NOS. 13-967, 13-979 & 13-980

In the
Supreme Court of the United States

CHRIS CHRISTIE, GOVERNOR OF NEW JERSEY, ET AL.,
Petitioners,
v.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.,
Respondents.

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

STEPHEN M. SWEENEY, PRESIDENT OF THE NEW JERSEY SENATE, ET AL.,
Petitioners,
v.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Congress enacted the Professional and Amateur Sports Protection Act ("PASPA") to stop the spread of state-sponsored sports gambling. PASPA prohibits states from sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling, and it prohibits individual conduct pursuant to any such state law. To preserve significant reliance interests, PASPA includes a "grandfather" exemption, for which four states qualified, that permits state laws authorizing sports gambling to continue to the extent they were already in place when PASPA was enacted. Although New Jersey had no such law, PASPA also afforded New Jersey a limited window of opportunity to adopt laws authorizing sports gambling, but New Jersey declined to avail itself of that opportunity. Two decades later, New Jersey eliminated a prohibition on sports gambling and then separately adopted a law and regulations authorizing sports gambling. Both the district court and the court of appeals held that PASPA preempts the latter law and related regulations and rejected New Jersey's arguments that PASPA is unconstitutional. No other court has considered, let alone accepted, New Jersey's novel constitutional attacks on PASPA.

The question presented is whether PASPA is a valid exercise of Congress' Commerce Clause power.

CORPORATE DISCLOSURE STATEMENT

Respondents are the National Collegiate Athletic Association, the National Basketball Association, the National Football League, the National Hockey League, and the Office of the Commissioner of Baseball. None of the respondents has a parent company. No publicly held company owns 10% or more of any respondent's stock.

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INTRODUCTION

This case involves two novel constitutional challenges that have been rejected by the only two courts to consider them—namely, the court of appeals and the district court below. There is no reason for this Court to grant certiorari or disturb that eminently correct result.

The Professional and Amateur Sports Protection Act ("PASPA") prohibits states from affirmatively sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling, and it prohibits individual conduct pursuant to any such state law. Before this case, the constitutionality of PASPA had never been challenged; in fact, in its 22-year existence, PASPA has generated only one other court of appeals decision. The prior case was a statutory case where Delaware could attempt to argue (albeit unsuccessfully) that its statute was compatible with PASPA. New Jersey has no such luxury. The New Jersey statute and regulations at issue here are a blatant and unapologetic violation of PASPA. New Jersey recognized as much and invited a PASPA action. When respondents filed one, New Jersey responded with a variety of novel constitutional challenges to PASPA, including that it commandeers states by prohibiting them from enacting laws authorizing sports gambling and violates the "equal sovereignty" principle by accommodating the strong reliance interests of the few states that permitted sports gambling when PASPA was enacted.

Both the district court and the court of appeals readily rejected those arguments—and for good

reason. Petitioners' attempts to portray PASPA as an impermissible intrusion on state sovereignty are irreconcilable with this Court's cases. Indeed, both of their constitutional arguments depend on wresting language from its context and extending purposefully narrow decisions in ways that would endanger numerous uncontroversial federal statutes. Further, in the unlikely event that another state raises similar arguments and succeeds in producing a circuit split, there will be time enough for this Court to consider them. The Court should deny the petitions.

STATEMENT OF THE CASE

A. The Professional and Amateur Sports Protection Act

Congress has long recognized a federal interest in protecting the integrity of professional and amateur sports from the harms of sports gambling. In the Interstate Wire Act of 1961, Congress prohibited the interstate wire transmission "of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest," exempting only states where the activity was legal. 18 U.S.C. § 1084(a). In 1964, Congress made it a federal crime to fix or attempt to fix any sports contest. *See id.* § 224. The House Report declared such offenses "a challenge to an important aspect of American life—honestly competitive sports." H.R. Rep. No. 88-1053, at 2 (1963). The Senate sponsor likewise emphasized the need "to keep sports clean so that the fans, and especially young people, can continue to have complete confidence in the honesty

of the players and the contests." 109 Cong. Rec. 2,016 (1963) (statement of Sen. Keating).

Congress also has long recognized a federal interest in regulating gambling on a nationwide basis. *See, e.g.*, *Champion v. Ames*, 188 U.S. 321 (1903) (upholding federal law prohibiting trafficking of lottery tickets as valid exercise of Congress' commerce power). Although Congress has accommodated limited state interests in legalized gambling, it has not strayed from its view that sports gambling is particularly damaging. When Congress exempted state lotteries from federal criminal lottery laws in 1975, for instance, it excluded state-sponsored sports gambling from this exemption, making clear that federal laws would continue to apply to any "placing or accepting of bets or wagers on sporting events or contests" conducted by states. *See* 18 U.S.C. § 1307(a)-(d). Congress' concerns about sports gambling mirror the longstanding concerns of professional and amateur sports organizations themselves.

In 1990, amid growing public dismay about the harms of sports gambling, Congress began considering federal legislation to stem the spread of state-sponsored gambling on professional and amateur sports. At the time, although only a handful of states had authorized any form of sports gambling, various states were considering authorizing state-sponsored sports gambling to be conducted on river boats or in off-track betting parlors and casinos; others were debating introducing sports themes to their lotteries.

After a robust debate and extensive hearings, Congress concluded that although "sports gambling offers a potential source of revenue," "the risk to the reputation of one of our Nation's most popular pastimes, professional and amateur sporting events, is not worth it." S. Rep. No. 102-248, at 7 (1991), *as reprinted in* 1992 U.S.C.C.A.N. 3553, 3558; *see also id.* at 5 ("Sports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling," "undermines public confidence in the character of professional and amateur sports," and "will promote gambling among our Nation's young people."). "Without Federal legislation," Congress concluded, "sports gambling is likely to … develop an irreversible momentum" because "[o]nce a State legalizes sports gambling, it will be extremely difficult for other States to resist the lure." *Id.* As an example, the report singled out the "pressures in such places as New Jersey … to institute casino-style sports gambling." *Id.*

Accordingly, on October 28, 1992, the President signed PASPA into law, after it was approved by a vote of 88-5 in the Senate and by voice vote in the House. 28 U.S.C. § 3701 *et seq.* PASPA makes it "unlawful for" any "governmental entity" to "sponsor, operate, advertise, promote, license, or authorize by law or compact":

> a lottery, sweepstakes, or other betting, gambling, or wagering scheme based … on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or

> more performances of such athletes in such games.

