

# TO REGULATE OR DEREGULATE? IS SPORTS GAMBLING HERE TO STAY IN MISSISSIPPI?

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## INTRODUCTION

In 2013, James Surowiecki, an American journalist for *The New Yorker*, stated, “The ban on sports betting does precisely what Prohibition did. It seems that Surowiecki’s contentious perspective is a debatable topic among sports enthusiasts almost ten years later. Since the Supreme Court’s decision in *Murphy v. National Collegiate Athletic Association*,<sup>1</sup> many states have legalized sports betting.<sup>2</sup> However, states like Mississippi have implemented new regulations that have almost banned sports gambling.<sup>3</sup>

While individual states are slowly implementing sports betting regulations, Congress has yet to assist states in their regulations by presenting a baseline that all states must follow.<sup>4</sup> The United States is consistently grappling to solve baseline regulations for gambling laws,<sup>5</sup> and it appears that the

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<sup>1</sup> See 138 U.S. 1461 (2018).

<sup>2</sup> See Ryan Rodenberg, United States of sports betting: An updated map of where every state stands, ESPN (Apr. 7, 2021), [https://www.espn.com/chalk/story/\\_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization](https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization).

<sup>3</sup> See Jill R. Dorson, Betting On College Sports – Or Not – Often A Game Of Political Football, Sportshandle (July 11, 2019), <https://sportshandle.com/sports-betting-on-college-sports> (stating that Mississippi became the fourth state to legalize sports gambling, following states such as New Jersey and Pennsylvania, while being one of three states to allow sports gambling on local collegiate teams).

<sup>4</sup> See Ryan Grandeau, Securing the Best Odds: Why Congress Should Regulate Sports Gambling Based on Securities-Style Mandatory Disclosure, 41 *Cardozo L. Rev.* 1229, 1232 (Feb. 2020).

<sup>5</sup> See Matthew Continetti, America Gambles with Its Future, *Nat’l Rev.* (Feb. 12, 2022, 6:30 AM), <https://www.nationalreview.com/2022/02/america-gambles-with-its-future/#slide-1>.

implementation of gambling regulations by the states is making sports betting even harder.<sup>6</sup>

The primary foundation of this Note examines the Supreme Court's decision in *Murphy* and the State of Mississippi's reaction to the holding. At the same time, the Note also argues why the federal government should increase gambling regulations post-*Murphy*, discusses legalizing mobile gambling in Mississippi, and critically focuses on the need to create a standard disclosure requirement for basic player information surrounding sports betting.

Part I explains the history of gambling and the passage of the Professional and Amateur Sports Protection Act. Part II scrutinizes Mississippi's highly regulated gambling industry and the lack of state incentive initiatives relating to Congressional legislation surrounding gambling. Part III proposes a solution to safely and effectively lessen the gambling regulations to benefit all parties. Part IV and V evaluate competing arguments for deregulations and conclude with arguments supporting a state's right to create legislation regarding betting.

## I. BACKGROUND

It is essential to understand the history of sports betting, subsequent federal regulations, and the Supreme Court's reasoning for overturning the Professional and Amateur Sports Protection Act in *Murphy*.<sup>7</sup> Until recently, the United States (U.S.) typically frowns upon the idea of gambling in general.<sup>8</sup> For centuries, the narrative of gambling litigation playing out in U.S. courtrooms depicts a legal roller coaster, with some states making it legal and others reversing their decisions.<sup>9</sup>

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<sup>6</sup> See Chris Bengel, et al., Wanna bet? Explaining where all 50 states stand on legalizing sports gambling, CBS Sports (Jan. 7, 2022, 3:37 PM), <https://www.gamblinglaws.org/us>.

<sup>7</sup> See *Murphy v. NCAA*, 138 S. Ct. 1461, 1473 (2018).

<sup>8</sup> See Grandeau, *supra* note 4, at 1233.

