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Going All In: New Jersey and the Sports Betting Landscape

Timothy Furman*

I. INTRODUCTION

The Constitution gives Congress the right to pass laws. In passing such laws it is assumed that Congress acts for the benefit of society, or at least with a true purpose. However, not all legislation passed is beneficial, and if it is beneficial at its inception, it may well become less beneficial with time. One such act, the Professional and Amateur Sports Protection Act of 1992 ("PASPA"), has barred states from implementing betting systems, including sports betting. The layperson's immediate reaction to hearing what PASPA does may be shock given that gambling is so widespread. While it is true that many states have casinos, which allow individuals to place bets, there are very few places in America where legal sports betting is possible. Because of the popularity and enormous benefits of legalizing sports betting in every state that wishes to implement a system, there are several states attempting to alter or defy PASPA.

New Jersey is at the forefront of the battle to repeal or revise PASPA in an effort to legalize sports betting and to bring said betting to New Jersey, and more specifically, to Atlantic City. New Jersey's most recent legislation, Senate Bill 2460, is currently facing obstacles but is the closest bill to actually forcing PASPA to be changed in some respect. The push from New Jersey is a hot button issue that raises numerous questions and concerns regarding the landscape of PASPA and sports betting laws and norms in the future.

Two facts critical to the issue of sports betting that hover over every debate related to the changing of PASPA. First, even with PASPA's enactment, sports betting is still very common in the United States,

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* Juris Doctor, Certificate in Business Law, DePaul University College of Law, anticipated May 2016.
4. See infra notes 31-61 and accompanying text.
generating over $380 billion per year. Second, if sports betting were legalized, each state would be able to make sports betting a "taxable business transaction" and use these transactions to boost the state's economy. The positive aspects of revising, amending, or eliminating PASPA altogether are very clear, while the actual and alleged negative aspects are minimalized more and more by the day.

Part II of this note examines the legislative history of numerous aspects of sports betting including PASPA, the Wire Act, state legislative actions, and relevant cases initiated regarding PASPA. Part III of this note examines the changing public policy surrounding sports betting and the ways sports betting concerns have been eliminated, as well as the positive economic and criminal benefits associated with the legalization of sports betting. Part IV of this note examines PASPA in a constitutional sense and specifically examines PASPA under the scrutiny of the 10th Amendment and analyzes how the courts should proceed with the 10th Amendment arguments posed by plaintiffs. Part V of this note summarizes the reasons why PASPA should be amended, or eliminated, to allow for the enactment of sports betting schemes for the benefit of society.

II. Background

A. Legislative History and Purpose Surrounding PASPA

PASPA was passed in 1992. The PASPA statute makes it unlawful for states, or persons, to "sponsor, operate, advertise, promote, license, or authorize" sports betting. PASPA exempted the states that already had betting systems in place. This exemption means that if a state had an established sports betting system in place between 1976 and 1990, the state would be allowed to legally retain that system permanently. However, PASPA prevented states, including those that already had an established betting system in place, from expanding their system beyond PASPA's listed exceptions in section 3703 of the Act.
NEW JERSEY AND THE SPORTS BETTING LANDSCAPE

Under the exceptions in Section 3703 of PASPA, states were given one year to implement a betting scheme in order to escape Act’s ban on betting. Following the year’s end, states would never be able to implement a system of betting. This one year limit is of particular interest given that at the time PASPA was passed, 13 states were considering enacting some sort of betting scheme.

PASPA’s allowance of current systems to remain and its numerous exceptions are also of interest given that the purpose of PASPA was to protect the integrity of sports against betting, but each of the aforementioned aspects runs directly opposite to this idea.

Currently only Montana, Delaware, Oregon, and Nevada allow some form of sports betting. Of these four states, Nevada is the only one without any significant restrictions on its betting scheme.

PASPA’s opposition and blocking of all future sports betting schemes ultimately became the source for much legislation.

B. Additional Legislation Related to Sports Betting

Changes in both technology and society during, and following the passing of PAPSA, especially the greater access to the Internet, created the “need” for additional legislation to ensure PASPA remained relevant.

The “Wire Act” works hand-in-hand with PASPA to regulate gambling, and for relevant purposes, sports betting. The Wire act prevents persons from using wire communication to move money related to bets or wagers. The Wire Act does allow for the transmission of information concerning betting or wagering to countries where sports betting is legal. This act works with PASPA in the sense that it

17. Id.
18. Steven Shur, The Second Annual Sports and Entertainment Law Society Symposium: Police Blockade: How the Revitalization of the Tenth Amendment Could Pave the Way to Legalized Sports Betting in New Jersey, 10 RUTGERS J.L. & PUB. POL’Y 99, 100-01 (2013) (stating that at the time PASPA was passed, up to 13 states were considering implementing some form of sports betting or gambling to overcome budget concerns).
19. Id.
21. Shur, supra note 18, at 102.
23. See infra notes 31-64 and accompanying text.
25. Id.
makes it illegal for people to place bets electronically while in a state where gambling is illegal.\textsuperscript{26}  

