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Bet on It: Making the Case for Regulating Sports Wagering in Ohio

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Cover Page Footnote

I would first like to thank my family for their endless love and support during my time in law school. I would also like to thank my Comment Editor, Madison Rittley, who spent a great deal of time and energy assisting me throughout the writing process. I also would like to extend my gratitude to Professor Jeffrey Schmitt and Professor Ebony Davenport for their continued advice and assistance during the writing process. Lastly, I would like to thank the Cincinnati Bengals Front Office for their ongoing support over the years and for sparking my passion for sport law.

BET ON IT: MAKING THE CASE FOR REGULATING SPORTS WAGERING IN OHIO

*Emma Compton**

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* J.D. Candidate (expected May 2020) at the University of Dayton School of Law. I would first like to thank my family for their endless love and support during my time in law school. I would also like to thank my Comment Editor, Madison Rittley, who spent a great deal of time and energy assisting me throughout the writing process. I also would like to extend my gratitude to Professor Jeffrey Schmitt and Professor Ebony Davenport for their continued advice and assistance during the writing process. Lastly, I would like to thank the Cincinnati Bengals Front Office for their ongoing support over the years and for sparking my passion for sport law.

I. INTRODUCTION

“Pete Rose: Banned for Life.” In August 1989, headlines across the nation broadcasted the news that the infamous “Hit King” was banned from baseball shortly after Major League Baseball’s (“MLB”) private investigator uncovered evidence revealing Rose bet on several games.¹ The Senate responded to this investigation by introducing Bill 474 a year and a half later, which ultimately became the Professional and Amateur Sports Protection Act of 1992 (“PASPA”).² The league commissioners from the four major professional sports leagues in the United States, MLB, the National Football League (“NFL”), the National Hockey League (“NHL”), and the National Basketball Association (“NBA”), all testified before the subcommittee advocating for the Bill.³ Their statements placed strong emphasis on the negative effects sports gambling has on the leagues.⁴ Congress soon adopted PASPA, stating that sports gambling threatens the integrity and public confidence in professional and amateur sports by promoting suspicion about controversial plays and leading fans to believe the game was rigged whenever their team failed to beat the point spread.⁵

Following its enactment, PASPA was the subject of severe criticism and the subject of judicial proceedings and appeals for Congress to overturn or modify it.⁶ The State of New Jersey was an early critic of PASPA, challenging the constitutionality of the law.⁷ New Jersey continued arguing against PASPA in a series of cases that spanned over the next six years until the Supreme Court ruled in May 2018 that PASPA was unconstitutional because it commandeered State legislatures to enforce federal law in violation of the U.S. Constitution.⁸ Congress was no longer permitted to prevent the States from authorizing sports gambling.

The Supreme Court’s decision to strike down PASPA opened the door for the States to begin proposing and adopting legislation to legalize sports gambling within their borders. New Jersey, Delaware, Mississippi, and West Virginia wasted no time doing just that and have already implemented

¹ Kyle Wyant, Note, *Do Not Pass Go, Do Not Collect \$231 Million Dollars: How NCAA v. Governor of New Jersey Could Negatively Affect Nevada’s Monopoly on Sports Betting*, 7 UNLV GAMING L.J. 223, 226 (2017).

² *Id.*

³ COMM. ON THE JUDICIARY, 102ND CONG., REP. ON PROFESSIONAL AND AMATEUR SPORTS PROTECTION 248 (1991).

⁴ *Id.*

⁵ *Id.*

⁶ ANTHONY CABOT & KEITH MILLER, *SPORTS WAGERING IN AMERICA: POLICIES, ECONOMICS, AND REGULATION* 59 (UNLV Gaming Press, 2018).

⁷ See generally *Interactive Media Entm’t & Gaming Ass’n v. Holder*, No. 09-1301 (GEB), 2011 U.S. Dist. LEXIS 23383 (D.N.J. Mar. 7, 2011).

⁸ *Murphy v. NCAA*, 138 S. Ct. 1461, 1478 (2018).

laws legalizing sports betting, and other States are not far behind.⁹ On July 12, 2018, five Ohio State senators formally introduced a bill “[t]o express the intent of the General Assembly to develop and enact legislation legalizing sports wagering.”¹⁰ The following week, House Representative Dave Greenspan introduced Bill 714, which further solidified Ohio’s intent to enact such pro-sports wagering legislation.¹¹

Implementing sports wagering in Ohio would strengthen Ohio’s \$3.6 billion-dollar gaming industry.¹² However, lawmakers must be crafty in drafting legislation that effectively regulates sports wagering in Ohio to avoid the pitfalls that led to PASPA’s enactment in the first place. Senator Matthew Schuler urged that Ohio needs to look at best practices in the jurisdictions that have legal sports betting and further stated that he does not have all the answers from a regulatory perspective.¹³ Thus, this Comment seeks to advise Ohio on its journey to legalized sports wagering.

Following this introduction, Part II will examine the reasons for PASPA’s enactment, the statutory provisions, and the attacks against PASPA that ultimately led to the Supreme Court’s decision declaring PASPA unconstitutional. Part III will examine the policy and economic challenges that Ohio will encounter as it works toward effective regulation of sports gambling. Part IV will assess how States currently regulate sports gambling, look at the similarities and differences of these schemes, and propose which provisions Ohio should consult and adopt. Part V will discuss the recent bill that Ohio introduced laying out its plan for legalized sports wagering. Part VI will conclude that although there are several issues Ohio will face as it enacts sports wagering legislation, if Ohio effectively consults with the other States’ provisions, it has the ability to implement a successful scheme.

II. BACKGROUND

PASPA was the product of history, politics, debates, and the cultural and moral uncertainty that society had against gambling in general.¹⁴ In the

⁹ Ryan Rodenberg, *United States of Sport Betting: An Updated Map of Where Every State Stands*, ESPN (Aug. 2, 2019), http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-track-cr-all-50-states.

¹⁰ S.B. 316, 132nd Gen. Assemb., Reg. Sess. (Ohio 2018).

¹¹ H.B. No. 714, 132nd Gen. Assemb., Reg. Sess. (Ohio 2018). Subsequently, Ohio introduced Senate Bill 111. This bill will be discussed *infra* Part V.

¹² Press Release, Am. Gaming Ass’n, Ohio Casino Gaming Generates \$3.6 Billion in Annual Economic Impact (May 30, 2018), <https://www.americangaming.org/newsroom/press-releases/ohio-casino-gaming-generates-36-billion-annual-economic-impact>. The Ohio Casino Control Commission collected \$265.5 million in tax revenue in 2017. Jay Miller, *Legal Sports Betting Still A Ways Off*, CRAIN’S CLEVELAND BUSINESS (July 22, 2018), <https://www.crainscleveland.com/article/20180722/news/169146/ohio-takes-cautious-approach-legalizing-sports-betting>.

¹³ Laura Hancock, *As Ohio Considers Legalizing Sports Betting, Regulators Say Most Games Are on Black Market*, CLEVELAND.COM (July 18, 2018), https://www.cleveland.com/open/index.ssf/2018/07/as_ohio_considers_legalizing_s.html.

¹⁴ CABOT & MILLER, *supra* note 6, at 55.

mid-1970s, Nevada was the first to enter the sports gambling market when the Stardust Casino opened its Race and Sports Book; other casinos in Nevada followed suit, making sportsbooks a part of their operations.¹⁵ By the late 1980s and early 1990s, after other States saw Nevada's success in generating tax revenue from the sports betting market, they began to consider legalizing sports betting to alleviate budget pressures.¹⁶ At the same time, those who opposed sports gambling, including the major sports leagues and the National Collegiate Athletic Association ("NCAA"), began voicing their disapproval toward the spread of sports gambling in the United States.¹⁷ This opposition hit its peak after the wake of the Pete Rose gambling scandal when Commissioner A. Bartlett Giamatti concluded that Rose bet on baseball and announced Rose would receive a lifetime ban from MLB.¹⁸

Shortly after Giamatti's announcement, it was evident that those who were proponents of regulated sports gambling were losing the battle against those seeking to abolish it.¹⁹ Coincidentally, U.S. Senator Bill Bradley, a former All-American basketball player and member of an NBA Championship team, led the growing group of abolitionists.²⁰ On February 22, 1991, Senate Bill 474 was introduced, and a public hearing on the bill was held four months later where these abolitionists were given the chance to voice their disapproval of sports betting on a much bigger stage.²¹ According to Senator Bradley, at the same time Congress began debating Senate Bill 474, thirteen States were considering legislation that would permit sports gambling.²² The Senate Judiciary Report found that federal action was necessary to prevent the spread of sports wagering to those thirteen States because sports wagering produced "moral erosion," and the continued implementation of sports gambling schemes would cause a domino effect of

¹⁵ *Id.* at 56. A sportsbook is "a company or individual who accepts bets from individual sports bettors." Jeff Harris, *What Is a Sportsbook? (And How Does Such a Business Make Money?)*, GAMBLING SITES (June 9, 2018), <https://www.gamblingsites.org/blog/what-is-a-sports-book-and-how-does-such-a-business-make-money/>.

¹⁶ CABOT & MILLER, *supra* note 6, at 56.

¹⁷ *Id.* at 56–57 (stating that "sports betting was a corrupting influence that affected the character and integrity of the game" and would send mixed signals to young people).

¹⁸ *Pete Rose Chronology*, THE ASSOCIATED PRESS (Dec. 10, 2002), <https://www.myplainview.com/news/amp/Pete-Rose-Chronology-8827097.php>.

¹⁹ CABOT & MILLER, *supra* note 6, at 57 (stating that the moralist arguments led to strong efforts to outlaw or limit sports betting to professional sports in the early 1990s).

²⁰ Scott J. Gregory, Note, *Don't Bet on It? Economic and Legal Implications of Legalized Sports Betting and Daily Fantasy Sports in the United States*, 10 OHIO ST. BUS. L.J. 217, 220 (2016).

²¹ See COMM. ON THE JUDICIARY, 102ND CONG., REP. ON PROF'L AND AMATEUR SPORTS PROTECTION 248 (1991). Those who testified in favor of the Bill included Paul Tagliabue, commissioner of the NFL, Francis T. Vincent, Jr., commissioner of the MLB, David Stern, commissioner of the NBA; and Gil Stein, general counsel and vice president of the NHL. *Id.*

²² James C.W. Goodall, Note, *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, 1106 (2015).

this moral erosion.²³ Congress believed that it had to do all it could to keep sports “clean so that the fans, and especially young people, [could] continue to have complete confidence in the honesty of the players and the contests.”²⁴

Those who opposed PASPA were also vocal during the legislative hearing process.²⁵ First, challengers of PASPA, including the Department of Justice, believed that it intruded on the States’ rights by restricting their right to raise revenue in an effort to fund State programs.²⁶ They argued that the States should be able to determine how to raise revenue, and if they chose to do so through lotteries and wagering, this choice was only theirs to make.²⁷ In addition, critics cited to many constitutional concerns including the violation of federalism principles based on PASPA allowing sports leagues to enforce the provisions of the Act.²⁸ Third, because Nevada, Oregon, Delaware, and Montana were grandfathered in, opponents argued that PASPA would blatantly discriminate between the States because the four States would hold a Federal monopoly on lawful sports wagering and exclude the other States.²⁹ Lastly, they argued that PASPA would increase illegal wagering by giving organized crime and local bookies a monopoly over sports wagering in forty-six States.³⁰ Challengers reasoned that it only made sense to allow for revenue generation from sports wagering to flow from legalized sports gambling schemes, rather than from criminals.³¹ These arguments ultimately lost the battle. Congress’s ambition to regulate intrastate gambling by categorically prohibiting the States’ ability to regulate sports gambling succeeded, and PASPA came into being.³² Regardless of the enactment of PASPA, opposing parties continued to assert these arguments in forthcoming judicial proceedings.³³

A. Key Provisions of PASPA

PASPA was signed into law and provided Congress with broad coverage to proscribe sports gambling in the States.³⁴ Section 3702 contained

²³ COMM. ON THE JUDICIARY, 102ND CONG., REP. ON PROF’L AND AMATEUR SPORTS PROTECTION 248 (1991) (finding that “the moral erosion [sports gambling] produces cannot be limited geographically. Once a State legalizes sports gambling, it will be extremely difficult for other States to resist the lure.”).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* (illustrating that State-run lotteries generated over \$20.7 billion in gross revenue and \$7.8 billion in net revenue for important State programs such as education, economic development and senior citizen programs).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Goodall, *supra* note 22, at 1106.

³³ See *infra* Part II(C) and II(D).

³⁴ See 28 U.S.C. § 3702 (2012). Congress defined professional and amateur sports organizations, as well as “governmental entity,” broadly to ensure that all sports activities and entities were within the scope of the Act. See *id.* § 3701.

PASPA's basic prohibitions, making it unlawful for a State or its subdivisions "to sponsor, operate, advertise, promote, license, or authorize by law or compact . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on" amateur or professional sporting events, and for "a person to sponsor, operate, advertise, or promote" those gambling schemes if done "pursuant to the law or compact of a governmental entity."³⁵ PASPA allowed the Attorney General or any professional or amateur sports organization to commence a civil action against a State "whose competitive game is alleged to be the basis of such violation."³⁶

In addition, Section 3704 of PASPA set out "Grandfather" provisions which allowed certain States to continue their current sports gambling operations and provided a ten-year period to pass a law which would allow sports wagering in the State.³⁷ This provision allowed Nevada's sportsbooks, Oregon and Delaware's limited sports lotteries, and Montana's limited sports pool betting to remain in effect.³⁸ It also gave New Jersey a one-year window to legalize sports gambling before it would face a PASPA violation.³⁹ Congress explained that it created this exception because it did not want to threaten the economy of Nevada and other States who had lawful sports gambling schemes; these States had depended on legalized private gambling—including sports gambling—as an essential industry for decades.⁴⁰ This leads to the question: if Congress saw sports gambling as an essential industry in Nevada and these other States, then why would it prevent the other forty-six States from fully implementing sports gambling schemes and utilizing sports gambling to help generate revenue and close budget deficits?⁴¹

B. Criticisms of PASPA

PASPA continued to be the object of severe criticism even after its

³⁵ *Id.* § 3702(1), (2).