<sup>9</sup> See Brett Smiley, A History of Sports Betting: Gambling Laws and Outlaws, Sportshandle (Nov. 13, 2017), <https://sportshandle.com/gambling-laws-legislation-united-states/history>; see also I. Nelson Rose, Gambling and The Law: Pivotal Dates, Frontline, <https://www.pbs.org/wgbh/pages/frontline/shows/gamble/etc/cron.html> (last visited Sep. 24, 2021).

*A. History of Sports Gambling In The United States*

## 1. Early Years of Sports Gambling

Traditionally, states have regulated the gambling industry since colonization.<sup>10</sup> The existence of betting relates back to history surrounding the formation of the United States.<sup>11</sup> The difference between ordinary gambling and sports gambling became prevalent in the early 1800s.<sup>12</sup>

The distinction between ordinary gambling and sports gambling stems from the rising popularity of professional baseball.<sup>13</sup> During baseball's increasing popularity, all forms of gambling were illegal.<sup>14</sup> While states prohibited gambling, individuals did not stop betting.<sup>15</sup> Instead, gambling caused citizens to resort to underground bookmakers.<sup>16</sup> As a result, sports gambling increased while receiving adverse treatment in the eyes of the public and the law.<sup>17</sup>

The negative stigma intensified in 1919 with the "Black Sox Scandal."<sup>18</sup> Gangster Arnold Rothstein paid Chicago White Sox players to throw the World Series.<sup>19</sup> The incident heightened the negative connotation surrounding sports and criminal activity.<sup>20</sup> The mob disregarded the laws for years and communicated through

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<sup>10</sup> Chil Woo, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)*, 31 *Cardozo Arts & Ent. L. J.* 569, 571 (2013).

<sup>11</sup> *Id.* at 572.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Cardozo Arts & Ent. L. J.* 569, 572 (2013).

<sup>15</sup> See Justin Fielkow, et al., *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 *DePaul L. Rev.* 23, 26 (Fall 2016).

<sup>16</sup> *Id.*

<sup>17</sup> Woo, *supra* note 11, at 572 ("[A]s with any lucrative venture, the opportunity for abuse was ever apparent. Many lotteries ended in scandal, with operators absconding with or misappropriating proceeds. In addition, many religious organizations strongly opposed gambling activities in the United States. Thus, state legislation on gambling became evermore complex and tumultuous, based on financial need and public perception.").

<sup>18</sup> See Evan Andrews, *What Was the 1919 'Black Sox' Baseball Scandal?*, HISTORY (Aug. 12, 2021) <https://www.history.com/news/black-sox-baseball-scandal-1919-world-series-chicago> ("In 1919, Chicago White Sox players allegedly threw the World Series. It remains one of professional baseball's most notorious scandals.").

<sup>19</sup> See *id.*

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

telephones and other resources.<sup>21</sup> Interestingly, in 1949, Nevada became the first state to allow a form of legalized sports betting.<sup>22</sup> However, despite legalization in Nevada, mob families in cities like New York and Chicago continued creating sportsbooks in response to the growing popularity of football, baseball, and basketball.<sup>23</sup>

## 2. Laws With No Enforcement

In response to the increasing presence of organized crime in the sports world, Congress implemented new federal laws such as the Interstate Wire Act of 1961 (The Act).<sup>24</sup> The Act initially provided assistance to states by enforcing anti-gambling laws, making unauthorized, in-state bookmaking illegal.<sup>25</sup> Although the Act assisted in preventing groups from engaging in intrastate gambling, it lacked provisions concerning interstate gambling.<sup>26</sup> However, the Interstate Wire Act seemingly did not paralyze the widespread growth of the popularity surrounding illegal gambling in America.<sup>27</sup>

A report during the 1960s by the Commission on the Review of the National Policy Toward Gambling describes gambling law

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<sup>21</sup> See Brett M. Bruneteau, Sports Gambling in Nebraska: A Good Bet for the Good Life, 98 Neb. L. Rev. 718, 723-724 (Spring 2020) (“Following the Great Depression, the need for revenue compelled many states to legalize certain forms of gambling again... Sports betting, however, was still banned throughout the country. Consequently, large multi-state crime syndicates began to fill the void. They organized sportsbooks and operations to meet the new surge in popularity of sports—specifically, professional baseball, professional football, collegiate football, and collegiate basketball. For nearly three decades, the “syndicates openly defied state gambling laws by using the telegraph and telephone” to communicate and transact business.”).

