

THE BEST BET: WHY MISSOURI SHOULD TAKE A CHANCE ON SPORTS GAMBLING AFTER *MURPHY V. NCAA*

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ABSTRACT

*Signed into law in 1992, the Professional and Amateur Sports Protection Act (PASPA) effectively outlawed sports betting in the United States. With a few exceptions, the law prohibited most states from authorizing sports betting schemes. Following its passage, opponents challenged the law, and it was eventually struck down as unconstitutional in 2018. The United States Supreme Court in *Murphy v. NCAA* determined that PASPA violated the Tenth Amendment and the anti-commandeering doctrine. The Court found that the law indirectly regulated sports gambling by unconstitutionally restraining state legislation. With PASPA out of the way, and absent any new federal legislation restricting the activity, states are now free to regulate sports betting. This Note examines the *Murphy* decision and proposes a legislative scheme for allowing limited sports betting within the State of Missouri.*

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I. INTRODUCTION

Gambling, like most gamblers, has had mixed luck over the course of American history.¹ The United States has overwhelmingly accepted the vice at times and completely banned it at others.² Sports betting was traditionally a state-regulated activity until Congress outlawed it in most United States jurisdictions with the passage of the Professional and Amateur Sports

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¹ Christopher T. O'Connor, *A Return to the Wild West: The Rapid Deregulation of the Riverboat Casino Gambling Industry in Missouri*, 19 ST. LOUIS U. PUB. L. REV. 155, 157-58 (2000).

² *Id.*

Protection Act of 1992 (PASPA).³ PASPA effectively prevented states from allowing any type of state-sponsored sports gambling scheme.⁴ After PASPA was passed, it was unsuccessfully challenged multiple times.⁵ The law was only recently invalidated when the United States Supreme Court struck it down as unconstitutional in *Murphy v. NCAA*.⁶ The Court held, in part, that PASPA's provision preventing a state from authorizing sports gambling violated the anti-commandeering doctrine.⁷

The *Murphy* decision cleared the way for state-sponsored sports gambling schemes and, in many ways, changed the entire landscape of sports wagering.⁸ Many states have already exercised this new-found power with regard to sports betting, but others have lagged behind.⁹ Missouri is one of many states that has yet to pass a law legalizing sports gambling in response to *Murphy*.¹⁰

Legalizing sports gambling is and will continue to be a hotly debated and controversial issue. There is no national consensus within the United States on whether sports betting should be regulated at the federal or state level.¹¹ In fact, public opinion of sports gambling has almost constantly vacillated throughout the nation's history.¹² This Note argues for the legalization of state-sponsored sports betting schemes with a focus on the State of Missouri. Part II of this Note discusses the history of gambling and sports betting in the United States. Part III examines *Murphy* and how states have responded to the decision. Part III ends with a discussion of Missouri's current gambling laws and the current state of sports betting in Missouri. Part IV argues that Missouri should legalize and regulate sports betting because

³ 28 U.S.C. §§ 3701-3704 (2012), *invalidated by* *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018).

⁴ *Id.* § 3702 ("It shall be unlawful for a government entity to sponsor . . . [a] wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate . . .").

⁵ *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 730 F.3d 208 (3d Cir. 2013); *see also* *OFC Comm Baseball v. Markell*, 579 F.3d 293 (3d Cir. 2009) (reasoning that Delaware could not legalize individual game betting on sports contests because the exception in PASPA limited Delaware to gambling schemes currently in effect at the time PASPA was passed); *Interactive Media Entertainment & Gaming Ass'n, Inc. v. Holder*, 09-1301 (GEB), 2011 WL 802106 (D.N.J. Mar. 7, 2011) (challenged PASPA but did not reach the constitutionality of the law); *Flagler v. U.S. Attorney for Dist. of N.J.*, 06-3699 (JAG), 2007 WL 2814657 (D.N.J. Sept. 25, 2007) (Tenth Amendment challenge against PASPA but was resolved without reaching the merits of the constitutional argument).

⁶ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1485 (2018).

⁷ *Id.*

⁸ *Id.*

⁹ Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Aug. 2, 2019), https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization.

¹⁰ *Id.*

¹¹ I. Nelson Rose, Comment, *Gambling and the Law—Update 1993*, 15 HASTINGS L.J. 93, 95-98 (1992).

¹² *Id.*

of the revenue it may generate for the state as well as the growing acceptance of the activity. Further, Part IV proposes a legislative scheme for allowing limited sports betting within the State of Missouri.

II. HISTORY

In order to understand the current state of legal sports gambling in the United States, it is helpful to look to history. First, a general history of gambling in the United States provides some insight into why Congress had reservations about legalizing sports gambling. Second, the history of sports gambling in America provides a background for why Congress passed PASPA and why the Supreme Court, in *Murphy*, struck it down.

A. History of Gambling in the United States

Cultural acceptance of gambling in the United States has fluctuated as American values have changed over the years.¹³ Gambling in the United States has been widely accepted at times and completely prohibited at others.¹⁴ Many early settlers condemned gambling as a “waste of time and resources.”¹⁵ In fact, in the 18th Century, the word “gamble” was considered a “term of reproach” in certain colonies.¹⁶ The Massachusetts Bay Colony even went as far as banning the possession of cards, dice, and gaming tables.¹⁷

The negative attitudes towards gambling were generally linked in some way to religious ideals.¹⁸ The early Puritanical view of gambling was that the vice was “inherently sinful” and “a great dishonor of God.”¹⁹ While this view was generally held by colonies with deeply rooted religious ties, other colonies, like the Jamestown Colony in Virginia, did not have the same restrictive religious beliefs.²⁰ Some early colonies imported the English attitude towards gambling along with English settlers who not only accepted, but actively participated in games of chance.²¹

In stark contrast to the moralistic religious views of some early settlers, much of England and many Native Americans participated in games of

¹³ O'Connor, *supra* note 1.

¹⁴ *Id.*

¹⁵ *Id.* at 158.

¹⁶ Rose, *supra* note 11, at 94.

¹⁷ *Id.* at 95.

¹⁸ Ed Crews, *Gambling: Apple Pie American and Older than the Mayflower*, TREND AND TRADITION (Autumn 2008), <http://www.history.org/foundation/journal/autumn08/gamble.cfm>.

¹⁹ *Id.*

²⁰ Zach Schreiber, *The Time is Now: Why the United States Should Adopt the British Model of Sports Betting Legislation*, 27 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 353, 358 (2017).

