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## SPORTS LAW—SPORTS GAMBLING IN A POST-MURPHY WORLD: ENSURING EMERGING SPORTS GAMBLING LAWS ADEQUATELY PROTECT THE INTEGRITY OF COLLEGE SPORTS

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SPORTS LAW—SPORTS GAMBLING IN A POST-*MURPHY*,  
WORLD: ENSURING EMERGING SPORTS GAMBLING LAWS  
ADEQUATELY PROTECT THE INTEGRITY OF COLLEGE  
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*In 2018, the United States Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA), which prohibited states from authorizing sports gambling schemes. The Court in *Murphy v. NCAA* struck down PASPA on constitutional grounds, holding that the Act violated the anticommandeering doctrine of the Tenth Amendment. Before the *Murphy* decision, because of a grandfather provision in PASPA, Nevada was essentially the only state where it was legal to place a bet on a sporting event. Not surprisingly, after PASPA was struck down, numerous states have legalized sports gambling.*

*Perhaps one of the most important decisions state lawmakers face when crafting state-sponsored sports gambling legislation is whether to permit gambling on college sports. Specifically, states must choose between limiting college sports gambling, and losing significant revenue, or authorizing college sports gambling while potentially exposing athletes, teams, and universities to an increased risk of corruption and problem gambling on college campuses. This Note will argue that state laws that continue to completely prohibit gambling on college sports will force consumers to seek alternatives in the illegal gambling market, thus neutralizing attempts to protect the integrity of college sports. It will also argue that state laws allowing college sports gambling without restrictions enhance risks to the integrity of college sports. Ultimately, this Note will argue that*

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\* Candidate for J.D., Western New England University School of Law, 2022. I would like to give special thanks to Professor René Reich-Graefe for his guidance and expertise throughout the writing of this piece. I would also like to thank the *Western New England Law Review* staff for its diligent efforts throughout the entire production process.

*the “middle-ground” approach already taken by multiple states, which permits gambling on college sports with some important limitations, is correct. It will urge other states that have not legalized sports gambling to adopt this approach while also providing a legislative roadmap for doing so.*

#### INTRODUCTION

Consider these hypotheticals: First, imagine John, an avid college football fan living in Springfield, Massachusetts, wants to place a wager<sup>1</sup> on the 2022 National Collegiate Athletic Association (NCAA) National Championship football game taking place in Indianapolis, Indiana.<sup>2</sup> Massachusetts has not legalized sports gambling,<sup>3</sup> but John has been wagering on college football with an illegal bookmaker<sup>4</sup> for years, and can place the wager using the bookmaker’s online platform.<sup>5</sup> Alternatively, John can make the short drive to New Hampshire or Rhode Island, where sports gambling is legal, and place the wager there.<sup>6</sup>

Next, imagine Steve, a financially struggling college student who is the starting wide receiver at one of Rhode Island’s largest colleges. To earn some extra money to cover his rent, Steve tells his friend to place a legal wager on his team to lose its next game through the new mobile

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1. This Note will use the terms “wager,” “gamble,” and “bet” interchangeably to mean risking a sum of money on the outcome of a sporting event.

2. Adam Rittenberg, *College Football Playoff Announces Title Game Sites for 2021 Through 2024*, ESPN (Nov. 1, 2017), [https://www.espn.com/college-football/story/\\_/id/21253665/college-football-playoff-announces-national-championship-sites-2021-2024](https://www.espn.com/college-football/story/_/id/21253665/college-football-playoff-announces-national-championship-sites-2021-2024) [https://perma.cc/JR8C-BCCS].

3. See Erin Tiernan, *Gambling Revenues Soar as States Cash in on Sports Betting, but Massachusetts Still Dragging Its Feet*, BOS. HERALD (Aug. 10, 2021, 5:20 PM), <https://www.bostonherald.com/2021/08/10/gambling-revenues-soar-as-states-cash-in-on-sports-betting-but-massachusetts-still-dragging-its-feet/> [https://perma.cc/8JX8-6PNA]; Rick Sobey, *Massachusetts Sports Betting Legalization Delayed, but May Come Soon*, BOS. HERALD (Jan. 6, 2021, 6:21 PM), <https://www.bostonherald.com/2021/01/06/massachusetts-sports-betting-legalization-delayed-but-may-come-soon/> [https://perma.cc/T5AW-TJNY]; Erin Tiernan, *Odds Shrinking for Sports Betting Legalization This Year in Massachusetts*, BOS. HERALD (Oct. 3, 2021, 7:54 PM), <https://www.bostonherald.com/2021/10/03/odds-shrinking-for-sports-betting-legalization-this-year-in-massachusetts/> [https://perma.cc/6E7P-W2Z2].

4. See *Bookmaker*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/bookmaker> [https://perma.cc/4BF2-XA7H] (a bookmaker is “a person who determines odds and receives and pays off bets” to sports bettors).

5. See *Illegal Sports Betting: How Offshore Operators—and Those Who Support Them—Break U.S. Law*, AM. GAMING ASS’N (Aug. 17, 2020), <https://www.americangaming.org/illegal-sports-betting/> [https://perma.cc/6WSY-HBQS].

6. See Jennifer McDermott, *Rhode Island Casino is 1st in New England for Sports Betting*, AP NEWS (Nov. 26, 2018), <https://apnews.com/article/07a8cf1b9e1c41de82276da72137595d> [https://perma.cc/A4YJ-CB9S]; Holly Ramer, *New Hampshire Legalizes Sports Betting*, ABC NEWS (July 12, 2019, 2:59 PM), <https://abcnews.go.com/Sports/wireStory/hampshire-legalizes-sports-betting-64296935> [https://perma.cc/G4QZ-TGS2].

sports betting app in Rhode Island.<sup>7</sup> Steve, knowing that he stands to make a significant amount of money if his team loses, intentionally drops three passes in the game, and his team does lose.

These hypotheticals illustrate the conundrum legislators face after the Supreme Court's decision in *Murphy v. NCAA*, which struck down the Professional and Amateur Sports Protection Act (PASPA) and allowed individual states to adopt legal sports gambling schemes.<sup>8</sup> On one hand, state lawmakers face the reality that even in the absence of state-level legalized sports gambling, their constituents can still place wagers on sporting events, both through legal and illegal channels.<sup>9</sup> On the other hand, lawmakers also face the daunting task of ensuring that vulnerable college athletes do not become prey to the temptations of the rapidly expanding legalized sports gambling world and jeopardize the integrity of college sports.<sup>10</sup>

The size of the illegal sports gambling market is estimated to be between \$50 billion and \$200 billion.<sup>11</sup> For decades, however, policy leaders, including legislators and sports league officials, have cited the risks involved with sports gambling and have continually argued against the adoption of legalized sports gambling.<sup>12</sup> The NCAA has also voiced concerns about college sports gambling and has continuously opposed any form of legalized sports gambling.<sup>13</sup> It has also pushed for federal regulation of college sports gambling.<sup>14</sup> In 1992, responding to the NCAA

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7. See Rachel Nunes, *RI Senate Passes Mobile Sports Betting Bill*, PATCH (Feb. 13, 2019, 5:04 PM), <https://patch.com/rhode-island/cranston/ri-senate-passes-mobile-sports-betting-bill> [<https://perma.cc/6E3E-9MRU>].

8. See *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018); Professional and Amateur Sports Protection Act, 28 U.S.C. §§ 3701–3704, *invalidated by Murphy*, 138 S. Ct. at 1461.

9. See Andrew Smith, Note, *Why Georgia Should Get off the Bench and Profit from the Inevitability of Sports Betting*, 36 GA. ST. U. L. REV. 845, 871 (2020) (arguing that “sports betting is inevitable and Americans will gamble on sports regardless of legality”).

10. See Dave Wilson, Note, *Massachusetts at the Forefront: How to Protect the Most Vulnerable Group in a Post-Legal Sports Betting World—NCAA Student-Athletes*, 15 U. MASS. L. REV. 124, 144–52 (2020).

11. Andrew J. Silver, *Legal Sports Betting Still Faces Competition from Illegal Market; Low State Taxes Could Turn the Tide*, FORBES (Apr. 7, 2020, 9:22 AM), <https://www.forbes.com/sites/andrewjsilver/2020/04/07/legal-sports-betting-still-faces-competition-from-illegal-market-low-state-taxes-could-turn-the-tide/#6d0c652223e3> [<https://perma.cc/GN5G-FUUF>].

12. See Andrew Brandt, *Professional Sports Leagues' Big Bet: "Evolving" Attitudes on Gambling*, 28 STAN. L. & POL'Y REV. 273, 275 (2017).

13. See generally Ryan Rodenberg, *From 'Irreparable Harm' to Moneymaker: A Brief History of NCAA Sports Betting Policy*, LEGALSPORTSREPORT (Feb. 4, 2021) [hereinafter *From 'Irreparable Harm' to Moneymaker*], <https://www.legalsportsreport.com/44380/ncaa-sports-betting-colorado-pointsbet/> [<https://perma.cc/83QM-RE6Q>].

14. Emily James, *NCAA Supports Federal Sports Wagering Regulation*, NCAA (May 17, 2018, 10:00 AM), <http://www.ncaa.org/about/resources/media-center/news/ncaa-supports->

and others' integrity concerns, Congress passed PASPA, which prevented states from legalizing sports gambling schemes.<sup>15</sup> Although PASPA essentially prohibited legal sports gambling outside of Nevada, its practical effect was minimized by the sustained prominence of illegal sports betting markets.<sup>16</sup>

In 2018, in *Murphy v. NCAA*, the Supreme Court held that PASPA was unconstitutional because it violated the Tenth Amendment's anticommandeering doctrine.<sup>17</sup> The *Murphy* decision came at a time when opposition to sports gambling was fading, and states were increasingly interested in capitalizing on the profits of a legal sports gambling market.<sup>18</sup> After *Murphy*, numerous individual states enacted state-sponsored commercial sports gambling schemes.<sup>19</sup> In addition, many other states are actively considering whether to legalize sports gambling.<sup>20</sup>

Emerging state sports gambling legislation post-*Murphy* differs in its treatment of college sports gambling. For example, some states have decided to adopt legislation that allows gambling on college sports without significant restrictions.<sup>21</sup> Other states have adopted a "middle-ground" approach and have legalized college sports gambling but with some significant limitations, like prohibiting live, in-game wagering on college games and prohibiting gambling on in-state colleges and universities.<sup>22</sup> Finally, some states have decided not to legalize sports gambling in any form, and others have legalized professional sports gambling but have outlawed college sports gambling.<sup>23</sup>

This Note will argue that the emerging "all-or-nothing" state sports

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federal-sports-wagering-regulation [<https://perma.cc/BQP2-L8HL>].

15. Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701–04, *invalidated by* *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018).

16. Smith, *supra* note 9, at 845 (highlighting that before May 14, 2018, only about \$2.5 billion was wagered in legal channels).

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

18. *See* Brandt, *supra* note 12, at 287.

19. *See Legislative Tracker: Sports Betting*, LEGALSPORTSREPORT, <https://www.legalsportsreport.com/sportsbetting-bill-tracker/> [<https://perma.cc/B7Q8-ZDES>].

20. *See, e.g.*, H.D. 678, 192d Gen. Ct., Reg. Sess. (Mass. 2021); S. 77, 2021-2022 Gen. Assemb., Reg. Sess. (Vt. 2021); S.D. 177, 192d Gen. Ct., Reg. Sess. (Mass. 2021); S.D. 2365, 192d Gen. Ct., Reg. Sess. (Mass. 2021); Jodi Reed, *MA Lawmakers Drag Their Feet on Sports Betting Bill*, WWLP (Aug. 2, 2021, 7:19 PM), <https://www.wwlp.com/news/state-politics/malawmakers-drag-their-feet-on-sports-betting-bill/> [<https://perma.cc/2TZH-6RCJ>].

21. *See, e.g.*, H.B. 4916, 100th Leg., Reg. Sess. (Mich. 2019).

