QUESTIONS PRESENTED


II. WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT THE RELOCATION OF THE N.O.’S, A MAJOR LEAGUE BASEBALL CLUB, IS EXEMPT UNDER ANTITRUST LAW

STANDARD OF REVIEW

The Supreme Court will review the case at hand de novo.
No. 02-2793

In the

SUPREME COURT OF THE UNITED STATES OF AMERICA

NATIONAL FOOTBALL LEAGUE, MAJOR LEAGUE BASEBALL, NATIONAL HOCKEY
LEAGUE, and the NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Petitioner,

v.

GOVERNOR OF TULANIA

Respondent.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FOURTEENTH CIRCUIT

COMPETITION PROBLEM PACKET FOR

THE TULANE MARDI GRAS SPORTS LAW COMPETITION, 2015
I. BACKGROUND

Tulania is one of the fifty-one states of the United States with a population of 1,000,000 located in the southern region of the country. Seeking to address illegal sports betting, particularly in the city of Bon Temps, the state of Tulania has sought to license gambling on professional and amateur sporting events. The National Football League, Major League Baseball, the National Hockey League, and the National Collegiate Athletic Association (hereinafter collectively referred to as “The League”) filed suit against the state of Tulania in District Court
when they heard of Tulania’s proposed law. In the complaint, The League alleged that Tulania’s proposed law violates the Professional and Amateur Sports Protection Act of 1992 (PASPA), which prohibits most states from licensing sports gambling. The League sought to enjoin Tulania from licensing sports betting. First, Tulania argued that PASPA is beyond Congress’ powers under the Commerce Clause. Second, Tulania argued that PASPA violates the “anti-commandeering” doctrine by prohibiting the states from enacting legislation to license sports gambling. Lastly, Tulania contended that PASPA violates the “equal sovereignty” principle where PASPA permits Nevada to license widespread sports gambling while prohibiting the other states from doing so.

Additionally, the City of Bon Temps, as the successor agency to the Redevelopment Agency of the City of Bon Temps (“RDA”), and the Bon Temps Development Authority (collectively, “City” or “Bon Temps”), brought a third-party claim against the Office of the Commissioner of Baseball, doing business as “MLB.”1 The city of Bon Temps is located in the southeast region of Tulania with a population of 100,000 residents. The Office of the Commissioner of Baseball, doing business as MLB, is an unincorporated association of thirty-one Major League Baseball Clubs, which are evenly divided into the American League and the National League. The N.O.’s is a Major League Baseball Club in the National League’s Eastern Division. The N.O.'s “operating territory” is Uptown and the Garden District in Tulania. The team was founded in New York, New York in 1910 as the “N.Y. Athletics.” In 1966, the team relocated to Chicago and became the “Chicago O’s.” Just over a decade later, in 1978, the N.O.'s

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1 The RDA was a public organization established in 2000 by the City of Bon Temps to improve the quality of life for all persons in the City. The RDA sought to revive the City’s economy by developing affordable housing, rehabilitating neighborhoods, and developing public facilities. Effective February 1, 2012, all redevelopment agencies in the State of Tulania were dissolved, resulting in the City of Bon Temps becoming the successor agency of the RDA.
moved to Cajun, Tulania. The N.O.'s enjoyed tremendous success in the next two decades, winning three consecutive U.S. Championships in the 1980’s; three League Pennants in 2000, 2001 and 2002; and the 1989 World Series. Today, the N.O.’s remain in the city of Cajun, and their home stadium is the “Cajun Coliseum,” or “Coliseum,” which the team shares with the N.O. Raiders of the National Football League.

Since 2000, however, attendance at N.O.'s games has plummeted. For several years, the N.O.’s have considered possible alternative locations for their home stadium, eventually focusing their relocation efforts on Bon Temps. In early 2010, the city of Bon Temps issued an Economic Impact Analysis detailing the economic benefits of the proposed N.O.'s stadium in Bon Temps. In March 2012, the RDA purchased eight parcels of land in Bon Temps with the intent that that the property would be developed into a MLB ballpark.

