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## From Bet Slips to Bank Accounts: The Federal Legalization of Sports Betting

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## From Bet Slips to Bank Accounts: The Federal Legalization of Sports Betting

### Cover Page Footnote

Brandon Grant, J.D. Candidate, DePaul University College of Law, 2023; University of Illinois at Urbana-Champaign, 2020. Brandon is an avid sports who enjoyed the opportunity to write about his passion. Brandon would like to thank his family and friends for all of their support.

## **From Bet Slips to Bank Accounts: The Federal Legalization of Sports Betting**

### **I. Introduction**

Sports betting is nothing new to Americans. Betting on sports has been intertwined with the presence of sports since its inception. Before professional sports leagues like the MLB and NFL were formed in 1876, Americans had steadily bet on horses.<sup>1</sup> Lotteries were an established form of legal gambling as well. The issues arising from sports betting have distinct characteristics that are not present in other forms of gambling. Longstanding issues include fixing games or shaving points by players and referees involved in the game. In 1919, the Chicago Black Sox Scandal was the first major sports betting scandal for American professional sports.<sup>2</sup> Eight players on the Black Sox were bribed to throw the World Series due to the money they would receive from bookmakers on the wagers lost.<sup>3</sup> Fast forward to 2022, Atlanta Falcons Wide Receiver Calvin Ridley was suspended for making online wagers<sup>4</sup> on various NFL games, including his team, while missing time due to injury.<sup>5</sup> Betting has and will continue to influence the pinnacle of professional sports, leaving a slippery slope of what was to come. Many individuals oppose the federal government legalizing sports betting on a federal scale because it encourages many to engage in addictive behavior that can drain finances and ruin relationships. What commonly occurs with all other addictions is no stranger to sports betting, those who want to partake in what is not legalized will find ways to participate, as shown by underground, black-market sports betting operations for

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<sup>1</sup> *History of Sports Betting in the U.S.*, Legal Sports Betting, (last modified Aug. 19, 2022) <<https://www.legalsportsbetting.com/history-of-sports-betting-in-the-usa/>>.

<sup>2</sup> Evan Andrews, *What Was the 1919 'Black Sox' Baseball Scandal?*History (last modified Aug. 12, 2021) <<https://www.history.com/news/black-sox-baseball-scandal-1919-world-series-chicago>>.

<sup>3</sup> *Id.*

<sup>4</sup> D.C. Mun. Regs. tit. 30, § 2199 (“Online Sports Wagering” means a sports wagering operation in which wagers on sports events are made through computers or mobile application on mobile devices or other approved interactive devices accepted through a sports wagering system approved by the Office to operate online sports wagering.)

<sup>5</sup> Kevin Patra, Falcons WR Calvin Ridley suspended indefinitely through at least 2022 season for betting on NFL games, NFL, (last modified Mar 7, 2022) <<https://www.nfl.com/news/falcons-wr-calvin-ridley-suspended-indefinitely-through-2022-season-for-betting->>.

Americans who are not legally allowed to sports bet where they live.<sup>6</sup> Due to a lack of regulation and attention from the Federal Government, crime families began offering sports betting and various other gambling services.<sup>7</sup> Up to \$140 billion is laundered through sports betting each year.<sup>8</sup> Offshore markets are another loophole that allows sports betting operations to set up in remote countries outside of U.S. jurisdiction while offering services to U.S. citizens.<sup>9</sup> Wayne Nix, a former minor-league baseball player, headed an illegal sports betting ring operating with assistance from a call center in Costa Rica, operating a website under the name “Sand Island Sports.”<sup>10</sup> Over 20 years, Nix put together an operation that was yielding millions of dollars in wagers, with some of those wagers coming from unnamed professional athletes, both current and retired.<sup>11</sup> Nix’s operation was even run with the help of three Major League Baseball players.<sup>12</sup>

Throughout the 20<sup>th</sup> century, American Courts dealt with sports betting at the judicial level.<sup>13</sup> In 1961, the Wire Act (18 U.S.C.S. § 1084) was intended to combat those operating sports betting operations using wire communication, mostly across state lines.<sup>14</sup> This was enacted partially to alleviate issues arising with crime families offering sports betting and other gaming enterprise opportunities.<sup>15</sup> In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA).<sup>16</sup> This Supreme Court enacted a federal policy that banned all states from

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<sup>6</sup> Owen Poindexter, *U.N.: Illegal Sports Betting Reaches \$1.7T Annually*, Front Office Sports, (last modified Dec 13, 2021), <https://frontofficesports.com/u-n-illegal-sports-betting-reaches-1-7t-annually/>.

<sup>7</sup> *History of the Mafia’s Ties to Gambling and Sports Betting*, SBD, (last modified Nov. 24, 2021) <https://www.sportsbettingdime.com/guides/articles/history-of-mafias-ties-gambling/>.

<sup>8</sup> See Front Office Sports, *supra* note 6.

<sup>9</sup> Brad Allen, *Analysis: Why Offshore Sportsbooks Are Thriving Despite Regulated Competition*, Legal Sports Report (last modified Apr. 29, 2022) <https://www.legalsportsreport.com/56009/are-offshore-sportsbooks-stronger-than-ever/>.

<sup>10</sup> Adam Candee, *Feds Bust California Illegal Sports Betting Ring Involving MLB Players*, (last modified Apr. 1, 2022) <https://www.legalsportsreport.com/67197/feds-bust-illegal-sports-betting-ring-mlb-players/>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 28 U.S.C.S., Pt. VI, Ch. 178, §§ 3701-3704; 18 U.S.C.S. § 1084; *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

<sup>14</sup> 18 U.S.C.S. § 1084

<sup>15</sup> *Id.* at § 1084(d)

<sup>16</sup> 28 U.S.C.S., Pt. VI, Ch. 178, §§ 3701-3704

allowing sports betting if they were not operating already.<sup>17</sup> PASPA showed the government’s view of sports betting as a national problem, that undermined the legitimacy and integrity of professional sports.<sup>18</sup> The constitutionality of this act was called into question in *Murphy v. NCAA* in 2018.<sup>19</sup> The Supreme Court reviewed PASPA and found it to be unconstitutional, failing to comport with the Tenth Amendment.<sup>20</sup> The Court found that provisions of PASPA violated the Constitution’s anticommandeering rule by specifically stating what a state can or cannot do.<sup>21</sup> It was held that under the anti-commandeering rule, there was no difference in forcing a state to enact a law or prohibiting a state from passing such laws.<sup>22</sup> Post-*Murphy*, action by the Federal Government will be monumental to the integrity and success the legal sports betting industry will have.

## II. A Country Divided

Since the Supreme Court’s decision, thirty-five states have legalized sports betting, however, some states are refusing to join the ever-growing majority.<sup>23</sup> Even among the states that have begun the process of, or have already legalized sports betting, no two structures of legislation have been the same.<sup>24</sup> There has yet to be a “blueprint” on how to go about this process in a way to guarantee success. An issue that arose in the wake of Covid-19 was whether states were allowing their bettors

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<sup>17</sup> *Id.* § 3702

<sup>18</sup> See *infra* note 19 at 1470 (*Murphy v. NCAA*, 138 S. Ct. 1461 (2018)).

<sup>19</sup> *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

<sup>20</sup> *Id.* at 1476.

<sup>21</sup> *Id.* (“[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.”)

<sup>22</sup> *Id.* at 1485.

<sup>23</sup> See *Interactive Map: Sports Betting in the USA*, American Gaming Association, <https://www.americangaming.org/research/state-gaming-map/>. (As of May 25, 2022, only 12 states in the United States do not have active or successful legislation for legalizing sports betting).

<sup>24</sup> Ryan Rodenburg, *United States of sports betting: An updated map of where every state stands*, ESPN, (last modified Apr. 7, 2021) [https://www.espn.com/chalk/story/\\_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization](https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization).

to sign-up and place wagers online.<sup>25</sup> State legislators have been put to the test on how to formulate sports betting legislation that can benefit all involved parties in the legalization process, and no state has the same plan.<sup>26</sup>

All modern progress in sports betting legislation is traced back to New Jersey.<sup>27</sup> New Jersey questioned why federal legislation gave Nevada the exclusive privilege of conducting legal sports betting operations.<sup>28</sup> Since being allowed to operate legal sportsbook operations, all states have distinguished themselves in how they chose to introduce sports betting within their state lines.<sup>29</sup> Additionally, each sportsbook operator within each state has taken its own approach to how clients use their books.<sup>30</sup> An overarching issue that states are faced with when legalizing is who shall be in charge of regulating and overseeing the state's new market, which has come down to the state lottery or gaming and casino commissions.<sup>31</sup>

#### *A. State Lotteries Regulating the Market*

States that are opting for the regulation of gambling markets by state lotteries include Connecticut, Delaware, Montana, New Hampshire, Oregon, Rhode Island, Tennessee, Virginia,

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<sup>25</sup> See Ryan Butler, *Where is Sports Betting Legal? Projections for All 50 States*, Action Network, (last modified Sep. 10, 2022) <<https://www.actionnetwork.com/news/legal-sports-betting-united-states-projections>>. (A divide among ways bettors can place legal wagers, between online availability, in-person and online hybrid set-ups, and also in-person only enterprises).

<sup>26</sup> See Ulrik Boesen, *Large Spread in Tax Treatment of Sports Betting Operators*, Tax Foundation, (last modified Feb 9, 2022) <<https://taxfoundation.org/sports-betting-tax-treatment/>>. (State tax rates on operators range from 3.28% [Michigan] to 66.25% [Delaware]).

<sup>27</sup> See *Murphy v. NCAA*, *supra* note 19 (Litigation ensued in 2016 from New Jersey Governor Chris Christie suing the NCAA).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 25.

<sup>30</sup> Adam Eckert, *EXCLUSIVE: Penn National Is Increasing Sports Betting Market Share With Different Approach, CEO Says*, Benzinga, (last modified Sep. 17, 2021) <<https://www.benzinga.com/news/21/09/22988743/exclusive-penn-national-is-increasing-sports-betting-market-share-with-different-approach-ceo-says>>. (PENN National has separated themselves from other major operators, such as, DraftKings, FanDuel, MGM, etc., in purchasing media companies (Score Media and Barstool Sports) to bolster their potential clientele, as opposed to spending that money on advertising and promotions.).

<sup>31</sup> Jill R. Dorson, *Look at Sports Betting Lottery States: Do Monopolies Leave Money on Table?*, SportsHandle, (last modified Sep. 24, 2020) <https://sportshandle.com/lottery-states-revenue-outlook/>>.