Id. § 3702. PASPA also makes it unlawful for "a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a government entity," any such sports gambling. *Id.* § 3702(2). In addition to granting the attorney general authority to enforce these prohibitions, PASPA grants professional and amateur sports organizations a cause of action to seek an injunction against a violation of PASPA whenever the organization's *own* "competitive game is alleged to be the basis of such violation." *Id.* § 3703.

Although Congress concluded that all state-sponsored sports gambling has harmful effects, it also recognized the strong reliance interests of the handful of states that already had instituted various forms of authorized sports gambling. *See* A-2306 ("Although the committee firmly believes that all such sports gambling is harmful, it has no wish to apply this new prohibition retroactively to Oregon or Delaware, which instituted sports lotteries prior to the introduction of our legislation. Neither has the committee any desire to threaten the economy of Nevada … or to prohibit lawful sports gambling schemes in other States that were in operation when the legislation was introduced."). Accordingly, as a sensible compromise, PASPA "grandfathered" any state law permitting sports gambling that had been enacted before PASPA. 28 U.S.C. § 3704. Four states—Delaware, Montana, Nevada, and Oregon—qualified in varying degrees for this narrow

exemption from PASPA's general prohibitions for pre-existing laws. *Id.* § 3704(a)(1)-(2).

The grandfather provision also provided a one-year window of opportunity in which states that had operated licensed casino gaming for the previous decade could pass laws permitting sports wagering and thereby avail themselves of a comparable exemption. *Id.* § 3704(a)(3). Although this provision was included for the sole benefit of New Jersey—the only qualifying state—New Jersey chose not to avail itself of that opportunity. In fact, New Jersey's legislature did not even vote on a joint resolution that would have allowed a referendum on a constitutional amendment authorizing casino betting on sporting events. *See In re Pet. of Casino Licensees*, 633 A.2d 1050, 1051 (N.J. Super. Ct. App. Div.), *aff'd*, 647 A.2d 454 (N.J. 1993). It is thus uncontested that New Jersey is subject to PASPA's general prohibitions.

During the more than two decades since PASPA's enactment, empirical studies have confirmed the harms that state-sponsored sports gambling poses. A 1999 National Gambling Impact Study Commission Report, for example, found that legalized sports gambling "threatens the integrity of sports." A-743. And recent consumer studies reveal that 38% of fans oppose the adoption of legalized sports betting, while only 17% support it, A-2298, and that fans perceive "[g]ambling influence[]" as a reason for officiating errors. A-1626; *see also* A-1728. In short, the concerns animating PASPA's enactment are not only substantial, but continuing.

B. The New Jersey Sports Wagering Law

For decades, New Jersey's constitution prohibited its legislature from adopting any law authorizing wagering "on the results of any professional, college, or amateur sports or athletic event." *See* A-117. Effective December 8, 2011, the state constitution was amended to repeal that prohibition, paving the way for the state legislature "to authorize by law wagering … on the results of any professional, college, or amateur sport or athletic event." N.J. Const. art. IV, § VII, ¶ 2D. This repeal is subject to two notable exceptions: The constitution continues to prohibit wagering "on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place." *Id.*

This repeal alone did not violate PASPA's prohibition against affirmatively authorizing sports gambling, and respondents did not sue to enjoin it. But in January 2012, New Jersey enacted the Sports Wagering Law, N.J. Stat. Ann. § 5:12A-1 *et seq.* (West 2012), which affirmatively authorizes licensed casino and gambling houses in Atlantic City and horse racetracks throughout the state to engage in "the business of accepting wagers on any sports event by any system or method of wagering." *Id.* §§ 5:12A-1, 5:12A-2. Consistent with its amended constitution, New Jersey exempted from this authorization the athletic events of its own colleges and universities, as well as any collegiate athletic events taking place in New Jersey, thus shielding these local interests from the negative effects of the

sports gambling it authorized. *Id.* § 5:12A-1 (defining "prohibited sports event" as "any collegiate sport or athletic event that takes place in New Jersey or a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place"). The Division of Gaming Enforcement, which is charged with regulating and issuing licenses for the sports gambling that the law authorizes, *id.* §§ 5:12A-2, 5:12A-4, promulgated regulations that were scheduled to take effect in October 2012. N.J. Admin. Code. § 13:69N.

New Jersey had no theory that its Sports Wagering Law and implementing regulations were somehow compatible with PASPA. Instead, New Jersey recognized the unambiguous conflict with federal law, and the governor declared, "'if someone wants to stop us, then they'll have to take action to try to stop us.'" A-118.

C. Proceedings Below

1. In August 2012, respondents filed suit in the U.S. District Court for the District of New Jersey against Governor Christopher J. Christie, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of New Jersey David L. Rebuck, and Executive Director of the New Jersey Racing Commission Frank Zanzuccki (collectively, "New Jersey"), challenging the state's clear violation of PASPA. Invoking the cause of action PASPA grants them, respondents moved for summary judgment and to enjoin implementation of New Jersey's illegal sports gambling law and regulations. New Jersey, in response, moved to dismiss the complaint, arguing that respondents suffer no injury

whatsoever from gambling on their own games and thus lack Article III standing to invoke the cause of the action that Congress granted them to enforce PASPA. New Jersey subsequently filed a cross-motion for summary judgment, raising a variety of novel constitutional challenges to PASPA.

Following an evidentiary hearing, the district court dispatched New Jersey's standing argument on the undisputed facts, agreeing with Congress that respondents suffer a concrete and particularized harm from state-sponsored gambling on their own games. After holding a second hearing on the constitutionality of the statute, the court granted summary judgment to respondents and permanently enjoined New Jersey from implementing its sports gambling law and regulations, concluding that they are squarely and validly preempted by PASPA. NJ App. 136a.