The MLB Constitution, however, currently designates Bon Temps as within the Blue Devils’ operating territory. The Blue Devils are another MLB Baseball Club. Because Bon Temps is outside of the N.O.'s operating territory, relocation requires a three-quarter majority approval by MLB's Clubs. As such, the Commissioner allegedly asked the mayor of Bon Temps to delay a public vote on whether the N.O.'s could purchase land and build a new stadium in Bon Temps. The City also alleges that the Blue Devil’s have attempted to prevent the N.O.'s from moving to Bon Temps.

Despite the ongoing dispute, on November 8, 2012, the Bon Temps City Council entered into a two-year Option Agreement for the Sale of Property with the N.O. Investment Group LLC,² giving the N.O.'s the option to purchase the eight parcels of land set aside by the RDA for

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² The N.O. Investment Group LLC was founded in 1999 and is based in Bon Temps, Tulania. The N.O. Investment Group owns and manages the N.O.’s professional baseball club.
the purpose of building the ballpark for a purchase price of $7,000,227. The N.O. Investment Group paid $50,000 for the initial two year option, which included the option to renew for a third year for an additional $20,000. The City alleges that MLB has intentionally delayed approving the N.O.’s relocation for over two years, effectively preventing the N.O.’s from exercising its option to purchase the land and resulting in damages in the form of lost revenue reasonably expected under the Option Agreement. Furthermore, the City alleges that both the territorial rights restrictions in the MLB Constitution and MLB's failure to act on the territorial dispute restrain competition in the baseball market, perpetuate the Blue Devils’ monopoly over the geographic market, and create anticompetitive effects that lead to consumer harm in violation of federal and state antitrust laws. MLB moves to dismiss all counts in the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

On October 1, 2014 the United States District Court for the Southern District of Tulania concluded that PASPA is constitutional. The District Court disagreed with Tulania’s arguments and enjoined Tulania from licensing sports betting. The District Court also granted the MLB’s motion to dismiss, concluding that the antitrust exemption encompasses all MLB decisions integral to the business of baseball. Tulania and the city of Bon Temps appealed. For the following reasons, the United States Court of Appeal for the Fourteenth Circuit affirms the District Court’s ruling.

II. LEGAL FRAMEWORK UNDER THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT OF 1992


PASPA's key provision applies for the most part identically to “States” and “persons,” providing that neither may
sponsor, operate, advertise, or promote ... a lottery, sweepstakes, or other betting, gambling, or wagering scheme based directly or indirectly (through the use of geographical references or otherwise), 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.

28 U.S.C. § 3702. The prohibition on private persons is limited to any such activity conducted “pursuant to the law or compact of a governmental entity,” Id. § 3702(2), while the states are subject to an additional restriction: they may not “license[ ] or authorize by law or compact” any such gambling activities. Id. §§ 3702(1), 3701.

PASPA contains three relevant exceptions—a “grandfathering” clause that releases Nevada from PASPA's grip, see Id. § 3704(a)(2), a clause that permitted New Jersey to license sports wagering in Atlantic City had it chosen to do so within one year of PASPA's enactment, see Id. § 3704(a)(3), and a grandfathering provision permitting states like Delaware and Oregon to continue the limited “sports lotteries” that they had previously conducted. See Id. § 3704(a)(1). PASPA provides for a private right of action “to enjoin a violation [of the law] ... by the Attorney General or by a ... sports organization ... whose competitive game is alleged to be the basis of such violation.” Id. § 3703.

