

NOTES

CASHING IN ON *MURPHY V. NCAA*: LOOKING TO THE UNITED KINGDOM AND AUSTRALIA FOR SOLUTIONS TO REGULATING SPORTS BETTING IN AMERICA

SEAN M. FARRELL*

INTRODUCTION

After years of calls for sports betting to be allowed in the United States, the question is once again open to the states following the United States Supreme Court's decision to strike down the Professional and Amateur Sports Protection Act ("PASPA").¹ With this decision, many states have the opportunity to legalize sports betting for the first time in over twenty years.² However, the Supreme Court's decision merely caps off a decades-long process as a tremendous shift in public opinion has created an environment where sports betting is both popular and profitable.³

This Note focuses on the sports betting systems already in place in other countries that U.S. states should consider if they want to enact legislation to legalize sports betting. Because sports betting in America has been riddled with controversy, it is imperative for states to understand the concerns which led to the passage of PASPA if they want to avoid another federal ban on sports betting.⁴ Through examining different legal systems and how they successfully or unsuccessfully regulate sports betting, states can take much of the guesswork out of creating a successful sports betting industry for themselves.

Part I of this Note examines two recent federal court decisions as New Jersey attempted to legalize sports betting.⁵ The latter case, *Murphy v. NCAA*, serves to outline some of the options available to states and the federal government following the court's decision.⁶ Part II examines the history of controversy that has followed the combination of sports and betting since the beginning of the

* J.D. Candidate, 2020, Indiana University Robert H. McKinney School of Law; B.A., magna cum laude, 2016, History, Franciscan University of Steubenville.

1. *Murphy v. NCAA*, 138 S. Ct. 1461, 1484-85 (2018).

2. Professional and Amateur Sports Protection Act, 28 U.S.C. §§ 3702-3704 (1992).

3. *See infra* Part IV.

4. *See infra* Part II; *see generally* S. REP. NO. 102-248, at 1 (1991); *see Murphy*, 138 S. Ct. at 1469-71.

5. *See NCAA v. Governor of N.J.*, 730 F.3d 208 (3d Cir. 2013); *Murphy*, 138 S. Ct. at 1461.

6. *Murphy*, 138 S. Ct. at 1484-85.

twentieth century. Part III examines how sports betting has traditionally been regulated and what regulations are currently in place. Part III specifically examines PASPA to understand why Congress sought to ban sports betting and how Congress sought to carry the ban out. Part IV seeks to understand the changing attitudes towards sports betting since PASPA was passed, particularly how individuals continued to bet on sports despite its illegality.⁷ Part IV will also examine how different sports leagues have begun to embrace the idea of sports betting and what the leagues want to see if sports betting is legalized.

Part V will examine three different legal frameworks for sports betting: Nevada, the United Kingdom, and Australia. In Part V, this Note will examine each framework's approach to regulating sports betting along with each system's respective benefits and drawbacks. For each framework, Part V will also analyze whether it would be an effective system for a state to adopt. Part VI proposes that states adopt Australia's system of integrity agreements and sports controlling bodies where sports books must first have an agreement in place with the league they want to accept bets on before receiving approval from the local regulatory body.⁸ Part VI also proposes that states should supplement this with the United Kingdom's practice of licensing requirements to protect children and those susceptible to gambling problems.⁹ This Note concludes that the best short-term solution is for states to adopt Australia's framework with the proposed U.K. additions from Part VI.

I. NEW JERSEY'S BATTLE TO LEGALIZE SPORTS BETTING

In May of 2018, the Supreme Court issued its opinion in the highly anticipated case of *Murphy v. NCAA*, where New Jersey challenged the constitutionality of PASPA, the federal statute which prevented states from legalizing sports betting.¹⁰ Ultimately, the Court ruled in favor of New Jersey's challenge.¹¹ However, it is important to go back to 2012 when New Jersey first tried to legalize sports betting to understand how the courts viewed the relationship between the state and federal government's abilities to regulate sports betting because these rulings will likely affect how future sports betting legislation is structured.¹²

7. See generally THE MELLMAN GROUP, AMERICANS' PARTICIPATION IN SPORTS POOLS (2018)(ebook), https://www.americangaming.org/sites/default/files/research_files/MellmanNCAA_poolsMemo_final.pdf. [<https://perma.cc/7NPV-MX9S>].

8. *Match-fixing, Corruption, Gambling*, NSW OFFICE OF SPORT, <https://sport.nsw.gov.au/sectordevelopment/matchfixing> (last visited Feb. 15, 2019) [<https://perma.cc/9ACC-5S8B>]; Australian Sport & Recreation Ministers, National Policy on Match-Fixing in Sport As Agreed 10 June 2011 § 3.6, <http://www.health.gov.au/internet/main/publishing.nsf/Content/match-fixing1> (last updated Nov. 19, 2013) [<https://perma.cc/U9F7-BX2Z>].

9. Gambling Act 2005-2019, c. 19 §1 (Eng.).

10. See *Murphy*, 138 S. Ct. at 1461 (2018); see also 28 U.S.C. §§ 3702-04.

11. *Murphy*, 138 S. Ct. at 1484-85.

12. See generally *NCAA*, 730 F.3d 208; see also Dylan O. Malagrino, *Off the Board: NCAA*

A. *NCAA v. Christie: New Jersey's First Attempt*

In 2012, New Jersey enacted the “Sports Wagering Law,” which allowed casinos and racetracks to apply for permits to operate “sports pools” for permitted college and professional sporting events.¹³ The National Basketball Association (“NBA”), the National Collegiate Athletic Association (“NCAA”), the National Football League (“NFL”), and the National Hockey League (“NHL”) subsequently sued New Jersey under Section 3703 of PASPA claiming that New Jersey’s law was invalid under PASPA.¹⁴ On appeal to the Third Circuit Court of Appeals, New Jersey argued that PASPA was “[b]eyond Congress’ authority under the *Commerce Clause*,” that PASPA’s control “[o]ver the Sports Wagering Law violates the ‘anti-commandeering’ principle¹⁵,” and that PASPA violated the Equal Sovereignty Principle by providing preferential treatment to Nevada.¹⁶

In response to New Jersey’s arguments, the Third Circuit Court found that the Commerce Clause gives the federal government the power to enact the provisions in PASPA because sports betting involves an “economic activity” and has a “substantial affect” on interstate commerce.¹⁷ Additionally, the court held that PASPA did not violate the anti-commandeering principle finding, “[i]t is hard to see how Congress can ‘commandeer’ a state, or how it can be found to regulate how a state regulates, if it does not require it to do anything at all.”¹⁸ The Court also indicated, “[n]othing in these words [PASPA] requires that the states keep any law in place. All that is prohibited is the issuance of gambling ‘license[s]’ or the affirmative ‘authoriz[ation] by law’ of gambling schemes.”¹⁹ Finally, the Court disagreed with New Jersey’s Equal Sovereignty argument finding the law was “*precisely tailored* to address the problem.”²⁰ The Court ultimately held, “[t]he law neither exceeds Congress’ enumerated powers nor violates any principle of federalism implicit in the Tenth Amendment or anywhere else in our Constitutional [sic] structure.”²¹ New Jersey subsequently petitioned the Supreme

v. *Christies Challenges Congress to “Move the Line” on the Professional and Amateur Sports Protection Act*, 118 PENN. ST. L. REV. 375, 395 (2013).

13. N.J. STAT. § 5:12A-1 *et seq.* (repealed 2014); *NCAA*, 730 F.3d 208 at 217 (citations omitted); Malagrino, *supra* note 12, at 395.

14. *NCAA v. Governor of N.J.*, 730 F.3d 208 at 217.

15. The anti-commandeering principle is the idea that it is unconstitutional for a federal law to order states “to regulate in accordance with federal standards” or to compel “state officers to enforce a federal law.” *Murphy*, 138 S. Ct. at 1471.

16. *NCAA*, 730 F.3d at 224, 227, 237.

17. *Id.* at 224-26.

18. *Id.* at 231.

19. *Id.* at 232.

20. *Id.* at 239; see James C. W. Goodall, *Bringing Down the House: An Examination of the Law and Policy Underpinning the Professional and Amateur Sports Protection Act of 1992*, 67 RUTGERS U. L. REV. 1097, 1125-26 (2015).

21. *NCAA*, 730 F.3d at 240.

Court for certiorari, but the petition was denied in June of 2014.²²

B. Murphy v. NCAA: New Jersey's Success and PASPA's Fall

New Jersey responded to the Third Circuit Court's suggestion that nothing in PASPA required states to keep sports betting laws in place by passing a law to "[r]epeal the provisions of state law prohibiting sports gambling insofar as they concerned the 'placement and acceptance of wagers' on sporting events."²³ New Jersey was trying to "[m]aneuver through the court's ruling" to bring sports betting to the state by "[l]ifting restrictions on who would be permitted to place bets."²⁴ The law also did not extend to New Jersey collegiate teams or collegiate sporting events taking place in the state.²⁵ Nonetheless, many of the same plaintiffs in *NCAA v. Christie* once again brought suit against New Jersey and won at the Third Circuit.²⁶

On appeal to the Supreme Court, the Court addressed whether the enforcement of PASPA violated the anti-commandeering principle and found that Section 13702(1) of PASPA "[u]nequivocally dictates what a state legislature may and may not do."²⁷ In writing the majority opinion, Justice Samuel Alito described PASPA "[a]s 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 said, "[a] more direct affront to state sovereignty is not easy to imagine."²⁸ When the leagues and the U.S. government tried to defend Section 13702(1) as a valid preemption, the Court found "[t]here is simply no way to understand the provision prohibiting state authorization as anything other than a direct command to the States. And that is exactly what the anti-commandeering rule does not allow."²⁹ In doing so, the Supreme Court held that Section 13702(1) was unconstitutional.³⁰

However, the Court did not stop there and went on to consider whether the rest of the statute could stand without Section 13702(1).³¹ This involved a severability analysis focused on "[i]f Congress had known that States would be free to authorize sports gambling in privately owned casinos, would it have

22. *Christie v. NCAA*, 730 F.2d 208 (2014), 134 S. Ct. 2866 (2014); see Goodall, *supra* note 20, at 1127-28.

