

12-1-2019

High Stakes: Throwing a Hail Mary to Congress for a Federal Ban on Sports Betting in College Athletics

Kaitlyn Kallert

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/jlp>



Part of the [Entertainment, Arts, and Sports Law Commons](#), [Gaming Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Kaitlyn Kallert, *High Stakes: Throwing a Hail Mary to Congress for a Federal Ban on Sports Betting in College Athletics*, 28 J. L. & Pol'y 276 ().

Available at: <https://brooklynworks.brooklaw.edu/jlp/vol28/iss1/6>

This Note is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Journal of Law and Policy by an authorized editor of BrooklynWorks.

HIGH STAKES: THROWING A HAIL MARY TO CONGRESS FOR A FEDERAL BAN ON SPORTS BETTING IN COLLEGE ATHLETICS

*Kaitlyn Kallert**

Our games embody our very finest traditions and values. They stand for clean healthy competition. They stand for teamwork. And they stand for success through preparation and honest effort. With legalized sports gambling, our games instead will come to represent the fast buck, the quick fix, the desire to get something for nothing. The spread of legalized sports gambling would change forever—and for the worse—what our games stand for and the way they are perceived.

- Paul Tagliabue, Commissioner of the National Football League¹

INTRODUCTION

Sports, both professional and amateur, are considered America's pastime and have become an integral part of Americans' daily lives. Research has shown that sixty-seven percent of American adults follow at least one sport, whether it be by attending games, watching

* J.D. Candidate, Brooklyn Law School, 2020; B.A. in Criminal Justice, Rider University, 2017. I would like to thank my parents whose endless love, support and guidance have allowed me to pursue my dreams without limitation. I would also like to thank my roommates for their encouragement and for being my family these past three years. Lastly, I would like to thank the entire *Journal of Law and Policy* staff, especially Elizabeth, Gabriella and Rachel for their invaluable feedback, patience and support during this tedious process.

¹ ERNEST P. GOSS & EDWARD V. MORSE, GOVERNING FORTUNE: CASINO GAMBLING IN AMERICA 154 (2007).

on television or simply checking the box scores.² Whether we are fans or not, sports are everywhere we look, from radio conversation and television programming to newspapers, online advertisements and water cooler talk. Of those who consider themselves fans, many use the world of sports as a distraction from the humdrum of everyday life.³ Americans develop deep connections with both sports teams and franchises, becoming loyally invested in their successes and failures.⁴ But with the soaring growth of professional sports has come an undeniable surge in sports betting and gambling.⁵ The Supreme Court's 2018 decision overruling a federal prohibition on sports betting as unconstitutional under the Tenth Amendment has cleared the way for states to legalize sports gambling, which, in turn, has proven a controversial subject.⁶ Supporters of state legalization of sports gambling⁷ "argue that

² Stephen Weinstein, *The Stakes Are High: The Professional and Amateur Sports Protection Act is Constitutionally Vulnerable and Reflects Bad Policy*, 33 *TOURO L. REV.* 1309, 1310 (2018).

³ Cole Bollinger, *Sports Offer the Best Distraction of All*, *THE MANEATER*, (Feb. 6, 2017), <https://www.themaneater.com/stories/sports/sports-offer-best-distraction-all>.

⁴ See, e.g., Terry Lefton, *What Drives Team Loyalty?*, *SPORTS BUS. DAILY* (Oct. 12, 2015), <https://www.sportsbusinessdaily.com/Journal/Issues/2015/10/12/In-Depth/Fan-study.aspx> (analyzing 4,000 sports fans in the U.S. to determine their loyalty to several pro sports—the National Hockey League, Major League Baseball, National Football League ("NFL") and the National Basketball Association ("NBA")); Jerry Useem, *The Curse of the Loyal Sports Fan*, *THE ATLANTIC* (July/Aug. 2016), <https://www.theatlantic.com/magazine/archive/2016/07/the-curse-of-the-loyal-sports-fan/485594/> (noting that Chicago Cubs fans "are too loyal").

⁵ The United States has the fastest growing sports betting market. "In 2009 the U.S. sports betting market was valued at \$20 billion. By 2016, it was valued at \$40 billion. With a present market capitalization of (conservatively) between \$60–73 billion, the market has conservatively grown at a rate of \$10 billion per year." Aaron Gray, *The Size and Increase of the Global Sports Betting Market*, *SPORTS BETTING DIME* (Jan. 25, 2019), <https://www.sportsbettingdime.com/guides/finance/global-sports-betting-market/>.

⁶ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1484–85 (2018).

⁷ The terms "sports betting" and "sports gambling" are used interchangeably throughout this Note.

legalization will generate revenue for states and critically weaken illegal sports betting operations, which are often commissioned by organized crime.”⁸ However, as the Supreme Court notes, opponents contend that the legalization of sports betting will expose America’s youth to accessible gambling, “encourage people of modest means to squander their savings, and corrupt both professional and college sports.”⁹ While gambling in any sports league provides opportunities for scandal and corruption,¹⁰ Congress should take action to ban gambling in collegiate and other amateur sports in particular, as these contexts pose a heightened risk for corruption predicated on the athletes’ youthfulness and vulnerability. We should not gamble with the integrity of our colleges or the futures of our college athletes. Our young athletes deserve legal protection from the seedy influences of gambling, and fans deserve to know that athletic competitions are honest and fair.

Part I of this Note will detail the history of sports betting in the United States predating the passage of the Professional and Amateur Sports Protection Act in 1992. Part II will discuss PASPA¹¹ and its relevant background, including Congress’ intent to protect players and the general public from the risk and corruption that accompanies sports wagering. Part III will examine the United States Supreme Court and lower courts’ decisions in *Murphy v. National Collegiate Athletic Association*, ultimately overruling a federal prohibition on sports gambling, and will discuss the implications of this ruling on state legislation moving forward. Part IV will examine the dangers

⁸ *Murphy*, 138 S. Ct. at 1484.

⁹ *Id.*

¹⁰ Chris Chase, *11 Biggest Scandals in Sports Gambling History*, USA TODAY (May 16, 2018, 7:31 AM), <https://ftw.usatoday.com/2018/05/11-biggest-scandals-in-sports-gambling-history> (describing some of the most notable instances of scandal and corruption in sports which include the 1951 scandal involving thirty-two college basketball players from seven schools around the country who participated in a mafia-run point-shaving scheme. Subsequently, it was revealed that members of the Lucchese crime family were involved in another point-shaving scandal involving the basketball team at Boston College. In an additional instance, John “Hot Rod” Williams, an NBA veteran, faced jail time stemming from a 1985 point-shaving scandal at Tulane University. The scandal involved five players who were accused of shaving points in two games for a total of \$17,000.).

¹¹ PASPA refers to the Professional and Amateur Sports Protection Act.

of legalized sports betting, particularly within the realm of collegiate athletics. Finally, Part V will offer a proposition that the United States Congress act to implement federal legislation regulating sports betting and outlawing all sports gambling on amateur sports.

I. HISTORY OF SPORTS BETTING IN AMERICA PRECEDING THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT

Dating back to eighteenth-century sports culture in America, when a competition occurred in which one party would prevail, individuals followed with ripe wallets, an eagerness to gamble and a hope to profit off their bets.¹² Sports gambling first emerged in the United States when an activity referred to as “pedestrianism,” a form of race-walking popular in England, made its way across the Atlantic Ocean.¹³ Pedestrianism quickly gained popularity in America, and people became invested in gambling on the races’ outcomes. Following the popularization of gambling on pedestrianism, Americans wasted no time finding other activities on which to place their bets, including “horse racing, cockfighting and bare-knuckle brawls.”¹⁴

For much of the nineteenth and beginning of the twentieth century many types of gambling continued to popularize immensely, and with that, sports gambling in particular paralleled in exponential growth.¹⁵ Americans increasingly turned their interest to team sports that were quickly emerging and gaining popularity.¹⁶ Sports betting became steadily more prominent with the rise of Major League Baseball (“MLB”) in 1871.¹⁷ The mounting popularity of professional sports at this time coined what became

¹² Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, SPORTS HANDLE (Nov. 13, 2017), <https://sportshandle.com/gambling-laws-legislation-united-states-history/>.

¹³ Christopher Poliso, *Betting Against PASPA: Why the Federal Restrictions on Sports Gambling are Unconstitutional and How They Hurt the States*, 25 JEFFERY S. MOORAD SPORTS L.J. 453, 455–56 (2018).

¹⁴ *Id.* at 456.

¹⁵ Chil Woo, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)*, 31 CARDOZO ARTS & ENT L.J. 569, 572 (2013).

¹⁶ Poliso, *supra* note 13.

¹⁷ Woo, *supra* note 15.

known as the “golden age of sports.”¹⁸ The attractiveness of sports gambling was further exacerbated by the emergence of televised sporting events in 1939, as spectators and fans could now watch the games live and observe the results of their wagers in real time.¹⁹ Americans immediately acknowledged the opportunity to turn sports into a money-making entity.²⁰ However, the lack of regulation of sports gambling led to a world of underground gambling in the form of “bookies”²¹ and syndicate bookmakers,²² and the rise in the popularity of sports gambling was followed by high-profile gambling scandals.²³

As professional baseball captured the nation’s attention, it provided a particularly attractive and opportune space for illegal sports betting activity such as point-shaving and match-fixing.²⁴ This betting activity, which eventually led to corruption in the realm of professional sports, caused the public perception of sports to turn sour, leaving behind, at least in part, the feeling of a game that was

¹⁸ Polisano, *supra* note 13.

¹⁹ Neil H. Huffey, *College Sports Wagering: A Case Study About Gambling on College Athletics and the Motivations and Consequences Surrounding Legislation Wanting to Ban Wagering on College Sports*, 415 UNLV THESES, DISSERTATIONS, PROF. PAPERS, & CAPSTONES 16, 17 (2001).

²⁰ Michael Goodwin, *The College Sports Industry; When the Cash Register is the Scoreboard*, N.Y. TIMES, June 8, 1986, at 1.

²¹ “Bookie” is a slang term for a bookmaker. The job of a bookmaker is to accept and pay off bets from gamblers. The wagers are usually on sporting events, but bookies also accept bets on horse racing and casino games. *Gambling Insights 101*, ACE PER HEAD, <https://www.aceperhead.com/blog/2018/02/18/gambling-insights-101/> (last visited Sept. 29, 2019). Richard Johnson, *The Centuries-Old History of How Sports Betting Became Illegal in the United States*, SBINATION (May 18, 2018, 8:00 AM), <https://www.sbnation.com/2018/5/18/17353994/sports-betting-illegal-united-states-why> (describing the world of American sports gambling at the turn of the century); see also David Purdum, *Sports Betting Legalization: How We Got Here*, ESPN (May 21, 2018), https://www.espn.com/chalk/story/_/id/23561576/chalk-line-how-got-legalized-sports-betting (describing “a thriving black market” in sports betting during the Prohibition era).

²² Huffey, *supra* note 19, at 19; Steve Cady, *The Bookie and the Syndicates*, N.Y. TIMES, Jan. 11, 1970, at 164.

²³ Justin Fielkow et al., *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 26 (2016).