<sup>22</sup> Fielkow et al., *supra* note 16, at 26-27; see also Aine Givens, States where sports betting is legalized and possible new ones in 2022, *The Journal Times* (Mar. 14, 2022), [https://journaltimes.com/news/states-where-sports-betting-is-legalized-and-possible-new-ones-in-2022/collection\\_c09501c0-2719-5698-a0a6-b6ec0a5c2492.html](https://journaltimes.com/news/states-where-sports-betting-is-legalized-and-possible-new-ones-in-2022/collection_c09501c0-2719-5698-a0a6-b6ec0a5c2492.html).

<sup>23</sup> Fielkow et al., *supra* note 16, at 27 (“Despite the growth of Nevada’s legal sports gambling operations, especially those in Las Vegas, organized crime remained a problem. Sophisticated criminal organizations openly defied authorities and quickly “became the primary operators of [illegal] sports gambling schemes throughout the United States.” As a result, in the early 1960s there was a palpable fear that organized crime would once again attempt to corrupt professional sports.”).

<sup>24</sup> See *id.*

<sup>25</sup> Bruneteau, *supra* note 22, at 724.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

enforcement as an impossible task.<sup>28</sup> Until the late 1970s, states did not begin to consider legalizing sports betting.<sup>29</sup> Subsequently, Congress requires Las Vegas bookmakers to pay a ten percent tax on sports bets until this point.<sup>30</sup> The triggering effect of charging a high fee to place a bet causes many people not to bet.<sup>31</sup> Eventually, Congress lowers the tax, and states begin to rethink their views on the gambling industry.<sup>32</sup>

While there is evidence of Congressional and State gambling regulations, enforcement of the gambling regulation presented its challenges. Police arrests were few, and those arrested rarely faced charges.<sup>33</sup> A study during the 1980s estimates that individuals wagered eight billion dollars to gamble illegally.<sup>34</sup> By 1989, it substantially increased to fifty billion dollars.<sup>35</sup> The increasing revenue in illegal gambling also increased the number of fixed games over many decades.<sup>36</sup> As scandals continued to be exposed, skepticism inevitably grew over the game's integrity among fans.<sup>37</sup> The most prominent gaming fixing scandal was in 1989.<sup>38</sup> Major League Baseball (MLB) discovers that Pete Rose of the Cincinnati Reds is betting on his team's games.<sup>39</sup> As a result, Rose received a lifetime ban from the sport.<sup>40</sup>

### 3. Professional and Amateur Sports Protection Act of 1992

While withstanding the growing concerns among fans and upholding the game's integrity, Congress enacted the Professional

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<sup>28</sup> Richard Johnson, The centuries-old history of how sports betting became illegal in the United States in the first place, SB Nation (May 18, 2018), <https://www.sbnation.com/2018/5/18/17353994/sports-betting-illegal-united-states-why>.

<sup>29</sup> See History of Sports Betting in the USA, Legal Sports Betting, <https://www.legalsportsbetting.com/history-of-sports-betting-in-the-usa/> (last updated Feb. 2, 2021).

<sup>30</sup> *Id.*

<sup>31</sup> See *id.*

<sup>32</sup> *Id.*

<sup>33</sup> Bruneteau, *supra* note 22, at 725.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Bruneteau, *supra* note 22, at 725.

