workers experiencing less upward mobility.[15] State agencies, exempt from truth-in-advertising laws and aiming to maximize revenue, run deceptive ads—with some even indicating that winning the lottery is a probable outcome.[16] Some ads specifically target poor areas, as when the Illinois Lottery placed a billboard in a poor Chicago neighborhood that read "[t]his could be your ticket out."[17]

State governments use these tactics because they're effective. One survey in 2010 found that, when asked what the most likely way for them to get rich would be, Americans said "winning the lottery" at similar rates to

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[15] Jonathan D. Cohen, *State Lotteries and the New American Dream*, Center for Gaming Research, University of Nevada, Las Vegas, at 2 (2016), https://goo.gl/GBtMex.

[16] *See* National Gambling Impact Study at 3-15–3-16; 18 U.S.C. § 1307.

[17] Cohen, *State Lotteries* at 5.

starting their own business or finding a high-paying job.[18] And when a new state lottery is introduced, lower-income households fund their ticket purchases by reducing their spending on food and mortgage payments rather than on entertainment or other gambling.[19] Studies confirm that this spending choice is made not because low-income consumers view lotteries as a cheaper form of entertainment but because they turn to lotteries in an attempt to improve their standard of living. Garrick Blalock et al., *Hitting the Jackpot or Hitting the Skids*: *Entertainment, Poverty, and the Demand for State Lotteries*, 66 American Journal of Economics & Sociology 545 (2007). For many Americans, state lotteries have become a Hail Mary investment strategy—one that is nearly guaranteed to fail.

The net effect is evident in states like Maine, where residents with low enough incomes to be on public assistance spent hundreds of millions of dollars on the lottery between 2010 and 2014, but collectively recouped only $22 million in winnings.[20] At the end of the day, lotteries function as highly regressive taxes that redistribute money away from lower-income families.[21]

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[18] *Id.* at 3.

[19] Melissa S. Kearney, *State Lotteries and Consumer Behavior*, National Bureau of Economic Research, at 3 (2002), https://goo.gl/n69h7W.

[20] Dave Sherwood, *People on public assistance spent hundreds of millions on the lottery – and took home $22 million in winnings*, Pine Tree Watch (Dec. 16, 2015), https://goo.gl/RwDATP.

[21] See, e.g., Ginny Blankenship, *Gambling on Our Future: Why a State-Sponsored Lottery is Still a Bad Bet for Education & Families in Arkansas*, Arkansas Advocates for Children & Families (2008), https://goo.gl/oZmMeq.

State lotteries are not the only form of gambling that, when legalized, becomes both predatory and inextricably tied to government revenue. Casinos (one of the categories of places where New Jersey seeks to permit sports gambling) are built on a model of exploiting addiction. While gambling advocates tout "responsible gaming" guidelines,[22] the casino industry's profits are built around a small minority of players. Customers who follow responsible gambling guidelines account for 75% of players but contribute only 4% of gambling profits. Natasha Dow Schüll, *Addiction by Design: Machine Gambling in Las Vegas* 267 (2012). As the author of one gambling study put it, "[i]f responsible gambling were successful then the industry would probably shut down for lack of income." *Id.*

Instead, casinos draw their profits from a narrow subset of vulnerable gamblers, often referred to as "problem gamblers," or in more severe cases "gambling addicts."[23] Gambling addiction has been recognized by the American Psychiatric Association since 1980 and is included in the Diagnostic and Statistical Manual of Mental Disorders; those who suffer from gambling addiction experience a behavioral compulsion to gamble similar to the chemical addiction experienced by drug users.[24] Gambling addicts develop highs and experience

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[22] *Casino industry in US has new rules for responsible gambling*, CNBC (Aug. 4, 2017), https://goo.gl/q2HM5C.

[23] David Blankenhorn, *New York's Promise: Why Sponsoring Casinos is a Regressive Policy Unworthy of a Great State*, Institute for American Values, at 68 (2013) (summarizing the distinctions as "Problem: My gambling causes problems in my life. Pathological: I am a gambling addict, or what is sometimes called a compulsive gambler."); *see also* Schüll, *Addiction by Design* at 14–18 (describing gambling addiction).

