

## **Panel with Governor Chris Christie and the Honorable Judge Paul Matey**

*Seton Hall Legislative Journal Sports Law Symposium*

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The Honorable Judge Paul Matey: Good afternoon everyone. We are delighted to be here today with this last day of the symposium. Our compliments to Seton Hall for putting on a tremendous event with a tremendous roster of speakers. It's been an excellent opportunity to engage in this important topic in an important time in the state regarding the future of sports and athletics. I am pleased to be joined by one of the few people—probably in the state—who actually lives up to the adage “he needs no introduction.” Governor Christie, we are honored to have you here today talk about all things sports gaming law and whatever else comes to mind.

Governor Chris Christie: Absolutely, your Honor, thank you. I appreciate being here. As you all know both Paul and I are proud graduates of Seton Hall Law School. We have both worked really hard since our time at the school, and we've gained some ability to be helpful to the school through the things that we've been able to accomplish and continue to come back and try to help the students who are there now. Paul's had an extraordinary record in his time on the bench so far in terms of interacting with Seton Hall Law students. And that's the biggest reason I think we're both here today is because we feel like we want to continue to give back to the school that gave us a lot—gave us our legal training. So, it's good to be back with all of you, and good to be back with my friend Judge Matey. We'll have a great conversation today about the evolution of sports gaming in our state, and across the country because of what New Jersey has done.

Matey: Governor I want to start, if we could, with a little bit of biographical detail because everyone knows the storied aspects of your career: two terms as governor in the state of New Jersey; eight years as one of the most consequential United States attorneys that our state has

ever seen; a commentator and influencer on both national and international events. I think everyone is well familiar with that part of your background. There's two things, though, that often don't get discussed and I think this is a perfect lecture for us to cover them. The first is—unlike many people who get into politics—you graduated Seton Hall and you didn't just start running, didn't start just governing. You actually practiced law for a good amount of time.

Christie: I did. Before I ever ran for any political office I practiced law in private practice for seven years, and most of those seven years—all of the seven years—were spent at the firm at that time called Dughi and Hewitt in Cranford, NJ. The reason I went to Dughi and Hewitt was because they tried medical malpractice cases and those were the only cases back then that were getting tried on a regular basis. Most everything else was getting settled and I really wanted to be a trial lawyer—I wanted to be in the courtroom. I went to this firm and I spent a good part of seven years before I ever ran for office for anything defending doctors in medical malpractice cases. What that's done is two things. One, I think it makes you—if you put the work in—a really good trial lawyer because the issues are very complex and there's a lot of emotion involved in all of these cases, so you have to find the intersection between factual mastery and emotional handling of the case and the people in the case. For me that was it was a great experience. The second thing it's done, is taught me just enough about medicine to be truly dangerous. I learned how to read fetal heart monitor strips when I was a lawyer defending obstetricians in obstetrical malpractice cases, and when our first child was born I was actually standing next to the machine reading the strips and pointing out to the doctor where I thought there might be some problems. He finally looked at me and said, "Chris this is a hospital room not a courtroom. Sit down and keep quiet." So those years in private practice were really very good. I actually stayed at Dughi and Hewitt for a total of fourteen years, although for three of those years—from '95 to '97—I served part time as a Morris County Freeholder—from the time I was 32 years old until I was 35—and that was my first foray into public office. But I left after three years, and then I considered whether or not to go back into public office until 2001 when I was appointed US Attorney.

Matey: In addition to learning the finer points of fetal monitoring strips—I bring this up because so many who are involved public leadership or other areas of influence may have had some legal education, but they never actually spent time in repeated controversy;

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never understood how it is that you unpack the complex problem and find a way to solve it on behalf of your client. I always come back to that because having watched you solve problems, now for many years, it occurs to me that that is often what you were doing. You were thinking about these problems like a lawyer. You were thinking, “How do I prove my case to get to the goal that satisfactory, understanding that I’m probably not going to run the table on all of this?”—although we’ll get to the NCAA in a moment—but knowing that there’s going to be a moment of compromise that is built on the strength of strategy. It has always struck me that your legal education first, but more importantly your legal practice, is what’s giving you the ability to drive those kinds of solutions.

Christie: I think that’s a really good observation, and I think there’s no doubt that that’s the case. In fact I’ll never forget my first day of law school when our Dean at the time, who was Elizabeth Defeis, came to the front of the room and said to us, “Remember how you think today. You will never think the same way again.” There’s no question that the biggest thing I think a law school education does for you, is to teach you a way to think. A way to think, a way to analyze and address problems, and ultimately hopefully solve them. Because that should be your job as a lawyer: to analyze a particular situation, address it, and hopefully solve it. There’s no doubt that my legal career—my legal education and my legal career, both—have led to the kind of decision-making process I use as a public official and have used both this US Attorney and for eight years as governor.

Matey: There’s a second part about your background that is probably a little less known, which is that you are not a *casual* observer of sports. You are a former athlete, going back to your childhood days, that has been involved in or around the game of sport and the business of sport for your whole life. I wonder if we could talk about that a little bit because I think people would be fascinated to know how deep those roots run.

Christie: Like many of us, from the time I was very young I played organized sports. I played baseball and basketball and enjoyed them greatly, ultimately playing varsity baseball in in my high school years and really enjoying it. That group of guys that I played with, most of them I’m still friends with today, and many of them when I ran for governor put together a separate little group called Lancers for Christie—that was our high school mascot—and they raised money and

they ran events. So that being part of a team was always a theme—and you know this because we worked together on a couple of different occasions both in the US Attorney’s office in the Governor’s office—and that I always talked about it being like a team and a family. That’s the way we had to view each other, that’s the way we had to treat each other, and that’s why we had to work together. There’s no doubt that my training in that, and my belief in that, came from my time playing sports. Because the most successful teams I was ever part of were certainly talented, but also they were people who cared about each other, treated each other with respect, and worked together in a way that was much more familial than almost anything else. Sports has played a great role in all that. And after you do that—when you can no longer play the kids’ games—you wind up enjoying watching, and I’ve always enjoyed watching and I’ve been involved in it since then. But the root of it is the way we all worked together, and enjoyed each other, and respected each other, and I think that’s really helped me in my public life, as well.