The court rejected petitioners' argument that PASPA commandeers the states, explaining that this Court's commandeering cases are concerned only with federal laws that "force States to engage in *affirmative* activity." NJ App. 119a. By contrast, Congress' "power to *restrict*, rather than *compel*, the actions of States in preempted spheres was, and remains, a settled issue." NJ App. 120a. Because "[n]o *action* on the part of the States is *required* in order for PASPA to achieve its ends," the court concluded that PASPA "neither *compels* nor *commandeers*" the states. NJ App. 101a. The court also rejected petitioners' argument that PASPA's grandfathering provision denies the other 46 states equal sovereignty. Noting the absence of any

"'requirement for uniformity in connection with the Commerce Power,'" the court concluded that Congress' accommodation "of States that have developed a reliance interest on sports gambling pre-dating the inception of PASPA[] is both rational and constitutional." NJ App. 99a n.5 (quoting *Currin v. Wallace*, 306 U.S. 1, 14 (1939)).

2. The court of appeals affirmed. The court first held that respondents have Article III standing to challenge the Sports Wagering Law because the law is aimed at "us[ing] the Leagues' games for profit" and because respondents likely would be injured by legalized gambling on their own games. NJ App. 15-20a. The court then rejected petitioners' commandeering and equal sovereignty claims.

The court held that PASPA does not commandeer the states, rejecting as "revolutionary" petitioners' "position that a state's sovereignty is violated when it is precluded from following a policy different than that set forth by federal law." NJ App. 37a. As the court explained, this Court "has struck down laws based on [anti-commandeering] principles on only two occasions," both of which involved laws "distinguishable from PASPA" in that they required states to affirmatively implement or enforce a federal regulatory regime. NJ App. 32a. In other words, those cases are "concerned with conscripting the states into affirmative action"; by contrast, it has "never been the case that applying the Supremacy Clause to invalidate a state law contrary to federal proscriptions is tantamount to direct regulation over the states, to an invasion of their sovereignty, or to commandeering." NJ

App. 36a, 40a. PASPA, the court observed, "does not *require* or coerce the states to lift a finger—they are not required to pass laws, to take title to anything, to conduct background checks, to expend any funds, or to in any way enforce federal law." NJ App. 39a. The court found it "hard to see how Congress can 'commandeer' a state, or how it can be found to regulate how a state regulates, if it does not require it to do anything at all." NJ App. 39-40a.

The court also rejected petitioners' effort to read into PASPA a command to prohibit sports gambling, concluding that the plain text of the statute contains no "*require*[*ment*] that the states keep any law in place," NJ App. 41a; instead, it contains only "classic preemption language," NJ App. 30a. Likewise, the court rejected petitioners' attempt to portray PASPA as directed solely at states, explaining that "PASPA prohibits individuals from engaging in a sports gambling scheme 'pursuant to' state law" as well. NJ App. 49a (quoting 28 U.S.C. § 3702(2)). Accordingly, the court found PASPA "'complementary to and consistent with'" other federal prohibitions on sports gambling. NJ App. 50a (quoting S. Rep. No. 102-248, at 7 and citing 18 U.S.C. §§ 224, 1084, 1301, 1307(d)). The court found it neither surprising nor problematic that PASPA does not impose a blanket ban on sports gambling. As it explained, "PASPA's text and legislative history reflect that its goal is more modest—to ban gambling pursuant to a state scheme—because Congress was concerned that state-sponsored gambling carried with it a label of legitimacy that would make the activity appealing." NJ App. 51a. "When so understood," the court

concluded, "it is clear that PASPA does not commandeer the states." NJ App. 52-53a.

The court of appeals also rejected petitioners' equal sovereignty argument, finding "nothing in" this Court's decision in *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), "to indicate that the equal sovereignty principle is meant to apply with the same force outside the context of 'sensitive areas of state and local policymaking.'" NJ App. 55a. The preclearance mechanism in the Voting Rights Act "is fundamentally different from PASPA," the court explained, because whereas the Framers intended states to retain power to regulate elections, the Constitution unambiguously grants Congress power to regulate interstate commerce. NJ App. 54a. The court also rejected as "overly broad" petitioners' attempt to import into the Commerce Clause context a rule that Congress may treat states differently "only" to "remedy local evils." NJ App. 55a.

The court further concluded that PASPA "passes muster" even if the equal sovereignty doctrine were applicable because its grandfather clause "is *precisely tailored* to" PASPA's goal of "stop[ping] the *spread of state-sanctioned* sports gambling." NJ App. 55-56a. Moreover, the court noted, PASPA hardly raises the same federalism concerns as the Voting Rights Act, as, "far from singling out a handful of states for disfavored treatment, PASPA treats *more favorably* a *single* state." NJ App. 56a. In all events, even if PASPA's grandfather clause were problematic, the court questioned why the proper remedy would be to invalidate the statute in its entirety, rather than to invalidate just *that clause*. NJ App. 56a. Petitioners'

"complete invalidation" argument, the court noted, would do "far more violence to the statute, and would be a particularly odd result given the law's purpose of curtailing state-licensed gambling on sports." NJ App. 56a.

Judge Vanaskie filed an opinion concurring in part and dissenting in part, explaining that he agreed with the majority that respondents have standing and that PASPA raises no equal sovereignty concerns but would have held that PASPA commandeers the states. *See* NJ App. 60a.

3. The court of appeals denied petitioners' request for rehearing en banc without comment. NJ App. 157a.

REASONS FOR DENYING THE PETITION

I. Petitioners' Novel Argument That PASPA Commandeers The States Does Not Warrant This Court's Review.

Petitioners' commandeering challenge to PASPA is novel, splitless, and meritless. This is the first *and only* case in which a commandeering attack on PASPA has been considered (or even brought), and both courts below readily rejected it. That is unsurprising, as there is nothing remotely constitutionally suspect about the manner in which PASPA accomplishes its goal of stopping the spread of state-sponsored sports gambling. PASPA prohibits states from sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling, and it separately prohibits individual conduct pursuant to any such state law. This belt-and-suspenders approach of preempting state laws that affirmatively authorize sports gambling and

prohibiting private conduct pursuant to such laws is an unremarkable exercise of Congress' settled power to regulate commerce in sports gambling and to protect respondents' games. PASPA is nothing like the only two statutes this Court has invalidated under the commandeering doctrine, both of which *compelled* states to enact or implement federal regulatory schemes.