22. *See, e.g.*, S. File 617, 88th Gen. Assemb., Reg. Sess. (Iowa 2019). An in-state college or university is typically defined as one that is "primarily located in" the state which is legalizing sports gambling. *See, e.g.*, H.B. 480, 2019 Leg. Reg. Sess. (N.H. 2019).

23. *See, e.g.*, John Canzano, *Canzano: You Can Bet on a Virtual Go-Kart Race, but Not an Oregon Ducks or OSU Beavers Football Game?*, THE OREGONIAN (June 3, 2020), <https://www.oregonlive.com/sports/2020/06/canzano-oregon-lottery-still-looking-for-a-win-vs-states-college-sports-wagering-ban.html> [<https://perma.cc/2WB9-6PFR>] (detailing how the Oregon legislature has legalized sports gambling but has banned college sports gambling).

gambling approaches do not adequately protect the integrity of college sports or the interests of the college athletes. Specifically, this Note will argue that state laws that continue to completely prohibit gambling on college sports will force consumers to seek alternatives in the illegal gambling market, thus neutralizing attempts to protect the integrity of college sports. It will also argue that state sports gambling laws that permit college sports gambling without any substantial limitations will similarly jeopardize the integrity of college sports.

Part I of this Note will provide a historical background of gambling in the United States, highlighting the developing opposition to sports gambling and the legislative attempts to prohibit it, including the Interstate Wire Act of 1961 (Wire Act)<sup>24</sup> and, most importantly, PASPA.<sup>25</sup> It will then discuss the legal challenges to PASPA, leading to its eventual invalidation in *Murphy*. Part II of this Note will analyze the emerging state sports gambling laws adopted after *Murphy*. Specifically, it will discuss the differing treatment of college sports gambling and highlight the inconsistent policy justifications behind the different state laws.

Based on the analysis of the different sports gambling laws, Part III of this Note will argue that other states that have not legalized sports gambling should adopt the “middle-ground” approach taken by some states which would legalize gambling on college sports with substantial limitations. In particular, it will argue that states should prohibit betting on in-state college teams, prohibit live, in-game, college sports betting, prohibit college sports proposition bets, and prohibit sports gambling advertising on college campuses and through college-sponsored media outlets. It will conclude that this approach appropriately strikes a balance between the reality of the expansion of legalized sports gambling, while simultaneously mitigating some of the risks involved with its expansion. Finally, it will suggest that the NCAA should create comprehensive partnerships with state regulators and sports gambling operators in order to fully protect the integrity of college sports.

#### I. THE HISTORY OF SPORTS GAMBLING IN AMERICA: THE LEAD-UP TO *MURPHY*

In order to fully analyze the emerging state sports gambling statutes post-*Murphy*, it is important to first understand the evolution of sports gambling in the United States.<sup>26</sup> For centuries, governments across the

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24. Federal Wire Act, Pub. L. No. 87-216, 75 Stat. 491 (1961) (codified as amended at 18 U.S.C. § 1084).

25. Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701–04, *invalidated* by *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

26. See Matt Farnum, Note, *Moving the Line: Leveraging the Legalization of Sports Gambling to Protect Student-Athletes and Preserve Amateurism*, 29 CORNELL J.L. & PUB. POL’Y 491, 493 (2019).

globe have struggled with the conflict between capitalizing on the financial benefits of gambling, and the perceived negative impact gambling can have on society.<sup>27</sup> The United States has struggled with the same conflict as public attitudes about gambling have constantly shifted.<sup>28</sup>

First, this Part will highlight early accepted forms of gambling in the United States. Next, it will discuss the early twentieth-century emergence of sports gambling and the resulting federal legislative attempts to prohibit its expansion. It will then analyze the recent expansion of sports gambling in America, made possible by the Supreme Court's decision in *Murphy*. Finally, it will highlight how the NCAA's stance on legalized sports gambling shifted after *Murphy*.

### A. *Early Forms of American Gambling*

In the colonies, organized gambling primarily took the form of government-sponsored lotteries.<sup>29</sup> These lotteries were largely viewed as acceptable, and were useful in raising revenues to build schools,<sup>30</sup> fund Revolutionary War efforts,<sup>31</sup> and construct roads.<sup>32</sup> Participation in government-sponsored lotteries was even encouraged to aid development of impoverished communities.<sup>33</sup> Some even saw participating in government-sponsored lotteries as part of a citizen's "civic responsibility."<sup>34</sup>

Along with government-sponsored lotteries, another form of early American gambling that influenced the emergence of modern sports gambling was horse racing.<sup>35</sup> With horse racing described as the "Sport of Kings," the first U.S. horse racing track emerged in 1665.<sup>36</sup> By 1875,

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27. Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 13–14 (1992).

28. *Id.* at 14 (noting that "[t]his conflict has resulted in cycles of governmental promotion and sponsorship of gambling and periods of complete prohibition").

29. *See id.* at 23–31.

30. *See id.* at 28–29 (noting that the funds from early government-sponsored lotteries were used to help construct Harvard, Yale, Princeton, and Dartmouth, among others).

31. Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, SPORTSHANDLE (Nov. 13, 2017) [hereinafter *History of Sports Betting*], <https://sportshandle.com/gambling-laws-legislation-united-states-history/> [https://perma.cc/RCP2-8NQS] ("The American Revolutionary War was funded in part through taxes on lotteries in the original U.S. colonies.").

32. *History of the Lottery in the United States*, LOTTERY.NET, <https://www.lottery.net/articles/history-of-the-lottery> [https://perma.cc/SQD8-LZQR].

33. *See Smith, supra* note 9, at 847.

34. Chil Woo, Note, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)*, 31 CARDOZO ARTS & ENT. L.J. 569, 571–72 (2013).

35. Justin Fielkow et al., *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 25–26 (2016).

36. *The History of Horse Racing*, HORSERACING.COM, <https://www.horseracing.com/reference/history-of-horse-racing/> [https://perma.cc/7QWJ-RBP6].

all three races of the Triple Crown (the Belmont Stakes, Preakness Stakes, and the Kentucky Derby) were established.<sup>37</sup> As horse racing saw a rise in popularity during the nineteenth century, gambling on horse racing remained legal, and a large number of gamblers “flocked to the tracks in droves to wager on races.”<sup>38</sup>

By the early twentieth century, however, governments discovered other useful ways to raise revenue through “better forms of taxation,” and the utility of lotteries diminished.<sup>39</sup> Concurrently, lotteries were increasingly viewed as fraudulent.<sup>40</sup> As a result, the public’s positive perception of government-sponsored lotteries faded.<sup>41</sup> Gambling opponents cited instances of organizers misappropriating funds as grounds for their prohibition.<sup>42</sup> In addition, opponents argued that lotteries had negative social impacts—namely, that they were a driving force behind an increase in poverty.<sup>43</sup> For the same reasons, religious organizations began to voice strong opposition to all forms of gambling.<sup>44</sup>

The shift in the public attitude about gambling eventually led to gradual prohibitions against government-sponsored lotteries and racetracks.<sup>45</sup> By the early twentieth century, virtually all gambling was completely outlawed in the United States.<sup>46</sup> In 1908, the introduction of pari-mutuel<sup>47</sup> betting allowed gambling on horse racing to make a comeback, and since then, it has largely been legal in the United States.<sup>48</sup> On the other hand, government-sponsored lotteries did not make a resurgence until the 1960s.<sup>49</sup>

#### B. *Rise of Modern Sports Gambling: Lack of Legal Sports Gambling Allows Organized Crime to Flourish*

When professional baseball was established in 1876, traditional

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37. *History of Sports Betting*, *supra* note 31.

38. Farnum, *supra* note 26, at 494.

39. See Rychlak, *supra* note 27, at 12.

40. See *id.* at 35–37.

41. See *id.*

42. *Id.* at 35 (“For example, Massachusetts outlawed lotteries after an investigatory committee discovered that \$886,439 worth of tickets had been sold in a lottery chartered for the purpose of raising \$16,000 to repair Plymouth Beach, but that after nine years only \$9,876 had been turned over to the project.”).

43. See *id.* at 34.

44. See Woo, *supra* note 34, at 572.

45. See Smith, *supra* note 9, at 847.

46. Farnum, *supra* note 26, at 494.

47. Pari-mutuel betting refers to a “betting pool in which those who bet on competitors finishing in the first three places share the total amount bet minus a percentage for the [gaming operator].” *Pari-mutuel*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/pari-mutuel> [<https://perma.cc/LQ76-9PFY>].

48. *The History of Horse Racing*, *supra* note 36.

49. See Smith, *supra* note 9, at 847.



sports gambling started to become commonplace throughout the United States.<sup>50</sup> At the time, like today, a typical sports bet took the form of betting on a team against a “point spread.”<sup>51</sup> As other sports like basketball, football, and hockey emerged during the early 1900s, sports gambling became even more prevalent.<sup>52</sup>

Although the emergence of professional and college sports led to increased interest in sports gambling, during the early twentieth century, it was conducted largely in the shadows.<sup>53</sup> During this period, it was still illegal to gamble on sports in the United States.<sup>54</sup> At this time, sports gambling prohibitions typically took the form of broader state constitutional prohibitions against gambling in general.<sup>55</sup> In addition, states also used (and still use) criminal laws to prohibit sports gambling.<sup>56</sup> Until 1949, when Nevada became the first state to legalize gambling on sporting events, sports gambling remained illegal throughout the country.<sup>57</sup>

Because of the absence of legal sports gambling channels, sports

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50. *History of Sports Betting in the USA*, LEGAL SPORTS BETTING (Feb. 2, 2021), <https://www.legalsportsbetting.com/history-of-sports-betting-in-the-usa/> [<https://perma.cc/FYF8-X2KQ>].

51. Hunter M. Haines, Note and Comment, *Passing the Ball: The United States Supreme Court Strikes Down PASPA and Throws Sports Gambling Back to State Legislatures*, 78 MD. L. REV. 604, 608 (2019). The point spread is set by the gaming operator, and it serves as a way to give two uneven teams an equal chance of winning the bet. See *Point Spread Betting Explained: Rules and Guidelines*, SIA INSIGHTS, <https://news.sportsinteraction.com/guide/point-spread-betting-explained-rules-guidelines> [<https://perma.cc/K9KE-GQX9>]. Essentially, points are taken away from the “favorite”—the team that, from a statistical standpoint, is more likely to win the game—and given to the “underdog”—the team that is less likely to win the game. *Id.* In other words, a point spread is a “bet on the margin of victory in a game.” See Steve Petrella, *Point Spread in Sports Betting: Definition, Examples, How to Make a Super Bowl Spread Bet*, ACTION NETWORK (Feb. 1, 2021, 12:35 PM), <https://www.actionnetwork.com/education/point-spread> [<https://perma.cc/BG6G-RRYV>]. For example, if a point spread was set at 6.5 points, the team determined to be the “favorite” would have to win by 7 points for a bettor to win a bet on that team. *Id.* Conversely, for a bet on the “underdog” to win, that team would have to either win the game or not lose by more than 6 points. *Id.*

52. *History of Sports Betting in the USA*, *supra* note 50; see also Marc Edelman, *Regulating Sports Gambling in the Aftermath of Murphy v. National Collegiate Athletic Association*, 26 GEO. MASON L. REV. 313, 315–17 (2018) (explaining that the National Hockey League was expanded to the United States in 1924, the National Football League began play in 1920, and that the first modern college athletic football conference, the Big Ten, was founded in 1895).

53. See Brandt, *supra* note 12, at 275.

54. *History of Sports Betting in the USA*, *supra* note 50.

55. See, e.g., *Atl. City Racing Ass’n v. Att’y Gen.*, 489 A.2d 165, 167–68 (N.J. 1985) (highlighting that an 1897 amendment to the New Jersey State Constitution “bar[red] all gambling in the State”).

56. See, e.g., GA. CODE ANN. § 16-12-21 (2019) (“A person who commits the offense of gambling shall be guilty of a misdemeanor.”).