Washington D.C, and West Virginia.<sup>32</sup> Of these states, only Washington D.C., Oregon, and Montana have barred commercial operators from entering their states for either regulation or competition purposes.<sup>33</sup> This decision primarily comes down to the financial gain of the parties involved.<sup>34</sup> In maintaining exclusive control, these states have resorted to creating their own software enabling prospective bettors to utilize online wagering, and therefore keep profits in-state as opposed to sharing with a major gambling platform.<sup>35</sup>

In Washington D.C.'s case, they sought to maintain control in hopes of the best legislation has resulted in many bettors resorting back to illegal offshore sportsbooks due to the state's underwhelming exclusive sports betting application, named GambetDC.<sup>3637</sup> Washington D.C. emphasized their lack of willingness for commercial operators to open shop by allowing only stadiums, arenas, and businesses to open without the intention of solely operating a sports wagering enterprise.<sup>38</sup> Washington D.C. has taxed anyone who gets these operating licenses at a 10% rate, though estimated they bring in about 50% of revenue share from their exclusive mobile app.<sup>39</sup>

Meanwhile, Tennessee's state Education Lottery (TEL) requires the legal operations in their state to keep a hold percentage (wagered amount of money a sportsbook does not have to pay back

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<sup>32</sup> Brett Smiley, *U.S. Sports Betting — Where You Can Make Legal Sports Bets And Full State-By-State Information*, SportsHandle, (last modified Sep. 2, 2022) <https://sportshandle.com/sports-betting/>.

<sup>33</sup> *Id.*

<sup>34</sup> See Nick Evans, *Cranley calls for lottery commission oversight of sports betting*, Ohio Capital Journal, <https://ohiocapitaljournal.com/2021/12/03/cranley-calls-for-lottery-commission-oversight-of-sports-betting/>. (Ohio's proposed sports betting bill would take away more funding for public education than if it were commissioned by the state lottery.).

<sup>35</sup> *Id.*

<sup>36</sup> See Julie Zauzmer Weil, *D.C.'s sports betting app keeps underperforming with lots of finger-pointing about what's to blame*, The Washington Post. (last modified Aug 30, 2021) <<https://www.washingtonpost.com/dc-md-va/2021/08/30/dc-sports-betting-revenue-disappointment/>>.

<sup>37</sup> See Jill R. Dorson, *Look At Sports Betting Lottery States: Do Monopolies Leave Money On Table?*, Sports Handle, <https://sportshandle.com/lottery-states-revenue-outlook/>

<sup>38</sup> D.C. Law 22-312. "Sports Wagering Lottery Amendment Act of 2018."

<sup>39</sup> *US Sports Betting Revenue and Handle*, Legal Sports Report, (last modified Sep. 8, 2022) <<https://www.legalsportsreport.com/sports-betting/revenue/>>.

to their clientele) of at least 10% of their handle, higher than the general percentages required by other states.<sup>40</sup> The hold percentage is the amount of money wagered that the sportsbook does not have to pay back to its clientele. This requirement was instituted by the TEL to guarantee tax dollars and to keep tighter control on the operators in their state.<sup>41</sup> Rather than allowing commercial operators to come in and operate at a loss, simply to overtake the market share of clientele. Tennessee is proportioning their tax money among education, local government needs, and gambling problem treatment programs<sup>42</sup>, in which they brought in an estimated \$3.4 million in taxes in their worst performing month since February of 2021.<sup>43</sup>

New Hampshire was launched in an exclusive partnership with DraftKings, which would have a monopoly for online and retail sports betting within the state.<sup>44</sup> In return getting 50% of DraftKings' GGR paid back to the state.<sup>45</sup> Though overseen and regulated by the lottery, they essentially allow DraftKings access to the entire market to themselves in return for half of their revenue. This move comes along with New Hampshire's plan to install their own state-run sportsbook very similar to Washington D.C. in partnering with Intralot.<sup>46</sup> Currently, New Hampshire does not allow for wagering on in-state collegiate events.<sup>47</sup>

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<sup>40</sup> See Alec Cunningham, *10% Hold Rate Reduction Biggest Wish From Sportsbook Operators In Tennessee*, PlayTenn.com, <https://www.playtenn.com/new-sports-betting-rules-ten-percent-hold-concerns/>. (The average hold percentage across all legal states is 7.03%).

<sup>41</sup> *Id.*

<sup>42</sup> See AP News, *Tennessee sports betting tax revenue hits \$5.4m in 2 months*, Associated Press, <https://apnews.com/article/tennessee-sports-betting-local-governments-a6c3c5fdbf456abfec921043304de876>. (80% of revenue from tax goes to education funds, 15% goes to local government needs, and the remaining 5% goes to gambling treatment programs.)

<sup>43</sup> Legal Sports Report, *supra* note 39.

<sup>44</sup> Jill R. Dorson, *DraftKings Goes Live in New Hampshire*, SportsHandle, (last modified Dec 30, 2019) <<https://sportshandle.com/new-hampshire-launch-draftkings/>>. (The legal age in New Hampshire for sports wagering is only 18, compared to the standard age of 21).

<sup>45</sup> *Id.*

<sup>46</sup> Steve Bittenbender, *New Hampshire Set to Approve DraftKings, Intralot Sports Betting Contracts at Monday Meeting*, Casino.org, (last modified Nov. 21, 2019) <<https://www.casino.org/news/n-h-council-set-to-approve-draftkings-intralot-sports-betting-contracts/>>.

<sup>47</sup> 2019 Bill Text NH H.B. 480.

In Connecticut and Rhode Island, the industry is also regulated by their state lottery, but they have also brought in commercial operators as their partners to guide them through the process.<sup>4849</sup> Both initially maintained control over where their residents are placing wagers by acting as sportsbook operators, doing so with the help of an established actor in the industry, but Rhode Island has since expanded its laws allowing various legal online operators.<sup>5051</sup>

However, Connecticut does not have exclusivity over its state's market share, allowing for two of its long-standing tribal casinos to have sports gaming licenses as well.<sup>52</sup> The tribal casinos have partnerships with DraftKings and FanDuel, two of the biggest commercial operators.<sup>5354</sup> As part of their licenses, tribal casinos do not have to pay taxes are not to be paid for wagers placed on tribal land, though wagers placed outside tribal lands and online wagers are taxed.<sup>55</sup> The state will collect 13.75% of gross gaming revenue for sports betting from operators FanDuel and DraftKings at these casinos.<sup>56</sup>

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<sup>48</sup> See Robert Fletcher, *RSI soft launches online sportsbook with Connecticut Lottery Corporation*, iGaming Business, <https://igamingbusiness.com/rsi-soft-launches-online-sportsbook-with-connecticut-lottery-corporation/>. (Connecticut Lottery Corporation launched an app for their own PlaySugarHouse sportsbook with partner RSI, who operates in various states throughout the U.S.).

<sup>49</sup> *Multi-Year Deal Between Caesars Entertainment and ESPN to Feature William Hill's Sports Betting Apps and Sports Book Odds*, Caesars Entertainment, (last modified Sep. 14, 2020) <<https://investor.caesars.com/news-releases/news-release-details/multi-year-deal-between-caesars-entertainment-and-espn-feature>>.

<sup>50</sup> Chris Murphy, *IGT and FanDuel extend retail sports betting partnership to Connecticut*, (last modified Sep. 9, 2021) <https://sbcamericas.com/2021/09/09/igt-and-fanduel-extend-retail-sports-betting-partnership-to-connecticut/>.

<sup>51</sup> R.I. Gen. Laws Ann. § 41-1-1

<sup>52</sup> Governor Lamont, *Mohegan Tribe, and Mashantucket Pequot Tribe Reach Agreement on the Modernization of Gaming in Connecticut*, The Office of Governor Ned Lamont, (last modified Mar 18, 2021) <<https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/03-2021/Governor-Lamont-Mohegan-Tribe-and-Mashantucket-Pequot-Tribe-Reach-Agreement>>.

<sup>53</sup> *Mohegan Gaming & Entertainment and FanDuel Group Launch Mobile Sports Betting and Casino Platforms in Connecticut*, FanDuel, (last modified Oct. 19, 2021), <<https://newsroom.fanduel.com/2021/10/19/mohegan-gaming-entertainment-and-fanduel-group-launch-mobile-sports-betting-and-casino-platforms-in-connecticut/>>.

<sup>54</sup> *Mobile Sports Betting and Igaming to Follow Pending Regulatory Approvals*, DraftKings, (last modified Sept. 29, 2021) <<https://draftkings.gcs-web.com/news-releases/news-release-details/retail-sports-betting-begins-september-30-foxwoods-resort-casino>>.

<sup>55</sup> *Governor Lamont Announces State Collects \$1.7 Million From First Month of Sports Wagering and Online Casino Gaming*, The Office of Governor Ned Lamont, (last modified Dec. 1, 2021) <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/12-2021/Governor-Lamont-Announces-Collections-From-First-Month-of-Sports-Wagering-and-Online-Casino-Gaming>>.

<sup>56</sup> *Id.*

Similarly, Rhode Island partnered with Caesars Sportsbook to operate their own Rhode Island sportsbook.<sup>57</sup> The State has also given Twin River Casinos a license to operate brick-and-mortar sports betting locations.<sup>58</sup> Originally, it was required to sign up in person in Rhode Island at one of their two Twin River Casinos in partnership with Twin River but has since been amended to allow for remote registration via the mobile app.<sup>59</sup> Their legislation is distinguishable from many other states in their revenue-sharing arrangement.<sup>60</sup> The state lottery walks away with 51% of total sports wagering revenue, in comparison to operator Caesars/William Hill/IGT getting 32%, and Twin River getting the remaining 17%.<sup>61</sup>

Virginia launched in early 2021 with a very broad approach. Though the Virginia Lottery regulates the market, allowing for many commercial operators to enter the market with approval from the lottery.<sup>62</sup> Virginia used sports betting to garner interest from outsiders. Although Virginia currently is not the home for any professional sports team, the Virginia Lottery/Sports Betting Law automatically allows professional sports teams to open a sportsbook on their premises and training facilities if they relocate to Virginia.<sup>63</sup> To no surprise in their liberal approach, Virginia became the fastest state in the US to reach \$2 billion in total wagers on sports.<sup>64</sup> The state collects 15% of

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<sup>57</sup> Caesars Ent., *supra* note 47.

<sup>58</sup> *Bally's Twin River Lincoln Casino Resort Bally's Tiverton Casino & Hotel*, State of Rhode Island Department of Business Regulation, <https://dbr.ri.gov/gaming-and-athletics/ballys-twin-river-lincoln-casino-resort-ballys-tiverton-casino-hotel>>.

<sup>59</sup> FAQ, SportsBook Rhode Island, <<https://sportsbetrhodeisland.com/info/faq>>.

<sup>60</sup> Gaming Regulations and Statutory Requirements Rhode Island, [https://www.americangaming.org/wp-content/uploads/2019/07/AGAGamingRegulatoryFactSheet\\_RhodeIsland-2022.pdf](https://www.americangaming.org/wp-content/uploads/2019/07/AGAGamingRegulatoryFactSheet_RhodeIsland-2022.pdf)>.

