

## Investigations, Compliance and Defense

# Update: Sports Betting and AML Compliance

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Earlier this week, the US Supreme Court decided that federal law can no longer force states to ban sports betting. Now that the federal prohibition will end, new sports betting outlets – both brick-and-mortar venues and online – will undoubtedly proliferate. These new outlets will be subject to the Bank Secrecy Act (BSA) and will therefore need anti-money laundering (AML) compliance programs.

The case before the Court – *Murphy v. National Collegiate Athletic Association*, 16-476 – involved the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. 3701 *et seq.*, which since 1992 prohibited sports betting everywhere but Nevada, Delaware, Oregon and Montana. Congress also made an exception for New Jersey. However, it was not until 2012 that New Jersey’s legislature enacted a law to provide licenses to casinos and racetracks for sports-wagering pools, and in 2014 passed a law to decriminalize sports betting. On the heels of New Jersey’s legislation, the National Collegiate Athletic Association and several professional sports leagues challenged the legislation as a violation of PASPA.

On Monday, the Court ruled that the federal government cannot force states to ban sports betting, citing the anti-commandeering principle, which recognizes that Congress has no role in dictating to state legislatures what laws to pass or not pass. Justice Alito wrote in his majority opinion for the Court that the anti-commandeering principle springs from the 10th Amendment, which provides that if the Constitution does not either give a power to the federal government or take that power away from the states, that power is reserved for the states or the people themselves. PASPA, however, was like having Congress sit in state legislatures, unconstitutionally directing legislators on what to do. Justice Alito wrote that “there is simply no way to understand the provision prohibiting state authorization as a direct command to the States, which is exactly what the anti-commandeering rule does not allow.”

With Monday’s decision, every state can now choose to pass legislation that would legalize sports betting. Legalizing sports betting will drastically change the current landscape. New sports betting outlets may pop up on every corner, in newspaper kiosks and in convenience stores, as well as online.

What can those new outlets and their casino partners expect? At a minimum, the BSA requires casinos and other gambling establishments to develop and maintain AML compliance programs that are tailored to the risks posed by a specific profile of customers. This includes, at least: (1) know-your-customer programs to ensure gamblers have a legitimate source of funds; (2) tracking individual play with the goal of identifying suspicious betting patterns; and (3) taking steps to prevent “messenger betting,” which is the practice of an individual placing bets on behalf of other individuals.

Although enhanced AML measures may not be warranted in every situation, with the landscape about to change, casinos or independent sports betting outlets should take note that federal regulators, including the Financial Crimes Enforcement Network (FinCEN) of the US Treasury Department, will closely monitor sports betting.



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