In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act ("UIGEA") into law.\textsuperscript{27} UIGEA seeks to prohibit persons from accepting any form of payment related to internet gambling.\textsuperscript{28} More clearly stated, UIGEA makes it illegal for financial institutions to facilitate payment transactions between offshore gambling operations and American Customers.\textsuperscript{29} UIGEA targets financial transactions related to internet gambling and attempts to prevent them, but technically never prevents actual internet gambling. UIGEA passed Congress along with the PORT Act, an attached piece of legislation, by an overwhelming vote.\textsuperscript{30} This overwhelming vote passage shows that some form of regulation was sought. However, one can surely question Congress's motivation behind passing the Act. Did Congress pass the bill because regulation on sports betting is truly needed, or did Congress merely seek to uphold PASPA and aid it its enforcement?

C. Since the Original Passage of PASPA, States Have Taken Issue With the Law and Have in Many Ways Attempted to Circumvent PASPA

Since PASPA's passage in 1992, many pieces of legislation have been proposed, or refused, suggesting that PASPA needs revisions or abandonment. Furthermore, the landscape surrounding PASPA's passage has also changed quite dramatically. In 2010, Iowa attempted to pass Senate Bill 2129 which would challenge the federal ban on sports betting, however the effort ultimately failed.\textsuperscript{31} In 2009, Delaware attempted to implement betting on individual games, but after the courts granted injunctions, Delaware was left with only three team parlay\textsuperscript{32} bets on the NFL.\textsuperscript{33} In 2014, Delaware Governor Jack Markell again passed legislation that expanded Delaware's current, and very limited, sports betting scheme to include a broader variety of sports betting.

\begin{itemize}
  \item \textsuperscript{26} Id.
  \item \textsuperscript{27} 31 U.S.C. §§ 5361-5367 (2015).
  \item \textsuperscript{28} Id.
  \item \textsuperscript{29} Ryan M. Rodenberg & Anastasios Kaburakis, Legal and Corruption Issues in Sports Gambling, 23 J. LEGAL ASPECTS OF SPORT 8, 14 (2013).
  \item \textsuperscript{30} Id.
  \item \textsuperscript{31} Id. at 18.
  \item \textsuperscript{32} "Parlay" refers to a form of betting where the bettor would select multiple games to bet on and is only paid if he/she correctly bets the winner of every game in the parlay. Allen Moody, Sports Betting - How to Bet Parlays, http://sportsbetting.about.com/od/advancedtheory/a/parlays.htm.
  \item \textsuperscript{33} Office of the Comm'r of Baseball v. Markell, 579 F.3d 293 (3d. Cir. 2009).
\end{itemize}
betting. At the time this legislation was passed, Delaware’s betting system still only allowed three team parlay bets on NFL games. Governor Markell’s legislation was found to be acceptable under state law, as evidenced by the Delaware Supreme Court issuing an advisory opinion, however the legislation was ultimately blocked by the Delaware District Court in Office of the Commissioner of Baseball vs. Markell. The court’s decision in Markell ultimately turned on a particular phrase in the PASPA: “to the extent that scheme was conducted by that state,” which refers to the notion that only the precise type of betting allowed prior to PASPA’s enactment, and subject to the exceptions of section 3703, would be allowed. Thus the court in Markell limited Delaware’s betting to three-team parlays.

New Jersey is by far the most active in attempting to alter or overcome PASPA in order to implement a system of betting within its territory. Even at the time PASPA was presented and being debated, New Jersey took issue with the Act. One of New Jersey’s first attempts to alter or overcome PASPA’s block on implementing betting schemes came in 2011 when several online gambling entities banded together and sued U.S. Attorney General Eric Holder, seeking to get PASPA declared unconstitutional. In 2012, Governor Chris Christie signed the New Jersey Sports Wagering Law into law and officially defied PASPA. The New Jersey Sports Wagering Law of 2012 sought to permit wagering on numerous sports at casinos and racetracks.

Congressmen Pallone and LoBiondo of New Jersey recently introduced two bills to the House of Representatives to accompany and aide Governor Christie’s law defying PASPA. The first, H.R. 625, would open a four-year window into PASPA, which would give states the authority to allow sports betting. The same Congressmen who

