



A Bet Gone Bad: How the Professional and Amateur Sports Protection Act Harms Consumers, States and Sports

Day	Team	Odds
TUESDAY OCTOBER 3	101 SO MISS	-6
TUESDAY OCTOBER 3	102 TULSA	-6
WEDNESDAY OCTOBER 4	103 C FLORIDA	-3.5
WEDNESDAY OCTOBER 4	104 MARSHALL	-3.5
THURSDAY OCTOBER 5	105 FLA ST	-11
THURSDAY OCTOBER 5	106 NC ST	-1
THURSDAY OCTOBER 5	107 TCU	-1
THURSDAY OCTOBER 5	108 UTAH	-1
FRIDAY OCTOBER 6	109 LOUISVILLE	-33
FRIDAY OCTOBER 6	110 MD TN ST*	-33
SATURDAY OCTOBER 7	111 N*WESTERN	-20.5
SATURDAY OCTOBER 7	112 WISCONSIN	-20.5
SATURDAY OCTOBER 7	113 PURDUE	-20.5
SATURDAY OCTOBER 7	114 IOWA	-11
SATURDAY OCTOBER 7	115 PITTSBURG	-6.5
SATURDAY OCTOBER 7	116 SYRACUSE	-6.5
SATURDAY OCTOBER 7	117 INDIANA	-6.5
SATURDAY OCTOBER 7	118 ILLINOIS	-7
119 HARVARD	-13.5	
120 GA TECH	-13.5	
121 BVL GREEN	-13.5	
122 OHIO ST*	-34.5	
123 KENT ST*	-24.5	
124 TEMPLE*	-24.5	
125 BALL ST	-5.5	
126 BUFFALO	-5.5	
127 ARKANSAS	-5.5	
128 AUBURN	-16	
129 DUKE*	-16	
130 ALABAMA*	-29	
131 OKLA ST	-3	
132 KANSAS ST	-3	
133 TEXAS A&M	-1.5	
134 KANSAS	-1.5	
135 S DIEGO S	-27	
136 BYU	-27	
137 RICE	-2	
138 TULANE	-2	
139 NAVY	-2	
140 AIR FORCE	-3	
141 STANFORD	-3	
142 NTRE DAME	-32	
143 W VIRGINI	-26	
144 MISS ST	-2	
145 LSU	-2	
146 FLORIDA	-2	
147 OKLAHOMA	-6	
148 TEXAS	-6	
149 PENN ST	-2.5	
150 MINNESOTA	-2.5	
151 MICH ST	-17	
152 MICHIGAN	-17	
153 UNLV	-17	
154 COL ST	-15.5	
155 N MEX ST	PICK	
156 IDAHO	-6.5	
157 VIRGINIA	-6.5	
158 E CAROLINA	-6.5	
159 AKRON	-6.5	
160 CINCINNATI	-6	
161 S CAR	-6.5	
162 KENTUCKY	-6.5	
163 BAYLOR	-5	
164 COLORADO	-5	
165 NEBRASKA	-6.5	
166 IOWA ST	-6.5	
167 MEMPHIS	-6	
168 ALA-BIRM	-6	
169 MISSOURI	-6	
170 TEX TECH	-3.5	
171 WEST MICH	-3	
172 OHIO	-3	

by Julian Morris and Guy Bentley

Reason Foundation



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Executive Summary

Sports betting has always been popular in America. However, various concerns, especially its potential to corrupt sports through game-fixing, led many states to ban most forms of sports betting. In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA), which prohibited most states from legalizing sports betting. The only state that continues to permit a wide range of legalized sports betting is Nevada.

Recent polling found that 62% of Americans cannot accurately say whether or not sports betting is legal in the state that they live in. With the exception of daily fantasy sports laws in a handful of states, and animal racing, which is allowed in many states, single-game sports betting is illegal in every state except Nevada.

A separate poll found that 30% of Americans say they have bet on sports. Estimates suggest about \$155 billion is bet on sports in America each year—97% of it illegally. Meanwhile, by driving the betting market underground PASPA has increased the liquidity of the illegal betting market, making it easier for criminals to place bets on games they have sought to fix and more difficult to identify those bets or the criminals who make them.

Removal of PASPA's prohibition on legalization of sports betting would have many advantages. It would result in economic growth, create new jobs, and provide additional tax revenue to states. A recent estimate found that if sports betting were legalized nationwide, GDP would increase by \$11.6 billion to \$14.2 billion, 125,000 to 152,000 additional jobs would be created, and tax revenues spread across state, federal and local municipalities would rise by \$4.8 billion to \$5.3 billion.

Sports fans, leagues and associations would benefit. Research shows that fans are more engaged when they bet on sports. That would translate into higher viewership and other forms of participation. Being able to bet legally in a well-regulated market also provides fans with greater assurance that they will be paid if their bet wins. And in well-regulated legal markets, such as those in the U.K. and Australia, sports betting companies offer consumers ways to manage their betting in order to reduce compulsive gambling. (Many U.S. casinos already do this for other forms of gaming.)

The likelihood of game-fixing would be further reduced, thereby enhancing the integrity of the games fan love and watch. By converting activity that currently occurs in underground and offshore markets into legitimate, well-regulated local economic activity, legalization would create a large, highly liquid and transparent legal market in the U.S. This would enable sports leagues and associations to work with sportsbooks and law enforcement to identify instances of game-fixing—as happens in other countries with legalized sports betting. (U.S. sports leagues and associations already use data generated by independent companies to identify betting irregularities that could potentially indicate instances of game-fixing.) And by reducing the liquidity of the illegal market, legalization would make it more difficult for criminals to profit from game-fixing by placing bets in underground markets.

Over 60% of Americans think sports betting should be legal and 70% believe it should be regulated by states, not the federal government. Legislatures in several U.S. states have already begun the process of legalizing sports betting. And in a 2011 referendum the citizens of New Jersey voted to legalize sports betting in the state. By prohibiting states from legalizing sports betting, PASPA arguably exceeds the federal government's constitutional authority, effectively commandeering states to pursue its bidding against the will of the people.

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Introduction

Millions of Americans bet on sports, and they've done so for decades. Estimates suggest that \$150 billion to \$160 billion is bet on sports in America each year. The vast proportion of that betting is currently illegal. In spite of this, or perhaps because of it, over the course of the past 100 years federal and state governments have made numerous attempts to regulate or even prohibit sports betting. The most comprehensive such attempt came in 1992 with the passage of the Professional and Amateur Sports Protection Act (PASPA), which sought to prohibit the legalization of sports betting in most states. This brief evaluates PASPA in light of the continued popularity of sports betting: the black-market-fueling effects of prohibition, the potential benefits of legalization, and the constitutional prohibition on commandeering of states by the federal government.

A Brief History of Sports Betting and Its Regulation in the U.S.

In the first half of the 20th century, prior to Nevada legalizing sports betting, the earliest forms of sports betting in the U.S. consisted of wagering on boxing, horse racing, and cockfighting. Horse racing, in particular, gained widespread popularity, with horse tracks spreading rapidly across the east coast.

In these early days of sports betting, the bets themselves were structured as “auction pools.” These pools auctioned bets for each horse in a given race. But this type of betting quickly fell out of favor with bettors, as they couldn’t wager on a horse that had already been selected by someone else.

Recognizing the limited value of auction pools, bookmakers innovated by setting odds on individual horses, a method still used by bookmakers to this day. This resulted in a larger “handle,” or the total amount wagered by bettors, on horse races. By the 1920s, there were more than 300 race tracks in the U.S., despite that by 1910, most states had prohibited gambling, and horse racing had been banned in New York.¹ The only legal gambling options that remained were horse races in Maryland and Kentucky. Gambling laws were, however, rarely enforced.

The popularity of horse racing was eclipsed as America’s favorite type of sports betting with the rise of amateur and professional baseball leagues at the end of the 19th and beginning of the early 20th centuries. Baseball “pool cards,” which offered players a range of betting options starting from as little as 10 cents a wager, gained popularity in eastern urban areas, despite being heavily weighted in the houses’ favor.²

¹ Martin, Jeremy. “History of Sports Betting and the Point Spread.” Doc’s Sports Service. May 30th, 2017. Available at <https://www.docsports.com/sports-betting-history.html>

² Ibid.

College football and basketball emerged as popular sports betting activities in the 1920s and continued to thrive through the years of the Great Depression. As America moved into the 1930s and the Depression worsened, attitudes toward gaming and alcohol shifted.

In a sign that America's commitment to puritanical notions of "right" and "wrong" was wavering, Nevada legalized gambling in 1931, two years before the repeal of Prohibition. By the 1950s, Nevada had authorized single-game sports betting at stand-alone locations, while it authorized hotel sportsbooks in 1975.³

Two factors would prove critical to the rise of sports betting in the second half of the 20th century. The first was the invention of the point spread (the expected difference in the amount of points scored between two teams), and the second was the rise of television.

But as sports betting grew, especially for the organized criminal networks that arose out of alcohol prohibition, the federal government sought oversight and regulation of the activity.

1.1 Regulation

In 1951, Congress introduced a \$50 "occupational stamp" for bookmakers and imposed a 10% excise tax on the handle of sports bets.⁴ The tax made sports betting an unprofitable enterprise for Nevada casinos, leaving it in the hands of the so-called "turf clubs," who often evaded the tax.

Eventually, Congress reduced the tax to 2% in 1974, sparking an economic boom in Nevada as casinos got in on the action, with the federal government able to capitalize on the subsequent tax revenue.⁵

But the main driver of congressional action concerning gambling in the second part of the 20th century was the desire to deprive organized crime syndicates of the large profits to which they had become accustomed through control of the illegal sports betting market.

³ Woo, Chil. "All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)." *Cardozo Arts and Entertainment Law Journal* 31, 2 (2013). 569. <http://www.cardozoelj.com/wp-content/uploads/2013/04/Woo.pdf>

⁴ Revenue Act of October 20, 1951. 26 U. S. C. § 3285 et seq. (Supp. 1952). Available at <https://www.scribd.com/document/62004879/Revenue-Act-of-1951-PL-82-183>

⁵ McCarthy, Michael. "Stardust wrote the book." *USA Today*. September 8, 2005. https://usatoday30.usatoday.com/sports/football/nfl/2005-09-07-betting-history_x.htm

Attorney General Robert Kennedy argued strongly that the federal government needed fresh legislation to tackle the mob's control of the illegal sports gambling trade, resulting in a series of laws passed in the 1960s and 1970s.