<sup>38</sup> *Id.*

<sup>39</sup> See Elizabeth Swinton, This Day in Sports History: MLB Announces Investigation of Pete Rose, Sports Illustrated (Mar. 20, 2020), <https://www.si.com/mlb/2020/03/20/this-day-in-sports-mlb-announces-pete-rose-investigation>.

<sup>40</sup> *Id.*

and Amateur Sports Protection Act of 1992 (PASPA).<sup>41</sup> PASPA came at a critical moment in the sports gambling world, with many states moving towards legalizing sports wagering.<sup>42</sup> Before its passage, thirty-two states had lotteries with sports betting plans.<sup>43</sup>

PASPA was designed to prohibit sports gambling conducted by or authorized under any State or other governmental entity.<sup>44</sup> PASPA did not make sports gambling a federal crime, but a violation would result in a civil action against the state.<sup>45</sup> The spirit of the federal law was to protect the character and integrity of sport, shield impressionable youth from the vices of gambling, and restrict any further spread of state-authorized sports gambling.<sup>46</sup> League Commissioners were the principal backers of PASPA, arguing that the integrity of sports would be compromised if states legalized gambling.<sup>47</sup>

PASPA provides two exceptions for specific states around legalized sports gambling.<sup>48</sup> The first exception provides that Delaware, Montana, Nevada, and Oregon are exempt from the law's prohibitions.<sup>49</sup> The second exception includes a one-year window allowing an exemption for specific states in the midst of creating regulations around sports gambling schemes.<sup>50</sup> Congress created the second exemption mainly for Atlantic City, New Jersey. However, New Jersey ultimately did not pass legislation within one year.<sup>51</sup>

Initially, PASPA centered around restoring honor to the game of sports and eliminating unlawful sports gambling, yet, the

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<sup>41</sup> S. Rep. No. 102-248, at 3 (1991).

<sup>42</sup> S. Rep. No. 102-248, at 5.

<sup>43</sup> *Id.*

<sup>44</sup> S. Rep. No. 102-248, at 17.

<sup>45</sup> *Id.* at 17. ("A civil action to enjoin a violation of section 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."). See 28 U.S.C. § 3702 (2012).

<sup>46</sup> *Id.* at 5.

<sup>47</sup> *Id.* at 5 ("Sports gambling threatens the integrity of, and public confidence in, amateur and professional sports.").

<sup>48</sup> Bruneteau, *supra* note 22, at 726-27.

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

<sup>50</sup> *Id.* at 727.

<sup>51</sup> Bruneteau, *supra* note 22, at 727.

Congressional attempt failed.<sup>52</sup> Neither aspect of the law came to fruition, and PASPA appears to limit states' rights glaringly.<sup>53</sup> States start to express their concerns over violations of the Commerce Clause and federalism, with New Jersey at the forefront.<sup>54</sup> The states' frustration made its way to the Supreme Court in 2017.<sup>55</sup>

#### 4. MURPHY V. NCAA

##### Behind The Bench: The Supreme Court Analysis

On December 4, 2017, the Supreme Court reviewed New Jersey's argument that PASPA violates the U.S. Constitution's anti-commandeering principles.<sup>56</sup> The Court cites that PASPA unconstitutionally "regulate[s] state governments' regulation" of the citizens of the respective state.<sup>57</sup> The Court reaches by closely scrutinizing the Act's provisions.

The Court first examines the PASPA provision prohibiting the authorization of sports gambling.<sup>58</sup> The states draw attention to the word "authorize" and argue that repealing a state prohibition or affirmatively authorizing sports gambling would violate PASPA.<sup>59</sup> The league responds by stating, "to authorize... means '[t]o empower; to give a right or authority to act; to endow with authority.'"<sup>60</sup> The interpretation did not allow a state to partially outlaw sports gambling but did give them the ability to outlaw the activity entirely.<sup>61</sup> States only violate PASPA when they affirmatively authorize sports gambling.<sup>62</sup>

The Supreme Court agrees with the state's interpretation of "authorize" by focusing on state gambling laws at the enactment of

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<sup>52</sup> Id. at 726.