35. Malagrinó, supra note 22, at 391.
36. Mierswa, supra note 7, at 452-53; See Markell, 579 F.3d at 304.
37. See Markell, 579 F.3d at 301.
38. Id.
39. 138 Cong. Rec. S7,300-01 (daily ed. June 2, 1992) (statement of Sen. Frank Lautenberg) (referencing that at the time PASPA was being written and on the floor a New Jersey Senator, Senator Lautenberg, opposed the Act’s passage and cited great worries on the impact said act would have on Atlantic City and New Jersey’s casino industry in the future).
42. Id.
44. Mierswa, supra note 7, at 455; H.R. 625, 113th Cong. (2013).
proposed and submitted H.R. 625 also proposed and submitted H.R. 626.\textsuperscript{45} H.R. 626 seeks to amend PASPA to specifically exclude New Jersey from the PASPA statute, to the extent approved by the state’s legislature.\textsuperscript{46} H.R. 625 and 626 remain in Committee and are currently awaiting action.\textsuperscript{47} Both H.R. 625 and 626 are valid on their face and each offers a unique and workable view of how to keep PASPA intact, while giving New Jersey some freedom as well. Because the actions required under either H.R. 625 or 626 would not violate any aspect of PASPA, but rather to alter the Act, PASPA cannot be said to be violated by either of the pieces of legislation.

The aforementioned pieces of legislation would require the legislature to either open PASPA’s window\textsuperscript{48} as it did in the original passing of PASPA,\textsuperscript{49} or to exclude New Jersey from PASPA.\textsuperscript{50} These actions would not require a court to overrule or strike down PASPA, but rather for require the legislature to vote on a matter, a much simpler solution that allows PASPA to remain intact.

Governor Christie’s Sports Wagering Law of 2012 met great opposition from the major sports bodies and a lawsuit resulted.\textsuperscript{51} In NCAA \textit{v. Christie} (the first of a line of cases regarding New Jersey’s attempts to legalize sports betting) the district court granted summary judgment to the plaintiff sports bodies and implemented a permanent injunction against such legalization.\textsuperscript{52} In ruling against Governor Christie’s plan, the court primarily reasoned that Governor Christie’s law violates the Federal law of PASPA.\textsuperscript{53} On appeal the Third Circuit affirmed the district court’s grant of summary judgment for the plaintiffs.\textsuperscript{54} When New Jersey attempted to petition the Supreme Court of the United States to hear the case, certiorari was denied.\textsuperscript{55}

Governor Christie’s loss in the first NCAA \textit{v. Christie} case did not stop New Jersey’s efforts to overcome the obstacle of PASPA in getting sports betting legalized in New Jersey. New Jersey’s Governor Chris Christie has recently signed new sports betting legislation into

\textsuperscript{45} H.R. 626, 113th Cong. (2013).
\textsuperscript{46} Id.
\textsuperscript{47} Id.
\textsuperscript{48} H.R. 625, 113th Cong. (2013).
\textsuperscript{50} H.R. 626, 113th Cong. (2013).
\textsuperscript{52} Id. at 577-79.
\textsuperscript{53} Id.
\textsuperscript{54} NCAA \textit{v. Governor of N.J.}, 730 F.3d 208 (3d Cir. 2013).
\textsuperscript{55} Christie \textit{v. NCAA}, 2014 U.S. Lexis 4345.
law in New Jersey known as Senate Bill 2460. Senate Bill 2460 was signed into law in October 2014, after passing the General Assembly by a vote of 73-4 and Senate by a vote of 27-1. New Jersey Senate Bill 2460 partially repeals "criminal and civil prohibitions against sports wagering similar to that which the attorney General of New Jersey earlier recognized as having been accomplished by the previously enacted Sports Wagering Act. This legislation prompted several of the major sports bodies to file for a temporary injunction against New Jersey's Bill. After a series of lawsuits regarding New Jersey's different pieces of litigation, the United States District Court of New Jersey addressed Senate Bill 2460.

In 2014, following the passing of Senate Bill 2460, the major sports bodies brought suit alleging a violation of PASPA. The court in this case, also titled NCAA v. Christie, determined that Senate Bill 2460 was invalid under the Supremacy Clause, and granted summary judgment in favor of the plaintiffs, while dismissing three of the four issues at hand as moot. A more in depth analysis of Senate Bill 2460's content and the implications of said legislation on sports betting, whether or not allowed by courts, will be analyzed in greater detail in Section III, and Section IV of this comment.

### III. Analysis of How Senate Bill 2460 and Benefits of Sports Betting Give Rise to PASPA's Demise

In analyzing the reasons why PASPA should be altered, or repealed in some manner, it is important to keep sight of the three reasons in support of repealing or amending PASPA. First, the public perception of sports betting is much more positive now than ever before. Fur-
thermore, the major “problems” or “worries” associated with sports betting are largely eradicated and are, at the very least, better monitored if done legally.\textsuperscript{66} Second, the benefits associated with sports betting are significant in an economic sense.\textsuperscript{67} Finally, PASPA’s existence causes otherwise law-abiding citizens to be stigmatized as criminals should they place sports bets in a location outside those “grandfathered” under PASPA.\textsuperscript{68}