[24] Schüll, *Addiction by Design* at 14–18.

withdrawal symptoms, and their neurological control systems are less effective at regulating their behavior.[25] The University of Buffalo's Research Institute on Addictions estimates that between three and five percent of Americans have a gambling problem.[26]

The financial and social costs of gambling disorders are staggering. By one estimate, between 20% and 30% of pathological gamblers declare personal bankruptcy—compared to 4.2% of the general population—with an average cost to creditors of these bankruptcies is $39,000.[27] Nearly one-third of pathological gamblers report gambling debts between $75,000 and $150,000. To pay these debts, one out of five turn to loan sharks.[28] Predatory gambling thus fuels predatory lending. The majority of pathological gamblers report missing work to gamble; about one third lose their jobs due to their disorder.[29] Divorce rates among pathological gamblers are more than twice as high as among non-gamblers, and 90% of pathological gamblers report gambling with their paychecks or family savings.[30] The estimated annual cost of gambling addiction in the U.S. has been estimated to be between $5 billion and $7 billion.[31]

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[25] John Rosengren, *How Casinos Enable Gambling Addicts*, The Atlantic (Dec. 2016), https://goo.gl/TStEBn.

[26] *Gambling*, Research Institute on Addictions (April 24, 2012), https://goo.gl/mo1Kg8.

[27] *Social Costs of Problem Gambling*, Problem Gambling Research and Intervention Project, Georgia State University, https://goo.gl/kcgQv2.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*; *see also Problem Gamblers and their Finances*, National Council on Problem Gambling, at 6 (2000),

Casinos look at these afflicted citizens with dollar signs in their eyes. As the "Director of Responsible Gambling" at one major international gambling firm put it, "[o]ur game designers . . . [are] creative folks who want machines to create the most revenue." Schüll, *Addiction by Design* at 21. Casinos use cameras, computers, and loyalty cards to track their most frequent customers, analyze their habits, and manipulate them in myriad ways to continue wagering. Rosengren, *How Casinos Enable Gambling Addicts*. They provide specialized ATMs and cash advances to gamblers, and aggressively target the gamblers with the highest "predicted lifetime value" to the casino. *Id.* The result is that casinos' business plans are based heavily on those with gambling addictions. *Id.*

Once these forms of commercial gambling are legalized, experience shows it is nearly impossible for states to rid themselves of them or effectively regulate them. State-sanctioned gambling creates influential vested interests that obstruct policy change, sometimes coming from within the government itself. States take financial interests in specific pieces of property or go so far as to own and operate casinos themselves. *Id.* As a result, it also becomes harder for states to effectively regulate the gambling industry in the name of the public interest.[32] When gambling revenues are earmarked for specific programs like education, states frequently decrease other appropriations for those programs.[33] As a result,

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http://www.ncpgambling.org/files/public/problem_gamblers_finances.pdf; National Council on Problem Gambling Statement to the New York State Gaming Commission, Forum on Problem Gambling, April 9 2014, https://goo.gl/VtrNo9.

[32] *See*, e.g., Blankenhorn, *New York's Promise* at 23.

[33] *See* Mimi Kirk, *For Schools, Gambling Funding is No Jack-*

specific public services become dependent on gambling revenue, creating broader constituencies to mobilize against new restrictions.[34]

Our nation's experience with legalized lotteries and casinos demonstrates that state-sanctioned gambling is a Pandora's box. Government agencies and private companies quickly become predatory and exploitative, with substantial social costs. These costs are borne primarily by lower-income households and those who develop gambling addictions. And once the lid on gambling is lifted, it is very hard to put back.

C. Permitting states to authorize and promote sports gambling would open new avenues for exploitation and crime, threaten the well-being of children and youth, and impose substantial net costs on communities.

Invalidating PASPA would cause these problems to proliferate. The petitioners and their *amici* argue as if the amount of gambling in society is a given, and the public only has to choose whether to regulate and tax it or consign it to the shadows. *See, e.g.*, AGA Br. at 16–20. But our nation's experience shows just the opposite. When new forms of gambling are permitted, gambling participation rates go up, as do the financial, health, and social problems that go with them.[35] Legalizing gambling increases the rate of problem gambling in communities anywhere from two to seven times its pre-legalization

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pot, CityLab (Feb 21, 2017), https://goo.gl/hkiqVa.