b. The Commerce Clause

Among Congress' enumerated powers in Article I is the ability to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. Const., Art. I., § 8, cl. 3. Since NLRB v. Jones & Laughlin Steel Corporation, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), the Commerce Clause has been construed to give Congress “considerable[ ] ... latitude in regulating conduct and transactions.” United States v. Morrison, 529 U.S. 598, 608,
120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). For one, Congress may regulate an activity that “substantially affects interstate commerce” if it “arise[s] out of or [is] connected with a commercial transaction.” United States v. Lopez, 514 U.S. 549, 559, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995). By contrast, regulations of non-economic activity are disfavored. Id. at 567, 115 S.Ct. 1624 (striking down a law regulating possession of weapons near schools); see also Morrison, 529 U.S. at 613, 120 S.Ct. 1740 (invalidating a law regulating gender-motivated violence).

III. THE PROFESSIONAL AND AMATEUR SPORTS PROTECTIONS ACT

a. ANTI-COMMANDEERING

Tulania argues that PASPA's operation over the sports wagering law violates the “anti-commandeering” principle, which bars Congress from conscripting the states into doing the work of federal officials. “As every schoolchild learns, our Constitution establishes a system of dual sovereignty between the States and the Federal Government.” Gregory v. Ashcroft, 501 U.S. 452, 457, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991). And it is well-known that all powers not explicitly conferred to the federal government are reserved to the states, a maxim reflected in the text of the Tenth Amendment. U.S. Const., amend. X; see also United States v. Darby, 312 U.S. 100, 123-24, 61 S.Ct. 451, 85 L.Ed. 609 (1941) (describing this as a “truism” embodied by the Tenth Amendment).

Among the important corollaries that flow from the foregoing is that any law that “commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program” is beyond the inherent limitations on federal power within our dual system. Hodel v. Va. Surface Mining & Reclamation Ass’n, 452 U.S. 264, 283, 288, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981). Stated differently, Congress “lacks the power directly to
compel the States to require or prohibit” acts which Congress itself may require or prohibit. New York v. United States, 505 U.S. 144, 166, 180, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). The Supreme Court has struck down laws based on these principles on only two occasions, both distinguishable from PASPA.

The anti-commandeering principle first appeared in Hodel v. Virginia Surface Mining & Reclamation Ass'n, 452 U.S. 264 (1981). In Hodel, the law at issue there imposed federal standards for coal mining on certain surfaces and required any state that wished to “assume permanent regulatory authority over ... surface coal mining operations” to “submit a proposed permanent program” to the Federal Government, which, among other things, required the “state legislature [to] enact[ ] laws implementing the environmental protection standards established by the [a]ct.” Hodel, 452 U.S. at 271. If a particular state did not wish to implement the federal standards, the federal government would step in to do so. Id. at 272, 101 S.Ct. 2352. The Supreme Court upheld the provisions, noting that they neither compelled the states to adopt the federal standards, nor required them “to expend any state funds,” nor coerced them into “participat [ing] in the federal regulatory program in any manner whatsoever.” Id. at 288, 101 S.Ct. 2352. The Court further concluded that Congress could have chosen to completely preempt the field by simply assuming oversight of the regulations itself. Id. The Supreme Court held that the Tenth Amendment posed no obstacle to a system by which Congress “chose to allow the States a regulatory role.” Id. at 290. The scheme there did not violate the anti-commandeering principle because it “merely made compliance with federal standards a precondition to continued state regulation in an otherwise preempted field.” Printz v. United States, 521 U.S. 898, 926, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997).
In F.E.R.C. v. Mississippi, the Court upheld a provision requiring state utility regulatory commissions to “consider” whether to enact certain standards for energy efficiency but leaving to the states the ultimate choice of whether to adopt those standards or not. 456 U.S. 742, 746, 769–70, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982). The Court upheld the law despite its outright commandeering of the state resources needed to consider and study the federal standards, because the law did not definitely require the enactment or implementation of federal standards. \textit{Id.} at 764. The Court noted that Congress chose to simply regulate where it could have “pre-empted the States entirely”, leaving some room for the states to maneuver. \textit{Id.} The Court saw the case as “only one step beyond Hodel.” \textit{Id.}