<sup>61</sup> R.I. Gen. Laws Ann. § 42-61.2-5 (West)

<sup>62</sup> Va. Code Ann. § 58.1-4032 (Lexis Advance through 2022 Regular Session acts effective May 31, 2022)

<sup>63</sup> *Id.*

<sup>64</sup> Dann Stupp, *Virginia Becomes Fastest State To Reach \$2B In Sports Betting Handle*, Play Virginia, (last modified Dec 1. 2021) <<https://www.playvirginia.com/october-2021-virginia-sports-betting/>>.

all adjusted gross revenue (AGR) from any permit holder in the state<sup>65</sup>, and also collects taxes on individual bettor's winnings for anything greater than \$600.<sup>66</sup>

Delaware, Montana, and Oregon were in unique situations when PASPA was initially repealed, as they had been allowed to operate specific sports betting enterprises in their state through a PASPA loophole that grandfathered them into keeping enterprises established before PASPA being signed into law.<sup>67</sup> Delaware currently maintains control over the state's market in partnership with Scientific Games<sup>68</sup> and William Hill<sup>69</sup>, similar to the structures of Connecticut and Rhode Island. Delaware continues to offer parlay wagering on NFL games throughout their state at retail and convenience store locations as a result of the loophole in PASPA, though they prohibit legal bets on in-state university collegiate events.<sup>70</sup> Delaware also taxes at an astounding 50% rate on revenue going to their State General Fund.<sup>71</sup>

Oregon initially instituted its sports betting legislation with the exclusive control set aside for their state lottery-sponsored app "ScoreBoard" made in partnership with SBTech in late 2019.<sup>72</sup> Whether this was the sole reason ScoreBoard was operating at a loss is not completely clear, Oregon's governor Kate Brown supports new legislation that would reform Oregon's market to a much more comparable one to Virginia.<sup>73</sup> It would be liberalized with the opportunity for nearly

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<sup>65</sup> How Virginia Sports Betting Revenues are Taxed Virginia Lottery,

<<https://www.valottery.com/aboutus/casinosandsportsbetting/sportsbettingrevenue>>.

<sup>66</sup> Philip Townsend, Betting on sports in Virginia comes with tax obligations you may not know about, 13NewsNow, (last modified Jul. 6, 2021) <<https://www.13newsnow.com/article/news/local/virginia/sports-betting-virginia-state-federal-taxes/291-00478172-51c2-430e-8a06-51fab8c8c756>>. (Virginia requires any winnings of \$600 or more to be filed in your tax returns, along with paying from 2% -5.75% on winnings less than \$600.).

<sup>67</sup> 28 U.S.C.S., Pt. VI, Ch. 178, § 3704

<sup>68</sup> *Id.* at 66.

<sup>69</sup> *CBS Sports & William Hill Announce Official Partnership*, Action2News, (last modified Apr. 6, 2022) <<https://delawarebusinessnow.com/2018/08/william-hill-announces-sports-betting-deal/>>.

<sup>70</sup> Del. Code Ann. tit. 29, § 4803 (Lexis Advance through 83 Del. Laws, c. 301)

<sup>71</sup> *State of play*, American Gaming Association, <https://www.americangaming.org/state/delaware/>>.

<sup>72</sup> OR Const. Art. XV § 4(4)(a)

<sup>73</sup> Adam Candee, *Oregon Governor Ready to Ditch Lottery Sports Betting Model*, Legal Sports Report (last modified Jan 12, 2021) <https://www.legalsportsreport.com/47098/oregon-governor-sports-betting-bill/>>.

any commercial operator to join.<sup>74</sup> Following DraftKing's buyout of SBTech, the Oregon Lottery switched operators and is now partnered with DraftKings.<sup>75</sup> As it stands, Oregon operates with the lowest tax rate of any state in the United States at 2.3% of gross gaming revenue (GGR).<sup>76</sup>

In Montana, the state very nearly passed a progressive form of legislation dating back to 2019, but their Governor abandoned it in hopes to maintain stability with a slower rollout.<sup>77</sup> Since its launch in April of 2020, like Oregon, Montana State Lottery has offered sports betting exclusively through its own brand “SportsBet Montana” via kiosks placed in taverns and other approved establishments.<sup>78</sup> Montana was hoping to use sports betting as a boost to their other industries, rather than capitalizing off of this industry for those *same* benefits.<sup>79</sup> However, the Governor who was heavily backed by the Montana Tavern Association favored the idea of money flowing directly to those establishments and using sports betting as a tool to get patrons in those doors.<sup>80</sup> Montana collects quarterly taxes of 8.5% on the sportsbook’s AGR.<sup>81</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> *Oregon Lottery and DraftKings Join Forces to Launch Online Sports Betting*, DraftKings, (last modified Jan 12, 2022) <https://www.draftkings.com/about/news/2022/01/oregon-lottery-and-draftkings-join-forces-to-launch-online-sports-betting/?wpsrc=Organic%20Search&wpaffn=Google&wpkw=https%3A%2F%2Fwww.draftkings.com%2Fabout%2Fnews%2F2022%2F01%2Foregon-lottery-and-draftkings-join-forces-to-launch-online-sports-betting%2F&wpcn=about&wpscn=news%2F2022%2F01%2Foregon-lottery-and-draftkings-join-forces-to-launch-online-sports-betting%2F>.

<sup>76</sup> Nicole Abele, *Oregon Sports Betting Revenue*, Sports Betting Dime (Updated Jul. 25, 2022) <https://www.sportsbettingdime.com/oregon/sports-betting-revenue/#:~:text=Unfortunately%2C%20Oregon%20does%20not%20currently,not%20include%20tribal%20sports%20betting.>

<sup>77</sup> Mont. Code Ann. § 23-5-502 (West) (Montana’s governor vetoed HB 330, that would have allowed casinos and bars to operate their own sportsbooks, in favor of HB 725)

<sup>78</sup> See Matt Volz, *Montana governor signs sports betting bill*, Great Falls Tribune, <https://www.greatfallstribune.com/story/news/2019/05/03/montana-governor-signs-sports-betting-bill/1094331001/> (quoting Montana Tavern Association Executive Director, John Iverson, “Extra cheeseburgers; extra slices of pizza, a few more people filling seats...[t]he actual revenue from the gaming isn’t going to be significant.”).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> SB 0330, State of Montana <<https://leg.mt.gov/bills/2019/billpdf/SB0330.pdf>>., 12

## *B. Gaming/Casino Commissions Regulating the Market*

Aside from the states discussed above, all remaining states that have passed legislation and legalized sports betting are regulated by a separate commission from the state's lottery. This majority approach separates the state lottery from sports gambling and allows for commercial operations to establish themselves in the state, but it does not separate the state completely if the state hands the responsibilities over to a state-sponsored gaming commission.<sup>82</sup> This also allows for states to promote fair and competitive competition among commercial operators.<sup>83</sup> States operating under this structure include Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Jersey, New Mexico, New York, Pennsylvania, North Carolina, South Dakota (in-person on Deadwood's grounds only) Washington, Wisconsin (in-person only at one casino), and Wyoming.<sup>84</sup>

Many of these states operate similarly as it relates to tax collection, amount of sportsbook permits allowed and features alike. However, states who have put a gaming commission in charge of regulating the market have not been the same across the board.

### *1. States Embracing Competition*

One of the main benefits of regulating the sports gambling industry via gaming commissions is competition, especially for consumers.<sup>85</sup> By forcing the operators to compete for customers, operators often turn to promotions to attract new bettors. These promotions are offered to both new and active users of their sportsbooks, but the real lure comes in the form of offering risk-free bets, deposit matches, and nearly guaranteed odds boosts to those who sign up with them

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<sup>82</sup> See <https://www.igb.illinois.gov/> (Illinois Gaming Board is appointed by the Governor and confirmed by the Senate)

<sup>83</sup> *Id.* (Board ensures integrity of gambling, with oversight from the Governor and Senate)

<sup>84</sup> Brett Smiley, *U.S. Sports Betting – Where You Can Make Legal Sports Bets and Full State-By-State Information*, SportsHandle, (last modified Sept. 2, 2022) <https://sportshandle.com/sports-betting>>.

<sup>85</sup> *Sports Betting Principles*, American Gaming Association, <https://www.americangaming.org/wp-content/uploads/2020/07/AGA-Sports-Betting-Principles-Final.pdf>>.

for the first time.<sup>86</sup> In fact, one bettor has taken advantage of these promotions in as many locations throughout the United States, eventually having made around \$37,000.<sup>87</sup> In signing up with these promotions, the bettor garnered up enough miles and points from traveling to each sportsbook to pay for a six-week, 13-country honeymoon.<sup>88</sup>

Nevada is the forefather of embracing competitive and legal gaming operations.<sup>89</sup> This is mostly in part to being the only state allowed to host such activity until the late 2010s.<sup>90</sup> Although they are finally being passed up by New Jersey in handle taken, Nevada has always been and will continue to be the sports betting capital with nearly 200 locations available to make a wager.<sup>91</sup> In May of 2022, Nevada set a state record for the amount of money wagered on sports betting in a single month with \$561.6 million.<sup>92</sup> Operators in Nevada continue to enjoy a 6.75% tax rate on all sports betting, which was the last consideration for increasing the gaming tax.<sup>93</sup> Since PASPA was repealed, Nevada has made over \$94 million in taxes on a potential of over \$24 billion wagered.<sup>94</sup>

New Jersey has officially become the home to the most money wagered since PASPA was repealed, finally ousting Nevada. The fight started with New Jersey repealing PASPA, and they are paving the way for the future of the industry. Their handle rose from \$6 billion in 2020 to \$10.9

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<sup>86</sup> [promo.il.betmgm.com/\\$1000-risk-free/offer](https://promo.il.betmgm.com/$1000-risk-free/offer) (In Illinois, BetMGM is offering a \$1000 risk-free wager in which they reimburse your first losing wager with up to \$1000 in free bets).

<sup>87</sup> Keither Romer, *The Cant't-Lose Betting Strategy That's Taking the Gamble Out of Sports Gambling*, Bloomberg US Edition, (last modified Mar. 30, 2022) <https://www.bloomberg.com/news/features/2022-03-30/sports-betting-app-promos-make-bettors-look-for-new-edge>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> A.J. Perez, *What It Means: Supreme Court Strikes Down PASPA Law That Limited Sports Betting*, USA Today, (last modified May 14, 2018) <https://www.usatoday.com/story/sports/2018/05/14/supreme-court-sports-betting-paspa-law-new-jersey/440710002/>.

<sup>91</sup> Nevada Sports Betting, Legal Sports Report, (last modified Sep. 6, 2022) <https://www.legalsportsreport.com/nevada/>. (There are nearly 200 different sportsbook locations in Nevada, according to the Nevada Gaming Control Board.)

