

# MISSISSIPPI SPORTS BETTING: THE WAY AHEAD

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## INTRODUCTION

When it comes to gambling, there is a giant elephant in the room which exists in 49 states: sports betting. How has such an overt and popular topic been shrouded in the cloaks of different state and federal laws for so long? Is there finally a pathway which will allow sports betting to be conducted in the open forum? Despite

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a federal ban on the practice, for the last five years, New Jersey has been trying to find a way to allow sports betting despite a federal ban on the practice. New Jersey is not the only state trying to legalize the practice of sports betting; Indiana, Minnesota, New York, South Carolina, and Texas introduced measures in 2015 that would legally permit sports betting within their respective borders.<sup>1</sup> However, none of these states will be allowed to implement their proposed laws according to the provisions of the present federal law. With the federal ban in place and no changes to it predicted anytime soon, what are the options for states like Mississippi which want to legalize and regulate sports betting?

### I. THE ELEMENTS OF PASPA

The federal ban on sports betting law is codified in the Professional and Amateur Sports Protection Act (PASPA) which was passed in 1992.<sup>2</sup> The law forbids wagering on professional or amateur sports and prohibits state governments from authorizing the activity.<sup>3</sup> PASPA also ensured no sports betting would be allowed at Indian casinos by specifically applying the ban<sup>4</sup> to all lands described in the Indian Gaming Regulatory Act.<sup>5</sup>

#### A. The Nevada and New Jersey Exceptions

Without specifically mentioning the state by name, PASPA carved out an exception for Nevada.<sup>6</sup> PASPA declared the law shall not apply anywhere betting was both “authorized by a statute as in effect on October 2, 1991.”<sup>7</sup> PASPA further required that sports betting was only legal if it had been “conducted in that State... pursuant to the law of that State” during a time period between September 1989 thru October 1991.<sup>8</sup> PASPA did not completely

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<sup>1</sup> Brent Johnson, *N.J. Sports Betting Case Will Go Before U.S. Appeals Court Again*, NJ.com, (Oct. 14, 2015, 11:07 AM), [http://www.nj.com/politics/index.ssf/2015/10/us\\_appeals\\_court\\_to\\_re-hear\\_nj\\_sports\\_betting\\_case.html](http://www.nj.com/politics/index.ssf/2015/10/us_appeals_court_to_re-hear_nj_sports_betting_case.html).

<sup>2</sup> 28 U.S.C. §§ 3701-3704 (1992).

<sup>3</sup> *Id.*

<sup>4</sup> 28 U.S.C. § 3704(b) (1992).

<sup>5</sup> 25 U.S.C. § 2703 (4) (1988).

<sup>6</sup> 28 U.S.C. § 3702(a)(2)(A) (1992).

<sup>7</sup> *Id.*

<sup>8</sup> 28 U.S.C. § 3704(a)(2)(B) (1992).

slam the door on New Jersey since the law permitted sports betting as long as it “was authorized, not later than one year after the effective date of this chapter.”<sup>9</sup>

When the law was written gambling was legal in several states, including Mississippi and New Jersey, neither of which had sports betting. To create the New Jersey exception, PASPA included a requirement that casinos which were “in operation in such municipality throughout the 10-year period... pursuant to a comprehensive system of State regulation authorized by that State’s constitution and applicable solely to such municipality.”<sup>10</sup> Thus, the law carved out specific exceptions to ensure that the one-year window only applied to New Jersey, and more specifically, Atlantic City.

In short, the law gave New Jersey one year to authorize sports betting, which the state declined to approve before the time window closed. Despite intense lobbying from by casinos representatives, efforts to put sports betting on a statewide ballot failed within a legislative committee.<sup>11</sup> Until recently, no other efforts to revive sports betting in Atlantic City casinos have taken place.

## B. Additional State Exceptions

In order to avoid conflict with states that already offered a limited amount of sports betting, PASPA created additional exceptions. Before PASPA was passed, three states (Oregon<sup>12</sup>, Delaware<sup>13</sup>, and Montana<sup>14</sup>) had allowed a limited version of sports betting within their own respective lottery systems. The National

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<sup>9</sup> 28 U.S.C. § 3704(a)(3)(A) (1992).

<sup>10</sup> 28 U.S.C. § 3704(a)(3)(B) (1992).

