

THE WINNING TICKET: AN EVALUATION OF STATE REGULATION OF SPORTS GAMBLING

Elijah Bunde*

ABSTRACT

In 2018, the Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA) with its decision in *Murphy v. NCAA*. PASPA prevented states from authorizing gambling on professional and amateur sporting events. States have responded with a diverse range of legislative and regulatory approaches; some states play an active role through state-run gambling platforms while others permit sports betting in the private market. This Note will propose a framework of sports betting policies for state legislatures to enact. The Author first provides historical context for the development of sports betting in the United States. Next, the Author explains the origins and evolution of PASPA and how the issue in *Murphy* developed over time. Finally, the Author examines different approaches to legalized sports betting in five different states in order to develop an optimal set of gambling laws and policies. Ultimately, the Author advocates for a system of private operation of sports betting with state regulation, strict licensing requirements, legalized mobile betting, and minimal involvement by sports leagues. This Note argues that the proposed framework will benefit state economies, maximize consumer experience, and protect the integrity of sports betting and the sporting events on which wagers are being placed.

* Elijah Bunde is a Law Clerk for the Missouri Court of Appeals, Southern District. He received his J.D. from Washington University School of Law in 2022.

INTRODUCTION

In May of 2018, the Supreme Court issued a ruling in *Murphy v. NCAA*¹ that some believed would “reshape professional sports in America.”² In *Murphy*, the Court struck down the Professional and Amateur Sports Protection Act (PASPA), a 1992 federal law which prevented states from authorizing gambling on professional or amateur sports.³ The ruling made waves in the sports world, as Nevada had been the only state with widespread sports betting prior to the Court’s decision.⁴ Almost immediately after *Murphy*, several other states passed bills legalizing sports gambling and began setting up regulatory schemes to oversee these new sports betting operations.⁵

The states that have legalized sports betting since *Murphy* have adopted a variety of different approaches to implementation and regulation of a sports betting system. Some states have chosen to set up a state-run gambling platform, while others have facilitated a marketplace of private sportsbooks. States vary widely in the financial burdens they place on sports betting operators, including taxes and license application fees. Some states require wagers to be placed in person, some exclusively allow mobile bets, and some allow both. States differ in the kinds of bets permitted and the events on which bets can be placed, and they impose varying requirements on sportsbooks for things like accounting, reporting, and security. Finally, some states allow for significant involvement in gambling regulation by professional sports leagues, while others exclude the leagues almost entirely.

This Note will propose a framework of sports betting policies for states to adopt that will benefit the state economy, maximize the consumer

1. 138 S. Ct. 1461 (2018).

2. Michael McCann, *Why New Jersey Won Its Supreme Court Battle to Legalize Sports Betting*, SPORTS ILLUSTRATED (May 14, 2018), <https://www.si.com/more-sports/2018/05/14/sports-betting-legal-supreme-court-ruling-analysis> [<https://perma.cc/LJR6-DGZ9>].

3. Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, 106 Stat. 4227 (codified at 28 U.S.C. §§ 3701–3704).

4. Nevada’s sports gambling scheme predated PASPA and was exempted by the statute. Jennifer Roberts & Greg Gemignani, *Who Wore It Better? Federal v. State Government Regulation of Sports Betting*, 9 UNLV GAMING L.J. 77, 83 (2019).

5. See Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Oct. 19, 2020), https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization [<https://perma.cc/CX6N-UA9X>].

experience, and protect the integrity of both sports betting and the sports on which wagers are placed. States should fully legalize sports gambling and allow for a system run by private sportsbooks. Financial burdens imposed on sportsbooks should be relatively low, but state oversight of betting should be strict and the application process for sports betting licenses should be thorough. States should permit both mobile and in-person betting, and the involvement of professional sports leagues should be minimal.

Section I of this Note traces the evolution of sports gambling in the United States. Part A reviews the historical growth of sports betting, from colonial America to the late-twentieth century. Part B explains the origins of PASPA and the legal developments which lead to *Murphy*. Part C examines five states that have legalized sports gambling and the regulatory schemes they have adopted. Section II analyzes and evaluates these schemes in an attempt to formulate an optimal set of sports gambling policies. Part A identifies some key distinctions between state policies and outlines a set of objectives that sports gambling regulation should pursue. Finally, Part B puts forth a proposal for how states should legalize and regulate sports betting.

I. HISTORY

A. The History of Sports Betting in the U.S.

Gambling has been a part of American history since the colonial era. Although Puritans in New England outlawed cards, dice, and other forms of gambling, most other colonies saw these activities as a harmless diversion.⁶ Each of the thirteen colonies eventually established a lottery to raise public revenues.⁷ Gambling continued after the colonies won their independence, and casino gaming and betting on horseracing both grew in popularity during the early nineteenth century.⁸ Perhaps due to the adventurous and risk-taking environment of the frontier, gambling became highly popular in places like riverboats and mining towns.⁹ However, as gambling in the U.S.

6. ROGER DUNSTAN, GAMBLING IN CALIFORNIA II-1 to II-2 (1997).

7. *Id.* at II-2. Playing the lottery was seen as a civic responsibility, and the money raised helped to fund the establishment of churches, libraries, and universities like Harvard, Yale, and Princeton. *Id.*

8. *Id.* at II-3.

9. *Id.* at II-3, II-5.

grew, so did the fervor of its critics. Social reformers in the nineteenth century campaigned against gambling of all sorts, arguing that it led to corruption and moral decline while exploiting the poor.¹⁰ As a result of this backlash, most states eliminated their lotteries and outlawed many forms of gambling.¹¹ By the early twentieth century, gambling was almost completely illegal in the U.S., although this simply meant that underground gambling flourished.¹²

Much of this underground gambling revolved around professional sports, which emerged in the late nineteenth century.¹³ As more people watched sports like baseball and boxing, more people placed bets on the outcomes of games and matches. Eventually, sports betting became associated with the same stigmas of corruption and fraud that had plagued earlier forms of gambling.¹⁴ These concerns were exemplified by the “Black Sox” scandal, in which eight members of the Chicago White Sox were accused of accepting payments from gamblers in exchange for intentionally losing the 1919 World Series.¹⁵ Nonetheless, sports betting continued as a popular activity whose prohibition was often poorly enforced by state governments. In 1949, Nevada departed from the national trend when it became the first state to legalize wagering on sporting events.¹⁶ The state legislature quickly moved to implement a regulatory structure to oversee gambling, creating the Nevada Gaming Control Board in 1955 and the Nevada Gaming Commission in 1959.¹⁷ The regulatory system put into place in Nevada helped to legitimize the gambling industry and was sufficient to hold off the threat of direct federal regulation of gambling.¹⁸

Early federal involvement in sports betting was focused on assisting in the enforcement of existing state prohibitions, rather than preempting state

10. *Id.* at II-3 to II-5.

11. *Id.*

12. *Id.* at II-7.

13. Alexandra Eichner, Comment, *Supreme Court Makes It Easier for People to Win Big*, 43 NOVA L. REV. 21, 27 (2018).

14. *Id.*

15. Robert Shawhan, Note, *Legalizing Federal Sports Gambling Laws: You Got to Know When to Hold 'em*, 40 HASTINGS COMM. & ENT. L.J. 41, 45 (2018).