Matey: You have watched the game and the world of sport evolve since your childhood, and through the childhood of your own children. You’ve been involved as both a parent and a coach and you’ve seen—continue to see—your kids out on the field. I’m wondering how it is that you’ve seen the business of sport, at least at the youth level, evolve over those decades and where maybe you think it might be going next.

Christie: I have to say that I don’t think that youth sports have evolved in a way that’s been positive. I mean this: when I was younger everyone was encouraged to play multiple sports. I played baseball, I played basketball, I played soccer. Everybody was *encouraged* to do that. You were encouraged to play in every season of the year a different sport. By the time my children became folks who were old enough to be in youth sports it was frowned upon. They wanted you to focus on one sport—figure out what your best sport was—and we want you to play that twelve months a year. I think that’s bad for a couple of reasons. I think, one, you miss out on a lot of great experiences that other sports will give you. But two, it puts enormous stress—both mental stress and physical stress—on young bodies. Because everyone’s competing against each other all the time with this one sport you utilize the same muscles in the same way. So, in baseball, for instance, the kid who’s pitching three months out of the year goes to pitching twelve months out of the year. There’s no doubt that that causes injury, that causes stress and strain, and I think except for the most exceptional people is a problem. So, to me youth sports has gone more from being something

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that was a fun, recreational thing to do that also had positive byproducts, to having everybody be in their own particular minor leagues striving to get either the college scholarship or the pro contract offer. And we know that the overwhelming percentage of people who ever play are never going to get either of those things. So seems to me we should be encouraging kids more to have a more diverse background in sports than the one they're getting currently.

Matey: I'm hardly surprised to hear you say that because it probably speaks to the greater crisis in specialization that we have seen grown in America over the last sixty or so years, and it harkens nicely back to the beginnings of your career as a lawyer. You wanted to become a trial lawyer. You wanted the general skills that go into all phases of building your case from meeting with the witnesses, figuring out what the place is going to see, handling discovery, yelling at people in depositions, and then ultimately get into the courtroom. I imagine though the focus was medical malpractice, you were going to be happy to try any old thing that came in the door as long as you got the chance to do it.

Christie: Absolutely, Paul. In fact, the first case I tried was not a medical malpractice case, it was an architectural malpractice case.

Matey: How'd you get that?

Christie: Like you get most of these things that are outliers for your firm: the architect was a very close friend of the senior partner of the firm. And he said, "Yeah we'll represent you." He was working the case up and the damages were not huge, and he came to me. I was in my first year as a lawyer. This was the summer of 1988. I was admitted in December and that summer I was going to be in a courtroom trying my first case. I was trying the case before the late Judge Larry Weiss, who was a Superior Court Judge in Union County, and he wound up years later joining the firm that I had been with, Dughi and Hewitt, when he left the bench. But he was a legendary grouch on the bench, and so I had the great joy of trying my first case in front of in front of Judge Weiss—an architectural malpractice case—which ultimately, in the midst of trial, settled. But, you know, I would have been willing to try anything, but what I was told at Seton Hall was that if you really wanted to get real courtroom work there were only two places to go: either to the County prosecutors' offices, or to a smaller boutique-type law firm like Duhgi and Hewitt. I think I think I was their twelfth or thirteenth lawyer

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working for Dughi and Hewitt. They said those are the two kind of places you should go. I quite frankly applied to both and the first offer came from Duhgi and Hewitt, so I took the first offer I got.

Matey: It worked out pretty well, I think.

Christie: You know, all things considered my career has turned out okay!

Matey: Now I'm going to pivot back sports in a second, but staying with the law. . .so, do you think that advice still holds—should Seton Hall students who are listening today, or folks who are at younger parts in their career, be more open to the possibilities of doing stuff that might be outside of their area of specialization such as it exists in year one of your legal practice? Or do you think the business has changed enough that it's kind of a nice thought, but it really doesn't work now?

Christie: I think, first of all, here's one thing you should know for sure: no matter what you have studied at Seton Hall you don't have a specialization. You don't. You may think you do—you may expect a lot of time in classes that are in a particular area of the law—but when you leave you really don't know much. You know how to think, you know how to analyze, you know how to research, but you don't know a lot about being an actual practicing lawyer. You learn that when you get out there. Certainly don't put yourself in a straitjacket of specialization if you can avoid it. I've always said go to the go to the firm or, other organization, that speaks to what you think you want to do with your life. For me, at that time, I thought I really wanted to be a trial lawyer. So I went to a place where I knew there were other trial lawyers I could learn from, and cases that needed to be tried. The fact it was medical malpractice—it was certainly not something I focused on in law school—but you learn. You learn how to do this stuff and that's part of the great challenge of it, and part of the great fun.

Matey: It's only through the doing that you ever get better at anything, particularly this whole business of law. We used to joke often at the US Attorney's office that applicants would come in and say—and I'm sure I was one of them— "I really want this job because I want to deal with complex issues involving the constitution, fundamental questions regarding our nation's values." The message back was always, "Sure. So now it's 11:00 o'clock at night and you can't find the exhibit stickers because nobody bothered to order them six months ago, the

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copier doesn't work, and you haven't been able to find your witness we need to call first thing tomorrow. How are you going to handle that?" And that is the practice of law.