<sup>11</sup> John Brennan, *Man Behind Sports Betting Ban Stands His Ground*, NorthJersey.com, (Oct. 14, 2015), <http://www.northjersey.com/news/man-behind-sports-betting-ban-stands-his-ground-1.268432>.

<sup>12</sup> Anne Peterson, *NCAA to bring bit of Madness to Rose Garden*, The Reg.-Guard, July 7, 2006, at A1 (explaining that Oregon ceased its football style lottery so that NCAA would allow basketball tournament to be played in the state).

<sup>13</sup> Craig Anderson, *Delaware Sports Lottery still cashing in*, Del. St. News, Feb. 6, 2016, available at <http://delawarestatenews.net/news/delaware-sports-lottery-still-cashing-in>.

<sup>14</sup> Mont. Code Ann. § 23-5-502.

Football League had previously lost a lawsuit to try and prevent Delaware from implementing its lottery based on NFL games.<sup>15</sup>

### C. The Timing of PASPA

The political will to establish PASPA grew as more states flirted with the idea of increased casino gaming. Sports betting seemed a likely path that states would follow. American sports had already seen some serious sports betting scandals that impacted the public's perception of the integrity of the games. A point-shaving scandal forced Kentucky<sup>16</sup> to suspend its basketball season for the 1952-53 season.<sup>17</sup> The 1951 City College of New York basketball team was considered to be one of the best teams of all time,<sup>18</sup> until a betting scandal was discovered that prevented the team from finishing its season.<sup>19</sup> In that year "investigations showed that between 1947 and 1950, 86 games had been fixed in 23 cities in 17 states by 32 players from seven colleges: C.C.N.Y., Long Island University, New York University, Manhattan, Kentucky, Bradley and Toledo."<sup>20</sup> Perhaps the biggest sports betting scandal ever was the infamous Black Sox scandal of 1919.<sup>21</sup> These scandals help to create the public perception that betting inherently corrupted sports.

The supporters of PASPA benefitted from the political climate at the time the law was passed in 1992. This period was during the big wave of gaming legalized across the nation.<sup>22</sup> Until that time,

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<sup>15</sup> See generally *NFL v. Governor of the State of Delaware*, 435 F. Supp. 1372 (D. Del. 1977).

<sup>16</sup> Richard Goldstein, *Ralph Beard, Kentucky Star Involved in Point-Shaving Scandal, Is Dead at 79*, N.Y. TIMES, Nov. 30, 2007, available at [http://www.nytimes.com/2007/11/30/obituaries/30beard.html?\\_r=0](http://www.nytimes.com/2007/11/30/obituaries/30beard.html?_r=0).

<sup>17</sup> Joe Goldstein, *Explosion: 1951 scandals threaten college hoops*, ESPN.COM, (Nov. 19, 2003), [http://espn.go.com/classic/s/basketball\\_scandals\\_explosion.html](http://espn.go.com/classic/s/basketball_scandals_explosion.html).

<sup>18</sup> Ira Berkow, *Scandal, the Unwanted Scar of Triumph*, N.Y. TIMES, Mar. 29, 1996, available at <http://www.nytimes.com/1996/03/29/sports/final-four-a-look-back-scandal-the-unwanted-scar-of-triumph.html?pagewanted=all&src=pm>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Douglas Linder, *The Black Sox Trial: An Account*, <http://law2.umkc.edu/faculty/projects/ftrials/blacksox/blacksoxaccount.html>. (last visited Apr. 29, 2016).

<sup>22</sup> Michael Nelson, *The Politics of Sovereignty and Public Policy toward Gambling*, in *MAPPING THE AMERICAN MORAL LANDSCAPE* 39-70 (Alan Wolfe & Erik C.

casinos were spread far and few around the country. Now only two states, Hawaii and Utah, have banned every form of gambling.<sup>23</sup> It is unlikely now that a national ban on gaming could pass the U.S. Congress. The PASPA promoters in 1992 accurately forecasted passage of state gaming laws and knew the time was right from them to enact a national ban before the opportunity was lost.

PASPA has become the biggest road block for any state wanting to legalize sports betting. However, since it is the one thing that stands in the way, if removed, unfettered access to sports betting across the country may be possible. Several states, led by New Jersey, have begun to ramp up attacks on the validity of PASPA. Thus far, the pathway for New Jersey has not been easy.