The Wire Act, the Travel Act, the Interstate Transportation of Wagering Paraphernalia Act, and the Illegal Gambling and Business Act were intended to disrupt the mob's ability to operate a successful illegal betting operation.⁶

These laws were not intended to impede ordinary citizens' ability to bet on sports in accordance with the law in their particular state, but instead were intended to complement existing state laws that forbade unauthorized in-state bookmaking. States still regulated sports betting within their own borders. Kennedy's target was always the "bankrollers and kingpins," not ordinary Americans.⁷

But this situation underwent radical change when NBA Hall of Famer and former U.S. Senator Bill Bradley championed the Professional and Amateur Sports Protection Act (PASPA) in Congress.⁸

PASPA was passed in 1992, after gestating for a few years in both the U.S. House and Senate in various forms. It sought to outlaw sports wagering in most states, and only grandfathered in pre-existing forms of sports betting. The law does not mention any state by name and thus did not grandfather specific states' schemes or specific betting types.

In addition to Nevada, whose long-established sports betting ecosystem was by far the most robust at the time of PASPA's passage, states such as Oregon, Delaware and Montana claimed their states' limited forms of sports gaming were also exempt. An examination of the Congressional Record reveals additional states also argued for their schemes' exemption as well, including betting on obscure contests like bicycle races.

The rise of internet betting over the next decade generated renewed focus on the issue from some in the federal government. This ushered in the Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006. The bill did not, in fact, ban any form of internet gambling

⁶ Meer, Eric. "The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States." *UNLV Gaming Law Journal* 2, 2 (2011). Article 7. Available at: <http://scholars.law.unlv.edu/glj/vol2/iss2/7>

⁷ Minton, Michelle. "The Original Intent of the Wire Act and Its Implications for State-based Legalization of Internet Gambling." Center for Gaming Research Occasional Paper Series: Paper 29 1-12, 2014. Available at http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1035&context=occ_papers

⁸ Lehrer, Eli. "Time to Fold the Unlawful Internet Gambling Enforcement Act." CEI On Point, No. 133. March 27, 2008. Available at <http://cei.org/sites/default/files/1-Eli%20Lehrer%20-%20poker%20OnPoint%20-%20FINAL.pdf>

that wasn't already illegal under state law. Rather, UIGEA targeted gambling-related payments, prohibiting those engaged in the business of betting from knowingly accepting any automated clearing house transaction or bank draft, "in connection with the participation of another person, in unlawful Internet gambling."⁹

1.2 Arguments for Prohibition

One of the most common arguments for the prohibition of sports betting is the preservation of the integrity of sports. Prohibitionists argue that betting erodes the integrity of sport, with players and referees tempted to fix games at the behest of criminal or other entities.

Indeed, preserving the integrity of sports was one of the driving forces behind PASPA. In Sen. Bradley's words, PASPA was intended to "protect sports from becoming a vehicle for promoting gambling among teenagers, ensuring that the values of character, cooperation, and good sportsmanship that have figured so heavily in the growth of athletic competition throughout the ages are not significantly compromised."¹⁰

Just three years prior to PASPA's passage, baseball had been embroiled in scandal when Pete Rose, a former professional player and manager, was banned from Major League Baseball due to allegations he wagered on games in which he participated.¹¹

The fear that the sport becomes secondary to the pursuit of winning money when betting is involved is intuitive to many, including Sen. Bradley, who said in 2011, "I know that when I was a player, I certainly didn't like the idea of being a roulette chip."

Those at the highest echelons of professional sports bodies have also voiced their concerns about the potential corroding effect betting could have on the game. "Widespread legalization of sports gambling would inevitably promote suspicion about controversial plays and lead fans to think 'the fix was in' whenever their team failed to beat the point-spread," said Paul Tagliabue, former commissioner of the NFL, testifying before Congress in 1992.

⁹ Ibid.

¹⁰ Woo, "All Bets Are Off." 587.

¹¹ Rodenberg, Ryan. "Pete Rose's Reckless Gamble." *The Atlantic*. August 22, 2014. <https://www.theatlantic.com/entertainment/archive/2014/08/why-pete-rose-still-cant-be-absolved/378866/>

1.3 Why the Prohibition Failed

But with PASPA's passage came an increase, not a decline, in illegal sports betting. The American Gaming Association estimates—conservatively—that Americans wagered roughly \$150 billion on sports illegally in 2016. In the absence of reform, that figure is sure to rise, fueling criminal activity and organizations.

The integrity issues PASPA sought to weed out of sports nonetheless remained entrenched.¹² During the 2007 NBA season, for example, ex-referee Tim Donaghy was found to have been betting on games he officiated and was linked to the Gambino mafia family. Meanwhile, point shaving and bribery scandals rocked college basketball teams at Northwestern, Arizona State, University of Texas-El Paso, and University of San Diego.¹³

Another concern has been the effect of sports betting on gambling disorders. Yet, there is no evidence that the prevalence of such disorders has declined since the passage of PASPA.¹⁴

And instead of stanching underage gambling, as Congress sought to do, PASPA likely promoted it. Restricting sports betting mainly to the illegal market, combined with the rise of the internet, created demand for and availability of illegal sports betting websites. These unregulated, often Caribbean-based websites illegally poach American customers, and they have little incentive to limit or even check the age of users.

If states were able to legalize sports betting, they could ensure that regulated online gambling sites imposed strict age verification and geolocation practices, thereby reducing the ability of minors to participate in sports betting. Perhaps more importantly, as we note later, well-regulated, legalized online gambling sites that offer a competitive product could significantly cut into offshore, gray market operators' bottom line.

1.4 PASPA's Exemptions Were Never Specified

In the three years prior to the passage of PASPA, in 1992, seven states—South Dakota, Iowa, Colorado, Illinois, Mississippi, Louisiana and Missouri—legalized commercial casinos. And

¹² Fish, Mike. "Donaghy sentenced to 15 months in prison in gambling scandal." ESPN.com news services. July 30, 2008. <http://www.espn.com/nba/news/story?id=3509440>

¹³ Assel, Shaun. "Portrait of a point shaver." ESPN, March 6, 2014. http://www.espn.com/mens-college-basketball/story/_/id/10545391/former-assistant-tj-brown-brandon-johnson-center-university-san-diego-point-shaving-scandal-espn-magazine

¹⁴ Chapman, Steve. "The real effects of gambling." *Chicago Tribune*. July 21, 2011. http://articles.chicagotribune.com/2011-07-21/news/ct-oped-0721-chapman-20110721_1_problem-gamblingonline-gambling-howard-shaffer

even as PASPA was being debated in Congress, 13 states were considering legalizing sports betting within their borders.

Although PASPA was predicated on the idea that sports betting should be prohibited, that's not what it did. Instead, as noted, it prohibited any state from operating, sponsoring, authorizing, advertising, licensing or promoting *new* forms of sports betting. It also allowed sports betting schemes conducted by states in prior years to continue on, unfettered.

PASPA's ill-defined exemptions are noteworthy because the result was the lack of a uniform national regulatory regime for sports betting that might legitimately have pre-empted state regulation. (As argued later, state regulation is likely superior—and is the option preferred by most voters—but a uniform national regulatory regime might be constitutionally legitimate.) Among the states commonly referred to as “exempted” are Nevada, Oregon, Montana and Delaware. These states claimed, in discussions and debate prior to the bill's passage, that their existing betting schemes (conducted prior to 1992) qualified for exemption. To wit:

- Nevada remained the only state where single-game sports betting is legal.
- Montana passed a sports pool law allowing bars to offer pool betting contests based on squares purchased by patrons, which was exempted.
- Oregon allowed parlay cards for the NFL from 1989 and for the NBA from 1990 through its state lottery, which was exempted.
- The Delaware Lottery had experimented with three-team or more parlay cards on NFL games in 1976. Although that was discontinued after one season, the law remained on the books, giving the state the freedom to relaunch these games, which it did in 2009.

In addition to these exemptions, other states claimed that their schemes legalized before PASPA was passed should be exempt as well.¹⁵ According to legal scholars Ryan Rodenberg and John Holden of Florida State University, the state of New Mexico argued for, and received approval in the Congressional Record for, an exemption for an obscure bicycle wagering scheme.¹⁶ The state of Wyoming appeared successfully to ask that its Calcutta wagering scheme be exempted, while another congressional representative argued that sports

¹⁵ Liebman, Bennett. “Expanding Sports Gambling – Is It Legal.” Government Law Center. Albany Law School. March 2003. Available at <http://www.albanylaw.edu/centers/government-law-center/publications/past-publications/Documents/Expanding%20Sports%20Gambling%20-%20Is%20It%20Legal.pdf>

¹⁶ Rodenberg, Ryan M. and John T. Holden. “Sports Betting Has An Equal Sovereignty Problem.” Duke Law Journal Online 67 (June 2017). Available at <http://dlj.law.duke.edu/2017/06/sports-betting-has-an-equal-sovereignty-problem/>

pools in Montana and North Dakota, as well as “social gambling” on sports in Arizona, would also be exempt under PASPA.

[N]either those who conceived PASPA nor those who voted for it in Congress had much idea what types of betting they were banning, or what types they were allowing.

But none of these betting schemes and none of the states in which they existed—even Nevada—were ever specified in the final full text of PASPA itself. This resulted in regulatory confusion, as well as an uneven and haphazard federal prohibition of activities for some Americans, but not others.

In sum, neither those who conceived PASPA nor those who voted for it in Congress had much idea what types of betting they were banning, or what types they were allowing.

1.5 Attempts by States to Legalize Sports Betting

PASPA remains a highly controversial issue to this day, constraining the freedom of states to institute legal sports betting regimes that best suit their needs—and oftentimes, that align with the will of their voters. New Jersey’s persistent attempts to legalize sports betting, particularly in light of Atlantic City’s popularity as a tourist destination, demonstrate this. New Jersey was given a one-year window after PASPA’s passage in which to legalize sports betting schemes that could retroactively be exempted under PASPA. But the state legislature was unable to agree and pass sufficient legislation in time.

New Jersey State Senator Raymond Lesniak filed a lawsuit in 2009 claiming PASPA was unconstitutional and discriminated against states by creating exemptions for the four existing states with some form of legal sports wagering. The effort was unsuccessful and was dismissed on procedural grounds, with the court finding that only the governor and in some cases the state attorney general could represent the state when challenging federal law.¹⁷

Undeterred, New Jersey voters supported the legalization of sports betting in a non-binding referendum held in November 2011. The New Jersey State Senate supported the decision and Governor Chris Christie signed a bill into law in January 2012 that would have allowed Atlantic

¹⁷ Goodall, James C. W. “Bringing Down The House: An Examination Of The Law And Policy Underpinning The Professional And Amateur Sports Protection Act of 1992.” *Rutgers University Law Review* 67 (July 9, 2015.) Available at http://www.rutgerslawreview.com/wp-content/uploads/2015/09/5.-Goodall_Note_Macro-7.24-2.pdf

City casinos to offer sports betting options.¹⁸ But a coalition of the NFL, NHL, NBA, MLB and NCAA sued to prevent New Jersey from implementing its plans for legal sports betting.¹⁹ After the plaintiffs were successful in district court, the state appealed but the Third Circuit Court of Appeals affirmed the lower court's decision based on PASPA, adding that the state could decriminalize sports betting if it wished.²⁰ The U.S. Supreme Court refused to hear the case.²¹

New Jersey came back with another bill supported by Sen. Lesniak, which passed in June 2014.²² But again, the district court ruled against New Jersey and the Third Circuit Court of Appeals affirmed the lower court's ruling in a 2-1 decision.²³ New Jersey was granted an appeal for an *en banc* decision in the Third Circuit but lost again in the summer of 2016.²⁴

Despite the support of the state's voters, the legislature and the governor, PASPA continues to prevent New Jersey from introducing a legal sports betting scheme that suits the needs and desires of the state and its electorate. Because of this, New Jersey again petitioned the Supreme Court.