³⁶ *Id.* § 3703.

³⁷ *Id.* § 3704.

³⁸ Eric Meer, Note, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 UNLV GAMING L.J. 281, 287 (2011). A "sports pool" means "the business of accepting wagers on any sports event by any system or method of wagering." N.J. STAT. ANN. § 5:12-1 (West 2012).

³⁹ Meer, *supra* note 38, at 287. Some believed this provision was designed specifically with Atlantic City, New Jersey casinos in mind. David D. Waddell & Douglas L. Minke, *Why Doesn't Every Casino Have a Sports Book?*, GLOBAL GAMING BUS (2008), <http://www.rmlegal.com/docs/media/Why%20doesnt%20every%20casino%20have%20a%20sports%20betting.pdf>. However, New Jersey failed to implement legislation within PASPA's one-year window. *Id.*

⁴⁰ Waddell & Minke, *supra* note 39.

⁴¹ New Jersey similarly argued that PASPA's differential treatment amongst the States violated the principles of equal sovereignty. *NCAA v. Christie (Christie II)*, 926 F. Supp. 2d 551, 577 (D.N.J. 2013). Other scholars agreed with New Jersey's argument. See Anthony G. Galasso, Jr., Note, *Betting Against the House (and Senate): The Case for Legal, State-Sponsored Sports Wagering in a Post-PASPA World*, 99 KY. L.J. 163, 167 (2010) ("It is difficult to understand why an exception was carved out for these States if sports wagering is indeed as dangerous as the majority of Congress believed."); Michael Welsh, Note, *Betting on State Equality: How the Expanded Equal Sovereignty Doctrine Applies to the Commerce Clause and Signals the Demise of the Professional and Amateur Sports Protection Act*, 55 B.C. L. REV. 1009, 1013 (2014) (arguing that PASPA is unconstitutional under equal sovereignty).

enactment in 1992.⁴² Many argued that PASPA did not accomplish the primary purposes that led to its enactment in the first place.⁴³ First, PASPA's aim to squash the spread of sports gambling was unsuccessful as individuals found other avenues to place bets.⁴⁴ According to the National Gaming Impact Study Commission, illegal sports wagering proved to be one of the most widespread and popular areas of gambling in America, as betting ranged from \$80 billion to \$380 billion yearly across the United States.⁴⁵ Congress's objective to prevent the spread of illegal sports gambling actually had the opposite effect as bettors now relied on the illegal market to place bets.⁴⁶ These illegal sports gambling providers recognized the strong demand for sports wagering and effectively profited from PASPA's prohibition on the States.⁴⁷

In addition, illegal sports gambling increased significantly as the internet made sportsbooks and gambling sites easily accessible.⁴⁸ Between 2001 and 2005, online sports gambling saw an almost \$2.6 billion increase in revenue.⁴⁹ Eighty percent of profits from internet gambling came solely from the United States.⁵⁰ Thus, instead of the States pocketing these profits for their own benefit, other providers were doing so through illegal measures. This evidence also acknowledged that the public perception of wagering had changed from one of great disapproval to one of understanding and continued acceptance.⁵¹ No matter whether PASPA was in place or not, people were still finding ways to place their bets and doing so through illegal methods.⁵²

Congress's other basis for PASPA, discouraging young people from gambling, also encountered weaknesses. Just as the general population found ways to gamble, young people still had numerous avenues to gamble illegally, and PASPA did nothing to curb this activity.⁵³ Research indicated that in 2012, "[h]alf of Americans aged 16 and older [had] placed a bet on sports"

⁴² Wyant, *supra* note 1, at 229; Goodall, *supra* note 22, at 1108; Meer, *supra* note 38, at 293–98.

⁴³ Meer, *supra* note 38, at 293.

⁴⁴ *Id.* at 294.

⁴⁵ NAT'L GAMBLING IMPACT STUDY COMM'N REP. 1, 10 (1999), <https://govinfo.library.unt.edu/ngisc/reports/3.pdf> (last visited Jan. 15, 2020) (asserting that sports wagering "is easy to participate in, widely accepted, very popular, and, at present, not likely to be prosecuted").

⁴⁶ Meer, *supra* note 38, at 294.

⁴⁷ See *New Report Says: End the Failing Ban on Sports Betting*, AM. GAMING ASS'N (Mar. 2, 2017), <https://www.americangaming.org/newsroom/press-releases/new-report-says-end-failing-ban-sports-betting> (asserting that the 2016 NCAA Men's Basketball Tournament resulted in \$9.2 billion in bets, and only \$292 million of the \$9.2 billion was bet legally).

⁴⁸ Dylan Oliver Malagrino, *Off the Board: NCAA v. Christie Challenges Congress to "Move the Line" on the Professional and Amateur Sports Protection Act*, 118 PENN ST. L. REV. 375, 383 (2013).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Nat'l Gambling Impact Study Comm'n Rep., *supra* note 45, at 2.

⁵² See Meer, *supra* note 38, at 294; *New Report Says: End the Failing Ban on Sports Betting*, *supra* note 47.

⁵³ Meer, *supra* note 38, at 297–98.

and “5% of people aged 21 to 29 [had] bet online.”⁵⁴ Also, two-thirds of individuals in their twenties considered sports betting to be essentially the same as buying a lottery ticket, and forty-one percent considered sports betting on the internet to be harmless.⁵⁵ Even with PASPA in place, young people were still engaged in sports wagering, and the continued increase in access to technology only made doing so much easier for them.⁵⁶ PASPA’s ban on sports wagering had no effect in the wake of a boom of technology that took place after its enactment as young people were still able to access technology and place bets online.⁵⁷ As regulating the use of gambling websites saw several obstacles, many argued that a repeal of PASPA would allow the States to regulate technology by limiting an individual’s ability to offer bets.⁵⁸ In addition, it would allow the States to address the issues of youth gambling by implementing regulations similar to those already in place for other gambling activities.⁵⁹

PASPA also failed to effectively preserve the integrity of professional and amateur sports. Many argued that PASPA supporters were naïve to think that legalized sports wagering would damage the integrity of the game because many athletes—even league officiators—in professional and collegiate athletics were involved in widely publicized scandals.⁶⁰ When balancing the effect of these actions in comparison to the effect of sports wagering on the game, sports wagering did not affect the integrity of the game more than cases of assault, steroid scandals, and salary disputes.⁶¹

In addition, although professional sports organizations took a stand against sports wagering by supporting PASPA, organizations such as the NFL still continued to contract with broadcasting networks who would offer analysis and predictions of games, a seemingly contradictory action to its attitude against sports wagering.⁶² NBA Commissioners David Stern and Adam Silver also appeared to change their positions on sports wagering by opening a new dialogue about the possibility of legalized sports wagering and

⁵⁴ Peter Keating, *How Much Sports Gambling Is Going on Out There?* ESPN (July 10, 2012), <http://www.espn.com/espn/magazine/archives/news/story?page=magazine-20030804-article23>. This percentage was far higher than the 1% of individuals aged 60-plus who were betting online. *Id.*

⁵⁵ *Id.*

⁵⁶ *See id.*

⁵⁷ Meer, *supra* note 38, at 298.

⁵⁸ Malagrino, *supra* note 48, at 384.

⁵⁹ Meer, *supra* note 38, at 297–98. *See generally* Minimum Age to Gamble in the United States of America, WORLD CASINO DIRECTORY, https://www.worldcasinodirectory.com/gambling_age_chart.htm (last visited Jan. 15, 2020).

⁶⁰ Michael Levinson, *A Sure Bet: Why New Jersey Would Benefit from Legalized Sports Wagering*, 13 SPORTS L.J. 143, 176–77 (2006); *see also* Donaghy Sentenced to 15 Months in Prison in Gambling Scandal, ESPN (July 30, 2008), <http://www.espn.com/nba/news/story?id=3509440>. This scandal “magnified not only the inability of one of the major professional leagues to police its own insiders but also the inability of PASPA to protect professional sports’ integrity.” Meer, *supra* note 38, at 296.

⁶¹ Levinson, *supra* note 60, at 76–77.

⁶² Delaware Governor Claims NFL Promotes Gambling, GAMBLING 911 (Apr. 1, 2009), <https://www.gambling911.com/gambling-news/delaware-governor-claims-nfl-promotes-gambling-040109.html> (arguing that the NFL’s television contracts effectively promoted gambling).

its potential as a new opportunity for revenue generation.⁶³ Now, as other scandals appeared to outweigh the effects sports gambling would have on the integrity of the game, and in light of the NFL's implicit tolerance and the NBA's explicit open-mindedness for the potential legalization of sports gambling, the rationale for PASPA's enactment in the first place continued to chip away.

In reality, Congress's motivations for enacting PASPA could have been effectively monitored by allowing the States to regulate sports wagering within its borders.⁶⁴ Those who opposed PASPA fought hard to provide evidence that this was the case.⁶⁵ In addition to countering the justifications for PASPA's enactment, those opposed also continued to argue that PASPA was a clear violation of the U.S. Constitution.⁶⁶ A string of cases followed.

C. *The Road to Murphy v. NCAA*

Many States attempted to circumvent PASPA by passing laws that would allow for sports wagering, but in a limited context; however, their efforts were unsuccessful.⁶⁷ New Jersey was at the forefront of litigation against PASPA after it missed its opportunity to implement a sports wagering scheme.⁶⁸ When its first constitutional challenge failed in *Interactive Media Entertainment and Gaming Association, Inc. v. Holder*, New Jersey began to feverishly prepare a constitutional amendment that would align with PASPA.⁶⁹ After implementing legislation authorizing the State to permit and regulate sports wagering in Atlantic City casinos and horse racetracks, the major sports leagues and NCAA sued New Jersey asserting that the law violated the clear mandates of PASPA and was pre-empted.⁷⁰ In *Christie I*,

⁶³ Ian Thomsen, *Weekly Countdown: Stern Open to Legalized Betting, Rule Changes*, SPORTS ILLUSTRATED (Dec. 11, 2009), <https://www.si.com/more-sports/2009/12/11/weekly-countdown>; James Herbert, *Adam Silver: Legalized Sports Betting 'Inevitable' in More States*, CBS SPORTS (Sept. 4, 2014, 6:59 PM), <https://www.cbssports.com/nba/news/adam-silver-legalized-sports-betting-inevitable-in-more-states/>; see also Juan Carlos Blanco, *Is the NFL Really Coming Around on Sports Betting?* PLAY USA (Apr. 4, 2018), <https://www.playusa.com/nfl-sports-betting-opinion/> ("[A]ll of the major sports leagues are now openly – if somewhat begrudgingly – acknowledging that generational change with respect to legalized wagering.").

⁶⁴ See Meer, *supra* note 38, at 298.

⁶⁵ Wyant, *supra* note 1, at 229; Meer, *supra* note 38, at 293–98; Goodall, *supra* note 22, at 1108–10.

⁶⁶ Thomas L. Skinner III, Note, *The Pendulum Swings: Commerce Clause and Tenth Amendment Challenges to PASPA*, 2 UNLV GAMING L.J. 311, 342 (2011).

⁶⁷ Timothy Furman, Comment, *Going All In: New Jersey and the Sports Betting Landscape*, 14 DEPAUL BUS. & COMM. L.J. 111, 114–15 (2015). See generally *Office of the Comm'r of Baseball v. Markell*, 579 F.3d 293 (3d Cir. 2009).

⁶⁸ CABOT & MILLER, *supra* note 6, at 62–63.

⁶⁹ See generally *Interactive Media Entm't & Gaming Ass'n v. Holder*, No 09-1301 (GEB), 2011 U.S. Dist. LEXIS 23383 (D.N.J. Mar. 7, 2011). New Jersey Thoroughbred Horseman Associations Senator Raymond Lesniak asserted that PASPA violated the Commerce Clause, Equal Protection Clause, and the First, Fifth, Tenth, and Fourteenth Amendments. *Id.* at *4–5. The court did not reach these arguments for standing reasons and stated that only the State of New Jersey could assert the Tenth Amendment violation. *Id.* at *23, *32.

⁷⁰ *NCAA v. Christie (Christie I)*, 926 F. Supp. 2d 551, 556 (D.N.J. 2013), *aff'd*, 730 F.3d 208 (3d Cir. 2013), *cert. denied*, 134 S. Ct. 2885 (2014).

New Jersey revived its constitutional arguments from *Interactive Media* and those made during the legislative hearings on PASPA.⁷¹ It argued that PASPA was an unconstitutional and improper use of Congress's Commerce Clause powers, violated the anti-commandeering principle with respect to the Tenth Amendment, and was a violation of equal sovereignty of the States.⁷² The district court struck down these arguments and held that Congress had acted within its powers under the Constitution to enact PASPA.⁷³

In affirming the district court's decision, the Third Circuit's rationale hinged on the two anti-commandeering precedent cases.⁷⁴ The anti-commandeering doctrine was introduced to further the Constitution's interest in federalism by protecting the sovereignty of the States; the doctrine prevented Congress from commanding the States to act.⁷⁵ The Third Circuit stated that PASPA was not an affirmative command for the States to enact or carry out a federal scheme but only operated as a law of preemption, stopped the States from doing something, and gave the States options.⁷⁶ Contrary to the decision in *New York v. United States*, the States were not compelled to enact a regulation program or expend resources if they chose not to legislate; such an instruction would have operated as a command for the States to choose.⁷⁷ Under PASPA, a State could repeal its sports wagering ban—allowing for unregulated sports wagering—or choose to keep a complete ban on sports wagering.⁷⁸ The court stated that even though these choices were not easy ones to make, they were nowhere near as coercive as the provisions in *New York* because PASPA only prevented the States from doing something they might have wanted to do—authorize sports wagering—and were not punitive in nature.⁷⁹ The court also distinguished PASPA from the provisions struck down in *Printz v. United States* and reasoned that PASPA did not contain directions requiring the States to address certain problems or command the States' officers to enforce federal regulations.⁸⁰ Lastly, the court was concerned with the idea that affirmative commands could be recast as prohibitions, which would open the door for many acts characterized as prohibitions to be struck down under the anti-commandeering doctrine.⁸¹ Its

⁷¹ *Id.* at 557–58.