## II. THE NEW JERSEY CASE STUDY

In 2010, New Jersey first tried to permit sports betting by changing its constitution to “authorize by law wagering at casinos or gambling houses in Atlantic City and at current or former running and harness horse racetracks on the results of professional, certain college, or amateur sport or athletic events.”<sup>24</sup> The next step was a public vote on the measure, which 64 percent of voters approved the following year.<sup>25</sup> With the state poised to open its doors to sports betting, the national professional leagues and the National Collegiate Athletic Association sued, arguing the state law violated PASPA.<sup>26</sup> In its response, New Jersey attacked the constitutionality of PASPA.

### A. New Jersey v. the Leagues, Round 1

New Jersey argued that PASPA violated the commerce clause by allowing a few states to permit legalized sports betting and prevented other states from doing the same, which amounted to

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Owens eds., 2009) p.48 (citing the third wave of legalized casino gambling from 1989-1993 when seven states legalized the practice).

<sup>23</sup> Alan Wolfe & Erik C. Owens, *Introduction*, MAPPING THE AMERICAN MORAL LANDSCAPE p.2.

<sup>24</sup> N. J. S. A. Const. Art. 4, § 7.

<sup>25</sup> Christopher L. Soriano, *The Efforts to Legalize Sports Betting in New Jersey – A History*, N.J. LAW., Apr. 2013, at 22, 24.

<sup>26</sup> See generally *NCAA v. Christie*, 926 F.Supp.2d 551 (D.N.J. 2013).

unconstitutional discrimination.<sup>27</sup> It also claimed PASPA violated the due process clause, the equal protection clause, and the Tenth Amendment.<sup>28</sup> This rarely used argument - that a violation of the Tenth Amendment had occurred - opened a door during litigation.<sup>29</sup>

In a following appeal, New Jersey won a dissenting vote by Judge Thomas Vanaskie, who based his decision on the Tenth Amendment's anti-commandeering principle.<sup>30</sup> Utilization of this rare argument exposed a weakness in the armor of PASPA. If sustained attacks on this weakness can work to chip away at the law's provisions, then it is possible that a state can find a way to allow a limited form of sports betting, despite the existence of PASPA.

New Jersey used the Anti-Commandeering principles previously set forth by the Supreme Court.<sup>31</sup> Even though the state lost its first round of sports betting litigation, New Jersey returned to this argument in its most recent battle with the professional sports leagues and the NCAA during the February 2016 en banc hearing before the U.S. Court of Appeals for the Third Circuit.<sup>32</sup> For their second attempt, New Jersey altered its law and better perfected its attack against PASPA's regulations.

### B. New Jersey v. the Leagues, Rounds 2 and 3

In February 2016, New Jersey, as defendants, argued in front of the Third Circuit Court of Appeals on their status to authorize legal sports betting. The plaintiffs in the case consisted of major sports leagues, such as the National Basketball Association, National Hockey League, Major League Baseball, the NFL and the NCAA.

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<sup>27</sup> Soriano, *supra* note 25, at 25.

<sup>28</sup> *Id.*

<sup>29</sup> NCAA, 926 F.2d at 554.

<sup>30</sup> NCAA v. Governor of New Jersey, 730 F.3d 208 (3rd Cir. 2013), (case will be referred to as *Christie I*). See *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), See also *Printz v. United States*, 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997). (Only *New York* and *Printz* cases have directly struck down prior laws citing unlawful commandeering by the federal government to the states.)

<sup>31</sup> NCAA, 926 F.2d at 561.

<sup>32</sup> See Matt Bonesteel, *After court arguments, is New Jersey any closer to legalized sports gambling?*, WASH. POST (Feb. 18, 2016), available at [https://www.washingtonpost.com/news/early-lead/wp/2016/02/18/after-court-arguments-is-new-jersey-any-closer-to-legalized-sports-gambling.](https://www.washingtonpost.com/news/early-lead/wp/2016/02/18/after-court-arguments-is-new-jersey-any-closer-to-legalized-sports-gambling/)