57. Fielkow et al., *supra* note 35, at 26–27.

gambling was largely conducted through organized crime groups acting as bookmakers.<sup>58</sup> Without any sports gambling laws and attention from law enforcement, these organized crime groups offered sports gambling services without substantial resistance.<sup>59</sup> As a result, their growing influence impacted the integrity of sporting events.<sup>60</sup> This influence was highlighted by the Black Sox Scandal of 1919, which involved members of the Chicago White Sox receiving money from organized crime members to fix the 1919 World Series.<sup>61</sup> This scandal enhanced the negative public perception of sports gambling that was developing at the time.<sup>62</sup>

### C. *The Federal Legislative Response to Sports Gambling*

Despite the fact that sports gambling was legal in Nevada, criminal organizations continued to be the “primary operators of sports gambling schemes” in the mid-1900s.<sup>63</sup> These sophisticated criminal organizations operated throughout the nation, and communicated across state lines to accept wagers on sporting events.<sup>64</sup> As it became clear that state governments did not have the resources to properly eliminate criminal bookmaking operations, the need for a federal response to sports gambling emerged.<sup>65</sup> After the “Black Sox” scandal, Congress had the support of the professional sports leagues because the leagues were increasingly concerned about organized crime impacting the integrity of professional sports.<sup>66</sup> This Section will begin by outlining multiple federal laws aimed at eliminating illegal sports gambling. Next, it will discuss PASPA, which became known as the federal ban on sports gambling.

#### 1. Pre-PASPA Legislation

Starting in the 1960s, Congress passed multiple laws aimed at combating illegal sports gambling.<sup>67</sup> First, in 1961, Congress passed the Wire Act.<sup>68</sup> The Wire Act makes it illegal for those “in the business of

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58. *Id.*

59. *See Woo, supra* note 34, at 572.

60. *See id.*

61. *See id.* at 572–73; *see also* Bill Lamb, *The Black Sox Scandal*, SOC’Y FOR AM. BASEBALL RSCH., <https://sabr.org/journal/article/the-black-sox-scandal/> [<https://perma.cc/4EQH-NDTD>] (detailing the Black Sox scandal).

62. Lamb, *supra* note 61.

63. Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 UNLV GAMING L.J. 281, 284 (2011).

64. *Id.*

65. *Id.*

66. *See Edelman, supra* note 52, at 316–17.

67. Meer, *supra* note 63, at 284.

68. Federal Wire Act, Pub. L. No. 87-216, 75 Stat. 491 (1961) (codified at 18 U.S.C. § 1084); *see also* John T. Holden, *Through the Wire Act*, 95 WASH. L. REV. 677, 679 (2020)

betting or wagering” to transmit wagering information across state lines using “a wire communication facility.”<sup>69</sup> Essentially, the Wire Act was not meant to disrupt casual or social sports gambling, but instead was meant to target organized crime’s comprehensive sports gambling businesses.<sup>70</sup> The Travel Act, also enacted in 1961, makes it a crime for “a ‘business enterprise’ [to] continuously engage[] in an activity outlawed by [a] state or federal statute.”<sup>71</sup> Similarly, the Interstate Transportation of Wagering Paraphernalia Act<sup>72</sup> and the Illegal Gambling Business Act<sup>73</sup> were also enacted to disrupt the business components of sports gambling.<sup>74</sup>

## 2. Congress Goes One Step Further: PASPA

Although the laws highlighted above were partially successful in targeting illegal sports gambling that crossed state lines, the states were responsible for enforcing prohibitions on intrastate sports gambling.<sup>75</sup> Enforcement on both the state and federal level, however, proved to be a near “impossible task,” and anti-gambling measures were enforced “half-heartedly.”<sup>76</sup> As a result, illegal sports gambling continued to thrive.<sup>77</sup>

In the 1980s, despite the federal government’s attempt to combat illegal gambling, numerous states began to consider sports gambling legislation that would allow legal sports gambling within their respective borders.<sup>78</sup> States were particularly interested in using sports gambling as a way to decrease substantial budget deficits.<sup>79</sup> At the time, however, the

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(stating that “[t]he Wire Act was at the time of its passage the crowning achievement of Attorney General Robert F. Kennedy’s war on organized crime”).

69. 18 U.S.C. § 1084(a).

70. *See Meer, supra* note 63, at 285 (quoting Attorney General Robert Kennedy who explained the law by saying that “[i]t is not intended that the [Wire Act] should prevent a social wager between friends by telephone[; instead,] [t]his legislation can be a most effective weapon in dealing with one of the major factors of organized crime in this country”).

71. *Id.* at 285–86 (citing 18 U.S.C. § 1952).

72. 18 U.S.C. § 1953 (making it illegal to “[carry] or send[] in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event”).

73. 18 U.S.C. § 1955 (“Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.”).

74. *See Meer, supra* note 63, at 286 (highlighting the fact that the Illegal Gambling Business Act “does not contain a provision that criminalizes the activities of individual bettors; rather, it only targets the illegal operators”).

75. *See Farnum, supra* note 26, at 499.

76. *Id.* at 500.

77. *Id.*

78. Kendall Howell, *You Can Bet on It: The Legal Evolution of Sports Betting*, 11 HARV. J. SPORTS & ENT. L. 73, 95 (2020).

79. *Id.*

pervasiveness of sports gambling diminished public trust in the integrity of sporting events.<sup>80</sup> In 1992, as a result of increased state interest in legalizing sports betting, and the decreasing public confidence in the integrity of sports, Congress enacted PASPA.<sup>81</sup>

PASPA made it unlawful for states and individuals to sponsor, operate, advertise, promote, license, or authorize sports gambling schemes.<sup>82</sup> PASPA did not make sports gambling a federal crime but it allowed the Attorney General, along with the professional and amateur sports organizations, to bring civil actions to enjoin violations of its provisions.<sup>83</sup> Although PASPA did not make sports gambling itself a crime, it was “generally viewed as a federal prohibition on sports gambling.”<sup>84</sup> A “grandfather” clause contained in PASPA permitted states that had legalized some form of sports gambling, like Nevada, to continue those forms of already-authorized sports gambling.<sup>85</sup> In addition, it also gave states that had not yet authorized sports gambling schemes one year to legalize sports gambling, otherwise they would be included in PASPA’s coverage.<sup>86</sup>

Senator Bill Bradley of New Jersey, one of PASPA’s sponsors, justified the Act by arguing that “[s]ports betting . . . threatens the integrity of and the public confidence in professional team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling.”<sup>87</sup> In addition, Senator Bradley, who was a former college and professional basketball player, argued that state-sponsored sports gambling would exacerbate problematic teen gambling.<sup>88</sup> Congress also had support from sports leagues that were pushing for a federal ban on sports gambling, including Major League Baseball, the National Basketball Association, and the National Football League.<sup>89</sup> Although it was eventually enacted, the Department of Justice opposed PASPA, asserting that it was an intrusion by the federal government into states’

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80. See Farnum, *supra* note 26, at 500 (noting that Pete Rose’s ban from baseball in 1989 for betting on his team’s games played an important role in the increased public skepticism).

81. Howell, *supra* note 78, at 95–96.

82. 28 U.S.C. § 3702(1), *invalidated by* *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

83. 28 U.S.C. § 3703, *invalidated by* *Murphy*, 138 S. Ct. at 1461.

84. Wilson, *supra* note 10, at 132.

85. *Murphy*, 138 S. Ct. at 1471; *see also* Farnum, *supra* note 26, at 501 (explaining that three other states that had previously authorized a form of sports gambling, including Delaware, Oregon, and Montana, qualified for this exception).

86. 28 U.S.C. § 3704(a)(3), *invalidated by* *Murphy*, 138 S. Ct. at 1461.

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

88. *Id.*

89. See Edelman, *supra* note 52, at 319–20.

rights to decide gambling policy.<sup>90</sup>

D. *The Expansion of State-Sponsored Sports Gambling: Murphy v. NCAA*

The road to expanded state-level legalized sports gambling began in 2012 when the New Jersey Legislature passed the Sports Wagering Act of 2012, which permitted sports gambling at certain casinos and racetracks in New Jersey.<sup>91</sup> The professional sports leagues and the NCAA challenged the law, arguing that it violated PASPA by impermissibly authorizing legal sports gambling.<sup>92</sup> The United States District Court struck down the Sports Wagering Act, holding that the law was preempted by PASPA.<sup>93</sup> In finding for the leagues and NCAA, it rejected the State's argument that PASPA's prohibition on state authorization of sports gambling violated the anticommandeering doctrine of the Tenth Amendment.<sup>94</sup> The Third Circuit agreed with the district court.<sup>95</sup>

In 2014, after its first attempt to legalize sports gambling was stifled, the New Jersey Legislature attempted legalization again by passing the Sports Wagering Act of 2014.<sup>96</sup> The professional sports leagues and the NCAA challenged the new law, arguing that it violated PASPA.<sup>97</sup> Once again, the district court and the Third Circuit agreed with the leagues, holding that although the 2014 law was framed as a repeal of old New Jersey laws prohibiting sports gambling, it still violated PASPA by impermissibly "authorizing" sports gambling.<sup>98</sup> This time, however, the Supreme Court granted certiorari, setting up the decision that would define the modern age of sports gambling.<sup>99</sup>

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90. See Meer, *supra* note 63, at 287–88.

91. See *New Jersey's Long Road to Legalizing Sports Gambling*, N.Y. POST (May 14, 2018, 11:07 AM), <https://nypost.com/2018/05/14/new-jerseys-long-road-to-legalizing-sports-gambling/> [https://perma.cc/F95G-27Z5].

92. See Nat'l Collegiate Athletic Ass'n v. Christie, 926 F. Supp. 2d 551 (D.N.J. 2013).

93. *Id.* at 577.

94. *Id.* at 561. The anticommandeering doctrine, set forth in *New York v. United States*, establishes the principle that "even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *New York v. United States*, 505 U.S. 144, 166 (1992).

95. *Christie*, 926 F. Supp. 2d at 551, *aff'd sub nom.* Nat'l Collegiate Athletic Ass'n v. Governor of N.J., 730 F.3d 208 (3d Cir. 2013).

96. See *New Jersey's Long Road to Legalizing Sports Gambling*, *supra* note 91.

97. See Nat'l Collegiate Athletic Ass'n v. Christie, 61 F. Supp. 3d 488, 491 (D.N.J. 2014).

98. See *Christie*, 61 F. Supp. 3d at 488, *aff'd sub nom.* Nat'l Collegiate Athletic Ass'n v. Governor of N.J., 799 F.3d 259 (3d Cir. 2015), *reh'g en banc granted, opinion vacated* (Oct. 14, 2015), *on reh'g en banc*, 832 F.3d 389 (3d Cir. 2016). Unlike the 2012 law which affirmatively authorized sports gambling pursuant to an amendment to the state constitution, the 2014 law sought to "authorize" sports gambling by repealing old New Jersey laws that formed the basis for the state's sports gambling prohibition.

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

In *Murphy*, the Court held that PASPA violated the anticommandeering doctrine of the Tenth Amendment.<sup>100</sup> In doing so, the Court stated that PASPA's provision prohibiting state authorization of sports gambling "unequivocally dictates what a state legislature may and may not do."<sup>101</sup> Further, it said that "[i]t 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 [and a] more direct affront to state sovereignty is not easy to imagine."<sup>102</sup>

Citing landmark anticommandeering doctrine cases like *New York v. United States*<sup>103</sup> and *Printz v. United States*,<sup>104</sup> the Court found no distinction between laws that "commanded 'affirmative' action" and ones like PASPA, which prohibited a state from enacting a law.<sup>105</sup> Both situations, the Court said, violate the anticommandeering doctrine.<sup>106</sup> In addition, the Court found that no provisions of PASPA were severable from those held unconstitutional, including provisions prohibiting states and private parties from organizing or promoting sports gambling.<sup>107</sup> As a result, PASPA was struck down entirely.<sup>108</sup>

#### E. *Shifting NCAA Stance on Legalized Sports Gambling Post-Murphy*

The NCAA continuously opposed legalized sports gambling on college sporting events.<sup>109</sup> In particular, the NCAA was interested in the effectiveness of PASPA, as evidenced by its involvement in the multiple lawsuits noted above seeking to overturn it.<sup>110</sup> The NCAA's strong opposition to legalized sports gambling was also evidenced by the fact that, prior to the *Murphy* decision, the NCAA prohibited states that had legalized gambling from hosting NCAA championship games.<sup>111</sup> In addition, the NCAA has a longstanding policy prohibiting college athletes and staff members from participating in any form of sports gambling, legal or illegal, including in fantasy sports.<sup>112</sup>

After *Murphy*, the NCAA reversed its policy prohibiting

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100. *Id.* at 1478.