A. The Public Policy Issues and “Alleged” Problems With Sports Betting Have, In Large Part, Been Eliminated

Senator Bradley, PASPA’s author, provided that PASPA was first passed because, “sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling.”\textsuperscript{69} Senator Bradley’s reasoning is significantly flawed in that it does not account for society’s progression or potential for change. While this logic may have reflected the public opinion in 1992, this is surely not true today. In fact, the modern trends show two revolutionary concepts to this point. First, the public perception of betting has drastically changed to a much more understood and even accepted level.\textsuperscript{70} Second, the moral implications implied by the original legislators of PASPA have largely been quelled and essentially eliminated through the passing of time and advent of new technology.\textsuperscript{71}

i. The Public Perception of Betting has Drastically Become More Understanding and Progressive

The progressive stance on betting is easily recognizable. In 1998, $2.3 billion were placed in bets in Las Vegas alone.\textsuperscript{72} In the United Stated, illegal bets accumulate $380 annually.\textsuperscript{73} It is common knowledge that “office pools” and “March Madness” brackets\textsuperscript{74} are ex-

\textsuperscript{66} See infra notes 88-109 and accompanying text.
\textsuperscript{67} See infra notes 110-22 and accompanying text.
\textsuperscript{68} See infra notes 122-126 and accompanying text.
\textsuperscript{70} See infra notes 72-87 and accompanying text.
\textsuperscript{71} See infra notes 88-109 and accompanying text.
\textsuperscript{72} Malagrino, supra note 22, at 378.
\textsuperscript{73} Shur, supra note 18, at 112-13.
\textsuperscript{74} March Madness is the title given to the yearly men’s division one college basketball tournament where a single elimination bracket is used in a winner moves on and loser is eliminated process until a champion is crowned. See Brad Evans, 2015 NCAA Tournament Tips 101: Understanding March Madness, (March 15, 2015, 7:37 PM), http://sports.yahoo.com/news/2015-tournament-tips-101-understanding-and-preparing-for-march-madness-062305405.html.
tremendously popular. This year alone it is expected that approximately forty million people will fill out an estimated seventy million brackets and will wager approximately nine billion dollars on March Madness brackets. Furthermore, Gallup polls illustrate that in the last twelve months seventeen percent of American people have wagered on sports.

Proponents of PASPA may highlight the attempts by major sports organizations to oppose betting legislation, specifically in Delaware and New Jersey to try and demonstrate that public perception of betting has not progressed towards acceptance. But does the opposition by major sports bodies reflect the idea that sports betting is not safe or that it is unaccepted? Or does such opposition reflect that the Leagues do not want systems put in place unless they benefit from the legalization of betting? David Purdam seems to answered this question in the affirmative when he opined, in an article regarding the legalization of sports betting that, “you don’t have to be a cynic to think that the leagues and their owners want a piece of that very big betting pie.”

Consider that one major sports body, the National Hockey League. The NHL is currently open to, and is discussing, the idea of putting a professional hockey team in Las Vegas, which would be the first professional team in a city known for its casinos and betting. While it can be argued that placing a team in Las Vegas is not directly correlated with an acceptance of sports betting, it can surely be inferred that if sports betting truly seen as “threaten[ing] the integrity of and public confidence in professional and amateur team sports, [and] converting sports from wholesome athletic entertainment into a vehicle for gambling,” then placing a team in a sports betting metropolis does not lend itself to the prevention of such a threat.

75. Id.
79. David Purdum, supra note 76.
Furthermore, the commissioners of two major sports bodies have declared their acceptance of sports betting. In 2009, David Stern, then commissioner of the National Basketball Association, stated, "[Gambling] may be a little immoral, because it is really a tax on the poor . . . [b]ut having said that, it’s now a matter of national policy: Gambling is good." Adam Silver, the current commissioner of the National Basketball Association, has stated that sports betting is inevitable and regulating such betting will help ensure competition in sports is done in the most safe and fair way possible. Mr. Silver has also stated that, "the laws on sports betting should be changed. Congress should adopt a federal framework that allows states to authorize betting on professional sports, subject to strict regulatory requirements and technological safeguards." Furthermore, the Vice President and Chief Operating Officer of the Ultimate Fighting Championship (UFC), Lawrence Epstein, recently stated (in regard to sports betting), "I think it will enhance the game as opposed to doing anything to hurt it. Sports wagering done in a way, like Nevada, that is properly regulated will give more confidence to fans that games and fights aren’t fixed."

The views of each of these individuals highlights society’s progression towards acceptance of legalized sports betting.

Additionally, the number of states with legal gaming casinos further supports society’s general acceptance of legalized betting. Before 1978, Nevada was the only state with a legal gaming casino. However, today at least thirty-eight states have legal gaming casinos, which shows a progressive trend towards the acceptance of betting and gambling in America. Furthermore, forty-seven states allow lotteries, casinos, and other sorts of gaming like horse racing.