⁷² *Id.*

⁷³ *Id.* at 554.

⁷⁴ See *New York v. United States*, 505 U.S. 144, 147 (1992) (holding unconstitutional a provision because it forced the State government to regulate according to instructions of Congress); *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding unconstitutional federal legislation compelling the States to administer or enforce federal regulatory programs).

⁷⁵ Tyler Valeska, *Reverse Line Movement: How the Third Circuit's Decision in National Collegiate Athletic Association v. Governor of New Jersey Contravenes the Anti-Commandeering Doctrine*, 10 NW J.L. & SOC. POL'Y, 461, 469–71 (2015).

⁷⁶ *NCAA v. Governor of New Jersey (Christie I)*, 730 F.3d 208, 233, 237 (3d Cir. 2013).

⁷⁷ *New York v. United States*, 505 U.S. 144, 174–177 (1992); *Christie I*, 730 F.3d at 231–34.

⁷⁸ *Christie I*, 730 F.3d at 233.

⁷⁹ *Id.* at 233–34.

⁸⁰ *Id.* at 231.

⁸¹ *Id.* at 233.

ruling limited the reach of the anti-commandeering doctrine in a way that would only strike down provisions that were overly intrusive and extraordinary in nature, and the provisions in PASPA did not meet this heightened requirement.⁸²

After the decision in *Christie I*, New Jersey legislators began to get crafty in an effort to square up against PASPA. If PASPA allowed for a State to repeal its laws prohibiting sports wagering, New Jersey could indirectly offer sports wagering within its borders by repealing its laws banning such conduct.⁸³ New Jersey chose this route, but instead only partially repealed its sports betting laws.⁸⁴ Like clockwork, after Governor Christie signed this provision into law, the leagues sued and asserted that New Jersey's partial repeal violated PASPA.⁸⁵ In *Christie II*, the district court ruled that PASPA preempted New Jersey's partial repeal because though it was "styled as a *partial repeal*, the 2014 Law [had] the same primary effect of the 2012 Law—allowing sports wagering in New Jersey's casinos and racetracks" under certain circumstances.⁸⁶ On appeal, the Third Circuit affirmed the district court's ruling.⁸⁷ The court stated that it would have had a hard time finding a violation had the 2014 Law repealed all prohibitions against sports gambling; however, the law selectively granted permission to certain entities to engage in sports gambling, while others were still prohibited by other provisions of New Jersey law.⁸⁸ Thus, the 2014 Law did not act as a repeal but was an authorization prohibited by PASPA.⁸⁹

Although the Third Circuit again ruled against New Jersey, there was no hiding the fact that *Christie II* was on a much different course than *Christie I*. First, the judge who wrote the majority opinion in *Christie I* dissented in *Christie II*.⁹⁰ In addition, the Third Circuit vacated the decision and granted a motion for rehearing *en banc*, a step that occurs in less than one percent of the cases that are decided by panels in the Third Circuit.⁹¹ The *en banc* decision was quite uneventful, as it still held PASPA constitutional.⁹² The

⁸² *Id.* at 240.

⁸³ CABOT & MILLER, *supra* note 6, at 68–69.

⁸⁴ S. 2460, 216th Leg. (N.J. 2014) (stating the 2014 law "partially repeal[ed] the prohibitions, permits, licenses, and authorizations concerning wagers on professional, collegiate, or amateur sports contests or athletic events"). The legislative statement quotes portions of the *Christie I* decision including that the Third Circuit "does 'not read PASPA to prohibit New Jersey from repealing its ban on sports wagering' . . . [and] 'it is left up to each state to decide how much of a law enforcement priority it wants to make of sports gambling, or what the exact contours of the prohibition will be.'" *Id.*

⁸⁵ NCAA v. Christie (*Christie II*), 61 F. Supp. 3d 488, 495 (D.N.J. 2014), *aff'd*, 799 F.3d 259 (3d Cir. 2015).

⁸⁶ *Id.* at 505.

⁸⁷ NCAA v. Christie (*Christie II*), 799 F.3d 259, 268 (3d Cir. 2015).

⁸⁸ *Id.* at 266.

⁸⁹ *Id.*

⁹⁰ *Id.* at 268 (arguing that a partial repeal does not amount to an authorization, and the majority relies on this false equivalence).

⁹¹ CABOT & MILLER, *supra* note 6, at 70.

⁹² See generally NCAA v. Governor of New Jersey, 832 F.3d 389 (3d Cir. 2016).

decision only clarified the law in *Christie II* and retreated back to language that was used in the *Christie I* decision.⁹³ However, the Supreme Court appeared to have been keeping a close eye on the case's progression through the Third Circuit and saw the need to clear up the anti-commandeering doctrine once and for all; the Court granted the petition for writ of certiorari, and New Jersey was on the verge of prevailing in a hard-fought battle.⁹⁴

D. *Murphy v. NCAA*

New Jersey's unrelenting battle reached its peak when the Supreme Court decided the important constitutional question in *Murphy v. NCAA*.⁹⁵ Prior to the decision in *Murphy*, the oral arguments indicated that many of the Justices were skeptical of PASPA's constitutionality.⁹⁶ For example, Justice Kennedy argued that PASPA left in place a State law that the State and citizens of the State did not want but were required to obey at the compulsion of the Federal Government.⁹⁷ Following oral arguments and after six years battling it out in court, New Jersey finally succeeded when the Supreme Court announced its decision on May 14, 2018.⁹⁸

In a 6-3 decision, the Court ruled that PASPA's provision which prohibited State authorization of sports gambling, violated the anti-commandeering rule because it "unequivocally dictat[ed] what a state legislature may and may not do."⁹⁹ This fact was true under either the Court's interpretation or the one advocated by the Respondents, the NCAA and United States, as *amicus curiae*, because State legislatures were put in direct control of Congress.¹⁰⁰ The Court struck down the Respondent's argument that Congress could not compel a State to enact legislation, but could prohibit a State from enacting new laws; the Court rendered this distinction empty.¹⁰¹ It articulated that "[i]t was a matter of happenstance that the laws challenged

⁹³ CAROT & MILLER, *supra* note 6, at 71-77.

⁹⁴ *Christie v. NCAA*, 137 S. Ct. 2327, 2328 (2017).

⁹⁵ See generally *Murphy v. NCAA*, 138 S. Ct. 1461 (2018). By the time the case reached the Supreme Court, Phillip D. Murphy had taken over as Governor of New Jersey.

⁹⁶ Transcript of Oral Argument at 31, 33, 36, *Christie v. NCAA*, 137 S. Ct. 2327 (2017) (No. 16-476).

⁹⁷ *Id.* at 31.

⁹⁸ *Murphy*, 138 S. Ct. at 1478.

⁹⁹ *Id.* at 1478.

¹⁰⁰ *Id.* The Respondents argued that the word "authorize" should be read more narrowly and that the primary definition—"to empower; to give right or authority to act; to endow with authority"—should control. *Id.* at 1473. The Court believed that New Jersey's (Petitioner) interpretation—"any state law that has the effect of permitting sports gambling, including, a law totally or partially repealing a prior prohibition, amounts to an authorization"—was correct. *Id.* at 1474. The Court stated the State-law landscape at the time of PASPA's enactment made such an interpretation clear:

At that time, all forms of sports gambling were illegal in the great majority of States, and in that context, the competing definitions offered by the parties lead to the same conclusion. The repeal of a state law banning sports gambling not only 'permits' sports gambling ([P]etitioners' favored definition); it also gives those now free to conduct a sports betting operation the 'right or authority to act'; it 'empowers' them ([R]espondents' and the United States's definition).

Id. at 1474.

¹⁰¹ *Id.* at 1478.

in *New York* and *Printz* commanded ‘affirmative’ action as opposed to imposing a prohibition.¹⁰² There was absolutely no difference between an affirmative action or imposition of a prohibition.¹⁰³ The fundamental principle of the anti-commandeering doctrine, that Congress cannot issue direct orders to the State legislature, applied in both circumstances.¹⁰⁴

The Court also acknowledged that the decision to legalize sports wagering is a controversial one which requires important policy decisions, but it asserted that Congress must leave this important policy decision to the people of each State.¹⁰⁵ In the future, Congress could regulate sports wagering directly, but until then, the States were free to act.¹⁰⁶ Thus, the decision made in *Murphy* allowed State legislatures, including Ohio, to hit the ground running and implement sports wagering legislation. However, as the Court noted, these States would be left with making important policy decisions.

III. POLICY AND ECONOMIC CONSIDERATIONS

In developing sports wagering laws, the States must consider the policy and economic impact the laws will have within their borders. As Ohio legislators continue to watch from the sidelines, they will be considering, among other things: (A) sport integrity, (B) tax rates, and (C) integrity fees.

A. Sport Integrity

Congress considered the maintenance of sport integrity to be a pivotal factor in its ambition to regulate sports gambling within the States.¹⁰⁷ Ohio—and other States working toward legal sports wagering—must still honor this ambition and maintain the integrity of the game through its regulatory schemes. If the States are not careful, the public’s confidence in the integrity of the game could lead to financial loss on competitions and leagues, a decrease in both live and television demand, and sponsors’ hesitation in associating themselves with the leagues in order to maintain their own reputation.¹⁰⁸ Nearly all parties involved in sports gambling—sportsbooks, data providers, sports leagues, advocacy groups, and lawmakers—have agreed that maintaining the integrity of sports is a top concern.¹⁰⁹ Thus, these

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 1484.

¹⁰⁶ *Id.*

¹⁰⁷ Professional and Amateur Sports Protection Act, S. Rep. 102-248, 102nd Cong. (1992).

¹⁰⁸ David Forest et al., “*Say It Ain’t So*”: *Betting-Related Malpractice in Sport*, 3 INT’L J. OF SPORT FINANCE 156, 156–57 (2008) (arguing that “repeated scandal would [] likely [] make it morally and politically unacceptable for sport to link itself too closely to gambling interests.”).

¹⁰⁹ Ryan Rodenberg, ‘Integrity Monitoring Association’ for Sports Betting Under Consideration, ESPN (Sept. 25, 2018), http://www.espn.com/chalk/story/_/id/24742199/integrity-monitoring-association-sports-betting-consideration; see also Press Release, AGA Outlines Sports Betting Priorities in Letter to Congress, AM. GAMING ASS’N (May 22, 2018), <https://www.americangaming.org/newsroom/press-releases/aga-outlines-sports-betting-priorities-letter-congress> (declaring that the gaming industry is

stakeholders must collaborate to effectively combat the threat of match-fixing, spot-fixing, and misusing inside information that tends to occur in sports gambling.¹¹⁰ State legislators should take the time to understand the level of susceptibility for potential manipulation that comes with the different types of wagers.¹¹¹

In a letter from the Senior Vice President of Public Affairs for the American Gaming Association (“AGA”), Sara Slane, to Senator Charles Schumer, the AGA set forth principles that would help achieve the numerous benefits that come with legal sports betting while still ensuring a safe and successful legal sports betting market.¹¹² The letter asserted that new technology makes it possible to monitor legal wagering, identify suspicious activities, and uncover match fixing.¹¹³ It also stated that the AGA has had discussions with the major sports leagues about the possibility of forming an integrity monitoring association, which would provide an enhanced reporting system to combat any illegal activity.¹¹⁴

States such as Nevada and Mississippi have already recognized the importance of sport integrity and have considered it as part of its regulatory scheme.¹¹⁵ Legal bookmakers have also been considered decent overseers of suspicious activity because of the negative repercussions they face from a potential fix.¹¹⁶ Although the States, with the help of bookmakers, have the potential to effectively regulate the integrity of sports through entities such as the Nevada Gaming Control Board or a State’s Lottery Commission, a

committed to shutting down vast illegal markets through sensible State regulatory solutions including support for a establishing a national data repository to share suspicious betting information with law enforcement).

¹¹⁰ Leigh Thompson, *How to Protect the Integrity of Sport – Key Points from the Sports and Sports Betting Integrity Action Plan*, LAW IN SPORT (Jan. 8, 2016), <https://www.lawinsport.com/topics/articles/item/how-to-protect-the-integrity-of-sport-key-points-from-the-sport-and-sports-betting-integrity-action-plan>; see also CABOT & MILLER, *supra* note 6, at 126–34. The governing bodies for the three major American sports leagues already have codes of conduct and penalties enforced through the collective bargaining agreements that cover sports wagering, accepting, or soliciting bribes, and insider information. *Id.* at 153.

¹¹¹ *Id.* at 159–66.

¹¹² Letter from Sara Slane, Senior Vice President of Public Affairs, American Gaming Association, to Senator Charles Schumer, Senate Democratic Leader, United States Senate (Sept. 13, 2018), <https://www.americangaming.org/sites/default/files/AGA%20Letter%20to%20The%20Honorable%20Charles%20Schumer%209-13-18%20FINAL.PDF>. The American Gaming Association sent this letter to Senator Schumer to argue that federal regulation of sports wagering was not warranted. *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Becky Harris, Chairwoman of the Nevada Gaming Control Board, Before the Judiciary’s Subcommittee on Crime, Terrorism, Homeland Security, and Investigation 4 (Sept. 27, 2018), <https://judiciary.house.gov/wp-content/uploads/2018/06/Chairwoman-Becky-Harris.pdf>. The Nevada Gaming Control Board, who is involved in the regulation of gaming in Nevada, “has and continues to meet with interested stakeholders, sports leagues, and other entities” and “continue[s] to participate and build on its sports betting related affiliations and relationships.” *Id.* at 4. See also MISS. CODE ANN. §§ 75-76-3, 75-76-89 and 75-76-103 (2019).