16. Roberts & Gemignani, *supra* note 4, at 78. Nevada had also led the way among the states by legalizing most forms of casino gaming in 1931. DUNSTAN, *supra* note 6, at II-8.

17. Roberts & Gemignani, *supra* note 4, at 79.

18. *Id.* at 79–80.

laws through direct regulation.¹⁹ In the 1960s and 70s, Congress passed a series of laws in response to illegal gambling operations conducted by organized crime groups. Federal intervention was seen as necessary since states could not effectively police these multi-state operations.²⁰ Concerned about the role of sports gambling as a revenue generator for organized crime, Congress passed the Wire Act in 1961.²¹ The Wire Act prohibited the transmission over the wires of wagers or information assisting in the placing of wagers on sporting events.²² Three years later, Congress passed the Bribery in Sporting Contests Act, which made it a crime to use bribery to influence or attempt to influence any sporting event.²³

The federal government assumed a more direct role in gambling regulation in 1978 with the passage of the Interstate Horseracing Act (IHA).²⁴ In order to ensure cooperation between states in “the acceptance of legal interstate wagers,” the IHA imposed certain uniform restrictions on bookmakers who took bets on horseracing.²⁵ Around the same time, Congress twice lowered the federal excise tax on state-authorized gambling: from 10% of the handle to 2% in 1974,²⁶ and from 2% to the current rate of 0.25% in 1982.²⁷

19. Keith C. Miller & Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 UNLV GAMING L.J. 153, 154 (2017).

20. *Id.*

21. John T. Holden, *Prohibitive Failure: The Demise of the Ban on Sports Betting*, 35 GA. ST. U. L. REV. 329, 334–35 (2019).

22. Interstate Wire Act of 1961, Pub. L. No. 87-216, 75 Stat. 491 (codified at 18 U.S.C. § 1084).

23. Bribery in Sporting Contests Act of 1964, Pub. L. No. 88-316, 78 Stat. 203-204 (codified at 18 U.S.C. § 224).

24. Interstate Horseracing Act of 1978, Pub. L. No. 95-115, 92 Stat. 1811-1815 (codified at 15 U.S.C. §§ 3001–3007).

25. *Id.* It should be noted that betting on horseracing has historically been treated differently than betting on other sports, and horseracing wagers are typically not subject to the same regulations as sports betting. This is largely because horseracing betting is considered “parimutuel” betting, in which bets are pooled and bettors compete against each other, rather than against the betting operator. *See* 15 U.S.C. § 3002(13). Thus, for the remainder of this Note, “sports betting” and similar terms will exclude betting on horseracing.

26. Act of October 29, 1974, Pub. L. No. 93-499, 88 Stat. 1549. The “handle” refers to the total amount wagered. The excise tax requires casinos to pay a portion of every dollar wagered by bettors. Roberts & Gemignani, *supra* note 4, at 78.

27. Miscellaneous Revenue Act of 1982, Pub. L. No. 97-362, 96 Stat. 1726.

B. PASPA's Rise and Fall

The federal government's most significant intervention into the regulation of sports betting came in 1992 with the passage of the Professional and Amateur Sports Protection Act (PASPA).²⁸ Professional sports leagues had expressed concern about the potential expansion of sports betting in the states, and fearing the possibility of match-fixing and other scandals, they pushed for federal legislation to help protect the integrity of the game.²⁹ Other proponents of restricting gambling emphasized concerns of public health, corruption, and the need to suppress illegal gambling.³⁰ Earlier efforts to limit sports gambling had focused on the use of league trademarks by gambling operators, but when this legislation failed to advance, Congress turned to direct restrictions on sports betting activities.³¹ After extensive hearings, PASPA received overwhelming support in Congress and was signed into law by President George H.W. Bush on October 28, 1992.³²

PASPA made it unlawful for states themselves to “sponsor, operate, advertise, promote, license, or authorize by law or compact,” any “lottery, sweepstakes, or other betting, gambling, or wagering scheme” based on amateur or professional competitive sports.³³ It also prohibited states from authorizing individuals to sponsor, operate, advertise, or promote such activities.³⁴ While PASPA did not make sports gambling a federal crime, it did authorize the Attorney General and amateur and professional sports organizations to bring a civil action to enjoin a violation of the law.³⁵ PASPA contained a number of exemptions, including for parimutuel animal

28. Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, 106 Stat. 4227 (codified at 28 U.S.C. §§ 3701–3704).

29. Holden, *supra* note 21, at 337. Executives from all four major American professional sports leagues (the NFL, NBA, MLB, and NHL) testified before Congressional committees in favor of PASPA. *Id.* at 345–46. One of the chief proponents of the Act was New Jersey Senator Bill Bradley, who had personal experience with the topic as a former NBA player. *Id.* at 344. Several current professional athletes testified that state-sponsored sports gambling could easily lead to point-shaving or match-fixing. *Id.* at 348.

30. *Id.* at 344–45.

31. *Id.* at 338–43.

32. *Id.* at 351.

33. 28 U.S.C. § 3702, *declared unconstitutional* by *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

34. *Id.*

35. *Id.* § 3703.

racing and for jai-alai.³⁶ It also grandfathered in the sports betting schemes that predated PASPA in four states: Nevada's expansive sports betting system, limited charitable sports wagering in Montana, and sports lotteries in Delaware and Oregon.³⁷

PASPA stopped the spread of legalized sports gambling in the U.S. outside of the four exempted states, but the illegal sports betting industry thrived. Between 1989 and 2017, the total amount wagered illegally on sports increased from \$29.5 billion to \$150 billion.³⁸ Over the past few decades, public opposition to sports betting has cooled. At the time PASPA was enacted, 56% of Americans disapproved of legalizing sports betting, but by 2017 that number had fallen to 33%.³⁹ This could reflect an increase in other forms of gambling, or perhaps that the boom in popularity of gambling-like activities such as fantasy sports has diminished the stigmas around sports gambling.⁴⁰ Even the major sports leagues, which were for many years the staunchest opponents to sports betting, began expressing openness to legalization as they came to view gambling as a means to generate both revenue and fan interest in the game.⁴¹ In 2014, NBA Commissioner Adam Silver opined that "sports betting should be brought

36. *Id.* § 3704.

37. Roberts & Gemignani, *supra* note 4, at 83. New Jersey could have qualified under one of the exemptions if it passed sports betting legislation within a year of PASPA's enactment, but it failed to do so. *Id.*

38. Holden, *supra* note 21, at 335–36. In comparison, the total amount wagered legally on sports in Nevada in 2017 was only \$4.8 billion. ANTHONY CABOT & KEITH MILLER, SPORTS WAGERING IN AMERICA: POLICIES, ECONOMICS, AND REGULATION 27 (2018). Increasingly, illegal sports betting is conducted online by offshore sportsbooks. *Id.* at 53–54.

39. Rick Maese & Emily Guskin, *Poll: For First Time, Majority of Americans Approve of Legalized 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 [https://perma.cc/JSZ3-32UV].

40. See CABOT & MILLER, *supra* note 38, at 114; Holden, *supra* note 21, at 358. Daily Fantasy Sports (DFS) websites like DraftKings and FanDuel have presented a significant legal dilemma over the last decade. In DFS games, players pay a fee to participate, choose a lineup of players for a one-day contest, and win money based on how their players perform. For several years, the legality of DFS was unclear, since players are essentially wagering on sporting events. However, many states have now passed bills that explicitly legalize DFS games. For a comprehensive examination of the legal implications of DFS, see Mark Dourmashkin, Note, *Examining the Legalization of Daily Fantasy Sports*, 25 CATH. U. J.L. & TECH 414 (2017).