<sup>92</sup> Dave Tuley, *Nevada Sportsbooks Set Another State Handle Record in May, but win down slightly 6/30*, Las Vegas Sun (last modified Jun. 30, 2022) <https://www.vsin.com/nevada-sportsbooks-set-another-state-handle-record-in-may-but-win-down-slightly-630/>. (\$27 million was won by sportsbooks).

<sup>93</sup> David McGrath Schwartz, *Nevada's Tax Income From Gaming Well Below Other Markets*, (last modified Oct. 7, 2011) <https://lasvegassun.com/news/2011/oct/07/nevadas-tax-income-gaming-well-below-other-markets/>.

<sup>94</sup> Legal Sports Report, *supra* note 39.

billion in 2021, and they now have entered the world of esports wagering.<sup>95</sup> New Jersey’s push for legalization has been affirmed by their showing of tax revenue of over \$200 million since operators were legally allowed to take bets in their state.<sup>96</sup>

In Arizona, the Arizona Department of Gaming regulates sports betting in the state.<sup>97</sup> Arizona is home to a plethora of commercial operations and has enacted legislation that allows for this industry to be treated like many other industries in a capitalistic society.<sup>98</sup> The Department of Gaming takes 8% for in-person wagers and 10% of revenue for online wagers.<sup>99</sup> This reflects the numbers that show the rise of online wagering in the United States and where technology can take this industry. Local lawmakers hope that the tax money collected, such as \$1.9 million in April of 2022, can help be an economic boom to *everyone* in the state, which is why it gets allocated to the State’s General Fund.<sup>100</sup>

Colorado launched gaming in May of 2020, allowing for all 33 casinos in the state to apply for a sports betting operation, resulting in 25 live sports betting online platforms and over \$7 billion wagered in the handle.<sup>101</sup> Sportsbooks are required to pay a 10% tax rate on all their winnings, in

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<sup>95</sup> Christopher Feery, *New Jersey Sports Betting*, Legal Sports Report, (last modified Sep. 8, 2022)

[<https://www.legalsportsreport.com/nj/>](https://www.legalsportsreport.com/nj/).

<sup>96</sup> Legal Sports Report, *supra* note 39.

<sup>97</sup> A.R.S. § 5-1301-5-1321

<sup>98</sup> *Id.*

<sup>99</sup> Nick Chappell, *Arizona Sports Betting – Where To Play Online Sportsbooks and Bonus Offers 2022*, SportsHandle (last modified Sep. 7, 2022)

[<https://sportshandle.com/arizona/#:~:text=The%20tax%20rate%20is%20set,annual%20renewal%20fee%20of%20%24150%2C000>](https://sportshandle.com/arizona/#:~:text=The%20tax%20rate%20is%20set,annual%20renewal%20fee%20of%20%24150%2C000>).

<sup>100</sup> Ryan Blank, *Although Youth Sports Receive Cut of Gamble Revenue in New York, Rules Are Different in Arizona*, Cronkite News Arizona PBS, (last modified Oct. 6, 2021)

[<https://cronkitenews.azpbs.org/2021/10/06/gambling-legalized-revenue-arizona/>](https://cronkitenews.azpbs.org/2021/10/06/gambling-legalized-revenue-arizona/). (“Our entire thought is that this should be an economic boom for everybody. . . [s]ince it goes to the General Fund, a future legislature could determine that “Hey, you know, we got to fund youth sports or whatever,” and use a portion of these proceeds to fund that.” said Sen. T.J. Shope, R-Coolidge.”).

<sup>101</sup> Bart Shirley, *Colorado Sports Betting*, Legal Sports Report, (last modified Sep. 8, 2022)

[<https://www.legalsportsreport.com/colorado/>](https://www.legalsportsreport.com/colorado/).

which amounted to over \$6.6 million in tax revenue to the state.<sup>102</sup> Colorado exemplifies a liberal approach to gaming legislation by allowing for more online casinos to operate, with more than 80% of wagers placed in their state coming from a smartphone or computer.<sup>103</sup>

In Illinois, the gaming industry is becoming more competitive, leading to greater results for the state and its consumers.<sup>104</sup> Illinois previously required in-person registration to wager online and also prohibited gambling on in-state college teams.<sup>105</sup> In early 2022, Illinois removed these prohibitions to allow online registration and in-person wagers on in-state college teams.<sup>106</sup><sup>107</sup> Since PASPA was repealed, Illinois is one of four states that has surpassed \$100 million in state taxes collected from sports betting.<sup>108</sup> With nearly all legal operators offering brick-and-mortar locations along with online platforms, Illinois is entertaining the influx of more competitors.<sup>109</sup> In embracing mobile wagering from the very beginning, Illinois has seen phenomenal results in tax revenue, bringing over \$130 million on over \$11 billion wagered through May of 2022.<sup>110</sup> Over 95% of the amount wagered in Illinois has been from online wagers.<sup>111</sup>

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<sup>102</sup> Corey H. Jones, *Colorado Got \$6.6M From Its First Year of Sports Betting. Where Does That Money Go Now?*, CPR News, (last modified Jun. 2, 2021) <<https://www.cpr.org/2021/06/02/colorado-first-year-sports-betting-money-plans/>>.

<sup>103</sup> *Id.*

<sup>104</sup> Robert Channick, *Illinois Ends In-Person Registration Requirement for Sports Betting Opening Floor Floodgates for Online Sportsbooks Ahead of March Madness*, Chicago Tribune, (last modified Mar. 5, 2022) <<https://www.chicagotribune.com/business/ct-biz-sports-betting-online-registration-illinois-20220305-jwp53ipj5be5thw6i3b7ahpefi-story.html>>.

<sup>105</sup> 230 ILCS 45/25-25(d)

<sup>106</sup> *Illinois Lifts In-Person Registration Requirement for Online Sports Betting Partially Reverses Ban on In-Person State Collegiate Betting*, JS Supra, (last modified Dec 22, 2021) <<https://www.jdsupra.com/legalnews/illinois-lifts-in-person-registration-9710184/#:~:text=Per%20the%20new%20law%2C%20beginning,state%2Dlicensed%20online%20sportsbook%20operator.&text=The%20law's%20collegiate%20sports%20betting%20provisions%20are%20effective%20immediate>>. (The new bill only allows for final score or outcome wagers and must be placed in person, prior to the start of event).

<sup>107</sup> 230 ILCS 45/25-25(d-5)

<sup>108</sup> Chris Altruda, *Legal US Sports Betting Revenue Handle and Tax Totals Since PASPA Repeal*, Sports Handle, (last modified) <<https://sportshandle.com/sports-betting-revenue/>>. (Illinois has only collected less than New Jersey, New York, and Pennsylvania)

<sup>109</sup> Illinois Gaming Board, State of Illinois, <https://www.igb.illinois.gov/SportsLists.aspx>.

<sup>110</sup> Legal Sports Report, *supra* note 39.

<sup>111</sup> Illinois Sports Betting Revenue, Play Illinois, <https://www.playillinois.com/revenue/>.

Indiana has had one of the more staunch turnarounds in legalizing sports betting and embracing the industry.<sup>112</sup><sup>113</sup> Results from a study commissioned by iDEA Growth suggested Indiana could make over \$500 million in tax revenue if they legalize the presence of online casinos.<sup>114</sup> These advances in the industry are reflections of where society is right now more than anything else. Having over ten locations to place a sports bet, Indiana taxes have brought in over \$46 million for the state on more than \$6 billion in wagers, keeping their tax rates competitive with other states.<sup>115</sup> This approach is ideal for consumers and operators and Indiana's results have been as expected.

Iowa maintains a 6.75% tax rate on net winnings from operators in their state, having one of the most favorable rates on operators in the country.<sup>116</sup> This favorable rate *still* has managed to generate over \$12 million in tax revenue for the state.<sup>117</sup> Iowa consumers have 18 legal options of placing in-person wagers, while also allowing those 18 locations to host three sports betting operators.<sup>118</sup> This rule further embraces mobile wagering than nearly any other state with the current possibility of 57 mobile options.<sup>119</sup> In Iowa's first five months of 2022 there was over \$1 billion wagered total, including a large increase in year-over-year growth with \$147.9 million wagered in May.<sup>120</sup>

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<sup>112</sup> Pat Evans, *Indiana Sports Betting Finishes 2021 With Near-Record Month*, *Legal Sports Report*, (last codified Jan 19, 2022) <<https://www.legalsportsreport.com/62410/december-2021-revenue-indiana-sports-betting/>>. (Indiana had 116.4% increase in sports betting handle from 2020 to 2021)

<sup>113</sup> In Sports Betting Generated Over \$360 Million of Bets During April, Play Indiana, (last modified) <<https://www.playindiana.com/april-2022-sports-betting-handle/>>. (Indiana had 52% increase in handle from April 2021 and April 2022)

<sup>114</sup> iGaming in Indiana, iDevelopment and Economic Association, <[https://ideagrowth.org/wp-content/uploads/2022/01/iGaming-in-Indiana\\_Research\\_iDEA-GMA.pdf](https://ideagrowth.org/wp-content/uploads/2022/01/iGaming-in-Indiana_Research_iDEA-GMA.pdf)>.

<sup>115</sup> *Id.* at 113.

<sup>116</sup> Iowa Gambling New, Play IA, <https://www.playia.com/>.

<sup>117</sup> Iowa Sports Betting Revenue Reports, Play IA, <<https://www.playia.com/revenue/>>.

<sup>118</sup> IAC 491, Chap. 13.7(2)(c)

<sup>119</sup> *Id.*

<sup>120</sup> Russ Mitchell, *May 2022 Sports Betting Numbers Carry Iowa to \$1 Billion Mark*, Play IA, (last modified Jul. 22, 2022) <[playia.com/may-2022-sports-betting-numbers-carry-iowa-to-1-billion-mark/](https://playia.com/may-2022-sports-betting-numbers-carry-iowa-to-1-billion-mark/)>. (Amount wagered in Iowa was 29% higher in May 2022, opposed to May 2021).

Louisiana launched their sports betting in January 2022.<sup>121</sup> In the first 36 hours of launch, they saw 3.6% of eligible residents place a legal sports wager.<sup>122</sup> Louisiana's statute allows for schools to create partnerships with gambling companies, with Louisiana State University and Caesars Sportsbook entering into a deal where Caesars became the official sportsbook of LSU Athletics.<sup>123</sup> To become an operator in Louisiana, the application fee costs \$250,000 and an acceptance comes with a five-year \$500,000 license.<sup>124</sup> Louisiana taxes online and mobile wagering at 15%, while keeping in-person wagering at 10% on the operators.<sup>125</sup> These regulations favor both consumers and the state, while not infringing too much of an imposition upon operators.<sup>126</sup>

Michigan continues to be one of the largest states of sports betting. Michigan has 15 mobile sportsbooks available to consumers, and mobile wagers have accounted for about 95% of the state's handle.<sup>127</sup> Michigan has brought in over \$15 million since launching, December 20, 2019, in tax revenue.<sup>128</sup>

New York has acknowledged the consumer by favoring the state over operators in an extreme fashion.<sup>129</sup> After launching in-person sports betting in 2019, New York officially legalized

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<sup>121</sup> Louisiana Sportsbooks & Legal LA Sports Betting, Action, <https://www.actionnetwork.com/online-sports-betting/louisiana>.