In all events, in the exceedingly unlikely event that a court ever accepts the argument that PASPA impermissibly commandeers the states, there will be time enough to consider the question when the circuits are split and an act of Congress has been invalidated rather than upheld. Here, by contrast, the Rule 10 criteria for this Court's review are not remotely satisfied. Indeed, review would be both premature and potentially academic, as operation of New Jersey's sports gambling law is independently foreclosed by PASPA's prohibition on private conduct pursuant to state law—a prohibition that New Jersey does not (and cannot) challenge.

A. Petitioners' Commandeering Challenge Satisfies None of the Traditional Criteria for Granting Certiorari.

Petitioners do not suggest that the decision below conflicts with any other lower court decision. Nor could they, as the novelty of their challenge eliminates that possibility. "This is the first case addressing PASPA's constitutionality." NJ App. 8a. Indeed, in its 20-year existence, PASPA has generated a grand total of two court of appeals decisions—both decided in the Third Circuit and both resolved against the state resisting the statute's

application. *See* NJ App. 8a ("Only one Court of Appeals has decided a case under PASPA—ours.").[1] The only other appellate case did not involve a constitutional challenge, but rather involved Delaware's failed effort to shoehorn a new initiative into PASPA's grandfathering provision. *See Office of the Comm'r of Baseball v. Markell*, 579 F.3d 293 (3d Cir. 2009), *cert. denied* 559 U.S. 1106 (2010). In short, petitioners' contention that PASPA commandeers the states is a novel argument about a rarely invoked statute that has been rejected by the only two courts to consider it: the district court and the court of appeals below.

Even widening the lens to commandeering cases more generally, petitioners identify no conflict in need of this Court's resolution. That is because their exceedingly expansive view of the commandeering doctrine—namely, that the doctrine applies not just when Congress forces states to act, but also when Congress prohibits states from acting—has been rejected by every court to consider it. *See, e.g.*, *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 397 (2d Cir. 2008) (rejecting commandeering claim where statute "'impose[d] no affirmative duty of any kind'");

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[1] This is not to suggest that there have been a plethora of lower court cases. To respondents' knowledge, there have been only two other PASPA decisions besides this case and Delaware's recent unsuccessful statutory challenge. *See Interactive Media Entm't & Gaming Ass'n v. Holder*, No. 09-1301 (GEB), 2011 WL 802106 (D.N.J. Mar. 7, 2011) (dismissing constitutional challenge to PASPA for lack of standing); *Flagler v. U.S. Att'y for Dist. of N.J.*, No. 06-3699 (JAG), 2007 WL 2814657 (D.N.J. Sept. 25, 2007) (same).

Fraternal Order of Police v. United States, 173 F.3d 898, 906-07 (D.C. Cir. 1999) (rejecting commandeering claim where statute did "not force state officials to do anything affirmative"); *United States v. Bostic*, 168 F.3d 718, 724 (4th Cir. 1999) (rejecting Tenth Amendment claim where statute imposed no "affirmative obligation"). As this unanimous body of case law reflects, petitioners' revolutionary view of the commandeering doctrine is utterly inconsistent with this Court's cases and well-settled preemption doctrines. *See infra* Part I.B. There is simply nothing about PASPA that renders it comparable to the unusual statutes this Court held unconstitutional in its commandeering cases.

Nor is petitioners' commandeering challenge to PASPA exceptionally important or likely to recur. As noted, PASPA has spawned just four cases in its two decades on the books—all within the bounds of the Third Circuit. And in the 22 years since its enactment, states have expressed little or no concern about PASPA, let alone about its constitutionality. New Jersey identifies nothing even suggesting that any states other than New Jersey and its three *amici* are troubled in the slightest by PASPA's prohibitions. And in the highly unlikely event that an influx of constitutional challenges to PASPA should materialize, there will be time enough for this Court to resolve any commandeering question if and when a conflict arises—and to do so with the benefit of the views of more than one court of appeals. The mere fact that PASPA has frustrated New Jersey's desire to authorize sports gambling is not nearly enough, standing alone, to warrant this Court's review. Every case finding preemption involves a state law

trumped by a federal statute through operation of the Supremacy Clause, yet the Court does not grant certiorari every time a state complains that federal law has interfered with its policy choices.

In all events, as the court of appeals correctly recognized, petitioners' commandeering challenge is largely academic, as operation of New Jersey's sports gambling scheme is independently preempted by a provision of PASPA that New Jersey does not challenge. PASPA not only prohibits states from licensing or authorizing sports gambling, but also prohibits *any person* from sponsoring, operating, advertising, or promoting sports gambling *pursuant to state law*. 28 U.S.C. § 3702(2). Accordingly, even if PASPA's prohibitions relating to state conduct were constitutionally infirm (and they are not), PASPA "would still plainly render the Sports Wagering Law inoperative by prohibiting private parties," as a matter of federal law, "from engaging in gambling schemes pursuant to that [state] authority." NJ App. 49a. That not only puts the lie to petitioners' assertion that PASPA is an anomalous effort to regulate only states, not private parties, but also confirms that the answer to the commandeering question is ultimately of little practical significance. There is thus no reason for this Court to grant review, and every reason to deny it.

B. The Courts Below Correctly Concluded that PASPA Does Not Commandeer the States.

Petitioners' commandeering argument is not only splitless and novel, but meritless as well. As both the court of appeals and the district court correctly

concluded, PASPA lacks the irreducible minimum of any successful commandeering claim: It does not compel states (or state officials) to do anything. Instead, PASPA only *prohibits* states from licensing or authorizing sports gambling, and prohibits private parties from sponsoring, operating, advertising, or promoting sports gambling pursuant to state law. Accordingly, PASPA is simply a straightforward exercise of Congress' power to preempt operation of state laws that conflict with federal policy on matters within Congress' purview. Like a whole host of federal statutes before and after it, PASPA prohibits states from enacting laws that conflict with federal policy and precludes individuals from relying on such laws to engage in conduct that Congress has deemed contrary to the national interest. There is nothing remotely constitutionally suspect about the manner in which PASPA does so.