Christie: No question. That's what I think—for everybody who's in law school—that's why I say to take as many varied classes as you can, experience as much as you can, because each one of those classes will teach you new and different ways to think about the law and think about problem solving. Get as much of that experience as you can because once you get out you don't get to pick and choose. It's a very rare place where you get to pick and choose what cases you can work on. Some senior associate or junior partner—or if you're lucky a senior partner—is going to come down to your office and drop a file on your desk and say, "Hey, we need you to handle this," and away you go. You're going to learn what you need to learn when you need to learn it. The most important thing is knowing how to think, and how to analyze, and how to problem solve, and hopefully that's what you're learning at Seton Hall—it's certainly what I learned.

Matey: The reactive element of the practice of law is a nice segue into what I'd like to spend some time talking to you about, which is the history of sports gaming in New Jersey. I say it's reactive because much of—well I'll let you answer—but I think it's fair to say that much of your work as governor was dealing with the things that landed on your desk, both the opportunities and the crises. And, again, I'm wondering if we can go from our prior conversation to this and talk a little bit about how you have now transitioned fully from a life in the law to being a leader of the law as governor. I'm imagining things haven't changed very much in that those files are still dropping on your desk unexpectedly. How does the skills that you've grown in practice and serving as United States Attorney prepare you for that challenge?

Christie: First off, I think the way it prepares you is, at least in my experience in private practice, I never had just one case at a time. You have multiple cases at a time at various stages of discovery, and so you had to be able to juggle. Certainly as governor I did not have the luxury, most of the time, to focus on just one thing. Hurricane Sandy was probably the only instance where it was necessary for me to focus on just one thing and block almost everything else out. But other than Superstorm Sandy, I think no matter how important what I was working on—whether the property tax cap, or a budget season, or criminal justice reform, or any of the things that we accomplished over the course

of time, education reform issues—they had to all exist in the context of everything else that you wanted to get accomplished. And then the things that would just land on your desk: a nurse lands at Newark airport and appears to have the symptoms of Ebola. It wasn't what you intended to spend your week on, but all of a sudden you are. Someone you nominated for the Supreme Court comes up with some background issues that you have to deal with, all of a sudden that's gotta take some of your time. There all kinds of different things can happen; a piece of legislation that you want that looks like it's cruising towards passage all of a sudden hits speed bumps. You've got to be adept enough, and you have to be nimble enough, to be able to pivot from issue to issue but bring with you the very same ability to be able to analyze issues and make decisions and make them quickly.

Matey: The challenge with that is always had been keep moving forward, and then how do you have the flexibility of the leader to realize, "Wait there's new opportunities showing up here that I haven't thought of before?" So, how often, in your mind, did you rewrite the playbook in order to take on the new challenges, versus staying with what you had considered going into term, or a month prior?

Christie: Often, but not frequently. I'd say that you would do it when you see morphs, more in one of two instances: either when something gets thrust upon you and you just had to deal with it. Or you saw an opportunity that you didn't think would be there. You take some time to figure out "where does this fit my priorities?" and then do it. You have to change the script. But the toughest part is not for you. You've gotta call your staff in and tell them, "Everything you've been working on now for the last six weeks—put that on one side of the desk because now you're going to work for six weeks on this." You've got to convince *them*, sell *them*, on the fact that this is the right thing to do because your ability to sell that will determine, in some measure, their level of enthusiasm for the task and how well they're going to do the job. You want them to be hitting on all cylinders as much as you possibly can have them doing that. Part of that is your job as a salesman to sell why you think this is the right thing to do at the right time, and that's always been fascinating to me how you get yourself into those positions and be able to do it correctly. I've always found it really challenging, but really interesting.

Matey: There's a straight line right back to the theme that you started off talking about of teamwork, of finding a shared value, building

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a cohesive group, driving to a single goal. It's obvious that most of those lessons are what you're drawing on as well when you talk about that. So, one of those opportunities maybe that was always in the background, but maybe not so much at the forefront when you're thinking about running for office is this intersection between New Jersey's vibrant gaming industry—or previously vibrant gaming industry, certainly by 2009—and the opportunity for sports betting. So, I want to go back to talk a little bit more about gaming broadly. It's 2009, you're getting ready to head into Trenton. What is your understanding of the state of the gaming industry, particularly Atlantic City?

Christie: Really bad. Hotel casinos were getting ready to close, threatening to close. We are in—coming out of, still in the midst of—one of the worst recessions in the nation's history, caused by economic factors, not by natural disaster factors like Covid. Atlantic City was in trouble. So, I actually signed the executive order my first day to establish an independent study commission to study what we could do to help revitalize that industry. It was chaired by John Hanson who had previously chaired the sports and exposition authority for Governor Kane. He chaired a group that that we put together that came back in about two months with a number of recommendations, one of them being that sports gambling be instituted in New Jersey, particularly to help revitalize and bring a new crowd to Atlantic City. That's where the germ of that idea came from—from that Commission headed by John Hanson.

Matey: When you signed the first executive order how much ability did you think you were going to be to have to fix the problems of Atlantic City? Because obviously they were they were well-settled by that point and the trends were all going in the wrong direction. How much did you think that this was something you were going to be able to use the levers of government to fix, versus inspiring, perhaps, local efforts?