23. See *NCAA*, 730 F.3d at 232; *Murphy*, 138 S. Ct. at 1472 (citing 2014 N. J. Laws p.602).

24. Andrew Brandt, *Professional Sports Leagues' Big Bet: "Evolving" Attitudes on Gambling*, 28 STAN. L. & POL'Y REV. 273, 280 (2017).

25. *Murphy v. NCAA*, 138 S. Ct. 1461, 1472 (2018) (citing 2014 N. J. Laws p. 602).

26. See *NCAA*, 730 F.3d at 208; *National Collegiate Athletic Assn. v. Governor of N. J.* 832 F.3d 389, 397 (2016).

27. *Murphy*, 138 S. Ct. at 1475-78.

28. *Id.* at 1478.

29. *Id.* at 1479-81.

30. *Id.* at 1481-82.

31. *Id.* at 1482.

nevertheless wanted to prevent states from running sports lotteries?”³² In considering whether Congress would have wanted to ban private parties from gambling while allowing state governments to sponsor sports betting, the Court found that the sections of PASPA were meant to work together as one unified plan.³³ In analyzing the alternative where Section 13702(2) was allowed to stand alone, Justice Alito wrote, “[i]f §3702(2) is severed from §3702(1), it implements a perverse policy that undermines whatever policy is favored by the people of a State. . . . We do not think that Congress ever contemplated that such a weird result would come to pass.”³⁴

As a result, a majority of the Court ruled all of PASPA as unconstitutional.³⁵ Justice Alito finished his opinion by advising where sports betting can go from this point:

The legalization of sports gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own. Our job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not. PASPA “regulate[s] state governments’ regulation” of their citizens. . . . The Constitution gives Congress no such power.”³⁶

Justice Alito’s parting words suggest that legislators at the state and federal levels have a wide array of options from this point.³⁷ In deciding *Murphy*, the Supreme Court struck down how the federal government prohibited sports betting, not the federal action itself.³⁸ With options ranging from letting each state make their own decision to passing a constitutional, federal law, it is important to examine all the available options, because each offers some benefits and drawbacks.³⁹

II. AMERICA’S HISTORY OF MATCH FIXING

While states now have the opportunity to legalize sports betting, that position may not last long if states cannot address the issue of maintaining integrity in sports, which has long been a problem in the United States when sports and gambling are combined.⁴⁰ This section will examine some of the largest scandals

32. *Id.*

33. *Id.* at 1483-84.

34. *Id.*

35. *Id.*

36. *Id.* at 1484-85 (quoting *New York v. United States*, 112 S. Ct. 2408, 2423 (1992)).

37. *See id.*

38. *Id.* at 1481-82.

39. *See id.* at 1484-85 (2018) (quoting *New York v. United States*, 112 S. Ct. 2408, 2423 (1992)).

40. *See generally* Stephen F. Ross et al., *Reform of Sports Gambling in the United States: Lessons from Down Under*, 5 ARIZ. ST. U. SPORTS & ENT. L.J. 6 (2015) (describing instances of scandals in sports betting in the United States).

in sports over the past hundred years to understand why so many people wanted to ban sports betting.⁴¹ It will also help to keep certain issues in mind that legislators and professional sports leagues will need to account for if they want sports betting to be successful and to avoid another federal ban on sports betting.

A. The Black Sox Scandal

One of the oldest, and perhaps most concerning, scandals in American sports occurred in 1919 with the Chicago White Sox.⁴² It took place at a time when baseball was rife with gambling corruption because the players were not highly paid, and gamblers offered them a source of additional income.⁴³ While historians continue to remain uncertain as to exactly how this scandal began, the belief is that it started a few weeks before the World Series when one of the White Sox players, C. Arnold Gandil, met with a gambler to discuss throwing the World Series.⁴⁴ The initial plan was that Gandil and several other players, including star player “Shoeless” Joe Jackson, would throw the game in exchange for \$100,000.⁴⁵ Before the Series started, “[b]ookies had previously had the Sox winning the World Series over the underdog Cincinnati Reds by as much as three-to-one, but the odds shifted after those in the know began betting heaps of cash on the Reds.”⁴⁶ It is believed that after the players threw the first two games, they became upset with the gamblers, who had not paid them their promised amount, and eventually started competing again before losing to the Reds in game eight of the series.⁴⁷

Some feel that this scandal demonstrates part of the problem with illegal betting because so little is actually known about the scandal; the uncertainty extends to what games were actually thrown and what players actually took money for throwing a game, which makes it hard for fans to trust games and bets in the future.⁴⁸ Those deemed to be involved in the scheme were indicted on conspiracy charges, but the records of some of the players’ grand jury confessions vanished during the trial, adding to the uncertainty surrounding the scandal.⁴⁹ Despite all the players being found innocent,⁵⁰ Commissioner Kenesaw Landis took a strong stance and banned those involved, declaring, “[n]o player who throws a ballgame. . . no player that sits in conference with a bunch of crooked

41. *See generally id.*

42. Evan Andrews, *The Black Sox Scandal, 95 Years Ago*, HISTORY (Oct. 9, 2014), <https://www.history.com/news/the-black-sox-baseball-scandal-95-years-ago> [<https://perma.cc/TG7C-HLBJ>].

43. Ross et al., *supra* note 40, at 30.

44. Andrews, *supra* note 42.

45. *Id.*

46. *Id.*

47. *Id.*

48. Ross et al., *supra* note 40, at 31.

49. Andrews, *supra* note 42.

50. Ross et al., *supra* note 40, at 31.

players and gamblers where the ways and means of throwing a game are discussed and does not promptly tell his club about it, will ever play professional baseball.”⁵¹ The White Sox scandal serves as a reminder of how damaging and long-lasting one match fixing incident can be.

Almost 100 years later, many people are still familiar with one of America’s ugliest moments in sports. Legislators should keep in mind that a match fixing scandal today could just as easily derail any hopes of legalized sports betting for the next 100 years.

B. Pete Rose

Yet another gambling-related scandal hit baseball in 1989 when Major League Baseball (“MLB”) began an investigation into then Cincinnati Reds Manager and all-time hits leader, Pete Rose, for betting on baseball games.⁵² Commissioner Bart Giamatti called on former federal prosecutor, John Dowd to investigate the allegation against Rose and to put his findings together into what later became known as the Dowd Report.⁵³ The report concluded that Rose had bet on Reds games between 1985 and 1987, with amounts up to \$2,000 a game.⁵⁴ Rose and the MLB eventually reached an agreement that he would leave baseball forever in exchange for not having to admit or deny betting on baseball.⁵⁵ Rose recently admitted that he did bet on baseball, saying, “It’s time to clean the slate, it’s time to take responsibility. . . I’m 14 years late.”⁵⁶

While there is some uncertainty as to whether Rose ever influenced a game he managed, evidence suggests that he never bet against his own team.⁵⁷ Despite this, some feel the situation is just as damaging as betting against one’s own team because the act of a coach betting on a game creates uncertainty as to the outcome of the game.⁵⁸ This sort of uncertainty could be enough to undermine sports betting without any games being fixed. If legislation is passed to legalize sports betting in a state and one of the professional team’s coaches in that state is known for betting on games, it will create a disincentive for people to bet on games because some people will always have a doubt in their mind that the betting

51. Andrews, *supra* note 42.

52. *Pete Rose Fast Facts*, CNN, <https://www-m.cnn.com/2013/05/07/us/pete-rose-fast-facts/index.html?r=https%3A%2F%2Fwww.google.com%2F> (last updated May 7, 2019) [perma.cc/5MQ7-6KLV].

53. Ronald J. Rychlak, *The Dowd Report: Pete Rose, Bart Giamatti, and the Dowd Report*, 68 Miss. L.J. 889, 892-96 (1999).

54. Ross et al., *supra* note 40, at 29.

55. *Pete Rose Admits He Bet on Baseball*, ABC NEWS (Jan. 5, 2018), <https://abcnews.go.com/Primetime/story?id=132415&page=1> [https://perma.cc/9DNM-GCLW].

56. *Id.*

57. Ryan Rodenberg, *Pete Rose’s Reckless Gamble*, THE ATLANTIC (Aug. 22, 2014), <https://www.theatlantic.com/entertainment/archive/2014/08/why-pete-rose-still-cant-be-absolved/378866/> [https://perma.cc/7PSG-HP3R].

58. *Id.*

interest of the coach or manager outweighs the competitive interest of the team. To create a lasting sports betting industry, there must be consumer confidence in the product.⁵⁹

C. Tim Donaghy

In 2007, another scandal broke out, this time with NBA referee Tim Donaghy betting on games, including those he refereed.⁶⁰ This scandal demonstrated that corruption in sports could reach even the referees—people who are expected to keep games fair. In an interview, Donaghy said that he won approximately \$100,000, over a four year span, while picking outcomes at a 70% rate.⁶¹ Donaghy credited his picks to all the information he had access to before games, such as reports on missed calls in recent games and players that referees did not like.⁶² “He said, ‘[k]nowing the information that I had, I didn't have to do anything on the court to pick a winner. I could pick a winner 80 percent of the time just knowing what I knew an hour before the game.’”⁶³ Donaghy’s “luck” did not last though; the mob found out about his actions and threatened him to get his picks for each game.⁶⁴

After his scheme fell apart, Donaghy pled guilty to “conspiracy to engage in wire fraud and transmitting betting information through interstate commerce.”⁶⁵ While both the FBI and the NBA investigations came to the conclusion that Donaghy probably did not influence the games on which he wagered, ESPN released an article in 2019 detailing how Donaghy was involved in match fixing.⁶⁶ Even if Donaghy did not fix the games, states considering sports betting should still be worried because his actions were essentially insider trading.⁶⁷ This skepticism can both ruin confidence in the game and prevent individuals from gambling due to a fear of unequal distribution of knowledge.⁶⁸ The scandal serves as a timely warning, ten years before the decision in *Murphy* that, if states want

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

60. Ross et al., *supra* note 40, at 27.

61. *Ex-NBA Ref Tim Donaghy's Personal Foul, 60 Minutes* (CBS News television broadcast Dec. 3, 2009), <https://www.cbsnews.com/news/ex-nba-ref-tim-donaghy-personal-foul/> [<https://perma.cc/NBD7-UQ4R>].