On June 27, 2017, almost six years after New Jersey began its sports betting odyssey, the high court agreed to take the case.²⁵ How the court rules remains to be seen, but SCOTUS's wide remit—it could uphold the ban, strike it down entirely, strip away PASPA's ability to exempt schemes, or something else entirely—leaves it no shortage of options in addressing the future of American sports betting.

¹⁸ Friedman, Matt. "Gov. Christie signs bill allowing gamblers to place bets on pro, college sports teams." NJ.com. January 17, 2012. http://www.nj.com/news/index.ssf/2012/01/gov_christie_signs_bill_allowi_4.html

¹⁹ Associated Press. "New Jersey sued over sports betting." ESPN. August 7, 2012. http://www.espn.com/espn/story/_/id/8243013/ncaa-4-pro-leagues-sue-new-jersey-sports-betting

²⁰ United States Court of Appeals for the Third Circuit. Opinion re; No. 13-1713. Available <http://www2.ca3.uscourts.gov/opinarch/131713p.pdf>

²¹ Klein Moynihan Turco. "United States Supreme Court Refuses to Hear New Jersey Sports Gambling Appeal." <http://www.kleinmoynihan.com/united-states-supreme-court-refuses-to-hear-new-jersey-sports-gambling-appeal/>

²² Johnson, Brent. "Christie signs law allowing sports betting in N.J." NJ.com. October 17, 2014. http://www.nj.com/politics/index.ssf/2014/10/chris_christie_signs_law_allowing_for_sports_betting_in_nj.html

²³ Gouker, Dustin. "All Bets Are Off: New Jersey Sports Betting Remains Illegal After Appeals Court Ruling." Legal Sports Report. August 25, 2015. <https://www.legalsportsreport.com/3277/new-jersey-loses-sports-betting-case/>

²⁴ Gouker, Dustin. "New Jersey Loses In Sports Betting Case Once Again, As Court Rejects Appeal." August 9, 2016. <https://www.legalsportsreport.com/10951/new-jersey-loses-sports-betting-case-again/>

²⁵ Hobson, Will. "New Jersey's fight for legal sports betting on life support after Solicitor General brief." May 24, 2017. https://www.washingtonpost.com/news/sports/wp/2017/05/24/new-jerseys-fight-for-legal-sports-betting-on-life-support-after-solicitor-general-brief/?utm_term=.e97a163065c5

1.6 Oregon and Delaware Pressured to Drop Schemes

Even with their partial exemptions, Oregon and Delaware have not had an easy time keeping their limited sports betting options open to their residents. Despite Oregon's legal right to do so, the NFL and the NCAA vigorously opposed the state conducting sports betting post-PASPA. The NCAA even went so far as to forbid any NCAA Tournament basketball games from being held in the state until the state eliminated its modest sports betting offering.²⁶ This echoed attempts by the NBA, prior to PASPA's passage, to shut down Sports Action through the courts.²⁷ Eventually, Oregon's state legislature caved, passing a bill in 2005 to end the state's Sports Action lottery by 2007. Sports Action ceased operating in 2007 and NCAA tournament games returned to the state in 2008.²⁸

Delaware relaunched its parlay card wagering system (in which bettors have to pick the outcomes of three games and get each of them correct in order to win) for football in 2009.²⁹ The state hoped it could raise desperately needed revenue in the wake of the financial crisis. In addition to the parlay card wagering, the state legislature and Governor Jack Markell also had plans to permit Nevada-style, or single-game, sports betting.

Delaware's legislature passed a bill in 2009, signed by Gov. Markell, that would have permitted single-game betting.³⁰ The decision was thought to be a way to attract tourism and economic development, and lessen the state's projected \$700 million deficit for the 2010 budget. Taxes from legal sports betting, as well as food and beverage sales, were projected to contribute \$22.5 to \$30.6 million to the state's coffers.³¹

But just before the 2009 NFL season was due to start, the four major sports leagues and the NCAA sued Delaware to stop them from offering single-game wagering.³² The U.S. Court of

²⁶ Nidetz, Stephen. "Ncaa Refuses To Consider Portland For Tournament Site." *Chicago Tribune*. January 11, 1997. http://articles.chicagotribune.com/1997-01-11/sports/9701110082_1_bill-hancock-portland-trail-blazers-blazers-officials

²⁷ United Press International. "NBA sues Oregon over sports lottery." December 21, 1989. <http://www.upi.com/Archives/1989/12/21/NBA-sues-Oregon-over-sports-lottery/1108630219600/>

²⁸ Gouker, Dustin. "Could Sports Betting Return To Oregon If NCAA Tournament Heads To Vegas?" *Legal Sports Report*. December 16, 2015. <https://www.legalsportsreport.com/6865/oregon-sports-action-possible-return/>

²⁹ Sports Business Daily. "Court Limits Delaware Sports Betting To NFL Parlays Only." September 1, 2009. <http://www.sportsbusinessdaily.com/Daily/Issues/2009/09/Issue-240/Sports-Society/Court-Limits-Delaware-Sports-Betting-To-NFL-Parlays-Only.aspx>

³⁰ Perez, A.J. "Delaware House approves revised gambling bill." *USA Today*. May 8, 2009. https://usatoday30.usatoday.com/sports/college/2009-05-08-delaware-gambling-bill_N.htm

³¹ State of Delaware Executive Department of Management and Budget, Memorandum. January 10, 2008. <http://finance.delaware.gov/publications/sportsbetting.pdf>

³² Millman, Chad. "Sports leagues sue to block betting." *ESPN*. July 24, 2009. <http://www.espn.com/espn/news/story?id=4353948>

Appeals for the Third Circuit ruled Delaware did not have the right to implement its plans for this type of sports betting under PASPA.³³ The court ruled Delaware's exemption under PASPA only applied to forms of sports betting it actually conducted before the law went into effect. This meant Delaware would be restricted to reintroducing a previous scheme, not implementing a new one: It would only be able to offer NFL parlay cards.

1.7 More States Get Involved

Despite the forced inability of New Jersey, Delaware and Oregon to offer a safer, legal sports betting market to their residents, around the year 2010 other states, including Rhode Island and Missouri, continued to push for legalization at the state level.

But these uncoordinated developments were nothing compared to the momentum for state-based legalization efforts that transpired in 2017.³⁴ As the map shows, in the first seven months of the year alone, legislators in 14 states took action to legalize sports betting, with a total of 23 sports betting-related bills and one joint resolution.

Three states—Mississippi, Montana and Connecticut—passed and enacted their bills. Pennsylvania and Maryland introduced legislation that called for the introduction of sports betting in the event PASPA was repealed or amended.³⁵ Pennsylvania's House Gaming Oversight Committee even passed its bill out of committee.³⁶

Elsewhere, states like South Carolina, Michigan, New York and West Virginia introduced legislation directly opposing PASPA.³⁷ Those states' bills called for the legalization of sports betting, openly flouting the federal prohibition.

And in Oklahoma—a tribal gaming state—legislators introduced a bill that would allow for the amendment of tribal-state compacts to allow for sports betting, in the event that the

³³ United States Court of Appeals for the Third Circuit. Opinion re; No. 09-3297. Available at <http://www2.ca3.uscourts.gov/opinarch/093297p.pdf>

³⁴ Amsel, Peter. "Maryland joins chorus of states seeking legal sports betting." CalvinAyre.com. February 09, 2017. <https://calvinayre.com/2017/02/09/business/maryland-seeking-legal-sports-betting/>; Gouker, Dustin. "A First Step Toward Legal PA Sports Betting? House Committee Unanimously Approves Bill." Legal Sports Report. April 25, 2017. <https://www.legalsportsreport.com/13820/pa-sports-betting-bill-2017/>

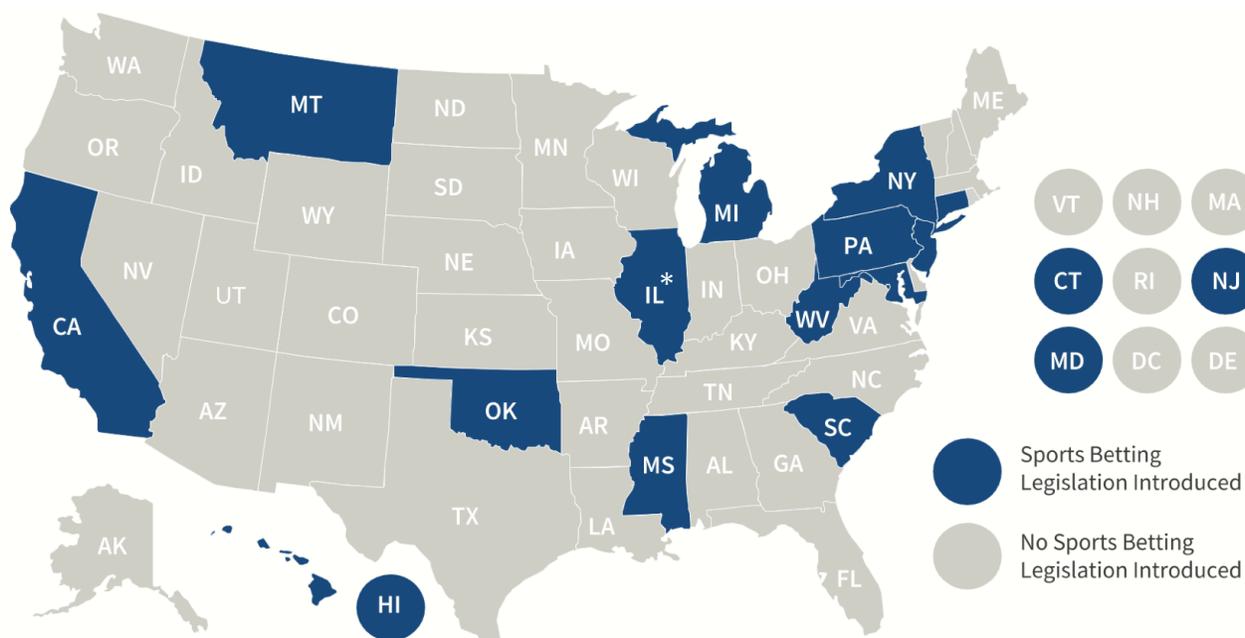
³⁵ Gouker, Dustin. "Maryland Becomes Latest State To Eye Legal Sports Betting With New Bill." Legal Sports Report. February 9, 2017. <https://www.legalsportsreport.com/13029/maryland-sports-betting-bill/>

³⁶ Prose, J.D. "House Passes Sports Betting Bill." *Herald Standard*. April 26, 2017. http://www.heraldstandard.com/news/local_news/house-passes-sports-betting-bill/article_1209c423-1d25-537b-8af2-c09be5987787.html

³⁷ Wallach, Daniel. "The Next Legal Challenge To The Federal Sports Betting Ban Could Come This Year." Legal Sports Report. March 7, 2017. <https://www.legalsportsreport.com/13260/wv-sports-betting-paspa-challenge/>

federal ban is repealed.³⁸ A joint resolution was also introduced in the Illinois Senate calling on Congress and President Trump to overturn PASPA; it received overwhelming support in the Senate Gaming Committee.

