

# Changing the Game: How the United States Can Look to the European Union to Create Effective Sports Betting Legislation in a Post-PASPA World

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*ABSTRACT: The Professional and Amateur Sports Protection Act (“PASPA”), which outlawed state-sponsored sports betting in the United States, was recently struck down as a violation of the anticommandeering principle in a 6–3 ruling by the Supreme Court. This has opened the door for states to finally legalize sports betting. This Note argues that in order to craft better legislation surrounding legalized sports betting, states should look to the experiences of different European Union Member States, where sports betting has been legal for quite some time. The European Union has experienced issues with match fixing, gambling advertisements, and their effects on young people. This Note proposes two solutions for legal sports betting—one that would maintain state sovereignty and one that would advocate for federal legislation—that will ensure a smooth transition into the new era of legalized sports betting. This Note concludes by arguing that federal legislation would be the most effective response to the issues presented in this Note.*

I.	INTRODUCTION.....	2274
II.	THE HISTORY OF SPORTS BETTING IN THE UNITED STATES AND EUROPE .....	2276
	A. THE HISTORY OF SPORTS BETTING IN THE UNITED STATES .....	2276
	B. THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT.....	2278
	1. <i>Murphy v. NCAA</i> .....	2281
	2. State Action Post-PASPA.....	2282
	C. THE HISTORY OF SPORTS BETTING IN EUROPE.....	2283

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1. Sports Betting for European Union Member States .....	2284
2. Major European Union Sports Betting Issues.....	2285
III. THE POTENTIAL CHALLENGES THAT ACCOMPANY	
LEGALIZED SPORTS BETTING .....	2287
A. MATCH FIXING .....	2287
1. The United Kingdom.....	2288
2. Italy.....	2288
3. Other Examples.....	2290
B. ADVERTISING .....	2291
1. The United Kingdom.....	2292
2. Italy.....	2293
3. Spain.....	2294
IV. HOW THE UNITED STATES CAN USE THE MEMBER STATES OF THE EUROPEAN UNION TO CRAFT BETTER SPORTS BETTING LEGISLATION.....	
A. MATCH FIXING .....	2295
B. ADVERTISING .....	2297
V. CONCLUSION .....	2298

## I. INTRODUCTION

In May of 2018, the Supreme Court issued a ruling that completely changed the game for sports-betting legislation.<sup>1</sup> The Court delivered its ruling on *Murphy v. NCAA*,<sup>2</sup> which determined the future of the Professional and Amateur Sports Protection Act (“PASPA” or “the Act”).<sup>3</sup> The Act, passed in 1992, outlawed sports betting in nearly every state in the Union.<sup>4</sup> Four states were grandfathered in, allowing them to keep whatever form of sports

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1. See A.J. Perez, *What It Means: Supreme Court Strikes Down PASPA Law that Limited Sports Betting*, USA TODAY, <https://www.usatoday.com/story/sports/2018/05/14/supreme-court-sports-betting-paspa-law-new-jersey/440710002/> [<https://perma.cc/8KNT-8FFR>] (last updated May 14, 2018, 3:23 PM) (stating that the Supreme Court “effectively killed . . . the federal law that essentially limited sports betting to one state for the last 25 years”).

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

3. See David Purdum, *Supreme Court Strikes Down Federal Law Prohibiting Sports Gambling*, ESPN (May 14, 2018), [http://www.espn.com/chalk/story/\\_/id/23501236/supreme-court-strikes-federal-law-prohibiting-sports-gambling](http://www.espn.com/chalk/story/_/id/23501236/supreme-court-strikes-federal-law-prohibiting-sports-gambling) [<https://perma.cc/LCT2-WXS9>] (noting that the case’s outcome was “a landmark decision that gives states the go-ahead to legalize betting on sports”).

