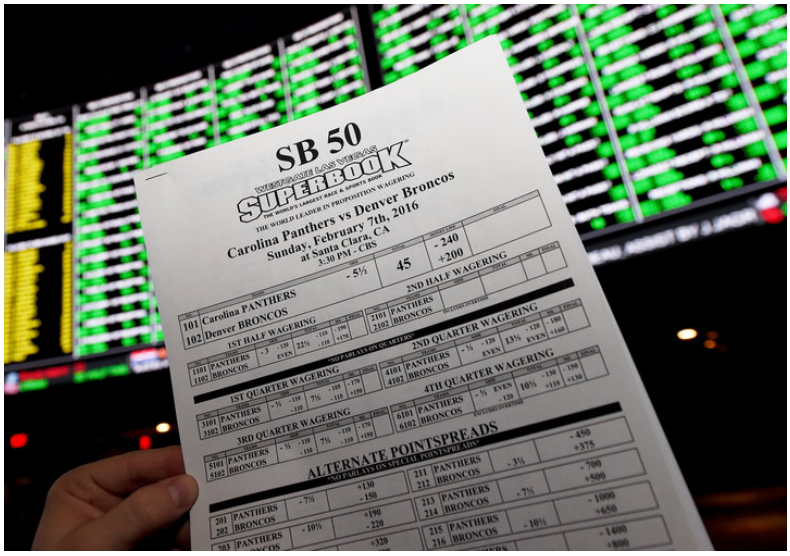

Recently, the U.S. Supreme Court issued a major decision invalidating a federal statute that had prohibited states from allowing betting on competitive sporting events. *Murphy v. National Collegiate Athletic Association*, is one of those relatively rare Supreme Court decisions that directly affects a substantial portion of the American public. So it's no great surprise that the *Murphy* case and its impact on sports betting in America have been heavily publicized and debated since the Supreme Court's decision.

What *is* surprising is that there's been precious little media or public discussion about the legal basis for the Court's decision striking down the Professional and Amateur Sports Protection Act (PASPA), a 1991 statute enacted by Congress that generally prohibits states from authorizing sports betting. The justices invalidated PASPA as contravening the "anti-commandeering" principle embodied in the Tenth Amendment to the U.S. Constitution.

Murphy is the Supreme Court's most important federalism decision in decades. And *Murphy* promises to have legal and policy implications extending far beyond sports gambling and betting promo code UK offers –including for environmental law and policy.

To understand the potential reach and significance of the *Murphy* decision, a bit of constitutional law background is required. The Tenth Amendment–the Constitution's core federalism provision– provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states…" For the first 200 years of our nation's history, the Tenth Amendment received relatively little judicial attention, and seemed to most observers to be an empty aphorism expressing the principle of "dual sovereignty" between the federal and state governments.

That changed in 1992, when the Supreme Court decided *New York v. United States*–an environmental law case. *New York*–the Tenth Amendment "pioneering case" according to the *Murphy* decision–concerned a federal statute that required states to either "take title" to accumulated low-level radioactive waste within their borders or, alternatively, to regulate the disposal of those wastes according to strictures mandated by Congress. The Supreme Court found the statute violative of the Tenth Amendment and therefore unconstitutional. Justice Sandra Day O'Connor, speaking for the Court, opined that "Congress may not simply `commandeer' the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program."

Aerial view showing the Sacramento-San Joaquin Delta, a key focus of the California "Water Fix" project. *J.C. Dahilig*

Five years after *New York*, the Court applied the same "anti-commandeering" principles to strike down a federal gun control statute requiring state and local law enforcement officers to perform background checks and related tasks in connection with applications for handgun licenses. In *Printz v. United States*, the justices ruled that the federal government may not "command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program."

Since *New York* and *Printz*, the Supreme Court had not revisited the Tenth Amendment's "anti-commandeering" principle–until last month's *Murphy* decision. The justices in *Murphy* held that PASPA's provisions prohibiting states from authorizing sports gambling similarly violates the Tenth Amendment's anti-commandeering rule. They found unpersuasive arguments by the federal government and the NCAA that congressional mandates prohibiting states from enacting laws (as PASPA does) should be treated differently for Tenth Amendment purposes than federal laws compelling states to enact legislation. Both, declared the *Murphy* Court, are equally violative of the Court's anti-commandeering rule.

The constitutional federalism principles embodied in *Murphy* have applicability far beyond the world of sports gambling. Perhaps the most obvious and timely example concerns the ongoing debate over the extent to which federal immigration agencies can require state and local law enforcement officials to assist them in enforcing federal immigration laws and policies.

But it's quite possible that the *Murphy* decision's reiteration of Tenth Amendment's federalism principles will resonate in ongoing environmental law and policy contexts as well. Here are a few examples of pending federal environmental policies that, if implemented, would seem constitutionally suspect under *Murphy*:

- Last year I blogged on H.R. 23, a radical and seemingly unprecedented congressional bill that, if enacted, would purport to strip California state courts and regulatory agencies of the authority to enforce California state water law. Section 108 of H.R. 23 (which has passed the House of Representatives and is currently pending in the Senate) would bar California state water regulators from: 1) conditioning state-issued water rights to protect plant or animal species from harm associated with the state-owned and operated State Water Project; and ii) restricting any state-issued water right involving water delivered from the State Water Project in reliance on California's (state) public trust doctrine.
- As has been recently reported on this site, the U.S. Department of Interior budget bill for FY2019 that's currently pending in the House Appropriations Committee contains a quite startling provision: one that purports to ban, among other things, any lawsuits brought under *state* law in *state* court to challenge the California "Water Fix" project–a *state*-proposed water infrastructure project.
- The Trump administration is working feverishly to prop up nuclear and coal-fueled power plants around the nation that utility managers and state officials have concluded are uneconomical and should therefore be shuttered. To date, those federal efforts have been limited to proposed, massive financial subsidies for nuclear and coal-fired plants, and the questionable assertion of federal emergency powers to address a

> "crisis" that doesn't exist. But it wouldn't surprise this observer if the Trump administration eventually goes further and attempts to assert federal authority to prevent state regulators from implementing their current plans to take nuclear and coal-fired power plants offline. (One prominent example: PG&E's Diablo Canyon nuclear plant, which the utility and California Public Utilities Commission are working together to shut down by 2025. [In a 1983 decision, the U.S. Supreme Court held that the State of California is not preempted in determining, on economic grounds, whether to site or discontinue reliance on nuclear power plants in the state.])

In the face of these and other threatened efforts by Congress and the Executive Branch, the Supreme Court's *Murphy v. National Collegiate Athletic Association* decision serves as an important constitutional bulwark for the states' continued exercise of their traditional environmental regulatory authority. The Tenth Amendment and the core federalism principles it embodies are important not just with respect to sports betting, but for environmental law and policy as well.