[34] *Id.*

[35] Earl Grinols & David Mustard, *Casinos, Crime, and Community Costs*, 88 Review of Economics and Statistics 28, 32 (Feb. 2006).

rates.[36] When gambling is restricted, in contrast, many fewer people gamble.[37]

There is strong reason to think that state-sanctioned sports gambling in particular will cause the already high incidence of problem gambling to rise. Sports gambling is more tightly linked to problem gambling than other forms of wagering. In a large, recent study of 10,000 adults, researchers at the University of Massachusetts found that adults who bet on sports have higher rates of problem gambling than those who bet at casinos, bought lottery or raffle tickets, or make private bets.[38] And, in Australia, where sports gambling is legal and widespread, researchers have found greater incidences of problem gambling among those more exposed to sports-gambling promotions.[39]

Australia's experience with sports gambling also highlights that Congress was right to be concerned that legalizing sports gambling would have a particular influence on children. Congress passed PASPA because it was "especially concerned about the potential effect of legalized sports gambling on America's youth." S. Rep. No. 102-248, at 5. Promoting the bill in the Seton Hall

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[36] John Warren Kindt, *The Economic Impacts of Legalized Gambling Activities*, 43 Drake L. Rev. 51, 64 (1994).

[37] Grinols & Mustard, *Casinos, Crime, and Community Costs* at 32.

[38] Rachel A. Volberg et al., *Gambling and Problem Gambling in Massachusetts: Results of a Baseline Population Survey*, University of Massachusetts School of Public Health and Health Sciences, 52 (May 28, 2015), https://goo.gl/g8EJey.

[39] Nerilee Hing et al., *Sports-embedded gambling promotions: A study of exposure, sports betting intention and problem gambling amongst adults*, 13 International Journal of Mental Health and Addiction 115 (2015).

Journal of Sport Law, PASPA champion and former NBA star Senator Bill Bradley argued that "[l]egalized sports betting would teach young people how to gamble."[40] Senator Bradley described a compulsive gambling hotline that received half of its calls from teenagers and college-aged students, and noted that "one million of the eight million compulsive gamblers in this country are teenagers."[41]

In Australia, studies show that children are regularly exposed to messages and advertisements about sports gambling and that their views of gambling are "highly influenced" by that exposure. *See, e.g.*, Hannah Pitt et al., *"It's just everywhere!" Children and parents discuss the marketing of sports wagering in Australia*, 40 Australian and New Zealand Journal of Public Health 480, 485 (Oct. 2016). Though advertisers disclaim an intention to target youth, sports gambling "is particularly appealing to young adults," who participate at high rates.[42] Australian children say that they feel like people are "missing out" if they don't gamble as part of enjoying sports because "everyone does it." Pitt et al., *"It's just everywhere!"* at 483–84.

Reports from Australia and the U.K., where sports gambling is also legal, highlight another way in which state-sanctioned sports gambling worsens existing problems with gambling addiction. Sports gambling in

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[40] Senator Bill Bradley, *The Professional and Amateur Sports Protection Act—Policy Concerns Behind Senate Bill 474*, 2 Seton Hall J. Sport L. 5, 7 (1992).

[41] *Id.* at 7 & n.7.

[42] Pitt et al., *Initiation, Influence, and impact: adolescents and parents discuss the marketing of gambling products during Australian sporting matches*, 16 BMC Public Health 967 (2016), https://goo.gl/RQmkn2.

those two nations has created a new market for aggressive and exploitative lending organizations: cash-strapped gamblers attempting to finance their debts or their gambling addiction. One survey in the U.K. found that 37% of respondents would be willing to take out a loan to finance a sports bet if they didn't have the money themselves.[43] And both countries have seen claims that predatory lenders like payday loan organizations have targeted those with gambling addictions, including sports gamblers.[44] The citizens of Australia now experience the biggest gambling losses in the world at nearly $1,000 per year per resident adult, more than twice as much as the United States.[45]