¹¹⁶ Todd Dewey, *Las Vegas Bookmakers Know a Fix When They See One*, LAS VEGAS REV. J. (Sept. 8, 2017, 5:54 PM), <https://www.reviewjournal.com/sports/betting/las-vegas-bookmakers-know-a-fix-when-they-see-one/>.

nationwide integrity monitoring system would effectively advance the end goal of maintaining sport integrity within the United States. Just recently, stakeholders, specifically United States sportsbook operators, followed through on their plan to implement such a system by creating the Sports Wagering Integrity Monitoring Association (“SWIMA”).¹¹⁷ SWIMA’s primary goals are to provide for a secure betting environment for consumers and protect the integrity of sports betting by identifying bad actors and discouraging certain activities from profiting from unfair betting markets.¹¹⁸ As Ohio legislators work toward legal sports wagering, they would benefit from implementing legislation that aligns with the goals of SWIMA and designating primary stakeholders who would work closely with SWIMA to protect the integrity of sports betting.

B. Tax Rates

The estimated tax revenue from legalized sports wagering would significantly boost Ohio’s economy. The AGA’s study anticipated that “annual tax revenue could range from \$5 billion to \$18 billion, depending on what venues are taxed, as well as the rates.”¹¹⁹ As Ohio legislators work to legalize sports wagering, they must address two main issues related to taxes on sports wagering. First, Ohio must decide where to set the tax rate in order to maximize revenue generation.¹²⁰ Tax rates across State borders vary dramatically. For example, Nevada’s tax rate is the lowest amongst the other States, as it places a 6.75% tax on a sportsbook’s revenue.¹²¹ In the middle of the pack are Mississippi, which taxes 8%, and West Virginia, which taxes 10%.¹²² New Jersey chose to tax sports betting at casinos at 9.75% and online

¹¹⁷ Eric Ramsey, *US Stakeholders Create National Sports Wagering Integrity Monitoring Association*, LEGAL SPORTS REP. (Nov. 27, 2018), <https://www.legalsportsreport.com/26282/sports-wagering-integrity-monitoring-association-swima/>. The organization is “designed as a collaborative entity to partner with state and tribal gaming regulators; federal, state and tribal law enforcement; and other various stakeholders to detect and discourage fraud and other illegal activity . . . related to betting on sporting events.” *Id.*; see also Martin Derbyshire, *US Sportsbooks Form Integrity Monitoring Group to Combat Illegal Activity*, PLAY USA (Nov. 29, 2018), <https://www.playusa.com/sports-betting-integrity-monitoring/>. A sportsbook operator “means a casino or a racetrack which has elected to operate a sports pool, either independently or jointly, and any entity with whom a casino or racetrack licensed to operate a sports pool contracts to operate a sports pool or online sports pool. . . .” N.J. STAT. ANN. § 5:12A-10 (2019).

¹¹⁸ Ramsey, *supra* note 117.

¹¹⁹ Howard Gleckman, *6 Reasons Why States Shouldn’t Be Counting Their Sports Betting Tax Revenue Yet*, FORBES (May 16, 2018, 11:35 AM), <https://www.forbes.com/sites/howardgleckman/2018/05/16/six-reasons-why-states-shouldnt-be-counting-their-sports-betting-tax-revenue-yet/#3084fccc3897>.

¹²⁰ See Jill R. Dorson, *Indiana Senator Files Sports Betting Bill, and Eyes 6.75% Tax Rate*, SPORTS HANDLE (Jan. 11, 2019), <https://sportshandle.com/new-indiana-sports-betting-bill-doesnt-address-tax-rate/>.

¹²¹ Gleckman, *supra* note 119.

¹²² *Id.* Mississippi chose to place the same tax on sport wagering as they did on other gambling games. Jill R. Dorson, *Mississippi Rolls Out Regs: No ‘Integrity Fee,’ OK to Bet on Mississippi College Teams*, SPORTS HANDLE (June 21, 2018), <https://sportshandle.com/mississippi-rolls-out-regs-no-integrity-fee-ok-to-bet-on-mississippi-college-teams/>.

wagers at 13%.¹²³ An obvious outlier is Pennsylvania, which set a 36% tax on sports wagering revenues.¹²⁴ Critics argued that Pennsylvania's high tax would fail to attract legal bookmakers to the State, would make it impossible for Pennsylvania casino operators to make any return on investment of capital, and would make licensed bookmakers uncompetitive with illegal bookmakers.¹²⁵ Thus, Ohio legislators should be cognizant and not implement too high of a tax so they can attract sportsbook operators and consumers and drive them out of the illegal market.¹²⁶

Second, Ohio must decide how to allocate the revenue to the State's budget.¹²⁷ Ohio should take a realistic approach and use the tax revenue as a "nice bump for [the State] when revenues are low; not as a budget balancer."¹²⁸ The States with legalized sports wagering have chosen to distribute and spend the tax revenue differently.¹²⁹ For example, Mississippi requires a percentage of sports betting revenue to be placed in a special fund for the Department of Transportation, which uses the revenue to repair and maintain infrastructure for roads, water, and sewer systems or for State, county, or municipal projects.¹³⁰ States such as Nevada, Delaware, Pennsylvania, and West Virginia place revenues in a general fund where key programs receive money.¹³¹ Rhode Island takes a different approach. Rhode Island's tax structure distributes the net revenue by giving 51% to the State, 32% to the State's official vendor in administering sports betting, and 17% to

¹²³ Jill R. Dorson, *New Jersey Adds Additional 1.25% Tax on Sports Betting Revenue*, SPORTS HANDLE (Oct. 10, 2018, 7:32 PM), <https://sportshandle.com/new-jersey-adds-additional-1-25-tax-on-sports-betting-revenue/>.

¹²⁴ Matt Rybaltowski, *G2E Recap: Pennsylvania Regulator Fights Back on Controversial Sports Betting Tax*, FORBES (Oct. 17, 2018, 6:00 AM), <https://www.forbes.com/sites/mattyrybaltowski/2018/10/17/g2e-recap-pennsylvania-regulator-fights-back-on-controversial-sports-betting-tax/#650acb594528>.

¹²⁵ Andrew Maykuth, *Pa.'s Sports Betting Taxes So High Legal Bookmakers May Shun State*, THE PHILADELPHIA INQUIRER (July 16, 2018, 5:00 AM), <http://www.philly.com/philly/business/ea-legal-sports-bookmakers-taxes-new-jersey-casinos-20180716.html>; see also Letter from Jocelyn Moore, Senior Vice President of Public Policy and Government Affairs, National Football League, to Pamela Lewis, Secretary, Pennsylvania Gaming Control Board (June 15, 2018), https://gamingcontrolboard.pa.gov/files/legislation/sports_wagering_public_input.pdf ("as the board works with state policymakers, we respectfully ask that you reconsider laws and regulations that could have the unintended consequence of advancing illegal sports betting.").

¹²⁶ See Scott Scherer, *Sports Betting After Murphy v. NCAA*, HOLLAND & HART ATTORNEYS (2018), [https://www.hollandhart.com/webfiles/HollandHart_Sports%20Betting%20After%20Murphy%20v%20NCAA%20FINAL\(1\).pdf](https://www.hollandhart.com/webfiles/HollandHart_Sports%20Betting%20After%20Murphy%20v%20NCAA%20FINAL(1).pdf) (arguing that high tax rates undermine the public policy supporting legal sports wagering). Ohio's proposed bill currently calls for the gross revenue to be taxed at a rate of 6.25%, the lowest rate among the States with legalized sports wagering. Jack Borchardt, *Ohio Sports Betting Pitch: Use Revenues to Eliminate Fees for High School Sports, Band, Art*, CINCINNATI ENQUIRER (Mar. 15, 2019), <https://www.cincinnati.com/story/news/politics/2019/03/15/ohio-sports-betting-bill-introduced/3166677002/>.

¹²⁷ Jill R. Dorson, *How States Are Spending Their Sports Betting Revenue*, SPORTS HANDLE (Oct. 25, 2018, 10:00 AM), <https://sportshandle.com/how-states-are-spending-their-sports-betting-tax-revenue/>.

¹²⁸ Ryan Prete, *States Cash in on Sports Betting Taxes, More Expected to Play*, BLOOMBERG BNA (Aug. 1, 2018), <https://www.bna.com/states-cash-sports-n73014481301/>.

¹²⁹ See generally Dorson, *supra* note 127.

¹³⁰ *Id.*

¹³¹ *Id.*

the casinos.¹³²

It would be advantageous for Ohio to consider how States have chosen to distribute the revenue and deliberate on the best-case scenario for delegating these funds. For instance, Ohio could continue to distribute sports gambling tax revenue to the funds that it already distributes to: the County Fund, Student Fund, Host City Fund, Ohio State Racing Commission, the Ohio Casino Control Commission, the Law Enforcement Training Fund, and the Problem Gambling and Addictions Fund.¹³³ In summary, in examining how other States have implemented their tax rates and considering Ohio's current gambling market and budget, Ohio can create a legislative scheme that positively impacts Ohio's revenue generation and budget concerns.

C. Integrity Fees

Another issue that has crept into in the statehouses working toward implementing sports gambling legislation is the "Integrity Fee."¹³⁴ As professional sports leagues such as the NBA and MLB continue to try and find a way to profit from sports wagering in the United States, they have proposed transferring money from sportsbooks and casinos to themselves by way of an Integrity Fee.¹³⁵ The idea of such an Integrity Fee was first introduced by the Indiana Legislature as it began its efforts to legalize sports gambling in the State.¹³⁶ House Bill 1325 came into being after the NBA and MLB discussed including the fee with Indiana House Representative Alan Morrison.¹³⁷ The Bill included an Integrity Fee of one percent of the total amount wagered by bettors payable to each league on which sports wagering would occur.¹³⁸ This one percent tax would require sports betting operators to pay sports leagues twenty percent before the State would even begin receiving its proceeds.¹³⁹ The AGA responded to Indiana's bill by arguing

¹³² Adam Candee, *Is It 'Revenue Sharing' or High Taxes for Sports Betting? Ask Rhode Island, Delaware How They Slice the Pie*, LEGAL SPORTS REP. (July 3, 2018), <https://www.legalsportsreport.com/21663/sports-betting-revenue-sharing/>.

¹³³ *Compliance, Monthly Casino Revenue Reports*, OHIO CASINO CONTROL COMM'N, <https://casinocontrol.ohio.gov/Compliance/MonthlyCasinoRevenueReports.aspx> (last visited Jan. 15, 2020). Ohio's current Bill creates a sport wagering revenue fund. See S.B. 111, 133d Gen. Assemb., Reg. Sess. § 3775.02(G) (Ohio 2019). Although the Bill is silent on where the money would be spent, Governor John Husted is currently pitching for the revenue to be used to eliminate high school pay-to-participate fees for sports and other extracurricular activities. Borchardt, *supra* note 126.

¹³⁴ See generally *Sports Betting Integrity Fee*, LEGAL SPORTS REP. (Aug. 2, 2019), <https://www.legalsportsreport.com/integrity-fee/> (indicating that an "Integrity Fee" is a tax on legal sports betting).

¹³⁵ *Id.*

¹³⁶ Dustin Gouker, *New Version of Indiana Sports Betting Bill Includes Hefty 'Integrity Fee' Paid to Sports Leagues*, LEGAL SPORTS REP. (Jan. 8, 2018), <https://www.legalsportsreport.com/17400/indiana-sports-betting-integrity-fee/>.

¹³⁷ Brett Smiley, *Indiana Sports Betting Bill Contains Bombshell 'Integrity Fee' Provision for Leagues*, SPORTS HANDLE (Jan. 9, 2018), <https://sportshandle.com/indiana-sports-betting-integrity-fees-provision-analysis/>.

¹³⁸ H.B. No. 1325, 120th Gen. Assemb., Reg. Sess. (Ind. 2018). The Integrity Fee provision did not appear in Indiana Senate Bill 405. See S.B. 405, 120th Gen. Assemb., Reg. Sess. (Ind. 2018).

¹³⁹ *AGA Statement on Proposed Indiana Sports Betting Legislation*, CDC GAMING REP. INC. (Jan. 9, 2018), <https://www.cdcgamingreports.com/aga-statement-on-proposed-indiana-sports-betting-legislation>

that the Integrity Fee would undercut Indiana's economic sustainability, allow the illegal market to continue to prosper in the State, and prevent tax revenues from funding essential public services.¹⁴⁰

In response to the AGA's hefty backlash against Integrity Fees, the major sports leagues subsequently began requesting amounts as low as .2% and started referring to the Integrity Fee as a royalty.¹⁴¹ The major sports leagues continue to argue that if the States are allowed to profit off the leagues' events, the major sports leagues should be involved in the sharing of the profits.¹⁴² In addition, the leagues argue that implementation of the Integrity Fee would allow for sports wagering to be monitored and regulated more appropriately by allocating a portion of the revenue to the implementation of integrity monitoring.¹⁴³ The major sports leagues have an inherent incentive to maintain the integrity of the game because it is unlikely that individuals will bet on—or even watch—NFL or NBA games if they believe the games are rigged. As such, the leagues will do whatever it takes to put integrity maintenance on a pedestal and are now doing so through the Integrity Fee argument.¹⁴⁴ However, the *Murphy* decision still opened up several doors for the major sports leagues to generate additional revenue, as the leagues have signed official gaming partnership agreements with casino and sportsbook operators.¹⁴⁵ These gaming partnership relationships “are the

1. For example, the major sports leagues would receive \$45 million integrity fee-generated revenue from Nevada's \$4.5 billion-dollar sport betting handle. Smiley, *supra* note 137.

¹⁴⁰ AGA Statement on Proposed Indiana Sports Betting Legislation, *supra* note 139; see also *Sports Betting Integrity Fee*, *supra* note 134 (asserting that integrity fees are a bad idea because taxing handle is not tied to revenue, the leagues play no functional role in the sports betting industry, it takes away from state revenue, and it hurts consumers and businesses by increasing costs).