²⁴ *Id.* at 23, 26, 29.

once relatively innocent and grounded in chance.²⁵ The negative stigma surrounding sports betting was further exacerbated by the Black Sox scandal, remembered now as the most infamous match-fixing scandal in American history.²⁶ Several players from the 1919 Chicago White Sox team,²⁷ considered to be one of the greatest teams in the history of professional baseball,²⁸ carried out a plan to fix the World Series in exchange for a monetary bribe from gamblers associated with organized crime.²⁹ Notorious gangster Arnold Rothstein offered to pay eight members of the White Sox team \$10,000 each to intentionally lose the game against the Cincinnati Reds.³⁰ The scandal came to light, and as a result, those eight White Sox players were banned from professional baseball indefinitely.³¹ The Black Sox scandal of 1919 drastically altered the public's perception of sports gambling and sports generally, as it occurred at a time when the notoriety of the World Series was at its historical peak prominence.³²

A subsequent scandal involving professional baseball icon Pete Rose further dragged down the public's perception of the legitimacy of sports.³³ Rose was a MLB team manager who was banned from

²⁵ *Id.* at 26.

²⁶ See generally CHARLES RIVER EDITORS, *THE BLACK SOX SCANDAL: THE HISTORY AND LEGACY OF AMERICA'S MOST NOTORIOUS SPORTS CONTROVERSY* (2015) (detailing how the Chicago White Sox fixed the World Series as a gambling scheme and became the most infamous culprits of game fixing to date).

²⁷ Fred Mitchell, *Flashback: Story of 1919 Black Sox Scandal Still Resonates*, CHI. TRIBUNE (July 5, 2015), <https://www.chicagotribune.com/sports/white-sox/ct-flashback-buck-weaver-black-sox-spt-0705-20150703-story.html> (naming the eight players banned from baseball as Ed Cicotte, Joe Jackson, Oscar Emil Felsch, Arnold Gandil, Frederick William McMullin, Charles August Risberg, George Daniel Weaver and Claude Preston Williams).

²⁸ *Id.*

²⁹ Fielkow et al., *supra* note 23, at 26.

³⁰ Matthew T. Mierswa, *Poor Man Wanna Be Rich, Rich Man Wanna Be King: The Battle to Legalize Sports Betting in the Garden State*, 38 SETON HALL LEGIS. J. 447, 470 (2014).

³¹ Polisano, *supra* note 13, at 458.

³² Mierswa, *supra* note 30, at 470.

³³ Chase, *supra* note 10.

the sport when he was found to be betting on professional baseball games in which he was personally involved as a manager.³⁴ The scandal cost Rose not only a lucrative baseball career, but also the possibility of someday becoming a Baseball Hall of Fame inductee.³⁵ Following the highly publicized and notorious Peter Rose incident, Rose fans became disenchanted with him and his scandalous activities.³⁶ Fans and spectators started viewing sporting events with skepticism and apprehension in the years that followed, and the question of whether players, coaches and officials were being influenced by profitable criminal side hustles became a lasting issue.³⁷

³⁴ Polisano, *supra* note 13, at 458; Gerald Posner, “Say it Ain’t So Pete!” *How Did Pete Rose’s Obsessions Bring Him Tumbling From the Pinnacle of Baseball?*, PENTHOUSE (1999), <http://geraldposner.blogspot.com/2016/01/say-it-aint-so-pete-how-did-pete-roses.html>. Responding to the scandal involving Rose, notable sports journalist Gerald Posner commented:

[T]he possibility exists that decisions won’t be made in the team’s best interest, but rather because of the money riding on the game. If a manager bets on a game, he may bring a player off injured reserve sooner than he should in order to win, or he may pitch a reliever without enough rest, not caring that he won’t be able to pitch for several extra days. If a betting manager gets in large debt to bookies, he can clear his account by merely revealing inside information about the team. The opportunity for corruption is greatly increased. This is not to suggest that Rose compromised [his team] in any way. The chance that such impropriety could result is the reason for such a strict taboo on betting baseball.

Id.

³⁵ Jeff Merron, *Biggest Sports Gambling Scandals*, ESPN (Feb. 7, 2006), <http://www.espn.com/espn/page2/story?page=merron/060207>.

³⁶ See generally Josh Hening, *Pete Rose and Phillies: The Illusion of Morality in Sports*, 97.3 ESPN (Aug. 2, 2017), <https://973espn.com/pete-rose-and-phillies-the-illusion-of-morality-in-sports/> (explaining that many baseball fans were conflicted in their feelings towards Rose, as he had such a high level of success on the field but such a low level of morality off the field).

³⁷ See generally Wendell Barnhouse, *Maintaining Integrity of the Games Will be Ongoing Issue for NCAA with Legalized Sports Betting*, GLOBAL SPORT MATTERS (Aug. 31, 2018), <https://globalsportmatters.com/business/2018/08/31/integrity-ncaa-legalized-sports-betting/>.

II. ENACTING THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT

In response to public concern about gambling's effects on the legitimacy of professional and amateur sports, as well as pressure from professional and amateur sports organizations, Congress enacted the Professional and Amateur Sports Protection Act ("PASPA") in 1992.³⁸ Legislators intended PASPA to "[serve] an important public purpose, to stop the spread of State-sponsored sports gambling and to maintain the integrity of [the] national pastime."³⁹ Senator Dennis DeConcini of Arizona introduced PASPA on February 22, 1991.⁴⁰ It was later enacted by Congress and signed into law by President George H. W. Bush on October 28, 1992.⁴¹ The statute prohibited any governmental entity from sponsoring or sanctioning any form of sports betting.⁴² Prior to the passage of PASPA, states were free to invoke the power granted to them by the Tenth Amendment and had the discretion to prohibit

³⁸ S. REP. NO. 102-248, at 5 (1991) (discussing the legislative intent of PASPA and integrating the opinions of professional sports officers).

Sports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling. It undermines public confidence in the character of professional and amateur sports . . . [and] will promote gambling among our Nation's young people. . . . Governments should not be in the business of encouraging people, especially young people, to gamble.

Id.

³⁹ *Id.* at 4.

⁴⁰ Mierswa, *supra* note 30, at 450.

⁴¹ Fielkow et al., *supra* note 23, at 31–32.

⁴² PASPA states that:

It shall be unlawful for [either] . . . a governmental entity . . . or a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances such as athletes in such games.

28 U.S.C. § 3702 (2017).

sports gambling.⁴³ However, PASPA effectively stripped the state governmental entities of that power and prohibited them from passing legislation to legalize sports betting.⁴⁴

Although PASPA prohibited all governmental entities from participating in sports gambling, Congress provided for several exceptions.⁴⁵ The Act grandfathered in any state that currently

⁴³ Fielkow et al., *supra* note 23, at 29 (“Although most states had already elected to prohibit sports betting prior to enactment of PASPA, Congress, for the most part, had given states the freedom to regulate sports gambling within their borders.”).

⁴⁴ *Id.* at 32.

⁴⁵ 28 U.S.C. § 3704:

(a) Section 3702 shall not apply to—

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—

(A) such scheme was authorized by a statute as in effect on October 2, 1991; and

(B) a scheme described in section 3702 (other than one based on pari-mutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity; [The above exceptions applied to the four states grandfathered in, namely Delaware, Montana, Nevada, and Oregon. The exception below under (3) is the one that allowed New Jersey to consider being the fifth state to survive the new restrictive regulatory scheme after January 1, 1993.] (3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and (B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of

permitted or operated a sports betting system at any time between 1976 and 1990.⁴⁶ Thus, subsequent to the enactment of PASPA, Oregon, Delaware, Montana and Nevada were the only states permitted to operate legalized sports betting as these states had implemented a sports betting scheme during the allotted period of time.⁴⁷ Additionally, Congress added a stipulation that allowed a state to implement a legalized sports betting system by January 1, 1993, one year after PASPA took effect, with the restriction that the state must have had continually-operated casino gambling for at least the ten years prior to the enactment date.⁴⁸ This exception provided an exemption for states such as New Jersey, which was already operating casino gambling in Atlantic City.⁴⁹ However, New Jersey failed to implement a sports betting system within the allotted time PASPA granted.⁵⁰ Therefore, Delaware, Montana, Nevada and Oregon remained the only states exempt from PASPA's sports betting prohibition.⁵¹

According to the Senate Judiciary Committee's report recommending the passage of PASPA, the Act's express purpose was to "prohibit sports gambling conducted by, or authorized under the law of, any State or other governmental entity."⁵² PASPA was also referred to as the Bradley Act, named after former professional basketball player and then-New Jersey Senator Bill Bradley, who

State regulation authorized by that State's constitution and applicable solely to such municipality; or (4) pari-mutuel animal racing or jai-alai games.

28 U.S.C. § 3704 (2017).

⁴⁶ Fielkow et al., *supra* note 23, at 32.

⁴⁷ Polisano, *supra* note 13, at 461.

⁴⁸ *Id.*

⁴⁹ Although the provision did not specifically mention New Jersey or Atlantic City, its requirements—permitting legalization only “in a municipality” with an uninterrupted 10-year history of legalized casino gaming—did not fit anywhere else. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1465 (2018) (“[PASPA] permitted New Jersey to set up a sports gambling scheme in Atlantic City within a year of [its] enactment.”). *See generally* 28 U.S.C. § 3704(a)(3)(B) (2017) (excusing any commercial casino gaming scheme that was in operation, in a municipality, throughout a ten-year period).

⁵⁰ Polisano, *supra* note 13, at 461.

⁵¹ *Id.*

⁵² S. REP. NO. 102-248, at 3 (1991).

acted as the bill's driving force.⁵³ Senator Bradley believed that "the harm that state-sponsored sports betting cause[d] far outweigh[ed] the financial advantages received," such as tax revenue.⁵⁴ During the bill's congressional hearing, Bradley recounted a first-hand account he witnessed that displayed sports betting's effect of replacing passion for the game with passion for the bets: he told an account of fans cheering for the game-ending shot of a seemingly irrelevant basketball game simply because of the impact the shot's outcome had on the point spread and, thus, on gamblers' winnings and losses.⁵⁵ Bradley most notably advocated for athletes and protested against them being likened to roulette chips or pawns in a money-making entity.⁵⁶ The legislative records of PASPA indicate that its

⁵³ Nina Totenberg, *New Jersey Takes on Major Professional Sports Leagues in Sports Betting Case*, NPR (Dec. 3, 2017, 7:00 AM), <https://www.npr.org/2017/12/03/567282814/new-jersey-takes-on-major-professional-sports-leagues-in-sports-betting-case%00>. Senator Bill Bradley proffered that:

Athletes are not roulette chips, but sports gambling treats them as such. If the dangers of state sponsored sports betting are not confronted, the characters of sports and youngsters' view of them could be seriously threatened Just as legalizing drugs would lead to increased drug addiction, legalizing sports gambling would aggravate the problems associated with gambling. As a society, we cannot afford this result, [and] . . . [l]egalizing sports gambling would encourage young people to participate in sports to win money. They would no longer love the game for the purity of the experience.

Bill Bradley, *The Professional and Amateur Sports Protection Act-Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORT L. 5, 5-7 (1992).

⁵⁴ Bradley, *supra* note 53, at 8.

⁵⁵ "Bradley's contention that he had witnessed fans cheering a seemingly irrelevant NBA end of game shot that resulted in a team covering the spread was not confirmed or pinpointed to a particular game by Bradley himself." Ryan M. Rodenberg & Anastasios Kaburakis, *Legal and Corruption Issues in Sports Gambling*, 23 J. LEGAL ASPECTS SPORT 1, 17 n.86 (2013).

⁵⁶ See Bradley, *supra* note 53, at 5-7.