4. See *id.* (“[The Act] made Nevada the only state where a person could wager on the results of a single game.”).

betting they currently had in place.<sup>5</sup> However, Nevada was the only state where placing single bets on different sporting events was legal.<sup>6</sup>

After implementing new legislation concerning sports betting, New Jersey was sued by the major sports leagues.<sup>7</sup> Following a six year legal battle, the case was finally taken up by the Supreme Court.<sup>8</sup> Justice Alito, writing for the majority, struck down the entire federal statute.<sup>9</sup> The Court found that the statute violated the anticommandeering principle; the federal government, through PASPA, had issued a direct command to the states with “no federal enforcement mechanism, shift[ing] regulatory costs to the state[s].”<sup>10</sup> With PASPA no longer viable law, states are free to legalize sports betting. In fact, many states have already legalized sports betting or have introduced legislation allowing for sports betting.<sup>11</sup>

This Note attempts to shed light on some of the issues that many states may run into when trying to draft legislation legalizing sports betting using the experiences of the European Union (“EU”) as a comparative tool. By looking at what issues the different Member States of the EU encountered, the 50 U.S. states can avoid expensive and time-consuming litigation while providing a clear legal framework for citizens to place bets on sporting events in a safe, regulated environment. This Note argues many of the issues that arise in the EU are equally likely to arise in the United States. Only by taking these issues into account at the beginning of the legislative process, rather than on a case-by-case basis, can states easily and effectively take advantage of what is sure to be a lucrative market. By looking to the EU, states will be better prepared when taking on the task of creating effective legislation.

Part II of this Note delves into the historical background of sports betting in the United States, including the rise of PASPA, the subsequent legal battle,

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5. See 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, 8:00 AM), <https://www.sbnation.com/2018/5/18/17353994/sports-betting-illegal-united-states-why> [<https://perma.cc/SGD2-HU9P>] (noting that Nevada, Oregon, Montana, and Delaware elected to continue to allow some sport gambling when the PASPA was passed).

6. See Purdum, *supra* note 3.

7. *Id.* (referencing *Murphy*, 138 S. Ct. at 1484–85).

8. See *id.*

9. John T. Holden, *Legalized Sports Betting in Oklahoma?*, 89 OKLA. B.J. 10, 10 (2018); see also *Murphy*, 138 S. Ct. at 1484–85.

10. Holden, *supra* note 9, at 10.

11. Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN, [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) [<https://perma.cc/33MJ-SASC>] (last updated Mar. 26, 2020). The states that have legalized sports betting and are fully operational are Nevada, Delaware, New Jersey, Mississippi, West Virginia, New Mexico, Pennsylvania, Rhode Island, Arkansas, New York, Iowa, Oregon, Indiana, New Hampshire, Illinois, Michigan, and Montana. *Id.* Washington, Colorado, Tennessee, North Carolina, and Washington D.C. have all passed bills allowing for legalization. *Id.* Out of the remaining states, at the time of this Note, only three have not introduced legislation that would legalize sports betting. *Id.*

and the Supreme Court decision in *Murphy*. Finally, it discusses the historical context of sports betting for different Member States in the EU and identifies issues that have arisen alongside sports betting.

Part III of this Note provides an in-depth look into two major issues that have plagued Member States of the EU since legalizing sports betting. It discusses match-fixing scandals and issues with advertising of sports betting services. Finally, it discusses how these issues can appear in the United States.

Part IV of this Note addresses the problems outlined in the previous Section, and then proposes a solution. The solution argues that federal legislation is the most efficient and effective way of combatting issues that accompany legalized sports betting because of the nature of modern sports betting.

## II. THE HISTORY OF SPORTS BETTING IN THE UNITED STATES AND EUROPE

This Part first discusses the history of sports betting in the United States. Section II.A explores the differing legal status of sports betting among states and how PASPA came to be. Section II.B then focuses on PASPA, going in depth into both how and when it was passed and how it came before the Supreme Court. Section II.B.1 discusses *Murphy v. NCAA*, the initial New Jersey lawsuit that led to the Supreme Court's review of PASPA. Section II.B.2 summarizes state action taken since the Supreme Court deemed PASPA unconstitutional. Finally, Section II.C concludes with a discussion of the history of sports betting in the EU. Section II.C.1 provides sports betting background for different EU Member States. Section II.C.2 identifies some of the major issues Member States have experienced with legalized sports betting.

### A. THE HISTORY OF SPORTS BETTING IN THE UNITED STATES

Sports betting has existed for quite some time. As long as sports have been around, people have been placing bets on the outcomes.<sup>12</sup> There are records as far back as the height of the Roman Empire of people gambling on sporting events, notably on “horse[-]racing in the Circus Maximus.”<sup>13</sup> “[P]ick any century and almost any culture and” evidence of sports betting can be found.<sup>14</sup>

The United States is no exception to this rule, having its own long history of sports betting.<sup>15</sup> The earliest domestic form of sports betting came in 1665

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12. *The History of Sports Betting*, ONLINEGAMBLINGSITES.ORG, <http://www.onlinegambling-sites.org/history/sports-betting/index.html> [<https://perma.cc/GZ7L-CGMQ>].