101. *Id.*

102. *Id.*

103. *New York v. United States*, 505 U.S. 144 (1992).

104. *Printz v. United States*, 521 U.S. 898 (1997).

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

106. *Id.*

107. *Id.* at 1484.

108. *Id.*

109. *See generally From 'Irreparable Harm' to Moneymaker*, *supra* note 13.

110. *See supra* notes 95–97 and accompanying text.

111. *See James*, *supra* note 14.

112. *See Sports Wagering: What Student-Athletes Need to Know*, NCAA, [https://ncaaorg.s3.amazonaws.com/ncaa/wagering/WAGER\\_DontBetOnItWhatSANeedToKnow.pdf](https://ncaaorg.s3.amazonaws.com/ncaa/wagering/WAGER_DontBetOnItWhatSANeedToKnow.pdf) [<https://perma.cc/2V9Y-3TVC>].

championship games from being hosted in states that offered legal sports gambling.<sup>113</sup> Citing integrity concerns, however, it has not changed its rule that athletes and staff are prohibited from participating in any form of sports gambling.<sup>114</sup> In addition, it kept its policy restricting sports gambling partnerships and advertising “for NCAA championships and Football Bowl Subdivision postseason bowls,” and continues to push for federal sports gambling regulation.<sup>115</sup>

It is important for state legislators to understand the history of sports gambling in the United States so that they are better able to assess the risks and benefits of sports gambling laws. As has been mentioned, and as will be developed further below, the overwhelming public acceptance of sports gambling leading up to and after *Murphy*, as well as the failed legislative attempts to prohibit sports gambling, must play an important role in how state sports gambling laws should be crafted, so that the integrity of college sports is adequately protected.<sup>116</sup>

## II. STATE SPORTS GAMBLING LEGISLATION POST-*MURPHY*

In striking down PASPA, the *Murphy* decision allowed the individual states to decide on whether to enact legislation that would allow sports gambling within their respective borders.<sup>117</sup> Since *Murphy* was decided, numerous states have enacted sports gambling legislation. As of May 13, 2022, twenty-six states and the District of Columbia have passed legislation legalizing some form of sports gambling and have operational sports gambling within their borders.<sup>118</sup> Four other states—New Mexico, Nevada, New York, and Oregon—allow sports gambling through pre-*Murphy* laws or existing tribal compacts.<sup>119</sup> Many other states have not

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113. See James, *supra* note 14.

114. See *Sports Wagering: What Student-Athletes Need to Know*, *supra* note 112.

115. See James, *supra* note 14. But see David Brandt, *Fiesta Bowl, Caesars Announce Sports Betting Partnership*, AP NEWS (Aug. 23, 2021), <https://apnews.com/article/lifestyle-college-football-sports-mlb-business-c92f10a8980a9cb8ebcc2044e62d89f1> [<https://perma.cc/TAA2-QTH3>] (detailing a partnership between sports gambling operator Caesars and the Fiesta Bowl, which is an NCAA-sanctioned postseason college football game, that appears to be in direct contradiction with the NCAA’s policy).

116. See discussion *infra* Part III.

117. *The Future of Legal Sports Gambling: What Everyone Needs to Know About Murphy v. NCAA*, BAKERHOSTETLER 1 (2018), <https://www.bakerlaw.com/webfiles/Litigation/2018/Articles/FutureLegalSportsGambling.pdf> [<https://perma.cc/QZ9M-G74D>].

118. See *Interactive Map: Sports Betting in the U.S.*, AM. GAMING ASS’N, <https://www.americangaming.org/research/state-gaming-map/> [<https://perma.cc/M6FL-KGKJ>].

119. *Id.* Tribal compacts, otherwise known as Tribal-State compacts, are agreements between Native American tribes and the state in which their reservation is located that permit tribes to conduct gaming operations. See Marianne T. Caulfield, *Will It Take a Move by the New York Yankees for the Seneca Nation to Obtain a Class III Gaming License?*, 44 CATH. U. L. REV. 279, 298 (1994).

legalized sports gambling but have pending legislation.<sup>120</sup>

The structures of emerging sports gambling laws share many similarities. Generally, states authorize licensed sports gambling operators to conduct sports gambling either online, through brick-and-mortar locations (like casinos), or both, with the state collecting a tax on the operators' sports gambling profits.<sup>121</sup> These post-*Murphy* laws differ, however, in their treatment of college sports and can be split into three categories. One category of states has enacted sports gambling laws permitting college sports gambling without substantial limitations (the "all" approach).<sup>122</sup> A second category of states allows some college sports gambling but has also included significant limitations (the "middle-ground" approach).<sup>123</sup> Finally, a third category of states still prohibits all forms of sports gambling, including on college sports (the "nothing" approach).<sup>124</sup> This Part will analyze the post-*Murphy* sports gambling laws as they relate to college sports gambling, and highlight the policy justifications behind the different treatment of college sports gambling.

#### A. The "All" Approach

Numerous states, including Colorado, Nevada, Michigan, Mississippi, Montana, Pennsylvania, and West Virginia, have decided to go "all-in" on legalized sports gambling, enacting laws that permit a wide range of sports gambling.<sup>125</sup> Laws in these states also permit college sports gambling without substantial limitations. For example, the laws in these states allow placing a wager on a sporting event in which an in-state college or university is participating.<sup>126</sup> Similarly, they also allow live,<sup>127</sup>

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120. *Interactive Map: Sports Betting in the U.S.*, *supra* note 118.

121. *See, e.g.*, H. 7200, 2018 Leg., Jan. Sess. (R.I. 2018); *see also* Brett Smiley, *Pennsylvania Passes Bill that Would Legalize Sports Betting—But with a Huge Tax*, SPORTSHANDLE (Oct. 26, 2017) [hereinafter *Pennsylvania Passes Bill*], <https://sportshandle.com/pennsylvania-sports-betting-bill-online-gaming-hb271-passes/> [<https://perma.cc/6F5T-9328>] (detailing how Pennsylvania's sport gambling law includes a large tax on sports gambling profits).

122. *See, e.g.*, H.B. 4916, 100th Leg., Reg. Sess. (Mich. 2019).

123. *See, e.g.*, S. File 617, 88th Gen. Assemb., Reg. Sess. (Iowa 2019); H.B. 480, 2019 Leg., Reg. Sess. (N.H. 2019).

124. *See, e.g.*, Joe Williams, *Oklahoma Sports Betting: Is Legal Sports Betting Available in Oklahoma?*, USA TODAY: SPORTSBOOK WIRE (Apr. 21, 2020, 11:00 AM), <https://sportsbookwire.usatoday.com/2020/04/21/oklahoma-sports-betting-is-legal-sports-betting-available-in-oklahoma/> [<https://perma.cc/CB95-MBVY>] (detailing how sports gambling is not legal in Oklahoma).

125. *See* H.B. 19-1327, 2019 Leg., Reg. Sess. (Colo. 2019); H.B. 4916, 100th Leg., Reg. Sess. (Mich. 2019); H.B. 967, 2017 Leg., Reg. Sess. (Miss. 2017); S.B. 415, 2018 Leg., Reg. Sess. (W. Va. 2018); H.B. 271, 2017-2018 Leg., Reg. Sess. (Pa. 2017).

126. *See, e.g.*, *Interactive Map: Sports Betting in the U.S.: Montana*, AM. GAMING ASS'N, <https://www.americangaming.org/state/montana/?type=activity> [<https://perma.cc/WYH9-6FS3>].

127. Live, in-game wagering allows a bettor to place a bet on a sporting event after the



in-game wagering on college sporting events.<sup>128</sup>

The policy justifications behind these laws are similar to those cited for legalizing other forms of gambling.<sup>129</sup> Namely, these new sports gambling laws were justified as a useful tool for raising needed state revenue.<sup>130</sup> They were also seen as ways to fund other state-sponsored programs that lacked needed funding.<sup>131</sup> In addition, recognizing that sports gambling still faces competition from illegal markets, “all-in” states are also interested in creating a “secure, responsible, fair, and legal system of sports wagering.”<sup>132</sup>

### B. The “Middle-Ground” Approach

Other states, like Arkansas, Delaware, Illinois, Indiana, Iowa, New Hampshire, New Jersey, New York, Rhode Island, and Tennessee, take a “middle-ground” approach to college sports gambling and allow some college sports gambling but also include substantial limitations.<sup>133</sup> Unlike the states taking the “all” approach, the “middle-ground” states have included restrictions. These restrictions include prohibiting wagering on sports events that in-state colleges and universities are participating in, prohibiting some proposition (prop) bets<sup>134</sup> on college sporting events, and prohibiting live, in-game wagering on college sporting events.<sup>135</sup>

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sporting event begins, with adjusted odds. *See Sports Betting Terms: Gambling 101 Glossary, SPORTS ILLUSTRATED* (June 2, 2020), <https://www.si.com/gambling/2020/05/13/sports-betting-terms-definitions-gambling> [<https://perma.cc/6RL9-6B2K>].

128. *See, e.g., Interactive Map: Sports Betting in the U.S.: West Virginia*, AM. GAMING ASS’N, <https://www.americangaming.org/state/west-virginia/?type=activity> [<https://perma.cc/BPZ7-HP4D>].

129. *See discussion supra* Section I.A.

130. *See Pennsylvania Passes Bill*, *supra* note 121.

131. *See, e.g., Zack Jones, Michigan Passes Sports Betting Legislation: The Race to Launch Before March Madness*, FORBES (Dec. 22, 2019, 5:38 PM), <https://www.forbes.com/sites/zackjones/2019/12/22/michigan-passessports-betting-legislation-the-race-to-launch-before-march-madness/?sh=55155d7f19bc> [<https://perma.cc/GH78-LGH5>] (highlighting that Michigan’s sports gambling bill was projected to result in “over \$19 million in revenue, with around \$5 million of the new revenue source going into the School Fund Aid”).

132. *See* S.B. 415, 2018 Leg., Reg. Sess. (W. Va. 2018).

133. *See* H. 7200, 2018 Leg., Jan. Sess. (R.I. 2018); H.B. 480, 2019 Leg., Reg. Sess. (N.H. 2019); Assemb. 4111, 218th Leg., Reg. Sess. (N.J. 2018); S. 5883, 236th Leg., Reg. Sess. (N.Y. 2013) (2013 legislation that authorized sports gambling if PASPA were to be invalidated); S.B. 690, 101st Gen. Assemb., Reg. Sess. (Ill. 2019); H.B. 1015, 121st Gen. Assemb., Reg. Sess. (Ind. 2019); S. File 617, 88th Gen. Assemb., Reg. Sess. (Iowa 2019).

134. A prop bet is an “exotic or special wager[] that [is] offered on most sporting events,” including a wager based on the performance of an individual player. *Sports Betting Terms: Gambling 101 Glossary*, *supra* note 127.