<sup>53</sup> Bruneteau, *supra* note 22, at 727.

<sup>54</sup> Id. at 727-28.

<sup>55</sup> PASPA Supreme Court Decision: Everything You Need to Know, World Sports Network, <https://www.wsn.com/sports-betting-usa/paspa> (last visited Mar. 24, 2022).

<sup>56</sup> *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

<sup>57</sup> Id. at 1485 (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)).

<sup>58</sup> Id. at 1473.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> *Murphy v. NCAA*, 138 S. Ct. 1461, 1473 (2018).

<sup>62</sup> Id.

PASPA.<sup>63</sup> The Court continues to deliberate on state claims that PASPA violates the anti-commandeering clause.<sup>64</sup> According to the Court, Congress may not simply commandeer the States' legislative process by directly compelling them to enact and enforce a federal regulatory program.<sup>65</sup> The Court reasons that PASPA's prohibition on state authorization of sports gambling does violate the doctrine.<sup>66</sup> The Court states that the Act unequivocally dictates what a state legislature may and may not do.<sup>67</sup>

After establishing the unconstitutionality of prohibiting states from authorizing sports gambling, the Supreme Court examines the possibility of severing the unconstitutional provisions of PASPA or striking down the legislation entirely.<sup>68</sup> The Court's analysis focuses on whether Congress would have enacted PASPA without the anti-authorization provision.<sup>69</sup> The Court reasons that Congress would not have passed the law if the prohibition on state action was absent.<sup>70</sup> The Court concludes that the provisions are not severable, making the law unconstitutional.<sup>71</sup>

The Supreme Court strikes down PASPA due to a Tenth Amendment violation,<sup>72</sup> and multiple states begin to legalize sports gambling, with others gaining momentum to do the same.<sup>73</sup>

## II. ANALYSIS: DID THE GOVERNMENT GET IT RIGHT?

Curious individuals may ask, "How can the federal government and states strike an appropriate balance between creating a baseline and integrating restrictions that make gambling

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<sup>63</sup> *Murphy*, 138 S. Ct. at 1474.

<sup>64</sup> *Id.* at 1475.

<sup>65</sup> *Id.* at 1467 (quoting *New York v. United States*, 505 U.S. 144, 161 (1992)).

<sup>66</sup> *Id.* at 1478.

<sup>67</sup> *Id.*

<sup>68</sup> *Murphy*, 138 S. Ct. at 1482.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 1484.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 1484.

<sup>73</sup> See generally *id.*; see also Rodenberg, *supra* note 2 (As of today, twenty states have regulated sports gambling. They are as follows: Arkansas, Delaware, Indiana, Iowa, New Hampshire, Illinois, Michigan, Montana, Oregon, Mississippi, Nevada, New Jersey, New Mexico, Colorado, New York, Pennsylvania, Rhode Island, Tennessee, West Virginia, and Washington, D.C.).



work while ensuring that gambling does not interfere with the on-field competition?” The answer is to maximize the state’s interest around regulations. Regulations must seek to enable the gambling experience to maximize the state’s money, eliminate third-party black markets, and make the experience better for everyone.<sup>74</sup>

Bribery scandals are more likely to occur when gambling is unregulated and unmonitored.<sup>75</sup> Scandals, however, are also likely to happen when gambling is overregulated, restricted, and scrutinized. It seems that no one is asking or trying to answer the question, “where is the middle ground?”

#### *A. Overregulation To No Regulation From The Nation’s Capitol*

A trend in insider information and the exploitation of sports integrity starts to grow after Supreme Court strikes down PASPA.<sup>76</sup> The increasing use of the internet and mobile gambling is the new intersection of the substantial use of insider information for placing bets.<sup>77</sup> It is a new face on an old problem that Congress encounters after the Court’s decision in *Murphy*.<sup>78</sup> Similarly, Mississippi seems to understand the benefits of sports gambling. Nevertheless, it is overregulating the industry where the intended uses are not properly utilized, and spin-off issues are increasing.