This time, however, New Jersey had altered its legal strategy. In *Christie I*, the Third Circuit rejected the state's anti-commandeering argument.<sup>33</sup> The new 2014 state law removed state regulation from the sports betting market altogether.<sup>34</sup> In this manner, the state believed it could bypass the PASPA regulations by simply not enforcing them at the state level. A three judge panel from the Third Circuit voted 2-1 that the new 2014 state law was also a violation of PASPA because it still "authorizes by law sports gambling."<sup>35</sup> Once again, New Jersey won a dissenting vote. In his dissent, Judge Julio Fuentes pointed out the majority rested its opinion on the same type of false equivalence that had been rejected in *Christie I*.<sup>36</sup> The rationale confliction between *Christie I* and *Christie II* forced the Third Circuit to hold an en banc hearing to clarify its previous holding.

Although the court's decision on this conflict is still months away at the time of this writing, it is likely that the courts will side with the leagues and uphold the ban on sports betting.<sup>37</sup> However, the intelligently crafted attack by New Jersey against PASPA demonstrates a compelling path to legalized sports betting outside of Nevada. How could Mississippi, or any other state, allow sports betting if New Jersey has failed thus far?

### III. THE ROAD AHEAD FOR MISSISSIPPI AND SIMILAR STATES

Mississippi could pick the low hanging fruit by starting the process of legalizing sports betting through passage of legislation at the state level. Current state law consists of many betting-related bans, including a prohibition on betting "upon any game."<sup>38</sup> This law could be changed or modified to allow for sports betting, an

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<sup>33</sup> *Christie I*, 730 F.3d 208 at 232.

<sup>34</sup> N.J. STAT. ANN. § 5:12A-7 (2014) (repealing certain sports wagering provisions as applicable to casinos or gambling houses).

<sup>35</sup> *NCAA v. Governor of New Jersey*, 799 F.3d 259, 268 (3rd Cir. 2014), *reh'g en banc granted*, opinion vacated Oct. 14, 2015. (case will be referred to as *Christie II*).

<sup>36</sup> *Id.* at 269. (Fuentes, J., dissenting).

<sup>37</sup> Michael McCann & Will Green, *New Jersey sports wagering facing uphill climb after hearing*, SPORTS ILLUSTRATED, Feb. 18, 2016, available at <http://www.si.com/nfl/2016/02/17/new-jersey-sports-betting-hearing-chris-christie>.

<sup>38</sup> MISS. CODE ANN. § 97-33-1 (2017).

approach similar to the New Jersey strategy in *Christie I* against PASPA.<sup>39</sup>

Several other states have begun the process of legalizing sports betting. There is a bill in the California Legislature, AB 1573, currently pending in committee that would legalize sports betting within the state upon the amendment or repeal of PASPA.<sup>40</sup> Pennsylvania has followed a similar path where a bill was passed by an overwhelming margin, 23-1, in the Legislative Gaming Oversight Committee.<sup>41</sup> While this bill does not create any new state law, it encourages Congress to repeal PASPA and allow states to enact their own sports betting measures.<sup>42</sup> A bill passed by the Mississippi Legislature which mirrors the Pennsylvania bill would help ramp up the pressure on Congress to repeal PASPA.

While this strategy could be helpful, it would still require Congressional action. However, unlike New Jersey's attempts to bypass PASPA, Mississippi would be arguing in front of the Fifth US Circuit Court. This could generate a Circuit split on PASPA, thereby forcing the Supreme Court to resolve the issue. The issue of standing was raised in *Christie I* as a possible line of attack against PASPA.

#### A. The Issue of Standing

Though many of the arguments Mississippi might make would be similar to those of New Jersey, Mississippi could add an additional piece. Since there are no major professional sports teams (NBA, NHL, NFL, or MLB) within the state, Mississippi could take the standing argument even further. In contrast, New Jersey is home to three of the four major sports leagues, with two MLB teams playing in nearby New York.

Similar to Nevada, Mississippi does not have a single major sports team within its state. This issue of geographic professional teams was not raised by New Jersey during the standing arguments, as the state knew it was likely a losing argument due to the professional sports teams located within its own borders.

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<sup>39</sup> *See generally* NCAA, 730 F.3d 208.

<sup>40</sup> A.B. 1573, 2015-16 Sess. (Cal. 2016).

<sup>41</sup> HR 619, 2015-16 Sess. (Pa. 2016).