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82. Malagrino, supra note 22, at 397.
86. Mierswa, supra note 7, at 462.
87. Id.
88. Rodenberg, supra note 29, at 19 (stating that only Alaska, Hawaii, and Utah block gambling in its entirety, thus allowing no gambling in the state).
ii. The Moral Implications and Concerns of Sports Betting Have Been Quelled

The notion that sports betting could cause a loss of integrity in sports is a complaint often cited by supporters of PASPA. The idea that bribery or other illegitimate means, stemming from sports betting, can be used to lower the integrity of “the game” is faulty for three interrelated reasons. First, the amount of money that athletes are paid today lessens the likelihood of cheating or bribery. Second, the technological advancements and detailed statistical tracking would make any form of immoral activity difficult, if not impossible. Third, the current betting limits on sports wagers and betting lines make it unlikely that the enough of a benefit would be achieved to persuade a sports figure to cheat.

First, the amount of money that athletes are paid today lessens the likelihood of cheating or bribery. Due to the drastic increase in popularity and media coverage over time, the pay scale is drastically greater today than it was in the years when bribery and corruption regularly occurred, meaning that it would take much more money to entice an athlete to either accept a bribe or cheat. When PASPA was passed in 1991, the highest paid NFL player was Dan Marino, who had an annual salary averaging $250,000 a year, over five years. Dan Marino’s contract was revolutionary at the time. However in 2014, twenty-three years after Marino signed his contract, Aaron Rodgers signed a five-year contract for $110 million, with an average salary of $22 million. It is not simply the top contracts that have increased exponentially, but the NFL cap limit of money spent on all players has risen dramatically in the last fifteen plus years. The aforementioned examples are of NFL players, however the dramatic increase in salary is consistent though each of the major sports. The

89. See NCAA v. Governor of N.J., 730 F.3d 208, 216 (3d Cir. 2013).
90. Mierswa, supra note 7, at 470-71.
94. See http://basketball.realgm.com/nba/info/salary_cap (illustrating a salary cap increase from 3.6 million dollars per year in 1984-85 to 63.065 million dollars per year in 2014-15 and a minimum player salary increase from $65,000 per year in 1984-85 to $623,646 per year in 2014-15); see also MG, NHL Highest Paid Players by Year, (Oct. 8, 2014, 12:01 AM), http://www.puckreport.com/2013/01/nhl-highest-paid-players-by-year.html (illustrating that the highest paid player in the NHL’s pay has increased from 2 million in 1989-90 to 14 million in 2014-15).
drastic increase in salaries shows that not only is the sports landscape dramatically different today than it was when PASPA was enacted, but also that players are also much less likely to take a bribe, and lose their very high paying job, in an effort to make a minimal amount of money at the expense of his team. Jim Pagels of Time magazine addressed this argument when he stated, “athletes making millions simply aren’t going to risk their already lucrative careers for a tiny cut in match-fixing bribes. In any case, the general principle applies that it is easier to police and regulate activity happening in the open than what takes place in the shadows.”

Critics of this argument may suggest that the referees also play a role in the outcome of games and do not make nearly what the players make. However, this argument is faulty because while referees are not paid as much as the actual athletes, they nonetheless make a significant salary for doing a part-time job. Furthermore, it is unlikely that referees, like players, will attempt to cheat or take bribes for the foregoing reasons. A possible counterargument is that not all players earn such high salaries, and thus they may try to influence a game. However, that argument ignores that these players are paid less because they are not as talented, and thus do not have as much of an opportunity to alter the games and are more susceptible to being fired should their performance suffer.

Second, even if players, coaches, or referees were enticed to cheat, shave points, or do other immoral activities, these actions would be very difficult in sports today. All major sporting events are televised and use a plethora of camera angles to capture every moment and every angle of each sporting event. Along with this comes instant replay, which allows the slow motion imagery of each moment of a sporting event to help ensure the fairest of results. Today, the NFL’s instant replay has a command center with 82 monitors and 21 employees working tirelessly through each NFL game to ensure correct and fair calls are made. While the NFL’s replay system is provided as an example here, other sports are very similar in their systems.

95. Pagels, supra note 76.
97. “Point Shaving is the (highly illegal) act of purposefully holding down the score of a sporting event, in order to impact who will win bets against a point spread.” Charlie Zegers, What is Point Shaving?, http://basketball.about.com/od/collegebasketballglossary/g/point-shaving.htm.
99. Id.
100. See Major League Baseball Replay Review Regulations, MLB.COM, http://mlb.mlb.com/mlb/official_info/official_rules/replay_review.jsp; see also THE CANADIAN PRESS, NHL central-
Furthermore, statistics are rigorously kept now and are highly scrutinized and analyzed by professional sports analysts. Each of these things individually, but especially collectively, make it extremely difficult, if not impossible, to engage in immoral acts without being caught. With the aforementioned advancements it is still feasibly possible to cheat and have the play upheld. However, the process is entirely more difficult, and if caught, the penalties are severe.