²¹ *Id.*

chance regularly.²² In the 1600s, King Charles II was very much a proponent of gambling and “[a]t his court, games of chance became a focus of life.”²³ Native Americans also played dice games as well as stick and straw games that could be likened to cards.²⁴ Similar to many early Puritanical settlers, the Native American view of gambling stemmed, in part, from closely held spiritual beliefs.²⁵ The Native Americans, however, believed “that gaming was a gift from the gods and had a spiritual dimension.”²⁶

Despite some negative perceptions, American lotteries were soon established and used to fund academic institutions and church groups.²⁷ The Revolutionary War was even partially funded by a national and several state lotteries.²⁸ Early on, the United States depended heavily on lotteries for funding because the country did not have a well-developed banking system or central government yet.²⁹

Once state and local governments developed, the need for lotteries decreased, and taxes became a more significant source of revenue.³⁰ The popularity of gambling continued to decrease as the country developed in the early part of the 1800s.³¹ By 1862, lotteries were banned in every state except Missouri and Kentucky.³²

The second wave of gambling in America was spawned by the Civil War and western expansion.³³ As time progressed, gambling started to become popular in the frontier region of the country.³⁴ Also, at the close of the Civil War, many Southern states initiated lotteries in order to raise operating funds.³⁵ This second wave of gambling was short-lived as public disdain for lotteries, and gambling in general, rose to its former prominence in the late-1800s.³⁶

The growing social concern surrounding the negative impacts of gambling led to the prohibition of lotteries in America from the late-1800s

²² Crews, *supra* note 18 (“Native Americans were gambling before colonists arrived, and early arrivals were surprised to find native peoples risking all they owned on games of chance.”).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Ronald J. Rychlack, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 25-26 (1992) (“[L]otteries provided funds to 47 colleges, 300 lower schools and 200 churches.”).

²⁸ *Id.* at 28-29.

²⁹ *Id.* at 31.

³⁰ *Id.* at 32-33.

³¹ Rose, *supra* note 11, at 95-96.

³² *Id.*

³³ *Id.*

³⁴ O’Connor, *supra* note 1, at 158.

³⁵ Mike Roberts, *The National Gambling Debate: Two Defining Issues*, 18 WHITTIER L. REV. 579, 584 (1997).

³⁶ Rychlack, *supra* note 27, at 13.

until 1964.³⁷ Throughout this time period, many forms of gambling were outlawed entirely, while the legality of other forms fluctuated with time.³⁸ A new resurgence of gambling began around 1931 when Nevada legalized casino gambling.³⁹ Other states followed a similar path by allowing pari-mutuel betting at horse tracks during the 1930s.⁴⁰ Lotteries then began to resurface in 1964 when New Hampshire became the first state to have a legal state lottery since the 1800s.⁴¹

Since the 1960s, the popularity of gambling has continued to grow in America.⁴² This growth can be attributed in part to the Indian Gaming Regulatory Act which was passed in 1988.⁴³ This Act allowed Native American tribes to operate gaming facilities.⁴⁴ The early 1990s brought about another shift as state governments actively promoted gambling as opposed to simply allowing it.⁴⁵ The gambling industry has continued to grow so much that, in 2018 alone, the casino gaming market in the United States generated \$79.42 billion in revenue.⁴⁶

B. History of Sports Gambling in the United States

Just as the public opinion of gambling in general has changed over time, sports gambling has gone through varying degrees of acceptance throughout American history.⁴⁷ To better understand the *Murphy* decision, it is important to understand the history of sports gambling with a focus on the PASPA provisions at issue in the case.

1. General History of Sports Gambling

As with many other forms of gambling, Native Americans were betting on the outcome of sporting contests at least by the time settlers arrived in

³⁷ *Id.*

³⁸ Rose, *supra* note 11, at 96 (noting that most states outlawed betting on horse races by 1910, but pari-mutuel betting at racetracks began to resurface in the 1930s).

³⁹ Roberts, *supra* note 35, at 585.

⁴⁰ *Id.*

⁴¹ Rose, *supra* note 11, at 97.

⁴² *Id.*

⁴³ 25 U.S.C. §§ 2701-2721 (2012).

⁴⁴ *Id.* § 2702 (“The purpose of this chapter is . . . to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments . . .”).

⁴⁵ Rose, *supra* note 11, at 97.

⁴⁶ S. Lock, *Total Revenue of the Gambling Market in the United States from 2004 to 2018 (in Billion U.S. Dollars)*, STATISTA, <https://www.statista.com/statistics/271583/casino-gaming-market-in-the-us> (last visited Oct. 25, 2019).

⁴⁷ Justin Fielkow, Daniel Werly & Andrew Sensi, *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 25 (2016).

America.⁴⁸ Around the same time, other European countries permitted sports betting in different forms, and those practices followed settlers to the New World.⁴⁹ In the first part of the 19th century, one of the earliest forms of sports betting in the United States, betting on horse races, was permitted across the country.⁵⁰ From there, sports gambling continued to develop in the United States in the late 19th century when organized professional and amateur sports teams and leagues were first established.⁵¹ By the early 20th century, betting on sports contests became increasingly popular.⁵²

While the popularity of sports gambling in some respects was growing, there were still many who were morally opposed to the activity.⁵³ Racetracks began to close in the early part of the 20th century.⁵⁴ At this same time, nearly all forms of gambling were outlawed across the country.⁵⁵ Although most types of sports gambling were illegal in the early 1900s, the growing popularity of professional baseball kept sports gambling alive, albeit illegally.⁵⁶ While illegal at this time, early sports gambling laws were rarely enforced because “the activity largely consisted of casual bets amongst fans.”⁵⁷

The federal government soon determined that it was necessary to intervene as sports gambling became increasingly interconnected with organized criminal operations.⁵⁸ Criminal syndicates transformed the world of illegal sports gambling from casual bets between fans to sophisticated enterprises that operated across state lines.⁵⁹ One of the most infamous scandals in baseball history occurred when members of the Chicago White Sox were found to have been paid by notorious gangster Arnold Rothstein to intentionally lose the 1919 World Series.⁶⁰

After the aptly named “Black Sox” scandal, sports gambling was viewed in a negative light until the Great Depression left the country desperate for revenue.⁶¹ The poor economic conditions of the Great

⁴⁸ Crews, *supra* note 18 (“Roger Williams witnessed an intense football-like game accompanied by enthusiastic sideline wagers.”).

⁴⁹ Schreiber, *supra* note 20, at 358 (“[R]ecords in the United Kingdom trace horse racing back to the ninth century A.D.”).

⁵⁰ Fielkow, *supra* note 47, at 25-26.

⁵¹ Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 UNLV GAMING L.J. 281, 283 (2011).

⁵² *Id.* at 283-84.

⁵³ Fielkow, *supra* note 47, at 26.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Meer, *supra* note 51, at 284.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Fielkow, *supra* note 47, at 26.