Petitioners' *amici* also repeat another common argument among gambling advocates: that state-sanctioned sports gambling will be a boon because it will generate tax revenues that can be spent on social services, law enforcement, and other public needs.[46] Experience has shown repeatedly that this argument is either overstated or wrong. *See* Lucy Dadayan, *State Revenues from Gambling: Short-Term Relief, Long-Term Disappointment*, The Nelson A. Rockefeller Institute of Government (2016). While states that create new revenue streams from gambling may see momentary bumps in tax income, "the revenue returns deteriorate—and often quickly." *Id.* at 1. Revenue stagnates or declines

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[43] Sarah Coles, *Punters take payday loans to bet on the Grand National*, Aol (April 4, 2017), https://goo.gl/neEzNg.

[44] *Gambling footballers take out payday loans*, BBC (Oct. 24, 2013), https://goo.gl/uPjPLE; Christopher Knaus, *Former staff say Cash Train loaned to problem gamblers, but payday lender denies claim*, The Guardian (March 15, 2017), https://goo.gl/ZuuAVR.

[45] *The World's Biggest Gamblers*, The Economist.

[46] *See, e.g.*, AGA Br. at 21.

because other states compete for gambling money and the new revenue streams begin taking money from existing revenue-generating activity. *Id.* at 14. In 2015, for instance, tax revenue from casinos declined in every state without new casinos, with a 26.9% decline since 2008 in the states with the oldest casinos. *Id.*

Revenue numbers also fail to address the reality that the harms associated with state-sanctioned gambling far outweigh the gains to revenue. Historically, at least for casino gambling, the answer has been "no." According to one comprehensive cost-benefit analysis, the costs of casino gambling—costs from increased rates of crime and problem gambling—have amounted to $3 for every $1 of gambling revenue.[47]

History suggests that the legalization of new forms of gambling worsens crime rates. After the National Gambling Impact Study Commission called for a moratorium on gambling to study its policy effects, researchers compiled a comprehensive study of all 3,165 U.S. counties over a 20-year period.[48] They found that the opening of casinos in an area increased both violent crime and property crime, and that this crime was newly induced by casinos "rather than simply being shifted from one area to another."[49] They also found that this effect increased over time for most types of crime.[50] And the Australian experience also belies *amicus* American Gaming Association's assertion (at 17) that there is "no

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[47] Rosengren, *How Casinos Enable Gambling Addicts* (citing Earl Grinols, *Gambling in America: Costs and Benefits* 2004).

[48] *See* Grinols & Mustard, *Casinos, Crime, and Community Costs*.

[49] *Id*. at 43–44.

[50] *Id*.

demand for a black market." Australia sees sums of one or two billion dollars wagered on domestic sports via unregulated, offshore entities that evade its enforcement mechanisms.[51]

Casinos increase crime rates in several ways. Desperate gamblers and those with gambling disorders commit crimes to finance their continued gambling.[52] Casinos also create opportunities for crime by increasing concentrations of cash.[53] And casinos allow organized crime to flourish by facilitating money laundering for drug cartels and other criminal enterprises.[54]

State-sanctioned sports gambling in particular threatens to create widespread opportunities for crime. Legal sports betting in other countries has facilitated money laundering and match-fixing, both of which have metastasized as sports become more international and commercialized.[55] The sports sector is particularly vulnerable to this kind of corruption for a variety of reasons. Among other things: large sums of money are transacted regularly and opaquely, and the image-consciousness of players, coaches, and sponsors means that crimes, when discovered, are less likely to be reported.[56] The optimistic prediction that state-sanctioned

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[51] Michael Carayannis, *Offshore gambling firms take billions and Australian authorities cannot act*, The Herald Sun (June 12, 2016), https://goo.gl/cVH2zy.

[52] *Id*. at 31–32.

[53] *Id*.

[54] *See, e.g.*, John L. Smith, *Reluctant casinos get clear warning*, Las Vegas Review-Journal (Sep. 29, 2013), https://goo.gl/wQo9Da.

[55] *Money Laundering through the Football Sector*, Financial Action Task Force, 24–25 (2009), https://goo.gl/7QU9ro.

[56] *Id*. at 14–16.

sports gambling will reduce corruption by increasing transparency, *see* AGA Br. at 20, is hard to square with these existing problems and the vast new opportunities for graft and corruption that would be created by state-sanctioned sports betting in the United States.