Conversely, in South Carolina v. Baker, the Supreme Court upheld the validity of laws that “directly regulated the States by prohibiting outright the issuance of bearer bonds.” 485 U.S. 505, 511, 108 S.Ct. 1355, 99 L.Ed.2d 592 (1988). These rules required the states to “amend a substantial number of statutes in order to [comply].” \textit{Id.} at 514. The Court concluded this result did not run afoul the Tenth Amendment because it did not “seek to control or influence the manner in which States regulate private parties” but was simply “an inevitable consequence of regulating a state activity.” \textit{Id.} In subsequent cases, the Court explained that the regulation in \textit{Baker} was permissible because it simply “subjected a State to the same legislation applicable to private parties.” \textit{New York}, 505 U.S. at 160.

Also, in Reno v. Condon, the Court unanimously rejected an anti-commandeering challenge to a law prohibiting states from disseminating personal information obtained by state departments of motor vehicles. \textit{Reno v. Condon}, 528 U.S. 141, 151, 120 S. Ct. 666, 672, 145 L. Ed. 2d 587 (U.S.S.C. 2000). South Carolina complained that the act required its employees to learn its provisions and expend resources to comply and, indeed, the federal law effectively
blocked the operation of state laws governing the disclosure of that information. 528 U.S. at 150. The Court agreed “that the [act] will require time and effort on the part of state employees” but otherwise rejected the anti-commandeering challenge because, like the law in Baker, the law “d[id] not require the States in their sovereign capacity to regulate their own citizens[,] ... d[id] not require the [State] Legislature[s] to enact any laws or regulations, and it d[id] not require state officials to assist in the enforcement of federal statutes regulating private individuals.” Id. at 151. Moreover, the law did not “seek to control[ ] or influence the manner in which States regulate private parties.” Id. (citing Baker, 485 U.S. at 514–15, 108 S.Ct. 1355).

Alternatively, to the extent PASPA coerces the states into keeping in place their sports-wagering bans, that coercion may be upheld as fitting into the exception drawn in anti-commandeering cases for laws that impose federal standards over conflicting state rules in areas where Congress may otherwise preempt the field. Under this view, PASPA gives states the choice of either implementing a ban on sports gambling or of accepting complete deregulation of that field as per the federal standard.

PASPA makes clear that the federal policy with respect to sports gambling is that such activity should not occur under the auspices of a state license. As noted, PASPA prohibits individuals from engaging in a sports gambling scheme “pursuant to” state law. 28 U.S.C. § 3702(2) (1992). In other words, even if the provision that offends Tulania, § 3702(1), were excised from PASPA, § 3702(2) would still plainly render the sports wagering law inoperative by prohibiting private parties from engaging in gambling schemes pursuant to that authority. Thus, § 3702(2) makes the federal policy with respect to sports wagering clear: to stop private parties from resorting to state law as a cover for gambling on sports. Tulania’s proposed sports wagering law, in purporting to permit individuals to skirt § 3702(2), “authorizes [private parties]

Furthermore, there are other provisions in federal law outside of PASPA that are aimed at protecting the integrity of sports from wagering and further demonstrate the federal policy of disfavoring sports-gambling. When Congress enacted PASPA, Congress explicitly noted that the law was “complementary to and consistent with [then] current Federal law” with respect to sports wagering. Senate Report at 3557. Congress has, for example, criminalized attempts to fix the outcome of a sporting event, 18 U.S.C. § 224, barred the placement of a sports gambling bet through wire communications to or from a place where such bets are illegal, 18 U.S.C. § 1084, and proscribed interstate transportation as a means for carrying out sports lotteries, 18 U.S.C. §§ 1301, 1307(d).