135. *See, e.g.,* H. 7200, 2018 Leg., Jan. Sess. (R.I. 2018) (“[S]ports wagering shall be prohibited in connection with any collegiate sports or athletic event that takes place in Rhode Island or a sports contest or athletic event in which any Rhode Island college team participates, regardless of where the event takes place.”); S. File 617, 88th Gen. Assemb., Reg. Sess. (Iowa

Lawmakers in the “middle-ground” states, like those taking the “all” approach, also highlight the positive economic impact legalized sports gambling will have.<sup>136</sup> They stress that legalized sports gambling profits will be used to “offset[] reliance on taxes for state needs” and “support[] critical state services, like road and bridge repairs, education and human services.”<sup>137</sup> Further, these states seek to limit participation in illegal sports gambling markets by providing a legal alternative, while also benefiting financially from legal market participation.<sup>138</sup>

Conversely, the primary justification for prohibiting wagering on in-state colleges and universities is that college sports gambling involves an increased risk of integrity violations, like match-fixing<sup>139</sup> and point-shaving schemes.<sup>140</sup> Although there is no comprehensive research on the subject, the inference can be made that because college athletes, unlike professional athletes, are generally not compensated,<sup>141</sup> they may be more susceptible to bribes in exchange for their participation in a cheating

2019) (“*Sports wagering*’ does not include placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from [Iowa] is a participant . . .”).

136. See *Sports Betting Approved in New Hampshire for Next Year*, FOX BUS. (Nov. 25, 2019), <https://www.foxbusiness.com/money/sports-betting-approved-in-new-hampshire-for-next-year> [<https://perma.cc/58TU-BMHQ>].

137. Nunes, *supra* note 7.

138. *Id.* (quoting Senate President Dominick Ruggerio who estimated that “[ninety-seven] percent of sports betting takes place illegally” and that legalized sports gambling gives “Rhode Islanders and visitors a legal avenue to participate in an activity they enjoy, while providing a very tangible benefit to our state”).

139. Match-fixing is a “dishonest activity to make sure that one team wins a particular sports match.” *Match-fixing*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/match-fixing> [<https://perma.cc/ENJ8-R9NN>].

140. See Don Cazentre, *No Syracuse Sports Bets for You: NY to Bar Wagers on In-State Schools*, SYRACUSE.COM (June 10, 2019, 7:34 AM), <https://www.syracuse.com/news/2019/06/no-syracuse-sports-bets-for-you-ny-to-bar-wagers-on-in-state-schools.html> [<https://perma.cc/S7FV-ET82>]. Point-shaving is “an attempt (as by a member of the team favored to win) to influence the final score of a game so that the predicted winner wins by less than the point spread.” *Point-shaving*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/point-shaving> [<https://perma.cc/PGQ5-QXLC>].

141. The Supreme Court’s recent decision in *NCAA v. Alston*, where the Court held that NCAA restrictions on education-related benefits for college athletes violated antitrust law, has changed the landscape of college athlete compensation. *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141 (2021). Since *Alston*, the NCAA has adopted a policy that allows college athletes to financially profit from their name, image, and likeness (NIL) rights. See Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021), <https://www.ncaa.com/news/ncaa/article/2021-06-30/ncaa-adopts-interim-name-image-and-likeness-policy> [<https://perma.cc/H2JL-5JD6>]. The full impact of *Alston*—and the NCAA’s compensation policies—is yet to be known. However, if college athletes can be compensated, the risk that they will succumb to financial pressures to impact the integrity of games is significantly reduced. It is unlikely that all college athletes will be able to profit from their NIL, especially those at small schools. Ultimately, a separate law review article is necessary to fully analyze the impact of *Alston* and NIL on college sports gambling.

scheme affecting the outcome of a game.<sup>142</sup> Similarly, the same integrity-related reasoning is used to justify prohibiting non-traditional prop bets on college games, which usually take the form of wagering on an individual athlete's performance.<sup>143</sup> It is also argued that the outcome of a bet that is dependent on the performance of an individual player, instead of one made on a team, can be more easily manipulated.<sup>144</sup> In addition, the individual athlete may be less concerned about "harming their [team's] chances of winning the game," potentially making it more likely they participate in an illicit scheme involving prop bets.<sup>145</sup>

### C. The "Nothing" Approach

Finally, a third group of states have chosen not to legalize sports gambling at all or have completely banned gambling on college sports. As of May 13, 2022, fifteen states have no form of legalized sports gambling, including on college sports.<sup>146</sup> It is important to note that post-*Murphy*, most states in this category have not taken any new legislative action. Instead, these states rely on state constitutional provisions and state criminal laws that were in place before *Murphy* to continue the prohibition on all forms of sports gambling.<sup>147</sup>

Oregon, on the other hand, has legalized sports gambling but still prohibits gambling on any college team or event.<sup>148</sup> Oregon's ban on college sports gambling was influenced by the NCAA policy prohibiting states with legalized college sports gambling from hosting NCAA championship games.<sup>149</sup> Even after the NCAA relaxed this prohibition, Oregon lawmakers proposed legislation in early 2020, seeking to further

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142. See Wilson, *supra* note 10, at 144–52 (highlighting that, unlike professional athletes, college athletes are unpaid and arguing that because of this they are more vulnerable to corruption if legal sports gambling becomes widespread).

143. See Stephen Gruber-Miller, *Working with Democrats, Republicans Could Limit In-Game Betting on College Athletes*, DES MOINES REGISTER (Mar. 21, 2019, 5:53 PM), <https://www.desmoinesregister.com/story/news/politics/2019/03/21/sports-betting-ban-game-bets-college-players-iowa-state-republican-democrat-gambling-ncaa-gaming/3233724002/> [<https://perma.cc/B734-7RCF>].

144. See John Brennan, *NCAA Makes Case to Senators to Ban Betting on College Sports*, SPORTSHANDLE (July 22, 2020), <https://sportshandle.com/ncaa-makes-case-to-senators-to-ban-betting-on-college-sports/> [<https://perma.cc/9CHR-8UAV>].

145. *Id.*

146. *Interactive Map: Sports Betting in the U.S.*, *supra* note 118.

147. See, e.g., UTAH CONST. art. VI, § 28; GA. CODE ANN. § 16-12-21 (2019) ("A person who commits the offense of gambling shall be guilty of a misdemeanor.").

148. See *Interactive Map: Sports Betting in the U.S.: Oregon*, AM. GAMING ASS'N, <https://www.americangaming.org/state/oregon/?type=activity> [<https://perma.cc/L53R-FXM3>].

149. See *Sports Gambling in Oregon*, NBC SPORTS, (May 14, 2018), <https://www.nbcsports.com/northwest/more/sports-gambling-oregon> [<https://perma.cc/PD4A-JB7Z>] (explaining that Oregon's state-run betting game, permitted under PASPA's grandfather provision, was banned in 2007 when "it became a roadblock to the State of Oregon being a host site for the NCAA basketball tournament").

restrict the State's ability to allow college sports gambling.<sup>150</sup>

Among the states that have not yet legalized sports gambling, many have introduced different forms of legislation seeking to do so.<sup>151</sup> However, as of May 13, 2022, numerous states, including Oklahoma, Utah, and Idaho, either have not formally considered legalizing sports gambling, or have no active legislation.<sup>152</sup>

### III. ADOPTING A BALANCED APPROACH TO COLLEGE SPORTS GAMBLING POST-MURPHY

To fully protect the interests of college athletes and the integrity of college athletics, states that have not yet legalized sports gambling should legalize college sports gambling and adopt the “middle-ground” approach discussed above. The “middle-ground” approach strikes an appropriate balance between mitigating risks involved with college sports gambling and capitalizing on a rapidly expanding legal sports gambling market. The “middle-ground” approach also recognizes that continued prohibition of college sports gambling will allow the illegal market to thrive while also preventing the likelihood of integrity violations that could result from a completely unlimited college sports gambling scheme.

This Part will first discuss why some form of college sports gambling should be legal. It will argue that a complete prohibition does not prevent illegal market college sports gambling and does not protect the integrity of college sports. Next, it will discuss why college sports gambling should not be unlimited and will propose four substantial limitations that should be included in all state-level sports gambling legislation. Finally, it will conclude that in the absence of federal sports gambling oversight, the NCAA and state regulators must create comprehensive partnerships to fully protect the integrity of college sports.

#### A. *Completely Prohibiting College Sports Gambling Will Not Prevent Betting on College Sporting Events*

Before *Murphy*, the sports gambling market size was “estimated to be between \$50 billion and \$200 billion.”<sup>153</sup> Participation in the illegal market, through illegal bookmakers, accounted for a majority of that market.<sup>154</sup> For example, in 2016 alone, it was estimated that

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150. See H.B. 4057, 80th Leg. Assemb., Reg. Sess. (Or. 2020).

151. See *Legislative Tracker: Sports Betting*, *supra* note 19.

152. *Id.*; *Interactive Map: Sports Betting in the U.S.*, *supra* note 118.

153. See Silver, *supra* note 11; see also Dan Glaun, *Illegal Sports Betting Is Already Big Business in Massachusetts, Where Residents Spent Estimated \$680 Million on Offshore Gambling in 2016*, MASSLIVE (Jan. 30, 2019, 5:02 AM), [https://www.masslive.com/news/2018/05/illegal\\_sports\\_betting\\_already.html](https://www.masslive.com/news/2018/05/illegal_sports_betting_already.html) [https://perma.cc/S5MN-47ML] (outlining three separate sports gambling market studies).

154. Silver, *supra* note 11; see also Glaun, *supra* note 153 (noting that one study

Massachusetts residents wagered \$680 million on sports using illegal channels.<sup>155</sup> In addition, before *Murphy*, college sports wagering accounted for a significant portion of the sports gambling market.<sup>156</sup> It has been estimated that “collegiate events account for about [thirty percent] of the basketball and football wagers placed in the legal market.”<sup>157</sup>

State and federal prohibitions on sports gambling, like PASPA, were primary factors in why the illegal market flourished.<sup>158</sup> In states that have legalized sports gambling post-*Murphy*, however, gambler participation in the illegal sports gambling market has dropped.<sup>159</sup> For example, in a 2019-2020 online survey, the American Gaming Association estimated that in states where sports betting was legal, participation in sports gambling through illegal bookmakers was reduced by twenty-five percent.<sup>160</sup> Conversely, in states where sports gambling was not yet legal, participation in sports gambling through illegal bookmakers was only reduced by three percent, while participation in illegal online offshore sportsbooks<sup>161</sup> rose by twenty-four percent.<sup>162</sup>

Suppressing the illegal sports gambling market and allowing “legal, regulated wagering on collegiate events” is a particularly important way to maintain the integrity of college athletes and games.<sup>163</sup> State-regulated sportsbooks provide a more effective way to monitor betting lines and are more likely to alert law enforcement authorities to suspicious betting trends.<sup>164</sup> Conversely, because illegal operators are unlikely to divulge

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estimated that “[ninety-seven] percent of all U.S. sports betting in 2016 was ‘illegal’”).

155. *Id.*

156. See Brennan, *supra* note 144.

157. *Id.*

158. See Jay S. Albanese, *Illegal Gambling Businesses & Organized Crime: An Analysis of Federal Convictions*, 21 TRENDS ORGANIZED CRIME 262–77 (2018) (highlighting that sports gambling prohibitions in particular allowed organized crime syndicates with illegal sports gambling businesses to prosper).

159. See *Bringing Sports Betting Consumers Back Onshore*, AM. GAMING ASS’N, <https://www.americangaming.org/wp-content/uploads/2020/07/Sports-Betting-Placemat-Final.pdf> [<https://perma.cc/7UXS-8EKT>].

160. *Id.*

161. Offshore sportsbooks operate outside of the United States and are illegal in the United States but rely on customers inside the United States (and elsewhere) to place sports wagers online. See *Illegal Sports Betting: How Offshore Operators—and Those Who Support Them—Break U.S. Law*, *supra* note 5.

162. The American Gaming Association attributes the rise in illegal offshore sportsbook participation to confusion in the market, especially in states that have not legalized sports gambling, about whether these offshore sports gambling sites are legal or not. See *Bringing Sports Betting Consumers Back Onshore*, *supra* note 159.

163. See *Gaming Group Makes Case to Include Colleges in Mass. Sports Betting Bill*, WHDH (Oct. 14, 2020), <https://whdh.com/news/gaming-group-makes-case-to-include-colleges-in-mass-sports-betting-bill/> [<https://perma.cc/499K-NKSU>].