Christie: Well, I knew that it was a two-fold job. The first is that I had to put government mechanisms of authority in place that were going to give the private sector confidence to reinvest in Atlantic City. There had been a number of corrupt mayors down there, and a lot of bad activity on that had gone on that had caused the casino industry themselves to be really skeptical about Atlantic City. You can't expect them to expand and grow down there if there's not a cohesive government entity down there to be able to do the things that municipal government does in New Jersey. So, the first part of it was getting an

operating—efficiently operating—government down there, or at least more efficiently operating. The second piece was if we did that, offering to be the only place outside of Nevada where you could gamble on sports, to me I thought was a really, really intriguing possibility to revitalize things. Especially when you look at our location—Atlantic City’s location—between both Philadelphia and New York and the passion that people have for betting on sports. So, I thought it was a two-fold job, but it was a potential for a real win for the city if we were able to get it done.

Matey: Standing in the way was a series of legal quirks that you’d forgive the casual observer for never believing exist, right? I mean there’s this odd history of gaming and gambling, not only in the United States, but certainly in the state of New Jersey. It had theoretically been outlawed since the eighteen-hundreds, but it was always prevalent, and that leads to the concerns that you were talking about corruption. The 1947 constitution gives the voters the ability to start permitting authorizations of gaming as they see fit, but nothing much really happened. There’s a little bit here and there with lotteries, raffles, bingos and things like that through the decades, but it’s not until 1976 that we get to proving the casinos in Atlantic City. Then not a whole lot goes on—unless of course you skip over the 1978 referendum, which didn’t go very far outside Hudson County. *But* that brings us in 1992 and the seismic moments where Congress—led by none other than Senator Bill Bradley from the Garden State, and obviously an athlete of great stature in his own right—Congress passes this thing called the Professional and Amateur Sports Protection Act. And I’m sure I’m not going on a limb here and saying PASPA was not something that was part of your everyday lexicon as you headed into the statehouse.

Christie: No, it was not. It was not at all. All I knew was that we were prohibited from doing it. I actually had you and others on my legal team look into it for me as we got deeper into the governorship. But no, PASPA was not a part of my lexicon when I walked into the front door of the statehouse January 18th of 2010.

Matey: I’m sure you know you’d be forgiven like the rest of us for thinking, “Well, the reason why there isn’t sports betting in New Jersey is because New Jersey just hasn’t gotten around to doing it. It could if it wanted to—you know they’re doing it out there in Nevada.” But it turns out Congress has built this House of regulation that is fairly unique in the law. They have decided that states are prohibited from operating

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gambling systems for professional or collegiate sports, except—and this is the fun part—*except* for four states that have *already* been permitting it, they get grandfathered in. And the kicker: New Jersey gets a year to join the club, and they don't. I'm curious if over the years you've reflected on the on the enormity of that decision to let the window pass?

Christie: Yeah, it turned out to be huge decision. Its a decision I think that ultimately was finalized by Governor Whitman to not join in. I think Governor Florio had a window to go in himself near the end of his term, and then-Governor Whitman had an opportunity to opt in the beginning of her term and did not. It clearly made things a lot harder as we moved along. Now, as you know, the kind of gaming they were allowed to do in some of the states that did opt in, like Delaware, was not what you would consider to be real sports gaming on any level, but they at least were grandfathered in for *something*. That's the other thing about PASPA, it said you're grandfathered in for what you're doing *at the time* on the date that you opt in. You can't expand it from there. So PASPA was a very restrictive statute, and one that, ultimately, I thought, was unconstitutional. And a lot of people thought I was crazy, but I thought it was unconstitutional, and ultimately, we won on that basis of this error, amongst others, at the Supreme Court.

Matey: You're perfectly foreshadowing what the issue is here. The oddity of PASPA is exactly the dynamic you were just talking about regarding Atlantic City. Here's a city that is struggling economically, it has a series of policies, perhaps, that are impeding its growth, but there's only so much that you as governor can do. There's only so much authority the state has to do things in these instances, so too in the sports gaming realm. A normal person would think, "Well, if New Jersey wants sports gaming they'll go do it." But what Congress has done is said, "No, you're not going to be able to. We have made the decision for you and we are going to tell you that you can't do this while we let some others do it." That gets into this great question of political accountability. How do the voters know who the blame, who to thank, when things go wrong? That's very much evident here. I imagine as this starts it must be enormously frustrating. You see this opportunity, you know what it's going to do for the state, how it dovetails with your plans for a resurgent Atlantic City, but you can't do anything about it. And you have to now try to communicate that to eight and a half million people that, in fact, this is not me. It turns out this was a bunch of folks—who probably still aren't even in Congress—back in 1992 making a decision. It must have been frustrating.

Christie: It was very frustrating, but I also knew there was a pathway out. Now it could be a long pathway—and it did turn out to be a long one—but we had to get to it. To me that was the key thing for us to do is to get to it. We worked with the legislature to get that first piece of legislation authorizing sports gaming at casinos and racetracks across New Jersey and wound up getting smacked by a Federal District Court judge named Michael Shipp who slapped an injunction on us at the request of the NFL, the NBA, the NHL, MLB, and the NCAA.

Matey: This is a perfect example of where I think your legal background comes into play, because in January 2012 you signed the Sports Wagering Act and, of course, you're immediately asked the question, "what's going to happen next?" You say something to the effect of, "Look if someone wants to stop us let him try. I'm quite confident that legal action will be taken, but I have every confidence we're going to be successful." But you're now not just speaking as Governor, you're speaking as a litigator. You already know what the issue is, and I imagine this is starting to give you some confidence. Or at that point, again, January 2012, from the earliest days did you see this as being a likely successful one that was going to require a lot to fall into place?