Beyond its potential to increase crime, state-sanctioned sports betting also comes at a cost to players and fans. As Senator Bradley wrote when he urged the passage of PASPA, sports play an important cultural role. Many look up to athletes as role models, and we associate sports with "the values of character, cooperation, and good sportsmanship that have figured so heavily in the growth of athletic competition throughout the ages."[57]

State-sanctioned sports betting threatens these values in at least two ways. First, sports betting "would convey the message that sports is about gambling, instead of personal achievement, sportsmanship and respect for the winner. . . . Legalizing sports gambling would encourage young people to participate in sports to win money."[58] Second, sports betting threatens public confidence in the integrity of team sports. As former NFL Commissioner Paul Tagliabue testified to Congress, "[s]ports gambling inevitably fosters a climate of suspicion about controversial plays and intensifies cynicism with respect to player performances, coaching decisions, officiating calls and game results. Cynical or disappointed fans would come to assume 'the fix was in' whenever the team they bet on failed to beat the point spread."[59]

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[57] Senator Bradley, Policy Concerns Behind PASPA at 6.

[58] *Id.* at 7.

[59] *Id.* at 8 n.10

New Jersey's law manifests these concerns, but transparently tries to foist the costs of sports gambling on other states. New Jersey specifically wrote its law to maintain its ban on gambling for college sports that take place in New Jersey and for sporting events in which a New Jersey team participates "regardless of where the event takes place." N.J. Stat. Ann. § 5:12A-7. This self-serving exemption is a tacit recognition both that sports gambling has deleterious effects and that those effects extend even when people in one state gamble on matches in other states. This sort of self-dealing, without regard to the costs imposed on other states, demonstrates that PASPA is just as necessary now as the day it was passed.

II. Regardless of whether this Court accepts petitioners' anti-commandeering arguments, it should leave PASPA largely intact.

As argued above, PASPA is constitutionally sound because it does not require action by state governments or their officers. Even if the Court holds to the contrary, however, it should refrain from invalidating any provisions of PASPA beyond the "authorize" and "license" clauses of Section 3702(1).

The petitioners argue that if the Court strikes down PASPA's prohibition on state "authoriz[ation]" of sports wagering, it should strike down the rest of the statute as well. Petitioners assert (at 53) that PASPA "cannot function" without the "authorize" term in a manner consistent with the intent of Congress. Congress, petitioners hypothesize, would not have wanted to allow states to repeal their bans on sports gambling without giving them the ability to adopt comprehensive legal regimes to manage sports gambling. This argument is wrong for three reasons.

1. Contrary to what petitioners say (at 55), there would not be an "absence of regulation" if the Court were to strike down PASPA's "authorize" term. To take this case as an example, petitioners do not claim that New Jersey's regulation is incompatible with the other terms in PASPA, and it does not appear on its face to run afoul of PASPA's prohibitions on, for instance, operating, sponsoring, advertising, or promoting sports gambling. Yet New Jersey's law transparently regulates sports gambling by limiting it only to certain venues, persons, sporting events, and so on. *See* N.J. Stat. Ann. § 5:12-1–62. Presumably, then, New Jersey and other states will be able to engage in at least some regulation of sports gambling if the "authorize" term is ruled unenforceable but the rest of PASPA stands.

Additionally, there is a wide array of federal anti-gambling legislation that remains in effect regardless of the outcome of this case. *See, e.g.*, 18 U.S.C. § 224; 18 U.S.C. § 1084; 18 U.S.C. § 1955; 31 U.S.C. § 5363.

And perhaps most obviously, the remaining terms of Section 3702(1) and all of the terms of Section 3702(2) provide a great deal of regulation regarding sports gambling in particular.[60] Suggesting that these sections of PASPA should be invalidated because Congress would have wanted *more* sports gambling regulation is nonsensical.

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[60] Petitioners argue (at 55–56) that Section 3702(2) is not severable from the "authorize" term because it is "dependent" on that term and a "complement," rather than freestanding. As justification, petitioners claim that without the "authorize" term, Section 3702(2) becomes "a nonsensical federal prohibition that permits sports wagering when prohibited by state law but prohibits such wagering when it is permitted by state law." *Id.* But 3702(2) never "permits" sports wagering; it is simply inoperative as to sports wagering that is not done pursuant to a state law.