1. Wrenching out of context a single line of dictum from *New York v. United States*, 505 U.S. 144 (1992), petitioners insist that PASPA is constitutionally infirm because it "'regulate[s] state governments' regulation of interstate commerce'" by prohibiting states from licensing or authorizing sports gambling. NJ Pet. 16 (quoting *New York*, 505 U.S. at 166). That sweeping vision of the commandeering doctrine is wholly divorced from this Court's cases and would have extraordinary consequences for the federal-state balance. Scores of federal statutes explicitly preclude states from

enacting laws that conflict with federal policy.[2] Neither this Court nor any other has suggested that

[2] *See, e.g.*, *American Trucking Ass'ns v. City of Los Angeles*, 133 S. Ct. 2096 (2013) (considering 49 U.S.C. § 14501(c)(1), which provides that a state "may not enact or enforce a law … related to a price, route, or service of any motor carrier … with respect to the transportation of property"); *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008) (same); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378-79 (1992) (considering 49 U.S.C. App. § 1305(a)(1), which precluded "States from prohibiting allegedly deceptive airline fare advertisements through enforcement of their general consumer protection statutes"); 7 U.S.C. § 136v(b) (a "State shall not impose or continue in effect any requirements for labeling or packaging [pesticides] in addition to or different from those required under this subchapter"); 15 U.S.C. § 1121(b) ("[n]o State or other jurisdiction of the United States or any political subdivision or any agency thereof may" impose certain requirements relating to trademarks); 21 U.S.C. § 360k ("no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement" that conflicts with federal requirements); 21 U.S.C. § 678 (identifying requirements relating to food or drug inspection that "may not be imposed by any State"); 46 U.S.C. § 4306 ("a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment"); 49 U.S.C. § 11501(b) ("a State, subdivision of a State, or authority acting for a State or subdivision of a State may not" impose certain taxes on rail transportation property); 49 U.S.C. § 31111(b) ("a State may not prescribe or enforce a regulation of commerce" that imposes length requirements on certain vehicles); 49 U.S.C. § 40116(b) ("a State, a political subdivision of a State, and any person that has purchased or leased an airport under … this title may not levy or collect a tax, fee, head charge, or other charge on" air commerce or transportation).

such laws raise commandeering concerns simply because they operate "on the states" rather than "on the people." *See* NJ Pet. 23. Certainly, the fact that Congress in PASPA and these other statutes is explicit, rather than implicit, about its intent to displace state law pursuant to the Supremacy Clause is no strike against the laws. *Cf. Wyeth v. Levine*, 555 U.S. 555, 587 (2009) (Thomas, J., concurring) (suggesting concerns about implied preemption while reaffirming validity of express preemption analysis). To the contrary, this Court has confirmed that "[t]here is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision." *Arizona v. United States*, 132 S. Ct. 2492, 2500-01 (2012).

Commandeering concerns arise only when, rather than *withdraw* powers from states (whether explicitly or implicitly), Congress attempts to *force* states to do its bidding. This Court's commandeering cases make that crystal clear. The fatal flaw in the provision of the Radioactive Waste Policy Amendments Act at issue in *New York* was that it *required* states either to enact particular legislation or take title to radioactive waste. *See New York*, 505 U.S. at 175. In other words, the law "offer[ed] a state government no option other than that of implementing legislation enacted by Congress." *Id.* at 177. The provision of the Brady Handgun Violence Protection Act at issue in *Printz v. United States*, 521 U.S. 898 (1997), suffered from a variant of the same basic defect: By *requiring* state and local law enforcement officers to conduct federally mandated background checks for handgun sales, it

unconstitutionally conscripted states' law enforcement officers into federal service. *See Printz*, 521 U.S. at 902-05. As these cases reflect, the commandeering doctrine embodies two related—and limited—principles: "The Federal Government may neither issue directives requiring the States to address particular problems," as in *New York*, "nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program," as in *Printz*. *Id.* at 935.

PASPA runs afoul of neither of those principles. It "does not *require* or coerce the states to lift a finger—they are not required to pass laws, to take title to anything, to conduct background checks, to expend any funds, or to in any way enforce federal law." NJ App. 39a. Instead, PASPA only *prohibits* states from enacting laws that interfere with federal objectives by licensing or authorizing sports gambling. PASPA's effect on state law is nothing like the effect of the statutes in *New York* and *Printz*, but is the precise effect that countless federal statutes have in displacing state law through operation of the Supremacy Clause. Indeed, *Printz* went out of its way to distinguish the law at issue there from ordinary operation of the Supremacy Clause. *See Printz*, 521 U.S. at 913 (explaining that there is a "duty owed to the National Government, on the part of *all* state officials, to enact, enforce, and interpret state law in such fashion as not to obstruct the operation of federal law, and the attendant reality that all state actions constituting such obstruction, even legislative Acts, are *ipso facto* invalid").

Thus, while it is easy and tempting to take a few sentences from *New York* and *Printz* out of context, both this Court and the courts of appeals consistently have recognized that the commandeering doctrine is not nearly so broad, and that the federal code is not replete with commandeering statutes. *Reno v. Condon*, 528 U.S. 141 (2000); *see also, e.g.*, *Strahan v. Coxe*, 127 F.3d 155, 167-70 (1st Cir. 1997); *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110, 122 (2d Cir. 2002); *Kennedy v. Allera*, 612 F.3d 261, 268-70 (4th Cir. 2010); *Texas v. United States*, 106 F.3d 661, 665-66 (5th Cir. 1997); *Cutter v. Wilkinson*, 423 F.3d 579, 588-90 (6th Cir. 2005); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States*, 367 F.3d 650, 662-65 (7th Cir. 2004); *Dakota, Minn. & E. R.R. v. South Dakota*, 362 F.3d 512, 517-18 (8th Cir. 2004); *Envtl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 844-48 (9th Cir. 2003); *Oklahoma ex rel. Okla. Dep't of Public Safety v. United States*, 161 F.3d 1266, 1271-73 (10th Cir. 1998); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1242-43 (11th Cir. 2004); *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1305-07 (D.C. Cir. 2004). Unless it is to swallow preemption whole, the commandeering doctrine simply cannot be understood to invalidate laws that, like PASPA, neither "require [a state] to enact any laws or regulations" nor "require state officials to assist in the enforcement of federal statutes." *Reno*, 528 U.S. at 150-51.