A significant flaw in Mississippi legislation is that it requires an individual to be on the premises of a casino to gamble.<sup>79</sup> The regulation eliminates a majority of sports gambling in the state, except in three areas.<sup>80</sup> As a result, the Mississippi legislature only

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<sup>74</sup> U.S. Sec. & Exch. Comm’n, Exhibit 99.3: Gaming Regulatory Overview, <https://www.sec.gov/Archives/edgar/data/858339/000119312512115625/d268435dex993.html>.

<sup>75</sup> See Woo, *supra* note 11, at 572. (Even while sports gambling was illegal but with no enforcement, one of the biggest scandals in sports history occurred with the “Black Sox.”).

<sup>76</sup> See Woo, *supra* note 10, at 574.

<sup>77</sup> See Grandeau, *supra* note 4, at 1263.

<sup>78</sup> See Paul Newberry, National Hypocrisy League shows true colors again, *Tri-City Herald* (Mar. 12, 2022, 3:07 PM), <https://www.tricityherald.com/sports/article25924879.html>; see also William C. Miller, Jr., *Casino Gaming Industry Priorities in 2021 and Beyond*, Am. Gaming Ass’n (Jan. 28, 2021), <https://www.americangaming.org/wpcontent/uploads/2021/01/Letter-to-the-Hill-Jan-2021.pdf>.

<sup>79</sup> See Mississippi Sports Betting 2021, *Bookies.com* (Feb. 4, 2022), <https://bookies.com/mississippi>.

<sup>80</sup> See Brett Smiley, Mississippi Sports Betting Information Sportsbooks, Betting Sites, *Sportshandle* (Mar. 16, 2022), <https://sportshandle.com/mississippi> (The three criti

makes gambling legal for people who live near a casino or for individuals willing to make a journey to casinos.<sup>81</sup>

Gamblers from states such as Louisiana and Tennessee benefit more from the legalization of sports gambling than the average Mississippian because of the location of Mississippi casinos.<sup>82</sup> However, why some state legislators will not change the law and allow mobile gambling remains an unanswered question.<sup>83</sup>

### III. THE SOLUTION STARTS AT HOME THE ROAD TO DEREGULATION

#### *A. Mobile Gambling Creates Untapped Tax Revenue*

While Congress needs to regulate sports gambling with vigor, contrastingly, Mississippi seemingly needs to deregulate the sports betting sector. State financial experts believe that allowing mobile sports gambling in the state will help increase state revenue through taxes. The current tax rate in Mississippi on sports betting is twelve percent.<sup>84</sup> Most states levy ad valorem (value-based) taxes on gross gaming revenue.<sup>85</sup> A low-rate ad valorem tax base appears to provide an optimal mechanism if the states were looking to design an excise tax on wagering because of the reasonable proxy for the negative externalities (problem gambling) associated with this activity.<sup>86</sup>

With most individuals preferring gamble online, an excise tax is economically promising.<sup>87</sup> Adding an excise tax relating to mobile betting to the current sports betting tax rate appears to help the

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cal cities in the state with legal sports gambling are Biloxi, Philadelphia, and Vicksburg, though some small cities in rural Mississippi have legal sports betting in their casinos).

<sup>81</sup> Id.

<sup>82</sup> See John Wallstreet, Mississippi Becomes 4<sup>th</sup> State to Offer Legalized Sports Betting, William Hill Partners With 11 MS Casinos, Sportico (Aug. 6, 2018, 2:00 AM), <https://www.sportico.com/business/commerce/2018/mississippi-4th-state-sports-betting-1072/>. [Article is only available to Sportico subscribers.]

<sup>83</sup> See Wallstreet, *supra* note 82.