62. *Id.*

63. *Id.*

64. *Id.*

65. *Donaghy Sentenced to 15 Months in Prison in Gambling Scandal*, ESPN (July 30, 2008), <http://www.espn.com/nba/news/story?id=3509440> [<https://perma.cc/UN37-6KFK>].

66. *Ex-NBA Ref Tim Donaghy's Personal Foul, supra* note 61; see Scott Eden, *How Former Ref Tim Donaghy Conspired to Fix NBA Games*, ESPN (Feb. 19, 2019), http://www.espn.com/nba/story/_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games [<https://perma.cc/96D7-D3R7>].

67. See *Ex-NBA Ref Tim Donaghy's Personal Foul, supra* note 61 (detailing Donaghy's account of how being an NBA referee gave him information that he used to place bets).

68. See Ross et al., *supra* note 40, at 31; see also S. REP. NO. 102-248, at 5.

to legalize sports betting, they will need to account for those closest to the game.

III. EVOLUTION OF AMERICA'S LAWS TO COMBAT SPORTS BETTING

Until relatively recently, most sports betting regulations occurred at the state level, rather than federal level.⁶⁹ This section examines the Wire Act of 1961, as well as the Professional and Amateur Sports Protection Act, to better understand the concerns that drove the federal government to regulate the sports betting industry.⁷⁰ Because those past issues likely remain concerns today, understanding what legislators hoped to address is important for anyone adopting legislation to legalize sports betting.

A. The Wire Act of 1961 and the Beginning of Federal Intervention

Traditionally, the federal government's approach to sports betting was to leave it to the states and to supplement state law with federal legislation to help states enforce their laws.⁷¹ However, a rise in betting in the second half of the 20th century, credited to the invention of the points spread⁷² and the rise of television, created a need for the federal government to do more.⁷³ As crime syndicates gained control over the illegal sports betting market, the federal government responded by passing several laws, including the Wire Act.⁷⁴ Despite the federal government's ability to now regulate some sports betting through the Wire Act, some feel that the "laws were not intended to impede ordinary citizens' ability to bet on sports in accordance with the law in their particular state, but instead were intended to complement existing state laws that forbade unauthorized in-state bookmaking."⁷⁵ The Wire Act created an environment where states could still make determinations about what types of sports betting, if any, they wanted to allow, while also giving states federal assistance from departments such as the FBI.⁷⁶

69. See Keith C. Miller & Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 UNLV GAMING L. J. 153, 154 (2018); see also JULIAN MORRIS & GUY BENTLEY, A BET GONE BAD: HOW THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT HARMS CONSUMER, STATES, AND SPORTS 3-4 (2017), https://reason.org/wp-content/uploads/2017/11/sports_gambling_legalization_papsa.pdf [<https://perma.cc/X3PE-N9Q3>].

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

71. Miller & Cabot, *supra* note 69, at 154.

72. *Nevada Sports Betting*, LEGAL SPORTS REPORT, <https://www.legalsportsreport.com/nevada/> (last visited Feb. 24, 2019) (the point spread is a "handicap that sets a favorite and requires that team to win by a certain number of points.").

73. MORRIS & BENTLEY, *supra* note 69, at 3-4.

74. *Id.*; Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the State*, 2 UNLV L.J. 281, 284 (2011); see Wire Act, 18 U.S.C. §1084 (2018).

75. MORRIS & BENTLEY, *supra* note 69, at 4.

76. See Miller & Cabot, *supra* note 69, at 154.

B. The Professional and Amateur Sports Protection Act

In 1992, Congress decided to move away from allowing state-sanctioned sports betting and instead ban it through a bill which would eventually become PASPA.⁷⁷ During the bill's consideration, the Senate Judiciary Committee issued a report where it found that "[s]ports gambling threatens the integrity of, and public confidence in, amateur and professional sports. Widespread legalization of sports gambling would inevitably promote suspicion about controversial plays and lead fans to think 'the fix was in' whenever their team failed to beat the point-spread."⁷⁸ The committee was also concerned that sports betting would damage young people's perception of sports and that technological developments would make it easier for children to gamble.⁷⁹

The Act is broken into three substantive sections: "Unlawful Sports Gambling," "Injunctions," and "Applicability."⁸⁰ Section 3702, the main provision, states:

It shall be unlawful for—(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.⁸¹

Section 3702 serves to prohibit states "from sponsoring, operating, advertising, promoting, licensing, or authorizing sports lotteries or any other type of sports betting that is based on professional or amateur games or performances"⁸² Section 3703 then allows Section 3702 to be enforced through an injunction filed by the Attorney General, a professional sports league, or an amateur sports organization "whose competitive game is alleged to be the basis of such violation."⁸³ Section 3704 created exceptions for states who had previously sponsored sports betting "at any time during the period beginning January 1, 1976, and ending August 31, 1990;" had authorized it by statute by October 2, 1991, when it had previously been legal between 1989 and 1991; or sports betting that had been conducted only in casinos.⁸⁴ Only four states chose to take the exception and maintain sports betting: Delaware, Montana, Oregon, and

77. Goodall, *supra* note 20, at 1101-04.

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

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

80. *See* 28 U.S.C. §§ 3701-04.

81. 28 U.S.C. § 3702.

82. S. REP. NO. 102-248, at 4; *see* Goodall, *supra* note 20, at 1107.

83. 28 U.S.C. § 3703; *see* Goodall, *supra* note 20, at 1106-07 (citations omitted).

84. 28 U.S.C. § 3704; *see* Goodall, *supra* note 20, at 1108.

Nevada.⁸⁵ New Jersey, a state well-known for being open to gambling, chose not to pursue the exception in Section 3704, which later became an issue for the state when it tried to pass legislation.⁸⁶

In addition to input from executives in the NFL, MLB, NBA, and NHL, the Department of Justice also gave its opinion on the nascent PASPA.⁸⁷ However, the Department of Justice broke from the others, who supported the bill, cautioning “that determinations of how to raise revenue have typically been left to the States. The Department is concerned that . . . it raises federalism issues. It is particularly troubling that [Section 3702] would permit enforcement of its provisions by sports leagues.”⁸⁸

IV. EVOLVING ATTITUDES

Despite America’s deep history of match-fixing and the Federal Government’s concerted effort to eliminate sports betting through various legislation, many Americans still want to be able to take part in sports betting.⁸⁹ Justice Alito even acknowledged this at the beginning of his opinion in *Murphy* when he said that, “Americans have never been of one mind about gambling, and attitudes have swung back and forth.”⁹⁰ Although *Murphy* officially marked the shift in attitudes towards sports betting, a significant shift in feelings had already occurred before the case was even heard, suggesting now is the perfect time for states to adopt sports betting laws.⁹¹

Widespread American participation in sports betting strongly indicates that Americans want the activity to become legal.⁹² According to one study from 2018, “[a]n estimated 54 million people, or nearly one-quarter of American adults, participated in a pool last year . . . and their total spend[ing] across all sports was nearly \$18 billion.”⁹³ An even more intriguing figure from the study states, “[a]mong those who participate in NCAA pools, 40% think they are legal, 22% illegal, and 38% are unsure.”⁹⁴ This suggests over half of the participants in sports pools are either willing to disregard the law or take a risk on whether or not the activity is actually illegal.⁹⁵

In recent years, the sports industry in America has also come to reflect the changing attitudes of many Americans towards sports betting, and some

85. Brandt, *supra* note 24, at 277.

86. *Id.* at 279; see Robert Shawhan, *Legalizing Federal Sports Gambling Laws: You Got to Know When to Hold ‘em*, 40 HASTINGS COMM. & ENT. L.J. 41, 47-48 (2018).

87. S. REP. NO. 102-248, at 3, 13 (1991).

88. S. REP. NO. 102-248, at 13; see Goodall, *supra* note 20, at 1108 (citations omitted).

89. See THE MELLMAN GROUP, *supra* note 7.

90. *Murphy v. NCAA*, 138 S. Ct. 1461, 1468 (2018).

91. See *id.* at 1484-85.

92. THE MELLMAN GROUP, *supra* note 7.

93. *Id.*

94. *Id.*

95. See *id.*

professional sports leagues no longer carry the same enthusiasm to enforce PASPA.⁹⁶ In 2014, the NBA Commissioner, Adam Silver, wrote an Op-Ed in the NY Times where he expressed his belief that the United States needed to re-evaluate PASPA and look at legalizing sports betting.⁹⁷ He wrote, “[t]imes have changed since Paspas [sic] was enacted. . . . There is an obvious appetite among sports fans for a safe and legal way to wager on professional sporting events.”⁹⁸ Silver voiced ideas like “a federal framework that allows states to authorize betting on professional sports[,]” safeguards such as “mandatory monitoring and reporting of unusual betting-line movements[,]” “licensing protocol[s,]” and “minimum-age verification measures.”⁹⁹

Commissioner Silver is not alone; the MLB’s commissioner, Rob Manfred, believes sports betting is something that the MLB should at least have a conversation about.¹⁰⁰ The MLB also shares the NBA’s desire to collect a percentage fee from sports books in exchange ““for risk and expense created by betting and the commercial value our product creates for betting operators.””¹⁰¹ Additionally, league partnerships with daily fantasy sports companies like FanDuel and DraftKings demonstrate a potential future with sports books as “[a]ll four major sports in the United States have either an individual team, single-year contracts, or league-wide multi-year contracts with FanDuel or DraftKings.”¹⁰² While there is some disagreement as to whether daily fantasy sports is sports betting or “a game of skill,” the general principle of placing money on the outcome of a sporting event, and professional sports leagues’ willingness to partner with these companies, suggests it is not that far of a leap for the leagues to partner with sports books.¹⁰³ With the combined interests of both consumers and America’s professional sports leagues, now is the time for states to reconsider sports betting.