2. Implicitly recognizing this fatal flaw in their argument, petitioners attempt to read into PASPA the affirmative command that it lacks, insisting that it somehow compels states to enact or retain

prohibitions on sports gambling. *See* NJ Pet. 30-31; NJTHA Pet. 16-17; Legislators' Pet. 28 n.10. Even setting aside the bedrock rule that statutes should be read to avoid constitutional questions, not to create them, *see, e.g.*, *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988), PASPA plainly does no such thing. PASPA declares it "unlawful for a government entity to sponsor, operate, advertise, promote, license, or authorize" sports gambling. 28 U.S.C. § 3702(1). Nothing in that unambiguous language compels states to prohibit or maintain any existing prohibition on sports gambling. Instead, like any other express preemption clause, PASPA says only what states *may not* do, which is license or authorize sports gambling. PASPA does not prohibit states from eliminating sports gambling prohibitions entirely should they so choose, or even require states to enforce whatever prohibitions they opt to maintain.[3] In keeping with that understanding, respondents did not challenge New Jersey's actions in partially lifting its constitutional prohibition on sports gambling. Only when New Jersey took the affirmative step of authorizing sports gambling did

[3] Nor does PASPA burden states with the sole obligation of preventing sports gambling should they choose to do so. In fact, federal law independently prohibits sports gambling that is not authorized by state law, meaning the federal government has already taken on the obligation of expending its own resources to enforce its policy limiting sports gambling. *See, e.g.*, 18 U.S.C. §§ 224, 1084, 1301, 1307(d); NJ App. 50a.

respondents sue, because only then was PASPA violated.[4]

Petitioners alternatively attack the distinction between laws that compel state action and laws that prohibit state action as illusory. Petitioners confuse semantics with substance. Obviously there is no meaningful difference between a law that says "each state shall take title to radioactive waste" and a law that says "no state shall refuse to take title to radioactive waste." That the latter is *phrased* as a prohibition does not change the fact that it is, in *substance*, an affirmative command. The problem for petitioners is that PASPA does not fit their analogies. It is a prohibition on affirmative authorizing legislation as a matter of both form and substance. It does not say "no state shall refuse to have a law on the books prohibiting sports gambling." Nor does it even impose the kind of conditional prohibition to which petitioners analogize, such as "no state shall do X unless it prohibits sports gambling." *See* NJ Pet. 28. PASPA says no state shall license or authorize sports gambling, plain and simple. That is

[4] This distinction is reinforced by PASPA's prohibitions on individuals, which petitioners conveniently ignore. PASPA prohibits individuals from sponsoring, operating, advertising, or promoting sports gambling pursuant to state law. 28 U.S.C. § 3702(2). When a state merely lifts an existing prohibition but does not authorize any sports gambling, there is no "gambling pursuant to state law" for individuals to sponsor, operate, advertise or promote. The state laws that PASPA targets clearly are those that affirmatively license or authorize sports gambling.

a preemptive prohibition, not a commandeering command.

To the extent petitioners insist that there is no substantive difference between a true affirmative command to enact or enforce federal law and a true prohibition with preemptive effect, their quarrel is with the commandeering doctrine itself. The commandeering cases themselves draw this distinction explicitly, and they do so in the precise context of denying that the commandeering doctrine will unsettle the federal-state balance in radical ways. *Printz*, for example, explicitly distinguishes between affirmative commands to enact or enforce federal policy and negative commands to refrain from contravening federal policy, explaining that there is a "duty owed to the National Government, on the part of *all* state officials, to enact, enforce, and interpret state law in such fashion as not to obstruct the operation of federal law, *and the attendant reality that all state actions constituting such obstruction, even legislative Acts, are ipso facto invalid*." *Printz*, 521 U.S. at 913 (some emphasis added); *see also New York*, 505 U.S. at 167-68. PASPA clearly falls into the latter, permissible category. It is no different from the scores of federal statutes explicitly distinguished by *Printz* that prevent states from enacting or enforcing laws that conflict with federal policy. Petitioners' contrary arguments would expand the commandeering doctrine beyond all recognition.

3. Petitioners fare no better with their effort to recast PASPA as "an attempt to regulate private conduct *through* the States." NJTHA Pet. 27. In

fact, PASPA regulates private conduct *directly*: It "prohibits individuals from engaging in a sports gambling scheme 'pursuant to' state law." NJ App. 49a (quoting 28 U.S.C. § 3702(2)). And PASPA is just one small piece of Congress' broader regulation of gambling, which includes numerous prohibitions on private conduct. *See, e.g.*, 18 U.S.C. §§ 224, 1084, 1301, 1307(d); NJ App. 50a. Petitioners' attempt to portray PASPA as some sort of stand-alone provision that is the beginning and end of Congress' concern with sports gambling therefore blinks reality. In fact, PASPA is part and parcel of Congress' efforts to regulate private conduct *directly*, which includes expending *federal* resources to enforce *federal* prohibitions on gambling activities (including sports gambling activities) that are not authorized by state law. *See, e.g.*, 18 U.S.C. § 1084(b) (exempting from blanket ban on use of interstate wires for gambling purposes activities authorized under state law). To be sure, Congress has chosen to assist states in their efforts to prevent sports and other gambling, rather than preempt the field entirely. But that only underscores its desire to respect, not override, federalism concerns.[5]

[5] PASPA also is part and parcel of Congress' efforts to protect respondents' interstate activities. Congress viewed respondents' sporting events as important interstate activities well worth protecting and viewed the spread of state-sponsored gambling as a threat to those games. Prohibiting state laws that interfere with federal objectives is, of course, the classic justification for federal laws that unobjectionably displace state laws pursuant to the Supremacy Clause.

Moreover, as noted, precisely because PASPA does *not* operate solely on states, it would prohibit operation of New Jersey's sports gambling scheme even without its preemption provision, as a casino that attempted to operate sports gambling pursuant to a license issued under that scheme would violate section 3702(2) of PASPA wholly independent from New Jersey's violation of section 3702(1). Petitioners attempt to get around that problem by dismissing section 3702(2) as "entirely derivative" of section 3702(1). NJTHA Pet. 27. But that only underscores just how radical their position really is, as they seem to suggest that the commandeering doctrine invalidates not only laws that limit how states may regulate private conduct, but also laws that regulate private conduct directly. Surely that cannot be what this Court envisioned when it concluded that "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *Printz*, 521 U.S. at 925.