<sup>84</sup> See Dorson, *supra* note 3; see also Sports Betting Tax Rates And Licensing Fees, BettingUSA.com, <https://www.bettingusa.com/sports/taxes-and-licenses> (last visited Mar. 25, 2022).

<sup>85</sup> Ulrik Boesen, Large Spread in Tax Treatment of Sports Betting Operators, Tax Found (Feb. 9, 2022), <https://taxfoundation.org/sports-betting-tax-treatment>.

<sup>86</sup> Boesen, *supra* note 85.

<sup>87</sup> Why People Prefer to Gamble Online? – Some Major Reasons, PYECKA, <https://pyecka.com/people-prefer-to-gamble-online/> (last visited Apr. 7, 2022).

state increase gaming revenue.<sup>88</sup> For instance, the state should subject in-person sports bets to a nine percent tax and online bets to a fourteen percent tax rate.<sup>89</sup> A higher tax rate for online gambling will bring in more tax revenue than if online and in-person tax rates were the same.

To put it in a better perspective, trends in college athletic game attendance demonstrate a decline in attendance due to an individual's preference to enjoy the game free of cost instead of paying for tickets.<sup>90</sup> Mobile gambling appears to have secondary benefits for secondary sports, such as women's basketball and soccer, because people have the tendency to view it more from the comforts of their homes for free; therefore, colleges and universities will see an increase in their viewership and advertising dollars.<sup>91</sup> Sports enthusiasts who may never consider going to one of the above games may now place mobile bets on the game, thereby leading to more viewership, eventually equating to more university income.<sup>92</sup>

### III. GAMBLING: WHY CONGRESSIONAL INVOLVEMENT IS NEEDED

Although the Supreme Court empowered states to create their own gambling laws,<sup>93</sup> it is hard for Congress and states to find common ground.<sup>94</sup> Some states argue that they are in a better seat to know the needs of the state and its citizens. However, allowing Congress to implement new regulations could contradict what some states have already done.<sup>95</sup> A cohesive Congressional legislative

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<sup>88</sup> Boesen, *supra* note 85.

<sup>89</sup> New Jersey currently taxes online gambling at a 13% rate and in-person at 8.5%. With this high online tax rate, 80% of the bets placed in the state were online. This proves that people are willing to pay for convenience. See Weston Blasi, This state makes the most tax revenue from sports betting – and it's not Nevada, MarketWatch (Nov. 23, 2019, 12:29PM), <https://www.marketwatch.com/story/this-state-makes-the-most-tax-revenue-from-sports-betting-and-its-not-nevada-2019-11-20>.

<sup>90</sup> See Nick Evans, Attendance Drops For College Football, NPR (Aug. 24, 2019, 8:30 AM), <https://www.npr.org/2019/08/24/753962604/attendance-drops-for-college-football>.

<sup>91</sup> Sean Keeley, 5 ways college sports will be affected by legalized sports betting, The Comeback (May 15, 2018), <https://thecomeback.com/ncaa/college-sports-legalized-sports-betting.html>.

<sup>92</sup> Keely, *supra* note 91.

<sup>93</sup> See *Murphy*, 138 S. Ct. at 1484-85.

<sup>94</sup> See Grandeau, *supra* note 4, at 1256.

<sup>95</sup> See *id.*

baseline will allow states to customize laws as they see fit. Having a uniform Federal standard would most likely even the playing field more than having multiple, contradictory state laws.<sup>96</sup>

#### IV. CONCLUSION

The prohibition around sports betting is almost extinct in the United States. Many states have legalized it or are considering legislation to legalize sports betting.<sup>97</sup> The time is now for Congress to take proactive steps to enact laws establishing agencies that will guide and provide oversight to states on sports betting issues. *Murphy* opened the door for sports betting. With consistent and intentional positive public policy initiatives geared towards sports betting by lawmakers, the changes will create tax revenue, efficiency and transparency, and a free market.

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<sup>96</sup> See Rodenberg, *supra* note 2.

<sup>97</sup> *Id.*