13. Brad R. Humphreys, *An Overview of Sports Betting Regulation in the United States 2* (W. Va. Univ. Dep't of Econ. Working Paper Series, Working Paper No. 17-31, 2017), available at [http://busecon.wvu.edu/phd\\_economics/pdf/17-31.pdf](http://busecon.wvu.edu/phd_economics/pdf/17-31.pdf) [<https://perma.cc/BV6Q-PHGR>].

14. *The History of Sports Betting*, *supra* note 12.

15. Johnson, *supra* note 5.

in the form of a horse-racing track.<sup>16</sup> Over the next 200 years, horse-racing became “a much more organized enterprise in the United States.”<sup>17</sup> This was “due [mainly] to the . . . *American Stud Book*,” a publication cataloguing all the thoroughbreds in the United States.<sup>18</sup> However, a few decades later, in the early 1900s, gambling became heavily outlawed.<sup>19</sup> The anti-gambling sentiment was so strong that some states, such as New York, actually outlawed gambling of any kind through constitutional amendments.<sup>20</sup>

While horse-racing survived the anti-gambling public sentiment, other forms of sports betting did not fare as well.<sup>21</sup> Different organized criminal syndicates were closely linked with sports betting throughout the 1900s.<sup>22</sup> Trying to distance themselves from the negative image that the public held for sports betting, professional leagues vocally opposed sports betting on the grounds of maintaining integrity for their respective sports.<sup>23</sup> Despite professional league leaders’ opposition, Nevada legalized sports betting once again in 1949.<sup>24</sup> As a result, sports betting experienced a growing sense of legitimacy in the eyes of the public.<sup>25</sup> However, the distance from their homes to Las Vegas casinos posed a major inconvenience for most members of the public who wished to place bets on sporting events.<sup>26</sup> The history of sports gambling has been “a reoccurring pattern: legalization, scandal, then prohibition.”<sup>27</sup>

While Congress has attempted—often successfully—to pass many pieces of legislation regarding sports betting, the statutes feel disjointed; the patchwork of legislation addresses multifaceted problems through individualized statutes without a unifying thread.<sup>28</sup> The Wire Act of 1961

16. Bennett Liebman, *There Used to Be a New York Racetrack There: But Where Was It?* 1 (Nov. 21, 2009), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1510317](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1510317) [<https://perma.cc/FXM7-KZL4>].

17. Johnson, *supra* note 5.

18. *Id.*

19. Will Hobson, *Sports Gambling in U.S.: Too Prevalent to Remain Illegal?*, WASH. POST (Feb. 27, 2015), [https://www.washingtonpost.com/sports/sports-gambling-in-us-too-prevalent-to-remain-illegal/2015/02/27/f1088e4c-b7d3-11e4-9423-f3do1ec335c\\_story.html](https://www.washingtonpost.com/sports/sports-gambling-in-us-too-prevalent-to-remain-illegal/2015/02/27/f1088e4c-b7d3-11e4-9423-f3do1ec335c_story.html) [<https://perma.cc/4FAT-BAEL>] (stating that from 1909 to 1931, “[e]ven Nevada [had] outlawed gambling”).

20. See Johnson, *supra* note 5 (“Some of this stuff was rather deeply embedded in the states’ DNA . . . . It wasn’t just the law.”).

21. See *id.* (identifying baseball as a sport which “[said] no to gambling”). In 1919, the Chicago White Sox tried to fix the World Series, which became a major scandal, not just in the baseball world, but in all professional sports leagues. *Id.*

22. *Id.*

23. See *id.*

24. *Id.*

25. See Holden, *supra* note 9, at 10–11.

26. See *id.* at 10–13.

27. Hobson, *supra* note 19 (stating that the legal bans last until elected officials start needing a new source of income).