Tulania contends that Congress has not preempted state law but has instead incorporated it to the extent certain prohibitions are tied to whatever is legal under state law. However, PASPA itself is not tied to state law. Rather, PASPA prohibits engaging in schemes pursuant to state law. 28 U.S.C. § 3702(2). Tulania also attempts to distinguish PASPA from other preemptive schemes. They note that preemptive schemes normally either impose an affirmative federal standard or a rule of non-regulation, and since PASPA’s aim was to stop the spread of sports gambling, it neither imposes an affirmative federal standard nor could possibly be construed as a law aimed at permitting unregulated sports gambling. But, 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. PASPA does impose a federal standard directly on private individuals telling them instead that thou shall not engage in sports wagering under the auspices of a state-issued license. See 28 U.S.C. § 3702(2).

We hold that PASPA does not violate the anti-commandeering doctrine. Although many of the principles set forth in many anti-commandeering cases may abstractly be used to support Tulania’s position, doing so would result in an undue expansion of the anti-commandeering doctrine.

b. EQUAL SOVEREIGNTY

Tulania contends that PASPA violates the equal sovereignty of the states by singling out Nevada for preferential treatment and allowing only that State to maintain broad state-sponsored sports gambling. The centerpiece of Tulania’s equal sovereignty argument is the Supreme Court’s analysis of the Voting Rights Act of 1965 (“VRA”) in Northwest Austin Municipal Utility District Number One v. Holder, 557 U.S. 193, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009) and Shelby County, Alabama v. Holder, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013). In Northwest Austin, the Supreme Court was asked by a small utility district to rule on the constitutionality of § 5 of the VRA, which required the district to obtain preclearance from federal authorities before it could make changes to the manner in which its board was elected. The district had sought an exemption from the preclearance requirement, but the district court held that only states are eligible for such “bailouts” under the Act. Nw. Austin, 557 U.S. at 196–97. On direct appeal, the Supreme Court stated that § 5 raises “federalism concerns” because it “differentiates between the States.” Id. at 203. The Court also explained that “[d]istinctions [between the states] can be justified in some cases” such as when Congress enacts “remedies for local evils which have
subsequently appeared.” *Id.* (citing *South Carolina v. Katzenbach*, 383 U.S. 301, 328–29, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966)). However, the Court did not ultimately decide whether § 5 violated the equal sovereignty principle, invoking instead the canon of constitutional avoidance to construe the VRA’s bailout provision to permit the district to obtain an exemption. *Id.* at 205, 129 S.Ct. 2504.

In *Shelby County*, when asked to revisit the constitutionality of § 5, the Court reiterated the “basic principles” of equal sovereignty set forth in *Northwest Austin* and invalidated § 4(b) of the VRA, which set forth a formula used to determine what jurisdictions are covered by § 5 preclearance. 133 S.Ct. at 2622. Nevertheless, § 5 once more survived despite the expressed equal sovereignty concerns. *Id.* at 2631.

Tulania asks that the Court strike down all of PASPA because it permits Nevada to license sports gambling. We decline to do so for five reasons. First, the VRA is fundamentally different from PASPA. It represents, as the Supreme Court explained, “an uncommon exercise of congressional power” in an area “the Framers of the Constitution intended the States to keep for themselves ... the power to regulate elections.” *Shelby County*, 133 S.Ct. at 2623-24. Thus, the regulation of gambling via the Commerce Clause is not of the same nature as the regulation of elections pursuant to the Reconstruction Amendments. Congress' exercises of Commerce Clause authority are aimed at matters of national concern and finding national solutions will necessarily affect states differently; accordingly, the Commerce Clause, “[u]nlike other powers of [C]ongress[,] ... does not require geographic uniformity.” *Morgan v. Virginia*, 328 U.S. 373, 388, 66 S.Ct. 1050, 90 L.Ed. 1317 (1946) (Frankfurter, J., concurring).