Christie: I saw it as a bit of a long shot. PASPA had been in place for twenty years, no one had successfully challenged it, and I knew that the only way we were going to overcome PASPA was not at the distinguished court that you serve on now, but to get up to the United States Supreme Court. We had to endure first the injunction, and then the decision by Judge Shipp, went up to Third Circuit, we lost at the Third Circuit, and the first time around were denied certiorari by the United States Supreme Court. But in the Third Circuit decision, importantly, it gave us a pathway where they said, "No, we can't do it the way you're doing it, but if you do it *this* way that would be OK." What that led us to—after losing in the Circuit and losing in the Supreme Court—was to go ahead and write a bill where literally we allowed the majority in the Third Circuit decision of *NCAA v. Christie* to be our guide. We did it, we wrote the statute exactly the way they asked us to do it, and as soon as we passed it, and I signed it, those same five adversaries came up and sued us again, *and* went in front of Judge Shipp, *and* got an injunction from Judge Shipp, despite the fact that we followed the blueprint the Third Circuit had given us. We got no credit for that—of any kind—until we ultimately argued before the Third Circuit again on this matter, lost again, but was able to wrestle a dissent out of Judge Fuentes. And he laid out very neatly, very nicely what the case was for sports gaming, and we

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rode that train all the way to the Supreme Court the second time and enjoyed our victory.

Matey: I want to unpack this a little bit, because I have to tell you, from the ultimate nerd standpoint this is a story that has everything. I'm a guy who keeps two things on his desk: a baseball, and a copy of the Constitution. This case is actually all things in one, right? I mean, what more could you ask for? So let's go back for a second. So the District Court essentially is grappling with this idea that, "Well, the statute says you can't do it, and now you guys are trying to do it. That doesn't that doesn't seem to really work for you." But you're getting the idea that there might be a bigger principle involved. And part of that is coming because you're getting legal guidance from outside counsel. I want you to talk a little bit about how that decision gets made, and ultimately how influential that choice ended up becoming.

Christie: No question that most of the time when counsel is picked for the state of New Jersey, it's picked by folks in the Attorney General's office, the attorney general him or herself, and the governor wouldn't have much involvement with that. In this one, I feel very strongly that the only way we're going to win this case—as I said at the beginning—was in the Supreme Court, and I wanted the nation's most successful Supreme Court advocate on my side. That's obviously Ted Olson, who's the partner at Gibson Dunn in Los Angeles, California. I immediately called Ted after the first papers were filed against us the first time, we had it overturned. We talked about the strategy of how to be able to position this the right way to shed the right light on what was going on here for the Supreme Court. The smartest thing I did in all of this was hiring Ted Olson. Ted did an amazing job. And everyone thought, "You're nuts. You're just at the District Court. You're hiring an appellate lawyer." Well, I wanted to lock him up before the leagues locked him up. So, the leagues ended up going with Paul Clement, another outstanding advocate in the Supreme Court, but you know a protégé of Ted's. And we got the real deal.

Matey: This is something I would add that can't be understated for all you litigators to-be. The Governor is talking exactly as a seasoned pro from the courtroom standpoint. We have to start thinking about strategy for winning when you're filing the complaint. It's too late to think about how you're going to win on appeal *after* you've already lost, or frankly even if you've already won. If you haven't started the framework for how you're going to advance a successful argument that's

going to defend your work, or get you out of an adverse one way back when the papers are first getting drawn up, it's already too late. It's a real illustration of how important is not only to have the right talent, but to have the right talent thinking about the right issues. What Ted and his team began to understand is that there is a much bigger principle here, and it's one that goes back in founding of the nation: this concept of federalism that is tied to the Tenth Amendment and finds form in this really obscure doctrine called the anti-commandeering principle. It's not something that shows up a whole lot, but it essentially says, "Listen, we want to make sure that we know who's doing what here in the United States. So we're not going to let Congress take over the state governments and make decisions for them." When you first start hearing about this more, Governor, are you thinking, "I was hoping for something with a little bit more meat on the bones, but you're pulling out something from the 1700s, Ted. Is this really this is really going to get there?"

Christie: No, you know, right from the beginning I had incredible confidence in Ted. He kidded when it was over that he never had a client who had continued to rehire him after he lost seven times. But, I have great confidence in Ted, I had great confidence in the issue. I really felt like this was an imposition on states' rights in a way where the federal government wasn't occupying the space and regulating it and taking it out of the states' hands. They wanted to have both ways. They wanted to set the rules, but they wanted the state to do the dirty work of regulation. The Constitution doesn't allow for that. I felt confident that if we could get enough attention of the Justices at the Supreme Court that our case would be taken, and that we would do well, and, as it turned out, we turned out to be right.

Matey: You mentioned that one of the things that happens that is somewhat interesting is the majority opinion in the first Third Circuit case points out that PASPA was not actually prohibiting New Jersey from repealing the state gaming restrictions. I've read a lot of cases and it's not every day that you see that clear of a path put forward. So it was obviously a big moment when the opinion comes down. Yeah, it says it says you lose, but it has this line in it in the majority. And I wonder if—and I should point out that there's a dissent in the first panel opinion, too—so you have majority saying, "Listen, PASPA doesn't say that the state can't repeal is gaming restrictions." Then you have the dissent from then-Judge Ansky saying, "This whole *thing* is no good." So you wind up actually having a fairly united court on the idea that this isn't

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the end. Take us back to that moment: you're told by your lawyers, "Well, we've lost *but* there is this thing in here that says maybe you could repeal all the gaming restrictions." How does this hit you when you when you first start hearing about it?