96. See Ross et al., *supra* note 40, at 9.

97. See generally Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html?_r=0 [<https://perma.cc/LQ42-JHYC>].

98. *Id.*

99. *Id.*

100. Ross et al., *supra* note 40, at 9.

101. Ira Broadway, *Why U.S. Sports Betting was Mostly Illegal, Until Now*, BLOOMBERG BUSINESSWEEK (Mar. 5, 2018) <https://www.bloomberg.com/news/articles/2018-03-05/how-u-s-sports-betting-is-rampant-and-mostly-illegal-quicktake> [<https://perma.cc/PH98-VPWA>]; Matt Bonesteel, *If Sports Gambling is Legalized, the NBA Wants in on the Profits*, THE WASHINGTON POST (Jan. 25, 2018, 11:41 a.m. EST), <https://www.washingtonpost.com/news/early-lead/wp/2018/01/25/if-sports-gambling-is-legalized-the-nba-wants-in-on-the-profits/> [<https://perma.cc/FT9X-C55C>].

102. Shawhan, *supra* note 86, at 56.

103. See Chris Grove, *Here's the Truth About the Legality of Daily Fantasy Sports*, LEGAL SPORTS REPORT (Sept. 17, 2015, 11:00 PST), <http://www.legalsportsreport.com/3967/are-daily-fantasy-sports-legal/> [<https://perma.cc/XAK3-NQF6>]; Shawhan, *supra* note 86, at 56.

V. FRAMEWORKS AVAILABLE FOR STATES

States that want to take immediate action following the decision in *Murphy* are not limited to creating new legislation.¹⁰⁴ Instead, they can draw from legal frameworks across the world. Some are as close as Nevada, while others are far away in Australia and the United Kingdom. Each system has its own nuances and methods for regulating gambling, which results in different benefits and challenges to enforcement. This section examines each framework and analyzes how it could potentially work if adopted by a state. Among the most important considerations is finding a system that addresses integrity of the sport and the protection of the youth, both of which have continued to be concerns of those hesitant to allow sports betting.¹⁰⁵

A. Nevada

The first framework which should be considered by states looking to adopt sports betting legislation is the framework used by Nevada. In theory, Nevada makes the most sense because it is closest to any state looking to legalize sports betting. Unlike the United Kingdom and Australia, Nevada shares the same legal system as other states, so Nevada state laws would require less adaptation to meet each state's needs. However, it is important to go beyond mere convenience and look to see how Nevada gambling laws would play out across the country.

i. Nevada's Legal Framework

Nevada's sports betting regulatory scheme is codified in Title 41, Chapter 463 of Nevada's Statutory code.¹⁰⁶ Section 463.022 creates the Nevada Gaming Commission, which serves as the regulatory body for making decisions about what betting operations will be allowed.¹⁰⁷ Anyone who wants to operate a sports book must obtain all required licenses in order to do things like accept and pay out wagers.¹⁰⁸

When the Gaming Commission considers applications for licenses, they first must find "that the applicant is: (a) [a] person of good character, honesty and integrity; (b) [a] person whose . . . reputation, habits and associations do not pose a threat to the public interest of the State . . . ; and (c) [i]n all other respects qualified to be licensed. . . ."¹⁰⁹ These considerations serve as an important first line of defense against potential hazards. By selecting only applicants who share a similar position with Nevada's stance on sports betting, the state is able to promote a uniform policy of sports betting.¹¹⁰ Anyone who is granted a license

104. See *infra* Parts V.A, V.B, and V.C.

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

106. NEV. REV. STAT. § 463 (2009).

107. §§ 363.022, 463.170.

108. § 463.160.

109. § 463.170.

110. § 463.170.2(c).

or permission to operate a sports book must continue to meet the standards set by statute and the Commission as well.¹¹¹ Because these regulations sustain a strong policy of integrity in sports, while also setting an example for all those interested in applying for a license, the Gaming Commission must constantly maintain and enforce these regulations upon those operating sports books.

The regulations gambling operations must adhere to includes providing “materials in or near gaming areas and cash dispensers, explaining the nature and symptoms of problem gambling, with displays of the toll-free telephone number of the National Council on Problem Gambling or . . . similar approved . . . services for problem gamblers.”¹¹² These materials are meant to keep gamblers safe and “aware of all the resources available to them should they experience problems.”¹¹³ The Nevada Gaming Control Board also provides oversight of sports books through “investigating regulatory and criminal matters, conducting background investigations of gaming employees, gathering intelligence and providing analysis to other appropriate agencies.”¹¹⁴

Nevada provides a variety of options for gamblers to bet on including football games, basketball games, baseball games, hockey games, soccer games and even sports from other countries.¹¹⁵ Additionally, each sport carries multiple types of bets that can be placed.¹¹⁶ This variety could make Nevada a good model for other states because other states can see how sports betting plays out in almost every sport and review betting options before deciding how they want to proceed with their own legislation. Despite the variety of options available to bettors, most bets are relatively low because large bets often create a question of legitimacy and sports books are hesitant to take large wagers; for example, a sports book might be hesitant with a \$1,000 wager.¹¹⁷ This can act as an “unofficial” cap on betting and can disincentivize match-fixing and other behavior which could call into question the integrity of sports. If it no longer becomes profitable for those taking measures to fix a match to get a big payout, it no longer becomes worth the risk, and there will be less match fixing.¹¹⁸

111. *See* § 463.170.8.

112. MORRIS & BENTLEY, *supra* note 69, at 22.

113. *Id.*

114. *Law Enforcement Summit in Illegal Sports Betting: After Action Report* at 3, ILLEGAL GAMBLING ADVISORY BOARD, https://www.americangaming.org/sites/default/files/After%20Action%20Report_PDF-Web.pdf (archived Oct. 7, 2019) [<https://perma.cc/4LAF-AFD3>].

115. *Nevada Sports Betting*, *supra* note 72.

116. *See id.* (explaining that the money line is “where a bettor picks a side to win the game outright” with a money handicap, that totals are where “a wager made on the total number of points scored,” and that Nevada also includes several other forms including partial game lines and parlays).

117. Matthew T. Mierswa, *Poor Man Wanna be Rich, Rich Man Wanna be King: The Battle to Legalize Sports Betting in the Garden State*, 38 SETON HAL LEGIS. J. 447, 469 (2014) (citations omitted).

118. *See id.* at 471.

ii. Why Nevada's System Will Not Work for the Rest of the Country

Even though Nevada has created several safeguards to ensure integrity in sports betting, there are reasons to pause before adopting Nevada gambling laws. Nevada is in a rather unique position compared to most other states because it is largely dependent on tourism.¹¹⁹ The state is 4.4 times more dependent on tourism than the national average and had over 50 million visitors in 2012 (compared to their population of approximately 3 million).¹²⁰ States with less reliance on tourism may find it harder to expect Nevada's framework to play out the same way because the majority of the people who gamble in the state will also be state residents.¹²¹

While Nevada's policy of having materials available to raise awareness of problem gambling and helping those with gambling problems seems like a good idea, it is hard to know how effective this really is because many of those gambling in Nevada are not from Nevada.¹²² During Super Bowl weekend, approximately 250,000 people will visit Las Vegas.¹²³ However, there is a risk that those individuals may soon return to other states and take any gambling problems they may have developed with them. This makes it difficult, if not impossible, to know how effective Nevada is at preventing gambling problems. For states whose economies are not built upon tourism, this should be a major concern because those participating in sports betting in the state will largely be those living and working in the state.¹²⁴ States looking to pass sports betting legislation would be better served by finding a more comparable market where the majority of bettors are also residents.

Nevada also stands apart from most states because it did not have a professional sports team until 2017 when the Las Vegas Knights joined the NHL as an expansion team.¹²⁵ The Oakland Raiders are also supposed to move to Vegas in 2020, but for now there has been only one professional sports team in Nevada for just a short time.¹²⁶ Some feel having these two teams in Las Vegas will be crucial for advocates of sports gambling and that "[h]aving two major professional teams in Las Vegas will serve as a test as to whether sports leagues

119. See *Nevada Tourism Insight*, NEV. COMM'N ON TOURISM (Dec. 6, 2012), <https://www.leg.state.nv.us/Division/Research/LegInfo/Orientation/2012-13/Handouts/03-EconTourHandouts.pdf>. [<https://perma.cc/7SWV-E2AZ>].

120. *Id.*

121. See *Quick Facts: Nevada*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/nv> (last visited Feb. 24, 2019) [<https://perma.cc/3RBU-P7AW>]; see also *Nevada Tourism Insight*, *supra* note 119.

122. See MORRIS & BENTLEY, *supra* note 69, at 22.

123. Aaron J. Slavin, *The "Las Vegas Loophole" and the Current Push in Congress Towards a Blanket Prohibition on Collegiate Sports Gambling*, 10 U. MIAMI BUS. L. REV. 715, 741 (2002).

124. See *Nevada Tourism Insight*, *supra* note 119.

125. Brandt, *supra* note 24, at 294.

126. *Id.* at 298.

can co-exist with sports gambling.”¹²⁷

While it is important to watch Las Vegas to see if professional sports teams can be co-located in a state with legalized sports betting without becoming tied up in a scandal, waiting does not answer the question for states who have sports teams in their state and want to immediately pass sports gambling laws. Having a sports team in the same state as millions of people betting on the team's outcome creates a situation where a lot of pressure can be exerted on the team, a player, a coach, or even a referee.¹²⁸ However, Nevada's framework does not appear to offer a solution for maintaining integrity in sports. States looking to legalize sports betting would be better served by looking to places where they have had to address maintaining integrity in sports when the sports being bet on are close to those placing the bets.

B. The United Kingdom's Approach

This section examines the structure the United Kingdom established to regulate sports betting. The United Kingdom can be a valuable source for states looking to pass their own sports betting laws because the United States' legal system is derived from the United Kingdom's.¹²⁹ The overlap between the two legal systems makes it easier to incorporate laws from the United Kingdom than from most other countries in the world. This section also examines some of the more unique aspects of the United Kingdom's framework such as consumer protection and mandated data purchasing to understand how they could be adopted to promote responsible sports betting in the United States.

i. The Gambling Act of 2005

In 1960, the British Parliament passed gambling legislation which sought to curb illicit betting through the legalization of betting shops while also establishing a regulatory body for betting.¹³⁰ However, the Gambling Act of 1960 was less successful at curbing illicit gambling than the British Parliament had hoped, so the Parliament subsequently passed the Gambling Act of 2005 (“The Gambling Act”) to reform the shortcomings of the previous legislation.¹³¹

The Gambling Act begins by setting forth three objectives the government hopes to meet through licensed gambling: “(a) preventing gambling from being a source of crime or disorder . . . , (b) ensuring that gambling is conducted in a fair

127. Shawhan, *supra* note 86, at 51.

128. *See supra* Part II.