41. See CABOT & MILLER, *supra* note 38, at 116.

out of the underground and into the sunlight where it can be appropriately monitored and regulated.”⁴²

In response to increasing support for sports betting, several states sought to legalize sports betting by either working around or directly challenging PASPA. In 2009, Delaware sought to expand their sports lottery that had been exempted from prohibition under PASPA.⁴³ Upon a challenge from the four major sports leagues and the NCAA, the Third Circuit Court of Appeals ruled that PASPA allowed states to continue, but not to expand, preexisting sports betting schemes.⁴⁴

Two years later, New Jersey enacted a law authorizing certain kinds of sports betting at the state’s casinos and racetracks.⁴⁵ When the leagues and the NCAA brought suit to enjoin the law, New Jersey argued that PASPA was unconstitutional under the anti-commandeering principle.⁴⁶ The Third Circuit rejected this argument, holding that PASPA was not unconstitutional and affirming the district court’s grant of summary judgment to the leagues. The Supreme Court declined to hear the case on appeal.⁴⁷ After this legal defeat, New Jersey took a slightly different approach: rather than passing a law authorizing sports betting, it simply repealed its laws prohibiting sports betting.⁴⁸ Once again, the leagues and the NCAA brought suit, and once again, the Third Circuit ruled against New Jersey, asserting that a repeal was tantamount to an “authorization,” which was prohibited by PASPA.⁴⁹ This time, however, the Supreme Court granted certiorari.⁵⁰

42. Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html> [<https://perma.cc/BGD5-AY9X>].

43. Holden, *supra* note 21, at 356.

44. OFC Comm Baseball v. Markell, 579 F.3d 293 (3d Cir. 2009).

45. An Act permitting wagering at casinos and racetracks on the results of certain professional or collegiate sports or athletic events, supplementing Title 5 of the Revised Statutes, and amending P.L.1977, c.110 and P.L.1992, c.19, 2011 N.J. Sess. Law Serv. Ch. 231 (West). *See also* Eichner, *supra* note 13, at 31.

46. NCAA v. Governor of N.J., 730 F.3d 208, 215 (3d Cir. 2013), *cert. denied*, 573 U.S. 931 (2014), and *abrogated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).

47. *Id.*

48. An Act partially repealing the prohibitions, permits, licenses, and authorizations concerning wagers on professional, collegiate, or amateur sport contests or athletic events, deleting a portion of P.L.1977, c. 110, and repealing sections 1 through 6 of P.L.2011, c. 231, 2014 N.J. Sess. Law Serv. Ch. 62 (West). *See also* Eichner, *supra* note 13, at 32.

49. NCAA v. Governor of N.J., 832 F.3d 389 (3d Cir. 2016), *rev’d*, 138 S. Ct. 1461.

50. Christie v. NCAA, 137 S. Ct. 2327 (2017).

In *Murphy v. NCAA*, the Supreme Court held that PASPA's prohibition of state authorization of sports betting violated the Tenth Amendment anticommandeering principle⁵¹ articulated in *New York v. United States*⁵² and *Printz v. United States*.⁵³ Writing for a 6-3 majority, Justice Alito declared that the anti-authorization provision of PASPA "unequivocally dictates what a state legislature may and may not do. . . . A more direct affront to state sovereignty is not easy to imagine."⁵⁴ He argued that there is no meaningful distinction between Congress compelling states to enact laws and preventing states from repealing laws.⁵⁵ Furthermore, the Court held that the rest of PASPA was not severable from the anti-authorization provision because Congress would not have enacted the other portions of the statute without the anti-authorization provision.⁵⁶ Therefore, the entire law was struck down.⁵⁷

The Court's ruling in *Murphy* had varying immediate effects on the sports betting landscape in the U.S. While PASPA's repeal allowed states to legalize intrastate sports betting, interstate sports betting remains illegal

51. 138 S. Ct. 1461 (2018). The Court's ruling on the anticommandeering principle in *Murphy* has raised questions about other issues regarding federal interference with state laws, such as sanctuary cities and federal marijuana prohibition. See Garrett Epps, *The Supreme Court Says Congress Can't Make States Dance to Its Tune*, THE ATLANTIC (May 14, 2018), <https://www.theatlantic.com/ideas/archive/2018/05/paspa-sanctuary-cities/560369/> [<https://perma.cc/E9V8-4UN4>]; Scott Bomboy, *Talk Grows About Sports Betting Decision's Impact on Cannabis Laws*, NAT'L CONST. CTR. (May 21, 2018), <https://constitutioncenter.org/interactive-constitution/blog/talk-grows-about-sports-betting-decisions-impact-on-cannabis-laws> [<https://perma.cc/LY5S-SVFP>].

52. 505 U.S. 144 (1992). The Court held that "the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *Id.* at 162.

53. 521 U.S. 898 (1997). The Court held that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers [...] to administer or enforce a federal regulatory program." *Id.* at 935.

54. *Murphy*, 138 S. Ct. at 1478.

55. *Id.*

56. *Id.* at 1484.

57. Several other justices wrote opinions in *Murphy*. In a concurring opinion, Justice Thomas argued that the Court's severability doctrine should be revisited because "modern severability precedents are in tension with longstanding limits on the judicial power." *Id.* at 1487. Justice Breyer agreed that PASPA's anti-authorization provision was unconstitutional but believed that the rest of PASPA was severable from the provision. *Id.* at 1488. Justice Ginsburg's dissent was joined by Justice Sotomayor and joined in part by Justice Breyer. She focused on the majority's severability argument as well, asserting that "the Court wields an ax to cut down § 3702 instead of using a scalpel to trim the statute." *Id.* at 1488-90.

under the Wire Act.⁵⁸ Furthermore, the Court's decision in *Murphy* would not prevent the federal government from directly regulating, or even outright prohibiting, sports betting. The Court held that "Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own."⁵⁹ However, efforts at federal regulation have failed to gain traction. In December 2018, Senators Orrin Hatch and Chuck Schumer introduced a bill that would have established a federal regulatory entity to oversee sports betting, but the bill did not receive a vote before the end of the 115th Congress.⁶⁰ Schumer and Senator Mitt Romney were rumored to be working on a similar bill in 2019, but no such bill has yet been proposed.⁶¹

In contrast, sports betting legislation has developed rapidly at the state level since the *Murphy* decision. As of April 2022, 31 states and Washington, D.C. had authorized some form of gambling on sports.⁶² And in all but three of the remaining states, bills have been proposed that would legalize sports betting.⁶³

C. State Models for Legal Sports Betting

Among the states that have legalized sports betting, a variety of approaches to regulation and enforcement have arisen. To better understand these different approaches, it is helpful to examine the regulatory schemes adopted by five states: Nevada, Pennsylvania, Tennessee, Indiana, and Oregon. These states illustrate some of the key differences in sports betting around the United States.

58. 18 U.S.C. § 1084.

59. *Murphy*, 138 S. Ct. at 1484–85.