Third, sports books typically put a limit of some kind on the amount that can be placed on any one game. Along with these betting limits come point spreads, and money lines, which make winning bets much more difficult and makes the payouts much more even kiced. Additionally, athletes themselves are prevented from gambling on their own sports, thus lowering the risk of them participating in an immoral activity. Even if an athlete, coach, or referee were to try and circumnavigate the rule against betting, the penalties associated with such actions can be so severe that it is likely not worth the risk. Furthermore section 3704 of PASPA exempts animal racing from the acts limitations. This exemption of animal racing, and specifically horse racing, is very peculiar given that horse racing requires the use of a jockey which inputs a human element into the sport and thus it is feasible that a jockey, like an athlete in any sport, could be bribed to alter the outcome of a particular event or race.

Critics to this argument may suggest that certain persons defy the betting limits and thus could have enough potential benefit to bribe people. While it is plausible that some extremely wealthy people, like Floyd Mayweather, could manage to find a no limit sports book.

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101. See Mierswa, supra note 7, at 470-71 (stating that a limit of 55,000 is typically placed on bets and such a bet could only result in a profit of 50,000 which theoretically does not provide enough money to make it worth the chance of getting caught for the athlete).


105. Jay Jaffe, Rose’s Chances at Reinstatement or Hall of Fame look Very Slim, SPORTS ILLUSTRATED MAG. (Mar. 15, 2015), http://www.si.com/mlb/2015/03/17/pete-rose-reinstatement-hall-of-fame-rob-manfred (explaining that because Pete Rose, a legendary baseball player and coach, bet on baseball was/is banned from baseball and the baseball Hall of Fame with limited chance at reinstatement to either).


and place enormous bets, such large bets are often heavily scrutinized and monitored by bookkeepers, as well as the media, who seek to ensure all bets are legitimate and free from harm. Also even if bribery or immoral activities were a possibility, the continued ban of sports betting in states like New Jersey would not prevent such acts, but instead simply force big bettors to travel to Las Vegas to place such bets. In the alternative, these people could also use off-shore sports books to place their bets. It is only logical that if a person is willing to be immoral enough to extort or bribe an athlete, this person would likely not be deterred by breaking the law and placing bets overseas.

As mentioned above, section 3704 of PASPA exempts animal racing from the Act’s limitations. This exemption of animal racing, and specifically horse racing, from PASPA is very peculiar because if protecting the integrity of sports and ensuring fair competition is PASPA’s purpose, then why would a sport (horse racing) that has a human element (jockeys) be exempted? Surely Jockeys for horse races are just as capable as athletes in other sports of influencing the outcome of a particular event. Addressing changing morality and eliminating alleged problems associated with sports betting are important, yet the benefits created by legalizing sports betting also need to be discussed.

B. Legalizing Sports Betting Will Provide Significant Benefits to the Economy and to Societal Progression

Sports betting will undoubtedly have a positive impact on the state, and perhaps even the entire region, where bets are placed. This positive impact associated with either the alteration of PASPA, or the legalization of sports betting, is threefold. First, sports betting can have a significant positive economic effect on the state legalizing it. Second, the legalization of betting lends itself to the progressive nature of individual freedoms and is consistent with the progression of each in-

108. Typically sports books have an official limit on the amount of money that can be wagered on any one event, however occasionally certain sports books will remove these limitations for certain people or celebrities.
111. See infra notes 114-23 and accompanying text.
individual's growing liberty in modern society. Third, the criminal activity surrounding illegal betting, and the social stigma associated with persons who are criminally punished for illegal sports betting, may be eliminated or at least greatly reduced through the legalization of sports betting. Each of these three aspects are intertwined and is also of critical individual importance.

i. The Economic Impact Associated With Legalized Betting Would be of Great Significance

The positive economic impacts stemming from legalizing sports betting are untapped and potentially limitless. The majority of these economic benefits would arise from two areas: the taxes collected from legally placed bets and the increased patronage to areas that host sports betting. In 2012 alone, $3.45 billion was wagered on sports in Nevada. If this figure is taxed at the standard tax rate of approximately twenty five percent for gambling winnings then a significant amount of tax revenue is collected annually. David Purdum of ESPN.com reported that in 2013, $1.05 billion was wagered legally on basketball, combining the professional and college levels. The illegal market across sports? Try times that — an estimated $138.9 billion, according to the American Gaming Association. You don’t have to be a cynic to think that the leagues and their owners want a piece of that very big betting pie.

This shows the potential of the untapped market that legal betting could bring to states such as New Jersey. One Nevada gaming company even suggested an immediate windfall of 50 million dollars to Atlantic City should betting be legalized.