Figure 1: Actions Taken by State Legislatures to Legalize Sports Betting in 2017



* Illinois recently had a resolution (not legislation) introduced

Source: Multi-State Associates. "2017 State Legislative Overview." Depicts legislative status as of July 24, 2017. Published Aug. 1, 2017.

1.8 PASPA's Forefathers Speak Out

Even legislators who formerly supported PASPA believe the time has come to re-examine the issue. Former Arizona Senator Dennis DeConcini, who introduced PASPA in the Senate, told Reason Foundation: "Any law that's been on the books for as long as PASPA has to be reviewed, particularly something dealing with gambling and other sports safety provisions. I think an oversight hearing would be appropriate."³⁹

DeConcini is no fan of sports betting personally, but he is no longer in favor of the one-size-fits-all sports betting prohibition that PASPA resulted in. "I feel like states can handle that for the most part," DeConcini said referring to regulation of sports betting. The former

³⁸ S.B. 857. OK. Session Year 2017. <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB%20857>

³⁹ Reason Foundation interview with Senator Dennis DeConcini. Notes on file with authors.

Democratic senator said he believed PASPA was necessary at the time it was passed but that the age of the internet and technological innovation has transformed the landscape necessitating a second look at the law. On whether PASPA had worked as intended, DeConcini says it worked at the time it was passed but that this was before widespread internet gambling rose to prominence and the proliferation of offshore gaming capabilities.

“Any law that’s been on the books for as long as PASPA has to be reviewed, particularly something dealing with gambling and other sports safety provisions. I think an oversight hearing would be appropriate. ...I feel states can handle [regulation of sports betting] for the most part.”

–Former Arizona Senator and sponsor of PASPA, Dennis DeConcini

DeConcini argues the federal government should still have a role in regulating sports betting, but the aim should be to ensure sufficient protections for consumers and athletes. If these protections are in place, DeConcini believes “the states should have some leeway if they want to permit it (sports betting).” Asked if PASPA should be repealed, DeConcini said:

I think that would be a consideration, but I can’t say whether or not I would support that now until I saw the oversight and saw the evidence presented, but I’d certainly consider it. I think it’s part of the job of a legislator to consider other possibilities. I don’t have a philosophical position that the federal government has to do everything or the states should do everything and not be federally regulated.

The Sports Betting Market in the U.S.

There are two types of sports betting: fixed odds and pari-mutuel. In fixed-odds betting, bets are made against the bookmaker, who sets the odds. This form of wagering is popular among the traditional American stick-and-ball sports. While odds may be adjusted in response to bets placed or other information, those changes do not affect the odds of previously placed bets. For example, in fixed-odds betting, if a bettor wagers \$100 on the Cleveland Cavaliers to beat the Golden State Warriors, the bettor knows from the second their bet is placed how much money they will win if the Cavaliers win the game.

In the U.S., fixed-odds sports betting is illegal in most states under PASPA. The main exception is Nevada, where fixed-odds betting on sports is generally legal and regulated by the state. As noted above, PASPA created ill-defined, limited exemptions for a handful of additional wagering schemes unlike the single-game betting Nevada has popularized for over half a century.

In pari-mutuel betting, bets are pooled, with bettors effectively wagering against one another. Potential payouts and odds are automatically determined by the ratio of bets made at the time the pool is closed to new bets.

Curiously, pari-mutuel wagering, popularized by the horse-racing industry, is permitted in 43 states and is largely subject to state and local regulation. The fact that Americans are allowed to bet on sports in one style (pari-mutuel) but not in another (fixed odds) yet again reveals the inconsistencies of U.S. gaming policy.

2.1 Estimating the Size of the U.S. Sports Betting Market

Nevada bettors wagered approximately \$4.5 billion on sports in Nevada in 2016 according to the Nevada Gaming Control Board.⁴⁰ Not counting minimal year-over-year dips in handle during the recessionary years of 2008 and 2009, this figure grew in 2016 for the 13th consecutive year, demonstrating continued consumer demand for legal, regulated sports betting.

Of course, under PASPA, single-game “spread” or “moneyline” betting is illegal in every other state outside of Nevada. But merely because it is illegal doesn’t mean that it doesn’t exist. Far from it. Millions of Americans, unable to place bets legally, choose to do so in illegal markets.

Illegal betting markets take various forms, one being illegal U.S. sportsbooks. These ventures—unregulated and unlicensed—typically consist of front businesses, private clubs, and underground operations often associated with organized crime. In 1999, non-internet sports books were estimated to comprise around 90% of the illegal market.⁴¹

Despite the tremendous growth of online gambling, illegal sportsbooks operating in the U.S. continue to play a role in the underground gaming economy: In a 2015 report, Dr. Jay S. Albanese found that illegal gambling operations and in-person games accounted for 25% of illegal gambling businesses resulting in federal convictions in 2014.⁴²

Another form of illegal sports betting likely more prevalent is the online market. The vast majority of these online sportsbooks are located “offshore,” often operating in small Caribbean countries outside of the reach of U.S. regulation and law enforcement. While often legal, licensed and regulated in their official country of jurisdiction, such as Costa Rica, Panama, Antigua, etc., these online sportsbooks knowingly and illegally poach customers from America, where betting on sports online is not legal.

Precise quantifications of the size of the illegal markets (both onshore and offshore) are almost impossible to come by. However, the American Gaming Association estimates that

⁴⁰ Gouker, Dustin. “Nevada Sportsbooks Took Record \$4.2 Billion In Wagers In 2015.” *Legal Sports Review*. February 4, 2016. <https://www.legalsportsreport.com/7902/nevada-record-sports-betting-2015/>

⁴¹ Strumpf, Koleman S. “Illegal Sports Bookmakers.” Department of Economics University of North Carolina at Chapel Hill. February 2003. Available at <http://economie.esg.uqam.ca/upload/files/seminaires/Bookie4b.pdf>

⁴² Albanese, Jay S. “Illegal Gambling & Organized Crime: An Analysis of Federal Convictions in 2014.” *Trends in Organized Crime*. September 30, 2015. Available at https://gallery.mailchimp.com/03373c05c46b5e9a6eb445537/files/Albanese_Illegal_Gambling_OC_Report_2014_cases_FINAL.pdf

approximately \$150 billion is bet on sports illegally in the U.S. each year.⁴³ This is echoed by others.

Longitude LLC, the inventor and distributor of a pari-mutuel (pool betting) technology platform estimates \$149 billion total was illegally bet on sports in 2015.⁴⁴ Meanwhile, Eilers Research put the figure at over \$160 billion in 2014.⁴⁵

2.2 Offshore Sites Out of Reach of American Enforcement Efforts

There have been numerous efforts to clamp down on offshore online gambling sites, including the prosecution of Americans associated with various offshore-domiciled sites. For example, World Wide Tele-Sports (WWTS), an Antigua-based website that offered sports betting to U.S. customers, was shuttered in 2002 following a series of legal actions by the Department of Justice.⁴⁶ But WWTS was only one of several such sites targeted by the Department of Justice starting in the late 1990s.⁴⁷

Online and offshore betting accounted for 38% of all illegal gambling enterprises (sports betting-related or otherwise) that resulted in federal convictions during 2014.⁴⁸ Law enforcement has recently targeted illegal gambling enterprises, including these examples:

- In January 2016, the U.S. Attorney for the Southern District of California charged 22 people for participating in an illegal sports gambling ring, including through online websites based in Peru.⁴⁹ The case gained notoriety for being run by former USC athletes including former tight end Owen Hanson.

⁴³ American Gaming Association. "Americans To Bet \$4.2 Billion On Super Bowl 50." AGA. 27 January, 2016. Available at <https://www.americangaming.org/newsroom/press-releases/americans-bet-42-billion-super-bowl-50>

⁴⁴ Desjardins, Jeff. "America's Multi-Billion Dollar Sports Betting Industry." Visual Capitalist. July 18, 2016. <http://www.visualcapitalist.com/americas-multi-billion-dollar-sports-betting-industry/>

⁴⁵ Krejcik, Adam. "Keynote: Bold Predictions on the Daily Fantasy Sports Market." Eilers Research. January 16, 2014. Available at <http://www.fstaconference.com/docs/01-Adam-Krejck.pdf>

⁴⁶ "Department of Justice Forfeits Nearly \$7 Million in Proceeds of Unlawful Offshore Gambling and Money Laundering Following Guilty Plea by William Paul Scott." Department of Justice Office of Public Affairs. December 14, 2012. Available at <https://www.justice.gov/opa/pr/department-justice-forfeits-nearly-7-million-proceeds-unlawful-offshore-gambling-and-money>

⁴⁷ See e.g.: Michael Rapoport. "Seven More People Are Charged In Internet-Betting Crackdown." *Dow Jones Newswires*. March 26, 1998. Available at <https://www.wsj.com/articles/SB890944590191004500>

⁴⁸ Albanese, "Illegal Gambling & Organized Crime." 3.

⁴⁹ *Ibid.*

- In May 2016, the Brooklyn District Attorney’s office broke up a Costa Rica-affiliated online sportsbook operated by the Lucchese crime family that took in more than \$13 million.⁵⁰
- In June 2016, the Brooklyn District Attorney’s office broke up a \$927 million operation run from New York and California, which allegedly used a wire room in Costa Rica and offshore websites to process bets during the 2015 football season.⁵¹

In spite of these prosecutions, many websites continue to offer sportsbooks that can be accessed by bettors in the U.S. Sportsbookreview.com lists 108 online sportsbooks that currently accept bets placed from the United States.⁵² Sixty of these sites accept credit cards, 56 accept bank transfers, and 41 accept bitcoin.

2.3 The Consequences of Illegality

The restrictions on legal sports betting have a number of pernicious consequences. Millions of Americans who want to bet on sports (and are either not Nevada residents or in Nevada at the time) end up making bets with illegal operations, either through domestic underground markets or by using internet sites based overseas.