60. S. 3793, 115th Cong. (2018). See also David Purdum & Ryan Rodenberg, *What You Need to Know About the New Federal Sports Betting Bill*, ESPN (Dec. 20, 2018), https://www.espn.com/chalk/story/_/id/25581529/what-need-know-sports-wagering-market-integrity-act-swmia-2018 [<https://perma.cc/9JAR-E2SK>].

61. Devin O'Connor, *Sen. Mitt Romney Hatching Federal Sports Betting Bill With Strange Bedfellow Sen. Chuck Schumer*, CASINO (Sept. 6, 2019, 3:40 PM), <https://www.casino.org/news/sen-mitt-romney-hatching-federal-sports-betting-bill/> [<https://perma.cc/Z2CG-Q6S8>].

62. Rodenberg, *supra* note 5.

63. *Id.* The three holdouts are Idaho, Wisconsin, and Utah. Utah's state constitution contains an anti-gambling provision, so legalization there is especially unlikely. *Id.*

The oldest and most well-developed sports betting scheme can be found in Nevada, where sports betting has been legal for over seventy years.⁶⁴ Thus, Nevada provides a useful baseline against which to compare newly adopted schemes in other states. Sports betting in Nevada is widespread but highly regulated, which is seen as crucial for maintaining public trust in the integrity of gambling.⁶⁵ To that end, all owners, operators, and “key employees” of sportsbooks must have a license from the Nevada Gaming Commission.⁶⁶ The application process for these licenses involves an inquiry into the applicant’s character, integrity, reputation, and business competence.⁶⁷ To ensure integrity of the system, Nevada has implemented extensive accounting and surveillance requirements for gambling operators, including sportsbooks.⁶⁸ Sportsbooks also have minimum reserve requirements based on the volume of bets the book takes in. Nevada imposes a tax on gross sports betting revenue of either 3.5%, 4.5%, or 6.75%, depending on the size of the book.⁶⁹ Sportsbooks may offer bets on any sporting events sanctioned by a recognized governing body, and virtually all significant types of sports betting products are permitted.⁷⁰ Licensed sportsbooks may offer mobile betting, but bettors must register in-person at the sportsbook so their identity can be confirmed.⁷¹ The Nevada system has generally been successful, generating billions every year in sports gambling revenue.⁷²

64. Becky Harris, *Regulated Sports Betting: A Nevada Perspective*, 10 UNLV GAMING L.J. 75, 76 (2020).

65. *Id.* at 77–78.

66. Nev. Gaming Comm’n Reg. § 3.110 (2019); § 22.020 (2020). A “key employee” is defined as “any executive, employee, or agent of a gaming licensee having the power to exercise a significant influence over decisions concerning any part of the operation of a gaming licensee or who is listed or should be listed in the annual employee report.” § 3.110 (2019). “Sportsbook” is a term referring to an entity which operates sports betting.

67. § 3.090 (2019).

68. *See generally* § 5 (2018); § 6 (2019).

69. NEV. REV. STAT. ANN. § 463.370 (West 2013). Gross revenue is the amount wagered less the amount paid out for winning bets. CABOT & MILLER, *supra* note 38, at 141. Note that this amount will be significantly less than the handle – the total amount wagered – which is the value with which the federal tax is calculated. *See supra* note 26.

70. Nev. Gaming Comm’n Reg. § 22.120 (2020). *See generally* § 22 (2020).

71. § 22.145 (2020). The term “mobile” betting, as it will be used throughout the rest of this Note, does not only refer to bets placed on a mobile device, but to any bets not placed at a brick-and-mortar sports betting facility.

72. Much of this financial success, however, may have been due to Nevada’s effective monopoly on sports betting while PASPA was still in force. *See generally* Kyle Wyant, Note, *Do Not*

In the aftermath of *Murphy*, Pennsylvania was one of the quickest states to legalize sports gambling. In fact, the state passed a bill establishing a framework for legal sports betting in October 2017, seven months before *Murphy*, in the anticipation that the Supreme Court would strike down PASPA.⁷³ The law allows the Pennsylvania Gaming Control Board to issue sports wagering certificates to sportsbooks provided that certain conditions are met, including adequate financing, integrity and responsibility, business ability and experience, and security and surveillance measures.⁷⁴ Sportsbooks in Pennsylvania may offer both in-person and mobile betting, and no in-person registration is required for mobile bettors.⁷⁵ However, all bettors, both in-person and online, must be physically located within the state to place a bet.⁷⁶ Like Nevada, Pennsylvania established comprehensive accounting requirements for sportsbooks.⁷⁷ In addition, Pennsylvania requires all sportsbook employees,⁷⁸ as well as manufacturers⁷⁹ and suppliers⁸⁰ of sports gambling equipment, to obtain licenses from the Gaming Control Board. In comparison to other states, Pennsylvania stands out due to the severe financial burdens they have placed on sportsbooks. Applicants for sports wagering licenses must pay a \$10 million fee,⁸¹ and the state placed a tax of 34% on gross revenues from sports betting.⁸²

Pass Go, Do Not Collect \$231 Million Dollars: How NCAA v. Governor of New Jersey Could Negatively Affect Nevada's Monopoly on Sports Betting, 7 UNLV GAMING L.J. 223 (2017).

73. Anthony Malky, *Pennsylvania Places Its Wager on the Legalization of Sports Betting*, VILL. UNIV.: SPORTS L. BLOG, <https://www.vlssportslawblog.com/post/pennsylvania-places-its-wager-on-the-legalization-of-sports-betting> [<https://perma.cc/KZ9G-HRBH>]. The bill contained a provision that forbade the Pennsylvania Gaming Control Board from authorizing sports gambling until “Federal law is enacted or repealed or a Federal court decision is filed that permits a state to regulate sports wagering.” 4 PA. STAT. AND CONS. STAT. ANN. § 13C11 (West 2017).

74. 4 PA. STAT. AND CONS. STAT. ANN. § 13C13 (West 2017).

75. *Id.* § 13C11.

76. *Id.*

77. *Id.* § 13C23.

78. 58 PA. CODE § 1403 (2018). Employees are split into principals, key employees, gaming employees, and nongaming employees. Each category has a different license, and the different licenses require varying levels of scrutiny to obtain. *Id.*

79. *Id.* § 1403.

80. *Id.* § 1404.

81. 4 PA. STAT. AND CONS. STAT. ANN. § 13C61 (West 2017).

82. *Id.* § 13C62. This is the highest rate of any state and reflects the relatively high tax rates Pennsylvania imposes on other forms of gambling. *See id.* § 13A62 (outlining tax rates for table games).

Sportsbooks are also subject to substantial restrictions on advertising and marketing.⁸³

Sports betting was legalized in Tennessee in May 2019 with the passage of the Tennessee Sports Gaming Act.⁸⁴ Sports gambling in the state is overseen by the Tennessee Education Lottery Corporation (“the Corporation”), and 80% of state revenue from sports gambling goes to funding education.⁸⁵ Like other states, Tennessee has an extensive licensure process for sportsbooks. Anyone wishing to operate a sportsbook must submit an application that includes a background check, documentation of good character and integrity, letters of reference, documentation of adequate financing, and documentation of business ability and gaming experience.⁸⁶ The initial application fee is only \$50,000, but sportsbooks must pay an annual licensing fee of \$750,000.⁸⁷ This fee is imposed on top of a 20% tax on gross revenue,⁸⁸ which is lower than the rate in Pennsylvania, but still relatively high compared to other states.