¹⁴¹ David Purdum, *Congressional Sports Betting Hearing FAQ: What to Know*, ESPN (Sept. 26, 2018), http://www.espn.com/chalk/story/_id/24798381/an-faq-thursday-congressional-sports-betting-hearing; see also Sam Carp, *MLB Calls for Casino 'Integrity Fees' to Cash in on Sports Betting*, SPORTSPRO LIVE (Oct. 15, 2018), <http://www.sportspromedia.com/news/mlb-betting-casino-integrity-fees> (indicating that the MLB's executive vice president of gaming argued that casinos should pay a .25% royalty on each MLB bet if they are going to make money off the sport).

¹⁴² Carp, *supra* note 141; see also Brant James, *Examining the Integrity Fees Argument in US Sports Betting*, GAMBLING.COM (Aug. 27, 2018), <https://www.gambling.com/news/examining-the-integrity-fees-argument-in-us-sports-betting-1553400>, stating that NBA Commissioner Adam Silver has been the most vocal among leagues on the implementation of integrity fees:

I know all the leagues support this position, but in the case of the NBA, we'll spend roughly \$7.5 billion dollars creating NBA basketball this season . . . [a]nd to the extent that product is then used for casinos, betting parlors, to make money on, we feel, just in the same way a musical that receives a royalty for the music that's played, that we should receive some sort of royalty . . . [s]o call it a royalty; call it an integrity fee. We will have additional expenses, and it's ultimately our intellectual property and we ultimately believe we should be compensated for it.

Id.

¹⁴³ See Dustin Gouker, *View: Leagues' New Argument for Sports Betting 'Integrity Fees' Is Their Worst Yet*, LEGAL SPORTS REP. (Feb. 12, 2018), <https://www.legalsportsreport.com/18383/leagues-argument-for-sports-betting-integrity-fees/>.

¹⁴⁴ *Id.*

¹⁴⁵ Sam Carp, *US Major League First as NBA Signs US \$2.5m Betting Deal with MGM*, SPORTSPRO LIVE (July 31, 2018), <http://www.sportspromedia.com/news/nba-signs-betting-deal-mgm-25-million>; see also *US Sportsbook and Casino Team Sponsorship Tracker*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sports-betting-deals/> (last updated Mar. 28, 2019).

kind of relationships that will help the two-way runway of information that can assure they keep the integrity of the game at the forefront of everything.”¹⁴⁶ Thus, there is an obvious check on the integrity of the game already in place, making these fees unnecessary in some regard.¹⁴⁷

Although no State has implemented legislation that includes an Integrity Fee, it may still be a topic of discussion amongst lawmakers in Ohio as the major sports leagues continue to argue for its inclusion, and stakeholders continue to express either approval or disapproval for the Integrity Fee.¹⁴⁸ Ohio Senator Bill Coley—also head of the National Council of Legislators from Gaming States (“NCLGS”)—has already pitched the idea of giving a cut of the proceeds from sports gambling to the major leagues, further establishing that it could be a hot topic among lawmakers in Ohio.¹⁴⁹

It would be in Ohio’s best interest to exclude the Integrity Fee from its sports wagering regulatory scheme.¹⁵⁰ Rather than using the money to fund important State programs, Ohio would be putting the money in the pockets of multi-billion-dollar entities who surely have the means to monitor the integrity of the game via other revenue-generating areas—i.e. the latest partnership agreements with sportsbooks and casinos.¹⁵¹ In addition, why should Ohio provide revenue to the leagues who neither regulate nor operate sports wagering within the State? All the leagues do is put the teams on the field for play. Lastly, Ohio would be doing everything it can to keep the cost of wagering on sports down within the State in an effort to maximize revenue; the Integrity Fee would hinder these efforts. For these reasons, Ohio would benefit from excluding the Integrity Fee from its scheme.

IV. STATE REGULATORY SCHEMES

Ohio made the tactful decision to sit back and watch from the sidelines as other States continue to implement sports wagering legislation. In doing so, Ohio has had, and continues to have, the opportunity to learn how these States have chosen to regulate sports wagering within their borders.

¹⁴⁶ James, *supra* note 142.

¹⁴⁷ *Id.*

¹⁴⁸ Martin Derbyshire, *Missouri has a Better Idea than Paying Sports Betting Integrity Fees*, PLAY USA (Dec. 4, 2018), <https://www.playusa.com/missouri-sports-betting-integrity-fees/>; see also *WV Legislature Debates Integrity Fees for Sports Betting*, WTRF.COM (Oct. 19, 2018, 4:15 AM), <https://www.wtrf.com/news/wv-legislature-debates-integrity-fees-for-sports-betting/1534408450> (indicating that WV Governor Jim Justice supports the Integrity Fee and that the legislature could revisit the issue when it reconvenes). But see *Chris Christie Urges Against Federal Control of Sports Betting*, ESPN (Jan. 4, 2019), http://www.espn.com/chalk/story/_/id/25685356/chris-christie-urges-federal-control-sports-betting (indicating that former NJ Governor Chris Christie disproves of the Integrity Fee).

¹⁴⁹ Aaron Marshall, *Ohio Lawmaker Pitches New Betting Tax for Pro Sports Leagues*, CLEVELAND.COM (Dec. 11, 2018, 5:21 PM), <https://www.cleveland.com/expo/sports/erry-2018/12/762b6416745350/ohio-lawmaker-pitches-new-bett.html>.

¹⁵⁰ Ohio’s sport wagering bill, introduced on March 14, 2019, does not include an integrity fee provision. See S. B. 111, 133rd Gen. Assemb. Reg. Sess. (Ohio 2019).

¹⁵¹ *US Sportsbook and Casino Team Sponsorship Tracker*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sports-betting-deals/> (last updated Mar. 28, 2019).

This Section examines various States' regulatory schemes by highlighting the similarities and differences that exist amongst the States.¹⁵² In addition, after examining current sports wagering legislation, this Section will propose legislation for Ohio to adopt.

A. Current States' Legislation

1. Oversight of Sports Wagering

There is still an ongoing debate concerning whether there should be federal oversight of sports wagering in the United States.¹⁵³ Until Congress makes the ultimate decision, the States may decide who to delegate this authority to in order to effectively regulate sports gambling within their borders. As expected, the States with regulatory schemes in place have chosen different bodies to regulate sports wagering.

Four States—Nevada, New Jersey, Mississippi, and Pennsylvania—have implemented legislation giving the State's Casino Control Commission, or an entity of similar stature, authority to regulate sports wagering to the same extent that it regulates casino games.¹⁵⁴ On the other hand, three States—Delaware, West Virginia, and Rhode Island—have delegated the State's Lottery authority to regulate sports wagering within the State.¹⁵⁵ Each States' legislation—regardless of who is charged with regulating sports wagering—requires these institutions to develop rules and regulations applicable to sports wagering, and they are then charged with overseeing ongoing compliance.¹⁵⁶

The key factor that appears to be prevalent amongst the States who have delegated authority to certain entities is that only one entity was available to delegate such authority. For example, the States that only have a Casino Control Commission had no choice but to delegate such authority to them.¹⁵⁷ Conversely, the States that have delegated authority to the State

¹⁵² This Comment highlights the regulatory schemes of seven States—Nevada, New Jersey, Mississippi, Pennsylvania, Delaware, West Virginia, and Rhode Island. Since this Comment was written, Arkansas, Iowa, New Mexico, and New York implemented full scale sports wagering and will not be discussed. See Ryan Rodenberg, *United States of Sport Betting: An Updated Map of Where Every State Stands*, ESPN (Aug. 2, 2019), http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states.

¹⁵³ David Purdum, *Congress Pushing for Federal Sports Betting Oversight*, ESPN (Dec. 5, 2018), http://www.espn.com/chalk/story/_/id/25453710/congress-pushing-federal-sports-betting-oversight; Chris Christie Urges Against Federal Control of Sports Betting, *supra* note 148 (arguing that statistics have proven the States can handle the job).

¹⁵⁴ See NEV. GAMING COMM. § 2.020; N.J. STAT. ANN. § 5:12A-13 (West 2012); MISS. CODE ANN. § 75-76-7 (2017); 58 PA. CODE § 1401.6 (2019).

¹⁵⁵ 10-200-204 DEL. CODE REGS. § 1.0 (LexisNexis 2018); W. VA. CODE §§ 29-22D-3, 29-22D-4 (2018); 42 R.I. GEN. LAWS § 42-61.2-2.4 (2018).

¹⁵⁶ See, e.g., N.J. REV. STAT. § 5:12A-13(a) (asserting in the "Authority of division" that the Division of Gaming Enforcement must promulgate regulations necessary to carry out the provisions of the act and providing examples of areas that should be included within the regulations).

¹⁵⁷ Nevada has no lottery in place because the gaming industry does not want the competition. Sean Whaley, *No Nevada Lottery Because Gaming Doesn't Want Competition*, LAS VEGAS REV. J. (Jan. 12, 2016), <https://www.reviewjournal.com/local/local-nevada/no-nevada-lottery-because-gaming-doesnt-wan>

Lottery had no other option.¹⁵⁸ New Jersey and Delaware are the sole outliers amongst the States who offer sports wagering, as they have both a Lottery and Division of Gaming Enforcement.¹⁵⁹ Yet, New Jersey chose the Division of Gaming Enforcement to regulate sports wagering in New Jersey casinos, and Delaware chose the Delaware Lottery, with the assistance of the Division of Gaming Enforcement, to regulate sports wagering.¹⁶⁰ The significant point is that if a State has a casino enforcement entity in place, they are involved with the regulation of sports wagering, regardless of whether they are the sole enforcement mechanism.

2. Key Regulatory Measures

There are several key regulatory measures that States have implemented within their legislation on sports wagering. Certain provisions are found in every States' regulatory scheme. These include the requirement of adopting and posting house rules, establishing license requirements and prohibitions, implementing minimum internal controls, and defining duties of an operator conducting sports wagering.¹⁶¹ The nuances of these provisions will be discussed in greater detail below.¹⁶²

3. Where Sports Gambling Can Occur

States also limit where sports wagering is allowed within their borders, and the limitations vary State by State. Nevada, New Jersey, West Virginia, and Pennsylvania allow for in-person wagering at the States' casinos

t-competition/. Mississippi is in the process of creating a State lottery and only just constructed a commission to oversee it once it is up and running. Luke Ramseth, *Mississippi is One Step Closer to State Lottery as Gov. Bryant Appoints 5-Person Board*, CLARION LEDGER (Oct. 19, 2018), <https://www.clarionledger.com/story/news/politics/2018/10/19/mississippi-gov-phil-bryant-appoints-board-state-lottery/1684846002>. Pennsylvania has no lottery commission, but charges the Secretary of Revenue and the Commonwealth with the duty to operate and administer the lottery. 72 PA. CONS. STAT. § 3761-303 (2019).

¹⁵⁸ History indicates that the State lotteries in Rhode Island and West Virginia are the only regulatory bodies within the States. See *Gambling in Rhode Island: Online Gambling, Live Venues and Laws*, GAMBLINGSITES.COM, <https://www.gamblingsites.com/online-gambling-jurisdictions/us/rhode-island/#faq> (last visited Jan. 15, 2020); *An Overview of The Gambling Laws in West Virginia*, GAMBLINGONLINE.COM, <https://www.gamblingonline.com/laws/west-virginia/> (last visited Jan. 15, 2020).

¹⁵⁹ See *Division of Gaming Enforcement*, STATE OF N.J. DEP'T OF L. & PUB. SAFETY, <https://www.nj.gov/oag/ge/index.html>; *Lottery Commission & Legislation*, New Jersey Lottery, <https://www.njlottery.com/en-us/aboutus/commissionandlegislation.html> (last visited Sept. 28, 2019); 10-200-204 DEL CODE REGS. § 1.0. The Delaware Division of Gaming Enforcement (DGE) assists the Delaware Lottery in promulgating and implementing rules and regulations within the State. *About the Division of Gaming Enforcement (DGE)*, DELAWARE.GOV, <https://dgc.delaware.gov/contentFolder/index-in.shtml?dc=aboutagency> (last visited Jan. 15, 2020).

¹⁶⁰ N.J. REV. STAT. § 5:12A-13(a); DEL CODE REGS. § 1.0.

¹⁶¹ W. VA. CODE § 29-22D-11 (requiring adoption of comprehensive house rules); N.J. REV. STAT. § 5:12A-11 (2018) (establishing procedures for the issuance and renewal of sport wagering licenses); 58 PA. CODE § 1408.3 (requiring submittal of internal controls for all aspects of sport wagering); N.J. STAT. ANN. § 5:12A-13(a); § 5:12A-11 (requiring operators to establish or display odds at which wagers may be placed on sports events).

¹⁶² See *infra* Part IV(B)(2).

and racetracks and mobile or online wagering from anywhere within the State.¹⁶³ Although these States expressly allowed for mobile or online wagering, it took time for them to actually act and implement online or mobile sportsbooks.¹⁶⁴ To this day, Pennsylvania has yet to launch online sports wagering, but action by the Pennsylvania Gaming Control Board indicates that online wagering is forthcoming.¹⁶⁵ Mississippi's scheme differs slightly in that it allows for in-person wagering at the State's approved casinos and mobile or online wagering within an approved casino; essentially, regardless of the means used to wager, it must occur within the casino.¹⁶⁶ Rhode Island and Delaware do not permit online wagering, allowing sports wagering to occur only in person at the States' licensed casinos.¹⁶⁷ Delaware, however, also allows for bets to be placed at more than eighty sports lottery retailers.¹⁶⁸ An economic impact study indicated that limitations on where sports wagering may occur would impact the States' revenue generation, estimating that sports wagering online would add an additional \$5.2 billion dollars of gross gaming revenue.¹⁶⁹ Thus, the States that currently do not have online gambling in place or prohibit online gambling are missing out on a substantial amount of revenue.¹⁷⁰

¹⁶³ *Sports Betting for Nevada Residents*, SPORTS BETTING NEVADA, <http://www.sportsbettingnevada.com/> (last visited Jan. 15, 2020); N.J. REV. STAT. § 5:12A-11. New Jersey limits each property to three individually branded websites. N.J. REV. STAT. § 5:12A-11; W. VA. CODE § 29-22D-15(a)-(b). West Virginia only allows the commission to issue up to five licenses to operate sport wagering in the State and only three individually branded websites. W. VA. CODE § 29-22D-6(c); W. VA. Lottery Sports Wagering Rule § 179-9-12, https://s3.amazonaws.com/ogden_images/www.theintelligencer.net/images/2018/07/11/223252/sports-betting.pdf (last visited Jan. 12, 2019); 58 PA. CODE § 1407.3.