⁶¹ *Id.*

Depression rejuvenated sports gambling in the United States.⁶² Despite this resurgence, betting on sports contests was still illegal in America until 1949 when Nevada legalized sports wagering within the state.⁶³

Although the legalization of sports gambling was a success in Nevada, illegal schemes were still a problem.⁶⁴ Fearing drastic consequences stemming from illegal sports gambling and professional sports corruption, Congress passed a number of laws in the 1960s and 1970s in an attempt to combat these issues.⁶⁵ Some of the laws passed at the time include the Wire Act,⁶⁶ the Travel Act,⁶⁷ the Interstate Transportation of Wagering Paraphernalia Act,⁶⁸ the Sports Bribery Act,⁶⁹ and the Illegal Gambling and Business Act.⁷⁰

The federal government also attempted to regulate intrastate and interstate gambling with the passage of the 1951 federal tax on Nevada sports betting⁷¹ and with the Professional and Amateur Sports Protection Act of 1992, which, until recently, operated as a bar on sports gambling in almost every state.⁷² The Unlawful Internet Gambling Enforcement Act, passed in 2006, marks one of the most recent attempts by the federal government to regulate sports gambling in America.⁷³ The purpose of the Act is to regulate all forms of online gambling.⁷⁴ As the internet has developed, so has online gambling.⁷⁵ As history has shown, American sports gambling, like gambling in general, has a tendency to evolve and persist as time moves forward. In recent years, the United States has grown more accepting of the activity.⁷⁶

⁶² *Id.*

⁶³ *Id.* at 26-27.

⁶⁴ *Id.* at 27.

⁶⁵ *Id.*

⁶⁶ 18 U.S.C. §§ 1081-1084 (2012) (prohibiting the use of interstate and foreign wire communication for the purpose of placing bets on sporting events).

⁶⁷ *Id.* § 1952 (prohibiting participation in interstate gambling activity).

⁶⁸ *Id.* § 1953 (prohibiting the interstate transportation of sports betting paraphernalia).

⁶⁹ *Id.* § 224 (prohibiting the use of bribery to influence sporting contests).

⁷⁰ *Id.* § 1955 (prohibiting the management of illegal gambling businesses).

⁷¹ 26 U.S.C. § 4401 (2012); 26 U.S.C. § 4411 (2012).

⁷² 28 U.S.C. §§ 3701-3704 (2012), *invalidated by* *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018).

⁷³ 31 U.S.C. §§ 5361-5367 (2012).

⁷⁴ *Id.* § 5361.

⁷⁵ Meer, *supra* note 51, at 284.

⁷⁶ Jim Norman, *Acceptance of Gambling Reaches New Heights*, GALLUP (June 7, 2018), <https://news.gallup.com/poll/235379/acceptance-gambling-reaches-new-heights.aspx> (reporting that, based on a recent Gallup poll, 69% of Americans believe that gambling is morally acceptable, which is an increase from 65% in 2017).

2. *Professional and Amateur Sports Protection Act of 1992*

Prior to the enactment of PASPA, the federal government generally left the regulation of sports gambling up to the states.⁷⁷ Even with the freedom to permit sports gambling, many states in the country still prohibited the activity in some fashion.⁷⁸ By 1991, in the interest of “protecting sports from corruption,” Congress felt it necessary to intervene.⁷⁹ Federal legislation was also advanced and supported by a number of professional and amateur sports leagues, including the National Football League, the National Basketball Association, Major League Baseball, and the National Collegiate Athletic Association.⁸⁰ As a result of this push for legislation, PASPA was signed into law on October 28, 1992.⁸¹

PASPA generally made it illegal for states to permit sports gambling schemes.⁸² The legislation’s relevant provision made it “unlawful for a government entity to sponsor, operate, advertise, promote, license, or authorize . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate.”⁸³ The Attorney General of the United States and sports organizations were permitted to file civil actions to enjoin any alleged violators.⁸⁴

PASPA’s final provision limited the applicability of the statute.⁸⁵ In particular, the provision “grandfathered” in states that already had a sports gambling scheme in place at the time PASPA was passed.⁸⁶ Those “grandfathered” in included “the Nevada sportsbooks, the limited Oregon sports lottery, the limited Delaware sports lottery, and the limited sports pool betting in Montana.”⁸⁷ New Jersey, the state that would ultimately challenge PASPA in *Murphy*, initially qualified for the “grandfather” provision, but did not take advantage in time.⁸⁸

⁷⁷ Fielkow, *supra* note 47, at 29.

⁷⁸ *Id.*

⁷⁹ S. REP. NO. 102-248, at 6 (1991).

⁸⁰ *Id.* at 8.

⁸¹ 28 U.S.C. §§ 3701-3704 (2012), *invalidated by* *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

⁸² *Id.* § 3702.

⁸³ *Id.*

⁸⁴ *Id.* § 3703.

⁸⁵ *Id.* § 3704.

⁸⁶ *Id.*

⁸⁷ Meer, *supra* note 51, at 287.

⁸⁸ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1471 (2018).

III. *MURPHY* v. NCAA AND STATE RESPONSES

A. Background

Murphy v. NCAA invalidated PASPA and opened the door for state-sponsored sports gambling.⁸⁹ The Supreme Court's decision specifically relied on its anti-commandeering doctrine and the Tenth Amendment.⁹⁰ The Tenth Amendment states that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."⁹¹ Rooted in the Tenth Amendment, the anti-commandeering doctrine has two main principles: (1) the federal government may not "command a state government to enact state regulation,"⁹² and (2) the federal government may not "command the States' officers, or those of their political subdivision, to administer or enforce a federal regulatory program."⁹³

B. The *Murphy* Decision

The *Murphy* decision arose from multiple attempts by New Jersey to legalize sports gambling.⁹⁴ In 2011, New Jersey attempted to circumvent PASPA by amending its constitution.⁹⁵ The amendment authorized the state legislature to pass a law legalizing sports gambling in the state.⁹⁶ In 2012, a law was enacted that did just that (the "2012 Act").⁹⁷ Shortly after the passage of the 2012 Act, major professional sports leagues and the NCAA brought an action in federal court seeking to enjoin the law.⁹⁸

In federal court, New Jersey argued that PASPA was unconstitutional because it forced states to legislate in contravention of anti-commandeering principles and the Tenth Amendment.⁹⁹ New Jersey relied heavily on the United States Supreme Court decisions in *New York v. United States* and *Printz v. United States*.¹⁰⁰ The plaintiffs argued that PASPA complied with

⁸⁹ *Id.* at 1485.

⁹⁰ *Id.* at 1475-76.

⁹¹ U.S. CONST. amend. X.

⁹² *New York v. United States*, 505 U.S. 144, 178 (1992).

⁹³ *Printz v. United States*, 521 U.S. 898, 935 (1997).

⁹⁴ *Murphy*, 138 S. Ct. at 1471-72.

⁹⁵ *Nat'l Collegiate Athletic Ass'n v. Christie*, 926 F. Supp. 2d 551, 554 (D.N.J. 2013).

⁹⁶ *Id.*

⁹⁷ *Id.* at 556.

⁹⁸ *Id.* at 553.

⁹⁹ *Id.* at 558.