Christie: When I first hearing about it, it doesn't hit me well. I'm thinking, "How we going to repeal all of these things? Will it be the Wild West?" But what Ted Olson kind of convinced me of was they've given you a pathway to do it, let's do it. Let's call their bluff, essentially. Because I think he was convinced the Third Circuit opinion was a bluff, and they never thought we'd do it. Their way of getting over the Constitutional problems with to demonstrate there was an explicable path to getting where we wanted to get to. But *barely* explicable. But Ted said, "Listen, I think that gives us a hole drive a truck through here. Let's go after it. Let's go after it and be aggressive." And he was. Even though we lost, ultimately, we then took that pathway and had the legislature repeal all the laws and said sports gambling could go on anywhere. And immediately when we did that the leagues sued us *again*, back to Judge Ship *again*, injunction from Judge Shipp *again*, and final decision from Judge Shipp. So it was right back up with the Third Circuit relatively quickly. For us we felt like the Third Circuit gave us a pathway, Ted was the best navigator to lead us through that pathway, and I remember despite having lost being pretty optimistic that we were going to be able to get this done.

Matey: And the litigation—as students in the audience will learn and those who live it can attest to—moves at glacial pace. But the Repealer Act goes into law in October of 2014, the leagues are back in the court in November of 2014, you get the injunction issued again on November 21st, and the Third Circuit decision comes August 2015. That's lightening quick in the world of federal law. And something interesting happened—there's two interesting things that that happened that start to really shape this story. The first, as the Governor said, the Supreme Court denies certiorari on the first but interestingly in there, the Justice Department takes the position that there's no reason to grant cert here because New Jersey is free to repeal that sports gaming prohibition in whole or in part. So now you have the United States adopting the logic of the panel majority before the Supreme Court, and that will wind up becoming a very important concession. So it goes back, as the Governor said, there's another appeal, again, the Third Circuit upholds the injunction, but *this time* the majority writer from the first panel, Judge Fuentes, is now in dissent—and I'll let you

take it from there, Governor—Judge Fuentes says, “Wait a minute here—”

Christie: “—Hold on, what the hell? We told them how to do it, and now we’re moving the goal posts on them. It just shouldn’t be allowed. They did what we told them to do, and now we’re telling them that’s wrong. I bet if we give another suggestion today as to how it was to be done, they’d do it, and we’d tell them that was wrong. Because we’re result and search for rationale.” That’s, in essence, what judge Fuentes said. I remember the day that the Third Circuit opinion came out, I remember calling Ted Olson to talk to him and he said to me, “Now our path to the Supreme Court is clearer.” I didn’t quite see it at the moment, but I was willing to bet on Ted. And that’s what I did.

Matey: And it’s another great illustration for the students or participating how closely you really need to work with your client to figure out what their goals are. Part of this here was Ted feeling competent to recommend this because he knew he had a client who had a real firm goal in mind: the ability to bring this opportunity to the State of New Jersey. It’s important not only to read opinions closely to see what the options are that you have, but to know your client and work with them carefully and closely so that you understand how it is you need to get it.

Christie: And by the way, Paul, one of things we didn’t talk about was that we put a ballot question on the ballot, which was advisory in nature, but we wanted to be able to say to the courts that—if we had it—that we have the strength of the opinions of the people behind us. That measure passed with over two-thirds of the vote, so we had a very clear mandate from the people of New Jersey.

Matey: Way back in 2011, actually, because the referendum of doubt, which is this quirk in the New Jersey constitution that allows you to ask these questions about gaming. Two to one margin—it’s huge, it comes it comes clearly out in favor of this. So you see now the accountability question being called. The people of New Jersey want this, they’re tapping their fingers—metaphorically—waiting for something to happen, and meanwhile nothing’s happening and you’re out there explaining, “Honestly, it’s not my fault. That’s not that’s not political rhetoric, I really can’t go and do this.” So there’s only one way to get there. To make another stop at the Third Circuit—

Christie: Just for fun! [laughing]

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Matey: Yeah, why not! They're not they're not doing much in Philadelphia, trust me! [laughing] So you go before the full court, the en banc court, and basically get the same results. It's an affirmance, and once again Judge Fuentes shares his concerns about the moved goal posts. Judge Vanaskie says, again, this is all unconstitutional, this is all violating the bedrock principle of compelling states. Now you have another vehicle for the position for cert, and this time a different answer comes from 1 First Street.

Christie: Yep, this next time they take it. I felt very convinced from the moment they took it that we were going to win. That there was no reason for them to come back, in this narrow area of the law, to affirm with the Circuit had done twice. It seemed to me that if they took it, they had concerns about it, and it was our job now to take it over the finish line and convince them that it was the right thing to do. We had an overwhelming majority ultimately that we won by. It was six to three, and seven to two and one of the other questions. We really clearly had a Court that was ready to move in this direction. It gave Ted a very clear way to attack the arguments of the NCAA, the NFL, the MLB, NBA, and the NCAA.

Matey: To the Governor's point—so the folks realize how rare this was—the last time that the Court had taken an anti-commandeering case straight up was in 1997, a case called *New York v. Prince*. So it was a strong signal from Washington that the Court was not likely to just affirm what the Circuit Court had done when they took it. But taking it was only half the battle, because now you've gotta actually go win it. So I'm wondering if you can take us into the war room, take us into the preparation, what it was like getting ready for this momentous case.

Christie: Well, for us, we'd gathered everything we needed to gather and gave it to our lawyers. This is really now on the lawyers to make this argument. I actually got the great opportunity to be invited down to Washington to watch Ted Olson's murder board on this case. He grabbed some friends of his who are professors at Georgetown Law School to play the judges on the panel. He only had four of them up there as opposed to nine, but let them go at him. I get to sit in that court room and watch Ted Olson keep getting beaten pillar to post by this bench. Very, very tough questions. Very, very persistent arguments coming from the bench and watching Olsen parry them off and try to turn them around. When they finally called time—he did it for two hours—he looked over at me and said, "Two weeks from now will be easy

compared to that.” And I think in the end he was right, but the opportunity to sit and watch Ted Olson do a murder board like that—just as a guy who had done a decent amount of appellate practice as a lawyer—was pretty amazing.