129. Selena E. Molina, *The Roots of Our Legal System: The Foundation for Growth*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/legal-history/roots-our-legal-system-foundation-growth/ (last visited Feb. 22, 2019) [<https://perma.cc/Q34X-D62L>].

130. Zach Schreiber, *The Time is Now: Why the United States Should Adopt the British Model of Sports Betting Legislation*, 27 FORDHAM INTELL. PROP., MEDIA AND ENT. L.J. 353, 371-72 (2017).

131. *See id.* at 373.

and open way, and (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.¹³² All three criteria are key to ensuring trusted and responsible sports betting because when one or more of those goals are absent, the issues that led to the passage of PASPA come to the fore.¹³³

The Gambling Act also created the Gaming Commission to replace the Gaming Board as the regulatory body for gambling.¹³⁴ The Gambling Act assigns several duties to the Gambling Commission including: issuing “Codes of practice” for gambling facilities; providing “[g]uidance to local authorities” on how to act; and investigating and prosecuting gambling offenses.¹³⁵

The Gambling Act attempts to solve the issue of protecting children in Part 4 of the Act through making it a crime for those who enable children to take part in gambling and making it a crime for children to gamble.¹³⁶ Under Part 4, it is a crime for any person to invite someone under the age of 18 to take part in gambling or to enter a location with a gambling license.¹³⁷ For anyone under 18, it becomes a crime to gamble, enter a location with a gambling license or provide a facility for gambling.¹³⁸ Criminalizing underage gambling for both minors and gambling licensees is a crucial step to protecting young people from early gambling problems. If only one side of the problem is addressed, it creates opportunities for children to keep looking for betting shops that will let them place a bet, or betting shops might continue looking for the next minor who wants to gamble if betting shops go unpunished. Addressing both sides of the problem minimizes the incentive to take part in or contribute to underage gambling.

Part 5 of the Gambling Act grants the Gambling Commission the authority to issue operating licenses to those who want to provide facilities for betting.¹³⁹ The Gambling Act gives the Gambling Commission a lot of discretion in deciding who is fit for a license, but it does require the application to:

- (a) specify the activities to be authorised [sic] by the licence [sic], (b) specify an address in the United Kingdom at which a document issued under this Act may be served on the applicant, (c) be made in such form and manner as the Commission may direct, (d) state whether the applicant has been convicted of a relevant offence, (e) state whether the applicant has been convicted of any other offence, (f) contain or be accompanied by such other information or documents as the Commission may direct, and (g) be accompanied by the prescribed fee.¹⁴⁰

The act states that the Gambling Commission must consider the licensing

132. Gambling Act 2005, c. 19 § 1 (Eng.).

133. *See supra* Part II; S. REP. NO. 102-248, at 5 (1991).

134. Gambling Act 2005, c. 19 §§ 20-21 (Eng.); *see* Schreiber, *supra* note 130, at 373.

135. Gambling Act 2005, c. 19 §§ 24-28 (Eng.).

136. §§ 45-64.

137. §§ 46-47.

138. §§ 48-50.

139. § 65.

140. *See generally* Gambling Act 2005, c. 19 (Eng.); Gambling Act 2005, c. 19 § 69(2) (Eng.).

objectives set forth at the beginning of the act and “the applicant’s suitability to carry on the licensed activities[.]”¹⁴¹ The Gambling Commission may also consider things such as “the integrity of the applicant or of a person relevant to the application,” “the criminal record of the applicant[.]” and several other factors.¹⁴² The flexibility the Gambling Act gives to the Gambling Commission is very beneficial because it allows the Commission to look at the totality of the circumstances to determine whether it would be prudent to grant the particular applicant a license. By first examining the particular situation, in light of the licensing objectives, the Commission can then go beyond that to make sure that licenses are only granted to individuals who will help promote a positive environment for sports betting. With the United Kingdom’s application process, states can promote the placement of bets with trusted betting operators rather than illicit bookmakers they know nothing about.¹⁴³

ii. Mandated Reporting

Since the passage of the Gambling Act, the Gambling Commission has been able to use the flexibility of the Act to develop effective methods of combating match fixing and to help ensure that consumer confidence in sports betting prevails.¹⁴⁴ One of the most effective methods it has used is mandated reporting by sportsbooks of suspected match fixing or other illegal activity.¹⁴⁵ Under Section 88 of the Gambling Act, the Gambling Commission may add, as a condition to a license, a requirement to report any suspicion that an offense under the Gambling Act has been committed or that someone has breached a rule set by a sporting body.¹⁴⁶

With the Gambling Commission acting as the regulatory body for the entire country, it faces an uphill battle monitoring all betting activities within the country.¹⁴⁷ However, when it requires sportsbooks to report any suspicious activities, the Gambling Commission is able to filter through enormous amounts of data without having to do it on its own, and as a result, has more time to investigate reported suspicions.¹⁴⁸ A great example of how this works occurred in 2007 when Betfair, a United Kingdom sportsbook, reported suspicions of match fixing in a tennis match after noticing atypical betting patterns.¹⁴⁹ The

141. § 70.

142. *See* §§ 70-71.

143. Ross et al., *supra* note 40, at 32.

144. Gambling Act 2005, c. 19 § 88(2) (Eng.); *see* S. REP. NO. 102-248, at 5.

145. *See* Schreiber, *supra* note 130, at 375.

146. Gambling Act 2005, c. 19 § 88(2) (Eng.).

147. *See* Schreiber, *supra* note 130, at 371.

148. *Law Enforcement Summit in Illegal Sports Betting: After Action Report*, *supra* note 114, at 3.

149. Schreiber, *supra* note 130, at 375 (in this instance, the sports book became suspicious after a large number of bets came in for an “obscure match” and one player went from being the odds favorite to a “significant underdog” before the match began); Joe Drape, *Talk of Efforts to Fix*

subsequent investigation revealed that no match fixing had taken place but it did help raise awareness to match fixing in tennis.¹⁵⁰ Even though no match fixing was found, the fact that an investigation occurred demonstrates how seriously the U.K. wants to maintain integrity in sports betting. By promoting an environment where it is better to report suspicions that may not be illegal activities, the U.K. prevents large scale corruption schemes from taking place because they will likely be discovered before such activities have a chance to involve large amounts of money and people.¹⁵¹ Early recognition by the sports books of questionable activity ultimately leads to an earlier response by the Gambling Commission than if the Commission had to identify the problem on its own.¹⁵² Mandated reporting also creates a disincentive for match fixers to attempt illegal betting practices because they know that even the smallest irregularity in the betting line is reported.¹⁵³

The other benefit of mandated reporting from sports books is that it allows those best suited at identifying betting irregularities to do so. Because each betting shop will set its own betting line for an event, the betting shops are really the ones that would know if someone is placing a bet that would indicate illegal betting.¹⁵⁴ If there are several betting shops setting their own betting lines, mandated reporting would put less strain on the Gambling Commission to identify a betting line shift that indicates an attempt to influence an event or some other unauthorized betting action.¹⁵⁵ While some betting companies might be hesitant to take up this responsibility, participating in upholding integrity in betting can help them in the long run. If the Gambling Commission knows that a particular company is a reliable and trusted reporter, the Commission will be more likely to approve future licenses, potentially with less attached conditions.¹⁵⁶ These companies will attract more business if bettors know that they are quick to vindicate themselves and work towards promoting an environment where customers are confident in the bets they place and who they place them with.¹⁵⁷

iii. Data Purchasing

One rather unique aspect of the United Kingdom's framework for sports betting is its protection of the data collected from sporting events, like soccer, to

Matches Rattles Pro Tennis, N.Y. TIMES (Nov. 25, 2007), <https://www.nytimes.com/2007/11/25/sports/tennis/25tennis.html> [<https://perma.cc/V8MJ-XXL5>].

150. Schreiber, *supra* note 130, at 375.

151. *See generally* Ross et al., *supra* note 40.

152. *See Law Enforcement Summit in Illegal Sports Betting: After Action Report*, *supra* note 114, at 3.

153. *See generally* Ross et al., *supra* note 40.

154. *See* Schreiber, *supra* note 130, at 375.

155. *See id.*

156. *See* Gambling Act 2005, c. 19 §§70-71, 77 (Eng.).

157. MORRIS & BENTLEY, *supra* note 69, at 27.

determine the winners of bets made on an event.¹⁵⁸ Unlike the Gambling Act, the propriety of data collected from sporting events developed through case law, as recently as 2013 in the case of *Football Dataco Ltd. et al. v. Sportradar et al.*¹⁵⁹ In *Football Dataco*, the English Court of Appeals held that when Sportradar used “a substantial part” of Football Dataco’s database without paying for the data, Sportradar violated copyright laws.¹⁶⁰ The plaintiff, Football Dataco, manages game data from the Premier League, the Football League, the Scottish Premier League, and the Scottish Football League, before licensing the compiled data to third parties.¹⁶¹

As a result, bettors wager on data coming from one source at one time.¹⁶² In order for a sports book to maximize its profits, they offer bets on more than just the outcome of the game, things like when and where a goal is scored, but to do this, sports books need quick, reliable data.¹⁶³ This means that on game days, stadium personnel must scour stadiums for “unofficial data scouts,” individuals looking to send results out to someone to place a bet before the official result is recorded.¹⁶⁴ The greatest benefit to having an official data source is that consumers feel more comfortable placing bets.¹⁶⁵ For instance, if there is a common sentiment that fans at a soccer match can notify a friend outside the stadium to place a bet on when a goal will be scored right after they see it scored and still get a payout, individuals will be hesitant to bet because they will feel like they are at a disadvantage.¹⁶⁶ However, when all bettors feel like they are on an even playing field, they will likely be more willing to place bets.¹⁶⁷

The other benefit of data purchasing is that it adds another set of eyes to each sporting event to watch out for potential match-fixing or other illegal activity.¹⁶⁸ While the companies who manage the data results from sporting events might not play the same role as the Gambling Commission and sports books in identifying

158. Kelly Buchanan & Claire Feikert-Ahalt, *Sport Betting and Integrity Agreements*, THE LAW LIBRARY OF CONGRESS (July 2018), at 15, <https://www.loc.gov/law/help/sports-betting/sports-betting.pdf> [<https://perma.cc/9TD8-QNW3>]; see *Football Dataco Ltd. V. Sportradar GmbH* [2013] EWCA (Civ) 27 (Eng.).