¹⁰⁰ *Id.* at 561-63; *see also* *New York v. United States*, 505 U.S. 144, 145 (1992) (reasoning that "take title" provision in Congressional Act was unconstitutional because it forced states to regulate); *Printz v. United States*, 521 U.S. 898, 898 (1997) (reasoning that statute requiring state law

the Tenth Amendment because the states were not commanded to take any affirmative act.¹⁰¹ The District Court ruled against New Jersey,¹⁰² and the Third Circuit affirmed.¹⁰³ New Jersey appealed the Third Circuit's decision to the United States Supreme Court, but certiorari was denied.¹⁰⁴

After its initial, unsuccessful attempt to legalize sports gambling with the 2012 Act, New Jersey tried to sidestep PASPA in 2014 by passing a law partially repealing previous state law provisions banning sports gambling.¹⁰⁵ The hope was that a partial repeal would comply with PASPA because New Jersey was not taking any affirmative action to legalize sports betting.¹⁰⁶ In response to New Jersey's partial repeal, the NCAA and major sports leagues again filed suit to enjoin the action.¹⁰⁷ The District Court¹⁰⁸ and Third Circuit¹⁰⁹ once again ruled against New Jersey.

After the Third Circuit affirmed the District Court's decision, the United States Supreme Court granted certiorari and declared PASPA unconstitutional.¹¹⁰ The anti-commandeering doctrine was the main focus of the Court's analysis.¹¹¹ The Court's decision relied heavily on the doctrine because "the rule serves as 'one of the Constitution's structural protections of liberty,'" "promotes political accountability," and "prevents Congress from shifting the costs of regulation to the States."¹¹² The Court reiterated that "[t]he Constitution confers on Congress not plenary legislative power but only certain enumerated powers."¹¹³ The Court concluded that PASPA violated the anti-commandeering doctrine because it forced states to legislate in a particular manner.¹¹⁴

After its anti-commandeering analysis, the Court next addressed the United States' argument that PASPA's anti-authorization prohibition constituted a valid preemption provision.¹¹⁵ The Supreme Court quickly dismissed this argument, stating, "[I]t is clear that the PASPA provision prohibiting state authorization of sports gambling is not a preemption

enforcement officers to run background checks was unconstitutional because it forced state officials to execute federal laws).

¹⁰¹ *Christie*, 926 F. Supp. 2d at 562.

¹⁰² *Id.* at 579.

¹⁰³ *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 730 F.3d 208, 241 (3d Cir. 2013).

¹⁰⁴ *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 730 F.3d 208 (3d Cir. 2013), *cert. denied*, 573 U.S. 931 (2014).

¹⁰⁵ *Nat'l Collegiate Athletic Ass'n v. Christie*, 61 F. Supp. 3d 488, 491 (D.N.J. 2014).

¹⁰⁶ *Id.* at 503.

¹⁰⁷ *Id.* at 490-91.

¹⁰⁸ *Id.* at 508.

¹⁰⁹ *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 832 F.3d 389, 402 (3d Cir. 2016).

¹¹⁰ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1473, 1485 (2018).

¹¹¹ *Id.* at 1475-77.

¹¹² *Id.* at 1477.

¹¹³ *Id.* at 1476.

¹¹⁴ *Id.* at 1478.

¹¹⁵ *Id.* at 1479.

provision because there is no way in which this provision can be understood as a regulation of private actors.”¹¹⁶ The Court reasoned that there was no other way to understand the provision than as a direct command to the states.¹¹⁷

The Court next determined that there were no other alternative grounds upon which the statute could be upheld and decided that PASPA was not severable.¹¹⁸ Since PASPA was not considered severable, no provision in the statute survived the decision.¹¹⁹ *Murphy* ultimately reversed the judgment of the Third Circuit and declared the entirety of PASPA unconstitutional.¹²⁰

C. Takeaways from the *Murphy* Decision

Now that PASPA has been declared unconstitutional, states are free to regulate sports gambling in whatever way they see fit. Before concluding, the *Murphy* Court noted that “[t]he legalization of sports gambling requires an important policy choice, but the choice is not ours to make.”¹²¹ The *Murphy* decision was a major victory for proponents of state-sponsored sports gambling, but it came with a caveat. So long as it is acting within one of its enumerated powers, Congress still retains the power to regulate sports gambling directly should it choose to do so.¹²²

Through the Commerce Clause, Congress has always had the power to pass federal laws directly regulating sports gambling, up to and including banning it entirely, but has not done so.¹²³ Should Congress adopt a law directly regulating sports gambling, states would be required to follow the federal law absent any other basis for striking it down. The issue with PASPA was that it indirectly regulated sports gambling by unconstitutionally restraining state legislation.¹²⁴ So, with PASPA out of the way, states may now legalize sports gambling, but only if Congress remains silent with respect to passing federal laws directly prohibiting the activity.

¹¹⁶ *Id.* at 1481.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1483.

¹¹⁹ *Id.* at 1484.

¹²⁰ *Id.* at 1485.

¹²¹ *Id.* at 1484.

¹²² *Id.*

¹²³ U.S. CONST. art. I, § 8, cl. 3 (“The Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”).

¹²⁴ *Murphy*, 138 S. Ct. at 1478.

D. State Responses

While *Murphy* opened the door for state legislation regarding sports betting, each state has responded differently. Nevada,¹²⁵ Delaware,¹²⁶ New Jersey,¹²⁷ Mississippi,¹²⁸ Pennsylvania,¹²⁹ and West Virginia,¹³⁰ along with a few other states,¹³¹ currently allow some form of legalized sports betting. As previously noted, some states with sports betting schemes in place at the time PASPA was passed were allowed to continue operating those schemes.¹³² The remaining states approached the *Murphy* decision in different ways. Some legislatures waited until *Murphy* was decided to act,¹³³ whereas others began legislating in anticipation of *Murphy*.¹³⁴

The states that were grandfathered in under PASPA include Nevada, Delaware, Oregon, and Montana.¹³⁵ Despite the limited forms of sports gambling allowed in Oregon during the beginning of the PASPA era, in 2005, the Oregon legislature passed a bill that banned sports wagering effective July 1, 2007.¹³⁶ For Montana, beyond the limited sports pools already offered, there has been no movement by the legislature towards broadening the scope of legal sports gambling in the state.¹³⁷

Understandably, Nevada has the most comprehensive sports gambling scheme of all the states with sports gambling laws in effect.¹³⁸ Since Nevada already had a strong sports gambling structure in place, Delaware has been the only state that was grandfathered in under PASPA to take any major steps towards expanding sports gambling post-*Murphy*.¹³⁹ Delaware now offers full-scale sports wagering in all three casinos in the state.¹⁴⁰

¹²⁵ NEV. REV. STAT. §§ 462.015-462.125 (2018).

¹²⁶ DEL. CODE ANN. tit. 29, § 4825 (2018).

¹²⁷ N.J. STAT. ANN. §§ 5:12A-10-5:12A-19 (2018).

¹²⁸ 13 MISS. ADMIN. CODE Pt. 9, R. 1.1-4.10 (2018).

¹²⁹ 3 PA. STAT. AND CONS. STAT. ANN. §§ 9301-9374 (2018); 4 PA. STAT. AND CONS. STAT. ANN. §§ 301-505 (2018).

¹³⁰ W. VA. CODE §§ 29-22D-1-29-22D-24 (2018).