Sports gambling threatens the character of team sports. Our games embody our very finest traditions and values. They stand for clean, healthy competition. They stand for teamwork. And they stand for success through preparation and honest effort. With legalized sports gambling, our games instead will come to represent the fast buck, the quick fix, the desire to get something

supporters believed that any expansion of sports gambling, including state-sponsored sports gambling, would increase the chances of corruption and completely deplete the public trust in professional and amateur sports.⁵⁷ PASPA sought to achieve three goals: (1) to restrict any further growth of state-sponsored sports betting; (2) to maintain the integrity of sports; and (3) to protect the youth of America from the dangers of gambling and vice.⁵⁸ This Note is primarily concerned with the former two goals and with Congress' finding that sports wagering "undermines public confidence in the character of professional and amateur sports" as a leading motivation behind the passage of PASPA.⁵⁹

In addition to the support from Congress, PASPA was also supported by the Commissioners of multiple professional sports leagues including Francis T. "Fay" Vincent of MLB, David Stern of the National Basketball Association and Paul Tagliabue of the National Football League.⁶⁰ Proponents of PASPA reasoned that Congress' restriction on states' authorization of legalized sports gambling would greatly limit the possibility and opportunity for corruption in sports.⁶¹ The Commissioners' main concern was maintaining the fairness and integrity of their sports and keeping them free from corruption.⁶²

PASPA gave rise to multiple lawsuits challenging the Act's constitutionality brought largely by private citizens and eventually by a state government.⁶³ For example, in *Flagler v. U.S. Attorney for the District of New Jersey*,⁶⁴ the claimant, a private citizen of the state of New Jersey, argued that PASPA violated the Tenth

for nothing. The spread of legalized sports gambling would change forever—and for the worse—what our games stand for and the way they are perceived.

GOSS & MORSE, *supra* note 1.

⁵⁷ See S. REP. NO. 102-248, at 5 (1991).

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* at 5.

⁶⁰ Woo, *supra* note 15, at 575.

⁶¹ *Id.* at 576.

⁶² *Id.*

⁶³ See *infra* notes 64, 102, 109.

⁶⁴ *Flagler v. U.S. Att'y Dist. of N.J.*, No. 06-3699 (JAG), 2007 WL 2814657, at *1 (D.N.J. Sept. 25, 2007).

Amendment of the United States Constitution and that a right to gamble was infringed.⁶⁵ The claimant also raised the argument that sports gambling was “contained within a state’s borders and, therefore, should not be subject to federal regulation under the Commerce Clause.”⁶⁶ The district court reasoned that not only did the plaintiff have no legally protected right to gamble, but also that even if the court were to overturn PASPA, New Jersey would be highly unlikely to pass any kind of sports betting regulation as the State did not do so before the implementation of PASPA, or during the one-year window PASPA allowed.⁶⁷ Thus, the district court concluded that since there was no injury in fact to the claimant’s legally protected interests, the claimant lacked constitutional and prudential standing to challenge the statute and dismissed the suit.⁶⁸

The rise of the Internet, which boomed shortly following PASPA’s enactment, revolutionized the sports gambling industry.⁶⁹ In the years preceding the widespread adoption of the Internet, those who wanted to place bets on sporting events were limited to two options—legal wagering in Nevada⁷⁰ and illegal wagering with a local bookie.⁷¹ Years later, the Internet became largely responsible for removing the geographical constraints on sports gambling.⁷² People could now wage their bets from the privacy of their own homes using their personal computers. The increased accessibility

⁶⁵ See Erica N. Reib, *Ante Up or Fold: What Should Be Done About Gambling in College Sports?*, 21 MARQ. SPORTS L. REV. 621, 627 (2011) (“The Tenth Amendment reserves all rights not delegated to the United States or prohibited to the States by the Constitution to the States or the people.”).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Flager*, 2017 WL 2814657, at *3–5.

⁶⁹ George Diemer & Ryan M. Rodenberg, *Economics of Online Sports Gambling*, in THE OXFORD HANDBOOK ON THE ECONOMICS OF SPORTS GAMBLING 131 (2012).

⁷⁰ *Id.* at 132.

⁷¹ *Id.* at 133.

⁷² Gary Mills, *Five Things That the Internet Changed in the Sports Betting Industry*, GAMBLINGSITES.COM (Jan. 21, 2019, 12:00 AM), <https://www.gamblingsites.com/blog/five-things-that-the-internet-changed-in-the-sports-betting-industry-91665/amp/>.

of sports gambling online subverted the intent and efficacy of PASPA while underscoring the need for federal regulation.⁷³

In an attempt to further regulate sports gambling by targeting that which occurred online and undermined the intent of PASPA, Congress introduced H.R. 3125, otherwise known as the “Internet Gambling Prohibition Act of 2000.”⁷⁴ The bill was introduced in an attempt to ban all Internet gambling, as its advocates believed the Internet introduced new and challenging issues to sports gambling.⁷⁵ Gerry Waldron, who represented the NFL during the bill’s committee hearing, explained the need for updates in our country’s laws to reflect the new technology’s implications on sports betting.⁷⁶ He further reasoned that the Internet provided a gambler with the means to circumvent the prohibitions set forth in PASPA and the Wire Act (pre-PASPA legislation banning sports gambling via telephone).⁷⁷ For instance, although no states were enacting legislation legalizing sports betting due to the restraints of PASPA, citizens could still utilize the Internet to place bets in states where it was legal (Delaware, Montana, Nevada and Oregon) as well as in offshore online sports books.⁷⁸ However, the bill was eventually defeated in the House, largely due to the lobbying efforts of Jack Abramoff, a notorious and powerful pro-gambling lobbyist.⁷⁹ In the

⁷³ See Nelson Rose, *Gambling and the Law: The Future of Internet Gambling*, 7 JEFFREY S. MOORAD SPORTS L.J. 29, 31–32 (2000).

⁷⁴ H.R. 3125, 106th Cong. (1999–2000).

⁷⁵ *Id.*

⁷⁶ *Internet Gambling Protection Act: Hearing on H.R. 3125 Before the Subcomm. on Telecomm.*, 106th Cong. (2000) (statement of Gerard J. Waldron, on behalf of the National Football League).

⁷⁷ *Id.* The Wire Act, 18 U.S.C. § 1084 (2018), predated the emergence of the Internet and thereby acted in the limited scope of prohibiting sports gambling via telephone. *Id.*

⁷⁸ Joey Richardson, *How the Repeal of the Federal Sports Betting Law Changes the Way You Can Make Bets*, GAMBLINGSITES.NET (June 6, 2018), <https://www.gamblingsites.net/news/how-the-repeal-of-the-federal-sports-betting-law-changes-the-way-you-can-make-bets-12572/>.

⁷⁹ See generally Susan Schmidt & James V. Grimaldi, *How a Lobbyist Stacked the Deck*, WASH. POST. (Oct. 16, 2005), <https://www.washingtonpost.com/archive/politics/2005/10/16/how-a-lobbyist-stacked-the-deck/fadf79ab-ec83-46d5-8061-66aceb21c51b/> (detailing how Jack

wake of the Internet Gambling Prohibition Act's defeat, another similar effort arose through the Amateur Sports Integrity Act ("ASIA"), which sought to prohibit all gambling on amateur sports including high school, college and the Summer and Winter Olympic Games—but that too was eventually struck down.⁸⁰ ASIA was eventually voted against as opponents argued successfully that most gambling took place through underground illegal gambling schemes, and so passing a law to prohibit gambling would not put an effective halt to the activity.⁸¹

While PASPA did prohibit the states from legalizing sports betting, it did not solve the problem in its entirety, leading Congress to introduce this aforementioned additional legislation.⁸² Unfortunately, this additional legislation, which sought to strengthen and supplement PASPA, never made it out of Congress' respective chambers.⁸³

Contrary to popular belief, PASPA did not make sports gambling a federal crime; instead it allowed the Attorney General, as well as professional and amateur sports organizations, to bring civil actions to enjoin violations.⁸⁴ This stipulation provided the civil remedy resulting in the landmark decision of May 2018 in *Murphy v. National Collegiate Athletic Association*.⁸⁵

Abramoff, a notorious lobbyist in Washington D.C., lobbied for the rejection of the Internet Gambling Prohibition Act of 2000).

⁸⁰ See generally *United States Senate Committee on Commerce, Science, and Transportation: Hearing on S.2340, Amateur Sports Integrity Act*, 106th Cong. (2000) (detailing how the Amateur Sports Integrity Act was introduced and eventually struck down by Congress); *S. 2267 (106th): Amateur Sports Integrity Act*, GOVTRACK, <https://www.govtrack.us/congress/bills/106/s2267> (last visited Sept. 29, 2019) (detailing the various bills introduced in Congress to combat sports wagering in America that were all eventually struck down).

⁸¹ *Id.*

⁸² See Fielkow et al., *supra* note 23, at 32–33.

⁸³ *S. 2267 (106th): Amateur Sports Integrity Act*, *supra* note 80.

⁸⁴ 28 U.S.C. Ch. 178: Professional and Amateur Sports Protection Act, § 3703 (2017).

⁸⁵ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1471 (2018).

III. *MURPHY V. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION*

In the two and a half decades following PASPA's enactment, public perception of sports gambling began to shift from initial intolerance and skepticism to overall acceptance.⁸⁶ Americans became more open-minded about the practice of sports betting and started adopting the idea that it was a victimless crime.⁸⁷ In 2016, a poll conducted by Farleigh Dickinson University reported that 48% of those polled were in favor of allowing states to legalize sports gambling, and 39% opposed.⁸⁸ The next year, the University of Massachusetts Lowell conducted a similar nationwide poll and reported finding that a majority—55%—of people were in favor of the legalization of sports betting, with only 33% opposing.⁸⁹

The substantial growth in support for legalized sports gambling among Americans provided a platform for public interest and incitement in New Jersey's fight against PASPA for its state legalization of sports betting.⁹⁰ Reacting to the nationwide recession in the previous year, New Jersey legislators sought to save the state's deteriorating economy in 2010 in part through tax income generated

⁸⁶ Emily Guskin & Rick Maese, *Poll: For the First Time, Majority of Americans Approve of Legalizing Sports Betting*, WASH. POST (Sept. 26, 2017), https://www.washingtonpost.com/sports/poll-for-first-time-majority-of-americans-approve-of-legalizing-sports-betting/2017/09/26/a18b97ca-a226-11e7-b14f-f41773cd5a14_story.html.

⁸⁷ *Id.*

⁸⁸ These results are from Farleigh Dickinson University's annual poll on sports betting, as reported in the Fox Business Section. Thomas Barrabi, *Legal Sports Gambling: Americans Weigh in*, FOXBUS. (Nov. 2, 2016), <http://www.foxbusiness.com/features/2016/11/02/legal-sports-gambling-americans-weigh-in.html>.

⁸⁹ *Poll: Majority of Americans Support Legalization of Sports Betting*, UMASS LOWELL (Sept. 26, 2017), <https://www.uml.edu/News/press-releases/2017/FantasySportsPoll09262017.aspx>.