Those who make bets through illegal sportsbooks in the U.S. typically have no legal recourse if the bookie refuses to pay out winnings—because the transaction was illegal and hence not a valid contract. Likewise, illegal sportsbooks typically have no legal recourse if bettors fail to make payment for failed bets made on credit extended by the bookie.⁵³ As a result, bettors and bookies often rely on intimidation and threats to enforce debt payments.⁵⁴

Making matters worse, a majority of Americans don’t even realize that single-game sports betting outside of the state of Nevada is illegal. A 2017 public opinion poll conducted by Greenberg Quinlan Rosner Research found 62% of Americans could not accurately say

⁵⁰ Green, Will. “Big US Sports Betting Busts In 2016 Serve As Backdrop For Legalization Effort.” Legal Sports Report. July 5, 2016. Available at <http://www.legalsportsreport.com/10643/2016-illegal-us-sports-betting/>

⁵¹ Ibid.

⁵² Information correct as of 5/3/2017.

⁵³ Kelly, Joseph. “Caught In The Intersection Between Public Policy And Practicality: A Survey Of The Legal Treatment Of Gambling-Related Obligations In The United States.” *Chapman Law Review* 5 (Spring 2002). 87. Available at <http://www.chapmanlawreview.com/archives/933>

⁵⁴ Tan, B.C. *World-Check special crime and terrorism series: illegal sports betting*. Anti-money laundering magazine. May 2010. 48-49. https://www.world-check.com/media/d/content_pressarticle_reference/AMLMag_IllegalSportsBet_Tan_May2010.pdf

whether sports betting was legal where they lived.⁵⁵ Among millennials, the demographic perhaps most likely to bet over the internet, this percentage is even higher.

Those who make bets through online sites domiciled overseas typically cannot make bets until they've first deposited money with the online book, thereby limiting risk for the website operator. And bettors have little recourse against that operator if winnings are not paid out.⁵⁶ While in principle they might be able to avail themselves of a domestic court in the country of domicile of the website (if such contracts are valid in that jurisdiction), doing so would be expensive and would potentially expose them to criminal liability for participating in an activity that is illegal in the U.S.

A 2017 public opinion poll conducted by Greenberg Quinlan Rosner Research found 62% of Americans could not accurately say whether sports betting was legal where they lived. Among millennials, the demographic perhaps most likely to bet over the internet, this percentage is even higher.

In addition to the risks associated with illegal sports betting, the fact that it takes place almost entirely underground means considerable economic activity that could occur in the U.S. instead currently occurs overseas. This not only harms the U.S. economy at large, but state and local governments too that are deprived of substantial tax revenue that would accrue if the betting activity were legalized and taxed accordingly. Instead, state governments are forced to spend scarce resources on law enforcement to counter illegal sports betting and related criminal activity. These issues are explored in the next section.

⁵⁵ Zagger, Zachary. "Americans Support Legalization Of Sports Betting, Study Says." Law360. May 9, 2017. <https://www.law360.com/articles/922037/americans-support-legalization-of-sports-betting-study-says>

⁵⁶ Non-U.S. persons offering credit for gambling through websites domiciled overseas may be able to enforce debt contracts in U.S. courts, even though those contracts would have been illegal if entered into in the U.S. state in which the counterparty is resident. ("Gambling Contract not Violative of Public Policy." *Catholic Lawyer* 11 (Spring 1965). 155–158. Citing *Intercontinental Hotels Corp. v. Golden*. 15 N.Y.2d 9, 203 N.E.2d 210, 254 N.Y.S.2d 527 (1964). Available at <http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1539&context=tcl>). However, it is not clear that a U.S. person seeking to enforce a payout in a foreign jurisdiction would be able to do so in the U.S. (Kelly, Joseph. "Caught In The Intersection Between Public Policy And Practicality: A Survey Of The Legal Treatment Of Gambling-Related Obligations In The United States." *Chapman Law Review* 5 (Spring 2002). 87. Available at <http://www.chapmanlawreview.com/archives/933>)

The Benefits of Legalized Sports Betting

A legal U.S. market that offers sports betting could generate significant new economic activity and tax revenue that would benefit local economies and state governments. Much of this revenue would come about from a shift in betting activity from offshore and illegal markets to a new, legal domestic market.

In addition, legalization would likely *reduce* many of the problems that are likely caused by illegal sports betting. In this section, we outline these benefits.

3.1 Economic Benefits

Legalization of a dynamic, competitive sports betting market has the potential to convert much of the illegal market into legal activity. Given that a substantial percentage of illegal sports betting by Americans currently takes place on websites domiciled offshore, the transfer of this activity to U.S.-based sites and physical locations would generate considerable benefits to the domestic economy. But the transparency and regulation of an explicitly legal sports betting market would also likely result in additional sports betting activity from those who do not currently bet in any form—legally or otherwise.⁵⁷ According to the Greenberg Quinlan Rosner poll, 12% of Americans, which includes approximately 26 million people of legal betting age, say they would be more likely to bet on sports if it were broadly legalized throughout the U.S.⁵⁸

A recent study from Oxford Economics found that if sports betting were legalized nationwide just at physical casino and retail locations (as opposed to online), the national handle would range between \$130 billion and \$170 billion. Gross gaming revenue, or the amount that sports books would retain after paying out winning bets and before any other expenses, would amount to between \$9.6 billion and \$11.2 billion.

⁵⁷ The extent of these benefits is more difficult to estimate since there would likely be some substitution away from other consumption.

⁵⁸ Greenberg Quinlan Rosner Research. “Legalizing Sports Betting: A Winning Wager.” GQR. April 24, 2017. https://www.americangaming.org/sites/default/files/Rev_Public%20AGA%20National%20Poll%20Memo%20042417%20FINAL.pdf

A recent study from Oxford Economics found that if sports betting were legalized nationwide just at physical casino and retail locations (as opposed to online), the national handle would range between \$130 billion and \$170 billion.

The Oxford Economics study also projected that tax revenues generated from such a legalized sports betting construct would range between \$4.8 billion and \$5.3 billion, and that it would support up to 152,000 jobs.⁵⁹ And if states were to offer the type of intra-state mobile app betting on smartphones currently offered in Nevada, the above projections increase dramatically.

3.2 Effects on Engagement

Recent evidence suggests that betting on sports increases engagement by fans. A survey conducted in 2016 by Nielsen Sports on behalf of the American Gaming Association found that sports bettors made up a quarter of all viewers of NFL games, but watched nearly half of all minutes viewed. Moreover, NFL bettors on average watched 19 more football games a season than those who didn't bet—more than an entire season's worth.⁶⁰ The survey also found that 84% of respondents were more likely to watch a game if they had bet on it, and 77% said that placing a bet on a game made it more fun and enjoyable to watch.

By driving additional viewership, sports betting would increase revenue for broadcasters, both directly and indirectly through advertising. Sports leagues, in turn, would benefit from this revenue uplift through increases in the price of rights sold to broadcasters. Broadcasters and sports leagues might also offer their own sportsbooks, as overseas broadcasters have done and as U.S. broadcasters and the NFL have done with fantasy sports leagues.

3.3 Improving Sports Betting Integrity by Cracking Down on Betting Fraud

Legal, regulated markets would give bettors easier access to legal recourse in the event of disputes. When betting is legal, both parties are able to use arbitration or the courts to resolve disagreements, and betting operators are subject to strictly monitored regulatory

⁵⁹ American Sports Betting Coalition. "The Sports Betting Opportunity: New Research Shows Legalized Sports Betting Will Generate Economic Growth, American Jobs, and Tax Revenues." June 12, 2017, https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/593dd28ee58c62c93bcfff94/1497223822296/ASBC_Oxford_Economics.pdf This figure includes direct jobs (such as working for a sports book directly) as well as indirect jobs (such as working for a firm that works with sports books) and well as induced jobs.

⁶⁰ American Gaming Association. Research conducted by Nielsen Sports. *Legal Sports Betting: What it Would Mean for NFL TV Partners & Advertisers*. September 2016. Available at: https://www.americangaming.org/sites/default/files/Nielsen_NFL_Betting.pdf

requirements that prevent fraud. And when betting takes place in open and transparent markets, sportsbooks have strong incentives to make payouts when a bettor wins. In addition to the threat of legal and regulatory sanction, sportsbooks seek repeat customers, and failure to make a payout would damage the sportsbook's reputation and ability to retain customers.

In addition, competition between legal sportsbooks creates incentives to publicly disclose the odds being offered on various bets—as well as their payout rate—in order to attract bettors. Moreover, this open and transparent competition results in odds and payouts that are more favorable for bettors.⁶¹

In the U.K., competition has resulted in the emergence of betting exchanges, such as Betfair, which enable bettors to bet against one another directly. Studies suggest that these betting markets can function efficiently and as an attractive alternative for consumers uninterested in traditional sportsbook-style betting.⁶² Meanwhile, bookmakers have taken advantage of the high liquidity of exchanges to hedge their liabilities at lower cost.⁶³ Indeed, competition in general, and from betting exchanges in particular, has increased transparency and driven down costs to bettors.⁶⁴

3.4 Responsible Sports Betting

In almost all legal, regulated markets, gaming companies are required to maintain robust consumer protection programs in order to retain their licensure with the appropriate regulatory authorities.

⁶¹ Goddard, John. "The Efficiency of Soccer Betting Markets." *The Oxford Handbook of The Economics of Gambling*. Eds. Leighton Vaughan Williams and Donald S. Siegel. New York: Oxford University Press, 2013. See also Europe Economics, *The Case for a Single European Gambling Market: A Report by Europe Economics*. London: Europe Economics, 2004, citing the benefits of competition in the UK betting market especially. Available online at <http://www.jogoremoto.pt/docs/extra/JsFGRM.pdf>, and Forrest, David "Competition, The Price of Gambling And The Social Cost of Gambling: A Briefing Paper Presented to The European Gaming And Betting Association." European Gaming and Betting Association. 2010. Available at http://www.egba.eu/pdf/Forrest_final_economic_review.pdf

⁶² In a 2011 study, Karen Croxsen and James Reade found that in-game wagers responded more rapidly to changes in scores on Betfair than at traditional bookies (Croxsen, Karen and James Reade. "Information and Efficiency: Goal Arrival in Soccer Betting." University of Birmingham Department of Economics Discussion Paper 11-01. 2011. Available at <ftp://ftp.bham.ac.uk/pub/RePEc/pdf/11-01.pdf>). An analysis by bettingmarket.com found that for the top 12 teams in the 2006 soccer World Cup, the over-round for Betfair was 100.92, compared with an average of 112 at the three largest fixed-odds bookmakers (William Hill, Ladbrokes, and Svenskapel). (*A Short History of the betting exchange industry*, bettingmarket.com, 2017. Available at: <http://www.bettingmarket.com/refraichir010388.htm>)

⁶³ McCoy, Michael. "Bookmakers and Betting Exchanges." Sportsbettingonline.net. <https://www.sbo.net/horse-racing/bookmakers-and-betting-exchanges/>

⁶⁴ And several bookmakers have merged with or purchased existing exchanges. Notably, Ladbrokes bought BETDAQ in 2013 and Betfair merged with Irish bookmaker PaddyPower in 2015.