¹³¹ Rodenberg, *supra* note 9.

¹³² Meer, *supra* note 51, at 287.

¹³³ See, e.g., N.J. STAT. ANN. §§ 5:12A-10-5:12A-19 (2018).

¹³⁴ See, e.g., 3 PA. STAT. AND CONS. STAT. ANN. §§ 9301-9374 (2018); 4 PA. STAT. AND CONS. STAT. ANN. §§ 301-505 (2018).

¹³⁵ Meer, *supra* note 51, at 287.

¹³⁶ OR. REV. STAT. ANN. §§ 416.535-416.543 (2018).

¹³⁷ MONT. CODE ANN. §§ 23-5-501-23-5-513 (2018).

¹³⁸ NEV. REV. STAT. §§ 462.015-462.125 (2018).

¹³⁹ Holland & Knight, LLP, *Sports Wagering: State-by-State Update for Tribal Entities with Gaming Compacts*, JDSUPRA (Oct. 11, 2018), <https://www.jdsupra.com/legalnews/sports-wagering-state-by-state-update-93947>.

¹⁴⁰ *Id.*

A few states that were not grandfathered in took prospective action by legislating with hope that *Murphy* would invalidate PASPA.¹⁴¹ Two of those states were Pennsylvania¹⁴² and West Virginia.¹⁴³ In Pennsylvania, 2017 Act. No. 42, House Bill 271 explicitly stated that sports wagering would be authorized “when Federal law is enacted or repealed or a Federal court decision is filed that permits a state to regulate sports wagering.”¹⁴⁴ In West Virginia, Senate Bill 415 had similar language that allowed sports wagering “after a federal law against such wagering is no longer in effect.”¹⁴⁵

Other states, such as New Jersey¹⁴⁶ and Rhode Island,¹⁴⁷ signed sports betting into law after the *Murphy* decision. New Jersey Assembly Bill No. 4111 allowed “wagering at casinos and racetracks on the results of certain professional or collegiate sports or athletic events.”¹⁴⁸ The bill permitted both in-person and online sports wagering.¹⁴⁹ The legalization of sports gambling in Rhode Island was encouraged by the Governor in the 2019 state budget.¹⁵⁰ Rhode Island currently limits citizens to only in-person sports wagering.¹⁵¹

Although each state has taken a different approach to legalized sports gambling, there are a few commonalities amongst them. Most states with some form of legalized sports betting have a commission or other government body that is in charge of regulating and overseeing the industry.¹⁵² Just like regular gambling, there is generally a legal gambling age as well. Most states have adopted twenty-one as the minimum age a person must be in order to gamble on sports.¹⁵³

Another major focus for states responding to *Murphy* has been to limit places where sports betting should be allowed. Most of the states that have already legislated allow on-site sports betting at licensed casinos within the

¹⁴¹ See 13 MISS. ADMIN. CODE Pt. 9, R. 1.1-4.10 (2018); H.R. 271, Reg. Sess. (Pa. 2018); S. 415, Reg. Sess. (W.Va. 2018).

¹⁴² H.R. 271, Reg. Sess. (Pa. 2018).

¹⁴³ S. 415, Reg. Sess. (W.Va. 2018).

¹⁴⁴ H.R. 271, Reg. Sess. (Pa. 2018).

¹⁴⁵ S. 415, Reg. Sess. (W.Va. 2018).

¹⁴⁶ N.J. STAT. ANN. §§ 5:12A-10-5:12A-19 (2018).

¹⁴⁷ GINA M. RAIMONDO, STATE OF RHODE ISLAND AND PROVINCE PLANTATIONS EXECUTIVE SUMMARY (2019), http://www.omb.ri.gov/documents/Prior%20Year%20Budgets/Operating%20Budget%202019/ExecutiveSummary/0_%20Complete%20FY%202019%20Executive%20Summary.pdf.

¹⁴⁸ A. 4111, Reg. Sess. (N.J. 2018).

¹⁴⁹ *Id.*

¹⁵⁰ RAIMONDO, *supra* note 147.

¹⁵¹ *Id.*

¹⁵² See, e.g., Delaware Lottery, DEL. CODE ANN. tit. 29, §§ 4801-4849 (2018); Mississippi Gaming Commission, MISS. CODE ANN. §§ 75-76-7-75-76-34 (2018); Pennsylvania Gaming Control Board, 4 PA. CONS. STAT. §§ 1201-1214 (2018).

¹⁵³ See, e.g., 13 MISS. ADMIN. CODE Pt. 9, R. 1.1-4.10 (2018); H.R. 271, Reg. Sess. (Pa. 2018); S. 415, Reg. Sess. (W.Va. 2018).

state.¹⁵⁴ While there is a general agreement between the states that on-site sports betting is permissible, there is a split on whether online sports gambling should be allowed.¹⁵⁵

E. Missouri's Response

1. Missouri's Current Gambling Laws

In 1992, Missouri legalized riverboat gambling on the Mississippi and Missouri rivers.¹⁵⁶ The constitutional amendment legalizing this form of gambling was supported by sixty-two percent of Missouri voters at the time.¹⁵⁷ Since the original constitutional amendment in 1992, businesses and casinos have successfully lobbied to remove many state regulations on the industry.¹⁵⁸

On April 28, 1993, Senate Bills 10 and 11 were enacted which allowed games of skill or chance on “excursion gambling boats.”¹⁵⁹ These acts also created the Missouri Gaming Commission.¹⁶⁰ Despite the majority of voters who were proponents of riverboat gambling, there were still many strongly opposed to the idea.¹⁶¹ Immediately after the passage of Senate Bills 10 and 11, a lawsuit was filed challenging the constitutionality of the acts.¹⁶²

In *Harris v. Missouri Gaming Commission*, the Supreme Court of Missouri declared “games of chance” played on Missouri riverboats as unconstitutional.¹⁶³ In response, the Missouri legislature attempted to amend Missouri's constitution in order to overrule the *Harris* decision.¹⁶⁴ The new amendment allowed for gaming on the riverboats regardless of whether the games involved skill or chance.¹⁶⁵ The amendment, however, was heavily opposed and did not have enough support by Missouri voters to be placed into law.¹⁶⁶

¹⁵⁴ See, e.g., 13 MISS. ADMIN. CODE Pt. 9, R. 1.1-4.10 (2018) (limiting sports betting to water- and land-based casinos in Mississippi).

¹⁵⁵ See, e.g., N.J. STAT. ANN. §§ 5:12A-10-5:12A-19 (2018).

¹⁵⁶ O'Connor, *supra* note 1, at 156.

¹⁵⁷ *Id.* at 160.

¹⁵⁸ *Id.* at 156.

¹⁵⁹ *Id.* at 160.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Harris v. Missouri Gaming Comm'n*, 869 S.W.2d 58, 60 (Mo. 1994) (Harris alleged that “the Act was unconstitutional in violation of the Missouri Constitution, Article III, §§ 39(9), 40(28), and 40(30).”).

¹⁶³ *Id.*

¹⁶⁴ O'Connor, *supra* note 1, at 160.