Although many of these provisions are similar to those of other states, Tennessee’s approach to sports betting is unique in two important ways. First, Tennessee is the only state which exclusively permits mobile betting – all wagers must be placed over the internet rather than in-person at brick-and-mortar sportsbooks.⁸⁹ Bettors must be physically located in the state⁹⁰ and must register and verify their identity with a sportsbook.⁹¹ Second, Tennessee’s sports betting laws give an unusually large amount of authority to sports leagues and teams. Sportsbooks must share betting info, including

83. 58 PA. CODE § 1409 (2018).

84. Brian Pempus, *Tennessee Sports Betting Law: Explainer and History*, TNBETS (Nov. 12, 2020), <https://www.tnbets.com/sports-betting-law/> [<https://perma.cc/EF5N-EH3F>]. The bill was somewhat controversial and ultimately was enacted without the Governor’s signature. *Id.*

85. Tennessee Sports Gaming Act, TENN. CODE ANN. § 4-51-304 (West 2019). The Act also established a nine-member Sports Wagering Advisory Council made up of individuals in sports, accounting, or law enforcement to assist the Corporation. *Id.* § 4-51-305.

86. *Id.* § 4-51-317.

87. *Id.*

88. *Id.* § 4-51-304.

89. TENN. COMP. R. & REGS. 1350-01-.03(4) (2021) (“Wagers may only be placed via the Internet, mobile device, or computer through Sports Gaming Systems operated by Licensees only within the geographic boundaries of the State of Tennessee”). This restriction could be due in part to the fact that there are no casinos located in Tennessee. Pempus, *supra* note 84.

90. § 4-51-311.

91. *Id.* § 4-51-325. “Prior to placing a wager with a licensee via interactive sports wagering, a bettor shall register with the licensee remotely and attest that the bettor meets the requirements to place a wager with a licensee in this state.” *Id.*

account-level data, with sports governing bodies upon request.⁹² Furthermore, sportsbooks must exclusively use official data provided by sports leagues for the purposes of live betting.⁹³ This allows the leagues to exert significant influence on sportsbooks, who have no other options to acquire the necessary data for live betting. Finally, universities and professional leagues and teams may request that the Corporation prohibit a type or form of betting if they believe it will create certain problems,⁹⁴ and these requests will be granted “upon demonstration of good cause from the requestor.”⁹⁵ This provision has the potential to give leagues a great deal of power to shut down certain types of betting that they find objectionable.

Indiana legalized sports gambling with a bill that was enacted in May 2019.⁹⁶ The Indiana Gaming Commission (“the Commission”) oversees sports betting,⁹⁷ reviews applicants for sports betting licenses,⁹⁸ and approves sports betting forms and devices.⁹⁹ Much like several other states, Indiana requires background checks and occupational licenses for all sportsbook employees.¹⁰⁰ Both in-person and mobile betting are permitted, and mobile bettors are not required to register in-person at a sportsbook.¹⁰¹ Indiana permits most forms of sports betting, but prohibits all bets on e-

92. *Id.* § 4-51-315. Sportsbooks must also report any suspicious, abnormal, or illegal betting activities to the relevant sports governing body. *Id.*

93. *Id.* § 4-51-316. Live betting is the placing of wagers on a sporting event while the event is in progress. The Act makes an exception if the league “cannot provide a feed of official league data for live betting in accordance with commercially reasonable terms,” but does not define “commercially reasonable terms.” *Id.* Illinois is the only other state with an official league data requirement. *See* Illinois Sports Wagering Act, 230 ILL. COMP. STAT. ANN. 45/25-25 (West 2019).

94. § 4-51-314. This includes belief “that such wagering by type, form, or category is contrary to public policy, unfair to consumers, or affects the integrity of a particular sport or the sports betting industry.” *Id.*

95. *Id.*

96. Kaitlin Lange, *Holcomb Signs Bill Legalizing Sports Betting, Allowing Lucrative Casino Industry Changes*, INDYSTAR (May 8, 2019, 5:24 PM), <https://www.indystar.com/story/news/politics/2019/05/08/governor-holcomb-signs-bill-legalizing-indiana-sports-betting-allowing-terre-haute-casino/1128554001/> [https://perma.cc/F6DX-KBP3].

97. IND. CODE ANN. § 4-38-1-3 (2019).

98. *Id.* § 4-38-4-3.

99. *Id.* § 4-38-5-1.

100. *Id.* § 4-38-9-1. The background checks are carried out by the sportsbooks themselves, not the Commission. *Id.*

101. *Id.* § 4-38-5-12. “A certificate holder or vendor may accept wagers placed using a mobile device from a patron located in Indiana if the patron registers with the certificate holder or vendor as a mobile device user. A patron may register under this section in person at the certificate holder’s licensed facility or online using mobile applications and digital platforms approved by the commission.” *Id.*

sports.¹⁰² The financial burdens imposed upon sportsbooks in Indiana are relatively minor compared to other states. The initial license application fee is \$100,000,¹⁰³ and licensed sportsbooks must pay a \$50,000 annual fee as well.¹⁰⁴ In addition, the tax rate is only 9.5% of gross revenue¹⁰⁵ – higher than Nevada, but lower than most other states. Finally, Indiana gives some authority to sports leagues, although not to the same extent as Tennessee does. Sportsbooks are not required to use official league data, but still must make certain disclosures to the leagues, including information about “abnormal betting patterns,” “suspicious or illegal wagering activities,” and “bets or wagers that violate state or federal law.”¹⁰⁶ Indiana also requires the Commission to prohibit certain types of betting or betting on certain events if a league makes a request for the Commission to do so and shows “good cause.”¹⁰⁷

Some states have legalized sports gambling without establishing a marketplace for private sportsbooks at all, choosing instead to run a betting operation entirely through a state agency. Oregon, for example, administers sports gambling activities as a part of the state lottery system.¹⁰⁸ The Oregon Lottery runs an online sports betting platform called Scoreboard, which effectively functions like any other online sportsbook.¹⁰⁹ Individuals over the age of 21 who are physically located in the state may register on Scoreboard and place bets on a wide variety of sporting events.¹¹⁰ However, Oregon soon may be following other states towards privately run sportsbooks: Governor Kate Brown has recently supported a bill that would

102. *Id.* at § 4-38-5-4. E-Sports, or sports competitions involving video games, present several unique challenges for sports gambling regulation. Some contend that e-sports should not be considered sports at all, while others worry about the fact that many competitors are under the age of eighteen. For an examination of the legal issues created by e-sports, see Sok Min Yun, Note, *A Comparative Overview of eSports Against Traditional Sports Focused in the Legal Realm of Monetary Exploitation, Cheating, and Gambling*, 37 CARDOZO ARTS & ENT. L.J. 513 (2019).

103. § 4-38-4-3.

104. *Id.* § 4-38-8-1.

105. *Id.* § 4-38-10-1.

106. *Id.* § 4-38-9-6.

107. *Id.* § 4-38-9-4.

108. Oregon established small-scale sports lottery games in the late 1980s and was given an exception under PASPA. Roberts & Gemignani, *supra* note 4, at 83. However, the Oregon Lottery stopped offering sports wagering products in 2007 before reintroducing them in 2020. *Sports Gambling in Oregon?*, NBC SPORTS (May 14, 2018), <https://www.nbcsports.com/northwest/more/sports-gambling-oregon>; Rodenberg, *supra* note 5.