<sup>122</sup> Bart Shirley, *Louisiana Sports Betting*, Legal Sports Report, (last modified Sep. 6, 2022) <<https://www.legalsportsreport.com/louisiana/>>.

<sup>123</sup> *Caesars Named Official Sportsbook of LSU Athletics*, Louisiana State University, (last modified Sep. 17, 2021) <https://lsusports.net/news/2021/09/17/caesars-named-official-sportsbook-of-lsu-athletics/>.

<sup>124</sup> La. Rev. Stat. § 27:1

<sup>125</sup> *Id.* at § 625

<sup>126</sup> Greg Larose, *Mobile App Sports Betting Starts Friday in Louisiana; Will It Be a Tax Revenue Win?*, Louisiana Illuminator, (last modified Jan 26, 2022) <<https://lailluminator.com/2022/01/26/mobile-app-sports-betting-starts-friday-in-louisiana-will-it-be-a-tax-revenue-win/#:~:text=In%2Dperson%20sports%20wagers%20became,at%2010%25%2C%20by%20comparison>>.

<sup>127</sup> Christopher Feery, *Michigan Sports Betting*, Legal Sports Report (last modified Sep. 6, 2022) <<https://www.legalsportsreport.com/michigan/>>.

<sup>128</sup> Michigan Sports Betting Revenue, Play Michigan, <<https://www.playmichigan.com/sports-betting/revenue/>>.

<sup>129</sup> Brad Allen, *Can NY Sports Betting Ops Solve Profit Problem They Helped Create?*, Legal Sports Report, (last modified Jun. 1, 2022) <https://www.legalsportsreport.com/70547/will-ny-sports-betting-ever-make-any-money/>

and launched their online wagering in early 2022 with a 51% tax on mobile wagering profit.<sup>130</sup> New York lawmakers have proposed legislation that would cut the tax on operators to 25% if six more operators obtain a license within the state's jurisdiction.<sup>131</sup> In their first 23 days of operation, mobile wagering generated \$57.6 million in tax revenue, a monumental record-setting launch for the industry.<sup>132</sup> Through the first five months of 2022, New York reported over \$7.5 billion in amount wagered.<sup>133</sup> New York's approach proved to be too costly for BetMGM and Bally's who have either stalled or cut back on their investment as an operator in New York.<sup>134</sup>

Pennsylvania is a very interesting state regarding their sports betting regulation. Having a high populous of bettors, the state used that to its advantage in placing a 34% tax rate on revenue for operators, on top of a \$10 million licensing fee the operators must obtain.<sup>135</sup> As of 2022, the state has 10 different mobile operations and sportsbooks at all retail casinos.<sup>136</sup> With numerous options, competition is high, as is tax revenue, with a nationwide record of more than \$252 million generated since sports betting launched in 2018.<sup>137</sup>

Wyoming has differentiated its sports gambling statute by legalizing mobile wagering as the sole form of sports betting in their state.<sup>138</sup> The goal of this system is to offer the most efficient

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<sup>130</sup> Legal Sports Report, *supra* note 101.

<sup>131</sup> Lou Monaco, *Bills Related to New York Sports Betting Cargo Changes in Senate Assembly*, Empire Stakes, (last modified Mar. 15, 2022) < <https://www.empirestakes.com/news/bills-related-to-new-york-sports-betting-undergo-changes-in-senate-assembly>>.

<sup>132</sup> Matthew Waters, *NY Sports Betting Handle Shatters US Monthly Record in 23 Days*, Legal Sports Report, (last modified Feb 4, 2022) <https://www.legalsportsreport.com/64005/ny-sports-betting-us-monthly-handle-record-23-days/>>.

<sup>133</sup> Legal Sports Report, *supra* note 39.

<sup>134</sup> Legal Sports Report, *supra* note 129.

<sup>135</sup> Title IV, Chapter 13c Sports Wagering, Pennsylvania General Assembly, <[https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=04&div=0&chpt=13C#:~:text=\(1\)%20It%20shall%20be%20unlawful,valid%20sports%20wagering%20certificate%20issued](https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=04&div=0&chpt=13C#:~:text=(1)%20It%20shall%20be%20unlawful,valid%20sports%20wagering%20certificate%20issued)>.

<sup>136</sup> Christopher Feery, *Pennsylvania Sports Betting*, Legal Sports Report, (last modified Sep. 8, 2022), <https://www.legalsportsreport.com/pa/>

<sup>137</sup> Legal Sports Report, *supra* note 39.

<sup>138</sup> W.S. § 9-24-101-106

and accessible form to the consumer.<sup>139</sup> Considering the population pool of prospective bettors in Wyoming, with a state population of less than 600,000, numbers are much lower than other states who allow for mobile wagering, but they still generate a hold of 9.9% in tax dollar generation, which is higher than Pennsylvania.<sup>140</sup>

## 2. *Anti-Competitive States*

Currently, Arkansas allows sports betting at the state's three casinos and two online operators.<sup>141</sup> For most of the first month's release, Arkansas's first mobile wagering application was not available on iPhones.<sup>142</sup> On receipts netting below \$150 million, Arkansas reels in taxes at a 13% rate on operators and raises that rate to 20% on receipts netting above \$150 million.<sup>143</sup>

Maryland offers multiple in-person locations for consumers to place wagers but has failed to approve mobile wagering.<sup>144</sup> While keeping a competitive 15% tax rate on operators, consumers are left with no option of legal sports betting unless they are at a brick-and-mortar sportsbook.<sup>145</sup>

Similarly, Mississippi, has not legalized mobile wagering.<sup>146</sup> A prospective bettor must register and wager at one of the brick-and-mortar casinos that has a sports betting enterprise.<sup>147</sup> Though legalized since 2018, Mississippi has not caught up to the times, but as neighboring states begin to embrace the industry, Mississippi will soon have to follow to stay competitive.

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<sup>139</sup> Leo Wolfson, *Mobile Sports Betting Now Legal in Wyoming*, Cody Enterprise, (last modified Sep. 3, 2021) [https://www.codyenterprise.com/news/local/article\\_b7d65990-0ce7-11ec-bef3-c32a42d7de1e.html](https://www.codyenterprise.com/news/local/article_b7d65990-0ce7-11ec-bef3-c32a42d7de1e.html)

<sup>140</sup> *Id.*

<sup>141</sup> Chet Fussman, *Arkansas Sports Betting Sep 2022*, Bookies, (last modified Aug. 22, 2022) <https://bookies.com/arkansas>.

<sup>142</sup> *Id.*

<sup>143</sup> Ted Dahlstrom, *Arkansas Sports Betting – Mobile Sportsbooks Info and FAQ*, Sports Handle, (last modified Aug. 22, 2022) <<https://sportshandle.com/arkansas-legalizes-sports-betting-via-ballot-referendum-first-casino-licenses-issued/>>.

<sup>144</sup> Pat Evans, *Online Maryland Sports Betting in 2022 Likely Dead*, Legal Sports Report, (last modified Jun. 15, 2022) <https://www.legalsportsreport.com/70223/may-2022-maryland-sports-betting-swarc/>.

<sup>145</sup> Md. HB940

<sup>146</sup> Adam Candee, *Goodbye Mobile Mississippi Sports Betting Bills We Hardly Knew Ye*, Legal Sports Report, (last modified Apr. 13, 2022) <https://www.legalsportsreport.com/28856/mobile-mississippi-sports-betting-bills-die/>.

<sup>147</sup> Rule 3.15 Sports Pool or Race Book Wagering by Electronic Means [https://www.msgamingcommission.com/images/uploads/MGC\\_sports\\_and\\_race\\_pool\\_regulations.pdf](https://www.msgamingcommission.com/images/uploads/MGC_sports_and_race_pool_regulations.pdf).

New Mexico allows for sports betting only legal on the premises of a tribal casino.<sup>148</sup> With this lack of regulation and advancement of the industry, issues have risen of offshore illegal mobile sports betting operations disguise themselves as what seem to be legal markets.<sup>149</sup> Consumers can find themselves dealing with illegal operations, lack of payouts, and lack of confidentiality.<sup>150</sup>

Much like New York before 2022, North Carolina only offers two retail sports betting locations, both located at Harrah's brick-and-mortar casinos.<sup>151</sup> As of June 1, 2022, an online wagering bill has been introduced, but delayed.<sup>152</sup> The proposed bill offers an 8% tax on operators.<sup>153</sup>

South Dakota has also launched in a very conservative form.<sup>154</sup> Legalized in 2021, sports betting is limited to four casinos in the town of Deadwood only.<sup>155</sup> States who have pursued these forms of legalization will soon find their residents going elsewhere to do activities that result in tax generation for *neighboring* states, rather than themselves.

Washington has approved sports betting, but only on the premises of tribal casinos.<sup>156</sup> While competitive among the tribal casinos with 24 different operators, there is no allowance of competition from popular market names.<sup>157</sup> Like South Dakota, mobile wagering is offered, but only on the premises which takes away from the mobile aspect.<sup>158</sup>

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<sup>148</sup> New Mexico Sports Betting 2022, Bookies, (last modified Jul. 12, 2022) <https://bookies.com/new-mexico>.

<sup>149</sup> Tyler Andrews, *Problems At Offshore Sportsbooks Underscore Need for MA Law*, Play MA, (last modified Jun. 1, 2022) <<https://www.playma.com/news/problems-at-offshore-sportsbooks-underscore-need-for-ma-law/>>. (Like MA, New Mexico residents use offshore markets and can face similar issues)

<sup>150</sup> *Id.*

<sup>151</sup> North Carolina Sports Betting: Online Betting Legislation Update, New Jersey True, <<https://www.nj.com/betting/online-sports-betting/north-carolina-sports-betting-sites-apps.html>>.

<sup>152</sup> NC SB 688

<sup>153</sup> Pat Evans, *Mobile North Carolina Sports Betting Bill Stuck in Legislative Traffic*, Legal Sports Report, Sep. 28, 2021, <<https://www.legalsportsreport.com/57453/house-progress-north-carolina-sports-betting/>>.

<sup>154</sup> Chapter 20:18:17, South Dakota Administrative Rules, <https://boardsandcommissions.sd.gov/bcuploads/Rules%2006-02-2021%20with%20revisions.pdf>>.