28. Humphreys, *supra* note 13, at 3.

is the oldest and most frequently enforced federal law regarding sports betting.<sup>29</sup> The Act focuses on the prosecution of bookmakers.<sup>30</sup> The Act “prohibits the transmission of wagers, or information assisting in the placing of wagers, over communication wires like telephone and telegraph lines and punishes violators with fines and imprisonment.”<sup>31</sup> In an important case, *United States v. Cohen*, the Second Circuit Court of Appeals expanded a reading of the Wire Act to apply towards transactions or transmissions that occurred over the internet.<sup>32</sup> The Supreme Court, however, denied the petition to review that decision.<sup>33</sup>

### B. THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT

As previously mentioned, U.S. law regarding sports betting tends to follow a cycle of legalization, scandal, and prohibition.<sup>34</sup> This was certainly true for the passage of the PASPA.<sup>35</sup> In 1989, Pete Rose was involved in a scandal that rocked the baseball world to its core.<sup>36</sup> Rose—“nicknamed Charlie Hustle” for how hard he played—was both a player and a manager for the Cincinnati Reds.<sup>37</sup> In both roles, Rose would bet on certain games that the

29. *Id.*

30. *Id.* Bookmakers are the individuals, groups, or organizations that offer odds on different sporting event outcomes, accept wagers from customers, and pay out earnings to successful gamblers. *Understanding What a Bookmaker Does and How They Make Money*, GAMBLINGSITES.COM, <https://www.gamblingsites.com/sports-betting/introduction/what-a-bookmaker-does> [https://perma.cc/3E2P-27ER]. While the term “Bookmaker” or “Bookie” only came into use in the nineteenth century, the role has existed for quite some time, and the role of a bookmaker has remained fundamentally the same, even with the rise of online bookkeeping. *Id.*

31. Humphreys, *supra* note 13, at 3; *see also* 18 U.S.C. § 1084(a) (2012) (“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”).

32. Ryan Rodenberg, *The Wire Act of 1961: When the Internet Met the ‘Bedrock’ Federal Sports Betting Law*, SPORTS HANDLE (Mar. 2, 2018), <https://sportshandle.com/wire-act-internet-federal-sports-betting-law> [https://perma.cc/58MP-RVMQ].

33. *Id.*

34. *See supra* Section II.A.

35. David Purdum, *Sports Betting Legalization: How We Got Here*, ESPN (May 21, 2018), [http://www.espn.com/chalk/story/\\_/id/23561576/chalk-line-how-got-legalized-sports-betting](http://www.espn.com/chalk/story/_/id/23561576/chalk-line-how-got-legalized-sports-betting) [https://perma.cc/AV3Y-JV67] (stating that the passage of PASPA was very non-controversial, as it was right after the Pete Rose scandal).

36. Ryan Rodenberg, *Pete Rose’s Reckless Gamble*, ATLANTIC (Aug. 22, 2014), <https://www.theatlantic.com/entertainment/archive/2014/08/why-pete-rose-still-cant-be-absolved/378866> [https://perma.cc/GYG2-N2CJ] (explaining that Pete Rose had created a lasting scandal by placing bets on his team to win certain games, compromising the integrity of professional baseball).

37. *The Pete Rose Controversy*, NPR (May 19, 2003, 12:00 AM), <https://www.npr.org/templates/story/story.php?storyId=1265784> [https://perma.cc/74TH-65AP].

Reds were playing.<sup>38</sup> John Dowd, a prosecutor who investigated the scandal, published a detailed report of Rose's gambling habits.<sup>39</sup> The report found that Rose had gambled extensively on the Reds during his time with the team.<sup>40</sup> While Rose did not gamble on every game, his actions still had major consequences.<sup>41</sup>

Notwithstanding the integrity issues, Rose's betting patterns gave inside information to bookkeepers and almost certainly influenced his decision-making process as a manager.<sup>42</sup> Following the report, Rose "agreed to a lifetime ban from Major League Baseball on August 23, 1989."<sup>43</sup>

With the scandal fresh on the minds of lawmakers, PASPA was introduced in the House of Representatives on January 3, 1991.<sup>44</sup> Backed by Senator Bill Bradley, a former NBA player,<sup>45</sup> a companion bill was introduced in the Senate the next month.<sup>46</sup> PASPA was passed with overwhelming support and was signed into law by President George H. W. Bush on October 28, 1992.<sup>47</sup> PASPA has "prohibit[ed] all sports betting in states where no legal sports betting existed at the time . . . and limit[ed] sports betting to . . . four states."<sup>48</sup> The four states that were allowed to maintain legal sports betting (Nevada, Montana, Delaware, and Oregon) already had certain types of sports betting in place at the time the Act was passed.<sup>49</sup> New Jersey was also given a year-long opportunity to pass sports-betting legislation, but failed to do so, putting the state under the purview of the PASPA ban.<sup>50</sup>