159. *Football Dataco Ltd.* [2013] EWCA (Civ) 27 (Eng.).

160. *Id.*

161. See *id.*; Bill Wilson, *Football Match Fixture List Copyright Claim Rejected*, BBC NEWS, (Mar. 1, 2012), <https://www.bbc.com/news/business-17218968> [<https://perma.cc/VC74-54LC>].

162. See James Glanz & Agustin Armendariz, *When Sports Betting Is Legal, the Value of Game Data Soars*, N.Y. TIMES (July 3, 2018), <https://www.nytimes.com/2018/07/02/sports/sports-betting.html> [<https://perma.cc/X5VT-X3MC>].

163. *Id.*

164. *Id.*

165. See *id.*; see S. REP. NO. 102-248, at 5 (1991) (describing how some felt sports betting threatens consumer confidence in sports).

166. See Glanz & Armendariz, *supra* note 162.

167. See S. REP. NO. 102-248, at 5 (describing how some felt sports betting threatens consumer confidence in sports).

168. See Glanz & Armendariz, *supra* note 162.

potential problems, the data managers still share the same incentive to maintain integrity in these events. Just like the sports books, they want people to be confident in the bets they place because if betting demand decreases due to a lack of confidence, data managers like Football Dataco will not be able to sell the rights to their data for as much money.¹⁶⁹

iv. The U.S. Is Not Ready for the U.K.'s System Yet

Although the United Kingdom offers many options for legalizing sports betting while maintaining integrity and avoiding the problems often associated with it, the United Kingdom's framework cannot be immediately adopted by the United States.¹⁷⁰ The biggest obstacle to merely adopting the United Kingdom's approach is the difference in government structures.¹⁷¹ The United Kingdom only has one level of government, while the United States has two.¹⁷² The United States would first need to repeal laws that conflict with the new framework, pass legislation at the federal level, and then ensure it is carried out at the state level.¹⁷³ Because there is still significant disagreement over whether sports betting should be legalized in the United States, it is unrealistic to believe Congress will pass an entirely new regulatory scheme for sports betting, especially at a time when Congress is extremely divided.¹⁷⁴ Additionally, as demonstrated by the Supreme Court's Decision in *Murphy*, sports betting laws passed at the federal level must be carefully crafted to avoid constitutional issues.¹⁷⁵ Any United States law modeled after the Gambling Act would need to account for this distribution of power, which makes adopting the United Kingdom's approach that much more difficult.¹⁷⁶

The other issue with the United Kingdom's framework is that it goes against the traditional approach to regulating sports betting, leaving the task to the states.¹⁷⁷ Since sports betting has traditionally been regulated at the state level, it makes sense for federal legislators to work within this pre-existing framework.¹⁷⁸

169. See S. REP. NO. 102-248, at 5 (describing how sports betting can lead to a fall in consumer confidence).

170. See Schreiber, *supra* note 130, at 377.

171. See *id.*

172. *Id.*

173. *Id.*

174. David Purdam, *Inside How Sports Betting Went Mainstream*, ESPN (Aug. 9, 2018), http://www.espn.com/chalk/story/_id/24310393/gambling-how-media-daily-fantasy-new-thinking-us-pro-sports-commissioners-helped-sports-betting-become-accepted [<https://perma.cc/C29C-BZNM>]; see Shawn Zeller, *Divided Government Will Pose an Obstacle to Lawmaking in 2019*, ROLL CALL (Jan. 3, 2019, 7:03 AM), <https://www.rollcall.com/news/politics/divided-government-will-pose-obstacle-lawmaking-2019> [<https://perma.cc/6XEZ-6M49>].

175. *Murphy v. NCAA*, 138 S. Ct. 1461, 1481 (2018).

176. *Id.* at 1478.

177. Miller & Cabot, *supra* note 69, at 154.

178. *Id.* at 154; see Ross et al., *supra* note 40, at 34.

Even after the enactment of PASPA, the reliance on state regulation remained because PASPA did not make sports betting illegal in the United States, it made it so that states could not make the activity legal.¹⁷⁹ However, elements of the United Kingdom's framework are still useful for states; states should adopt these regulations piece by piece rather than simply adopting the entirety of the Gambling Act. The licensing objectives of the Gambling Act, the flexibility afforded to the Gambling Commission, the development of data purchasing, and especially the mandated reporting of suspicious activity, could all play crucial roles in allowing sports betting and integrity to coexist in the United States.

C. Australia

This section will examine the Australian legal structure developed to regulate sports betting. Australia is an intriguing model for the United States because, unlike the United Kingdom, sports betting is regulated at both the national and state level, which could allow the United States to adopt the Australian framework at both the state and federal levels.¹⁸⁰ This section will examine how Australia regulates sports betting at the national level through the National Policy on Match-Fixing in Sport as well as how two Australian States, New South Wales and Victoria, incorporate aspects of the National Policy on Match-Fixing in Sport.¹⁸¹ This part will also examine each states' use of integrity agreements, which promote agreements between betting companies and sports leagues which govern how and to what extent sports betting is allowed.¹⁸² Finally, this section will address some of the issues that have come with Australia's legalization of sports betting and how the United States can eliminate these problems if they adopt the Australian system.

i. National Policy on Match-Fixing in Sport

In 2011, Australian governments at the commonwealth, state, and territorial level, came together to develop the National Policy on Match-Fixing in Sport (the "National Policy") to "deter match-fixing. . . and in doing so. . . preserve the integrity of one of Australia's greatest assets—our [Australia's] national sporting heritage."¹⁸³ The agreement sets forth the purpose of the National Policy as to:

[M]aximise [sic] public confidence in the integrity of sport and to ensure a level playing field, by: a. articulating the roles, responsibilities and aspirations of all Australian governments, sporting organisations [sic] and the betting industry; b. making a commitment to pursue nationally-consistent legislative arrangements and standard requirements across all governments, sporting organisations [sic] and the betting industry in

179. See 28 U.S.C. § 3702; see *Murphy*, 138 S. Ct. at 1478.

180. See Buchanan & Feikert-Ahalt, *supra* note 158 at 2; see Schreiber, *supra* note 130, at 377.

181. See Buchanan & Feikert-Ahalt, *supra* note 158, at 2.

182. *Id.*

183. Australian Sport & Recreation Ministers, *supra* note 8, at 1.

regard to match-fixing in sport; and c. detailing the approach to implementation of the Policy.¹⁸⁴

The National Policy calls on all Australian governments to take on the majority of the responsibility of addressing match-fixing while also stating that all governments will take a consistent approach to resolving problems with match-fixing.¹⁸⁵ The agreement also calls for each government to provide for a “Sport Controlling Body” to deal with betting agencies and register all betting events on behalf of the sport.¹⁸⁶ A Sport Controlling Body holds a similar governing role as that of the NFL or any other professional American sports league.¹⁸⁷ Under the National Policy, Sport Controlling Bodies play a crucial role in sports betting because a betting company cannot offer bets on an event “unless: i. an agreement is in effect between the registered Sport Controlling Body and the betting agency; or ii. a determination of the appropriate regulator is in effect for the betting agency to offer a betting service on the event. . . .”¹⁸⁸ This stipulation gives the Sport Controlling Bodies a significant role in the development of betting because if they do not feel a certain betting company promotes integrity in the sport, they can refuse to enter into an agreement with the company. This also creates an incentive for betting companies to maintain honest betting because sports leagues will not enter into agreements with betting companies that do not maintain the integrity of sport. At the same time, by leaving recourse for betting companies to apply to a state regulator, it prevents sports leagues from prohibiting all betting while still scrutinizing those who apply for approval for an event.¹⁸⁹

Sporting organizations and betting companies are also expected to play a role in the National Policy.¹⁹⁰ The agreement states that Sport Controlling Bodies will be expected to adopt measures to prevent match-fixing while also ensuring that all those involved in the sport understand the policies and how to prevent match-fixing.¹⁹¹ Sporting organizations are a crucial piece needed to stop match-fixing. Those in the sport are best suited to identify any suspicious activities because they have the best understanding of what honest matches should look like. The agreement also calls for betting agencies to adopt information exchange policies and to work with both sporting organizations and law enforcement to prevent illegal activity.¹⁹² By bringing in both the sports leagues and the betting companies, the National Policy creates a network that, through information

184. *Id.* § 2.1.

185. *Id.* §§ 3.1-3.4.

186. *Id.* § 3.5.

187. *See id.* §§ 3.5, 4; *see Sports Controlling Bodies*, VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION, <https://www.vcglr.vic.gov.au/gambling/wagering-and-sports-betting/sports-controlling-bodies> (last updated Sep. 17, 2018) [<https://perma.cc/SF9U-8MVU>].

188. Australian Sport & Recreation Ministers, *supra* note 8, § 3.6.

189. *See id.* § 3.6bii.

190. *See id.* §§ 4-5.

191. *Id.* § 4.2.

192. *Id.* § 5.

sharing, can identify almost any potential illicit betting act that would go undetected if monitored by only one of the groups. When this is applied, “bookmakers and leagues share information regarding suspicious betting trends,¹⁹³ participants barred from placing bets, suspicious inquiries, and attempts to fix matches.”¹⁹⁴ It is also believed that “information sharing will flag any improprieties that could affect the outcome of a sporting event and it allows the leagues to take proper action, whether internally or by enlisting the help of law enforcement.”¹⁹⁵ This information sharing network is similar to the mandatory reporting system of the United Kingdom, but it also has the potential to be even more helpful because it brings the sports leagues in as well.¹⁹⁶

One highly beneficial aspect of the National Policy, is that it recognizes that components of the agreements may need to be implemented in a different manner, depending on the state.¹⁹⁷ This aspect recognizes that states throughout a country are all different and have different needs and that while they may all have the same goal, each state may utilize a different method to achieve this goal. This is a principle of state sovereignty which is a strong component of American government.¹⁹⁸ A National Policy in the United States could promote a uniform system for maintaining integrity in sports while still offering states flexibility to deal with state-specific issues and concerns regarding sports betting.

ii. Regulation at the State Level Through Integrity Agreements

Multiple Australian states have passed legislation within the parameters of the National Policy, including New South Wales and Victoria, the two largest states in Australia, which account for more than 50% of the country’s population.¹⁹⁹ New South Wales and Victoria each adopted requirements similar to that of Section 3.6 of the National Policy which creates regulation at the state level and gives the Sport Controlling Bodies and the betting companies a key role in crafting the state’s regulations.²⁰⁰

New South Wales passed reforms to its state sports betting laws in 2015 which closely resemble the type of agreements called for by the National

193. See Schreiber, *supra* note 130, at 375 (in this instance, the sports book became suspicious after a large number of bets came in for an “obscure match” and one player went from being the odds favorite to a “significant underdog” before the match began).