2. Petitioners' argument regarding Congress's intent is also inconsistent with PASPA's text. Petitioners' reading of PASPA is strange. They insist (at 40–45) that "authorize" must be read to include the rescinding of a prohibition. But under that approach, unless Congress's use of "sponsor," "operate," and "advertise" in Section 3702(1) were nullities, PASPA would be read to prohibit states from sponsoring, operating, and advertising gambling schemes that they already prohibit under their own laws.

A more plausible reading of the statute is that Congress viewed each of the prohibitions as freestanding: under PASPA, states would not be permitted to authorize sports gambling, nor would they be permitted to advertise or operate sports gambling schemes. Read this way, PASPA bans several rungs on the ladder of state involvement in sports gambling: from authorizing all the way up to operating.

Petitioners do not argue that their reading of the anti-commandeering doctrine applies to the steps on the ladder above "authorize" and "license," and nothing in the statute's text or structure suggests that Congress would want all of PASPA's remaining protections repealed. Petitioners' approach is contrary to this Court's practice of striving to give effect to every word Congress includes in a statute, and should therefore be rejected. *See, e.g.*, *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 70 (2011).

3. Finally, petitioners ignore that Congress specifically chose to restrict governmental entities rather than regulating only individuals and leaving states to their own devices. As discussed in detail above, Congress was concerned not with sports gambling in the abstract, but

with the specific phenomenon of "State-sponsored sports gambling." S. Rep. No. 102-248, at 4.

This concern had two distinct elements. One motivation behind the law, as Senator Bradley put it, was to prevent state-sponsored gambling from legitimizing sports betting by endowing it with "the imprimatur of the state."[61] This concern is not just reflected in the prohibition on state authorization of sports gambling. The specific prohibitions on governmental entities operating, sponsoring, advertising, or otherwise promoting sports gambling are all directly tied to the fear that putting the government's seal of approval on the activity communicates to society—and especially to children—that this activity is a normal and legitimate pastime.[62]

Congress was also concerned that state governments could not effectively regulate sports gambling. As we explained in Part I above, PASPA was passed in the midst of an aggressive wave of state gambling legalization. Congress passed the law in part because the "pressures in such places as New Jersey and Florida to institute casino-style sports gambling" illustrated how "[o[nce a State legalizes sports gambling, it will be extremely difficult for other States to resist the lure." S. Rep. No. 102-248, at 5. But this problem would not be confined to states that chose to give in to these incentives, because "[t]he harms [sports gambling] inflicts are felt beyond the borders of those States that sanction it." *Id.* PASPA was thus a response to "a national problem" that state governments would not be able to contain on their own. *Id.* Far from wanting states to be able to

[61] Senator Bradley, Policy Concerns Behind PASPA at 5.

[62] *See id.* at 15 n.49 (quoting testimony that "[t]he rise of state lotteries clearly helped turn gambling from a vice to a normal form of entertainment.")

license and regulate sports gambling, Congress was specifically concerned that the lure of revenue from gambling licensing and regulation would lead States to make bad choices that would spill across the country.

Petitioners are thus wrong to declare (at 55) that there is "no evidence that Congress would have singled out State-run schemes *uniquely* for prohibition." Congress did exactly that in Section 3702, and the legislative history of PASPA demonstrates that Congress's plain language means what it says. "[N]othing in [PASPA's] text or historical context" indicates that Congress would have preferred no limitations on state governments whatsoever to limitations on state sponsorship, promotion, operation, and advertisement of sports gambling. *Cf. Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 509 (2010). Regardless of how this Court decides the question with respect to the "authorize" and "license" terms, then, the remaining prohibitions in Section 3702 should remain as freestanding restrictions on state-sponsored sports betting.

CONCLUSION

The Court should affirm the judgment below. In the alternative, if the Court accepts the petitioners' anti-commandeering argument, it should refrain from invalidating any provisions of PASPA beyond the "authorize" and "license" clauses of Section 3702(1).

Respectfully submitted,

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