

# WORD ON THE STREET

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Issue 5

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*“The way to get started is to quit talking and start doing.”*

- Walt Disney

## A Bold Statement

*By Charles J. Esposito, Esq.*

### GREETINGS AND SALUTATIONS!

Welcome to the fifth issue of *Word on the Street*, the semi-occasionally occurring newsletter from the Taft Street Law Firm.

We are proud to announce that Taft Street has forged an “Of Counsel” relationship with *Bold IP, PLLC*. Bold IP is an intellectual property law firm that specializes in Patent, Trademarks, and other type of intellectual property.

Be on the lookout for new information on our website regarding intellectual property protection and how Taft Street, with the assistance of Bold IP, can help your company better protect your brands and inventions.

As part of our [Concierge Legal Services](#), Taft Street aims to provide general counsel to our clients including a focus on risk mitigation. Now, we can provide more specialized advice regarding intellectual property protection and branding. We are excited to continue providing these great services to our clients.

Onward!

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## Sports Gambling – Legal!?

By Charles J. Esposito, Esq.

The Supreme Court certainly likes to make waves in the sports world. A [previous newsletter](#) touched on the Law and the Links briefly, and today we return to look at the landmark *Murphy v. NCAA*. In a 6-3 decision (Justice Breyer dissented in part and concurred in part), the Supreme Court of the United States struck down the PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT (PASPA) which had previously banned most states from allowing sports gambling. Justice Alito delivered the opinion of the court, which stated that PASPA violated the 10<sup>th</sup> Amendment of the U.S. Constitution.

### It's a Jersey Thing

Back in 1992, PASPA permitted the state of New Jersey to set up sports gambling in its casinos if the state did so within one year. It wasn't until 2012 that New Jersey decided to act, when the state legislature legalized sports betting. The NCAA along with the MLB, NBA, NFL, and NHL filed suit to block New Jersey from implementing sports gambling. Ultimately the dispute reached the highest court in the land.

### The 10<sup>th</sup> Amendment and Dual Sovereignty

We often discuss how a 200+ year old legal document can apply to modern laws. *Murphy v. NCAA* is a prime example of how our Constitution still effectively protects the rights of States and citizens. The 10<sup>th</sup> Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Essentially, Congress may not exercise legislative power that is not given in the Constitution; those powers not enumerated in the Constitution are reserved by the States and the people.

10<sup>th</sup> Amendment jurisprudence has spawned the "anticommandeering doctrine," which provides that Congress may not directly compel a state to act or not act to enforce a federal program. In this case, Justice Alito's majority opinion held that PASPA ran afoul of the 10<sup>th</sup> Amendment because the law "unequivocally dictates what a state legislature may and may not do," thus violating the anticommandeering doctrine.

With PASPA being struck down, states are expected to move quickly to legalize sports gambling. In fact, a dozen states already have legislation in the pipeline. Don't be surprised if you can place a bet at the next ballgame you attend.

"It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine."

- Justice Samuel Alito  
*Murphy v. NCAA*





## Epic Arbitration Agreements

By Charles J. Esposito, Esq.

Once again, the Supreme Court has shown us why we are a country of laws and not of men. In *Epic Systems v. Lewis*, the high court analyzed the 1925 Federal Arbitration Act (FAA) and its conflict with the 1935 National Labor Relations Act (NLRA). At issue was the 2012 National Labor Relations Board's (NLRB) interpretation that, in certain instances, employers could not install arbitration agreements into their employment contracts that would prevent employees from bringing collective claims. The Court disagreed with this interpretation and definitively resolved a circuit split.

### Can't We All Join Together and Sue?

By a 5-4 decision, the answer is “no.” Not when the employee agreement has an arbitration clause that requires employees to submit their claims individually. The majority opinion, written by Justice Gorsuch, explained that, “The NLRA secures to employees rights to organize unions and bargain collectively, but it says nothing about how judges and arbitrators must try legal disputes that leave the workplace and enter the courtroom or arbitral forum.”