Second, Tulania argued in the district court, and would have us hold, that laws treating states differently can “only” survive if they are meant to “remedy local evils” in a manner that is
“sufficiently related to the problem that it targets.” (citation omitted). This position is overly broad in that it requires the existence of a one-size-fits-all test for equal sovereignty analysis, which, as the foregoing shows, is a perilous proposition in the context of the Commerce Clause. And Northwest Austin’s statement that equal sovereignty may yield when local evils appear was made immediately after the statement that regulatory “[d]istinctions can be justified in some cases.” 557 U.S. at 203 (emphasis added). Thus, local evils appear to be but one of the types of cases in which a departure from the equal sovereignty principle is permitted.

Third, there is nothing in Shelby County 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.” Shelby County, 133 S.Ct. at 2624. Fourth, even accepting that the equal sovereignty principle applies in the same manner in the context of Commerce Clause legislation, we have no trouble concluding that PASPA passes muster. Tulania’s argument that PASPA's exemption does not properly remedy local evils because it “target[ed] the States in which legal sports wagering was absent,” again distorts PASPA's purpose as being to wipe out sports gambling altogether. (citation omitted). When its true purpose is considered—to stop the spread of state-sanctioned sports gambling—it is clear that regulating states in which sports-wagering already existed would have been irrational. Targeting only states where the practice did not exist is more than sufficiently related to the problem, it is precisely tailored to address the problem. If anything, Tulania’s quarrel seems to be with PASPA's actual goal rather than with the manner in which it operates.

Finally, Tulania ignores another feature that distinguishes PASPA from the VRA—that far from singling out a handful of states for disfavored treatment, PASPA treats more favorably a single state. Indeed, it is noteworthy that Tulania does not ask us to invalidate § 3704(a)(2), the
Nevada grandfathering provision that supposedly creates the equal sovereignty problem. Instead, we are asked to strike down § 3702, PASPA's general prohibition on state-licensed sports gambling. Tulania did not explain why, if PASPA's preferential treatment of Nevada violates the equal-sovereignty doctrine, the solution is not to strike down only that exemption. The remedy Tulania seeks—a complete invalidation of PASPA—does 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. That Tulania seeks Nevada's preferential treatment, and not a complete ban on the preferences, undermines their invocation of the equal sovereignty doctrine.

IV. ANTITRUST

a. The Trilogy and Related Supreme Court Cases

In Federal Baseball, petitioner Federal Baseball Club of Baltimore sued the National League and the American League (“the Major Leagues”) under the Sherman Antitrust Act alleging that the Major Leagues conspired to monopolize the baseball business by means of league structure and the reserve system. Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Base Ball Clubs, 259 U.S. 200, 207, 42 S. Ct. 465, 465, 66 L. Ed. 898 (1922). The Supreme Court for the District of Columbia entered judgment for petitioner, but the Court of Appeals for the District of Columbia reversed on the basis that the Major Leagues “were not within the Sherman Act.” Id. at 208. The Supreme Court granted certiorari and affirmed judgment for the Major Leagues. Id. at 208-09. The Court first held that baseball qualifies as a business, specifically: “the business is giving exhibitions of baseball [sic], which are purely state affairs.” Id. at 208. The Court then held, however, that the business of baseball is not engaged in interstate commerce. Id. at 208-09. (Although “competitions must be arranged between clubs from different cities and States” to carry out the exhibitions, “the fact that ... the Leagues must induce
free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business.”). The Court held that any interstate activities were merely incidental to the state exhibitions, and thus “would not be called trade or commerce in the commonly accepted use of those words.” *Id.* at 209. Accordingly, the Court concluded that “the restrictions by contract that prevented the plaintiff from getting players to break their bargains [i.e., the reserve system] and the other conduct charged against the defendants were not an interference with commerce among the states.” *Id.*