164. See, e.g., Todd Dewey, *Las Vegas Bookmakers Know a Fix When They See One*,

information about their books, regulatory officials are less likely to identify trends that would indicate potential match-fixing or point-shaving schemes.<sup>165</sup>

Further, as noted above, many organized crime groups operate illegal sports gambling businesses.<sup>166</sup> It is important to eliminate the sports gambling portion of their business because these groups often use the illegal sports gambling revenue “to fund other criminal activities, like the trafficking of humans, drugs, and weapons.”<sup>167</sup> In addition, consumers participating in illegal markets find themselves having significantly fewer protections than those in legal markets.<sup>168</sup> Specifically, they have essentially no recourse if they are unable to “withdraw their funds or [they] disagree[] with how a bet was settled.”<sup>169</sup>

State sports gambling legalization has not completely eliminated competition from illegal operators.<sup>170</sup> To decrease participation more significantly, states must continue to offer a legal sports gambling option that “provides a compelling alternative to the illegal channels consumers have traditionally relied on.”<sup>171</sup> As highlighted above, because gambling on college sports is so popular, state sports gambling schemes that prohibit wagering on collegiate events will not provide a compelling alternative to the illegal market. Sports gamblers in these states, or in states that have not legalized sports gambling at all, are still likely to turn to the illegal market to place wagers on college sporting events.<sup>172</sup> Alternatively, gamblers can turn to legal markets in nearby states that have legalized sports gambling.<sup>173</sup> Under either scenario, however, failing to legalize college sports gambling does not stop wagering on college sporting

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LAS VEGAS REV.-J. (Sept. 8, 2017, 5:54 PM), <https://www.reviewjournal.com/sports/betting/las-vegas-bookmakers-know-a-fix-when-they-see-one/> [<https://perma.cc/9LXX-JZQC>] (detailing how legal Las Vegas bookmakers have the motivation to alert law enforcement about suspicious betting trends).

165. See *How to End Illegal Sports Betting*, LEGAL SPORTS BETTING (June 8, 2021), <https://www.legalsportsbetting.com/how-to-end-illegal-sports-betting/> [<https://perma.cc/TEB9-2BDP>].

166. *Illegal Sports Betting*, FBI, <https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/illegal-sports-betting> [<https://perma.cc/VRX5-ABY4>].

167. *Id.*

168. See *Illegal Sports Betting: How Offshore Operators—and Those Who Support Them—Break U.S. Law*, *supra* note 5.

169. *Id.*

170. See Silver, *supra* note 11.

171. *Sports Betting Principles*, AM. GAMING ASS’N, <https://www.americangaming.org/wp-content/uploads/2020/07/AGA-Sports-Betting-Principles-Final.pdf> [<https://perma.cc/23WC-AW2P>].

172. See Kailey J. Walsh, *Going “All In” After Murphy v. NCAA: An Approach for California to Legalize Sports Gambling*, 42 HASTINGS COMM. & ENT. L.J. 117, 137 (2020).

173. See Ben Garbarek, *Ohio Losing Out on Millions as Neighboring States Legalize Sports Betting*, ABC6 (Feb. 3, 2020), <https://abc6onyourside.com/news/local/ohio-losing-out-on-millions-as-neighboring-states-legalize-sports-betting> [<https://perma.cc/VW3M-XH7N>].

events.<sup>174</sup> Instead, it allows the illegal sports gambling market to continue while also encouraging residents to travel to neighboring states with legalized sports gambling.

B. *Completely Prohibiting College Sports Gambling Does Not Necessarily Protect the Integrity of Collegiate Sporting Events*

Proponents of completely banning college sports gambling argue that widespread state legalization will increase the risk of point-shaving<sup>175</sup> and match-fixing<sup>176</sup> scandals.<sup>177</sup> Massachusetts college presidents and athletic directors shared these concerns, urging state lawmakers to keep college sports gambling out of any sports gambling legislation being considered.<sup>178</sup> Specifically, they argued that allowing gambling on collegiate sporting events “will increase temptations and pressures on student-athletes to influence the outcome of games or point spreads in return for financial reward or other benefits from betting interests.”<sup>179</sup> Similarly, NCAA officials have also argued that legalized sports wagering will “threaten the integrity of college sports in many ways.”<sup>180</sup>

While protecting the integrity of college sports is a legitimate concern for college officials, completely banning college sports gambling fails to recognize that the integrity of college sports is also threatened, perhaps more severely, if the illegal sports gambling market continues. This is evidenced by the fact that many of the infamous college sports gambling scandals occurred at times, and in states, where there was no legal alternative to the illegal sports gambling market.<sup>181</sup> In addition, some of the college gambling scandals included participation by organized crime groups, adding to the risk of integrity violations if the illegal market

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174. See Walsh, *supra* note 172, at 137.

175. Point-shaving is “an attempt (as by a member of the team favored to win) to influence the final score of a game so that the predicted winner wins by less than the point spread.” *Point-shaving*, *supra* note 140.

176. See *Match-fixing*, *supra* note 139.

177. See, e.g., Wilson, *supra* note 10, at 149–52.

178. See Colin A. Young, *Presidents: Keep Mass. Colleges out of Sports Betting*, TELEGRAM.COM (Sept. 11, 2020, 11:50 AM), <https://www.telegram.com/story/business/2020/09/11/presidents-keep-mass-colleges-out-of-sports-betting/113898812/> [<https://perma.cc/A6C5-UKJ5>].

179. *Id.* But see discussion *supra* note 141 (describing how the Supreme Court decision in *Alston* and the NCAA shift on NIL compensation may mitigate the risk that college athletes will face financial pressures to influence the outcome of games).

180. Ryan Rodenberg, *NCAA Pivots to Address Sports Betting Integrity*, ESPN (Mar. 11, 2019) [hereinafter *NCAA Pivots to Address Sports Betting Integrity*], [https://www.espn.com/chalk/story/\\_/id/26229344/how-ncaa-pivoting-address-sports-betting-integrity](https://www.espn.com/chalk/story/_/id/26229344/how-ncaa-pivoting-address-sports-betting-integrity) [<https://perma.cc/5SPG-PAXA>].

181. See Chris Chase, *11 Biggest Scandals in Sports Gambling History*, USA TODAY SPORTS: FOR THE WIN (May 16, 2018, 7:31 AM), <https://ftw.usatoday.com/2018/05/11-biggest-scandals-in-sports-gambling-history> [<https://perma.cc/VL5Z-9SBE>].

continues.<sup>182</sup>

For example, in the late 1970s, three Boston College basketball players conspired with notorious gangster Henry Hill to fix the outcome of Boston College basketball games for the financial benefit of themselves and corrupt gamblers.<sup>183</sup> Before that, in the early 1950s, members of the City College of New York basketball team were arrested and charged with conspiring with illegal bookmakers in New York City in a point-shaving scheme.<sup>184</sup> In 1985, members of the Tulane University basketball team accepted payments of money and drugs in a point-shaving scheme that resulted in the school terminating its men's basketball program.<sup>185</sup>

Importantly, as noted above, at the time of these scandals, the states where the affected colleges were located did not have legalized sports gambling.<sup>186</sup> As a result, it was less likely that law enforcement would be able to detect suspicious betting trends before the game.<sup>187</sup> The importance of early detection, made possible in a legal sports gambling market, was highlighted in the Arizona State basketball point-shaving scheme.<sup>188</sup> Legal bookmakers in Las Vegas alerted authorities after noticing larger-than-normal amounts of money being wagered on an Arizona State basketball game.<sup>189</sup> As a result of the legal bookmakers' attentiveness, a point-shaving scheme involving four Arizona State basketball games was uncovered and prevented from continuing.<sup>190</sup>

In the 2016 pre-*Murphy* NCAA National Study on Collegiate Wagering, college athlete respondents highlighted the presence of sports

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182. *Id.*

183. Bob Hohler, *When 'Goodfellas' Collided with BC Basketball*, BOS. GLOBE (Mar. 16, 2014, 4:00 AM), <https://www.bostonglobe.com/sports/2014/03/15/and-goodfellas-sports-scandal-and-its-lingering-toll/nvIXKiXCYSgpUqBUtg9BRN/story.html> [https://perma.cc/H579-QT69].

184. See Michael Schaub, *Scandal Brings Down a Remarkable College Basketball Team in 'The City Game'*, NPR (Nov. 8, 2019, 7:43 AM), <https://www.npr.org/2019/11/08/777189246/a-remarkable-college-basketball-team-falls-from-grace-in-the-city-game> [https://perma.cc/8SJ5-PMFJ].

185. See Janet Plume, *A Tulane Student and Another Man Pleaded Guilty Monday . . .*, UPI (Sept. 8, 1986), <https://www.upi.com/Archives/1986/09/08/A-Tulane-student-and-another-man-pleaded-guilty-Monday/1000526536000/> [https://perma.cc/8TCA-7RW3].

186. Massachusetts, Louisiana, and New York, the states where these scandals primarily occurred, did not have legalized sports gambling at the time of the scandals. See Fielkow et al., *supra* note 35, at 23 (explaining that at the time of PASPA's passage in 1992, only four States—Nevada, Delaware, Montana, and Oregon—had some form of legal sports gambling).

187. See *How to End Illegal Sports Betting*, *supra* note 165.

188. See Dewey, *supra* note 164.

189. *Id.*

190. See *Five Men Sentenced in Arizona State Basketball Point-Shaving Scandal*, ARIZ. DAILY SUN (June 21, 1999), [https://azdailysun.com/five-men-sentenced-in-arizona-state-basketball-point-shaving-scandal/article\\_0e78f43f-529e-554c-bbb7-3cddef1009b8.html](https://azdailysun.com/five-men-sentenced-in-arizona-state-basketball-point-shaving-scandal/article_0e78f43f-529e-554c-bbb7-3cddef1009b8.html) [https://perma.cc/L7DT-TRFS].



gambling temptations.<sup>191</sup> Conducted at a time when legalized sports gambling was virtually non-existent outside of Nevada, the study showed that even in a largely illegal sports gambling market, gamblers attempt to influence the outcome of games through college athletes.<sup>192</sup> In fact, 1.6% of NCAA Division I football players reported that they had been asked to influence the outcome of a game.<sup>193</sup> Considering there are typically over 100 members on an NCAA Division I football team, it is not a stretch to assume that most teams had at least one member tempted to influence the outcome of a game.<sup>194</sup> Further, 3.4% of NCAA Division I basketball players reported that they were asked to share information relevant to sports gambling.<sup>195</sup> While these statistics may be used by college officials to argue that college sports gambling should be prohibited, it must be highlighted once again that these numbers are reflective of a time when college sports gambling was largely illegal.

Ultimately, lawmakers must recognize that a complete prohibition on college sports gambling does not better protect the integrity of college sports. Instead, the integrity of college sports can be better protected by legalizing some form of college sports gambling. This will allow regulatory authorities to establish monitoring systems that detect suspicious betting trends and recognize point-shaving and match-fixing schemes before they affect games.

### C. *Legalized College Sports Gambling Must Include Some Limitations to Mitigate Integrity Concerns*

Although legalizing some form of college sports gambling may allow regulators to better protect college sporting events' integrity, it does not mean that gambling on college sports should be unlimited. Importantly, states must recognize that sports gambling on college campuses and college sports teams is becoming increasingly popular.<sup>196</sup> For example, a 2016 study of college athletes conducted by the NCAA revealed that twenty-four percent of men and five percent of women had placed a bet on a sporting event for money during the year preceding the study.<sup>197</sup> In

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191. See Brian Burnsed, *Doubling Down*, NCAA CHAMPION MAG. (Summer 2019), <http://www.ncaa.org/static/champion/doubling-down/> [https://perma.cc/5AHS-X4GP].

192. *Id.*

193. *Id.*

194. See Dag Michelson, *How Many Players Can a NCAA Football Roster Have?*, PAYPERHEAD (Apr. 3, 2019), <https://payperhead.com/ncaa-football-player-rosters/> [https://perma.cc/9YTR-AE36].