194. Ross et al., *supra* note 40, at 25.

195. *Id.* at 26.

196. See *supra* Part V.B.ii; see Australian Sport & Recreation Ministers, *supra* note 8, § 4.

197. Australian Sport & Recreation Ministers, *supra* note 8, § 3.7.

198. See *Murphy v. NCAA*, 138 S. Ct. 1461 at 1475-76, 1478 (describing how state sovereignty was established and how PASPA infringed on state’s sovereignty).

199. Buchanan & Feikert-Ahalt, *supra* note 158, at 1; see *Australian States and Territories by Population*, WORLD ATLAS, <https://www.worldatlas.com/articles/the-largest-states-and-territories-of-australia.html> (last updated June 27, 2018) [<https://perma.cc/G3TF-MB53>].

200. See Buchanan & Feikert-Ahalt, *supra* note 158, at 1; see Australian Sport & Recreation Ministers, *supra* note 8, § 3.6.

Policy.²⁰¹ For New South Wales, betting cannot take place without an integrity agreement when the event is under the control of a “sports controlling body.”²⁰² Each integrity agreement must include: “1. an outline of the measures used to prevent, investigate and assist in the prosecution of any match fixing or corrupt behaviour [sic]; 2. provision of financial return to the sport; 3. information sharing arrangements; and 4. a consultation process for applications for new sporting events and bet types.”²⁰³ The intriguing part about these agreements is that they are determined by private parties, not the government; the reason New South Wales does this is because the state believes the sports controlling bodies and the betting companies are the parties best suited to determine the specifics of the agreement.²⁰⁴ One aspect of Australia’s integrity agreements which are not seen in the United Kingdom is the provision for financial return to the sport on which bets are placed.²⁰⁵ Financial returns can take the form of fees paid to the sports leagues by the betting provider and ultimately give sports leagues an incentive to want sports betting to succeed.²⁰⁶ Currently, sports leagues in the United States have no incentive to want sports betting to succeed because there is no compensation for the risk of match-fixing scandals breaking fans’ trust in the game.²⁰⁷ This is why sports leagues have pushed so hard for so long to keep sports betting from becoming legal.²⁰⁸ However, when each sports league is compensated by sports books, the leagues will be more willing to let betting take place, especially when the leagues can negotiate for their compensation in integrity agreements.²⁰⁹ Integrity agreements also give sports leagues a greater incentive to take measures to prevent match-fixing because if they are financially benefiting from sports betting and match-fixing occurs, fans will likely hold the sports controlling body responsible along with anyone else involved in promoting sports betting. The financial component of integrity agreements also takes this aspect into consideration because it expects that part of the money goes towards maintaining integrity in sports.²¹⁰

The state of Victoria has similar laws requiring integrity agreements; however, Victoria has required the agreements since 2003, which means states could use integrity agreements on their own before the passage of the National Policy.²¹¹ The Gambling and Racing Legislation Amendment (Sports Betting) Act

201. *Match-fixing, Corruption, Gambling, supra* note 8; see Australian Sport & Recreation Ministers, *supra* note 8, § 3.6.

202. *Match-fixing, Corruption, Gambling, supra* note 8.

203. *Id.*

204. *Id.*

205. *Id.*; see *supra* Part V.B.i.

206. See Buchanan & Feikert-Ahalt, *supra* note 158, at 2, 4.

207. See S. REP. NO. 102-248, at 5, 8 (1991) (describing how sports betting threatens integrity in sports and how sports leagues support PASPA).

208. See S. REP. NO. 102-248 (1991); see *supra* Parts I and III.B.

209. *Match-fixing, Corruption, Gambling, supra* note 8.

210. *Id.*

211. *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) § 4.5.22

2007, passed by Victoria, requires an agreement to be in place between the “sports controlling body” and the betting provider, just like New South Wales.²¹² The parameters of the agreement are similar to those of New South Wales; the agreement needs to cover how information will be shared between the parties to promote integrity in the sport and whether a fee must be paid to the sports controlling body, as well as any other matters the parties want to cover.²¹³ While Victoria has less stringent requirements on the specific details of each agreement, the same core principle of a mutual agreement between those promoting the sport and those offering bets on the sport remain.²¹⁴ The differences between the two states’ laws also demonstrates how the National Policy allows each state the flexibility to decide how integrity agreements are made.²¹⁵

However, unlike New South Wales, Victoria offers an alternative to sports betting providers if they cannot come to an agreement with a sports controlling body; the sports betting provider can apply to the state regulator, similar to the process in the National Policy.²¹⁶ The Victorian Gambling Commission will then examine the facts to determine if the sports controlling body “unreasonably refused or failed to enter into an agreement with the sports betting provider.”²¹⁷ If the Commission determines that the betting provider can offer bets, the determination must still account for information sharing between the betting provider and the sports controlling body as well as whether the sports controlling body should be financially compensated.²¹⁸ The benefit of this approach is that it prevents sports controlling bodies from unreasonably refusing to allow sports betting while still holding betting companies to a high standard. This could also lead sports controlling bodies to be more willing to form an integrity agreement with betting companies because a negotiated agreement could offer better terms than if a betting company applies to the Commission and the sports controlling body is then forced to permit sports betting.

(Austl.), [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/7F87494B9F48C351CA2572EA0020E114/\\$FILE/07-018a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/7F87494B9F48C351CA2572EA0020E114/$FILE/07-018a.pdf) [<https://perma.cc/X2KU-H8LB>] (last visited Feb. 24, 2019); see Buchanan & Feikert-Ahalt, *supra* note 158, at 6.

212. *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) § 4.5.22 (Austl.); *Match-fixing, Corruption, Gambling*, *supra* note 8.

213. *Compare Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) § 4.5.23 (Austl.) and *Match-fixing, Corruption, Gambling*, *supra* note 8.

214. *Compare Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) § 4.5.23 (Austl.) and *Match-fixing, Corruption, Gambling*, *supra* note 8.

215. Australian Sport & Recreation Ministers, *supra* note 8, § 3.7.

216. *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) § 4.5.24 (Austl.); Australian Sport & Recreation Ministers, *supra* note 8, § 3.6.

217. *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) § 4.5.24 (Austl.).

218. *Id.* § 4.5.26.

iii. Concerns with the Australian System

While the Australian system does offer many promising aspects which states could easily adopt to keep both sports leagues and betting companies happy, there are several reasons to pause before embracing the Australian framework. One of the most troubling concerns is Australia's rate of gambling problems. For instance, in 2015, "41% of all regular sports bettors - 234,000 adults - experienced one or more gambling-related problems. . . . more than double the rate among regular gamblers nationally."²¹⁹ This nation-wide problem has even been referred to as the "gamblization" of Australia as an increased number of gambling problems followed the increased legalization of sports betting in Australia.²²⁰ Meanwhile, in the United Kingdom, less than 1% of all gamblers in the country self-identified as problem gamblers in 2015.²²¹

Australia did not initially see such large problems following the "widespread legalization of online sports betting" in 2001, but the problem became more prevalent as international bookmakers shifted their focus to Australia and gambling ads became commonplace.²²² An increase in gambling addiction led to an increase in betting losses; between 2014 and 2015, Australians bet \$7.1 billion on sports and lost close to \$815 million of it.²²³ With so many issues, states would be hard pressed to get support for a bill that could lead to rampant gambling problems for residents. Despite this glaring problem, Australia's use of integrity agreements, along with an effective method of preventing gambling addiction, could provide states with a solution for how to legalize sports betting while protecting consumers and maintaining integrity in sports.²²⁴

VI. RECOMMENDATION

This section offers a recommendation to states looking to pass sports betting legislation based upon the previously examined frameworks. The recommendation is centered on the principle that Australia's integrity agreements should be the center of sports betting legislation in states because they allow

219. Andrew Armstrong & Megan Carroll, *Sports Betting in Australia*, AUSTRALIAN INSTITUTE OF FAMILY STUDIES (Dec. 2017), <https://aifs.gov.au/agrc/publications/sports-betting-australia> [<https://perma.cc/Z46T-WD8D>].

220. Christopher Polisano, *Betting Against PASPA: Why the Federal Restrictions on Sports Gambling are Unconstitutional and How They Hurt the States*, 25 JEFFREY S. MOORAD SPORTS L. J. 453, 481 (2018).

221. *Gambling Participation and Problem Gambling*, GAMBLING COMMISSION, <https://www.gamblingcommission.gov.uk/news-action-and-statistics/Statistics-and-research/Levels-of-participation-and-problem-gambling/Gambling-participation-and-problem-gambling.aspx> (last visited Feb. 24, 2019) [<https://perma.cc/W3ES-ZY6U>].

222. Davis Purdam & Ryan Rodenberg, *Future of Sports Betting: The Pitfalls*, ESPN (Nov. 1, 2016), http://www.espn.com/chalk/story/_/id/17910253/the-future-sports-betting-go-wrong-sports-betting-was-legal-united-states [<https://perma.cc/D8MC-2PGW>].