¹⁶⁵ *Id.* at 161.

¹⁶⁶ *Id.*

In 1994, the amendment was once again placed on the ballot.¹⁶⁷ This time the amendment was passed into law by a tight margin of fifty-four percent.¹⁶⁸ The amendment was adopted as Article III, § 39(e) of the Missouri Constitution.¹⁶⁹ In response to this new amendment, another lawsuit arose challenging the constitutionality of certain Missouri Riverboat casinos that were constructed in off-river, man-made moats.¹⁷⁰ The new suit, *Akin v. Missouri Gaming Commission*, held that the constitutional amendment allowing gambling on riverboat casinos did not authorize riverboat gambling in artificial spaces that were not contiguous to the Mississippi or Missouri River.¹⁷¹ That decision was quickly overruled in 1998 by another amendment to the Missouri Constitution and has brought us to Missouri's current gambling laws today.¹⁷²

Today, Missouri is home to thirteen riverboat casinos.¹⁷³ Similar to the original constitutional amendment, Missouri's current constitution permits riverboat gambling on the Mississippi and Missouri Rivers.¹⁷⁴ Taking a step in the direction of legalized sports betting, Missouri enacted the Missouri Fantasy Sports Consumer Protection Act in 2016, which regulates the fantasy sports industry.¹⁷⁵ While akin to sports gambling, the Act explicitly states that “[a] fantasy sports contest . . . does not constitute gambling for any purpose.”¹⁷⁶ Although there are elements of chance, fantasy sports contests are not considered “gambling” in Missouri because “[a]ll winning outcomes reflect in part the relative knowledge and skill of the participants.”¹⁷⁷

2. *The Direction of Sports Betting in Missouri*

Missouri is one of many states that has yet to pass a law legalizing sports gambling,¹⁷⁸ but it has taken steps towards legalization.¹⁷⁹ Since the *Murphy* decision, Missouri has introduced bills in both the House and Senate

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ MO. CONST. art. III, § 39(e).

¹⁷⁰ *Akin v. Missouri Gaming Comm'n*, 956 S.W.2d 261, 262 (Mo. 1997).

¹⁷¹ *Id.* at 264.

¹⁷² O'Connor, *supra* note 1, at 162.

¹⁷³ *Missouri Casinos*, WORLD CASINO DIRECTORY, <https://www.worldcasinodirectory.com/missouri> (last visited Oct. 25, 2019).

¹⁷⁴ MO. CONST. art. III, § 39(e).

¹⁷⁵ MO. REV. STAT. §§ 313.900-313.955 (2018).

¹⁷⁶ MO. REV. STAT. § 313.910 (2018).

¹⁷⁷ MO. REV. STAT. § 313.905(4)(b) (2018).

¹⁷⁸ Rodenberg, *supra* note 9.

¹⁷⁹ See S. 1009, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); S. 1013, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2406, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2535, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

that would legalize sports gambling in some form or another.¹⁸⁰ House member Bart Korman was the first to introduce a bill on January 30, 2018, in anticipation of the *Murphy* decision.¹⁸¹ Aside from the bills already introduced, another indication that Missouri may be moving towards legalizing sports gambling in some form is its legalization of daily fantasy sports in 2016.¹⁸² While daily fantasy sports are not considered games of chance and, therefore, not considered gambling,¹⁸³ daily fantasy sports are akin to other sports betting games. The relatedness of daily fantasy and sports betting suggests that Missouri is inching closer towards legalizing sports betting.

All of the bills currently introduced in the Missouri House and Senate authorize sports wagering in some form.¹⁸⁴ Each bill uniformly calls for regulation and oversight of the industry by the Missouri Gaming Commission.¹⁸⁵ In conjunction with Missouri's current gambling laws, the proposed legislation allows for sports wagering only on licensed excursion gambling boats.¹⁸⁶ The current bills are all relatively similar across the board.¹⁸⁷ Each bill seeks to add or delete provisions of chapter 313 RSMo., which contains statutes relating to "Licensed Gaming Activities."¹⁸⁸

IV. LEGALIZING SPORTS GAMBLING IN MISSOURI

Sports betting has a large number of benefits but some potential detriments as well. Before legislating, it is important to recognize the potential advantages and disadvantages of legalized sports betting. There are proponents and opponents of sports gambling, so there are important policy decisions that must be made before acting.

¹⁸⁰ See S. 1009, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); S. 1013, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2406, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2535, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

¹⁸¹ H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

¹⁸² MO. REV. STAT. §§ 313.900-313.955 (2018).

¹⁸³ MO. REV. STAT. § 313.910 (2018).

¹⁸⁴ See S. 1009, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); S. 1013, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2406, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2535, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

¹⁸⁵ See S. 1009, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); S. 1013, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2406, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2535, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

¹⁸⁶ See S. 1009, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); S. 1013, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2406, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2535, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

¹⁸⁷ See S. 1009, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); S. 1013, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2406, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2535, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

¹⁸⁸ See S. 1009, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); S. 1013, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2320, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2406, 99th Gen. Assemb., Reg. Sess. (Mo. 2018); H.R. 2535, 99th Gen. Assemb., Reg. Sess. (Mo. 2018).

A. Argument for Sports Gambling

While there are a few potential concerns related to sports gambling, there are also many benefits. Adam Silver, commissioner of the National Basketball Association, has already discussed some of the benefits and, prior to the *Murphy* decision, called legal sports betting “inevitable.”¹⁸⁹ In an interview with ESPN, Silver explained the positive impact sports betting could have on the professional sports leagues stating that “[i]f you have a gentleman’s bet or a small wager on any kind of sports contest, it makes you that much more engaged in it.”¹⁹⁰

Beyond fan engagement, sports gambling has provided a significant amount of revenue for the states that have legalized it.¹⁹¹ The illegal sports gambling industry in the United States is estimated to be worth roughly \$380 million.¹⁹² Legalizing the activity would redirect funds from illegal gambling syndicates to the states and professional sports leagues.¹⁹³ As a result of legal sports betting, “[t]he four major leagues are projected to generate combined revenues of over \$4.2 billion per year through TV advertising, sponsorship, data/product revenue, media rights, merchandise, and ticket sales.”¹⁹⁴

Countries like Canada that have some form of legalized sports betting have seen an increase in revenue along with job creation and a decrease in criminal activity.¹⁹⁵ Sports gambling has the potential to generate revenue in the United States without cutting spending or increasing taxes.¹⁹⁶ With respect to job creation, additional casino employees will be needed to manage the sports books.¹⁹⁷ Further, the illegal sports gambling market is heavily connected to organized crime and legalizing the activity could substantially detract from the illegal market.¹⁹⁸

Outside of Canada, sports betting has seen enormous success in Britain and other European countries.¹⁹⁹ In many European countries, “gambling is

¹⁸⁹ David Purdum, *Adam Silver: Betting is ‘Inevitable,’* ESPN (Sept. 4, 2014), http://www.espn.com/chalk/story/_/id/11466692/nba-commissioner-adam-silver-says-sports-betting-inevitable.