<sup>42</sup> *Id.*

Mississippi could raise this issue at the Fifth Circuit to help attack the leagues' standing.

The Christie I court went into great length concerning standing. The Court focused heavily on defending its decision that the leagues did have standing to bring the lawsuit. However, another Circuit Court undertaking a similar claim may come to a different conclusion. Mississippi, along with Louisiana and Texas, are part of the Fifth Circuit. The Third and Fifth Circuits have similar tests to determine if a plaintiff has standing in a civil suit.

### 1. *Third Circuit Court Standing Test*

Having decided early on in Christie I that the leagues did have standing, the trial court did not spend much time on the issue, as New Jersey initially focused most of its attacks on the constitutionality of PASPA itself.<sup>43</sup> On the appeal to the Third Circuit, New Jersey altered its strategy to focus on whether the leagues had standing to bring their cause of action.<sup>44</sup> The court went into great detail to explain the leagues did have standing. Under the three part test utilized by the court, a plaintiff must show (1) injury in fact, (2) causation, and (3) redressability of the injury by the court.<sup>45</sup> The court quickly concluded that the last two parts of the three part test had been met – however, it had to use some creativity to create the causation.<sup>46</sup>

Since no past injury had been claimed, the court focused heavily on whether or not an actual “identifiable trifle of injury”<sup>47</sup> could occur to the leagues. The Third Circuit Court went to great lengths, striving to show an injury to the leagues. While the decision contains an abundance of citations - from a Senate report<sup>48</sup> to the National Gambling Impact Study Commission<sup>49</sup> and the

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<sup>43</sup> See generally NCAA, 926 F.Supp.2d 551.

<sup>44</sup> NCAA, 730 F.3d at 209.

<sup>45</sup> Summers v. Earth Island Inst., 555 U.S. 488, 493(2009).

<sup>46</sup> *Christie I*, 730 F.3d at 218. See also Nat'l Wrestling Coaches Ass'n v. Dep't of Educ., 366 F.3d 930, 940–41 (D.C. Cir. 2004) (law requires only that the regulations have constituted a “substantial factor” in the third party’s decision making); see also *Competitive Enter. Inst. v. NHTSA*, 901 F.2d 107, 113 (D.C. Cir. 1990) (requiring “substantial likelihood of the alleged causality”).

<sup>47</sup> *Christie I*, 730 F.3d at 210.

<sup>48</sup> Senate Report at 3555, *Christie I*, 730 F.3d at 221. (noting that PASPA was necessary to “maintain the integrity of our national pastime”).

<sup>49</sup> *Id.*

recent case of corrupt NBA referee Tim Donaghty<sup>50</sup> - there was no concrete evidence that any damage to the leagues did occur. Betting line point spreads are still printed in most major newspapers in the country on a daily basis. ESPN and CBS show the betting lines on their websites when displaying team schedules, a change from when the networks tried to steer away from gambling. Indeed, it would be foolish for anyone to assume that sports betting is not a major reason for the leagues success.

For all the potential injuries the court attempted to blame on an increase in sports betting, the cited harms occurred when the ban on sports betting was in place. It is misplaced to argue that lifting the ban would create such rampant betting to produce injuries to the leagues.

## 2. Fifth Circuit Court Standing Test

The rabid defense of the leagues standing might be judged differently in a separate Circuit Court.

Christie II is almost completely silent on the issue of standing. It seems New Jersey surrendered that ground early on after the appeal results in Christie I. If Mississippi were to allow the casinos to begin taking sports bets this would almost certainly invite a lawsuit from the leagues as well. Mississippi could then attack the issue of standing, like New Jersey did in Christie I.

The Fifth Circuit's standing test is not dissimilar to the Third Circuit's test. The Fifth Circuit mandates 1) there must be an injury in fact that is concrete, actual and imminent, 2) a causal connection between the injury and conduct complained of and 3) injury is likely to be redressed by a favorable decision.<sup>51</sup> Despite the similarities of the test Mississippi could still alter its proposed law to attack the standing of the leagues.

The drafters of the PASPA legislation appear to have been worried that professional and amateur leagues may run into to same standing problem. In order to remedy the problem the

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<sup>50</sup> *Id.* at 222. (showing that match fixing scandals do tarnish a league's image).