¹⁶⁴ Eric Ramsey, *Here's Everything We Know About NJ Online Sports Betting Right Now*, LEGAL SPORTS REP. (Jan. 1, 2019), <https://www.legalsportsreport.com/21853/new-jersey-online-sports-betting/> (indicating the first online sportsbook to launch was on August 1, 2018, two months after the sports betting bill was signed into law on June 11); Dustin Gouker, *WV Online Sports Betting Goes Live, and Two More Sportsbooks Open*, LEGAL SPORTS REP. (Dec. 27, 2018), <https://www.legalsportsreport.com/27178/wv-online-sports-betting-goes-live/>.

¹⁶⁵ Eric Ramsey, *Government Approvals Mounting for PA Sports Betting Operators, Suppliers*, LEGAL SPORTS REP. (Dec. 20, 2018), <https://www.legalsportsreport.com/26761/pa-sports-betting-fanduel-bet-stars/>.

¹⁶⁶ MISS. CODE ANN. § 75-76-89 (2019); MISS. CODE ANN. § 97-33-1 (2017). This limitation has not proven to be a problem for Mississippi, as their sports betting gross revenue continues in an upward progression. See Andrej Vidovic, *Mississippi's Sports Wagering Records Best Month Yet*, GEN. GAMBLING NEWS (Jan. 21, 2019), <https://www.realmoneyaction.com/mississippis-sports-wagering-records-best-month-yet/> (indicating that in December, the total revenue amounted to \$6.2 million).

¹⁶⁷ 42 R.I. GEN. LAWS § 42-61.2-2.4(g) (2019); *Delaware Online Betting*, BETTING USA, <https://www.bettingusa.com/states/de/> (last visited Sept. 28, 2019). Delaware legislation does not expressly limit sport wagering to casinos, indicating that online wagering in Delaware could be authorized in the future. See generally 10-200-204 DEL. CODE REGS. (LexisNexis 2019).

¹⁶⁸ See *Economic Impact of Legalized Sports Betting*, OXFORD ECON 9 (May 2017), <https://www.americangaming.org/wp-content/uploads/2018/12/AGA-Oxford-Sports-Betting-Economic-Impact-Report1-1.pdf>.

¹⁶⁹ *Id.* at 8.

¹⁷⁰ See generally *Sports Betting Revenue by State in 2019*, THE LINES, <https://www.thelines.com/betting/revenue/> (last visited Jan. 15, 2020) (demonstrating the difference in revenue generation in States where online sport wagering is permitted and States where online sport wagering is currently not implemented or prohibited).

4. Prohibited Wagers and Bettors

Several States also prohibit gamblers from wagering on certain sporting events or prohibit certain individuals from placing bets in general. For example, New Jersey and Rhode Island both prohibit gamblers from placing bets on college events that take place within the State or involve State schools.¹⁷¹ All other States prohibit wagers on amateur sport or athletic events, excluding the Olympics and collegiate sporting events.¹⁷² In addition to prohibiting wagers on certain sporting events, States have also prohibited certain individuals from placing wagers, likely for reasons similar to Congress's sport integrity argument and implementation of PASPA in the first place.¹⁷³ For instance, New Jersey does not allow athletes, coaches, referees, directors of a sports governing body, and other similar individuals to have an ownership interest in, control of, or be employed by a sportsbook operator, sports wagering licensee, or a facility where sports wagering is located.¹⁷⁴ The State also prevents these individuals from placing a wager on a sports event that is overseen by that individual's sports governing body.¹⁷⁵ Mississippi and Nevada take a different approach and prohibit wagers on any sport or athletic event which the sports wagering licensee "knows or reasonably should know [was] placed by, or on behalf of a coach or participant in that [] event."¹⁷⁶ Rhode Island and Delaware do not address this specific issue within their legislation.¹⁷⁷ In sum, Ohio should consider whether to place similar restrictions in its legislation.

5. Integrity Provisions

Although other key stakeholders have recognized the importance of sport integrity, the States must also communicate their efforts in combatting

¹⁷¹ N.J. REV. STAT. § 5:12A-10(1) (2018); 42 R.I. GEN. LAWS § 42-61.2-2.4(i) (2019).

¹⁷² MISS. CODE ANN. §§ 75-76-89, 75-76-5 (2019); NEV. GAMING COMM. § 22.120 (2017); 58 PA. CODE § 1401.6(b) (2019); W. VA. CODE ANN. § 29-22D-3(2) (LexisNexis 2019); 10-200-204 DEL. CODE REGS. § 1.0 (LexisNexis 2019). Delaware's sport wagering legislation has yet to be updated indicating that wagering on collegiate sports is allowed, but Delaware's full-scale sports wagering how-to guide suggests it is permitted. See *How to Bet Guide*, DELAWARE SPORTS LOTTERY, https://www.delottery.com/Content/assets/sports/LOT18_23686_How_to_Bet_Guide_me03_Digital.pdf (last visited Jan. 15, 2020).

¹⁷³ See *supra* Part II and Part III(A). For example, West Virginia Lottery Commission's Rules and Regulations includes within the definition of "prohibited sports pool participant," "any individual whose participation may undermine the integrity of wagering on the sports event or for other good cause." W. VA. CODE R. Lottery § 179-9-2 (2018).

¹⁷⁴ N.J. REV. STAT. § 5:12A-11(f)(1) (2018).

¹⁷⁵ N.J. REV. STAT. § 5:12A-11(f). For example, an NFL player or coach may not place a wager on an NFL game. However, New Jersey's legislation does permit an employee of the MLB from wagering on an NFL game; this individual must provide notice to the division before placing a wager. *Id.*; see also 58 PA. CODE § 1401.8(b)-(c) (2019). The NCAA bylaws also currently prohibit student-athletes, coaches, and other institutional athletic staff members from betting on amateur, collegiate and professional sports which the NCAA conducts a championship. See *2018-19 NCAA Division I Manual*, NAT'L COLLEGIATE ATHLETIC ASS'N, 45-46 (2018), <http://www.ncaapublications.com/productdownloads/D119.pdf>.

¹⁷⁶ MISS. CODE ANN. §§ 75-76-89, 75-76-5; NEV. GAMING COMM. § 22.120. Mississippi and Nevada's regulatory schemes nearly mirror one another. This provision implemented by both States does not seem to reach as many individuals as New Jersey's regulatory scheme.

¹⁷⁷ See generally 10-200-204 DEL. CODE REGS. § 1.0 (2019); 42 R.I. GEN. LAWS § 42-61.2-2.4. (2019).

illegal activity and promoting the integrity of the game.¹⁷⁸ The States' regulatory schemes place varying emphasis on the importance of sport integrity within their sports wagering laws. Rhode Island and Nevada place the least amount of emphasis on sport integrity and are on the lowest end of the spectrum, as their legislation and regulations do not explicitly use the word "integrity" at all.¹⁷⁹ Specifically, Nevada's legislation takes an indirect approach to promoting sport integrity by requiring sportsbook owners to go through a thorough background investigation, implementing strict procedures that sportsbook owners and operators must follow, and subjecting sportsbooks to strict State oversight.¹⁸⁰ Sportsbooks in Nevada are further regulated by the federal government by way of general securities regulations.¹⁸¹

Delaware is toward the middle of the spectrum, mentioning the word integrity sporadically throughout its regulatory scheme.¹⁸² Similarly, New Jersey and West Virginia mention sport integrity sporadically throughout their legislation.¹⁸³ However, New Jersey's sports wagering emergency regulations include a sport pool and online sports pool integrity provision, requiring operators to have controls in place and report suspicious activity to an integrity monitoring provider.¹⁸⁴ The West Virginia Lottery Commission's Rules also contain a provision regarding sports wagering integrity, and they require an integrity monitoring system to report unusual activity.¹⁸⁵ Though New Jersey and West Virginia's integrity provisions have a slightly different title, their sport integrity provisions are nearly identical, indicating that West Virginia legislators likely consulted with New Jersey's regulations prior to implementing their own.¹⁸⁶ The placement of an integrity provision within their sports wagering rules and regulations puts New Jersey and West Virginia just past Delaware on the spectrum.¹⁸⁷

Lastly, on the highest end of the spectrum—placing the most emphasis on sport integrity—are Mississippi and Pennsylvania, which each have independent provisions regarding sport integrity.¹⁸⁸ These provisions require that sports wagering licensees implement integrity monitoring

¹⁷⁸ See *supra* Part III(A).

¹⁷⁹ See generally NEV. GAMING COMM. § 22.

¹⁸⁰ NEV. GAMING COMM. § 3 (establishing licensing qualifications), 22.061, 22.062 (implementing procedures for wagers in excess of \$10,000, multiple wagers, and structured wagers), 22.121, 22.140, 22.165 (requiring mandatory internal controls, recordkeeping, and law enforcement oversight) (2017).

¹⁸¹ Bo J. Bernhard et al., *Professional Team Sports in Las Vegas: What the Research Says*, UNLV NAT'L GAMING INST. 35 (Feb. 1, 2016), https://www.unlv.edu/sites/default/files/page_files/27/IGI-Publi shedResearch-NFLStudy.pdf.

¹⁸² 10-200-204 DEL. CODE REGS. §§ 3.4.9, 3.8.5, 4.2.5.

¹⁸³ N.J. REV. STAT. §§ 5:12A-11(a), 5:12A-11(i), 5:12A-13(a) (2018).

¹⁸⁴ N.J. ADMIN. CODE § 13:69N-1.6 (2019).

¹⁸⁵ W. VA. CODE R. § 179-9-3 (2018).

¹⁸⁶ N.J. ADMIN. CODE § 13:69N-1.6; W. VA. CODE R. § 179-9-3.

¹⁸⁷ N.J. ADMIN. CODE § 13:69N-1.6; W. VA. CODE R. § 179-9-3.

¹⁸⁸ MISS. CODE ANN. §§ 75-76-89, 75-76-3 (2019); 58 PA. CODE § 1408.9 (2019).

procedures and share unusual betting activity with the Gaming Control Commission.¹⁸⁹ Interestingly, in addition to sharing suspicious information with the other sports wagering operators and licensees, Pennsylvania requires operators and licensees to share the information of suspicious activity with the applicable sports leagues.¹⁹⁰ Mississippi does not use this mandatory language and gives the Gaming Control Commission discretion to provide the information to entities deemed necessary to maintain the integrity of wagering; it names law enforcement and the sports governing bodies as possible entities to inform.¹⁹¹

B. Proposed Legislation for Ohio

1. Oversight of Sports Wagering

Ohio should delegate considerable oversight of sports wagering to the Ohio Casino Control Commission and allow the Ohio Lottery Commission to regulate in a limited capacity. Similar to Delaware and New Jersey, Ohio has both a State Lottery Commission and Casino Control Commission, and both entities are well established within the State.¹⁹² Thus, Ohio is in a unique position, as it must choose who to delegate this important authority to. Just as other States have modeled their legislation on what States have already done, Ohio should follow New Jersey's lead and delegate this authority to the Ohio Casino Control Commission.¹⁹³ Ohio already places significant authority on the Ohio Casino Control Commission to oversee gambling in Ohio.¹⁹⁴ Because of its extensive powers in carrying out the responsibilities of wagering, this regulatory body already has established standards and procedures for casino operators, vendors, and employees, and it has the ability to use these regulations to implement sports wagering rules.¹⁹⁵ Accordingly, the Ohio Casino Control Commission is in the best position to effectively regulate sports wagering in Ohio.

Also, Ohio would benefit significantly from modeling New Jersey's

¹⁸⁹ MISS. CODE ANN. §§ 75-76-89, 75-76-3; *see generally* 58 PA. CODE § 1408.9.

¹⁹⁰ 58 PA. CODE § 1408.9(b)(3). New Jersey's integrity provision in its Sport Wagering Emergency Regulations also allows such action for suspicious activity. *See* N.J. ADMIN. CODE § 13:69N-1.6.

¹⁹¹ MISS. CODE ANN. §§ 75-76-89, 75-76-3, 75-76-89.

¹⁹² The Ohio Lottery has existed since 1970 and continues to provide Ohioans with an innovative gaming experience. *See About Ohio Lottery*, OHIO LOTTERY, <https://www.ohiolottery.com/About/Index> (last visited Jan. 15, 2020). For comparative purposes, the New Jersey Lottery came into being one year later. *History*, NEW JERSEY LOTTERY, <https://www.njlottery.com/en-us/aboutus/history.html> (last visited Jan. 15, 2020). The Ohio Casino Control Commission was created in 2011 and is authorized to license, regulate, investigate, and exercise jurisdiction over all participants of casino gaming. *Ohio Casino Control Commission: What We Do*, OHIO CASINO CONTROL COMMISSION, <https://casinocontrol.ohio.gov/About.aspx> (last visited Jan. 15, 2020).

¹⁹³ *See Overview*, CASINO CONTROL COMM'N, <https://www.state.nj.us/casinos/about/overview/> (last visited Jan. 15, 2020).

¹⁹⁴ OHIO REV. CODE ANN. § 3772.033 (LexisNexis 2015).

¹⁹⁵ *Ohio Casino Control Commission: What We Do*, *supra* note 192.