¹⁹⁰ *Id.*

¹⁹¹ Joshua Winneker, Ira Sprotzer & Lindsay Demery, *Sports Gambling and the Expanded Sovereignty Doctrine*, 13 VA. SPORTS & ENT. L.J. 38, 38 (2013).

¹⁹² Patrick Doughty, *Pound for Pound: A Legal Analysis of the Gambling, Alcohol, and Taxation Issues the NFL Must Weigh as it Expands to London*, 22 JEFFREY S. MOORAD SPORTS L.J. 593, 602 (2015).

¹⁹³ Andrew Vacca, *Sports Betting: Why the United States Should Go All In*, 11 WILLAMETTE SPORTS L.J. 1, 10 (2014).

¹⁹⁴ AMERICAN GAMING ASSOCIATION, *HOW MUCH DO LEAGUES STAND TO GAIN FROM LEGAL SPORTS BETTING?* (2018), <https://www.americangaming.org/wp-content/uploads/2018/10/Nielsen-Research-All-4-Leagues-FINAL.pdf>.

¹⁹⁵ Vacca, *supra* note 193, at 8.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 11.

¹⁹⁸ *Id.* at 12-13.

¹⁹⁹ Tariq Panja, *Is Britain the Future of U.S. Sports Betting?*, NYTIMES (May 14, 2018), <https://www.nytimes.com/2018/05/14/sports/sports-betting-england.html>.

as much a part of the sports culture as wearing the home team's jersey to the game."²⁰⁰ Using Europe as an example, the United States, and Missouri in particular, has the potential to exceed the results seen overseas. In contrast to many European countries, whose main source of gambling revenue derives from soccer, the United States "has a far more diverse sports market, with five major professional sports leagues, plus college sports."²⁰¹ Many European Premier League soccer teams generate millions of dollars in revenue from official betting partnerships alone.²⁰² If each major professional sports team began partnering with betting sponsors, the potential revenue is enormous.

Legal or not, sports betting has been immensely popular for years.²⁰³ One of the country's favorite times of the year to place sports bets is during the month of March. It is estimated that over \$2.5 billion is bet during March Madness each year.²⁰⁴ March Madness is so popular in the United States that President Obama used to make his March Madness selections each year during a live segment on ESPN.²⁰⁵ Although President Obama did not place wagers on his selections or endorse sports betting in any way, the popularity of March Madness shows the pervasiveness of sports in American society today. The revenue generated from sports gambling is already substantial, but it always has the potential to grow if properly regulated.

B. Addressing Sports Gambling Concerns

Opponents of gambling have cited a number of negative effects spawned by the activity.²⁰⁶ Some professional sports league representatives believe that legalized sports gambling may lead fans to think that the games are being played with less integrity.²⁰⁷ In fact, a Senate Report published prior to the enactment of PASPA explicitly stated that one of the original purposes of the legislation was to "maintain the integrity of our national pastime."²⁰⁸ Many of the sports league executives are concerned that sports betting will make fans believe that officials and players will begin match-fixing.²⁰⁹

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Nicholas Burkhardt & Dylan Welsh, *The Legalization of Sports Gambling: An Irreparable Harm or the Beginning of Unprecedented Growth?*, 21 SPORTS L.J. 145, 146 (2014).

²⁰⁴ *Id.* "March Madness" is the term used to describe the NCAA national basketball tournament which is typically held during the month of March.

²⁰⁵ *Id.*

²⁰⁶ O'Connor, *supra* note 1, at 169-174 (discussing potential negative effects of gambling such as compulsive gambling and increased crime rates).

²⁰⁷ Doughty, *supra* note 192, at 599.

²⁰⁸ S. REP. NO. 102-248, at 4 (1991).

²⁰⁹ Doughty, *supra* note 192, at 599.

Match-fixing and athlete corruption have been and will always be concerns with regard to sports betting,²¹⁰ but that threat exists whether or not sports betting is legal. There have been a number of reported cases of athletes and referees throwing games despite the illegality of sports betting.²¹¹ While there may be a slight deterrent to participate in illicit gambling schemes if the activity is illegal, the monetary benefits of legalized sports gambling alone far outweigh any deterrent factor.

Another related concern is that legalized sports gambling may “undermine[] the public confidence in the character of professional and amateur sports.”²¹² In support of PASPA, Paul Tagliabue, former commissioner of the NFL, condemned sports gambling.²¹³ He predicted that legalized sports betting would “come to represent the fast buck, the quick fix, [and] the desire to get something for nothing.”²¹⁴

While there is a small likelihood that sports betting may undermine the character of professional sports, today, American society overwhelmingly supports the activity,²¹⁵ which shows that sports fans, as a whole, do not believe that the character of sports is in any danger. There are far worse threats to the character of professional and amateur sports than sports betting.²¹⁶

There is a legitimate concern that some who participate will become addicted to sports betting, but the same risk is present with any form of gambling. Many states, including Missouri, currently have laws in place²¹⁷ and resources available²¹⁸ for those with a gambling addiction. Unfortunately, many of those who suffer from gambling addiction would participate in the activity whether it was legal or not.²¹⁹

²¹⁰ John Holden, *Match Fixing and Other Manipulations in Sports Betting: A Primer*, LEGAL SPORTS REPORT (June 4, 2018), <https://www.legalsportsreport.com/20922/match-fixing-primer-sports-betting>.

²¹¹ *Donaghy Sentenced to 15 Months in Prison in Gambling Scandal*, ESPN (July 29, 2008), <http://www.espn.com/nba/news/story?id=3509440> (detailing the 2007 NBA betting scandal where NBA referees manipulated games for favorable results at a time well prior to the *Murphy* decision). “Throwing games” refers to the act of losing a sporting contest on purpose.

²¹² S. REP. NO. 102-248, at 5 (1991).

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Norman, *supra* note 76.

²¹⁶ Michael McCarthy, *Sports, Crime and Money: Athletes Gone Wrong*, CNBC (Aug. 9, 2013, 4:20 PM), <https://www.cnn.com/id/100942614> (detailing the legal troubles of a number of professional athletes).

²¹⁷ MO. REV. STAT. §§ 572.010-572.125 (2018); MO. REV. STAT. §§ 313.004-313.955 (2018).

²¹⁸ *Compulsive Gambling and Treatment Services*, MO. DEP’T OF MENTAL HEALTH, <https://dmh.mo.gov/alcohol-drug/gambling> (last visited Oct. 25, 2019).

²¹⁹ *Choosing the Top Private Gambling Addiction Treatment Center*, REHABS.COM, <https://luxury.rehabs.com/gambling-addiction> (last visited Oct. 25, 2019) (noting that “[t]he gambler may do illegal things to fuel the addiction”).