<sup>155</sup> *Id.*

<sup>156</sup> Wash. HB 2638 – 2019-20

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

### *C. States Without Legislation Legalizing Sports Betting*

Now the minority, there are still a handful of states in the U.S. who have not made progress or chosen to avoid legislation that would legalize sports betting within their borders. Many of the states who have chosen not to legalize sports betting view the industry to have more of a negative impact rather than a positive one. In many ways, these state governments have made the decision on behalf of their residents that betting on sports is *bad* and should be refrained from participation in the activity. Almost 9 out of every 10 Americans believe that gambling on sports is an acceptable form of entertainment, along with 73% supporting legalization in their own state.<sup>159</sup>

Of the estimated 45.2 million Americans to bet on NFL football this season<sup>160</sup>, it is highly unlikely that each one is coming from a state that has legalized the industry with over half of the betting population participating in the illegal market.<sup>161</sup> States without legalization are forcing their residents to indulge in illegal or offshore markets offering no value to the state at any capacity, with 82% of illegal market users reporting they were unaware it was an illegal market.<sup>162</sup>

### III. Federal Regulation in a Post-Covid-19 World

The Covid-19 pandemic has not only ravished through the U.S. population, but also through the finances of individuals, states, and the federal government. In response to the economy's tailspin Congress has raised the debt ceiling by \$2.5 trillion.<sup>163</sup> With unemployment rates in the United States has yet to settle back to pre-pandemic levels<sup>164</sup> with both businesses and

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<sup>159</sup> *American Attitudes on Casino Gaming 2021*, American Gaming Association, <[https://www.americangaming.org/wp-content/uploads/2021/09/AGA\\_AmericanAttitudes\\_RG\\_Factsheet\\_Final.pdf](https://www.americangaming.org/wp-content/uploads/2021/09/AGA_AmericanAttitudes_RG_Factsheet_Final.pdf)>.

<sup>160</sup> *Record 45.2 Million Americans to Wager on 2021 NFL Season*, American Gaming Association, <<https://www.americangaming.org/new/record-45-2-million-americans-to-wager-on-2021-nfl-season/>>.

<sup>161</sup> See Joe Drape, *As Sports Betting Grows, So Do Appetite-Whetting Sure Bets*, New York Times, <<https://www.nytimes.com/2021/02/02/sports/football/sports-betting-super-bowl.html>>.

<sup>162</sup> *Id.*

<sup>163</sup> Emily Cochrane, *Congress Approves \$2.5 Trillion Debt Limit Increase Sending It to Biden*, New York Times (last modified Dec. 14, 2021) <<https://www.nytimes.com/2021/12/14/us/politics/debt-limit.html>>.

<sup>164</sup> <<https://www.bls.gov/news.release/pdf/empst.pdf>>.

families are struggling as much as ever. Fostering in a booming new industry will directly and indirectly create jobs for Americans. The federal government continues to repeal its prior actions on criminalizing and regulating sports betting instead of flat-out pushing federal legalization through and not have to steer on the edge. Individual states have shown that tax money *will* be generated, and there are various approaches available to the federal government. Oversight is one of the largest components that will come along with legalizing sports betting on the federal level, however, it is vital that the effectiveness of the oversight's intended purpose is monitored. This section will focus on how federal regulation can help the United States respond to the rising national debt and declining economy by generating tax dollars, creating jobs, and the federal government providing oversight to deter illegal forms of sports betting.

#### *A. Response to National Debt*

In response to our nation's economy, the U.S. federal government needs to look for new ways to generate revenue, and the legalization of sports betting on a federal level would have an immediate positive impact. By 2028, the industry is projected to generate over \$10 billion in revenue<sup>165</sup> and 77% of Americans already see it as a growing industry.<sup>166</sup> The Covid-19 pandemic has had lasting effects causing hospital expenses per patient across the nation to increase by over 20% from 2019 to 2021, which resulted in states bidding against the federal government and spending over \$7 billion in Spring of 2020.<sup>167</sup><sup>168</sup> Prior to the pandemic, hospitals were spending

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<sup>165</sup> *US Sports Betting Revenues 2021-2028*, Insider Intelligence, (last modified Mar. 3, 2021) <<https://www.emarketer.com/chart/247230/us-sports-betting-revenues-2021-2028-billions>>.

<sup>166</sup> *American Attitudes on Casino Gaming 2021*, American Association, <[https://www.americangaming.org/wp-content/uploads/2021/09/AGA\\_AmericanAttitudes\\_RG\\_Factsheet\\_Final.pdf](https://www.americangaming.org/wp-content/uploads/2021/09/AGA_AmericanAttitudes_RG_Factsheet_Final.pdf)>.

<sup>167</sup> *Massive Growth in Expenses and Rising Inflation Fuel Continued Financial Challenges for America's Hospitals and Health Systems*, American Hospital Association, <<https://www.aha.org/costsofaring>>. (citing January 2022 Kaufman Hall National Hospital Flash Report)

<sup>168</sup> David A. Lieb, *Tight Supplies for Virus Gear Cost US States Billions*, AP News, (last modified Dec. 19, 2020) <[https://apnews.com/article/business-us-news-coronavirus-pandemic-massachusetts-cb8c50c43781d81957ef8a1e61869ca7?utm\\_campaign=SocialFlow&utm\\_medium=AP&utm\\_source=Twitter](https://apnews.com/article/business-us-news-coronavirus-pandemic-massachusetts-cb8c50c43781d81957ef8a1e61869ca7?utm_campaign=SocialFlow&utm_medium=AP&utm_source=Twitter)>.

about \$7 per patient on personal protective equipment (“PPE”).<sup>169</sup> After reaching peaks above \$20 in the midst of the pandemic, hospitals are still spending about \$12-13 per patient on PPE.<sup>170</sup> The United States experienced their highest inflation rate in May of 2022 since December of 1981.<sup>171</sup>

Before Covid-19, sports betting was a shell of what the industry has become. Accordingly, the United States needs a new form of tax generation without increasing tax rates currently in place. Current successes of states like New Jersey, Nevada, Illinois, New York, and Pennsylvania shows what can be generated. The federal tax rate does not need to be imposing on the industry to be worthwhile. For instance, Nevada has over 200 willing sports betting options and operators are taxed at 6.75%<sup>172</sup>, well below other states, such as, New York.<sup>173</sup> From when PASPA was repealed in 2018 to May of 2022, at a 6.75% rate the U.S. Government would have generated over \$652 million in tax dollars.<sup>174</sup> This form of tax collection also would not be imposed on any consumer’s wages or purchases, rather only on the operator’s winnings.

### *B. Job Creation*

Job creation would be another direct effect of the federal legalization of sports betting. 64% of Americans believe that the sports betting industry creates high-quality jobs.<sup>175</sup> From February 2020 to February 2021, low wage workers lost jobs at an astounding rate; 24.8 million workers were out of a job, dropping employment among low wage workers 11.7%.<sup>176</sup> As of November of

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<sup>169</sup> Hailey Mensik, *Hospitals Still Spending More on PPE – Labor as Result of COVID 19*, Healthcare Dive (last modified Oct. 13, 2021) <<https://www.healthcarediver.com/news/ppe-labor-costs-expenses-pandemic-hospitals-premier/608144/>>.

<sup>170</sup> *Id.*

<sup>171</sup> *United States Inflation Rate*, Trading Economics <<https://tradingeconomics.com/united-states/inflation-cpi>>. (Inflation rate was 8.6%).

<sup>172</sup> Las Vegas Sun, *supra* note 90.

<sup>173</sup> Legal Sports Report, *supra* note 39.

<sup>174</sup> Legal Sports Report, *supra* note 39.

<sup>175</sup> American Gaming Association, *supra* note 159.

<sup>176</sup> Elsie Gould, *Low-Wage Low-Hours Workers Were Hit Hardest in the COVID 19 Recession*, Economic Policy Institute, (last modified May 20, 2021) <<https://www.epi.org/publication/swa-2020-employment-report/>>.

2021, unemployment rates sat at 4.2%, though much worse for minorities with Black or African Americans out of employment at 6.7%, almost double White Americans.<sup>177</sup> Over 75% of Americans agree that the sports betting industry provides equal opportunities for its employees, the industry employs a diverse workforce, and caters to a diverse cliental.<sup>178</sup> Between operators, vendors, advertisers, and more branches of the labor side of sports betting the industry can be a source for Americans to either gain back a job or finally be able to get one. Third-party businesses will be greatly affected by a legalization of sports betting at the federal level resulting in even more jobs outside the direct industry.<sup>179</sup> Brick-and-mortar sportsbooks sell beverages, food, and require proper maintenance as any other entity would.<sup>180</sup> Online gambling entails the need for services such as, cybersecurity to protect user information and maintain the site during busy hours, paywalls in which various companies can offer services to deposit, cash out, and track activity, along with content.<sup>181</sup> In the new age of content, tons of positions open up as the stigma of sports betting being an illegal activity will be erased.

Sports betting companies have also proved to be phenomenal sponsors and advertising partners for various media personalities. In late 2021, FanDuel and The Pat McAfee Show struck a four-year partnership deal that would pay \$120 million.<sup>182</sup> These types of deals directly benefit

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<sup>177</sup> *Id.*

<sup>178</sup> American Gaming Association, *supra* note 159.

<sup>179</sup> Darren Heitner, *The NBA's Six Year \$250 Million Data Deal*, Forbes, (last modified Sep. 22, 2016) <<https://www.forbes.com/sites/darrenheitner/2016/09/22/the-nbas-six-year-250-million-data-deal/?sh=70a0ee54481d>>. (NBA struck 6-year deal to sell their data to Second Spectrum statistics firm for \$250 million)

<sup>180</sup> *Elys Game Technology and New York State Restaurant Association Announce Memorandum of Understanding Partnership*, Elys Game Technology, (last modified Sep. 28, 2021) <<https://ir.elysgame.com/news-events/press-releases/detail/34/elys-game-technology-and-new-york-state-restaurant>>. (New York Restaurant Association plead for opportunity to open brick and mortar sportsbooks)

<sup>181</sup> *Mazooma Plaid Team Up to Advance Payments for iGaming Sports Betting*, PYMNTS, (last modified Nov. 10, 2020) <<https://www.pymnts.com/news/payment-methods/2020/mazooma-plaid-team-up-to-advance-payments-for-igaming-sports-betting/>>. (Mazooma and Plaid partnered to provide payment services for online sports betting)

<sup>182</sup> Jimmy Traina, *Lessons Fallout From Pat McAfee's Monster Deal with FanDuel*, Sports Illustrated, (last modified Dec. 10, 2021) <https://www.si.com/extra-mustard/2021/12/10/pat-mcafee-fan-duel-120-million-deal>.

consumers of gambling content, as it allows an extremely popular personality like Pat McAfee to expand his brand and offer more content to the public. Professional sports leagues have embraced the industry after seeing the undeniable impact it brings to sports and the expansion of each sport's fan base it is responsible for.