109. OR. ADMIN. R. 117-092-0015 (2020).

110. OR. ADMIN. R. 117-092-0025 (2020).

establish a marketplace of sports betting operators under the oversight of the Oregon Racing Commission.¹¹¹

II. ANALYSIS AND PROPOSAL

A. Issues and Objectives of Sports Gambling Regulation

When evaluating the different approaches states have taken in legalizing sports betting, several key issues emerge. First, states vary in the financial burdens they place on sportsbooks. These burdens can take many forms, including taxes, license application fees, annual license fees, and even costly accounting or security requirements. Higher financial burdens lower the profit margins for sportsbooks and create greater barriers to entry for new sportsbooks to enter the market. For instance, it is significantly easier for a sportsbook to establish operations in Indiana, with its \$100,000 license application fee and 9.5% tax on gross revenue, than it is in Pennsylvania, where the tax rate is 34% and the fee is one hundred times greater.¹¹² Second, states have different restrictions on where and how bets may be placed. Some only permit in-person betting, some allow in-person and mobile betting, and Tennessee uniquely allows only mobile betting.¹¹³ Furthermore, states that allow mobile betting differ with respect to whether bettors must register in-person at a licensed sportsbook. Third, while most states have private sports betting operators with state oversight, some states, like Oregon, directly administer sports gambling activities through government agencies.¹¹⁴ States also have different rules about sporting events on which bets may be wagered. Some states impose almost no restrictions, while some prohibit betting on e-sports or in-state college

111. Adam Candee, *Oregon Governor Ready to Ditch Lottery Sports Betting Model*, Legal Sports Report (Jan. 12, 2021), <https://www.legalsportsreport.com/47098/oregon-governor-sports-betting-bill/> [<https://perma.cc/RP43-HGUX>]. Like the system in Tennessee, the bill would require the use of official league data and allow leagues to request certain bets to be prohibited. *Id.*

112. See 4 PA. STAT. AND CONS. STAT. ANN. §§ 13C61, 13C62 (West 2017); IND. CODE ANN. §§ 4-38-4-3, 4-38-10-1 (2019). Some states place even lower financial burdens on sports betting operators. Iowa, for example, has a \$45,000 initial licensing fee and a 6.75% tax rate. IOWA CODE ANN. § 99F.7A (West 2019); § 99F.11.

113. See Tennessee Sports Gaming License Rules, Regulations and Standards, 15.1.3, <https://inlottery.com/wp-content/uploads/2020/10/FINAL-REVISED-Amendments-to-Sports-Gaming-Rules-Regulations-10-2020.pdf> [<https://perma.cc/2X7J-FJNW>].

114. See *supra* note 108.

athletics. Finally, states differ on the role that sports leagues should play in gambling. When the legalization of sports betting first became a possibility after *Murphy*, the leagues lobbied hard for an “integrity fee,” which would entitle the leagues to a cut of every wager placed on their events.¹¹⁵ Although no state has yet implemented an integrity fee, Illinois and Tennessee require sportsbooks to use official data from the leagues,¹¹⁶ which in theory could allow the leagues to exact some form of similar financial concessions from sportsbooks. As previously explained, some states have also adopted provisions that require certain disclosures to leagues or permit leagues to request the prohibition of certain wagers.¹¹⁷

Any effective regulatory scheme for sports gambling must accomplish several key objectives. First, states should seek to strike the appropriate balance when erecting barriers to entry, financial and otherwise, for sportsbooks. The barriers must be high enough to keep out bad actors who do not have the requisite experience, integrity, and ability to conduct a viable sports betting operation. However, if the barriers are too high, the sports betting market will become uncompetitive and unprofitable. Furthermore, excessively high financial burdens placed on sportsbooks will likely be passed on to consumers, who may reject legal, regulated sportsbooks in favor of the illegal sports betting market.¹¹⁸

115. The leagues initially pushed for an integrity fee of 1% of the handle, but later lowered their proposal to 0.25% of the handle. These fees have been controversial, and casinos and sportsbooks have expressed strong opposition. See Eben Novy-Williams, *If Sports Betting's Going to Be Legal, Major Leagues Want a Cut*, BLOOMBERG NEWS (Mar. 19, 2018, 8:00 AM), <https://www.bloomberg.com/news/articles/2018-03-19/if-sports-betting-s-going-to-be-legal-major-leagues-want-a-cut> [https://perma.cc/NR54-PHB7]; Eben Novy-Williams, *Controversial Sports-Betting Fee Would Boost Revenue, Study Says*, BLOOMBERG NEWS (Apr. 3, 2019, 1:15 PM), <https://www.bloomberg.com/news/articles/2019-04-03/controversial-sports-betting-fee-would-boost-revenue-study-says> [https://perma.cc/9Q6A-XN3X]. Although the integrity fee concept seemed to have been thoroughly defeated, the Massachusetts House of Representatives recently passed a bill that would legalize sports betting with an integrity fee of 1% of gross revenue. Note that 1% of gross revenue is significantly less than the 1% of the handle that leagues originally lobbied for. Mike Florio, *Massachusetts Resuscitates the Issue of Integrity Fees in Sports Betting*, NBC SPORTS: PRO FOOTBALL TALK (Aug. 2, 2020, 9:39 AM), <https://profootballtalk.nbcsports.com/2020/08/02/massachusetts-resuscitates-the-issue-of-integrity-fees-in-sports-betting/> [https://perma.cc/A2D9-Q43F].

116. Tennessee Sports Gaming Act, TENN. CODE ANN. § 4-51-316 (West 2019).

117. See *id.* §§ 4-51-314, 4-51-315; IND. CODE ANN. §§ 4-38-9-4, 4-38-9-6 (2019).

118. As Miller and Cabot explain, “An unintended economic consequence of gaming regulation is higher prices for gaming products. . . . In contrast, illegal sportsbooks have minimal regulatory costs, low or no taxes, and high liquidity. This permits them to offer lower “pricing” in the form of better odds than the regulated sportsbooks.” Miller & Cabot, *supra* note 19, at 159.

Second, states should promote ease of access for consumers. Sports bettors should have a wide variety of wagering products to choose from, and the process for registering to bet should be relatively simple. Widespread online betting would certainly help with this goal, especially during a time in which public health concerns prevent people from physically going to casinos and sportsbooks. Certain safeguards will be necessary to prevent fraudulent and illegal betting, but states should avoid putting more restrictions on bettors than are absolutely necessary.

Third, sports gambling systems should be designed to generate revenue for the state.¹¹⁹ Naturally, this can be achieved via high tax rates and fees. In some cases, however, states may be more successful if they seek to maximize sportsbooks' income, which also maximizes the revenue base the state can tax. Finally, and perhaps most importantly, states must enact regulations to protect the integrity of the sports betting system. Sportsbooks should be transparent and subject to strict oversight to ensure that fraudulent and illegal behavior does not occur. When bettors place their wagers, they must be able to trust that, if they win, they will receive their winnings quickly and easily. Sports gambling has historical connections with organized crime,¹²⁰ and these connections must be prevented in the modern era of sports betting. Protecting the integrity of sports themselves is also important. The perception of sports betting has for decades been sullied by point-shaving and match-fixing scandals like the Black Sox,¹²¹ so states must take steps to minimize the risk of gambling leading to such corruption in sports.