⁹⁰ See generally Andrew Beaton et al., *Supreme Court Ruling for New Jersey Opens Door to Sports Betting*, WALL STREET J. (May 14, 2018), <https://www.wsj.com/articles/supreme-court-ruling-for-new-jersey-opens-door-to-sports-betting-1526308430> (detailing how the public's support for the legalization of sports betting in New Jersey helped pave the way for its eventual implementation).

by sports gambling.⁹¹ Although New Jersey did not take advantage of the one-year window set forth in PASPA to authorize legalized sports gambling in Atlantic City, by 2011 the state decided to pursue legalization.⁹² Under the direction of Governor Chris Christie, New Jersey amended its state constitution, making it lawful for the state legislature to authorize sports gambling, a move that knowingly violated the prohibitions in PASPA.⁹³

New Jersey's second substantive challenge to PASPA arose in 2012 when Governor Christie of New Jersey signed the Sports Gambling Law, which authorized casinos and racetracks to offer Las Vegas-style sports betting at their facilities.⁹⁴ The law quickly came under attack by various sports organizations, both professional and collegiate.⁹⁵ These organizations, including the National Football League, National Basketball Association, National Hockey League, MLB and the National Collegiate Athletic Association ("NCAA"), filed suit against Governor Christie and other state officials⁹⁶ (collectively "New Jersey"), seeking to enjoin the state from implementing a sports gambling system on grounds that it violated PASPA.⁹⁷

Responding to the NCAA's claim, New Jersey argued that PASPA "violates the system of dual sovereignty by prohibiting New Jersey from enacting state sponsored sports betting."⁹⁸ In making

⁹¹ CHRISTOPHER L. SORIANO, THE EFFORTS TO LEGALIZE SPORTS BETTING IN NEW JERSEY—A HISTORY 22 (2013), https://www.duanemorris.com/articles/static/soriano_njlawyer_0413.pdf.

⁹² *Id.* at 22, 24.

⁹³ Nat'l Collegiate Athletic Ass'n v. Governor of N.J., 832 F.3d 389, 396 (3d Cir. 2016); Steve Berkowitz & Tom Schad, *Your State-by-State Guide to Sports Betting in Light of Supreme Court Ruling*, USA TODAY (May 14, 2018), <https://www.usatoday.com/story/sports/2018/05/14/sports-gambling-status-every-state-after-supreme-court-ruling/607334002/>.

⁹⁴ Polisano, *supra* note 13, at 463.

⁹⁵ *Id.*

⁹⁶ Other officials named as defendants included David L. Rebeck, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and Frank Zanzuccki, Executive Director of the New Jersey Racing Commission. Nat'l Collegiate Athletic Ass'n v. Christie, 926 F. Supp. 2d 551, 551 (D.N.J. 2013).

⁹⁷ *Id.* at 561.

⁹⁸ *Id.* at 563.

this argument, the state principally relied on a landmark case in which the United States Supreme Court struck down federal laws as violating the anti-commandeering principle,⁹⁹ emphasizing that “the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States.”¹⁰⁰ Relying on this preceding case, New Jersey argued PASPA was similarly flawed in that it regulated a state’s lawmaking ability by barring the state from modifying or repealing its laws prohibiting sports gambling.¹⁰¹ The NCAA countered that PASPA is critically different from the commandeering issue considered by the Supreme Court because it did not command the states to take any affirmative action.¹⁰² Without an affirmative federal command to do something, the NCAA insisted, there could be no claim of commandeering.¹⁰³

The United States District Court for the District of New Jersey found no anti-commandeering violation, and the case was appealed to the United States Court of Appeals for the Third Circuit.¹⁰⁴ Through a split panel, the Third Circuit affirmed the District Court’s decision.¹⁰⁵ The Third Circuit relied on the significant fact that PASPA did not impose any affirmative command on the states, noting that it did not “require or coerce the states to lift a finger.”¹⁰⁶ Reacting to the Third Circuit’s affirmation, New Jersey filed a petition for a writ of certiorari, raising the anti-commandeering issue. Certiorari was denied.¹⁰⁷

⁹⁹ Steven Schwinn, *Symposium: It’s Time to Abandon Anti-Commandeering (but Don’t Count on This Supreme Court to do it)*, SCOTUS BLOG (Aug. 17, 2017), <https://www.scotusblog.com/2017/08/symposium-time-abandon-anti-commandeering-dont-count-supreme-court/>; see also *New York v. United States*, 505 U.S. 144, 176 (1992) (holding a federal law unconstitutional because “the Act commandeered the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program” (quoting *Hodel v. Virginia Surface Min. & Reclamation Ass’n, Inc.*, 452 U.S. 264, 287 (1981))).

¹⁰⁰ *New York*, 505 U.S. at 166.

¹⁰¹ *Christie*, 926 F. Supp. 2d at 561–62.

¹⁰² *Id.* at 562.

¹⁰³ *Id.*

¹⁰⁴ *Nat’l Collegiate Athletic Ass’n v. Governor of N.J.*, 832 F.3d 389 (3d Cir. 2016).

¹⁰⁵ *Id.* at 215.

¹⁰⁶ *Id.* at 231.

¹⁰⁷ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1466 (2018).

Following the Third Circuit's 2013 decision, the New Jersey legislature enacted a new law in 2014,¹⁰⁸ repealing its own state laws criminalizing sports gambling and, in effect, legalizing the activity indirectly without expressly stating such a purpose.¹⁰⁹ The new legislation repealed the provisions of the state law's prohibitions on sports gambling insofar as they concerned the "placement and acceptance of wagers" on sporting events by persons twenty-one years of age or older at a horseracing track or a casino or gambling house in Atlantic City.¹¹⁰ The legislation also specified that the repeal was effective only as to wagers on sporting events that did not involve a New Jersey college team or collegiate event taking place within the state.¹¹¹ Subsequently, the NCAA and accompanying plaintiffs commenced a new action in the District Court of New Jersey challenging this partial repeal.¹¹²

The District Court issued a summary judgment ruling in favor of the NCAA, and the case was eventually heard by the United States Court of Appeals for the Third Circuit.¹¹³ The Third Circuit affirmed the District Court's decision, finding that the new law, no less than the old one, violated PASPA by "authorizing" sports gambling.¹¹⁴ The court concluded that the new law constituted an authorization because it "selectively remove[d] a prohibition on sports wagering in a manner that permissively channel[ed] wagering activity to particular locations or operators."¹¹⁵ Having found that the 2014 law violated PASPA's prohibition of state authorization of sports gambling schemes, the court went on to hold that PASPA's prohibition did not infringe upon the anti-commandeering principle because it did not command states to take affirmative action.¹¹⁶ New Jersey appealed, and the United States Supreme Court granted

¹⁰⁸ See *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 799 F.3d 259, 263 (3d Cir. 2016).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Weinstein, *supra* note 2, at 1323.

¹¹³ *Nat'l Collegiate Athletic Ass'n*, 799 F.3d at 263; *Nat'l Collegiate Athletic Ass'n v. Christie*, 61 F. Supp. 3d 488, 508 (D.N.J. 2014).

¹¹⁴ *Nat'l Collegiate Athletic Ass'n*, 832 F.3d at 396.

¹¹⁵ *Id.* at 401.

¹¹⁶ *Id.*

certiorari to decide the constitutional question presented as to whether PASPA impermissibly commandeered the states.¹¹⁷

In May 2018, the Supreme Court issued a 6-3 ruling in favor of the state of New Jersey.¹¹⁸ The majority held that PASPA's Section 3702(1) prohibited state authorization of sports gambling in violation of anti-commandeering principles as recognized in *New York v. United States*¹¹⁹ in violation of the Tenth Amendment.¹²⁰ The Supreme Court did not address whether New Jersey's reframed law violated PASPA because it concluded that PASPA's Anti-Authorization and Anti-Licensing Provision ("AAALP") violated the United States Constitution.¹²¹ Specifically, the Court held that by "unequivocally dictat[ing] what a state legislature may and may not do," PASPA's AAALP violated the anti-commandeering doctrine of the Constitution.¹²² Delivering the opinion of the Court, Justice Alito reasoned that Congress has the power to regulate sports gambling under the Commerce Clause, but if it fails to do so, that

¹¹⁷ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1468 (2018).

¹¹⁸ Justice Alito delivered the opinion of the Court and was joined by Chief Justice Roberts and Justices Kennedy, Thomas, Kagan, Gorsuch and, in part, Breyer. Justices Thomas and Breyer (dissenting in part) separately filed concurring opinions. Justice Ginsberg delivered the dissent, joined by Justices Breyer and Sotomayor. *Id.* at 1461.

¹¹⁹ Under the anti-commandeering doctrine, "Congress may not simply commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *Murphy*, 138 S. Ct. at 1467 (quoting *New York v. United States*, 505 U.S. 144, 161 (1992)).

¹²⁰ *Id.* at 1478.

¹²¹ *Id.* at 1481–82.

¹²² *Id.* at 1478. In a condemnation of PASPA, Justice Alito wrote:

The PASPA provision at issue here—prohibiting state authorization of sports gambling—violates the anti-commandeering rule. That provision unequivocally dictates what a state legislature may and may not do. And this is true under either our interpretation or that advocated by respondents and the United States. In either event, state legislatures are put under the direct control of Congress. It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine.

Id.

power is then delegated to the states, who are free to act on their own accord.¹²³ Moreover, the Supreme Court explained that PASPA “regulate[s] state governments’ regulation” of practices in their own states, involving their own citizens, and that the federal Constitution does not grant such power to Congress, thus ultimately reversing the decision of the Third Circuit.¹²⁴

Importantly, *Murphy v. National Collegiate Athletic Association* did not affirmatively legalize sports betting in America; instead, it attributed power to do so to the states.¹²⁵ Moving forward, the decision of whether or not to legalize sports gambling will be left up to state legislatures on a state-by-state basis.¹²⁶ State legislators will have the power to decide whether or not to legalize sports betting and permit sports betting schemes in their respective states.¹²⁷ In the wake of the Supreme Court’s decision, “[n]early [twenty] states have introduced bills that could legalize sports betting,” and a gaming institute estimates that “as many as [thirty-two] states could offer legal sports betting within the next five years.”¹²⁸ Currently, only eleven states have *actually* legalized sports gambling, including Arkansas, Delaware, Mississippi, Nevada, New Jersey,¹²⁹

¹²³ *Id.* at 1483–84.

¹²⁴ *Id.* at 1478, 1485 (citation omitted).

¹²⁵ See *id.* at 1490 (Breyer, J., dissenting); Ariane de Vogue & Maegen Vazquez, *Supreme Court Lets States Legalize Sports Gambling*, CNN: POLITICS (May 14, 2018), <https://www.cnn.com/2018/05/14/politics/sports-betting-ncaa-supreme-court/index.html>.

¹²⁶ See *Murphy*, 138 S. Ct. 1461, 1485 (2018).

¹²⁷ *Id.*

¹²⁸ Rick Maese, *What the Supreme Court’s Sports Gambling Decision Means*, WASH. POST (May 14, 2018), https://www.washingtonpost.com/news/sports/wp/2018/05/14/what-the-supreme-courts-sports-gambling-decision-means/?utm_term=.a1c8169c43a0.

¹²⁹ In the first three months of 2019, more than \$1 billion has been legally wagered across the state. In March alone, New Jersey’s sports betting handle made up a third of the total amount bet legally on sports across all states with[in] legal markets. That means valuable tax revenue, with nearly \$20 million in new revenue going to the state since the ban was lifted.

Michelle Minton, *Legalized Sports Betting is Paying Off*, THE HILL (Jun. 6, 2019), <https://thehill.com/blogs/congress-blog/civil-rights/446232-legalized-sports-betting-is-paying-off>.