### *C. Federal Government Action Will Be Needed*

Congress has already repealed PASPA and allows States to act on their own without federal interference on regulating sports betting, but more action is required by Congress to ensure safe gaming options as states continue to legalize. The Federal Government will be the quickest and most efficient way to combat issues expected to arise with legalization. The U.N. Office on Drugs and Crime estimates that global illegal sports bets total up to \$1.7 trillion each year and are often used by organized crime groups for money laundering.<sup>183</sup> A large component of these money laundering schemes is made possible by cryptocurrencies<sup>184</sup>, because of their opportunities to conduct illicit financing.<sup>185</sup> Since 2006, the federal government has ignored the presence of illegal online sports betting markets.<sup>186</sup> The federal government is the only actor that can truly affect issues that arise of this nature.

As discussed above, sports betting is expanding to nearly every state. The inherent nature of wagering on sports as they happen all around the country begs for uniform regulation. An

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<sup>183</sup> See Owen Poindexter, *U.N.: Illegal Sports Betting Reaches \$1.7T Annually*, Front Office Sports, <<https://frontofficesports.com/u-n-illegal-sports-betting-reaches-1-7t-annually/>>.

<sup>184</sup> Lizzie R. Hobbs, *Facebook's Libra: The Social Media Giant's Pursuit of Global Financial Inclusion*, 24 N.C. Banking Inst. 331, 337 (2020) (People are also finding commercial uses for [cryptocurrency, specifically Libra], such as sports betting.).

<sup>185</sup> Reid Schar, *Insight: FinCen Has Eye on Sports Betting – Crypto Money Laundering Risks*, Bloomberg Law, (last modified Sep. 17, 2019) <<https://news.bloomberglaw.com/us-law-week/insight-fincen-has-eye-on-sports-betting-crypto-money-laundering-risks>>.

<sup>186</sup> 31 U.S.C. §§ 5361-67 (Unlawful Internet Gambling Enforcement Act [UIGEA]) (Federal Government outlawed “gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law,” but offshore markets presently operate in the United States.).

individual residing outside some states can wager on another state's team, though a resident in that team's state might not be able to legally place wagers on them. Sports are at the forefront of pop culture on a macro scale, not just depending on what state you reside in. For sports betting to be treated as individual state responsibility is adhering to the Tenth Amendment but treating sports betting as a state-specific industry is a position that will fail our country in years to come.

#### IV. Who Bears Responsibility for the Negative Effects?

As great as the benefits are from legalizing sports betting, there is no denying the negative effects that come along with it. Gambling addiction is a well-documented disorder for sports bettors around the globe.<sup>187</sup> Like any addiction, once someone is hooked it is tough for them to stop or resist the urge to place more wagers.<sup>188</sup> This has also resulted in many bettors severely impact their economic standing, with a projected 2 million Americans to suffer from serious gambling issues in the next year.<sup>189</sup> These negative effects of legalizing sports betting should not deter the legalization itself, rather it should look to be improved upon to deter these effects from occurring.

##### *A. The Federal Government's Responsibility*

By turning a blind eye to the industry, the federal government is willfully allowing the negative impacts of sports betting to go unchecked, rather than actively trying to stop effects that the judicial system has recognized.<sup>190</sup><sup>191</sup> The duty of the federal government falls on being responsible for the

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<sup>187</sup> What is Gambling Disorder?, American Psychiatric Association, <<https://www.psychiatry.org/patients-families/gambling-disorder/what-is-gambling-disorder>>.

<sup>188</sup> *Id.*

<sup>189</sup> FAQ, National Council on Problem Gambling, <<https://www.ncpgambling.org/help-treatment/faq/>>.

<sup>190</sup> Garrett McDowell, *The Best Bet: Why Missouri Should Take A Chance on Sports Gambling After Murphy v. NCAA*, 44 S. Ill. U. L.J. 299, 317 (2020) (“B. Addressing Sports Gambling Concerns”).

<sup>191</sup> *Nat'l Collegiate Athletic Ass'n v. Christie*, No. CIV.A. 12-4947 MAS, 2012 WL 6698684, at \*6 (D.N.J. Dec. 21, 2012), *aff'd sub nom. Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013) (“The following undisputed material facts support the Court's conclusion that the [NCAA, NBA, NFL, NHL & MLB] have demonstrated [negative effects due to The Sports Wagering Law]”)

states as a collective, and the citizens of those states as a collective should have the federal government recognizing what they need. State governments can have commissions or subsets of their own dedicated to tackling issues more direct to citizens particularly based on location. States also will likely have a more direct impact on local residents as they have more knowledge on issues they are facing and are better prepared to deal with local residents. The federal government's responsibility weighs heavily on what can be done to prevent the issues and must be proactive in avoiding these potential issues *in the face* of legalization. For instance, Illinois has codified requirements that all online wagering platforms include a system that allows gamblers to set their own limits on the amount they can wager, deposit, and how many times they can deposit.<sup>192</sup> It would be beneficial and is necessary to create a government entity dedicated to regulating sports betting and gaming alike. Issues at the forefront of this discussion can be alleviated by some form of a commission as done in Europe or many of the states that have taken the legalization into its own hands.

### *B. An Individual's Responsibility*

For centuries the United States has allowed its citizens to legally wager their money and gamble it away. Every single state in the nation offers state-sponsored lotteries allowing citizens to pay low prices for a chance to get lucky and win large sum. The same issues that are brought up with citizens wagering too much on sports games are never brought up when citizens overspend on the lottery. Around before professional sports, horse racing was never prohibited or grouped with sports betting when issues arose.<sup>193</sup> Many horse tracks also allow families and underage kids

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<sup>192</sup> Ill. Admin Code tit. 11, § 1900.1250 (2019).

<sup>193</sup> 117 A.L.R. 828 (Originally published in 1938) (*quoting Maine State Raceways v. La Fleur*, 147 Me. 367, 87 A.2d 674 (1952), "No license is required for anyone who wishes to engage in horse racing unless pari mutuel betting is permitted, and therefore neither commission established to issue licenses for different types of horse racing has jurisdiction over all horse racing of the type dealt with by it.")

to be on the premises, as well. Though there are restrictions on who can wager on horses, betting on horses has become a societal norm.

Accordingly, the grave potential negative effects of gambling must not have been *bad enough* for the United States to continuing allowing Las Vegas to operate their enterprises all these years. Any citizen residing in Nevada or with the means to travel to Las Vegas has had that opportunity to gamble on casino games or wager on sports. Allowing it in other states would not become a new issue, rather it would need to be regulated and handled on a much larger scale. This in itself was shown to be unconstitutional interference on all the other states in the Supreme Court's ruling in *Murphy v. NCAA*.

#### V. A Look to Europe: What Can We Learn?

The European Union has provided the United States. with a test-run of the legalization process. In 2019, sports betting was 41% of the European Union's GGR and brought in over €10 billion.<sup>194</sup> Along with extreme success at the revenue level, the industry helped sustain over 40,000 jobs over that year throughout the EU.<sup>195</sup>

Like the EU, majority of Americans are in favor of sports betting legalization nationwide. Over 44 billion online bets were made across the EU in one year.<sup>196</sup> A major function of government is to provide for the greatest interest in their citizens. This comes with avoiding infringing on their own interests at the same time. Legalizing sports betting would cater to the interests of the majority while not causing much of an infringement upon the government's interest. Federal involvement brings about many more value for customers that improve the

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<sup>194</sup> European Online Gambling Key Figures 2020 Edition, European Gaming and Betting Association, <<https://www.egba.eu/uploads/2020/12/European-Online-Gambling-Key-Figures-2020-Edition.pdf>>.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

industry as well. In 2019, customers engaged in over 1.2 million direct interventions to promote safer gambling with 63% of their customers using a safer gambling tool.<sup>197</sup>

The U.S. can see the issues faced on the other side of the pond. Most glaring are scandals among professional sports. This is not new and would be in the minds of every person responsible while creating new laws. It would not be new to the U.S. either, who has dealt with multiple large-scale scandals even prior to offering legal sports betting (i.e., Black Sox scandal, Tim Donaghy's scandal as an NBA referee). Issues regarding advertising have also surfaced. Once again, these are issues that come with any new industry. There are big tech companies in the United States dealing with Congress and their legal woes on a reoccurring basis. Alleviating these issues starts at recognizing them and proactively combatting them. In the U.S., sportsbook operators spent over \$200 million on television advertising alone, and that number was expected to double by the end of 2020.<sup>198</sup>

What the EU has done with a great amount of success is establish the European Betting and Gaming Association (EBGA) & European Sports Security Association (ESSA). The EBGA and ESSA are the two most important things the U.S. can learn from and incorporate into their own federal legalization. The EBGA works directly with EU government authorities in drafting legislation and regulations that cater to all intended interests. The ESSA oversees all sports betting in Europe to ensure the integrity and legitimacy in professional sports continues. Creating committees and groups such as EBGA and ESSA would not be a new function of governing for the U. S. Many of its regulated industries are specifically monitored by groups such as these. The delegation of responsibility would also make for a better result on the consumer and government's end. It allows for a more genuine approach at extracting the greatest benefits from this industry.

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<sup>197</sup> *Id.*

<sup>198</sup> *See* Joe Drape, *supra* note 161.

## VI. What Federal Regulation Should Look Like

### *A. Federal Commission Dedicated to Sports Betting Regulation*

A federal commission dedicated to regulating this new industry would be the most effective way to correctly go about introducing legalized sports betting. We see from Europe, already various states in America, and other government entities that having a commission to oversee the regulation sets standards and does so efficiently. It is important that the legalization of a new industry looks at inevitable issues in the eye and attempts to tackle them before it is too late. One of the inevitable issues in sports betting is there are going to be people who end up being negatively impacted by it. This also comes with aspects of negative impact that do not relate to a person, rather issues that arise between operators, integrity of the sport, and how those could impact a bettor.

#### *1. Combat Underage Betting*

Audiences under the age of 18 are being targeted and introduced to sports betting. This is done in various ways, most commonly through the allure of winning big. Many sportsbooks' social media accounts will post bet slips that have cashed in extremely large winnings, potential parlays with low wagers and high payouts, and celebrity spokespersons telling the audience how great betting is. While the advertising of sports betting to audiences under the legal age is going to be a near impossible task to combat, the best course of action in stopping underage betting comes to the due diligence of vetting each prospective bettor. While this is something each sportsbook operation will be tasked with handling, it is something that is worth federal oversight. These little parts of the legal process are frivolous for agencies in the federal government to focus on, yet those same agencies deal with the daunting repercussions. Underage betting is the precursor to many

other issues an individual can face over time, especially an early exposure to an addictive and costly hobby. It furthers the necessity for a federal commission whose sole purpose is to enhance the industry and be dedicated to its improvement. These issues cannot be looked at as a frivolous part of the process, and it can truly be impacted in providing the best vetting practices for new bettors. According to the 1999 U.S. Gambling Commission, legalized betting on college and amateur sports “threatens the integrity of sports, it puts student athletes in a vulnerable position, it can serve as gateway behavior for adolescent gamblers, and it can devastate individuals and careers.”<sup>199</sup>

## 2. *Provide Support and Outreach*

Providing support can come in many forms. Most importantly, and true with most addictions, the stigma of gambling addiction must be normalized throughout society. Combating this awful addiction starts with realizing it is far more common than society makes it out to be. Though self-ban and hotline programs have been put into place by nearly every state that has legalized sports betting, they are not advertised or promoted anywhere.