An evaluation of the sports betting systems of the previously discussed states in light of these objectives reveals varying levels of success. For the first objective, a balance in barriers to entry for sportsbooks, Indiana earns high marks for their moderate tax rate and low initial license fee. On the other hand, Pennsylvania's excessively high tax rate and license fee is likely to stifle competition by excluding smaller operators from the marketplace. In terms of non-financial barriers, all the states examined have a strict

119. Sports betting can be a significant revenue source for states. For example, in 2019, New Jersey earned \$36.12 million from taxes on sports betting. Weston Blasie, *This State Makes The Most Tax Revenue from Sports Betting — and It's Not Nevada*, MARKET WATCH (Nov. 13, 2019, 12:29 PM), <https://www.marketwatch.com/story/this-state-makes-the-most-tax-revenue-from-sports-betting-and-its-not-nevada-2019-11-20> [<https://perma.cc/S9T5-LDX6>].

120. See Miller & Cabot, *supra* note 19, at 154; Holden, *supra* note 21, at 334–35.

121. See Shawhan, *supra* note 15, at 45.

process for obtaining a sports betting operator license, which should help to keep out unscrupulous businesses. For the second objective, ease of access for consumers, Pennsylvania and Indiana are the most successful. Both states allow in-person betting and mobile betting without in-person registration. Tennessee, in contrast, offers less flexibility to bettors since it allows only mobile betting. It is too early to evaluate the third objective, revenue generation, since states have only recently begun to legalize sports wagering. Several years of data is needed to see which schemes are the most effective at producing income for the state. However, Oregon may be particularly successful in this regard, since the state government keeps all sports gambling revenue, rather than only taking a percentage of it through taxation. Finally, for the fourth objective, each state seems to have reasonably effective protections in place to protect the integrity of the system. Provisions like a comprehensive licensing process, reporting and accounting requirements, and licenses for sportsbook employees have been widely adopted and should help ensure that the sports betting remains fair and lawful. Tennessee and Indiana have also involved sports leagues in their betting schemes in order to secure the integrity of the sports themselves, although the necessity and effectiveness of this involvement is uncertain.

B. A Framework for Legalized Sports Gambling

In theory, the objectives outlined in the previous section could be achieved through regulation by the federal government, rather than regulation by state governments. Because the Court in *Murphy* only held that the federal government could not prohibit states from legalizing sports betting, their decision leaves open the possibility of legalization and regulation at the national level.¹²² However, direct federal involvement in sports betting would be unwise for several reasons. First, each state faces different challenges regarding sports gambling, and a one-size-fits-all regulatory scheme implemented by the federal government would likely fail to accommodate these differences.¹²³ For example, the optimal regulation of sports betting may differ between a large state with lots of professional teams and a smaller state where college sports are dominant. Second, states have historically been the primary actors in regulating other forms of

122. *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018).

123. See Roberts & Gemignani, *supra* note 4, at 88.

gambling, such as casino games, and state regulation has generally been effective.¹²⁴ Many states already have gaming commissions or other agencies who specialize in oversight of the gaming industry, while no such agency exists at the federal level. State governments have more experience and expertise in dealing with gambling issues, so they are better suited to assume responsibility for regulating sports betting.

Because federal regulation is unwise, the 19 states in which sports gambling is still illegal should pass legislation that legalizes sports gambling. Allowing the establishment of legitimate sportsbooks will help suppress the influence of underground and offshore sports betting operations. These unregulated enterprises give bettors no protections against fraudulent bookmakers, lost funds, or market manipulation, and are often associated with undesirable activities like organized crime, money laundering, and match-fixing.¹²⁵ People will always seek to gamble on sports, but by legalizing sports betting, states can give bettors safer and less socially harmful alternatives for placing their bets. Legalizing the sports betting industry can also create significant economic benefits for states. Taxation of sports betting will provide much-needed revenue for state governments,¹²⁶ and jobs will be created at casinos, sportsbooks, and in related industries. Finally, states can collect much more information on sports betting activity if it is legal. This information can help states uncover illegal activity around sports – for example, unusually heavy betting on one team could be an indicator that a game has been fixed. Additionally, information on individual gamblers can be used to identify people with gambling problems so that the state can help them get the services they need, similar to existing systems already found in casinos. Legalizing sports betting may also contribute to reducing the stigma around gambling, which would make it easier for people to seek help for gambling addiction.¹²⁷

124. Anthony Cabot & Keith Miller, *Moving Faster than the Speed of Regulation: Can State-Authorized Sports Wagering Dodge a Game-Fixing Bullet Without the Help of the Feds?*, 30 J. LEGAL ASPECTS SPORT 85, 96 (2020).

125. Eichner, *supra* note 13, at 39.

126. Many states dedicate part or all of their tax revenue from sports betting to funding specific services, such as education or treatment for individuals struggling with gambling addiction. *See, e.g.*, Tennessee Sports Gaming Act, TENN. CODE ANN. § 4-49-104 (West 2019).

127. Some states have requirements that sportsbooks post information about resources for dealing with gambling addiction. *See, e.g.*, ILL. ADMIN. CODE tit. 11, § 1900.1660 (2021).

The optimal framework for legalized sports gambling will differ somewhat from state to state, but several important elements can be borrowed from the states that have already established regulatory schemes for sports betting. First, sports gambling should not be directly conducted by state agencies, but rather by private sportsbooks subject to state oversight. Allowing sportsbooks to compete with one another in the marketplace will encourage innovation and provide a better experience for bettors. A privatized system will allow consumers to choose from a wider variety of sports betting products than a system monopolized by a government entity. And while running their own sports lottery may generate more revenue for states than taxing private sportsbooks, it also exposes the states to significant financial risks. Sports betting operators can suffer large short-term losses, which states may not be in a position to bear.¹²⁸

In order to promote competition while also screening out bad actors, states should establish low monetary and high non-monetary barriers to entry for sports betting operators. License fees and taxes should be kept relatively low – closer to Indiana than to Pennsylvania. This will facilitate a competitive marketplace and prevent a few large, national companies from squeezing out smaller, local sportsbooks.¹²⁹ However, states should also have a thorough review process for sports betting license applicants. For example, Nevada’s in-depth inquiry into the character, reputation, and business competence of prospective sportsbook operators helps to ensure that sports gambling will be conducted with integrity and lawfulness.¹³⁰ By establishing substantial non-monetary barriers to entry for sportsbooks, while also making the process affordable for smaller operators, states can create a better experience for consumers.

For many of the same reasons, states need to implement strict oversight of sportsbooks. Most states have detailed requirements for accounting and reporting of gambling activity,¹³¹ which are necessary for the state to

128. During a single weekend of NFL games in November 2018, Nevada sportsbooks lost \$10 million. Roberts & Gemignani, *supra* note 4, at 94.

129. This has become a potentially significant problem during the first few years of legalized sports betting. According to recent estimates, two national companies – DraftKings and FanDuel – control 65% of the sports betting market in the United States. Christopher Palmeri, *FanDuel Parlays Fantasy Sports Into a \$1.9 Billion Betting Boom*, BLOOMBERG (Sept. 21, 2021, 5:00 AM), <https://www.bloomberg.com/news/articles/2021-09-21/how-fanduel-gained-more-fantasy-sports-gamblers-than-draftkings-dkng> [<https://perma.cc/R43P-B99L>].