“Authority of Division” language.¹⁹⁶ The provision would be advantageous for Ohio because it would: (1) give the Ohio Casino Control Commission the authority to regulate all sports wagering conduct to the same extent that it regulates casino games; (2) allow the Commission to examine regulations implemented by the other States and adopt a similar regulatory scheme; (3) list certain regulations legislators deem necessary to be included within the rules; and (4) allow the Commission to amend or repeal any rule or regulation to guarantee efficient and effective implementation of sports wagering at casinos and racetracks in Ohio.¹⁹⁷

Ohio should also delegate certain authority to the Ohio Lottery Commission because of its long tenure in Ohio.¹⁹⁸ However, similar to Delaware’s scheme, legislators should require the Ohio Casino Control Commission to regulate the bulk of sports wagering in the State.¹⁹⁹ As indicated above, the Ohio Casino Control Commission is already heavily involved in the regulation of casinos and racetracks in Ohio.²⁰⁰ Cutting the Ohio Casino Control Commission out of the process would be an ineffective and inefficient move on Ohio’s part. The involvement of both the Casino Control Commission and the Ohio Lottery Commission would be advantageous for Ohio in the effective regulation of sports wagering; both regulatory bodies would serve as a check on ensuring that the rules and regulations are complied with by all those involved, including licensed casinos, sportsbooks, operators, and gamblers. Under the divided authority, the Ohio Lottery Commission’s involvement should be limited to regulating sports wagering outside of its casinos—in restaurants or in retail stores.²⁰¹ Though it is unlikely Ohio would implement intricate legislation of this caliber early on, as sports wagering continues to reach new heights, involving both entities to regulate in some capacity appears to be Ohio’s best bet.²⁰²

¹⁹⁶ N.J. REV. STAT. § 5:12A-13(a) (2018).

¹⁹⁷ See *id.* § 5:12A-13(a)-(b).

¹⁹⁸ See *supra* note 192 and accompanying text.

¹⁹⁹ See *About the Division of Gaming Enforcement (DGE)*, *supra* note 159.

²⁰⁰ OHIO REV. CODE ANN. § 3772.033.

²⁰¹ Delaware allows NFL parlay wagering—betting on the outcomes of multiple games—that is available in about 100 lottery locations throughout the State. Dustin Gouker, *Delaware Sees \$17 Million in Sports Bets for First Month of Football Season*, LEGAL SPORTS REP. (Oct. 3, 2018), <https://www.legalsportsreport.com/24710/delaware-sports-betting-for-football/>.

²⁰² All four major sports leagues have jumped ship and joined forces with major gaming corporations to achieve the maximum benefits from sports wagering. See Adam Candee, *MGM Inks Another Major Deal to Become Official Sports Betting Partner of The NHL*, LEGAL SPORTS REP. (Oct. 29, 2018), <https://www.legalsportsreport.com/25328/mgm-nhl-official-sports-betting-partnership/>; Eric Ramsey, *MLB Makes MGM Reports ‘Official Gaming Partner’ as Sport Betting Deals Proliferate*, LEGAL SPORTS REP. (Nov. 27, 2018), <https://www.legalsportsreport.com/26238/mlb-sports-betting-announcement-mgm/>; Eben Novy-Williams, *NBA Breaks Fresh Ground for Sports With First Gambling Data Deal*, BLOOMBERG (Nov. 28, 2018), <https://www.bloomberg.com/news/articles/2018-11-28/nba-breaks-fresh-ground-for-sports-with-first-gambling-data-deal>; David Purdum, *NFL Partners with Caesars Entertainment in First Casino Sponsorship*, ESPN (Jan. 3, 2019), http://www.espn.com/nfl/story/_/id/25675553/nfl-partners-caesars-entertainment-first-casino-sponsorship.

2. Key Regulatory Measures

In light of the fact that every State with legalized sports wagering has adopted certain provisions with respect to sports wagering, Ohio legislators should follow their lead and implement such provisions within their legislation. These provisions include: (a) the requirement of adopting and posting house rules; (b) establishing licensing requirements and prohibitions; (c) implementing minimum internal controls; and (d) defining duties of an operator conducting sports wagering.

a. House Rules

Under Ohio law, the Ohio Casino Control Commission must approve all rules for playing table games, and the casino operators must operate the games according to the approved rules.²⁰³ With this requirement in place, each Ohio casino has house rules regarding table games that must be posted both in the casino and on the casino's website.²⁰⁴ Ohio lawmakers should mirror this legislation and require Ohio sportsbook operators to post house rules with respect to sports wagering within the casino and online—if it chooses to allow for online wagering. Ohio should consult with New Jersey's Rules and Regulations about minimum requirements that must be included within the house rules of each sportsbook operator because it is the most comprehensive and detailed of the current regulatory schemes.²⁰⁵ Its minimum requirements include: (1) the method for calculating and paying winning bets; (2) the effect of scheduling changes; (3) the method of informing gamblers of odds or proposition changes; (4) the method for contacting operators with questions and complaints; and (5) the description of individuals who are prohibited from participating in sports pools.²⁰⁶

b. Licensing Requirements

In addition, Ohio already has license requirements and prohibitions in place within its gambling laws.²⁰⁷ Ohio should continue to require the same license requirements and prohibitions for sportsbook operators. However, because of the unique attributes that exist with respect to sports wagering,

²⁰³ OHIO ADMIN. CODE 3772-11-03 (2019).

²⁰⁴ OHIO ADMIN. CODE 3772-11-09. See also *Jack Cincinnati Casino LLC Internal Controls*, OHIO CASINO CONTROL COMM'N (approved Apr. 19, 2017), <https://casinocontrol.ohio.gov/Portals/0/Table%20Game%20Rules/2019/JC1%20Table%20Game%20Rules%20as%20of%20Jan%202019.pdf>; *Hollywood Casino Columbus Table Games Operations Plan*, OHIO CASINO CONTROL COMMISSION (approved Oct. 17, 2018), <https://casinocontrol.ohio.gov/Portals/0/Table%20Game%20Rules/2018/HCO%20Table%20Game%20Rules%20-%20Oct2018.pdf>.

²⁰⁵ See N.J. ADMIN. CODE § 13:69N-1.7(c) (2019).

Caesars Casino in New Jersey came out with Sports House Rules which were approved by New Jersey's Division of Gaming Enforcement. See Sports House Rules, CAESARS CASINO AND SPORTS, <https://www.caesarscasino.com/p/sports-house-rules/> (last visited Jan. 15, 2020).

²⁰⁶ See N.J. ADMIN. CODE § 13:69N-1.7(c).

²⁰⁷ See generally OHIO ADMIN. CODE 3772-1-06 (2019); OHIO ADMIN. CODE 3772-4-07 (2019); OHIO ADMIN. CODE 3772-4-08 (2019); OHIO ADMIN. CODE 3772-6-02 (2019).

Ohio should also consider adding specific requirements and prohibitions related to sports wagering, and it can evaluate what the other States have implemented. For instance, because sports wagering licensees are required to purchase a license before they can conduct sports wagering, Ohio must consider how many sports wagering licenses it will make available for purchase and the price to purchase a license.²⁰⁸ Also, if Ohio chooses to implement online sports wagering, it would benefit from limiting licensed operators to no more than three individually-branded online sports pool websites and accompanying mobile applications—like West Virginia and New Jersey—as a means of limiting operators.²⁰⁹

Finally, Ohio should adopt West Virginia’s “Patron Wagers” Regulation, which requires licensed casino operators to provide written notification to the Lottery Director—or in Ohio’s case, the Ohio Casino Control Commission—of the first time that wagering on a specific wagering event is offered to the public and places limits on the types of wagers on sports events allowed.²¹⁰ Ohio would benefit from including this sports-wagering-specific regulation because it would only allow licensed operators to offer wagering on new events with the approval of the regulatory body and would keep operators within bounds on what types of sports wagering may be offered. In conclusion, Ohio should continue to require the same license requirements and prohibitions on its sports wagering licensees, but it will need to include sports-wagering-specific provisions.

c. Internal Controls

Ohio also requires casino operators to submit internal control plans to the Ohio Casino Control Commission; without the Commission’s approval of the plans, casino operators are prohibited from operating.²¹¹ Similarly, Ohio should require sportsbook operators to submit internal controls for all aspects of sports pool wagering operations before commencing operations. New Jersey’s internal control requirements provide detailed and comprehensive requirements for sportsbook operators.²¹² These requirements include: (1) addressing user access controls for all sports pool personnel; (2) segregation of duties; (3) automated and manual risk management procedures; (4) procedures for identifying and reporting fraud and suspicious conduct; (5) procedures to prevent wagering by patrons prohibited from wagering; and (6) a description of all types of wagers available.²¹³ Ohio

²⁰⁸ See N.J. ADMIN. CODE § 13:69A-9.4 (2019). Ohio’s current bill, as introduced, sets the price at \$100,000. See S.B. 111, 37705.02(D), 133d Gen. Assemb. Reg. Sess. (Ohio 2019).

²⁰⁹ N.J. REV. STAT. § 5:12A-11 (2019); W. VA. CODE ANN. § 29-22D-15(a)–(b) (LexisNexis 2019); W. VA. CODE R. § 179-9-12.1 (2018).

²¹⁰ W. VA. CODE R. § 179-9-7.1 (2018).

²¹¹ OHIO ADMIN. CODE 3772-10-02 (2019).

²¹² N.J. ADMIN. CODE § 13:69N-1.7(c).

²¹³ *Id.*

would benefit from implementing a provision that is similar in nature because such requirements would promote effective operation.²¹⁴

d. Operator Duties

Lastly, Ohio would benefit from adopting a provision regarding operator duties so that all licensed gaming casinos who choose to operate a sportsbook know exactly what is required of them. Ohio should consult with West Virginia's "Operator duties; sport wagering operations at a licensed gaming facility" provision in an effort to impose key guidelines on its sportsbook operators.²¹⁵ This provision would include requiring sportsbook operators to: (1) employ a monitoring system to identify irregularities; (2) promptly report any facts which constitute a violation of State or federal law; (3) assist in maximizing sports wagering revenues; (4) ensure that sports wagering occurs only in the designated areas; and (5) acquire the necessary sports wagering gaming equipment.²¹⁶

While each State addresses the above provisions in various ways within their legislation, they all set forth requirements that are similar in practice. Though only certain States' regulatory provisions are mentioned within this Section, Ohio would benefit from consulting with each States' provisions with respect to these requirements in an effort to implement the most effective scheme. In addition to these key regulatory provisions, Ohio will also need to address where sports wagering is allowed, wagers that are prohibited, and integrity provisions; and because the States have taken varying perspectives on these provisions, Ohio must choose which route would be most beneficial for it.

3. Where Sports Gambling Can Occur

A pivotal decision that Ohio must make with respect to implementing sports wagering legislation is whether it will allow only in-person or both in-person and online sports wagering. One thing is for certain: Ohio should only allow individuals to engage in sports wagering if they are physically present in the State of Ohio at the time of wagering. Such a requirement is of utmost necessity in the effective regulation of sports gambling and gambling generally, because gambling must be kept within limits for reasons including gambling addiction and problem gambling.²¹⁷

As for Ohio's stance on where it should permit sports wagering within the State, Ohio should include provisions allowing for in-person and

²¹⁴ *Id.*

²¹⁵ W. VA. CODE § 29-22D-12 (LexisNexis 2019).

²¹⁶ *Id.*

²¹⁷ See *Help & Treatment*, NAT'L COUNCIL ON PROBLEM GAMBLING, <https://www.ncpgambling.org/help-treatment/faq/> (last visited Jan. 15, 2020).

online sports wagering. However, similar to New Jersey, West Virginia, and Pennsylvania, Ohio should postpone allowing online wagering until it releases comprehensive rules and regulations governing sports wagering, and consults with the other States about their online sports wagering platforms.²¹⁸ One essential provision that Ohio must include with respect to online sports wagering is a provision similar to West Virginia's "Geolocation Requirement," which would require Ohio to implement a Geolocation System to detect physical location of a gambler who is attempting to access the online sports wagering platform; such a provision would monitor and block unauthorized attempts to access the online platform from out-of-state gamblers.²¹⁹

4. Prohibited Wagers and Gamblers

The decision for prohibitions requires taking into account the well-being of athletes as well as the integrity of the sports. The NCAA explicitly opposes all forms of legal and illegal sports wagering on college sports because it threatens student-athlete well-being and the integrity of college sports.²²⁰ The NCAA has accepted the current reality as States continue to legalize sports wagering, and has solidified its commitment to ensuring that the States' laws and regulations "promote a safe and fair environment for the nearly half a million students who play college athletics."²²¹ The competitive nature of college sports in Ohio is monumental compared to the other States who have legalized sports wagering; Ohio has thirteen NCAA Division I schools, and many of these institutions see great success and publicity.²²² There is no doubt that Ohio college sports fans are some of the most dedicated, loyal, and die-hard in the United States.²²³ In an effort to respect the NCAA and in light of the passion of Ohio college sports fans, Ohio should prohibit individuals from placing bets on college events that take place within the State

²¹⁸ See W. VA. CODE R. §§ 179-9-13, 179-9-14, 179-9-16, 197-9-17 (2018) (establishing additional requirements for wagers placed on mobile applications and other digital platforms).

²¹⁹ *Id.* § 179-9-15.

²²⁰ *College Sports Betting – NCAA Official Statement*, NCAA.ORG, <https://strofe.ftpsidearmsports.com/custompages/Compliance/Coaches/Don't%20Bet%20On%20It%20College%20Sports%20Wagering.pdf> (last visited Sept. 28, 2019).

²²¹ Matt Norlander, *Legalized Sports Betting Presents the NCAA with an Amazing Opportunity, Not a Problematic Hurdle*, CBS SPORTS (July 23, 2018), <https://www.cbssports.com/college-basketball/news/legalized-sports-betting-presents-the-ncaa-with-an-amazing-opportunity-not-a-problematic-hurdle/>.