223. *Id.*

224. *See id.* (describing how the U.K. heavily restricts gambling advertisements).

states to set the terms of the agreement and also allow sports controlling bodies and betting providers to play a role in the process. However, the recommendation also draws from the United Kingdom's approach for protecting children and other vulnerable people from gambling problems by adding a preventative component to the integrity agreements and also making it illegal for children to bet or for a betting provider to encourage children to bet.²²⁵

A. Leave Betting to the States as Australia Does

The greatest benefit of integrity agreements and Australia's approach to sports betting is that it allows states to move at their own pace while letting the sports betting providers and sports controlling bodies play a role in the development of these regulations. Australia demonstrates that integrity agreements are flexible, and the only real requirement is that the sports controlling body and the betting provider have an agreement in place before betting is offered.²²⁶ This would allow states to follow Victoria and New South Wales' lead in adding additional parameters to these agreements.²²⁷ For instance, if a state decides it wants to test out sports betting but wants to take it slow, it could include the requirement that integrity agreements only allow for individual bets under \$50.²²⁸ In theory, a state could add any requirement that must be covered by the integrity agreement. This would give states the ability to allow gambling at the level they feel comfortable while still providing requirements for promoting information exchange to prevent match-fixing.²²⁹ Even if two states allow different levels of gambling but still maintain similar requirements such as those in the Australia's National Policy, the exchange of information between the state regulatory body, the betting provider, and the sports controlling body would work to make it easier to spot a betting irregularity or suspicious activity by a player.²³⁰

While integrity agreements allow states to proceed with sports betting as they feel comfortable, sports leagues can regulate the pace as well because they are one of the parties to the integrity agreement. At this time, American sports leagues hold differing opinions on sports betting and may not be willing to enter into integrity agreements with betting providers.²³¹ Similar to the states, leagues

225. See Gambling Act 2005, c. 19 §§1, 45-64 (Eng.); Concerns over youth gambling were one of the main reasons PASPA was introduced; if those concerns are not addressed, it could lead to efforts in the future to make sports betting illegal again. See S. REP. NO. 102-248, at 5 (1991).

226. See Australian Sport & Recreation Ministers, *supra* note 8, § 3.6.

227. See *Match-fixing, Corruption, Gambling*, *supra* note 8; see *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) § 4.5.23 (Austl.).

228. See Mierswa, *supra* note 117, at 469.

229. Australian Sport & Recreation Ministers, *supra* note 8, § 5.

230. See *generally id.*; see Andrews, *supra* note 42.

231. See Tom Schad, *NFL, MLB, NBA, NCAA and Others React to Supreme Court Decision on Sports Betting*, USA TODAY (May 14, 2018, 1:25 PM), <https://www.usatoday.com/story/sports/2018/05/14/sports-betting-nfl-mlb-nba-ncaa-reaction-supreme-court/607459002/>

can restrict sports betting to the level they feel comfortable. For instance, NBA commissioner, Adam Silver, expressed interest in pursuing sports betting and has even endorsed specific laws.²³² Other leagues who are more hesitant to step into sports betting, like the NHL, could wait to allow sports betting because, under New South Wales' approach to integrity agreements, betting would only occur if the sports controlling body entered into an agreement.²³³ This would allow sports leagues to move at their own pace if they are still skeptical of maintaining integrity in sports while allowing sports betting. Hesitant leagues could let willing leagues serve as "test-pilots" to see if sports betting is really something they want to pursue. And even if a league eventually decides to make an agreement with a betting provider, the league can still ease into sports betting by negotiating for a short betting period or by putting high restrictions on the betting process.²³⁴

The other benefit of integrity agreements is that they allow leagues to work with betting providers to customize how sports betting is regulated in each sport. For example, while not all of the things Commissioner Silver called for would be available with state adopted use of integrity agreements, such as a federal framework, the remaining elements like mandatory monitoring and reporting, licensing protocols, and age requirements are all things that could be put into an integrity agreement.²³⁵ Integrity agreements also help overcome the problem of one single law trying to prevent match-fixing within different sports. Each sport faces unique match-fixing challenges, and it would be difficult to pass one single law that would cover match-fixing prevention for all of them. Integrity agreements would allow specific protocols to be developed for each league so there can be a customized approach to match-fixing in each sport.

This customized approach to preventing match-fixing for each sport would also incorporate the use of information networks like in Australia.²³⁶ Each information network would include the entity that knows that sport better than anyone else in the world, the sports league. The NBA already has a system in place that sends data from each game to its replay center, which also visually monitors games.²³⁷ This could be used to monitor games for suspicious actions, like a player doing something in a situation that they normally would not.²³⁸ All

[<https://perma.cc/P6B9-H8G4>].

232. See Silver, *supra* note 97.

233. See Schad, *supra* note 231; *Match-fixing, Corruption, Gambling*, *supra* note 8.

234. See Mierswa, *supra* note 117, at 469 (describing how capping off bets at low prices can prevent attempts to fix matches).

235. Silver, *supra* note 97.

236. Australian Sport & Recreation Ministers, *supra* note 8, § 5.

237. See Glanz & Armendariz, *supra* note 162; see Reid Forgrave, *At the NBA Replay Center, the League's Most Scrutinized Employees Aim to Get it Right*, CBS SPORTS (Jan. 11, 2019, 10:22 AM), <https://www.cbssports.com/nba/news/at-the-nba-replay-center-the-leagues-most-scrutinized-employees-aim-to-get-it-right/> [<https://perma.cc/A4ZV-7MEB>] (describing how games are monitored in real time from the replay center).

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

of these implementations demonstrate how Australia's framework allows sports betting to be as customized to a sport or state as needed while still providing individuals with a chance to place a bet.

B. Necessary Additions from the U.K.

Despite the great flexibility offered by Australia's gambling framework, its system is far from perfect.²³⁹ States looking to prevent the problems that led to rampant gambling addiction in Australia, could add components from the United Kingdom's framework detailing protections for vulnerable people, including protection from gambling problems and the requirement of integrity agreements.²⁴⁰ The best way to start would be to add the third licensing objective from the Gambling Act of 2005: "protecting children and other vulnerable persons from being harmed or exploited by gambling."²⁴¹ As states set requirements for integrity agreements, they can require that parties must develop a plan for how they will prevent bettors from developing gambling problems.²⁴²

Most states will likely have an idea of how they want to address gambling problems, so they can use that as a model for drafting their integrity agreements. Also, because each bettor will still need to apply to the state's gambling commission after agreeing to an integrity agreement, the state will have the final say on whether the integrity agreement includes a sufficient plan for preventing mental health problems caused by or exacerbated by gambling.²⁴³ The state's gambling commission can then reject the betting provider's request if it does not believe the arrangement would prevent people from developing gambling addictions. This would both encourage betting providers and sports leagues to develop more detailed approaches to combating gambling addictions while also preventing betting companies who have no interest in preventing the "gamblization" of America from taking bets.²⁴⁴

States should also include the United Kingdom's criminal laws regarding youth gambling. The Gambling Act makes it illegal for people under the age of 18 to gamble or for gambling providers to encourage people under the age of 18 to gamble.²⁴⁵ Adding this to collaborate with integrity agreements would allow states to address underage gambling, because while having a provision in an integrity agreement might prevent a large portion of underage gambling, it would not specifically address what happens if minors attempt to place bets. With this law, if a minor attempts to place a bet, states could step in and rehabilitate the

[<https://perma.cc/GR3X-7CZM>].

239. *See supra* Part V.C.iii.

240. Gambling Act 2005, c. 19 §§1, 45-64 (Eng.); Purdam & Rodenberg, *supra* note 222.

241. Gambling Act 2005, c. 19 §1 (Eng.).

242. *See* Gambling Act 2005, c. 19 §70(3) (Eng.).

243. *See* Australian Sport & Recreation Ministers, *supra* note 8, § 3.6a.

244. *See* Polisano, *supra* note 220, at 481.

245. Gambling Act 2005, c. 19 §§ 46-50 (Eng.).

minor, so he or she does not develop gambling problems.²⁴⁶ Also, a combination of civil and criminal penalties can effectively prevent betting providers from promoting child gambling. With just integrity agreements in place, some gambling providers might find it worth the risk to try to get a minor to gamble because if they are caught, they would only lose their license to offer bets or face some other civil penalty.²⁴⁷ However, if gambling providers also faced jail time, many would be less willing to take or solicit bets from minors.

CONCLUSION

In the wake of *Murphy v. NCAA* many states have a blank canvas for creating sports betting legislation. However, these states do not have to start from scratch because there are numerous examples to follow throughout the world. Each approach to regulating sports betting offers its own approach to solving the problem. As states examine these different systems, they need to determine how each one addresses the issues of integrity in sports and gambling addiction, two issues that led to the federal ban on sports betting in PASPA.²⁴⁸

Australia's use of integrity agreements and the ready flow of information between sports leagues, betting providers, and the government, offers states a way to combat and prevent match-fixing.²⁴⁹ Because each Australian state can set its own standards for what must be included in an integrity agreement, it would be an easy framework for the United States to adopt because each state can customize the requirements of an integrity agreement to its own needs.²⁵⁰

States should also incorporate some of the United Kingdom's laws regarding mental health and consumer protections in gambling because Australia's current framework does not do a good job preventing gambling addiction and other mental health-related problems.²⁵¹ Incorporating principles like requiring integrity agreements to include plans to prevent gambling problems, making it illegal for children to gamble, and making it illegal for gambling providers to encourage children to gamble, would help prevent those issues.²⁵² By combining these two frameworks, states can develop an effective regulatory system for sports betting that allows consumers to enjoy placing bets on their favorite team while maintaining integrity in all sports and preventing gambling from becoming a national health crisis.

246. See *Youth in the Justice System: An Overview*, JUVENILE LAW CENTER, <https://jlc.org/youth-justice-system-overview>, (last visited Jun. 12, 2019) [<https://perma.cc/9XHS-3ZBJ>].

247. Gambling Act 2005, c. 19 §§ 70-71, 119-21 (Eng.).

248. S. REP. NO. 102-248, at 5.

249. See Australian Sport & Recreation Ministers, *supra* note 8, §§ 1.5, 3.6; see Ross et al., *supra* note 40, at 31.

250. See *Match-fixing, Corruption, Gambling, supra* note 8; *Gambling and Racing Legislation Amendment (Sports Betting) Act 2007*, (Vict.) §§ 4.5.22, 4.5.23 (Austl.).

251. Armstrong & Carroll, *supra* note 219.

252. Gambling Act 2005, c. 19 § 1, 46-50 (Eng.).