The Commission must offer some incentive to these operators to combat addiction. Assuming the problem still would persist, the Commission would be able to prioritize preventing addiction as it would be their sole purpose of existence. The government must approach this logically. Though it would be a perfect scenario for companies such as DraftKings, FanDuel, and other large-scale commercial operators to prevent addictive use to their services, all of these companies are seeking the largest profits; leaving behind worries of addiction as it would inhibit their profits. In 2001, William S. Saum, former director of gambling for the NCAA, testified to the Judiciary

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<sup>199</sup> John Warren Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away Our Youth?*, 8 Vill. Sports & Ent. L.J. 221, 251 (2002) (quoting NGISC Final Report, *supra* note 1, at 3-10).

Committee of the Nevada State Assembly that sports betting addictions, in part, can be traced to exposure of illegal gambling to those under 18 years old.<sup>200</sup>

*3. Continuously Regulate and Improve Laws as the Industry Evolves*

Though sports betting will be a “brand-new” industry to the federal government, it will not be new to users and consumers. It is vital to maintain bettors using legal markets for laws and regulations to reflect what the majority of citizens are asking for. Keeping laws up to date in this industry will also constantly be changing due to the reflection of professional sports. Professional sports go through various rule changes on a year-to-year basis and a cohesive work relationship between the government and professional sports leagues will result in the best possible lawmaking.

A modernized wrinkle in the world of legalized sports betting has become gambling content in the form of shows, podcasts, and reporting. There will be a need for rules regulating the impact of media on the oddsmakers. For example, prior to Adam Schefter choosing to stay with ESPN there was plenty of rumored interest from the gambling companies to try bringing him in as a reporter representing their brand. The issue faced with someone like Schefter going to a gambling company is Schefter is one of the most “in the know” of individuals around the NFL. Rules would have to regulate the access oddsmakers have to that information and not allow the concealment of any information the public should know, before accepting bets on odds that would change had the news been public. Various professional leagues have begun instituting rules to combat these new issues in the face of legalization, such as the MLB and NBA requiring teams to submit their starting

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<sup>200</sup> 5 Andrews Gaming Indus. Litig. Rep. 14 (2001)

lineups well before the game starts to reduce the risk of confidential information helping or hurting bettors.<sup>201202</sup>

#### 4. Integrity

Integrity of the games is always something that comes with sports betting. There are various facets at which the game can be tainted, and a council dedicated to these issues will be proactive in combatting these integral issues of the game. Most famously the NBA has dealt with the integrity issues stemming from former NBA referee Tim Donaghy, who was fixing games as the referee based on wagers he had.

On the night Stephen Curry broke Ray Allen's record for the most 3-pointers made in NBA history, Draymond Green managed to wreak havoc for legal sports betting operators throughout the nation. Without notice, Draymond Green had come to an agreement with all parties involved in the game that immediately following the tip-off, he would exit the game due to an injury that would have kept him from playing altogether had it not been the night Curry would break the record.<sup>203</sup> Draymond said after the game he wanted to be in the starting lineup for the night Curry did break it. While there is nothing wrong with what Green and the Warriors did in the NBA's context, sportsbooks around the country had lost tons of money on bets for Green's stats to be under his set totals, either by fans who were skeptical of Green's status and/or individuals who might have been tipped off of what Green and the Warriors were planning.

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<sup>201</sup> Darren Rovell, *MLB Changes Lineup Submission Process to Prevent Bettors from Being 'Tipped' Info*, Action Network, (last modified Dec. 10, 2021) <<https://www.actionnetwork.com/mlb/baseball-lineup-submission-rule-sports-betting-las-vegas>>. (MLB required teams to submit their lineups to a partner SportsRadar who then publicizes the information).

<sup>202</sup> Matt Moore, *'It's About Gambling, All of It': How the NBA's Sports Betting Interests Propelled a Key Rule Change*, Action Network, (last modified Sep. 23, 2021) <<https://www.actionnetwork.com/nba/nba-rule-change-starting-lineups-sports-betting>>. (NBA requires lineups to be submitted at least 30 minutes before the game starts).

<sup>203</sup> Divij Kulkarni, *Draymond Green Played Only 7 Seconds After Getting Injured Because He Wanted to be There for Klay Thompson*, Yardbarker, (last modified Jan. 10, 2022) [https://www.yarbarker.com/nba/articles/draymond\\_green\\_played\\_only\\_7\\_seconds\\_after\\_getting\\_injured\\_because\\_he\\_wanted\\_to\\_be\\_there\\_for\\_klay\\_thompson/s1\\_16751\\_36944534](https://www.yarbarker.com/nba/articles/draymond_green_played_only_7_seconds_after_getting_injured_because_he_wanted_to_be_there_for_klay_thompson/s1_16751_36944534).

Along with the regulators trying maintaining integrity, professional athletes must be held accountable to maintain integrity as much as they can, as well. Former Atlanta Falcons Wide Receiver Calvin Ridley was caught placing wagers via the Hard Rock's mobile application in Florida. Ridley was not active in any of the games he wagered on, nor was there any evidence that he told anyone in the organization of his wagers, but the fact of the matter remains that there is an issue of professional athletes having a hand in the outcome of games they might be wagering on, or telling others information to place their own wagers. The NFL responded to their findings by administering Ridley a season-long suspension that will keep him out for the 2022 season.<sup>204</sup> The NFL had to hand out a large punishment, just as courts do on legal issues *outside* the scope of sports, to deter bad actors acting with bad intent. The issue dealt with is not that Calvin Ridley chose to bet on games, it is that a player currently on the roster for a professional sports team *cannot* be allowed to wager on the outcome of those or any games in their respective sport.

A federal commission can combat these issues by not leaving sportsbook operators in the dust of having to make decisions that ultimately impact their business, based on competitive practice. Rules can be put in place by a federal integrity council who makes rulings based off circumstances, and whether a bet is deemed legitimate and fair. A federal commission would be dedicated to the responsibilities of the Financial Crimes Network, a branch of the Department of Treasury, in applying the Bank Secrecy Act not only to avoid money laundering, rather, to determine the legitimacy of the wager and the identity of who placed it.<sup>205</sup> In all aspects of sports, the individual professional leagues, including the NCAA at the collegiate level, have dedicated committees to

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<sup>204</sup> Michael Rothstein, *NFL Suspends Atlanta Falcons WR Calvin Ridley for at Least 2022 Season for Betting on Games*, ESPN, (last modified Mar. 7, 2022) [https://www.espn.com/nfl/story/\\_/id/33446869/nfl-suspends-atlanta-falcons-wr-calvin-ridley-least-2022-season-betting-games](https://www.espn.com/nfl/story/_/id/33446869/nfl-suspends-atlanta-falcons-wr-calvin-ridley-least-2022-season-betting-games).

<sup>205</sup> Keith C. Miller, Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 UNLV GAMING L.J. 153, 157 (2018)

legislate the rules and regulations of their respective sports. For bettors, there needs to be a group of regulators dedicated to legislating this industry to the fairest extent, while keeping it legitimate for all parties.

## *B. Availability to Place Sports Wagers Anywhere You Are*

### *1. Geographically*

The Wire Act was initially created to vilify and criminalize the idea of sports betting being available across state lines.<sup>206</sup> Interstate legality of sports betting must be treated just like any other form of interstate commerce. It is a form of entertainment that follows professional sports leagues spaced out across the entire United States and Canada. These teams travel across state lines constantly. From team sports playing host to out-of-town teams, to UFC bouts being hosted in different states and countries. Treating sports betting as interstate commerce allows a federal playbook on how to allow for traveling fans to participate in legal wagering. In many instances, fans traveling from states where sports betting has been legalized are no longer able to make a sports bet on the team they traveled to see being within another state's borders.

Issues can arise in situations where bettors are attending the game while live-betting, called courtsiding. Though it is rare, times have allowed for bettors to see the game play out live, and still manage to wager on the outcome of individual plays or events *after* they have occurred in real-time, before the operator has graded the play.

### *2. Accessibility*

Online and mobile wagering has become the new normal in sports betting's landscape. Technology has shifted the paradigm on a multitude of industries, sports betting is no different. The days of having to go to the counter at a physical sportsbook are numbered as the internet and

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<sup>206</sup> Jeff C. Dodd and Raymond T. Nimmer, *Information Law* § 9:53 Internet Gambling (2021).

smartphones have created an entirely new experience. Many states still force potential bettors to sign up and register by physically going to the sportsbook, as opposed to many of the other states who have allowed new, willing bettors to sign up from the comfort of their home via online or a smartphone application. Especially during and after the Covid-19 pandemic, allowing mobile registration has proven to be the smartest course of action. The ramification of requiring in-person registration deprives many sportsbook operators in the state a fair chance at bringing in new clients. When Illinois launched their legalized sports betting plan, in-person registration was required<sup>207</sup>, but most of the legal operators in the State lie outside the Chicagoland reach. However, most of the population pool available to Illinois operators is the Chicagoland area. That gave an unfair advantage to sportsbooks that are able to locate closer to those areas. Allowing new bettors to sign-up online caters to both the consumer in a logical sense and allows for a much more equal playing field for legal operators to compete within state lines. Having federal regulations on allowing remote sign-ups prevents any quirky state laws that have empty purposes, or act as a favor from judicial officers.

## VII. Conclusion

Federally Legal sports betting is inevitable. Even the marvel of making a bracket in March Madness has taken a back seat for those who can legally wager on the games where they live, as 54% of bettors think legalized sports betting is more interesting than filling out a bracket, compared to 26% that disagree.<sup>208</sup> The United States has a chance to get ahead of a booming industry that is prevalent in all facets of American society. Sports have dominated the scope of pop culture for decades, and now more than ever. The arrival of legalized sports betting has only increased this

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<sup>208</sup> Brett Smiley, *Exclusive Survey: 65% Of NCAA Tournament Bettors Wagered More Than Ever This Year*, Sports Handle, (last modified Mar. 31, 2022) <https://sportshandle.com/march-madness-betting-survey-results/>.

engagement by the fans and spectators all around the world. With the chance to benefit on a financial level, getting ahead of the curve on the sports betting industry will be of great benefit to American citizens. The intake of sports has risen to unseen heights with the assistance of sports betting. The United States can pioneer this evolution to the landscape of how Americans enjoy sports and entertainment.