New Mexico, New York, Oregon, Pennsylvania, Rhode Island and West Virginia.¹³⁰ Looking to the future,¹³¹ analysts in the sports gambling industry predict that by the year 2022, more than half of the fifty states will offer some form of a legalized sports betting scheme.¹³²

IV. DANGERS OF LEGALIZED SPORTS BETTING IN COLLEGE ATHLETICS

While legalized sports gambling on any sporting event can pose a risk of corruption, gambling on amateur sports—particularly college athletics—enhances this risk in large part because unlike their professional counterparts, young collegiate athletes do not receive compensation in the form of a salary.¹³³ Gambling on college sports has become increasingly popular with the NCAA Men’s Basketball Tournament (known as “March Madness”), as it is the second-largest event for sports gambling in the world, only second to the Super Bowl.¹³⁴ Legalizing sports wagering on college

¹³⁰ Alexandra Licata, *42 States Have or are Moving Towards Legalizing Sports Betting — Here are the States Where Sports Betting is Legal*, BUS. INSIDER (Aug. 2, 2019, 1:51 PM), <https://www.businessinsider.com/states-where-sports-betting-legal-usa-2019-7> (showing that the states that are currently debating sports betting bills include California, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Oklahoma and South Carolina).

¹³¹ Additionally, Iowa legalized sports gambling in August 2019, and Indiana is set to legalize it in September 2019. Steve Silverman, *Legalized Sports Gambling Passes \$10 Billion, Likely Just Tip of the Iceberg*, FORBES (Aug. 29, 2019), <https://www.forbes.com/sites/stevesilverman/2019/08/29/legalized-sports-gambling-passes-10-billion-likely-just-tip-of-the-iceberg/#739ba7e7c223>.

¹³² Mike Fish & David Purdum, *Sports Leagues Stand Pat as Legal Gambling Spreads*, ESPN (Sept. 26, 2018), https://www.espn.com/espn/otl/story/_/id/24783436/sports-leagues-ncaa-leave-teams-players-trainers-officials-own-figure-how-best-navigate-evolving-gambling-landscape.

¹³³ Sean Isabella, *Legal Sports Gambling Could Put NCAA Athletes at Risk*, VALDOSTA DAILY TIMES (Jun. 29, 2018), https://www.valdostadailytimes.com/sports/national_sports/legal-sports-gambling-could-put-ncaa-athletes-at-risk/article_81965018-3ee5-5ec3-bd08-fa172ba2905b.html.

¹³⁴ According to the American Gaming Association, an estimated \$10 billion were bet by Americans on the 2018 NCAA Men’s Basketball Tournament.

athletics poses grave dangers, including: (1) compromising the integrity of the game; (2) preying on the vulnerability of college student athletes; and (3) increasing the risk for corruption.¹³⁵

A. *Compromising the Integrity of the Game*

Athletes and fans participate in and watch sporting events for the competition, the sense of comradery and for the love of the game.¹³⁶ The implementation of legalized sports betting threatens the integrity of these sports and taints them for spectators and participants alike.¹³⁷ Many believe that the legalization of sports betting will lead to inevitable problems and jeopardize the integrity of all those involved.¹³⁸ When interviewed about the legalization of sports betting in Pennsylvania, University of Pittsburgh Athletic Director Heather Lyke responded that sports betting would have a “negative effect on the integrity of college athletics and on the health, safety, and welfare of [the University’s] students.”¹³⁹ While there are potential risks for all athletes, young students’ mental health, safety and welfare are priorities that are not worth endangering, making this a heightened risk area. Since its inception in 1906, the NCAA has deemed its primary goal to be the protection of student athletes from exploitation, both on and off the playing

However, only three of the wagers made toward that sum were placed legally. Kyle Boon, *2018 NCAA Tournament: Estimated \$10 Billion Bet on March Madness*, CBS SPORTS (Mar. 12, 2018, 11:35 AM), <https://www.cbssports.com/college-basketball/news/2018-ncaa-tournament-estimated-10-billion-to-bet-on-march-madness>.

¹³⁵ Isabella, *supra* note 133.

¹³⁶ See Tim Urban, *Why Sports Fans Are Sports Fans*, WAIT BUT WHY (Mar. 18, 2014), <https://waitbutwhy.com/2014/03/sports-fans-sports-fans.html>.

¹³⁷ Caitlin D. Buckstaff, *Covering the Spread: An Assessment of Amateurism and Vulnerability of Student-Athletes in an Emerging Culture of Sports Wagering*, 16 VAND. J. ENT. & TECH. 133, 135 (2013).

¹³⁸ Keith Miller, *Is the Legalization of Sports Betting in the US Inevitable?*, THE CONVERSATION (Nov. 12, 2015, 6:00 AM), <http://theconversation.com/is-the-legalization-of-sports-betting-in-the-us-inevitable-50280>.

¹³⁹ Mark Wogenrich, *Penn State Proposes 2-Year Halt to College Sports Betting in Pennsylvania*, MORNING CALL (June 29, 2018 9:06 PM), <http://www.mcall.com/sports/gambling/mc-spt-penn-state-football-sports-betting-20180627-story.html>.

field.¹⁴⁰ At its origin, the NCAA's vision of the student athlete was a "well-rounded gentleman who played sports purely for entertainment with no designs on (or need for) compensation."¹⁴¹ Today, the NCAA is an association comprised of 1,061 colleges and universities¹⁴² that are mandated to adhere to its rules and regulations in order to maintain membership.¹⁴³ In furtherance of this goal, the NCAA makes clear that its number one priority is "fostering clean and fair competition among member schools."¹⁴⁴ The NCAA is primarily concerned with maintaining the integrity of the game and the sportsmanship of all of its student athletes at all times.¹⁴⁵

Overall, the NCAA believes that sports should be enjoyed and appreciated for the inherent benefits of playing and spectating. Ideally, athletes participate in sports for the pure competition, enjoyment and the self-affirmation they provide.¹⁴⁶ Likewise, spectators and fans watch and follow sporting events generally for entertainment, a sense of unity and the uplifting notion that on any night an underdog athlete or team can rise above itself and touch greatness, defying all odds or expectations. However, the emergence

¹⁴⁰ See Dan Treadwater, *Why Does the NCAA Exist?*, HUFFPOST (Aug. 6, 2013, 1:39 PM), https://www.huffpost.com/entry/johnny-manziel-ncaa-eligibility_b_3020985?.

¹⁴¹ Elizabeth McCurrach & Ronald Gaither, *How the Sports Betting Decision May Affect College Athletes*, LAW360 (July 31, 2018), <https://www.law360.com/articles/1068712/how-the-sports-betting-decision-may-affect-college-athletes>.

¹⁴² The membership of the 1,037 colleges and universities is divided into three legislative and competitive divisions (Division-I, Division-II and Division-III). Huffey, *supra* note 19, at 33; McCurrach & Gaither, *supra* note 141.

¹⁴³ McCurrach & Gaither, *supra* note 141.

¹⁴⁴ Buckstaff, *supra* note 137, at 146.

¹⁴⁵ See NCAA 2019–20 NCAA: DIVISION 1 MANUAL ¶ 2.10 (2019) <http://www.ncaapublications.com/productdownloads/D120.pdf> [hereinafter NCAA MANUAL] (defining the principle of competitive equity).

¹⁴⁶ See generally Ann Josephson, *15 Reasons Competitive Sports Are Great for Kids (That Have Nothing to Do with Winning)*, HUFFPOST (Dec. 7, 2017), https://www.huffpost.com/entry/15-reason-competitive-sports-are-great-for-kids-that-have-nothing-to-do-with-winning_b_7219150 (detailing the social benefits and personal growth that involvement in sports provides America's youth).

of legalized sports betting threatens the integrity of sports and their participating athletes.¹⁴⁷

The NCAA cannot control whether the public gambles on the outcome of sporting events; however, it can control how the games are played and try to ensure that they are played with honesty and sportsmanship.¹⁴⁸ As a combative mechanism to the looming threat that legalized sports betting brought in the wake of *Murphy v. National Collegiate Athletic Association*,¹⁴⁹ the NCAA has relied on enforcing its bylaws, which prohibit coaches, players and others affiliated with the NCAA and their respective member organizations from participating sports wagering.¹⁵⁰

The NCAA is extremely committed to ensuring all college sports remain free from any sort of sports wagering by NCAA athletes and employs a staff whose chief focus is ensuring

¹⁴⁷ Buckstaff, *supra* note 137, at 135.

¹⁴⁸ See NCAA MANUAL, *supra* note 145, ¶ 10.01.1 (noting the “honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports”).

¹⁴⁹ *Murphy v. NCAA*, 138 S. Ct. 1461, 1484 (2018) (“The legalization of sports gambling requires an important policy choice, but the choice is not ours to make.”).

¹⁵⁰ NCAA Bylaw 10.3: Sports Wagering Activities[:]

Staff members of a member conference, staff members of the athletics department of a member institution and student-athletes shall not knowingly:

- (a) Provide information to individuals involved in organized gambling activities concerning intercollegiate athletics competition;
- (b) Solicit a bet on any intercollegiate team;
- (c) Accept a bet on any team representing this institution;
- (d) Solicit or accept a bet on any intercollegiate competition for any item (e.g., cash, shirt, dinner) that has a tangible value; or
- (e) Participate in any gambling activity that involves intercollegiate athletics, through a bookmaker, a parlay card or any other method employed by organized gambling.

See NCAA MANUAL, *supra* note 145, at ¶ 10.3 (prohibiting coaches, players and staff members associated with a member’s athletics department, among others, from participating in sports wagering).

compliance with regard to gambling.¹⁵¹ However, the NCAA regulations fall short because the NCAA can only enforce regulations against those individuals over of which it has authority: student athletes, coaches and athletic personnel who belong to the NCAA.¹⁵² The NCAA has no authority over the public placing wagers on college sporting events.¹⁵³ The NCAA's limited authority significantly constrains its ability to wholly regulate the ever-growing phenomenon of sports betting.¹⁵⁴

B. Vulnerability of Collegiate Student-Athletes

Unlike their professional counterparts, amateur athletes—especially those in college—are exceedingly more vulnerable to the influences and corruption that sports gambling brings.¹⁵⁵ It is the young age, access to gambling and lack of compensation that, taken together, leave college athletes susceptible to the dangers of legalized sports betting.¹⁵⁶

i. A College Athlete's Young Age

When student athletes enter college after graduating high school, many are leaving home for the first time.¹⁵⁷ Each August, young

¹⁵¹ See John W. Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away Our Youth?*, 8 VILL. SPORTS & ENT. L.J., 224–49 (2002).

¹⁵² Buckstaff, *supra* note 137, at 151.

¹⁵³ *Id.*

¹⁵⁴ Ben Nuckols, *NCAA Can't Keep Tournament Games Away from Legal Gambling*, AP NEWS (Mar. 19, 2019), <https://www.apnews.com/66e15b3a43ef49619c57467cecd0b8c>.

¹⁵⁵ Joseph Goodman, *Vulnerable to Corruption, NCAA Remains Worried About Daily Fantasy Sports*, AL.COM (Mar. 6, 2019), https://www.al.com/sports/2015/09/vulnerable_to_corruption_ncaa.html.

¹⁵⁶ Steve Berkowitz & Erik Brady, *Legalized Sports Betting Will Wreak Havoc on College Athletics. Or Not*, USA TODAY (May 31, 2018), <https://www.usatoday.com/story/sports/college/2018/05/31/sports-betting-college-athletics-world-concerned-supreme-court-ruling/645367002/>.