### True to Form

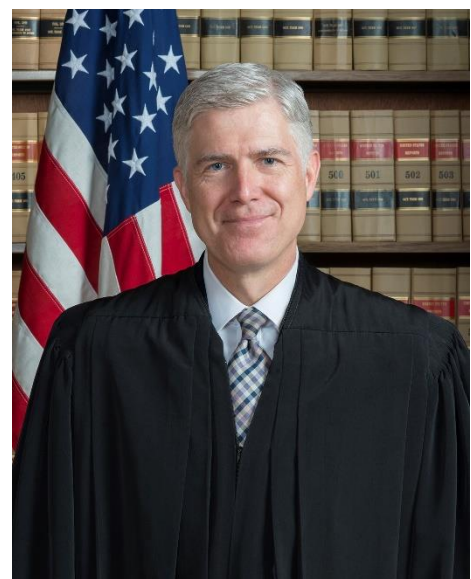
Justice Gorsuch spoke at length about the FAA in his [confirmation hearing](#). In a memorable back and forth with former Senator Al Franken, Gorsuch intimated that if Congress does not find the FAA to be good policy, then Congress should change the law. Gorsuch's opinion in *Epic* harkened back to his previous comments by stating, “As a matter of policy these questions are surely debatable. But as a matter of law the answer is clear.”

### Yellow Dog?

Justice Ginsburg read her dissenting opinion from the bench and argued that the majority was reviving “yellow dog” contracts designed to prevent workers from unionizing. The majority characterized those claims as a “false alarm.” Gorsuch goes on to explain that the majority is merely honoring Congress's policy judgments and following the “mountain of precedent” in its favor. Indeed, he points out that the NLRB's own general counsel held the same position as recently as 2010.

### Practical Implications

Detractors claim the implications of this decision range far and wide and will have a negative impact on worker's rights. The decision most likely will not have an impact on those who are members of unions, but it could mean more private companies insert arbitration clauses into their employment agreements.



“It is this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another. And abiding that duty here leads to an unmistakable conclusion.”

- Justice Neil M. Gorsuch  
*Epic Systems v. Lewis*

## Fight Night

*With Taft Street Law Firm*

You're invited to join us on June 14, 2018 at Delray Beach Boxing & Fitness for a Delray Beach Chamber of Commerce event!

Taft Street Law Firm is proud to be co-sponsoring Contacts & Cocktails from 5:00pm - 7:00pm.

[Please visit the Chamber website to register.](#)

Fees/Admission:

\$15 Chamber Members in Advance

\$20 Chamber Members at the Door

\$30 Non-Members

## Future Endeavors

*By Charles J. Esposito, Esq.*

### NEW AND EXCITING TIMES!

The Taft Street Law Firm is continuing to move forward in its mission to provide quality legal representation to our clients.

Be sure to visit our website at [TaftStreetLaw.com](http://TaftStreetLaw.com), where we have more information including a presentation on [Worker Misclassification](#). Thank you for reading and please do not hesitate to contact us if you need any help.

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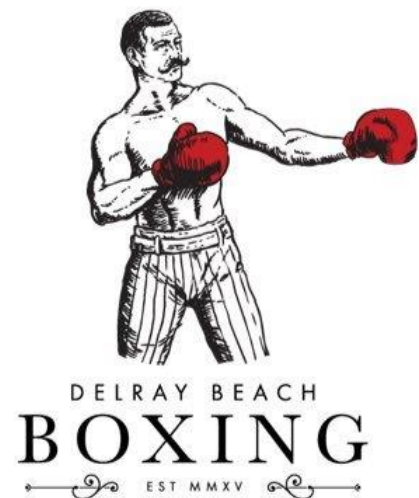
*"There is little success where there is little laughter."*

- **Andrew Carnegie**

Delray Beach Boxing & Fitness is a new business in Delray Beach, Florida. It houses three venues in one location:

- The Cornerman Pub & Lounge
- A Fitness Center
- A Boxing Ring

We're excited to be co-sponsoring with such an amazing venue and we hope you will join us at the "main event."



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