Delaware has suggested that if it were to expand its current betting scheme it would bring in between an additional $50 to $100 million to the state per year. New Jersey, the focus of this article and the focus of revolutionizing betting laws, has suggested that as much as $8.4 billion could be wagered annually in New Jersey, all of which would

112. See infra notes 124-27 and accompanying text.
113. See infra notes 128-32 and accompanying text.
114. Malagrino, supra note 22, at 382.
116. Id. (explaining that only winnings over a certain amount are taxed).
117. Purdum, supra note 83 (emphasis in original).
118. Id.
119. Malagrino, supra note 22, at 391 (noting that Delaware is a very small state so the number would in theory be bigger elsewhere).
be taxable. While the amount is difficult to pinpoint, the increase of tax revenue stemming from the legalization of sports betting is undisputable. New Jersey believes it is likely that the legalization of sports betting could not only save a large portion of the gaming industry but could also provide an additional influx of jobs and traffic to local businesses. Furthermore, New Jersey Senator Raymond Lesniak has stated that the legalization of sports betting could help the nearly 10,000 people who have lost their Atlantic City jobs.

The tax implications are uncertain in terms of dollars, yet with the looming deficits, it is hard to suggest that states could not put the money to good use. The legalization of marijuana in the United States bears a striking resemblance to the issue here in an economic sense. Like sports betting, the legalization of marijuana is an issue largely based in morality. Also like sports betting, the legalization of marijuana has the potential to bring America a great deal of money per year in tax revenue if regulated by the government. The potential to earn money from taxing an activity should not by itself be enough to make a previously illegal activity legal, however the government should at least be able to point to reasons aside from an individual’s moral standpoint before they levy rules against an entire population of people.

Having a positive economic effect is certainly not a legitimate basis for the courts to strike down PASPA. Nevertheless, the positive effects of legalizing sports betting can and should be taken into account by the legislature in current and future decisions related to the altering of PASPA.

ii. The Legalization of Sports Betting is Consistent With the Progressive Liberation of Individuals’ Rights

The overall importance of revisiting and amending the PASPA legislation is centered largely on its positive effects concerning crime and the economy. While the aforementioned points are valid, the examination of individual liberties and sports betting’s legalization is also critical. The authors of PASPA, and many of PASPA’s supporters, ar-

120. Mierswa, supra note 7, at 476.
gue that gambling, especially gambling on sports, is an immoral activity. Similar arguments have been used for a multitude of other activities that are now accepted. In an era of progressive reform, America has seen tremendous advances in the quest for legalizing gay marriage and has legalized marijuana in many capacities.

The legalization of certain drugs, namely marijuana, is specifically relevant to the point that times are changing. In 1992 Senator Bill Bradley stated, "the revenue earned by the states through sports gambling is not enough to justify the waste and destruction attendant to the practice. Just as legalizing drugs would lead to increased drug addiction [sic], legalizing sports gambling would aggravate problems associated with gambling." Senator Bradley's statement shows an ignorance to the fact that as time progresses public policy changes and the laws and statutes change along with said public policy. Just as the recent trend of legalizing marijuana is largely the result of public pressure and an advancement of public policy, sports betting should be allowed under the same reasoning. As mentioned above in Section III(A)(i), there is significant evidence demonstrating society's increasing acceptance of betting, including sports betting, and therefore old-fashioned notions of propriety and morality should be discarded in favor of reality and allowing individuals the right to choose.

iii. The Illegality of Sports Betting Is Inconsistent With Modern Society and Makes Otherwise Law Abiding Citizens Criminals Because of a Lack of Understanding

Along with the economic and societal reasons illustrated above, the legalization of sports betting would also benefit the country and economy by eliminating the condemnation of bettors as criminals. The fact that sports betting is illegal in some fashion in nearly every state does not prevent people from betting on sports through illegal avenues. Americans illegally wager between $80 and $380 billion annually on sports. The amount of money spent on illegal gamblingoutnumbers the amount wagered legally in the US by a margin of over one hundred to one. Despite PASPA, illegal betting still occurs at a

125. See Bostick v. Schaefer, 760 F.3d 352 (4th Cir. 2014).
127. Shur, supra note 18, at 101.
128. Malagrino, supra note 22, at 378.
129. Mierswa, supra note 7, at 463-64.
high level. Because of this, the premises underlying PASPA must be revisited.

First, it can be argued that PASPA’s “morality” reasoning fails because the population as a whole regularly engages in the activity and is generally accepting of the idea.130 “The federal government’s 20th century attempts to curb prize gaming initially were aimed at fighting an organized crime problem that was viewed as both a cause and an effect of illegal gambling.”131 While it would be naive to suggest that no organized crime exists today, sports betting, particularly off-shore betting, may now take place from any computer with internet access. This increase in technology and resulting decrease in organized crime involvement in sports betting suggests that the primary concerns of the bettor’s safety and the furtherance of criminal enterprises via illegal funds are both eradicated and thus not valid arguments in today’s society.