130. Nev. Gaming Comm’n Reg. § 3.090 (2019).

131. See, e.g., 4 PA. STAT. AND CONS. STAT. ANN. § 13C23 (West 2017).

effectively monitor betting markets. Active monitoring of betting activity serves several purposes, including protecting the integrity of betting markets and identifying individuals with gambling problems. States should mandate that sportsbooks have adequate security and surveillance measures in order to quickly detect unlawful betting activities.¹³² Background checks and occupational licensing for sportsbook employees can also help exclude individuals who would seek to exploit the sports betting system through fraudulent or criminal activities.¹³³ Enacting these and other oversight measures will not only protect the integrity of sports and sports betting, but will also improve business by increasing bettors' confidence in the fairness of the system.

States should also allow mobile betting in addition to in-person betting. Mobile betting gives more flexibility to bettors, and by eliminating the need to travel to a brick-and-mortar sportsbook, it makes betting less expensive. In states that allow mobile sports gambling, it has been very popular among consumers.¹³⁴ However, allowing only mobile betting, as Tennessee does, is not ideal. Physical sportsbooks will attract visitors who will spend money in the community, creating jobs and boosting local economies. States must also determine whether to require in-person registration before bettors can place mobile wagers, and the appropriate solution will likely vary from state to state. On one hand, requiring in-person registration helps to prevent unlawful betting and fraudulent behaviors by confirming that prospective gamblers are in fact eligible to place bets. However, in some larger, less densely populated states, people may live hours away from a licensed sportsbook, meaning that an in-person registration requirement would impose a significant burden on some bettors.¹³⁵ Whether or not a state should require in-person registration for mobile betting depends on the physical size of the state and the number of sportsbooks at which bettors can register.

132. See, e.g., Nev. Gaming Comm'n Reg. § 5.160 (2012).

133. See, e.g., 4 PA. STAT. AND CONS. STAT. ANN. § 13C24 (West 2017).

134. In Nevada, research suggests that over half of all sports wagers are placed with a mobile device. Roberts & Gemignani, *supra* note 4, at 95.

135. Missouri, for example, has only 12 casinos, all but one of which are located on the east or west edge of the state. *Map of Missouri Casinos*, MO GAMING COMM'N, https://www.mgc.dps.mo.gov/contacts_map/rb_casinos_map.html [<https://perma.cc/BK5W-ZX3W>] (last visited Jan. 28, 2021). If the state legalized gambling and sportsbooks only opened at existing casinos, as has been the case in many states, some residents would live over 150 miles away from any brick-and-mortar sportsbook.

Finally, states should allow for minimal involvement in sports gambling operations by sports leagues. States should not impose official league data requirements, like Tennessee has,¹³⁶ nor should they allow sports leagues to request to prohibit certain types of wagers, as in Indiana.¹³⁷ The efforts by the leagues to obtain these concessions are simply another attempt to profit from sports gambling after they failed to persuade states to give them “integrity fees.”¹³⁸ Forcing sportsbooks to pay for official league data will cut into their already slim profit margins, and some of these costs will likely be passed on to consumers. The leagues claim that their involvement is necessary to ensure the integrity of sports gambling. However, this argument is unpersuasive, since betting has been carried out in with integrity in Nevada for years without any league interference.¹³⁹ League involvement in sports betting regulation will only make the wagering experience more expensive for bettors and less profitable for sportsbooks.

CONCLUSION

In the wake of the Supreme Court’s decision in *Murphy v. NCAA*, states have many options when it comes to legalizing sports gambling. However, they will be most successful if they adopt the policies advocated for by this Note. Sports betting should be regulated at the state level but conducted by private operators. The financial burdens on sportsbooks should be low in order to promote competition, but strict licensing requirements and regulatory oversight are necessary to protect the integrity of sports betting and the sports on which bets are placed. For bettors to have greater flexibility and lower costs, mobile betting should be legal and easily accessible. Sports leagues should have little to no involvement in sports betting regulation, so that sportsbooks can remain profitable and provide the best experience to consumers.

Despite the progress made in recent years, some still argue that sports betting should not be made legal. Some worry about the potential for corruption and match-fixing in sports, especially at the college level. Because college athletes are unpaid, they could be especially vulnerable to

136. TENN. CODE ANN. § 4-49-116 (West 2019).

137. IND. CODE § 4-38-9-4 (2019).

138. See *supra* note 115.

139. Roberts & Gemignani, *supra* note 4, at 93.

bribery attempts and match-fixing schemes.¹⁴⁰ Others fear that the sports betting industry will become dominated by big businesses who make huge amounts of money at the expense of average people.¹⁴¹ Although these concerns are legitimate, they can be mitigated by effective regulation. Close monitoring of betting patterns by state regulatory agencies can help sniff out match-fixing schemes and identify problem gamblers. States can use gambling revenues to provide assistance for those with gambling problems.¹⁴² Additionally, states can promote competition and support small operators in the sports betting market by keeping financial barriers to entry relatively low.

The benefits of legalized sports gambling are numerous, from job creation to higher tax revenues to crime prevention.¹⁴³ By bringing sports betting out of dark alleys and seedy corners of the internet, states can regulate it and ensure that it is conducted fairly and lawfully. Sports betting is and should be viewed as a legitimate recreational activity in the modern world, and by rejecting outdated stigmas surrounding gambling, we can prevent some of the negative consequences brought about by gambling in the past. It is time for every state to move forward by legalizing and effectively regulating an activity enjoyed by millions of Americans every year.¹⁴⁴

140. Nina Totenberg et al., *Sports Betting Ruling Could Have Consequences, Especially for College Athletes*, NPR (May 14, 2018, 10:33 AM), <https://www.npr.org/sections/thetwo-way/2018/05/14/589087523/supreme-court-rules-states-are-free-to-legalize-sports-betting> [<https://perma.cc/9FP3-VWA5>].

141. Michael Baumann, *The Downsides of Legal Sports Gambling*, THE RINGER (May 15, 2018, 10:56 AM), <https://www.theringer.com/sports/2018/5/15/17355544/downsides-sports-gambling-legalization-ncaa-marijuana> [<https://perma.cc/4KBD-4BT5>].

142. Some states have dedicated a portion of gambling revenues to fund gambling addiction programs, but these programs are often grossly underfunded and allow many problem gamblers to slip through the cracks. See Rich Shapiro, *Sports Betting Skyrocketed in Pandemic. Experts Warn of a Ticking Time Bomb*, NBC NEWS (May 15, 2021, 5:00 AM), <https://www.nbcnews.com/news/us-news/sports-betting-skyrocketed-pandemic-experts-warn-ticking-time-bomb-n1266518> [<https://perma.cc/C7EX-S6WQ>].

143. See Eichner, *supra* note 13, at 38-42.

144. *Americans' 2019 NFL Betting Plans*, AM. GAMING ASS'N (Sept. 4, 2019), <https://www.americangaming.org/resources/americans-2019-nfl-bettingplans/#:~:text=More%20than%2038%20million%20American,by%20the%20American%20Gaming%20Association> [<https://perma.cc/5S4F-N9SS>].