Matey: You weren’t yet a member of the bar of the Supreme Court of the United States, so what better opportunity to get your membership ticket punch then to head on down for the argument.

Christie: And who better to be my sponsor on my certificate but Ted Olson? The guy who is the modern champion of Supreme Court arguments. I think he’s had 65 arguments before the United States Supreme Court. By the way, his winning percentage is .700. So this is a guy who has won 46 of the 65 matters—as I remember it—that he’s argued before the Supreme Court. So that’s not bad.

Matey: Hall of fame! So the day comes and you head on down to Washington. Can you tell us what the atmosphere is like in this courtroom: where you sitting, and who’s there?

Christie: Well, first off it’s an amazing experience for me because I’m a litigant. The matter is called by the Court—by the Chief Justice—*Christie vs. The NCAA*. So the idea that you never think that you’d hear yourself called out as a litigant in the United States Supreme Court as a lawyer is pretty amazing. But then also, because I was a litigant, I was sitting in the front row right behind the lawyers, right next to the jury box that they have in the Supreme Court. Why they have a jury box in the Supreme Court was always a bit of a mystery to me, but they do have one where they seat the press in that courtroom—at least some of the press, the regular press—and I was sitting right next to there in the front row. Before they do any cases they swear in all the new members to the Supreme Court. You get your name called as a potential new member of the Court. The person who is sponsoring you stands up and says that you have the character and the integrity to be a member of the bar of the United States Supreme Court. They then grant you your license and then swear you all in, so that was pretty amazing. And then to listen to the arguments it was one of those moments which were pretty amazing because after listening to the arguments we felt even more confident we were going to win.

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Matey: What did you hear in the in the questions, and particularly what justices did you focus in on during the presentation that began to give you that confidence?

Christie: The two most active Justices that they were Justice Breyer and Justice Alito. Justice Alito actually wound up writing the opinion ultimately, but Justice Breyer was very active in our favor, which was obviously a good sign for us have one of the more liberal justices on our side. But he honed right in on the anti-commandeering and just battered poor Paul Clement. Then Sam Alito asked one of the best a questions. Because the League had to take the position that they would rather have no laws at *all* in New Jersey rather than the law we had passed—it would be better if they had no laws at all and it was the Wild West. So Sam Alito said to Paul Clement, “Is it really the position of the leagues and the government”—because the solicitor general’s office had joined in on the side of the leagues—“Is it really the position of the leagues and the government that they would rather have a situation in New Jersey where 12 year old could walk up to a window and bet his lunch money for the week on a football game, rather than allow the state of New Jersey to appropriately regulate this and prevent something like that?” And, in fact, it wasn’t Clement it was the solicitor general he asked that of, and the solicitor general stood there—and I’m telling you, Paul, felt like a two-minute pause, it was probably 5 seconds but it felt like forever—and he said, “Yes that’s the position of the government.” Sam Alito started laughing out loud and picked up his coffee cup, took a swig of his coffee, leans back, and kind of looked over at the Chief Justice like, “I’m done here. That’s it.” Between Breyer and Alito the two of them really—Roberts did a very nice job as well, he was pretty active. Those were the three that were the most active, but the very most active were Sam Alito and Steven Breyer.

Matey: Yet another litigation tip: you have to be ready for the line drawing question. I’m sure Jeff Wall—who’s an enormously talented litigator and veteran Supreme Court advocate in his own right—had thought about it, and maybe had hoped that question wasn’t going to come up. But it’s one of the things that we’re always we’re always mindful of it and it’s one of those points where you have to really work with the client and say, “How far are you willing to take this? What position is it that you want me to get up there and say? Do you really want me to say that it’s OK?” Again, if that’s the position the United States Justice Department may well have said, “OK we’re going to go up

there and make it” but it doesn’t make it easier when you have to actually say the words.

Christie: He had a hard time saying the words. Then you look at what’s happened in the aftermath—because I know we’re starting to run short on time—but we then had the freedom to pass the law we wanted to once PASPA was taken out completely and it was left then to the states to legislate over these issues. New Jersey has now become the number one sports gaming venue in the country—passing Nevada—and we did it in a way that really respects the free market. We’ve got lots of different competitors in here. I’m sure all of you can see, if you consume any type of media, the advertising that goes on inside New Jersey whether it’s by DraftKings, or FanDuel, or Points Bet, or MGM or William Hill—all these different places are advertising. I work on a Sunday morning show most Sundays for ABC in New York City, and during the football season the cameramen leave when I leave—after it’s over—follow me into New Jersey, park at a rest area on the Turnpike, take out their phones, make their bets on the football games, then turn back around and go back to New York. New Jersey is made it easy for people to do things in the sports gaming area, and as a result we’ve gotten great levels of participation. It’s been great revenue for the state, as well. But also it allows the people of the state who by more than two-thirds wanted this, they now have it. By the way, they’re voting with their dollars. They’re betting on games in New Jersey and we’ve really become a model for the rest of the country. The states that are out there now doing it right are the ones who are following the model that we followed, and it’s been a model of success.

Matey: It’s a big part of that success that you’ve touched upon have been the economic benefits that have come to New Jersey: an entirely new source revenue, and an entirely new way to open New Jersey for business. How have you seen that change in the way that New Jersey thinks about ability to be open for business, and what it might mean to citizens?