195. See Burnsed, *supra* note 191.

196. See Keith Savage, *The Increased Popularity of Sports Gambling Puts Young Adults at Risk of Developing a Betting Problem*, THE QUINNIPIAC CHRON. (Oct. 20, 2020), <https://quchronicle.com/71194/opinion/the-increased-popularity-of-sports-gambling-puts-young-adults-at-risk-of-developing-a-betting-problem/> [https://perma.cc/HX6K-V9PH].

197. NCAA RSCH., TRENDS IN NCAA STUDENT-ATHLETE GAMBLING BEHAVIORS AND

addition, because of technological advances, most legal sports betting is projected to be done by using an online sports betting platform.<sup>198</sup> Consequently, a college athlete may easily place a bet against their own team without leaving their dorm room. Alternatively, a friend or a roommate of a college athlete may acquire important inside information through a college athlete and use it to place a bet for or against that team.<sup>199</sup>

As a way of balancing integrity concerns with the reality of a rapidly developing sports gambling market, states must include provisions that mitigate the risks to college sports and college athletes. This Section discusses four substantial “middle-ground” limitations states should include in sports gambling legislation. First, it will urge that states prohibit proposition bets on college athletes. Next, it will argue that states should limit live, in-game gambling on college sporting events. Next, it will propose that states prohibit gambling on in-state colleges and universities, regardless of where those teams are playing the games. Finally, it will argue that states should prohibit sports gambling advertising on college campuses and through college-sponsored media outlets. While these limitations do not completely eliminate the risk of corruption in college athletics, they will significantly reduce the likelihood that college athletics’ integrity is compromised.

#### 1. Proposition Bet Limitation

As noted above, a prop bet is a special type of wager that can be placed on a sporting event.<sup>200</sup> Unlike bets made against a point spread or on the winner of the game, prop bets are wagers on events not necessarily directly connected to the outcome of the game.<sup>201</sup> For example, a bettor can place a prop bet on certain player-based events: whether a player will score over or under a certain number of points or whether a quarterback will throw for over or under a certain number of yards.<sup>202</sup> In addition, prop bets can be placed on team-based events like whether a team will score over or under a certain number of goals in a particular game.<sup>203</sup> Prop

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ATTITUDES 1 (2017), [https://ncaaorg.s3.amazonaws.com/research/wagering/2017RES\\_wageringexecutivesummary.pdf](https://ncaaorg.s3.amazonaws.com/research/wagering/2017RES_wageringexecutivesummary.pdf) [<https://perma.cc/MCJ8-6YCL>].

198. See Burnsed, *supra* note 191 (“Data from European markets suggest[] that, in states permitting mobile betting, about [eighty percent] of wagers will be made via the devices seemingly tethered to us at all times.”).

199. See Steve Berkowitz & Erik Brady, *Legalized Sports Betting Will Wreak Havoc on College Athletics. Or Not.*, USA TODAY (May 31, 2018, 4:28 PM), <https://www.usatoday.com/story/sports/college/2018/05/31/sports-betting-college-athletics-world-concerned-supreme-court-ruling/645367002/> [<https://perma.cc/GMP5-N5TX>].

200. See *Sports Betting Terms: Gambling 101 Glossary*, *supra* note 127.

201. *Proposition Betting Explained*, PLAYCOLORADO, <https://www.playcolorado.com/sports-betting/proposition/> [<https://perma.cc/SNB3-TE4D>].

202. *Id.*

203. *Id.*

betting does not require as much advanced gambling knowledge. As such, it appeals to casual sports fans, making it one of the most popular types of sports wagers.<sup>204</sup>

Because prop bets based on the performance of individual college athletes amplify the risk of integrity violations, states should follow the lead of Tennessee<sup>205</sup> and limit college sports gambling legislation to prohibit these types of bets.<sup>206</sup> Although the NCAA recently unveiled interim rules that allow college athletes to profit from their name, image, and likeness<sup>207</sup> after the recent Supreme Court decision in *NCAA v. Alston*, college athletes are still generally unpaid for playing college sports.<sup>208</sup> As a result, college athletes may still be more “susceptible to corruption” than professional athletes.<sup>209</sup> Perhaps most concerning is that college athletes may feel more comfortable participating in a scheme involving prop bets because altering their individual performance for financial gain does not necessarily put their team directly at risk of losing the game.<sup>210</sup>

Even though legal sports gambling operators have indicated that player-based prop bets on college sporting events are rarely offered,<sup>211</sup> the rapid development of mobile sports betting platforms may lead to more offerings.<sup>212</sup> Because of this, state legislatures should not leave it to the gambling operators to decide whether to offer these types of bets. Instead, sports gambling legislation should include language like Tennessee’s that explicitly prohibits proposition betting on collegiate sporting events.

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204. See, e.g., Megan Cerullo, *\$6 Billion to Be Bet on Super Bowl LIII—Not All of It on Game Itself*, CBS NEWS (Feb. 1, 2019, 10:49 AM), <https://www.cbsnews.com/news/betting-on-the-super-bowl-1-in-10-americans-placing-bets-on-super-bowl-liii/> [<https://perma.cc/NH53-85QQ>] (estimating that “[r]oughly 1 in 10, or 22.7 million, Americans are expected to place ‘proposition bets[.]’” on Super Bowl LIII).

205. See H.B. 1, 111th Gen. Assemb., Reg. Sess. (Tenn. 2019) (prohibiting wagering on “[i]ndividual actions, events, statistics, occurrences, or non-occurrences to be determined during a collegiate sporting event, including, without limitation, in-game proposition bets on the performance or non-performance of a team or individual participant during a collegiate sporting event”).

206. See Wayne Parry, *NCAA Voices Concern over Prop Bets on College Athletes*, AP NEWS (Nov. 12, 2020), <https://apnews.com/article/nfl-football-college-sports-sports-betting-9f70802489515b2599d7cca994498256> [<https://perma.cc/55B2-BDZP>].

207. See Brutlag Hosick, *supra* note 141.

208. See Andrew Brandt, *Business of Football: The Supreme Court Sends a Message to the NCAA*, SPORTS ILLUSTRATED (June 29, 2021), <https://www.si.com/nfl/2021/06/29/business-of-football-supreme-court-unanimous-ruling> [<https://perma.cc/QS9Q-YDBL>] (discussing the impact of the *Alston* decision on college athlete compensation but noting that the decision did not address the “larger issue of pay-for-play” of college athletes).

209. See Wilson, *supra* note 10, at 152 (quoting Las Vegas attorney Kate Lowenhar-Fisher who also suggested that college athletes’ susceptibility to corruption could be fixed by compensating them).

210. See Burnsed, *supra* note 191.

211. See Parry, *supra* note 206.

212. See Burnsed, *supra* note 191.

## 2. Live, In-Game Bet Limitation

Like prop bets, another type of bet that heightens the risk of integrity violations is live, in-game betting on collegiate events. In-game betting involves placing a bet on a sporting event after it has started and before it ends.<sup>213</sup> As the game is played, sports gambling operators “release new point spreads, moneylines, props and totals before each period, quarter, half, inning, etc.”<sup>214</sup> along with adjusted live odds.<sup>215</sup> As states have legalized sports gambling post-*Murphy*, many have authorized placing bets using mobile applications.<sup>216</sup> Because of this, the popularity of in-game betting has increased.<sup>217</sup>

A significant risk in allowing in-game wagering on collegiate sporting events is that gamblers may attempt to obtain information in real-time through persons associated with college teams and use that information to place an in-game wager. Oftentimes, gamblers analyze injury reports to determine whether a specific bet is worth making.<sup>218</sup> In most professional leagues, these injury reports are mandatory; however, the NCAA does not require them.<sup>219</sup> Consequently, gamblers must acquire injury information through other sources, like college students and players.<sup>220</sup> For example, assume that a player on Team X finds out during halftime of a game that the best player on the team is hurt and will not return to the game. That player can then send a text message to an outside person (like a roommate or a friend) alerting them to this otherwise unknown information, and that person can place an in-game bet through a mobile betting application.

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213. See Roy Larking, *Sports Gambling 101: What Is Live Betting?*, SPORTS ILLUSTRATED (May 21, 2020), <https://www.si.com/gambling/2020/05/21/how-to-live-betting-sports> [<https://perma.cc/DC25-28L6>].

214. *How Does Live Betting Work: In-Game Betting Guide*, ODDS SHARK, <https://www.odds shark.com/sports-betting/how-live-betting-works> [<https://perma.cc/989Y-ZDVQ>].

215. A “moneyline” bet simply requires the bettor to pick a team to win the game, with each team given a numerical value (odds) which determines the payout of a winning bet. See *Moneyline Betting Guide: What Is a Moneyline Bet and How Does It Work?*, ODDS SHARK, <https://www.odds shark.com/sports-betting/betting-money-line> [<https://perma.cc/KWX9-8HPT>].

216. See, e.g., Stefan Geller, *DraftKings to Launch Mobile Sports Betting in New Hampshire Monday*, BOS. HERALD (Dec. 25, 2019, 7:28 PM), <https://www.bostonherald.com/2019/12/25/draftkings-to-launch-mobile-sports-betting-in-new-hampshire-by-end-of-the-year/> [<https://perma.cc/UU83-XZ4B>].

217. See Larking, *supra* note 213.

218. See Berkowitz & Brady, *supra* note 199.

219. Associated Press, *NCAA Says No Football Injury Reports This Season*, SPORTS ILLUSTRATED (Aug. 7, 2019), <https://www.si.com/college/2019/08/08/ncaa-no-football-injury-reports> [<https://perma.cc/J3EW-FALF>].

220. See Berkowitz & Brady, *supra* note 199 (“Sometimes fellow students are in the best position to know if the quarterback wrenched a knee—or broke up with his girlfriend. That sort of information could be valuable to gamblers.”).

Of course, there is always a risk that gamblers will acquire useful information from inside sources and use that information to place a bet before the game has begun.<sup>221</sup> The heightened risk with in-game wagering is that regulatory authorities are less likely to catch fraudulent activity.<sup>222</sup> Even if the fraudulent activity is detected, because the game has already started it is unlikely that authorities will be able to rectify the illicit activity in time. In addition, as stated above, because college athletes are unpaid, they may be more willing to divulge inside information if they are offered a financial incentive for doing so.<sup>223</sup> As a result, state sports gambling legislation should prohibit live, in-game wagering on collegiate sporting events.

### 3. In-State College Bet Limitation

Next, states that legalize sports gambling should prohibit gambling on in-state colleges and universities.<sup>224</sup> Multiple states, including New Hampshire, Rhode Island, and New York, have included this limitation in their sports gambling legislation.<sup>225</sup> While this limitation does not completely eliminate the risk that college athletes will be asked to participate in a match-fixing or point-shaving scheme, it serves as an important strategy to mitigate integrity concerns in college sports.<sup>226</sup>

Specifically, prohibiting wagering on in-state colleges helps reduce the risk that college athletes will feel pressured by students or staff on campus, many of whom are gambling on their colleges' sports teams.<sup>227</sup> Unlike professional athletes, college athletes are regularly socializing with other students in a close campus environment.<sup>228</sup> Because of this close

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221. See Terrin Waack, *NCAA Injury Debate Pits Player Privacy vs. Gambling Concerns*, AP NEWS (Aug. 10, 2018), <https://apnews.com/article/c6651f1a7dab43ccb07f7724d2be209f> [<https://perma.cc/NLH2-PVAE>] (describing that the lack of an injury report in the NCAA creates opportunities for “inside information”).

222. See ADAM LEWIS ET AL., INDEPENDENT REVIEW OF INTEGRITY IN TENNIS 8 (2018), <https://www.usta.com/content/dam/usta/pdfs/IRP-Final-Report.pdf> [<https://perma.cc/26LP-UXE8>] (noting that fraud in gambling on tennis is harder to detect because of the live betting opportunities it offers).