Nor can *New York* and *Printz* plausibly be read to suggest that the accountability concerns they discussed give rise to a commandeering problem every time "'state officials cannot regulate in accordance with the views of the local electorate.'" NJ Pet. 19 (quoting *New York*, 505 U.S. at 169). That is *always* the case when Congress preempts state law, which is why the very sentence of *New York* from which New Jersey quotes concludes with the critical caveat "*in matters not pre-empted by federal regulation*." 505 U.S. at 169 (emphasis added). As the decision goes on to explain, when, as here, Congress explicitly *preempts* state law, "it is the Federal Government that makes the decision in full

view of the public, and it will be federal officials that suffer the consequences if the decision turns out to be detrimental or unpopular." *Id.* at 168. The commandeering doctrine is concerned only with the accountability problem that arises "where the Federal Government compels States to regulate," thereby creating the appearance that *state officials* are responsible for policies that *Congress* forced them to enact. *Id.* Clearly, no such problem exists here. Precisely because New Jersey stood in full compliance with PASPA for two decades without enacting or implementing anything, PASPA did not put New Jersey in a situation where it was "forced to absorb the costs of *implementing* a federal program" or "tak[e] the blame for [a federal program's] burdensomeness and for its defects." *Printz*, 521 U.S. at 930 (emphasis added). And to the extent the citizens of New Jersey now are frustrated by their inability to engage in lawful sports gambling, there is no question that PASPA, not New Jersey, is to blame. If there were any confusion on that score, the decisions below surely removed it.

II. Petitioners' Novel Equal Sovereignty Challenge To PASPA Does Not Warrant This Court's Review.

Petitioners' equal sovereignty challenge suffers from the same basic flaws as their commandeering challenge: Not only is it splitless and novel, but it would expand the equal sovereignty principle articulated in *Shelby County* beyond all recognition. Neither this Court nor any other has suggested that this principle applies outside the narrow contexts in which it has been invoked—let alone that it

precludes Congress from accommodating the vastly different economic and reliance interests of states when it regulates interstate commerce. To the contrary, this Court has recognized for nearly a century that the Commerce Clause embodies no uniformity principle. Nothing in *Shelby County* casts any doubt on those settled precedents. Even were that not the case, a statute that treats a handful of states *more* favorably than the others would hardly be the optimal vehicle for exploring the outer limits of the equal sovereignty doctrine.

A. Petitioners' Equal Sovereignty Challenge Satisfies None of the Traditional Criteria for Granting Certiorari.

Petitioners' unprecedented equal sovereignty challenge to PASPA derives largely from a single decision of this Court issued just last term, in the unique and entirely inapposite context of section 5 of the Voting Rights Act. Lower courts have had neither the time nor the occasion to explore the implications of *Shelby County* in any depth—let alone its implications for PASPA, a question never even raised before this case. It should come as little surprise, then, that petitioners identify no conflict or confusion (even among the judges below) in need of this Court's resolution. Indeed, petitioners do not even identify any cases addressing the broader question of whether *Shelby County* has any bearing on Commerce Clause legislation.

Even if this Court were inclined to explore that question, this would hardly be the place to begin. Whatever constitutional concerns may arise when Congress enacts Commerce Clause legislation that

singles out a handful of states for unfavorable treatment, any such concerns are not implicated when, as in PASPA, a handful of states are singled out for *preferential* treatment. After all, if the legislative representatives of the other 46 states ever tire of PASPA's grandfathering of four states, their combined forces ought to be enough to change the law. Moreover, New Jersey is particularly poorly positioned to claim that PASPA is an affront to its sovereignty, as it was among the handful of states PASPA originally *accommodated*. PASPA's grandfather clause gave New Jersey alone a one-year window, based on its unique reliance interests on casino gambling (but not sports gambling), to authorize sports gambling. *See* 28 U.S.C. § 3704(a)(3). Having failed to take advantage of the statutory provision designed for its own unique reliance interests, New Jersey is in no position to begrudge Nevada, Delaware, Oregon, and Montana.

In any event, once again, petitioners' argument is largely academic, as it would not entitle them to the remedy they seek. As the court of appeals correctly noted, NJ App. 56a, even assuming PASPA's grandfathering clause were constitutionally infirm, at most, that would support invalidation of *that clause*, not invalidation of PASPA in its entirety. *See, e.g.*, *United States v. Booker*, 543 U.S. 220, 258 (2005) (courts should "'refrain from invalidating more of the statute than is necessary'"); *Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984) (plurality opinion) (noting "presumption … in favor of severability"). If there were a problem with the favorable treatment of four states, the logical remedy would be to treat them like the other 46, not vitiate PASPA *in toto*. Thus,

even if petitioners prevailed on their equal sovereignty argument, PASPA would still prohibit operation of New Jersey's sports gambling scheme. That is all the more reason to deny review.

B. The Courts Below Correctly Concluded that PASPA Does Not Intrude Upon the Equal Sovereignty of the States.

Like their commandeering argument, petitioners' equal sovereignty argument is not only splitless and novel, but meritless as well. This Court has long recognized that Congress may differentiate among the states when legislating pursuant to its Commerce Clause power. The cases petitioners invoke are readily distinguishable, as they neither involve the Commerce Clause nor cast any doubt whatsoever on the settled body of law rejecting arguments much like those petitioners raise here. In short, once again, PASPA is simply nothing like the unusual provisions to which petitioners analogize, each of which gave rise to federalism concerns not present here.

Petitioners' equal sovereignty argument derives largely from this Court's recent decision in *Shelby County* and its precursor in *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009). Both *Shelby County* and *Northwest Austin* concerned the unique preclearance regime established by section 5 of Voting Rights Act, which intrudes on the core sovereign authority of certain states to regulate and administer elections. *See* 42 U.S.C. § 1973c. As the Court explained in both cases, "'despite our historic tradition that all the States enjoy equal sovereignty,'" section 5 "'differentiates between the States'" by requiring only a handful of

disfavored states to submit all of their voting changes for federal approval. *Shelby County*, 133 S. Ct. at 2621 (quoting *Nw. Austin*, 557 U.S. at 203). The Court emphasized that this "uncommon exercise of congressional power" encroaches on a core sovereign power that "the Framers of the Constitution intended the States to keep for themselves"—namely, "the power to regulate elections." *Id.* at 2623-24. Because the statute's formula for determining which states to subject to section 5 failed to justify its differential treatment based on current needs, this Court found the coverage formula unconstitutional.