<sup>51</sup> *See Hosein v. Gonzales*, 452 F.3d 401, 403-404 (5th Cir. 2006) at 403,404; *See also Blanchard 1986 Ltd. v. Park Plantation LLC*, W.D.La., July 30, 2007 WL 2381268.

drafters created a special section within the law, attempting to codify standing for the leagues.<sup>52</sup>

### 3. The Mississippi Fight Against Standing

With the lessons learned from the New Jersey fight against PASPA, Mississippi could try a different approach. Instead of allowing sports betting at all levels of professional and amateur sports, Mississippi could restrict betting to professional sports only. This would strike a serious blow to one of the plaintiffs in the original Christie I and Christie II suits, the NCAA. The NCAA was the main party to both of the original suits against New Jersey. Their omission from the proposed betting authorization would at least serve to defeat the standing of the NCAA, leaving the professional leagues to fend for themselves as plaintiffs in a lawsuit.

There are many NCAA schools within Mississippi, allowing bets on college games would likely invite the same loss New Jersey suffered in its standing argument. Mississippi could possibly get around this by restricting betting to only professional teams as a way to attack the Christie I court's finding of concrete injury and thus, standing for the leagues.<sup>53</sup>

The initial standing argument in the Third Circuit was not based on any material finding of fact. Instead, it was based largely on secondary sources that were patched together to create sufficient injury to give the leagues standing. The basis of the injury itself could be attacked in the Fifth Circuit.

### 4. Does State Regulated Sports Betting Create an Injury to the NCAA or the Professional Leagues?

The one state that does allow unfettered access to sports betting, Nevada, has not seen any negative effects on its NCAA games played there. Nevada is home to two NCAA schools: University of Nevada-Reno (UNR) and University of Las Vegas (UNLV). These schools compete against other NCAA schools,

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<sup>52</sup> 28 U.S.C. § 3703 (1992) (A civil action to enjoin a violation of § 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation).

<sup>53</sup> See generally *NCAA v. Governor of New Jersey*, 730 F.3d 208.

sometimes just miles from casinos which invite sports bets on those same games. In 2001, Nevada lifted its self-imposed betting ban on UNR and UNLV,<sup>54</sup> and in a recent 2017 article, the Chairman of the Nevada Gaming Control said that there haven't been any problems with game fixing.<sup>55</sup> Furthermore, the Oakland Raiders have pursued a possible move to Las Vegas.<sup>56</sup> If this happens, it is unlikely that there will be any restrictions on the ability to place sports bets on the Raiders despite the team being located in Las Vegas.<sup>57</sup>

It is clear that sports betting can alter the integrity of a game. The ability to bet on specific sporting events can create the perception of possible game-fixing. It also can allow for corruption within the game or sports league. Focusing on these potential negative side effects of sports betting in general shifts the discussion of sports betting in the wrong direction that favors the leagues. Instead, the heart of the issue is whether or not state sponsored regulation of sports betting will affect the integrity of games.

The places that have had game-fixing scandals are places where sports betting is illegal.<sup>58</sup> The largest point shaving scandals occurred outside the realm of legalized and regulated sports betting. Some of the biggest fixing scandals occurred at Boston College in the 1978-79 basketball season,<sup>59</sup> Northwestern during

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<sup>54</sup> Matt Youmans, *Goodell, NFL Might be Warming up to Gambling*, LAS VEGAS REVIEW JOURNAL, (May 1, 2016 7:00PM), available at <http://www.reviewjournal.com/opinion/columns-blogs/matt-youmans/goodell-nfl-might-be-warming-gambling>.

<sup>55</sup> See Joe Drape, *Cash Hungry States Eye Sports Betting, to Leagues' Dismay*, N.Y. TIMES, Mar. 27, 2013, available at <http://www.nytimes.com/2013/03/28/sports/more-states-look-to-get-in-the-sports-betting-game.html>.

<sup>56</sup> Matt Youmans, *Bookmakers don't expect restrictions if Raiders move to Las Vegas*, LAS VEGAS REVIEW JOURNAL, (Jan. 29, 2016 1:00AM) available at <http://www.reviewjournal.com/sports/betting/bookmakers-dont-expect-restrictions-if-raiders-move-las-vegas>.

<sup>57</sup> *Id.*

<sup>58</sup> Drape, *supra* note 55.