Thirty years later, the Supreme Court revisited *Federal Baseball* for the first time in *Toolson v. New York Yankees, Inc.* 346 U.S. 356, 74 S. Ct. 78, 98 L. Ed. 64 (1953). In *Toolson*, in a *per curiam*, one paragraph opinion, the Court upheld *Federal Baseball*:

In [*Federal Baseball*], this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without reexamination of the underlying issues, the judgments below are affirmed on the authority of [*Federal Baseball*], so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.
Toolson, 346 U.S. at 356-57. After Toolson, the Court faced the issue of whether other types of sport or leisure were also exempt from the antitrust laws under the same reasoning. The Court held that they were not. United States v. Shubert, 348 U.S. 222 (1955) (theatrical attractions), United States v. Int'l Boxing Club, 348 U.S. 236 (1955) (boxing), and Radovich v. NFL, 352 U.S. 445 (1957) (football). In all three cases, the Court cabined the antitrust exemption to the “business of baseball.” Shubert, 348 U.S. at 227–30; Int’s Boxing Club, 348 U.S. at 242-43; Radovich, 352 U.S. at 450–51. In Radovich, the Court considered Federal Baseball, Toolson, Shubert and International Boxing and, in line with those cases, continued to characterize baseball's exemption as broadly applicable to “the business of organized professional baseball.” Radovich, 352 U.S. at 451. In Radovich, the Court admitted that any distinction between the interstate nature of football and baseball may be “unrealistic, inconsistent, or illogical,” but nevertheless upheld the distinction on the basis of stare decisis, concluding that the proper remedy was “by legislation and not by court decision.” Id. at 452.

In 1972, the Court again had the opportunity to overrule Federal Baseball and Toolson in Flood v. Kuhn, 407 U.S. 258, 92 S. Ct. 2099, 32 L. Ed. 2d 728 (1972). In Flood, petitioner, professional baseball player Curtis Flood, was traded to another major league club without his previous knowledge or consent. 407 U.S. at 264-65. The Commissioner of Baseball denied Flood's request to be made a free agent. Id. at 265. Flood brought suit against the Commissioner of Baseball, the presidents of the two major leagues, and the major league clubs challenging professional baseball's reserve clause under, inter alia, the Sherman Antitrust Act, under New York's and California's antitrust laws, and common law. Flood, 316 F. Supp. 271, 272 (S.D.N.Y. 1970). The District Court for the Southern District of New York dismissed the federal antitrust claims under Federal Baseball and dismissed the state law claims on the basis that there must be
“uniformity in any regulation of baseball and its reserve system” and, as such, any conflicting state regulation would violate the Commerce Clause. *Id.* at 279-80. The Second Circuit affirmed. 443 F.2d 264, 267–68 (2d Cir.1971). On certiorari, the Supreme Court affirmed the dismissal of all claims. 407 U.S. at 285.

In so affirming, the Supreme court did overturn *Federal Baseball* in one respect, holding that “[p]rofessional baseball is a business and it *is engaged in interstate commerce.*” 407 U.S. at 282 (emphasis added). Despite officially recognizing that the business of baseball was then “in interstate commerce,” the Court held that, based on Congress's inaction for “half a century” following *Federal Baseball*, Congress intended for baseball to remain outside the scope of antitrust regulation: “Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes. This, obviously, has been deemed to be something other than mere congressional silence and passivity.” *Id.* at 282–83. Although the Court describes baseball's exemption as an “aberration,” the Court reaffirmed that the exemption is “an established one ... that has been recognized not only in *Federal Baseball* and *Toolson*, but in *Shubert*, *International Boxing*, and *Radovich*, as well, a total of five consecutive cases in this Court.” *Id.* at 282.