Second, because many people are still betting illegally despite the enactment of PASPA, the Act is not effectively furthering its goal of protecting the integrity of sports, but is instead criminalizing many people merely because they act in a location other than a city such as Las Vegas. Sports betting, like gambling in general, is made more difficult to enforce because of the inconsistencies in rules. Thus, “prohibition and regulation of gambling transactions amount to curbing a market in which people conduct what they may believe to be mutually beneficial transactions.”132 Consequently, because Congress allows PASPA to retain a stronghold on all things betting, American citizens are forced to either travel to a state where betting is legal or risk being labeled as a criminal for betting in a very unclear and inconsistent enterprise.

The aforementioned arguments are not to suggest that because members of society elect to participate in an illegal activity said activity should be made legal. Rather, these points show that society may have a misunderstanding about the legality of their betting activities due to inconsistency throughout the states. Such inconsistency comes from the limitations PASPA places on the states. The potential misunderstanding of bettors, or the inability to travel to a state that had a sports betting system in place prior to 1991 (thus satisfying PASPA), may leave otherwise law-abiding citizens to be labeled as criminals.

130. Id.
132. McCarthy, supra note 130, at 764.
IV. PASPA DIRECTLY LIMITS THE RIGHT OF THE STATES TO HANDLE LOTTERIES AND LEVY TAXES, THUS CREATING A COGNIZABLE ISSUE UNDER THE TENTH AMENDMENT

The 10th Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."\(^{133}\) Two hurdles must be overcome in order to have 10th Amendment arguments reviewed in cases concerning a State’s legalization of sports betting. The first emanates from the fact that the PASPA does not make betting illegal but rather prevents states from legalizing it.\(^{134}\) The second hurdle that has commonly arisen is that claimants have a lack of standing.\(^{135}\)

The first hurdle refers to PASPA preventing states from legalizing sports betting while technically not banning such betting. Preventing a state from making an activity legal is constructively and literally no different than Congress directly making said activity illegal because in either situation the Act is prevented. In other words, preventing the legalization of X by states is tantamount to the outright prohibition of X throughout the nation – a distinction without a difference. Such tautological reasoning creates a very slippery slope. Justice Stevens, in Gonzalez v. Raich stated, "something more than mere assertion is required when Congress purports to have power over local activity whose connection to an intrastate market is not self-evident."\(^{136}\) Here the issue of legalizing sports betting may well fall within the "interstate market" in that people would travel to New Jersey to place bets, or the money would be spent across state lines.

Because an “intrastate market” is potentially involved, the Commerce Clause could be invoked, however the 10th Amendment is nonetheless implicated and PASPA’s continued prohibition of legal betting violates a right ordinarily reserved to the states. It is necessary to again stress that PASPA prevents, “a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact” a betting scheme.\(^{137}\) Again, Governor Christie’s signing of Senate Bill 2460 does not involve the state sponsoring any sort of betting and actually avoids such activity in its entirety.\(^{138}\)

\(^{133}\) U.S. Const. amend. X.
\(^{134}\) Mierswa, supra note 7, at 459.
\(^{135}\) Id. at 458.
\(^{136}\) Gonzales v. Raich, 545 U.S. 1, 52 (2005).
\(^{138}\) S. 2460, 216th Leg. (N.J. 2014) (enacted).
However, even assuming that sports betting crosses state lines and the Commerce Clause applies, it is illogical to find that PASPA prohibits sports betting since it is allowed in Nevada, and more specifically Las Vegas. Las Vegas is a very popular tourist attraction. It is well known that people commonly place sports bets in Vegas, or even go for sporting events. Prohibiting one state from legalizing sports betting, while contemporaneously enabling another state to legalize sports betting not only leads to inconsistent results amongst the states, it also abridges states' power to make certain policy-based decisions for themselves.

PASPA's application to New Jersey's current bill is misplaced, in light of the 10th Amendment's language and related jurisprudence, something which, at the very least, should be directly addressed by a federal court. PASPA does not allow states to be in control of gambling nor conduct the management of any gambling within their borders. However, New Jersey's Bill seeks to legalize sports betting in the state while never having the state manage or run any sports gambling institutions that would host sports betting.

V. CONCLUSION

Laws should undeniably have specific purposes and reasons for their existence that go beyond that of moral concerns. PASPA is a prime example of law that arguably never had either of the aforementioned traits, even at its advent, and which surely does not display said traits in modern times. Not only should laws have specific purposes and reasons for their existence, they should change as society's needs and modes of operation change, something that PASPA has failed to do.

The state of New Jersey is attempting to take a progressive approach towards sports betting and alter a law, which has outlived any usefulness or purpose that it once had. PASPA was passed to preserve integrity in sports, which in itself makes the Act potentially unconstitutional. Furthermore, even if it is determined that PASPA is constitutional, the Federal Courts should find either that New Jersey's Bill withstands PASPA, thus sports betting can be legalized in New Jersey, or that PASPA needs to be reformed, eliminated, or amended to account for the change in times and society's wants. If the courts, or


ideally the Supreme Court, do not hold that PASPA needs some form of revision, Congress should nonetheless pass legislation to achieve the same end.