In Nevada, gaming operators are required to undertake a number of measures to ensure consumers are as safe as possible and aware of all the resources available to them should they experience problems. Nevada gaming operators provide materials in or near gaming areas and cash dispensers, explaining the nature and symptoms of problem gambling, with displays of the toll-free telephone number of the National Council on Problem Gambling or a similar approved organization that provides information and referral services for problem gamblers.

All employees of gaming operators who directly interact with customers receive special training on problem gambling behavior and in helping customers obtain information about problem gambling programs. Special personnel are designated for maintaining these programs and addressing the types and frequency of such training and procedures.

There also exists in Nevada an extensive self-exclusion program for operators that engage in the issuance of credit, check cashing, or the direct mail marketing of gaming opportunities. These programs allow customers to self-limit their access to these services. Money is also made available for treatment programs, with an annual slot machine levy of \$2 for each slot machine deposited into the Account for the Prevention and Treatment of Problem Gambling.

And in Canada, the British Columbia Lottery Corporation developed a program called GameSense that offers a range of tools intended to help prevent problem gambling, including:⁶⁵

- A voluntary self-exclusion list, which enables gamblers to limit the amount of time they spend on gambling.
- A system for preventing children from gambling online, using content filtering and parental controls.

GameSense has been implemented in Massachusetts, and MGM recently announced that it was rolling out the program in all its casinos nationwide.⁶⁶ Other states that have legalized gambling also require casinos and, where available, online gambling sites to offer voluntary

⁶⁵ Game Sense. BCLC. <http://gamesense.bclc.com/tools-and-resources.html>

⁶⁶ Kinney, Jim. "MGM unveils problem-gambling prevention efforts inspired by requirements at Springfield casino." MassLive.com. February 22, 2017. http://www.masslive.com/news/index.ssf/2017/02/mgm_unveils_problem_gambling_p.html

self-exclusion. Research on one of the longest-running such programs, the Missouri Voluntary Exclusion Program, suggests that they reduce the incidence of problem gambling.⁶⁷

In 2011, the Remote Gaming Association, whose members compose the vast majority of major companies offering online gaming in Europe, established a Workshop Agreement on “Responsible Remote Gambling Measures” that comprised 134 measures, including:⁶⁸

- 21 measures intended to protect vulnerable customers. These include: “clear and accessible customer information and the ability for players to impose deposit limits, self-exclusion or cooling-off periods.”
- 14 measures intended to prevent underage gambling. These include operator and third-party age and ID verification and the use of filtering programs.
- 16 measures aimed at preventing fraudulent and criminal behavior. These include: “the implementation and enforcement of strict security measures and the reporting of any suspected transactions to the authorities.”
- 10 measures aimed at promoting “responsible marketing.” These include “ensuring advertising is not aimed at underage individuals and does not suggest gambling is a means of solving financial difficulties.”

Such measures are only realistically possible when sports betting is legal, suggesting that while legalization might increase the number of people who bet on sports, it could also likely have the effect of reducing problem gambling.

3.5 Improving Sports Betting Integrity by Identifying Instances of Game-Fixing

One main argument made by opponents of legalizing sports betting is that it harms the integrity and reputation of sports by encouraging game-fixing.⁶⁹ But the evidence suggests just the opposite is the case.

⁶⁷ Christenson, Glenn, Kevin Mullally, Helen A. Suurvali, Richard LaBrie, Sarah E. Nelson, and Robert Ladouceur. “Evaluation Self-Exclusion as an Intervention for Disordered Gambling.” National Center for Responsible Gambling. Vol. 5. April 9, 2014. [https://www.gaming.ny.gov/gaming/20140409forum/Reilly%20\(National%20Responsible%20Gambling%20Council\)/Applicant%20Provided%20Material/NCRG,%20Increasing%20the%20Odds,%20Volume%205,%20Evaluating%20Self-Exclusion%20\(2011\).pdf](https://www.gaming.ny.gov/gaming/20140409forum/Reilly%20(National%20Responsible%20Gambling%20Council)/Applicant%20Provided%20Material/NCRG,%20Increasing%20the%20Odds,%20Volume%205,%20Evaluating%20Self-Exclusion%20(2011).pdf)

⁶⁸ European Committee for Standardization. “Responsible Remote Gambling Measures.” CEN Workshop Agreement. February 24, 2011. http://www.rga.eu.com/data/files/Pressrelease/cen_leaflet_final.pdf

⁶⁹ In its Report on PASPA, the Senate Judiciary Committee asserted that “Sports gambling threatens the integrity of, and public confidence in, amateur and professional sports. Widespread legalization of sports gambling would inevitably promote suspicion about controversial plays and lead fans to think “the fix was in” whenever their team failed to beat the point-spread.”

Game-fixing occurs when players, coaches, referees or others intentionally seek to alter the outcome of a game (or some element of a game). In some cases, the objective of game-fixing is to obtain future advantage, for example by obtaining a lower handicap, or an easier opponent in a playoff. But in many cases, the purpose is to guarantee an outcome in order to facilitate a one-way bet. Game-fixing violates multiple state and federal laws and harms the reputation of the game. Several point-shaving scandals in college basketball, for example, have occurred in states such as Massachusetts, Arizona, Texas, Illinois, California, Ohio and New York, whose laws have never legalized sports betting.⁷⁰

Unsurprisingly, many instances of game-fixing are facilitated by those with ties either to organized crime or to illegal sportsbook operators. Game-fixing is also facilitated by bettors, including, as noted above, those who are indebted to and coerced by illegal sportsbook operators or those who operate their own criminal operations. L. Burke Files, president of the American Anti-Corruption Institute (AACI), notes that many instances of game-fixing are facilitated by individuals and organizations seeking to launder money obtained through illegal operations.⁷¹

Legal markets, however, enable better identification of instances of game-fixing, which is in legal bookmakers' best interest to identify, prevent and stamp-out. If the outcome of a game is predetermined through illicit means, and criminals are looking to capitalize on advance knowledge of the outcome of the game, then criminals will flood sportsbooks with large sums of money on the right side of a fix. This means that sportsbooks will lose significant amounts of money, because they will be forced to pay out a disproportionate amount of winnings to bettors who were "in the know" on a certain game.

When sports betting is legal, sportsbooks have strong incentives to avoid game-fixing, since they are likely to be harmed by it. Recent developments in the ability to analyze patterns in betting and to relate those to game outcomes enable sportsbooks to better detect instances of game-fixing, either directly or through third parties. At least two companies are already providing such services, one of which is working with the NBA to help main sports integrity.⁷²

⁷⁰ Killinger, Scott. "A History of Infamous Point-Shaving Scandals." *craveonline*. Sept. 13, 2012. Available at: <http://www.craveonline.com/mandatory/1039175-a-history-of-infamous-point-shaving-scandals>; Assael, Shaun. "Portrait of a point shaver." *espn.com*. March 6, 2014. Available at: http://www.espn.com/mens-college-basketball/story/_/id/10545391/former-assistant-tj-brown-brandon-johnson-center-university-san-diego-point-shaving-scandal-espn-magazine

⁷¹ Interview with Burke Files, May 4 2017. Notes on file with authors.

⁷² Wistreich, Brian. "As Data Takes Over The Sports World, It Takes Genius To Uphold Integrity." *Sport Techie*. April 22, 2016. <https://www.sporttechie.com/sportim-genius-sports-offer-services-keep-integrity-sports-betting-market/>

3.6 Crippling the Illegal Sports Betting Market

Moving a large proportion of sports betting action to legal, regulated sportsbooks would severely weaken the illegal sports betting market. By reducing the liquidity of illegal betting markets, game-fixers and crooked books would have a reduced chance of benefitting from their activities.

Evidence suggests that while game-fixing still occurs in markets where sports betting is legal, it is more prevalent in markets where such betting is illegal: According to the International Center for Sports Security (ICSS), legal sports betting regimes such as those in the U.K. and Australia are less vulnerable to criminal interference.⁷³

The ICSS notes that cooperation between sportsbooks and law enforcement is of crucial importance to the identification and prosecution of game-fixers. In the U.K. and Australia, betting operators are required to cooperate with game-fixing investigations being carried out by law enforcement. This cooperation includes sharing critical information such as details about the person(s) placing bets as well as any other evidence connecting them to the bets, such as computer records and their betting history. In countries where there are no statutory provisions, obtaining this kind of information/intelligence depends on whether there are voluntary agreements in place or whether it is necessary to seek judicial assistance to obtain information from betting operators.

Such cooperation, whether mandated or voluntary, is far less likely in markets where betting is illegal because investigators often do not even know who is running betting operators and usually do not have access to evidence that directly relates to fixes. Moreover, even if one or more illegal sportsbook operators are cajoled into talking to law enforcement, the lack of transparency of illegal betting operations in general (what bets were placed at what time) makes it very difficult to identify instances of potential game-fixing. Identifying the person or persons behind suspicious betting activity in such cases is even more difficult.

The ICSS notes that “In reality, this is only likely to be feasible at this stage with regard to bets placed on legal, well-regulated betting markets.”⁷⁴ This view is echoed by L. Burke Files of

⁷³ International Center for Sports Security. *Resource Guide on Good Practices in the Investigation of Match-Fixing*, Vienna: United Nations Office on Drugs and Crime. Available at http://www.unodc.org/documents/corruption/Publications/2016/V1602591-RESOURCE_GUIDE_ON_GOOD_PRACTICES_IN_THE_INVESTIGATION_OF_MATCH-FIXING.pdf

⁷⁴ Ibid.

AACI, who said that “While game fixing can never be stopped, it can be reduced by making betting reasonably transparent and enabling the sharing of information.”⁷⁵

If sportsbooks were legal and appropriately taxed and regulated, the proportion of illegal betting would almost certainly fall dramatically. Paul Scotney, director of the UK-based Sports Integrity Services told the American Gaming Association’s Summit on Sports Betting in 2016 that legal markets would result in “simply no demand for a black market.”⁷⁶

Karen Gwynn, vice president of programs for the National Black Prosecutors Association and senior assistant prosecutor, Bergen County, New Jersey, concluded in the summit’s After Action Report that illegal sports betting was a “drain on law enforcement resources, particularly since illegal gambling crimes often only lead to minimal consequences and suggested regulation would help optimize time and resources for law enforcement.”⁷⁷

This would reduce crime and expenditures on law enforcement and prison. It would also enable law enforcement better to prioritize its actions on the remaining illegal betting activities, including those associated with game-fixing.