¹⁵⁷ See generally Emma Beernink, *What it Is Like Leaving Home for College for the First Time*, ODYSSEY (Nov. 14, 2016), <https://www.theodysseyonline.com/leaving-home-time>.

men and women from across the country unload suitcases and mini fridges in a ten-by-ten concrete-walled dormitory room to begin their college experiences.¹⁵⁸ However, in addition to a full course load, grappling with being away from loved ones and trying to develop a social life, these young men and women are also collegiate athletes who will have to practice up to twenty hours per week.¹⁵⁹ Though rewarding due to the competition and glory, playing a collegiate sport, particularly at the Division-I level, adds an immense amount of stress and pressure to a young student's life.¹⁶⁰ It is often forgotten that these athletes are just eighteen to twenty-four-year-old young adults.¹⁶¹ Sports betting in college athletics places an undue burden and enormous amount of additional pressure on these young athletes.¹⁶²

ii. Accessibility of Collegiate Athletes

While professional athletes remain secluded from the press and general public, hidden behind locker room walls and bodyguards,¹⁶³ college athletes are far more accessible to the public. Imagine sitting in a Thursday morning lecture at an undergraduate university. In walks the starting quarterback of the football team wearing a sling on his right throwing arm. The football team has its biggest game of the season this upcoming Saturday night against a league rival.

¹⁵⁸ E.g., *Joe E. Berry Hall*, C. CHARLESTON, <http://housing.cofc.edu/residence-halls/joe-berry-hall.php> (last visited Sept. 29, 2019).

¹⁵⁹ See NCAA MANUAL, *supra* note 145, ¶¶ 13.11.2.1(h), 17.01.

¹⁶⁰ See Jason Perry, *Dealing with Stress as a College Athlete*, ATHLETE NETWORK, <https://an.athletenetwork.com/blog/dealing-with-stress-as-a-college-athlete> (last visited Sept. 29, 2019).

¹⁶¹ *US College Student Demographics in 2012*, MARKETING CHARTS (Sept. 12, 2013), <https://www.marketingcharts.com/demographics-and-audiences/men-demographics-and-audiences-36555>.

¹⁶² Jill R. Dorson, *Betting on College Sports - or Not - Often a Game of Political Football*, SPORTS HANDLE (July 11, 2019), <https://sportshandle.com/sports-betting-on-college-sports/>.

¹⁶³ The NFL specifically places strict regulations on locker room access for the media and the public to protect its players. 2018 MEDIA ACCESS POLICY, NATIONAL FOOTBALL LEAGUE 1 (2018), <https://operations.nfl.com/media/3176/2018-nfl-media-access-policy.pdf>.

Because of the buzz surrounding the game, many bets will be placed, and the quarterback's team is projected to win by twenty points. But, because that quarterback attended the lecture to further his own education as a normal student, everyone who saw him walking to the classroom, sitting in on the lecture and walking back to his dorm now has information that the starting quarterback may be sidelined for the game on Saturday. Anyone who has seen him and discovered his injury can now place more informed bets based on what was observed or sell that valuable information to other gamblers.

What is often overlooked is that college athletes are first and foremost students who attend classes and interact with the rest of the student body. The legalization of college sports betting brings new challenges, such as the issue of gamblers, "including classmates and neighbors," trying to coax out non-public information from insiders regarding critical factors affecting the outcome of a game, such as "injuries or academic standing."¹⁶⁴ Phil Esten, the deputy athletic director at Pennsylvania State University,¹⁶⁵ commented, "Your mind goes to the worst possible scenario. . . . You think about where student athletes could be influenced, where somebody tries to intercept them as they're going from study hall to dorm rooms to cafeteria, to try to get information from them."¹⁶⁶ These student athletes are far more vulnerable and exposed than their professional counterparts and should therefore be offered additional protections.

¹⁶⁴ Andrew Maykuth, *What Are the Odds? Colleges Fear Sports Betting Will Lead to Cheating*, PHILA. INQUIRER (Sept. 14, 2018), <https://www.inquirer.com/philly/business/college-sports-betting-ncaa-laws-pennsylvania-new-jersey-20180914.html>.

¹⁶⁵ Phil Esten is currently in his fifth year as Deputy Director of Athletics and Chief Operating Officer for Penn State Intercollegiate Athletics. Jill Beckman, *Phil Esten Named Deputy Director of Athletics and Chief Operating Officer for Intercollegiate Athletics*, DAILY COLLEGIAN (Oct. 6, 2014), https://www.collegian.psu.edu/sports/article_22b8fcfa-4da4-11e4-84ae-0017a43b2370.html.

¹⁶⁶ Maykuth, *supra* note 164.

iii. Lack of Compensation in College Sports

Professional athletes sign contracts that promise them millions of dollars for their athletic abilities.¹⁶⁷ They have the financial security to protect them from becoming predictable targets for match-fixing scandals.¹⁶⁸ College athletes, however, are not compensated for their athletic abilities beyond the costs of tuition, room and board and therefore are left to cover their own additional personal expenses.¹⁶⁹ In addition to a substantial salary, professional athletes also may receive financial incentives such as endorsements, which college athletes are also prohibited from receiving.¹⁷⁰ The NCAA awards an average of \$2.6 billion in athletic scholarships each year through its 351 collegiate institutions.¹⁷¹ Although the NCAA compensates its athletes in the form of academic scholarship and room and board, it fails to recognize that college scholarships do not account for additional living expenses.¹⁷² According to a study conducted by the National College Players Association and Drexel University, many college athletes live below the poverty

¹⁶⁷ Courtney Connley & Kerri Anne Renzulli, *Here's What the Average NFL Player Makes in a Season*, CNBC (Feb. 1, 2019), <https://www.cnbc.com/2019/02/01/heres-what-the-average-nfl-players-makes-in-a-season.html>.

¹⁶⁸ Richard Lapchick, *Sports Betting: Itch to Fix Games, Shave Points Grows for College Athletes*, ORLANDO SENTINEL (May 25, 2018), <https://www.orlandosentinel.com/opinion/os-ed-tempted-to-bet-student-athletes-front-burner-20180521-story.html>.

¹⁶⁹ *Id.*

¹⁷⁰ Student athletes who pursue endorsement deals or professional contracts will face the consequence of losing their eligibility to participate in intercollegiate competitions. See NCAA MANUAL, *supra* note 145, ¶ 12.1.2. The NCAA permits the use of a student athlete's likeness on sports-related educational materials like books and films, provided that the student athlete does not "expressly or implicitly endorse a commercial product or service." *Id.* ¶ 12.5.1.5.

¹⁷¹ Chris Talgo & Emma Kaden, *To Pay or Not to Pay: The Big Business of College Sports*, INV. BUS. DAILY (Sept. 14, 2018), <https://www.investors.com/politics/commentary/college-sports-pay-scholarships-ncaa>.

¹⁷² Marykate Edmunds, *The Financial Gap Between Athletic Scholarships and Athlete Expenses*, SPORTS MGMT. UNDERGRADUATE (May 1, 2014), at 4.

line.¹⁷³ This finding adds to the vulnerability of college athletes and their susceptibility to accept monetary bribes.¹⁷⁴

The NCAA Annual Handbook stipulates that “a student-athlete shall not receive any extra benefit.”¹⁷⁵ “Receipt by a student-athlete of an award, benefit or expense allowance not authorized by NCAA legislation renders the student-athlete ineligible for athletics competitions in the sport for which the improper award, benefit or expense was received.”¹⁷⁶ In addition to tuition costs and room and board costs, the NCAA allows institutions also to compensate student athletes for medical and other related expenses.¹⁷⁷ Student athletes are granted permissible benefits such as meals, team-issued clothing and other expenses relating to an academic purpose.¹⁷⁸ However, student athletes are not permitted to receive any “extra benefits” from the institution.¹⁷⁹ These extra benefits include, but are not limited to, a loan of money, a guarantee of bond, an

¹⁷³ *Study College Athletes Worth Six Figures Live Below Federal Poverty Line*, DREXEL NOW (Sept. 13, 2011), <https://drexel.edu/now/archive/2011/September/Study-College-Athletes-Worth-Six-Figures-Live-Below-Federal-Poverty-Line/>.

¹⁷⁴ Professor of Sports Law at Syracuse University John Wolohan explains: Professional players make too much [money] to risk throwing a game . . . but a kid on a full athletic scholarship with no money in the bank is much more susceptible when someone approaches him and says, “Hey, you’re playing Colgate tonight. You guys are favored by 20 points. Here’s \$5,000. Make sure it’s under 20.”

Camila Domonoske et al., *Sports Betting Ruling Could Have Consequences, Especially for College Athletes*, NPR (May 14, 2018, 10:33 AM), <http://www.npr.org/sections/thetwo-way/2018/05/14/589087523/supreme-court-rules-states-are-free-to-legalize-sports-betting> (quoting Professor of Sports Law John Wolohan).

¹⁷⁵ NCAA MANUAL, *supra* note 145, ¶ 16.01.1.

¹⁷⁶ *Id.* The NCAA considers as award to be an “item given in recognition of athletics participation or performance.” The NCAA considers an extra benefit to be “any special arrangement by an institutional employee or representative of the institution’s athletics interests to provide a student-athlete or the student-athlete family member or friend a benefit not expressly authorized by the NCAA legislation.” *Id.* ¶¶ 16.02.1, 16.02.3.

¹⁷⁷ *See id.* ¶ 16.4.

¹⁷⁸ *Id.* ¶ 16.11.

¹⁷⁹ *Id.* ¶ 16.11.2.1.

automobile or the use of an automobile, transportation, or signing or co-signing a note with an outside agency to arrange a loan.¹⁸⁰

College athletics has grown into a billion-dollar business.¹⁸¹ Colleges and universities profit immensely from ticket sales,¹⁸² radio and television contracts,¹⁸³ merchandising,¹⁸⁴ and the increased alumni donations and endowments athletic programs bring.¹⁸⁵ Recently, many of these college athletes have voiced their frustrations with the lack of compensation as their names and likenesses are used to drive massive amounts of revenue for the NCAA and their respective universities.¹⁸⁶ For example, in 2018, the University of Alabama Athletic Program's annual revenue increased to approximately \$174.3 million with the football program alone generating \$108.2 million.¹⁸⁷ Similarly, the University of Texas Athletic Department generated nearly \$215 million in revenue in 2017.¹⁸⁸ Measuring public opinion on the matter, the Washington Post conducted a survey asking the public whether college football and basketball players "deserve to be paid in

¹⁸⁰ *Id.* ¶ 16.11.2.2.

¹⁸¹ Talgo & Kaden, *supra* note 171.

¹⁸² In 2008, the University of Texas generated the largest revenue of ticket sales compared to other colleges, reaching approximately \$45 million in sales. Paula Lavigne, *The Money That Moves College Sports*, ESPN (Dec. 7, 2009), <https://www.espn.com/espn/otl/news/story?id=4722523>.

¹⁸³ Paula Lavigne, *Rich Get Richer in College Sports as Poorer Schools Struggle to Keep Up*, ABCNEWS (Sep. 4, 2016, 9:20 AM), <https://abcnews.go.com/Sports/rich-richer-college-sports-poorer-schools-struggle/story?id=41857422>.

¹⁸⁴ *Football by the (Negative) Numbers*, AUSTIN CHRON. (Apr. 2, 2010), <https://www.austinchronicle.com/news/2010-04-02/988248/>.

¹⁸⁵ Benjamin Baumer & Andrew Zimbalist, *The Impact of College Athletic Success on Donations and Applicant Quality*, 17 INT'L J. FINANCIAL STUD. 1, 1 (2019).