223. See Wilson, *supra* note 10, at 144–49.

224. An in-state college or university is typically defined as one that is “primarily located in” the state that is legalizing sports gambling. See, e.g., H.B. 480, 2019 Leg. Reg. Sess. (N.H. 2019).

225. See, e.g., *id.* (preventing wagering on a “collegiate sports event in which one of the participants is a collegiate team of a college institution that is primarily located in New Hampshire”).

226. See Cazentre, *supra* note 140 (quoting New York attorney Karl Sleight who stated that “there’s a feeling that that kind of language (prohibiting local college bets) would be a prophylactic (preventive [sic]) for integrity issues that may exist”).

227. See Burnsed, *supra* note 191 (noting that 3.1% of NCAA Division I men’s football players, 1.2% of NCAA Division I men’s basketball players, and 2.0% of all other men in Division I, II, and III, have bet on another team at their school).

228. See Jill R. Dorson, *Betting on College Sports—Or Not—Often a Game of Political*

environment, these athletes may be more easily “swayed into taking game-altering bribes.”<sup>229</sup>

States must also ensure that their sports gambling legislation includes language that explicitly prohibits wagering on colleges and universities located within the state, regardless of where the game is being played. For example, Rhode Island’s sports gambling law states that “sports wagering shall be prohibited in connection with any collegiate sports or athletic event . . . in which any Rhode Island college team participates, *regardless of where the event takes place*.”<sup>230</sup> It is important to prohibit wagering on in-state colleges regardless of the location of the game because modern forms of technology allow athletes to communicate with friends back on campus very easily.<sup>231</sup> For example, a college athlete on a Massachusetts-based team who is playing a game in California can simply call or text his roommate to facilitate a point-shaving scheme.

Many states have also prohibited placing wagers on college sporting events that take place within the state, even if they do not involve participation by a college or university located in the state.<sup>232</sup> For example, New Hampshire’s sports gambling law prohibits gambling on a “collegiate sports event that takes place in New Hampshire.”<sup>233</sup> While this limitation also aims to mitigate the risk of integrity violations, it does not seem that the risks are as high as if residents (specifically, students on campus) in the state were allowed to bet on their in-state college or university.

Of course, prohibiting gambling on in-state colleges and universities does not mean that a gambler who intends to place a bet on an in-state college cannot do so.<sup>234</sup> As stated above, a gambler could simply travel to a nearby state that has legalized sports gambling or use the illegal market to place the bet.<sup>235</sup> Alternatively, they could also communicate with an individual located in a different state to place the bet for them.<sup>236</sup> This limitation does, however, contribute to a balanced legal sports gambling approach by providing an extra step that individuals would have

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*Football*, SPORTSHANDLE (July 11, 2019), <https://sportshandle.com/sports-betting-on-college-sports/> [https://perma.cc/VW7A-8CFP].

229. *Id.*

230. H. 7200, 2018 Leg., Jan. Sess. (R.I. 2018) (emphasis added).

231. *See Dorson, supra* note 228.

232. *Interactive Map: Sports Betting in the U.S., supra* note 118.

233. H.B. 480, 2019 Leg., Reg. Sess. (N.H. 2019).

234. *See Walsh, supra* note 172, at 137.

235. *See Dorson, supra* note 228 (quoting then-American Gaming Association Vice President of Public Affairs Sara Slane who opposed the in-state college limitation saying that “[i]f you are an Illinois sports fan, and you want to bet on Northwestern, and you download ‘name-your-app,’ and Northwestern wasn’t there, what would you do? The options are to drive over the state line or go to the black market.”).

236. *Id.*

to take to facilitate a match-fixing or point-shaving scheme on college sports. In addition, it adds an extra layer of insulation to protect college athletes from “potential negative influences.”<sup>237</sup>

#### 4. Advertising Limitation

Finally, as a way to discourage gambling operators from targeting college students, states that legalize sports gambling should prohibit sports gambling advertising on college campuses and through college-sponsored media outlets. Placing a statutory restriction on sports gambling advertising on college campuses and through college-sponsored media outlets is necessary to help ensure that college students do not develop problematic sports gambling habits.<sup>238</sup>

Many states that have commercial casinos or legal sports gambling already impose some restrictions on the way operators may market or advertise gambling-related products.<sup>239</sup> Take Iowa, for instance, which prohibits a sports gambling operation from “[f]ailing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.”<sup>240</sup> No state, however, expressly prohibits sports gambling-related advertising on college campuses.<sup>241</sup>

In September 2020, in response to expanded legal sports gambling made possible by *Murphy*, the American Gaming Association developed marketing principles for members and non-members to follow in an attempt to standardize sports gambling advertising.<sup>242</sup> One principle that the American Gaming Association outlined is that “sports wagering should not be promoted or advertised in college or university-owned news assets . . . or advertised on college or university campuses.”<sup>243</sup> Although these principles do provide industry-wide guidance to sports gambling operators, they are not a statutory mandate prohibiting sports gambling advertising on college campuses.<sup>244</sup>

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237. *Id.*

238. Mark D. Griffiths, *Does Gambling Advertising Contribute to Problem Gambling?*, 3 INT’L J. MENTAL HEALTH & ADDICTION 15, 21 (2005) (encouraging states to place gambling advertisements in the same restrictive category as alcohol and tobacco promotions because of its “potentially addictive nature” and “potential for being a major health problem”).

239. See *Responsible Gaming: Regulations and Statutes*, AM. GAMING ASS’N (Sept. 2019), [https://www.americangaming.org/wp-content/uploads/2019/09/AGA-Responsible-Gaming-Regs-Book\\_FINAL.pdf](https://www.americangaming.org/wp-content/uploads/2019/09/AGA-Responsible-Gaming-Regs-Book_FINAL.pdf) [<https://perma.cc/P8C8-RH89>].

240. IOWA ADMIN. CODE r. 491-13.2(2)(a).

241. See *Responsible Gaming: Regulations and Statutes*, *supra* note 239.

242. See *Responsible Marketing Code for Sports Wagering*, AM. GAMING ASS’N, <https://www.americangaming.org/wp-content/uploads/2020/09/AGA-Responsible-SB-Marketing-Code.pdf> [<https://perma.cc/2JW2-ZRMF>].

243. *Id.*

244. See *AGA Responsible Marketing Code for Sports Wagering*, AM. GAMING ASS’N (June 14, 2021), <https://www.americangaming.org/responsibility/marketingcode/> [<https://perma.cc/5LKP-NQ9B>] (“Specifically, the code includes *self-imposed* restrictions on

A statutory mandate prohibiting sports gambling advertisement is imperative because sports gambling operators are already entering into agreements with colleges to advertise on college campuses. For example, PointsBet, a sports gambling operator, and the University of Colorado (CU) have already entered into a five-year advertisement agreement.<sup>245</sup> Under the agreement, PointsBet will pay CU “at least \$1.625 million” in exchange for receiving in-stadium advertisements at CU football games and on CU football game radio broadcasts.<sup>246</sup> In addition, CU will receive a “\$30 referral fee for each new gambling customer it sends to PointsBet.”<sup>247</sup> Notably, an individual must be twenty-one years of age or older to gamble on sports in Colorado.<sup>248</sup> Undoubtedly, the PointsBet agreement will allow for widespread advertising to large numbers of underage college students in open violation of another American Gaming Association principle stating that “[s]ports wagering advertisements should not be placed in media outlets . . . that appeal primarily to those below the legal age for sports wagering.”<sup>249</sup> To fully prevent gambling operators and colleges partnering in ways that promote underage gambling on college campuses, states should directly prohibit sports gambling advertising on college campuses and through college-sponsored media outlets.

D. *The NCAA and State Gambling Regulators Must Create Comprehensive Partnerships in Order to Fully Protect the Integrity of College Sports*

The rapid expansion of state-level sports gambling legalization has meant that the NCAA and its member institutions have had to rush in order to adapt to the number of new regulatory schemes.<sup>250</sup> Even before *Murphy*, it was argued that the NCAA and its member institutions do not have adequate resources to properly educate student-athletes about gambling-related risks.<sup>251</sup> In addition, the NCAA lacks any authority

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target audiences, outlets, and materials branding, while mandating the inclusion of responsible gaming in marketing activities.” (emphasis added)).

245. See Ross Dellenger, *Inside Colorado's Unprecedented \$1.625M+ Deal with Gambling Outlet*, SPORTS ILLUSTRATED (Oct. 3, 2020), <https://www.si.com/college/2020/10/03/inside-colorado-pointsbet-deal> [<https://perma.cc/NX33-RBSG>]; see also Niko Blankenship, *Denver Athletics Partners with Superbook Sports*, UNIV. OF DENVER ATHLETICS (Sept. 2, 2021, 9:00 AM), <https://denverpioneers.com/news/2021/9/2/denver-athletics-partners-with-superbook-sports.aspx> [<https://perma.cc/49DD-AYD2>] (detailing partnership between the University of Denver and Superbook Sports, a sports gambling operator).

246. *Id.*

247. *Id.*

248. See H.B. 19-1327, 2019 Leg., Reg. Sess. (Colo. 2019).

249. See *AGA Responsible Marketing Code for Sports Wagering*, *supra* note 244.

250. See Burnsed, *supra* note 191.

251. *Id.*



beyond its member schools.<sup>252</sup> This means that the NCAA has no ability to discipline individuals who are not associated with a member institution, but may be involved in a scheme to influence a college sporting event.<sup>253</sup>

Because of this, the NCAA must create partnerships with regulatory authorities, including state gaming regulators, who may have better resources to educate student-athletes and protect against undue influence.<sup>254</sup> The NCAA will likely have more motivation to analyze sports gambling data from legal markets nationwide because its members are located across the country.<sup>255</sup> And, as noted above, because different states have adopted different approaches to the scope of college sports gambling, consumers may travel across state lines (or contact someone in another state) to place a bet that they may not have been otherwise able to in a different state.<sup>256</sup> Because state gambling authorities are mainly concerned with enforcing their gambling laws in an intrastate manner, the NCAA—if provided with comprehensive data from regulators in different states—may be in a better position to identify suspicious gambling trends that move across state lines by serving as a conduit for the sharing of information. This approach also helps state regulators by alerting them to suspicious trends occurring in other states, which, in turn, may help those regulators detect a trend that they would not otherwise have noticed.<sup>257</sup>

#### CONCLUSION

In conclusion, states that have yet to legalize sports gambling must consider the competing interests involved when deciding whether, and in what way, they should legalize college sports gambling. On one hand, states must recognize the reality that a large segment of the population is already gambling on college sports, both in the legal and illegal market. On the other hand, states must acknowledge the considerable risk that

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252. See Caitlin Buckstaff, Note, *Covering the Spread: An Assessment of Amateurism and Vulnerability of Student-Athletes in an Emerging Culture of Sports Wagering*, 16 VAND. J. ENT. & TECH. L. 133, 151–52 (2013).

253. *Id.*

254. *Id.* at 166–67.

255. While the NCAA may have the motivation to identify integrity violations on a national scale, it may not have the resources, or it may not want to devote the resources to implement these partnerships. One source of possible funding for this type of proposed partnership is through an “integrity fee,” which is a payment made by the gambling operator to the governing bodies of sports, like the NCAA. See Eric Ramsey, *NCAA Rejects Integrity Fee Concept in Laying Out Sports Betting Requests to Indiana Lawmakers*, LEGALSPORTSREPORT (Oct. 24, 2018), <https://www.legalsportsreport.com/25234/ncaa-indiana-sports-betting-integrity-fee/> [<https://perma.cc/2QFG-JYMH>]. For now, the NCAA has rejected the idea of the integrity fee. *Id.*

256. See *supra* note 235 and accompanying text.

257. See Buckstaff, *supra* note 252, at 166–67 (noting that state and nation regulatory authorities like gaming commissions and the FBI both have the desire for “clean sporting events and an end to illegal gambling”).

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legalizing sports gambling without restrictions has on the integrity of college sports. As discussed above, the best legislative approach for states is the “middle-ground,” which allows college sports gambling, albeit with some substantial limitations.