Because *Flood* explicitly overrules *Federal Baseball*'s holding that the business of the exhibition of baseball is purely a state activity, the City argues that *stare decisis* only requires this court to adhere to an antitrust exemption limited to the reserve clause, which was at issue in *Flood*.

b. Analysis

This court is still bound by the Supreme Court's holdings, and cannot conclude today that those holdings are limited to the reserve clause. *Flood* explicitly declined to overrule *Federal Baseball* and *Toolson*, holding: “we adhere once again to *Federal Baseball* and *Toolson* and to
their application to *professional baseball.*” *Id.* at 284 (emphasis added). Federal Baseball and Toolson are broadly decided, i.e., the cases are *not* limited to the reserve clause either by the underlying facts (which include other claims related to, *inter alia*, territorial restrictions on media broadcasting) or the language used in the holdings. Thus, in Flood, the court naturally held that, under Federal Baseball and Toolson, the reserve system, a part of the broader “business of baseball,” continued to enjoy exemption from the antitrust laws. See *id.* at 282-83. The Court's recognition and holding in Flood that the business of baseball is now in interstate commerce cannot override the Court's ultimate holding that Congressional inaction (at that time for half a century, but now for now over 90 years) shows Congress's intent that the judicial exception for “the business of baseball” remain unchanged. See *id.* The Supreme Court is explicit that “if any change is to be made, it [must] come by legislative action that, by its nature, is only prospective in operation.” *Id.* at 283.


Subject to subsections (b) through (d) of this section, the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

15 U.S.C. § 26b(a) (1998). Subsection (b), however, provides that “[n]o court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a).” *Id.* § 26b(b). Subsection (b) further provides that the Act “does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to ... (3) ... franchise expansion, location or relocation.” *Id.* §26b(b)(3) (emphasis added). Despite the
opportunity to do so, Congress chose not to alter the scope of the exemption with respect to any issues other than those “directly relating to or affecting employment of major league baseball players.” Id. §26b(a)-(b); see also Sen. Rep. No. 105–118, at 6 (1997) (“With regard to contexts, actions or issues outside the scope of subsection 27(a) ..., the law as it exists today is not changed by this bill.”). The Curt Flood Act provides further support for the Court's holding in Flood that Congress does not intend to change the longstanding antitrust exemption for “the business of baseball” with respect to franchise relocation issues. 15 U.S.C. § 26b(a)-(b); accord Morsani v. MLB, 79 F.Supp.2d 1331, 1336n.12 (M.D.Fla. 1999) (“Congress explicitly preserved the exemption for all matters ‘relating to or affecting franchise expansion, location or relocation’.... Congress' preservation of the broadest aspects of the antitrust exemption in this recent legislation casts in sharp relief the misdirection in Butterworth v. National League of Professional Baseball Clubs, 644 So.2d 1021 (Fla. 1994).”).

V. CONCLUSION


The Court concludes that enacting PASA was within Congress’s powers in Article I under the Commerce Clause. The activity PASPA targets, state-licensed wagering on sports, may be regulated consistent with the Commerce Clause. Second, there is nothing in the anti-commandeering cases to suggest that the principle is meant to apply when a law merely operates via the Supremacy Clause to invalidate contrary state action. Several important points buttress our conclusion: first, PASPA operates simply as a law of pre-emption, via the Supremacy Clause; second, PASPA thus only stops the states from doing something; and, finally, PASPA's policy of stopping state-sanctioned sports gambling is confirmed by the independent prohibition on private activity pursuant to any such law. When so understood, it is clear that PASPA does
not commandeer the states. Third, this Court declines to strike down PASPA under the equal sovereignty principle. The remedy Tulania seeks—a complete invalidation of PASPA—does 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. This Court finds the PASPA constitutional and affirms the District Court ruling to enjoin Tulania licensing its sports betting law.

b. Antitrust

The court concludes that the federal antitrust exemption for the “business of baseball” remains unchanged, and is not limited to the reserve clause. The court holds that MLB's alleged interference with the N.O.’s relocation to Bon Temps is exempt from antitrust regulation. For the forgoing reasons, the Court affirms the District Court’s grant of the MLB’s motion to dismiss Bon Temps’ Sherman Act claims.