¹⁸⁶ Buckstaff, *supra* note 137, at 148–49.

¹⁸⁷ Michael Casagrande, *Alabama Athletics Brought in \$174.3 Million Last Year*, AL.COM (Jan. 24, 2018), https://www.al.com/alabamafootball/index.ssf/2018/01/alabama_athletics_brought_in_1.html.

¹⁸⁸ Steve Berkowitz, *Texas Athletics Program Reports More Than \$219 Million in Revenue During the 2018 Fiscal Year*, USA TODAY (Jan. 15, 2019, 7:31 PM), <https://www.usatoday.com/story/sports/2019/01/15/texas-athletics-program-had-over-219-million-revenue-2018/2586818002/>.

addition to receiving scholarships based on how much money they generate for universities, or [whether] scholarships [are] adequate compensation.”¹⁸⁹ The results indicated that “[thirty-eight percent] of Americans believe college football and basketball players should be compensated beyond [their] scholarships,” while the fifty-two percent majority “believe[s] college scholarships are enough compensation.”¹⁹⁰

Those who oppose the additional compensation of college athletes argue that the “vast majority of college athletes, including most females, participate in sports that do not produce much, if any revenue.”¹⁹¹ The question then arises: who deserves to be paid? Because the majority of college athletic programs are funded by general university budgets, there is not enough money to pay every NCAA athlete.¹⁹² While schools with thriving athletic programs such as the University of Alabama and the University of Texas have enough money in their budgets and revenue to pay all of their athletes, smaller Division-I schools, such as those in the Metro-Atlantic Athletic Conference,¹⁹³ simply do not have large enough budgets to pay their athletes.¹⁹⁴ Paying some NCAA athletes and not others would be neither moral nor legal.¹⁹⁵ Those who oppose additional compensation also argue that other than football and men’s basketball players,¹⁹⁶ there are few (if any) student athletes

¹⁸⁹ Talgo & Kaden, *supra* note 171.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² See Cork Gaines, *Paying College Athletes Would Cost \$200 Million Each Year*, BUS. INSIDER (Aug. 20, 2011, 10:35 AM), <https://www.businessinsider.com/paying-college-athletes-would-cost-200-million-each-year-2011-8>.

¹⁹³ The Metro-Atlantic Athletic Conference is comprised of Canisius University, Fairfield University, Iona College, Manhattan College, Marist College, Monmouth University, Niagara University, Quinnipiac University, Rider University, Saint Peter’s College and Siena College. *About the MAAC*, MAAC, <https://maacsports.com> (last visited Sept. 29, 2019).

¹⁹⁴ See Gaines, *supra* note 192.

¹⁹⁵ Talgo & Kaden *supra* note 171.

¹⁹⁶ In 2013, the median annual revenue generated at the 126 largest (Football Bowl Subdivision) programs from football was \$20.3 million and from men’s basketball \$5.6 million. The next highest median revenue was \$1.0 million from men’s ice

who are personally responsible for generating more revenue for college athletics programs than the value of their scholarships.¹⁹⁷ Decisions to compensate athletes, then, are complicated not only by questions of finance, but by questions of basic fairness and practicality.¹⁹⁸

Conversely, those in favor of additionally compensating college athletes argue that the NCAA and participating universities profit exponentially off of student athletes and that therefore the athletes deserve to share in the profits.¹⁹⁹ To illustrate, if merchandisers, as well as the institution, are benefiting off sales of basketball jerseys with their student athletes' names on the back, supporters argue that the student athletes should then also be entitled to profit off the sales. Again, due to the lack of compensation despite revenue generation off their likenesses, college athletes have a unique vulnerability compared to their professional counterparts who are compensated with million-dollar contracts.

C. Increased Risk of Corruption

It is no secret that the world of sports has a long and all too familiar past with scandal and corruption.²⁰⁰ By reading the sports section of the newspaper, listening to the radio, or watching ESPN,²⁰¹ people are confronted with the indignity that often plagues the industry.²⁰² Scandal and corruption long predated the Supreme

hockey. Beyond men's ice hockey, no other men's or women's intercollegiate sport at [Football Bowl Subdivision] institutions generated median revenues exceeding \$600,000 in 2013.

Allen R. Sanderson & John J. Siegfried, *The Case for Paying College Athletes*, 29 J. ECON. PERSP. 115, 118 n.4 (2015).

¹⁹⁷ Jeffrey Dorfman, *Pay College Athletes? They're Already Paid Up to \$125,000 Per Year*, FORBES (Aug. 29, 2013), <https://www.forbes.com/sites/jeffreydorfman/2013/08/29/pay-college-athletes-theyre-already-paid-up-to-125000year/#4c47a7742b82>.

¹⁹⁸ See Talgo & Kaden *supra* note 171.

¹⁹⁹ *Id.*

²⁰⁰ See Chase, *supra* note 10.

²⁰¹ ESPN stands for Entertainment and Sports Programming Network.

²⁰² See, e.g., Ante Z. Udovicic, *Special Report: Sports and Gambling a Good Mix? I Wouldn't Bet on It*, 8 MARQ. SPORTS L.J. 401, 403 (1998); Steve Wyche, *NFL Shows Evidence of Saints' 'Bounty' Program to Media*, NFL (June 19, 2012

Court's decision in *Murphy*,²⁰³ particularly so in college athletics. The first of a wave of major reported college basketball gambling scandals occurred in 1951, involving thirty-two athletes from seven different universities.²⁰⁴ Over the course of three years,²⁰⁵ the group of athletes fixed²⁰⁶ approximately eighty-six collegiate basketball games by engaging in point-shaving.²⁰⁷ Point-shaving, the most common form of cheating in sports, is a federal crime.²⁰⁸ We can consider this example to illustrate the practice of point-shaving: a basketball player may fix a game by purposefully missing a free throw at the end of the game. Although the missed shot will not affect the outcome of the game, it could impact the point spread and ultimately help gamblers win certain wagers. Any athlete caught

1:13 AM), <http://www.nfl.com/news/story/09000d5d829f19d3/article/nfl-shows-evidence-of-saints-bounty-program-to-media> (discussing a scandal involving financial bonuses paid to professional football players in exchange for injuring opponents); *Most Significant College Sports Scandals*, USA TODAY SPORTS (Oct. 22, 2012, 11:02 AM), <http://www.usatoday.com/picture-gallery/sports/ncaaf/2013/09/13/most-significant-college-sports-scandals/2792053> (describing scandals involving collegiate athletes and coaches spanning from 1950 to 2013).

²⁰³ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S.Ct. 1461, 1481 (2018).

²⁰⁴ Joe Goldstein, *Explosion: 1951 Scandals Threaten College Hoops*, ESPN CLASSIC (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_explosion.html.

²⁰⁵ *Id.*

²⁰⁶ Fixing refers to the act of point-shaving. Point-shaving is “an attempt (as by a member of the team favored to win [the game]) to influence the final score of a game so that the predicted winner wins by less than the point spread.” *Point-Shaving*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/point%20shaving> (last visited Sept. 29, 2019). To better understand the betting aspect of point-shaving and fixing games, assume that the game a better fixed was between Team A and Team B. Team A was favored to win by 10 points. That meant bookies would accept your bet if you thought Team A would win by more than 10 points. The better had told his bribed player—on Team B—that his team must lose by at least 11 points. Therefore, the better bet, correctly, on Team A to win by more than 10 points.

²⁰⁷ Goldstein, *supra* note 204.

²⁰⁸ Ray Gustini, *How Point Shaving Works*, THE ATLANTIC (Apr. 12, 2011), <https://www.theatlantic.com/entertainment/archive/2011/04/how-point-shaving-works/349575/>.

shaving points permanently loses his or her NCAA eligibility,²⁰⁹ and in all states a point-shaving player can be arrested and prosecuted.²¹⁰ Steven “Hedake” Smith, a former team captain of the Arizona State University men’s basketball team, is a prime example.²¹¹ Smith was convicted of point-shaving and conspiracy to commit sports bribery in 1997 and served nearly a year in prison following his conviction.²¹² Point-shaving is not only illegal, leading to repercussions such as prison time and fines, but it also compromises the integrity of the game and the public’s perception of athletics.²¹³

Gambling, thus, raises suspicions about point-shaving and game-fixing. If gambling and the number of gambling-related sports scandals continue to increase, fans may reasonably suspect improper motives and will be forced to question a player, a coach, or a referee and wonder why a player missed a free throw, why a kicker missed an extra point, why a coach benched a key player, or why an umpire blew a close call at home plate. Perhaps one of the greatest instances of corruption in sports occurred during the 2007 NBA season.²¹⁴ NBA referee of thirteen years Tim Donaghy was found to be betting on NBA games, including many of the games he was officiating.²¹⁵ During a thorough investigation it was found that Donaghy’s illegal gambling scheme was orchestrated by the notorious Gambino crime family.²¹⁶ Donaghy stated that members of the mafia organization threatened his family and forced him to bet and relay his picks to the mob.²¹⁷ A study completed by the University of Michigan found that

²⁰⁹ College athletes must maintain their NCAA eligibility status in order to remain on their respective teams. *See* NCAA MANUAL, *supra* note 145, ¶ 12.7.

²¹⁰ *See* Gustini, *supra* note 208.

²¹¹ Michael McCarthy, *Point Shaving Remains a Concern in College Athletics*, USA TODAY (May 15, 2007), http://www.usatoday.com/sports/college/2007-05-08-point-shaving-cover_N.htm.

²¹² *Id.*

²¹³ Udovicic, *supra* note 202, at 411.

²¹⁴ *Donaghy Sentenced to 15 Months in Prison in Gambling Scandal*, ESPN (July 29, 2008), <https://www.espn.com/nba/news/story?id=3509440>.

²¹⁵ *Ex-NBA Ref Tim Donaghy’s Personal Foul*, 60 Minutes, CBSNEWS (Dec. 6, 2009), <http://www.cbsnews.com/stories/2009/12/03/60minutes/main5880547.shtml>.

²¹⁶ *Id.*

²¹⁷ *Id.*

eighty-four percent of college referees admitted to participating in some sort of gambling since beginning their careers,²¹⁸ and approximately twenty percent also admitted to gambling on NCAA basketball tournaments.²¹⁹ Furthermore, multiple referees who officiated particular games said that the gambling affected their judgment.²²⁰ Economic models have suggested that with the legalization of sports betting and an increased interest in the United States, there will be an increase in corruption specifically within college sports.²²¹

Scandals and incidents of cheating have large repercussions in college athletics specifically.²²² Public scandals can lead to drastic financial losses for the universities;²²³ coaches and athletic department staff may lose their jobs;²²⁴ schools may lose donations from sponsors and alumni; recruiting efforts may suffer; and schools' reputable images may be tarnished.²²⁵ A team's hard-fought victory may be lost as the result of one player's involvement in a corrupt practice, such as point-shaving and game-fixing, like in 1961 when St. Joseph's University was stripped of its third-place finish in the NCAA men's basketball tournament.²²⁶ Boston College

²¹⁸ *Amateur Sports Integrity Act and Gambling in Amateur Sports: Hearing on S.2340 Before the S. Comm. on Commerce, Science, and Transportation*, 106th Cong. (2000) (statement of Hon. Sam Brownback, U.S. Senator from Kansas).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Brad R. Humphreys, *An Overview of Sports Betting Regulation in the United States* 9 (West Virginia Univ. Dep't of Econ. Working Paper Series No. 17-31, 2017).