Shelby County and *Northwest Austin* are readily distinguishable from this case. First, PASPA's grandfather provision is nothing like section 5's preclearance mechanism. Allowing four states to *continue* authorizing sports gambling even though others are prohibited from doing so is not remotely comparable to the "strong medicine" of creating a federal veto over the laws of only a handful of states. *Shelby County*, 133 S. Ct. at 2618. State authorization of sports gambling also is nothing like state administration of elections, as the Constitution grants *Congress*, not the states, authority to regulate interstate commerce. *See* U.S. Const. art. I, § 8, cl. 3. The Framers could hardly have intended the states to "keep for themselves" the power to regulate sports gambling that has a substantial effect on interstate commerce. As such, laws that intrude upon a state's ability to do so cannot plausibly be understood as encroaching upon the same "sensitive areas of state and local policymaking" as section 5 of the Voting Rights Act. *Shelby County*, 133 S. Ct. at 2624. Petitioners' contrary argument is just another vastly

overbroad attack on the Supremacy Clause, as the "States' ability to enact regulatory measures in response to the expressed preferences of their citizens," NJ Pet. 32, will *always* be frustrated when Congress preempts state law.

Moreover, precisely because the Constitution grants Congress the power to regulate interstate commerce, it is well-settled that Congress may treat states differently when doing so. *See, e.g.*, *Prudential Ins. Co v. Benjamin*, 328 U.S. 408, 422-23 (1946); *Currin v. Wallace*, 306 U.S. 1, 14 (1939); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 197 (1824). Indeed, federal commerce statutes regularly differentiate among the states.[6] Under this Court's Commerce Clause jurisprudence, moreover, differentiating among states is a core component of Congress' commerce power, and includes the power to authorize states to adopt laws that discriminate *against other states*. *See, e.g.*, *New York*, 505 U.S. at 173 (upholding provision that authorized states to discriminate against states that failed to meet federal radioactive waste disposal deadlines); *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 44 (1980); *S. Pac. Co. v. Arizona*, 325 U.S. 761, 769 (1945). Petitioners' equal sovereignty argument thus not

[6] *See, e.g.*, 42 U.S.C. § 7543(b) (allowing California to seek waiver of Clean Air Act preemption to adopt more protective motor vehicle emissions standards); 42 U.S.C. § 10136(c)(6) ("No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987"); 26 U.S.C. § 142(*l*) (differentiating between states with different population sizes for "qualified green building and sustainable design projects" allocation).

only would endanger countless federal laws, but also would call into question a central—and century-old—premise of this Court's Commerce Clause jurisprudence.

Notwithstanding this settled law, petitioners attempt to divine a much broader equal sovereignty principle from *Coyle v. Smith*, 221 U.S. 559 (1911). But *Coyle* has never been read to establish anything close to the novel principle petitioners espouse. *Coyle* involved a federal law that imposed as a condition of Oklahoma's entry into the Union a prohibition against changing the location of its capital for seven years. The Court held the condition unconstitutional, concluding that Congress has no power under the Constitution, "by the imposition of conditions in an enabling act, [to] deprive a new state of any of those attributes essential to its equality in dignity and power with other states." *Id.* at 568. In other words, the problem in *Coyle* was that Congress lacked any power to impose the condition in the first place, not that it lacked the power to impose it on some states but not others.[7] That is clear from the explicit distinction the Court went on to draw between the challenged restriction and a hypothetical law coupling admission into the Union with legislation regulating commerce with the new state. *See id.* at

[7] Petitioners' efforts to draw support from *Coyle* for their commandeering argument fail for the same reason—the prohibition in *Coyle* was unconstitutional not because it imposed a prohibition on state action, but because it imposed a prohibition *that Congress had no enumerated power to impose*. Here, of course, there is no dispute that PASPA falls within the substantive scope of Congress' commerce power.

574. The latter would not raise the same concerns, the Court emphasized, because it "would not operate to restrict the state's legislative power *in respect of any matter which was not plainly within the regulating power of Congress*." *Id.* (emphasis added).

Here, too, PASPA does not operate to restrict the states' legislative power in any matter outside of Congress' regulatory sphere. Instead, it simply adds to Congress' substantial body of Commerce Clause legislation regulating sports-related and other gambling. This Court has never suggested that *Coyle* (or any other decision) stands for the sweeping proposition that Congress may not differentiate among states, or accommodate significant reliance interests, when exercising its power to regulate commerce among the states. To the contrary, this Court repeatedly has reaffirmed that there is no "requirement of uniformity in connection with the commerce power." *Currin*, 306 U.S. at 14.

In all events, at most, this Court's equal sovereignty cases have suggested that concern may arise when Congress singles out a handful of states for *disfavored* treatment. PASPA, of course, does exactly the opposite: The *four* "favored" states are heavily outnumbered by a purportedly "disfavored" majority of *46* states that may not authorize sports gambling. Petitioners invoke the specter of a tyrannical majority dictating "winners and losers" among a hapless minority of subjugated states, *see* NJTHA Pet. 36 (citing Suzanne Collins, *The Hunger Games* (2008)), but these outlandish concerns are completely divorced from reality, as there is no conceivable basis for concern that the 46 states

"disfavored" by PASPA were deprived of any say in the matter. In short, this case is nothing like *Northwest Austin*, *Shelby County*, or *Coyle*, each of which involved an attempt by a powerful majority to deprive select states of "those attributes essential to its equality in dignity and power with other states." *Coyle*, 221 U.S. at 568. Here, the situation is the reverse. Should the legislative representatives of the 46 states that PASPA prohibits from authorizing sports gambling wish to eliminate that prohibition, they have more than enough political power to do so.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for certiorari.

Respectfully submitted,

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