Furthermore, as a legal, onshore sports betting market matured into the 21st century, it could realistically begin accepting a range of payment methods beyond simple cash transactions at a betting window, which is the current standard practice in Nevada. Offering these additional payment methods, such as credit card transactions or bank transfers, at U.S. sportsbooks would put additional pressure on illegal sportsbooks. This is because illegal sportsbooks, perhaps surprisingly, offer those same account funding methods, often via name-brand credit card networks and issuing banks. This often occurs without the networks’ or banks’ knowledge due to fraudulent miscoding of transactions, so that deposits with offshore sportsbooks from U.S. customers appear to networks and banks as a charge for something innocuous and legal.

Regulated, legal sports betting operators in a future U.S. market would be highly incentivized to work with card networks, payment processors and banks who do *not* also facilitate illegal sports betting payments to offshore sites. Thus, as more and more networks, processors and banks secure potentially lucrative contracts to process sports betting-related payments for

⁷⁵ Interview with L. Burke Files, May 4, 2017. Notes on file with author.

⁷⁶ American Gaming Association. *Law Enforcement Summit on Illegal Sports Betting: After-Action Report*. Washington, DC: American Gaming Association, 2016. Available at https://www.americangaming.org/sites/default/files/After%20Action%20Report_PDF-Web.pdf

⁷⁷ Ibid.

legal books, they would likely be highly scrutinized, and more incentivized to audit the bad actors in the financial system who are miscoding transactions that are sending U.S. dollars to offshore sports betting sites. As a result, the liquidity of the illegal offshore sports betting market would be reduced, further weakening the potential for criminal interference with U.S. sports.

3.7 Requirements for a Sustainable Legal Sports Betting Market

For a legal, regulated sportsbook market effectively to deliver all these benefits, it is essential for that market to be more attractive than the illegal alternatives. Of course, legality itself brings substantial advantages to most bettors: consumer protections, legal certitude, greater transparency, among others.

But even with those advantages, any future, legal U.S. sports betting market would be handicapped if the terms available to bettors were to be substantially worse than the terms available from illegal sportsbooks. Four conditions are fundamental to that:

First, legal sportsbooks should offer odds and payouts that are competitive with the often “reduced-juice” odds offered by offshore sportsbooks—in other words, a winning bet made onshore should pay out the same as a winning bet made offshore.

Second, and directly related to the first issue, legal sportsbooks should not be subject to excessive taxation that prohibits them from competing with offshore sportsbooks, and creates an excessive burden on their general business operations.

Third, regulations governing legal sportsbooks should enable the creation of products that are at least as convenient and accessible to bettors as offshore sportsbooks are.

Fourth, players want to play how they want, when they want, and where they want. Having sales and distribution channels that provide convenience is essential to converting the illegal market into the legal market.

PASPA, the Constitution and States Rights

Under PASPA, states are prevented from creating a legal framework for offering sports betting within their borders. As Senator Chuck Grassley noted in the Senate Judiciary Committee report on PASPA in 1992:

*The Federal Government has never sought to regulate purely intrastate wagering activities. Indeed, this is how the State of Nevada, which would be exempted from this legislation, has created a lawful \$1.8 billion State-licensed sports wagering industry. This legislation would prohibit purely intrastate activities.*⁷⁸

Furthermore, regarding the taxation of sports betting, Senator Grassley noted, “Congress should not be telling the states how they can or cannot raise revenue.”⁷⁹ And he warned that, if enacted, PASPA “would set the dangerous precedent that the Federal Government can prohibit any state revenue raising program, under the guise of ‘interstate commerce,’ at the behest of any special interest.”⁸⁰

...69% of Americans believe that states should be able to decide whether or not to allow sports betting within their borders, as opposed to the federal government.

These restrictions are not only unpopular with states, but also with consumers. According to the aforementioned 2017 Greenberg Quinlan Rosner public opinion poll, 69% of Americans believe that states should be able to decide whether or not to allow sports betting within their

⁷⁸ Senate Report 102-248. Available at https://ipmall.law.unh.edu/sites/default/files/hosted_resources/SportsEntLaw_Institute/Congressional%20Reports%20and%20Hearings/Senate_Report%20102_248.docx

⁷⁹ Ibid. at 12.

⁸⁰ Ibid. at 13.

borders, as opposed to the federal government.⁸¹ Likewise, in a recent poll by Seton Hall University, 70% of respondents favored state regulation, against 21% for federal regulation.⁸²

Such restrictions on states' rights are also arguably a violation of the anti-commandeering doctrine, which prohibits unwarranted intrusion of the federal government into the operation of state government. This doctrine derives from the Tenth Amendment of the U.S. Constitution, which states that "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." The courts have interpreted this to mean that the federal government cannot command the states to implement or enforce federal legislation. As Justice Sandra Day O'Connor put it: "Congress may not simply "commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program."⁸³

PASPA appears to violate the anti-commandeering doctrine because it limits the ability of states to regulate activities that occur entirely within their own jurisdictions, without establishing a national regulatory scheme. In 2012, New Jersey contended this in its defense of its Sports Wagering Act, which would have legalized sports betting at racetracks and Atlantic City casinos. But in September 2013, the Third Circuit Court of Appeals ruled that PASPA did not violate the anti-commandeering doctrine because "[n]othing in [PASPA's] words requires that the states keep any law in place. All that is prohibited is the issuance of gambling 'license[s]' or the affirmative 'authoriz[ation] by law' of gambling schemes" and thus does "not read PASPA to prohibit New Jersey from repealing its ban on sports wagering."⁸⁴ In June 2014, the Supreme Court refused to take the case, leaving unsettled the question as to whether PASPA violates the anti-commandeering doctrine.

In response to the assertion by the Court of Appeals in the 2013 case (commonly referred to as "*Christie I*") that PASPA does not prohibit New Jersey from repealing its ban on sports wagering, New Jersey Acting Attorney General John Hoffman issued a Law Enforcement Directive and Formal Opinion in September 2014 announcing that "sports pools operated by casinos or racetracks continue to be exempted from criminal liability under New Jersey law so long as no wagering occurs on a college sport or athletic event that takes place in New Jersey or in which any New Jersey college team participates regardless of where the event

⁸¹ Greenberg Quinlan Rosner Research. "Legalizing Sports Betting: A Winning Wager." 3.

⁸² Ricciardelli, Michael. "Young People Show Greater Support for Legalized Sports Gambling, but Overall Nation Divided." Seton Hall Sports Poll. February 27, 2017. Available at <https://blogs.shu.edu/sportspoll/2017/02/23/young-people-show-greater-support-for-legalized-sports-gambling-but-overall-nation-divided/>

⁸³ *New York v. United States* (91-543), 488 U.S. 1041 (1992). Available at <https://www.law.cornell.edu/supct/html/91-543.ZS.html>

⁸⁴ *National Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d at 232.

takes place.”⁸⁵ This Directive and Opinion was superseded by Senate Bill 2460 (“the 2014 Law”), which codified its precepts into law.⁸⁶

In response, the leagues that had challenged the Sports Wagering Act in *Christie I* again sued New Jersey, claiming that the 2014 Law violates PASPA. New Jersey argued in its defense that the new law simply repeals existing state prohibitions on sports wagering, consistent with the 2013 ruling by the Third Circuit Court of Appeals. The District Court rejected this argument, asserting that because the 2014 Law only partially repeals existing prohibitions it amounts to authorization of sports wagering by the state.

New Jersey appealed the District Court’s decision. But in August 2015, the Third Circuit Court of Appeals upheld the District Court’s decision, ruling that the 2014 Law violates PASPA on the grounds that it “authorizes by law sports gambling.”⁸⁷ New Jersey petitioned and was granted a rehearing. In August 2016, the Third Circuit Court of Appeals held “that the District Court correctly ruled that because PASPA, by its terms, prohibits states from authorizing by law sports gambling, and because the 2014 Law does exactly that, the 2014 Law violates federal law. We also hold that we correctly ruled in *Christie I* that PASPA does not commandeer the states in a way that runs afoul of the Constitution.” In essence, the Court of Appeals ruled that because the 2014 Law repeals New Jersey’s prohibition on sports wagering only at state-licensed casinos and racetracks, which are subject to existing state licensing restrictions, it amounts to authorization of wagering at those locations.

New Jersey filed a petition with the Supreme Court, arguing that the Court of Appeals’ construal of the 2014 Law amounts to unwarranted federal intrusion into the state’s ability selectively to repeal its own legislative restrictions on sports wagering—in direct conflict with the anti-commandeering doctrine:

This federal takeover of New Jersey’s legislative apparatus is dramatic, unprecedented, and in direct conflict with this Court’s Tenth Amendment jurisprudence barring Congress from controlling how the States regulate private parties. Never before has congressional power been construed to allow the federal government to dictate whether or to what extent a State may repeal, lift, or otherwise modulate its own state-law

⁸⁵ State of New Jersey. Office of the Attorney General Department of Law and Public Safety. Law Enforcement Directive 2014-1. Formal Opinion 1-201. Available at <http://www.nj.gov/lps/oag/AG-Directive-Opinion-Sports-Wagering.pdf>

⁸⁶ 2014 N.J. Sess. Law Serv. Ch. 62

⁸⁷ *NCAA et al. v Chris Christie*, Third Circuit Court of Appeals REF. 16.

*prohibitions on private conduct. And never before has federal law been enforced to command a State to give effect to a state law that the State has chosen to repeal.*⁸⁸

In May 2017, the solicitor general filed an amicus curiae brief with the Supreme Court arguing that the Court of Appeal’s decision was correct and urging the Court not to take up the case. However, on June 27th the Supreme Court agreed to hear the case.

PASPA increasingly is seen by many elected officials in other states as an unwarrantable overreach of the federal government. In 2017 alone, seven states introduced sports betting legislation. Pennsylvania, Maryland and Connecticut introduced legislation that would allow or potentially allow for sports betting in the event that PASPA is amended or repealed.⁸⁹ These “contingent” bills demonstrate states’ eagerness to introduce lawful sports betting schemes while still being mindful of federal prohibitions.

Other states took a different tack. Bills introduced in New York, Michigan, South Carolina and West Virginia, meanwhile, represent a direct affront to PASPA.⁹⁰ The West Virginia bill, for example, goes so far as to assert: “That in 1992, Congress unlawfully enacted the Federal Professional and Amateur Sports Protection Act ... prohibiting state and local governments from authorizing sports betting.” It continues, “the U.S. Congress has no power to prevent state governments from authorizing sports betting as a form of gaming and therefore, the Legislature finds that it is reasonable and appropriate, for the State of West Virginia to proceed with legalizing sports pool betting pursuant to this article.”

Meanwhile, the Maryland bill includes a provision that it may seek a determination from the Department of Justice as to whether its proposed sports betting scheme(s) aren’t prohibited under PASPA. This raises some intriguing possibilities, and begs an examination of DOJ’s role in both the formation and implementation of PASPA.