²²² Udovicic, *supra* note 202, at 412.

²²³ See, e.g., Stephanie Hughes, *Assessing the Impact of NCAA Scandals: An Exploratory Analysis*, 3 INT'L J. SPORT MKT. & MGMT. 2, 2 (2008).

²²⁴ Jim Valvano was forced to resign as head coach of the North Carolina State men's basketball team in the wake of point-shaving allegations in 1990. See, e.g., David Teel, *Shamed Valvano to Step Down*, DAILY PRESS (Aug. 1989), <https://www.dailypress.com/news/dp-xpm-19890826-1989-08-26-8908250402-story.html>.

²²⁵ *Id.*

²²⁶ *College Scandals*, L.A. TIMES (Mar. 27, 1998, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1998-mar-27-sp-33239-story.html>.

has been especially rattled by sports gambling.²²⁷ In 1979, Rick Kuhn, a former basketball player for the college, was convicted of accepting monetary bribes from the Italian mafia to shave points off of the scores during five games of the 1978–79 basketball season.²²⁸ Kuhn was later sentenced to ten years in prison for his involvement in the scheme.²²⁹

The overarching theme is that legalized sports gambling poses severe risks for collegiate athletes that can potentially lead to a forfeiture of eligibility or even criminal prosecution and a jail sentence.²³⁰ Moving forward, the NCAA and its universities must implement precautionary measures to avoid the risk of corruption in collegiate sports, while retaining their integrity. Tom McMillen, President and CEO of the NCAA Division-I Athletic Directors' Association, explained that unless the NCAA and its universities find a way to protect student athletes to ensure proper compliance with NCAA bylaws, major scandals will be inevitable in the future.²³¹

²²⁷ See *United States v. Burke*, 700 F.2d 70, 73 (2d Cir. 1983); David Purdum, *The Worst Fix Ever*, ESPN (Oct. 3, 2014), https://www.espn.com/espn/chalk/story/_/id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal.

²²⁸ *Burke*, 700 F.2d at 73–74. The Boston College basketball point-shaving scheme was the “brainchild of Rocco and his brother Anthony [Perla]. The Perla brothers were small-time gamblers” who elicited Kuhn, a high school friend of Rocco that was entering his senior year at Boston College:

[The Perla brothers and Kuhn] would select . . . certain basketball games where the projected point spread separating [Boston College] from its opponent was expected to be significant. Kuhn would [then] be responsible for ensuring, by his play on the court, that [Boston College] fell short of the proposed point spread. Thus, for example, if participating bookmakers determined [Boston] to be an eight-point favorite in a particular game, Kuhn would be paid his bonus, usually \$2,500, if [Boston] won by less than eight points.

Id.

²²⁹ *Rick Kuhn Sentenced to 10 Years*, N.Y. TIMES, Feb. 6, 1982, at 17.

²³⁰ Domonoske, *supra* note 174.

²³¹ Adam Edelman, *As States Race to Launch Sports Betting, Calls Grow for Congress to Protect Games' Integrity*, NBC NEWS (May 14, 2018, 6:30 PM), <https://www.nbcnews.com/politics/politics-news/states-race-launch-sports-betting-calls-grow-congress-protect-games-n874051>.

V. OFFERING A SOLUTION

The elimination of PASPA opened doors to a massive regulated sports betting market. A recent study conducted by Eilers & Krejci Gaming estimated that, within the next three years, the U.S. sports betting market will generate about \$18 billion in revenue.²³² With the legalized sports gambling market currently expanding and growing each day, federal regulation is needed to protect those involved and implicated.

A. Implementing Federal Regulation

In the majority opinion of *Murphy v. National Collegiate Athletic Association*, Justice Samuel Alito wrote, “The legalization of sports gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.”²³³ Justice Alito’s statement “left the door open for Congress to step in and pre-empt the states if it want[ed] to set up a federal regulatory system.”²³⁴ Presently, an obvious consequence of each state enacting its own legislation is a lack of uniformity and consistency,²³⁵ further complicated by the possibilities of online gambling. In responding to this lack of continuity in the states’ laws, Congress must implement a gambling policy at the federal level to promote one cohesive construct throughout the country to which all states must adhere. The NCAA has stated, “While we recognize the

²³² See Darren Heitner, *How Legalized Sports Betting Could Bring in \$6.03 Billion Annually by 2023*, FORBES (Sept. 27, 2017), <https://www.forbes.com/sites/darrenheitner/2017/09/27/how-legalized-sports-betting-could-bring-in-6-03-billion-annually-by-2023/#5f251b079ecb>.

²³³ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S.Ct. 1461, 1484–85 (2018).

²³⁴ Herb Jackson, *Sports Betting: Congress May Try to Regulate, but Passage of Any Legislation is a Long Shot*, USA TODAY (May 15, 2018, 11:19 AM), <https://www.usatoday.com/story/news/politics/2018/05/15/sports-betting-congress-may-try-new-regulations-but-odds-high/609817002/>.

²³⁵ Darren Heitner, *For 21 States Considering Sports Betting, Lack of Uniform Legislation is a Problem*, FORBES (Mar. 2, 2018), <https://www.forbes.com/sites/darrenheitner/2018/03/02/lack-of-uniform-wise-legislation-is-bad-for-21-states-considering-sports-betting/#41f904f9337f>.

critical role of state governments, strong federal standards are necessary to safeguard the integrity of college sports and the athletes who play these games at all levels.”²³⁶ Importantly, Congressional action through federal legislation “would set out the terms of licensing and regulation,” and “direct a federal agency or entity to administer the law . . . and coordinate regulation with states.”²³⁷ This nationalized approach to legalized sports betting would allow states to either opt into or opt out of the federal regulation.²³⁸ It would still be left up to the individual state legislatures whether or not each state would participate in legalized sports betting, but if a state elected to do so, it would be subject to the federal regulations. A state could regulate sports gambling as it sees fit, so long as no state regulation exceeds the limitations set forth in the federal regulation, thus respecting anti-commandeering and dual sovereignty.

Furthermore, it has been suggested that a federal regulation of sports betting would “facilitate the collection of data so that threats to game integrity could be quickly identified and acted upon by federal law enforcement[,] offer[ing] efficiencies that state regulation could not achieve.”²³⁹ Consistent regulations and a uniform federal structure throughout the country would help to better protect against potential abuse of the regulations and serve an important public policy objective.²⁴⁰

Those in favor of sports betting being regulated by the federal government have compared it to regulating securities.²⁴¹ “Securities regulation and sports wagering have striking similarities. Both concern the regulation of exchanges involving contracts where the purchaser/bett[e]r is attempting to earn profits based on a future contingent event.”²⁴² Much like how securities in our country are

²³⁶ Emily James, *NCAA Supports Federal Sports Wagering Regulation*, NCAA (Mar 17, 2018), <http://www.ncaa.org/about/resources/media-center/news/ncaa-supports-federal-sports-wagering-regulation>.

²³⁷ Keith C. Miller & Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 UNLV GAMING L.J. 153, 171 (2018).

²³⁸ *Id.*

²³⁹ *Id.* at 172.

²⁴⁰ *Id.*

²⁴¹ *Id.* at 173.

²⁴² *Id.*

regulated by the Securities and Exchange Commission and federal securities laws, sports wagering should also be regulated through a federal agency and federal legislation to ensure compliance, equal competition and a fair market.²⁴³

*B. Taking Federal Regulation a Step Further:
Implementing a Federal Ban on Amateur Sports Betting*

Presently, Congress holds the power to enact legislation to limit the scope of legalized sports betting in our country.²⁴⁴ As detailed, legalized sports betting in college athletics poses a greater risk than in the world of professional sports.²⁴⁵ Congress must act fast and wield its power to limit the scope of legalized sports betting to avoid history repeating itself in the form of infamous scandals and depleted confidence in sports. Congress has made several attempts to ban wagering on amateur sports, exemplifying its need for regulation. In 2000, Representative Lindsey Graham introduced a bill which ultimately failed but proposed a federal ban on all college athletics gambling.²⁴⁶ Congress acknowledged that amateur athletes, specifically those in college, need to be afforded special protections from the pressures and corruption legalized sports gambling presents.²⁴⁷

Some states that have passed legislation legalizing sports gambling, including New Jersey, have added provisions in their sports betting legislation that prevent wagering on college

²⁴³ *Id.*

²⁴⁴ Patrick Moran, *Anyone's Game: Sports-Betting Regulations After Murphy v. NCAA*, CATO INST. (Mar. 11, 2019), <https://www.cato.org/publications/legal-policy-bulletin/anyones-game-sports-betting-regulations-after-murphy-v-ncaa>.

²⁴⁵ See generally David Welch Suggs Jr., *A Risky Future on College Sports Betting*, INSIDE HIGHER ED (May 15, 2018), <https://www.insidehighered.com/views/2018/05/15/legalization-sports-gambling-poses-problems-colleges-ncaa-opinion>.

²⁴⁶ Jason Goldstein, Note, *Take the Money Line: PASPA, Bureaucratic Politics, and the Integrity of the Game*, 11 VA. SPORTS & ENT. L.J. 362, 364, 368–69 (2012).

²⁴⁷ *Id.* at 368.

athletics.²⁴⁸ For example, under New Jersey's new sports betting law, the public cannot place bets on high school sports, on college events taking place in the state, or on any event involving a New Jersey college team anywhere.²⁴⁹ To illustrate, if the Seton Hall University basketball team from South Orange, New Jersey is playing DePaul University from Chicago, Illinois, and that game is taking place in Illinois, the public cannot legally place a bet on that game in New Jersey. That states are placing this caveat on their new sports betting legislation shows a sense of fear.²⁵⁰ It may be that state legislatures are affording protections to their own college athletes because they acknowledge the risks that legalized betting on college sporting events can incur. Despite the positive step that New Jersey has taken,²⁵¹ it is problematic that not all student athletes across the country are afforded the same protections. Congress needs to yield the power recognized by Justice Alito's opinion in *Murphy*²⁵² and introduce legislation for a nationwide ban on sports betting in amateur sports. Student athletes present more risk and vulnerabilities than their professional counterparts, and it is therefore in the public interest to protect them accordingly.²⁵³

CONCLUSION

College athletics provide a forum where young student athletes can strive for excellence by displaying values that our educational system has instilled in them, such as teamwork, self-sacrifice, determination, humility, courage and sportsmanship. While the practice of sports gambling in general has its detriments, the legal

²⁴⁸ See Sean Keeley, *Sports Gambling is Officially Legal in New Jersey... Just Don't Bet on Rutgers*, THE COMEBACK (June 14, 2018), <https://thecomeback.com/ncaa/sports-gambling-new-jersey-rutgers.html>.

²⁴⁹ See *id.*

²⁵⁰ See Keeley *supra* note 248 (showing that although the New Jersey legislature did not explicitly state that the limitation on sports betting prohibiting placing bets on New Jersey college teams was out of fear, it did show a hesitation stemming from the history of point-shaving and corruption in the realm of collegiate athletics).

²⁵¹ *Id.*

²⁵² *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S.Ct. 141, 1478 (2018).

²⁵³ See *supra* Section IV.D.

practice of gambling on collegiate sports presents a heightened risk of problematic gambling that tarnishes the integrity of sports and places unseemly influences on amateur athletes. In a time when corruption and uncertainty seem to thrive, Congress must step in to ensure a simple truth about America's favorite pastime: that athletes and fans alike deserve to know that fair competition and honesty still exist in the game today.