Christie: Unfortunately, not enough in my view. It hasn’t changed the state’s view on being open for business nearly as much as it should. I think our taxes are still too high, our state government is still too large and too intrusive, and I don’t think it’s necessarily an attractive place for new businesses to want to open, or for existing businesses to want to expand. But that’s a whole other political argument for another day. In terms of what it’s done for Atlantic City, its done great things for Atlantic

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City. We'll see what happens this year—because we didn't have March Madness last year—but it's hard to get a hotel reservation on those first two weekends of March Madness in Atlantic City because people go down there, spend a long weekend, go to the sports books—which have been built out in almost every one of the casinos—they watch the games with their friends, there's other gaming available to them as well. For certain times of the year—Super Bowl is exactly the same way, the World Series very much the same way—you have people down in Atlantic City because sports gambling has brought them there.

But the real place where sports gambling exploded has been on mobile devices. These issues have been grabbed by younger folks who use their phones for everything, and they've done amazing business with a lot of the online places. So it's been extraordinary success for exactly why we wanted to do it, going all the way back to 2011, which was to revitalize Atlantic City, and to give people more entertainment options in the state. Now, I didn't expect it was going to take us seven years to get it done from the germ of the idea until 2018.

For those of you who are looking up the case don't look it up for *Christie v. the NCAA* because I was sued by the NCAA and the other leagues in my capacity as governor, not my individual capacity. When the case was ultimately decided—it was argued in December of '17 when I was still the governor, but it was decided in May of '18—Phil Murphy was the governor. So that the case is actually captioned at the US Supreme Court level *Murphy v. the NCAA*, all the earlier decisions are captions *Christie v. the NCAA*. I think they're a very interesting read, about a very interesting and rarely discussed part of the Constitution, but something that's key to states' rights.

I know we've run out of time, but I would love, Paul, if we have one or two questions in queue that you'd like to take from the people who are here, I'd be happy to try to address those quickly so that they can get on with the rest of their symposium.

Matey: You mentioned, Governor, a little bit about Atlantic City so let me touch on that: where do you see Atlantic City—as a city, and as a hub of entertainment and attraction—going, hopefully, in the next 10 or so years?

Christie: What I really hope is that the city governance becomes better, that they wind up treating their businesses with more respect, and if they do I think we're going to see a lot of continued growth in Atlantic City for non-gaming related businesses. I think we are pretty much maxed out for casinos in Atlantic City. I don't think you'll see the

development of any new ones, but we still have more in one place than any place in the country except for Las Vegas. We're still the number two gaming state in the country. We're the number one sports gaming state in the country. So, a lot of what we looked to achieve in 2011, it has been achieved now. What we need to do now is to make circumstances more predictable and hospitable in Atlantic City so that we don't lose ground.

Matey: How do you see the virtual platforms evolve? As you said it really has become about the partnerships with the digital providers, less about the physical presence. Where do you see that going?

Christie: We were one of the first states to authorize online gaming, so you can play blackjack online, you can play roulette online, you can play bunch of different table games online. We took a lot of heat for that from the brick-and-mortar casinos. But again, what we did in New Jersey was if you wanted to do that stuff you had to be affiliated with a current brick-and-mortar casino license-holder. So in both sports gaming and online gaming, the profits have been shared with the people who have built the big hotels and casinos in New Jersey, who employ a lot of people. You can do it both ways and that's the way we did it, and I'm very proud of the way we did it.

There's another issue too, Paul, which deems mentioning before we go, which is there's obviously an issue of problem gambling and addictive gambling. We in, our law, require that a certain percentage of the money be committed to helping those who become compulsive gamblers. That's a problem in our country—as lots of other addictions to drugs and alcohol are, as well—but we hope that through the programs that are set up through 1-800-gambler and others we can deal with that. I can tell you having had a personal experience with gambling addiction with my friend Craig Carton—who is now back on WFAM as a radio host after serving time in federal prison for acts that he committed caused by his compulsive gambling—I take it really seriously.

For anybody who's concerned about it—an unpaid for plug—every Saturday morning Craig has a show on WFAM where he talks about problem gambling and compulsive gambling. I've been a guest on the show a couple of times and he's had some really amazing stories on there. We need to keep our eye on that ball because no matter what you do in public life there are always collateral consequences. There is almost never a pure good where there will be no collateral consequences at all. The good overwhelms the bad in this instance, in my view, but we are keeping our eye on the ball with compulsive

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gambling, dedicating some of the money by law to support those institutions that are helping compulsive gamblers get through their compulsion, their addiction. It shouldn't certainly stop us from continuing to do what the overwhelming majority of people in New Jersey can do without any risk of compulsive gambling—that is make gambling on their games part of their entertainment.

Matey: I'm so glad that we're able to end on that point because of your leadership on the issues of addiction, recovery, and reentry, not only in the state of New Jersey, but nationally, as well. So thank you for making that important point. We are almost out of time, but we have time for one last question. I have one here from Paul from New Jersey and he writes, "Governor Christie, the 2021 World Series Champions will be—?"

Christie: The New York Mets! Yes, very bold but I love what we've done in the offseason, we've got a deep and talented team, we've got a great new owner, and we're hoping to match your Nats 2019 World Championship with the 2020 World Championship in Queens. Let me put it this way, Paul—this is why I know it's going to be this year. The last time the Mets won the World Championship was the year I was married. And this year will be my 35th wedding anniversary—just a week and a half from now—and I'm convinced that the Mets are going to give me the 35th anniversary gift that I deserve, which is a World Championship.

Matey: I mean there's no question that that's mostly what has been on Mr. Cullen's mind since the acquisition. He's been very vocal about this, so I'm glad you're paying attention, too.

Christie: That's why he's spending the money he's spending, Paul!

Matey: Governor we are so pleased to have had this time with you today. I want to thank you on behalf of Seton Hall University for making yourself available for this wonderful discussion.

Christie: Thank you, your Honor.