⁸⁸ *Governor Christopher J. Christie, et al. v National Collegiate Athletic Association, et al.*, Petition for a Writ of Certiorari to The Supreme Court of the United States, 10/16/2016, at page 3. Available at: <http://www.scotusblog.com/wp-content/uploads/2016/10/16-476-cert-petition.pdf>

⁸⁹ H.B 989. Department of Legislative Services Maryland General Assembly 2017. Available at http://mgaleg.maryland.gov/2017RS/fnotes/bil_0009/hb0989.pdf <http://mgaleg.maryland.gov/2017RS/bills/hb/hb0989f.pdf>

⁹⁰ New York Attorney General Eric T. Schneiderman. Opinion re: Senate No. 1282. <http://www.legalsportsreport.com/wp-content/uploads/2017/02/AG-Opinion-Sports-Betting.pdf>; H.B. 4060, MI, 2017 session [http://www.legislature.mi.gov/\(S\(2bgxezdw34cnbvq3ar05uoos\)\)/mileg.aspx?page=getObject&objectName=2017-HB-4060; S01282. NY, 2017 session](http://www.legislature.mi.gov/(S(2bgxezdw34cnbvq3ar05uoos))/mileg.aspx?page=getObject&objectName=2017-HB-4060; S01282. NY, 2017 session) http://assembly.state.ny.us/leg/?default_fld=%0D%0A&leg_video=&bn=S01282&term=2017&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Text=Y

4.1 The DOJ and PASPA

While an increasing number of Americans don't want PASPA as a law in 2017, DOJ didn't want PASPA as a law from the beginning. PASPA created two routes of enforcement for its prohibitions:

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.⁹¹

Initially, DOJ opposed PASPA, and its own enforcement role in the law. In a letter to Sen. Joseph Biden, then-chairman of the Senate Judiciary Committee (and an identical letter to Sen. DeConcini, co-sponsor of Senate Bill 474, which would become PASPA), then Attorney General Lee Rawls noted that “Generally speaking, it is left to the states to decide whether to permit gambling activities based upon sporting events.”⁹² He also raised concerns about the apparently arbitrary decision not to include in the legislation a similar ban on pari-mutuel wagering, or on individual professional sports.

Most tellingly, Rawls expressed concern that the only non-DOJ enforcers of the law would be private entities who have business interests directly tied to the commercial activities the law sought to prohibit. “The Department is concerned that, to the extent the bill can be read as anything more than a clarification of current law, it raises federalism issues. It is particularly troubling that S. 474 would permit enforcement of its provisions by sports leagues,” AG Rawls wrote. It was for these reasons, he concluded, that “the Department opposes enactment of S. 474 as drafted.”

While DOJ has taken action against offshore betting sites (when operators or their agents were based in the U.S. and therefore in violation of state and federal law), it has never brought enforcement action against PASPA. The sports leagues, on the other hand, have brought enforcement action against not only New Jersey, but against Delaware, too. In 2009, the First State attempted to become the second state in America to authorize single-game sports wagering, a la Nevada. But the leagues sued the state to prevent its lottery corporation from

⁹¹ 28 U.S.C. 3703. Available at: <https://www.gpo.gov/fdsys/pkg/USCODE-2002-title28/html/USCODE-2002-title28-partVI-chap178-sec3703.htm>

⁹² Letter from Attorney General Lee Rawls to Senator Joseph Biden. September 24, 1991. Available at http://www.federalgaminglaw.com/page18/files/PASPAletters_DOJ_Senate91.pdf

offering the form of betting, arguing that betting on the spread of one game represents a different form of wagering than betting on the spread of three separate games.

With a majority of the American public supporting the legalization of sports betting, a larger majority viewing it as a states' rights issue, and with seven states having introduced sports betting legislation, it is possible the DOJ will continue its practice of not bringing enforcement action against PASPA violations.

A Coalition Emerges For Reform

The numerous problems with PASPA—constitutional, economic and criminal—have nurtured conditions for the emergence of a broad coalition of groups from across the spheres of law enforcement, politics, public policy and the sports industry itself who are now urging Congress to re-examine, reform and repeal PASPA.

The law enforcement community is a powerful voice in this coalition, and many of its representatives made their voices heard at the Law Enforcement Summit on Illegal Sports Betting in 2016 held by the AGA.⁹³

The Illegal Gambling Advisory Board chaired by Tim Murphy, former deputy director of the Federal Bureau of Investigation, concluded at the summit that the status quo is failing and has led to a host of unintended consequences. “The current approach to sports betting in the United States is not working; instead, it’s fueling criminal enterprises,” Murphy said at the summit. “The time has come to repeal the current sports betting ban and replace it with rigorous regulations that benefit states, protect consumers and maintain the integrity of the games.” His words were echoed by the former sheriff of Clark County Nevada Bill Young. “Many leaders from all parts of the world law of enforcement and professional sports believe it’s time to reconsider the national ban and allow states to decide whether to legalize and regulate, just like we do with all other forms of gambling, ” said Young.⁹⁴

Political momentum for reform at the local, as well as the state and national level, is also gathering pace with mayors from across the country recognizing potential benefits to their constituents from legalized sports betting. These benefits would include economic growth, tax revenue for local communities, and the elimination of a vast black market which threatens the integrity of sports.

⁹³ American Gaming Association. “AGA Convenes Law Enforcement Leaders To Critique Federal Prohibition On Sports Betting.” AGA, June 16, 2016. Available at <https://www.americangaming.org/newsroom/press-releasess/aga-convenes-law-enforcement-leaders-critique-federal-prohibition-sports>

⁹⁴ American Gaming Association. “Law Enforcement Summit On Illegal Sports Betting: After-Action Report.” AGA. September 21, 2016. Available at https://www.americangaming.org/sites/default/files/research_files/After%20Action%20Report_PDF-Web.pdf

In June 2016, the U.S Conference of Mayors adopted a resolution calling for the legalization and regulation of sports betting. They resolved that, “It’s time for a new approach to sports betting in the United States that could include strict regulation, rigorous consumer protections, taxation of revenues to benefit local communities, and robust tools and resources for law enforcement to root out illegal sports betting and uphold the integrity of games.”

Support for reforming the nation’s approach to sports betting has also grown significantly among some of the country’s most prominent legal officers. As the chief law enforcement officers in their states, attorneys general are familiar with the problems associated with keeping sports betting in the shadows rather than the legal economy.

Former president of the National Association of Attorneys General (NAAG), J.B. Van Hollen, argued in 2016 that “PASPA is not achieving its desired intent. Legalizing and regulating sports betting would help take money out of the black market and instead support legitimate business operations and strengthen game integrity.”

Another former president of the NAAG, Marty Jackley, also took aim at the country’s failing sports betting regime during his presidential initiative conference in May 2016. “As President of the National Association of Attorneys General, I chose to focus on 21st century policing for my presidential initiative,” said Jackley. “We are confronted with many issues in law enforcement, but we must focus also on the proliferation of illegal gambling, the harm it causes to consumers and the billions of dollars of illegal proceeds that stay in the black market and fund horrible activities like human trafficking, drug dealing and terrorism.”

Sports leagues themselves have also begun to reconsider the prohibition on sports betting, arguing that legal, regulated markets may better protect sports integrity than unregulated black markets subject to criminal control. The commissioners of both Major League Soccer and Major League Baseball have publicly called for an examination of what a legal, regulated sports betting market might look like.⁹⁵

Commissioner of the NBA, Adam Silver, has gone even further, arguing in the pages of *The New York Times* for full legalization of sports betting to bring it “out of the underground and into the sunlight where it can be appropriately monitored and regulated.” Silver highlights the fact that in legal sports betting markets better technological safeguards can be put in

⁹⁵ Barrabi, Thomas. “Sports Gambling Ban Repeal Could Happen in Trump’s First Term, Group Says.” FoxBusiness. April 26, 2017. <http://www.foxbusiness.com/features/2017/04/26/sports-gambling-ban-repeal-could-happen-in-trumps-first-term-group-says.html>

place to prevent underage betting and spot unusual betting-line movement that may be connected to criminal activity.⁹⁶

As noted above, sports leagues are increasingly working in collaboration with sports integrity services, such as those offered by SportRadar and Genius Sports, which use information from legal betting to identify instances of game-fixing. These collaborations indicate that the sports leagues understand the benefits of legal betting as a means of preventing corruption and maintaining the integrity of their sports.

Independent public policy organizations echo many of these points highlighting the flawed nature of PASPA and the unintended consequences that have arisen since its passage in 1992. Some have even intervened to support states challenging the law in court. The Pacific Legal Foundation, the Cato Institute and the Competitive Enterprise Institute (CEI) jointly filed a brief in November 2016 supporting New Jersey's challenge to the federal prohibition on legalizing sports betting.⁹⁷

CEI also produced a paper in March 2017 that makes a powerful case for repealing PASPA on both economic and constitutional grounds, as well as protecting the integrity of sports from corruption.

Such a diverse and deep coalition of interests—including policy analysts, sports industry representatives, law enforcement, elected officials and, in fact, the majority of the American public—shows PASPA is failing to satisfy anyone, with the exception of a few holdout sports leagues and ideologically committed prohibitionists.

⁹⁶ Silver, Adam. "Legalize and Regulate Sports Betting." *The New York Times*. November 13, 2014. <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html>

⁹⁷ Amicus brief of Pacific Legal Foundation, Competitive Enterprise Institute, and Cato Institute in support of petitioners. No. 16-476. Available at https://object.cato.org/sites/cato.org/files/wp-content/uploads/christie_v_ncaa_cert-stage.pdf



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COLLEGE FOOTBALL	
TUESDAY OCTOBER 3	
101 SO MISS	
102 TULSA	-6
WEDNESDAY OCTOBER 4	
103 C FLORIDA	
104 MARSHALL	-3.5
THURSDAY OCTOBER 5	
105 FLA ST	-11
106 NC ST	
107 TCU	-1
108 UTAH	
FRIDAY OCTOBER 6	
109 LOUISVILE	-33
110 MD TN ST*	
SATURDAY OCTOBER 7	
111 N*WESTERN	
112 WISCONSIN	-20.5
113 PURDUE	
114 IOWA	-11
115 PITTSBURG	-6.5
116 SYRACUSE	
117 INDIANA	
118 ILLINOIS	-7
119 CLEMSON	-16
120 WY FOREST	
121 HARVARD	
122 GA TECH	-13.5
123 BWL GREEN	
124 OHIO ST*	-34.5
125 KENT ST*	-24.5
126 TEMPLE*	
127 BALL ST	-5.5
128 BUFFALO	
129 ARKANSAS	
130 AUBURN	-16
131 DUKE*	
132 ALABAMA*	-29
133 OKLA ST	-3
134 KANSAS ST	
135 TEXAS A&M	-1.5
136 KANSAS	
137 S DIEGO S	
138 BYU	-27
139 RICE	-2
140 TULANE	
141 NAVY	
142 AIR FORCE	-3
143 STANFORD	
144 NTRE DAME	-32
145 W VIRGINI	-26
146 MISS ST	
147 LSU	-2
148 FLORIDA	
149 WASH ST	-4
150 OREGON ST	