<sup>59</sup> David Purdum, *'The worst fix ever'*, ESPN, (Oct. 3, 2014) [http://espn.go.com/espn/chalk/story/\\_id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal](http://espn.go.com/espn/chalk/story/_id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal).

the 1994-95 basketball season,<sup>60</sup> and Tulane during the 1984-85 season.<sup>61</sup>

Whether the type of legal sports betting sought actually “injures” leagues is debatable. The NBA Commissioner, Adam Silver, has suggested a new approach to sports betting.<sup>62</sup> His idea is bringing sports betting out from the shadows and into a regulated market that ensures integrity for the leagues.<sup>63</sup> It shows that any “injury” the leagues claim is currently taking place in the underground betting scene. The addition of state sponsored sports betting outside of Nevada would not increase the “injury” the leagues claimed in Christie I and Christie II.

### CONCLUSION

New Jersey has focused its attack on the constitutional issues that could nullify PASPA. Their line of attack, while decisive, has not been very successful. Instead of trying to kill the law outright, Mississippi could simply allow a limited form of sports betting that could succeed despite the existence of PASPA.

Mississippi could craft the bill in a way that would hurt the legal standing of the leagues. Allowing bets to be placed only on smaller market sports such as UFC, MLS, NASCAR, professional boxing, European soccer, golf, and tennis would hurt, if not destroy entirely, the ability of the leagues to bring a lawsuit. Whether or not there is a market for such bets to be placed in Mississippi is for the casinos to determine. In order to make this type of sports betting more attractive to casinos, the law could also authorize betting machines instead of a person to person requirement. This would help to reduce the long term cost of casinos to implement the betting scheme.

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<sup>60</sup> Pam Belluck, *Ex-Northwestern Players Charged in Point-Shaving*, N.Y. TIMES, (Mar. 27, 1998), at <http://www.nytimes.com/1998/03/27/sports/college-basketball-ex-northwestern-players-charged-in-point-shaving.html>.

<sup>61</sup> Frances Frank Marcus, *8 Indicted in Tulane Scandal; School to Give Up Basketball*, N.Y. TIMES, (Apr. 5, 1985), at <http://www.nytimes.com/1985/04/05/sports/8-indicted-in-tulane-scandal-school-to-give-up-basketball.html?pagewanted=all>.

<sup>62</sup> See Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES, (Nov. 13, 2014), at <http://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html>.

<sup>63</sup> *Id.*

The political will within the state to allow for this type of sports betting appears to be present. A bill that would legalize fantasy sports betting was recently passed within the Mississippi Legislature and sent to the governor for approval.<sup>64</sup> The attitude for sports betting across the nation is changing. A recent unofficial poll said that two-thirds of Americans support ending PASPA.<sup>65</sup> The Attorney General of Wisconsin said PASPA has been “ineffective” in prohibiting sports betting.<sup>66</sup> Even one of the biggest opponents of sports betting, Roger Goodell, admitted the NFL has begun to approach sports betting differently from years past.<sup>67</sup>

Despite these prevailing attitudes, PASPA still stands as federal law. It is unquestionably the biggest impediment preventing regulated sports betting across the nation.

In order to help overcome it, Mississippi could allow sports bets on the professional leagues while excluding NCAA teams. If the state loses the standing argument in the Fifth Circuit, Mississippi could then alter its law to allow sports bets on other professional athletics (UFC, MLS, NASCAR, professional boxing, European soccer, golf, and tennis). This type of sports betting may only achieve minimal success, but it would be a significant step in the state’s fight against PASPA.

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<sup>64</sup> Dustin Gouker, *Lightning Strikes Twice for Fantasy Sports in One Day: Mississippi Passes Bill*, LEGAL SPORTS REPORT (Apr. 19, 2016, 3:59 PM), <http://www.legalsportsreport.com/9606/mississippi-legislature-passes-dfs-bill/>.

<sup>65</sup> Dustin Gouker, *A Step Towards Repealing PASPA? Sports Betting Gets Spotlight At U.S. Capital*, LEGAL SPORTS REPORT, (Apr. 20, 2016, 3:32 PM), <http://www.legalsportsreport.com/9624/sports-betting-event-in-dc/>.

<sup>66</sup> *Id.*

<sup>67</sup> Youmans, *supra* note 52.