²²² *List of NCAA Division I Schools*, STATE KEY DATA, <https://state.1keydata.com/ncaa-division-1-schools-by-state.php> (last visited Jan. 15, 2020). See Patrick Brennan, *Ohio State tops CBS Sports 'Best in College Sports' Rankings*, THE ENQUIRER (July 11, 2018), <https://www.cincinnati.com/story/sports/college/university-of-cincinnati/2018/07/11/ohio-state-tops-cbs-sports-best-college-sports-rankings/776385002/>; Nicole Auerback, *Cincinnati-Xavier: Anatomy of a Rivalry*, USA TODAY (Dec. 19, 2012), <https://www.usatoday.com/story/sports/ncaab/2012/12/18/college-basketball-xavier-cincinnati-crosstown/1774975/>; David Jablonski, *Flyers Soar into Elite Eight*, DAYTON DAILY NEWS (Mar. 28, 2014), <https://www.daytondailynews.com/sports/college-basketball/flyers-soar-into-elite-eight/cJbNmRT5bkdsYX9L2o0XoO/>.

²²³ See Alex Kirshner, *This Week in Schadenfreude, Ohio State Gets the Anger Spotlight All To Itself*, SB NATION (Oct. 22, 2018), <https://www.sbnation.com/college-football/2018/10/22/18007474/ohio-state-lost-purdue-2018>.

or involve Ohio schools. Such a prohibition would promote the integrity of college sports in Ohio, limit the NCAA's continued revenue generation off amateur student-athletes in Ohio, and better align with the NCAA's message of opposition of legal sports wagering on college athletics. However, similar to New Jersey, Ohio should still allow for betting on the NCAA Basketball Tournament because of its enormous popularity and substantial revenue generation.²²⁴ Now, instead of the almost \$10 billion wagered on March Madness illegally, Ohio—and other States—can pocket the proceeds and use it to fund important State programs.²²⁵ Though New Jersey only limited its exception to college sports wagering to the NCAA Tournament, Ohio could also allow for bets to be placed on the College Football Playoff as it begins to gain significant popularity in the United States.

Ohio should also implement legislation that resembles New Jersey with respect to individuals who are prohibited from placing bets.²²⁶ New Jersey's scheme is the most comprehensive and covers more individuals who have some sort of role within a professional sports governing body. Such a scheme promotes sport integrity more proficiently and would leave Ohio out of the public spotlight for potential illegal wagering of these individuals—i.e. another Pete-Rose-like incident. In summary, Ohio should limit the ability for individuals to bet on college sports and implement a provision prohibiting a wide range of individuals who have some role in a professional sports governing body from placing bets.

5. Integrity Provisions

Because of the importance of maintaining sport integrity, Ohio should implement an integrity provision that resembles New Jersey and West Virginia's legislation.²²⁷ New Jersey and West Virginia's schemes lay out a complete set of guidelines that sportsbook operators must follow in an effort to regulate sports wagering and combat suspicious activity that would hinder the integrity of the game.²²⁸ Such a structure would be beneficial for Ohio's legislation because of its strict and far-reaching character.

Ohio should also require that information be shared with the sports governing body involved. The sports governing bodies have a clear interest in the continued preservation of integrity in sports, and keeping them in the loop with respect to any suspicious sports wagering activities would further

²²⁴ Jim Caple, *Why NCAA Basketball Tournament's March Madness Has Global Allure*, ESPN (Mar. 14, 2017), http://www.espn.com/mens-college-basketball/story/_/id/18900053/why-enjoy-ncaa-basketball-tournament-march-madness-no-matter-where-the-world.

²²⁵ Chris Crouse, *Betting on NCAA March Madness Basketball Games Will Hit \$10 Billion, Most of it Illegal*, CNBC (Mar. 15, 2018), <https://www.cnbc.com/2018/03/15/ncaa-march-madness-betting-will-hit-10-billion-most-of-it-illegal.html>.

²²⁶ See N.J. REV. STAT. § 5:12A-11(f) (2019).

²²⁷ See *supra* Part IV(A)(5).

²²⁸ See *supra* Part IV(A)(5).

this interest and promote continued communication amongst the key stakeholders. These integrity provisions would also most closely align with the goals of SWIMA, which are to provide a secure betting environment for consumers and protect the integrity of sports wagering.²²⁹ Thus, by implementing legislation mirroring New Jersey or West Virginia and requiring that information concerning suspicious activity be shared with the sports governing body, Ohio would effectively highlight the importance of sport integrity and implement legislation furthering this interest.

V. BREAKING NEWS: OHIO SENATE INTRODUCES SPORTS WAGERING BILL

At what seems like the two-minute warning, Ohio introduced Senate Bill 111, which laid out Ohio's plan for legalized sports wagering.²³⁰ Without getting into the fine print of this 146-page Bill, there are some key points that deserve acknowledgement because many of the provisions included within the Bill were argued previously.

In its current proposal, Ohio delegates oversight of sports wagering to the Ohio Casino Control Commission.²³¹ Ohio also sets forth specific responsibilities of the Ohio Casino Control Commission in carrying out sports wagering within the State that closely mirror New Jersey's "Authority of Division" provision; Ohio's provision is both detailed and effective in establishing the Ohio Casino Control Commission's obligations.²³²

The Bill also implements key regulatory measures, including the requirement of posting house rules, implementing minimum internal controls, and defining duties of an operator. First, the Bill requires the Ohio Casino Control Commission to adopt, amend, or repeal house rules necessary for effective sports wagering regulation; this section also sets forth minimum requirements for these rules and regulations.²³³ Second, the Bill requires sports wagering licensees to establish internal controls and receive approval

²²⁹ See *supra* Part III(A).

²³⁰ S.B. 111, 133d Gen. Assemb., Reg. Sess. (Ohio 2019); See H.B. 194, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019). This Comment only highlights key points from Senate Bill 111, though it is important to note that these bills are at odds over various issues including who should regulate sports wagering. Matthew Kredell, *Argument Bubbles Over Who Should Regulate Ohio Sports Betting*, LEGAL SPORTS REP. (July 25, 2019), <https://www.legalsportsreport.com/34594/ohio-sports-betting-casino-commission/>. Ohio can overcome this issue by implementing a scheme that involves both the Ohio Casino Control Commission and the Ohio Lottery Commission. See *supra* Part IV(B)(1).

²³¹ See S.B. 111, 3775.01(C), 133d Gen. Assemb., Reg. Sess. (Ohio 2019). See also *supra* Part IV(B)(1) (arguing that Ohio should delegate considerable oversight to the Ohio Casino Control Commission).

²³² S.B. 111, 3775.04, 133d Gen. Assemb., Reg. Sess. (Ohio 2019). See also *supra* Part IV(B)(1) (arguing that Ohio would benefit from modeling New Jersey's "Authority of division" language).

²³³ See S.B. 111, 3775.06, 133d Gen. Assemb., Reg. Sess. (Ohio 2019). See also *supra* Part IV(B)(2)(a) (arguing that Ohio lawmakers should mirror its current requirement within § 3772-10-01 and consult with New Jersey's rules and regulations about minimum requirements for house rules).

from the Ohio Casino Control Commission before accepting wagers.²³⁴ Lastly, Ohio's Bill implements detailed operator duties including: (1) acceptance of wagers on sporting events; (2) designation of an area within the gaming facility to conduct sports wagering; (3) determination of the minimum and maximum wagers; (4) employment of a system to offset loss or manage risk; (5) requirement of cooperating with investigations by sports governing bodies or law enforcement; and (6) reporting of abnormal or illegal activity.²³⁵

As the Bill currently stands, Ohio would allow sports wagering operators to accept wagers from individuals physically present within the State in person at a casino, or online; an imperative decision that will allow Ohio to gain substantial revenue.²³⁶ However, Ohio's licensing requirements within the Bill appear to limit each sports wagering licensee to one online-betting platform, creating more of a limitation than other States who have also placed a similar limitation on their sports wagering licensees.²³⁷ Such a limit is necessary to bind operators, but only allowing for one online betting platform per sports wagering licensee may create too much of a limit on sports wagering licensees, thereby limiting revenue generation.

Next, Ohio's current Bill allows for individuals to place bets on college events.²³⁸ Although Ohio cannot be faulted for choosing not to limit wagers on these events because of the substantial revenue potential they bring, the Ohio Casino Control Commission should take special care to ensure the integrity of college sports perseveres.²³⁹ In addition, Ohio's Bill prohibits "wagering by any athlete, coach, referee, team owner, employee of a sports governing body or one of its member teams, or player or referee union personnel."²⁴⁰ This provision closely resembles New Jersey's provision, which is the most comprehensive and complete scheme of the States with

²³⁴ See S.B. 111, 3775.05(A), 133d Gen. Assemb. Reg. Sess. (Ohio 2019); OHIO ADMIN. CODE 3772-10-02 (2019). See also *supra* Part IV(B)(2)(c) (arguing that Ohio should require sports wagering licensees to submit internal control before operation and mirror New Jersey's requirements).

²³⁵ See S.B. 111, 3775.03(A)-(C); 3775.05(A), (G), (H); 3775.07(B)-(E); 133d Gen. Assemb., Reg. Sess. (Ohio 2019). Many of these duties mirror those implemented by the West Virginia Legislature, but Ohio's bill is more comprehensive. See W. VA. CODE ANN. § 29-22D-12 (LexisNexis 2019).

²³⁶ See S.B. 111, 3775.05(A), 133d Gen. Assemb., Reg. Sess. (Ohio 2019). See also *supra* Part IV(B)(3) (arguing that Ohio should only allow individuals to accept wagers if they are physically present in the State, and that Ohio should allow for in person and online sports wagering). John Eklund, sponsor of the new bill, was hesitant about online sport wagering, but his opinion evolved after learning more about the industry; he stated that "I am learning more and more that there are many vendors out there who profess to have the means by which to maintain the security in that space, to maintain integrity." Brian Pempus, *Bill Introduced To Legalize Retain, Mobil Sport Betting In Ohio*, SPORTS HANDLE (Mar. 14, 2019), <https://sportsandle.com/ohio-sports-betting-legislation-filed/>.

²³⁷ See S.B. 111, 3775.02(E)(5), 3775.03(B)(2), 133d Gen. Assemb., Reg. Sess. (Ohio 2019); see also *supra* Part IV(B)(2)(b) (arguing that Ohio should limit licensed operators to no more than three online sports pool websites).

²³⁸ See S.B. 111, 3775.01(J), 133d Gen. Assemb., Reg. Sess. (Ohio 2019).

²³⁹ See *supra* Part IV(B)(4) (emphasizing the monumental nature of college sports in Ohio and NCAA's explicit disagreement with all forms of sports wagering on college sports).

²⁴⁰ See S.B. 111, 3775.07(B)(2), 133d Gen. Assemb., Reg. Sess. (Ohio 2019).

regulated sports wagering.²⁴¹ However, Ohio should take this provision one step further like New Jersey and prevent these individuals from placing a wager on a sports event that is overseen by that individual's sports governing body.²⁴²

Finally, Ohio's Bill emphasizes the importance of sport integrity. Similar to New Jersey and West Virginia, Ohio's current Bill only mentions the word integrity sporadically throughout its regulatory scheme.²⁴³ The Bill also resembles Nevada because it takes an indirect approach to promoting sport integrity by requiring sports wagering operators to go through a background check, implementing strict procedures that sports wagering operators must follow, and subjecting sports wagering operators to strict oversight from the Ohio Casino Control Commission.²⁴⁴ Although the Bill effectively places requirements related to the maintenance of integrity, the Ohio Casino Control Commission should also implement a sports wagering integrity provision that resembles New Jersey or West Virginia within its rules and regulations.²⁴⁵

In addition, Ohio requires the Casino Control Commission and sports wagering operators to cooperate with investigations conducted by the sports governing bodies related to suspicious wagers.²⁴⁶ Although this provision within the Bill effectively allows for the sports governing body to play an active role in monitoring sport integrity, it would also be advantageous for Ohio to require the sports wagering operators to provide information to the sports governing body.²⁴⁷ In sum, Ohio's sports wagering Bill hit many of the points argued in this Comment. However, Ohio must still consider other provisions within other States' regulatory schemes that would make its current proposal even more effective.

VI. CONCLUSION

Although there are several key issues that Ohio must address in its efforts to adopt sports wagering in the State, Ohio is in an exceptional position. Legislators can watch from the stands as lawmakers in other States adopt and amend sports wagering legislation over the next year. In doing so,

²⁴¹ See *supra* Part IV(B)(4) (arguing that Ohio should implement legislation resembling New Jersey's scheme with respect to individuals who are prohibited from placing bets).

²⁴² N.J. REV. STAT. § 5:12A-11(f)(1) (2019).

²⁴³ See S.B. 111, 3775.06(F), 3775.07(D)(3), 133d Gen. Assemb., Reg. Sess. (Ohio 2019); see also N.J. REV. STAT. §§ 5:12A-11(a),(i); 5:12A-13(a) (2019).

²⁴⁴ See S.B. 111, 3775.07(A)-(E), 133d Gen. Assemb., Reg. Sess. (Ohio 2019).

²⁴⁵ See *supra* Part IV(B)(2)(d)(5) (arguing that Ohio should implement a sports wagering integrity provision within its rules and regulations that resembles New Jersey and West Virginia because their provisions lay out a complete set of guidelines that sportsbook operators must follow in an effort to regulate sports wagering and combat suspicious activity that would hinder the integrity of the game).

²⁴⁶ See S.B. 111, 3775.07(C), 133d Gen. Assemb., Reg. Sess. (Ohio 2019).

²⁴⁷ See *supra* Part IV(B)(2)(d)(5) (arguing that Ohio should require information be shared with the sports governing body involved in the potential illegal activity).

Ohio can implement a successful sports wagering scheme. Ohio is already on track to create this successful sports wagering scheme with Senate Bill 111. The hope is that this Comment emphasizes some of the important and most effective provisions from other States so that Ohio legislators can use them in their own scheme, as they continue to deliberate and adjust the Bill.

Ohio must keep sport integrity at the forefront of every single decision made with respect to its sports wagering scheme. In the words of the former commissioner of the National Football League, Paul Tagliabue: “[o]ur games embody our very finest traditions and values. They stand for clean, healthy competition. They stand for teamwork. And they stand for success through preparation and honest effort.”²⁴⁸

²⁴⁸ COMM. ON THE JUDICIARY, 102ND CONG., REP. ON PROF'L AND AMATEUR SPORTS PROTECTION 248 (1991).