Those opposed to legalized sports gambling are also concerned that “[s]ports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling.”²²⁰ Many believe that sports gambling has the potential to have a negative effect on younger generations.²²¹ To that end, one major reason for the passage of PASPA was because “[s]tate-sanctioned sports gambling will promote gambling among our Nation’s young people.”²²²

While sporting events in many respects are meant to appeal to a younger generation, there is no reason to believe that offering regulated sports betting would disrupt the sanctity of any particular sport. Allowing those of age to bet on sports is no more harmful than allowing those over the age of twenty-one to purchase alcohol at games. Those who are old enough will have the opportunity to participate in sports betting schemes, but those who are not will still be able to enjoy the games in the same way they had before.

C. Regulating Sports Gambling in Missouri

The negative effects of sports betting are minimal compared to the benefits, which is why Missouri should legalize the activity. Further, the negative effects of sports betting may still occur even if the activity is illegal.²²³ Missouri is in an advantageous position because the state has the opportunity to learn from other states’ approaches to legalized sports betting and model successful approaches, while avoiding less successful methods. One of the benefits of federalism is that it allows some states to act as laboratories of experimentation for other states.²²⁴

Missouri should take advantage of a time in history where states have the opportunity to regulate an activity that can bring in millions of dollars in state revenue. In order to prevent a drastic overexpansion of legal gambling rights within the state, Missouri should begin by allowing in-person sports wagering at licensed casinos to those over the age of twenty-one. The state will then have the ability to move forward with other legislation as the need arises. Offering sports gambling within the state will provide those who wish

²²⁰ S. REP. NO. 102-248, at 5 (1991).

²²¹ *Id.*

²²² *Id.*

²²³ Luke Kerr-Dineen, *One Amazing Stat About All the Illegal Money Americans are Gambling on 2017 March Madness*, FOR THE WIN: USA TODAY (Mar. 14, 2017, 8:01 AM), <https://ftw.usatoday.com/2017/03/one-amazing-stat-about-all-the-illegal-money-americans-are-gambling-on-2017-march-madness> (estimating that \$10.1 billion was illegally bet on March Madness in 2017).

²²⁴ *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeiz, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).

to partake the ability to do so without traversing an illegal marketplace. Those who still wish to abstain from sports betting are in no way forced to participate in the activity.

Missouri is different from each of the states to legalize sports betting so far. There are policy issues and other matters that may have worked in other states but will not work for Missouri. For instance, Nevada's broad authorization of sports betting would likely not work the same in Missouri because of cultural, economic, and geographical reasons to name a few.²²⁵ In considering how Missouri should regulate the sports gaming industry, it is important to recognize the general policies of the state. As noted above, Missouri voters have swayed back and forth on the idea of gambling in general.²²⁶ Notwithstanding a fierce legal battle in the 1990s, Missouri, as a policy matter, has decided it best to limit casino gambling within the state to riverboats on the Missouri and Mississippi rivers.²²⁷ As such, sports betting should be reserved to these licensed casinos.

Some states have allowed sports betting outside the confines of casinos, but, at least initially, Missouri should limit sports betting to in-person wagers at licensed casinos. Missouri history has shown some distaste for gambling, and the riverboat casino limitation is an example of a compromise that allowed betting within the state but only in certain circumstances.²²⁸ Small steps should be taken towards legalizing the activity in order to better alleviate complications that may arise along the way. Sports betting is uncharted territory and should be approached carefully with an eye for detail. Expanding sports betting throughout the state too quickly may cause problems, as this is an issue the legislature has not addressed for the past twenty-five years.

Initially allowing only in-person betting at licensed casinos makes regulation simpler and will make potential problems more easily addressable. Some states have already allowed online sports betting along with other forms of sports gambling outside of the confines of casinos.²²⁹ Explicitly legalizing online sports gambling in Missouri would not be initially appropriate, if at all, because the Missouri legislature has never spoken on the issue before.²³⁰ There are no current laws on the books regulating online gambling in Missouri.²³¹ If Missouri is to address online gambling, this should be done with careful regard to gambling as an entire industry and not just in regard to sports betting.

²²⁵ NEV. REV. STAT. §§ 462.015-462.125 (2018).

²²⁶ O'Connor, *supra* note 1, at 160.

²²⁷ MO. CONST. art. III, § 39(e).

²²⁸ MO. CONST. art. III, § 39(e); O'Connor, *supra* note 1.

²²⁹ See, e.g., N.J. STAT. ANN. §§ 5:12A-10-5:12A-19 (2018).

²³⁰ *Missouri Online Gambling*, GAMBLE ONLINE, <https://www.gambleonline.co/usa/missouri> (last visited Oct. 25, 2019).

²³¹ *Id.*

Further, Missouri's current gambling laws require an individual to be twenty-one years old before they are allowed to place a bet at a casino, and this age would be appropriate for sports betting as well.²³² While sports betting is akin to gambling in general, sports betting is slightly different because sports attract fans of all ages. Not to say that individuals below the age of twenty-one are not interested in gambling, but, as a whole, sports gambling has the potential to appeal to more individuals under the age of twenty-one than other forms of gambling. With that being said, if Missouri limits sports betting to in-person wagers at licensed casinos as recommended above, the age should stay at twenty-one.

Allowing individuals under twenty-one to enter casinos strictly for sports betting has the potential to create a number of problems. One major problem could be the service of alcohol and, in conjunction with the in-person betting limitation, it is much easier to verify someone's age in-person than it is online. In order to stay consistent with other gambling laws in the state and to promote the safety of those under the age of twenty-one, the legal age to bet on sports should be twenty-one in Missouri. As for concerns regarding players betting on sports, professional and amateur sports officials are more than capable of regulating their players and should be able to decide what is best for their league.

V. CONCLUSION

Sports gambling is, and will likely always be, a heavily debated issue in the United States. As with many things, the activity comes with a number of potential benefits and detriments. The history of gambling in the United States has shown that no matter how much the activity is either supported or opposed, there will always be a disagreement about the morality of it.²³³ If history is any indication, gambling and sports gambling will be most supported during times of economic downturn.²³⁴ There appears to be a correlation between the need for state revenue and the support of gambling in American society.

The United States is in a new era in terms of sports betting. States are now presented with an opportunity to act on an issue that has been beyond their control for the past twenty-five years. *Murphy v. NCAA* is a meaningful case, not only for proponents of sports gambling, but for supporters of federalism. *Murphy* may be the beginning of a future with more expansive state rights and sovereignty. States will now have more power to

²³² MO. REV. STAT. § 313.817 (2018).

²³³ Rose, *supra* note 11.

²³⁴ *Id.*

meaningfully legislate, especially with regard to difficult social issues that the U.S. government has previously regulated at the federal level.

Missouri is well-equipped to expand its current gambling laws to allow for certain forms of sports betting. Prior to the *Murphy* decision, the legislature had already acted in certain respects to move bills through the Missouri House and Senate. The revenue that sports betting could potentially generate would greatly benefit the state. Additionally, legalizing the activity has the potential to reduce illegal activity that currently plagues the state. Now that the opportunity is present, Missouri should move towards the legalization of sports betting as numerous other states have already done.