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38. *Id.*

39. See generally JOHN M. DOWD ET AL., THE DOWD REPORT (1989), available at [http://www.seanlahman.com/rose/dowd/dowd\\_cover.html](http://www.seanlahman.com/rose/dowd/dowd_cover.html) [<https://perma.cc/Y8ZQ-HFAG>] (discussing various findings concerning Pete Rose's gambling habits during his time as manager of the Cincinnati Reds).

40. *Id.*

41. See Rodenberg, *supra* note 36.

42. *Id.* ("[W]hen Rose did not bet on the Reds, his inaction was a signal to his bookies that he wasn't very confident in that game. Those bookies may have used this inside information to place a bet against the Reds. This doesn't mean the game was fixed, but is reflective of Rose's state of mind. He was compromised. Second, his wager on certain games, but not others, may have influenced the way he made decisions as a manager.")

43. *Id.*

44. Purdum, *supra* note 35.

45. *Bill Bradley*, BILL BRADLEY, <http://www.billbradley.com/bill-bradley-bio> [<https://perma.cc/V44R-BSNG>] ("Bill Bradley served in the U.S. Senate from 1979-1997 representing the state of New Jersey. . . . Before serving in the Senate, he was an Olympic gold medalist in 1964 and a professional basketball player with the New York Knicks from 1967-1977 during which time they won two NBA championships.")

46. Purdum, *supra* note 35.

47. *Id.*

48. Humphreys, *supra* note 13, at 4.

49. *Id.*

50. *Id.*

On its face, “PASPA is difficult to justify on both economic and legal grounds.”<sup>51</sup> Economically speaking, PASPA granted certain states a monopoly for certain forms of sports betting.<sup>52</sup> In particular, after PASPA was passed, Nevada was the only state in the union that was allowed to have “betting on individual sporting events.”<sup>53</sup> The other states were also granted gambling monopolies of sorts, such as Delaware for parlay sports betting.<sup>54</sup> The law treated residents of these states differently than nonresidents.<sup>55</sup> Residents of the four states where sports betting was legal were allowed access to some form of it, while residents of the other 46 states were left with no choice but to travel to one of the four legal states.<sup>56</sup> In short, PASPA did “not apply uniformly to all states.”<sup>57</sup>

In the decades following its passage, PASPA was no stranger to dissenting opinions.<sup>58</sup> In 2014, Adam Silver, the commissioner of the NBA, penned an op-ed in *The New York Times* describing why PASPA should be repealed.<sup>59</sup> In his piece, Silver wrote that “despite legal restrictions, sports betting is widespread.”<sup>60</sup> Silver contended that because of the limited legal opportunities to place sports bets, potential gamblers were turning to illegal bookmaking operations, creating an estimated \$400 billion market for illegal sports betting.<sup>61</sup> The NBA was not the only league that had softened its tone in regards to legalizing sports betting.<sup>62</sup> Commissioners from many different U.S. major league sports, such as Roger Goodell (National Football League), David Stern (formerly of the National Basketball Association), Rob Manfred (Major League Baseball), and Gary Bettman (National Hockey League), have all taken more favorable stances on sports betting.<sup>63</sup>

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51. *Id.*

52. *Id.*

53. *Id.*

54. *See id.* Parlay betting involves placing a single wager where the better picks multiple winning teams. *What is Parlay Betting?*, THELINES (Feb. 13, 2020), <https://www.thelines.com/betting/parlay> [<https://perma.cc/JXP2-8HGC>]. Because of the difficulty in picking multiple winners, parlay wagers have a much larger payout than an individual wager. *Id.*

55. Humphreys, *supra* note 13, at 5.

56. *Id.*

57. *Id.*

58. *See* Hobson, *supra* note 19 (explaining that calls have been made to repeal or re-examine PASPA).

59. Adam Silver, Opinion, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), [https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html?smid=tw-share&\\_r=0](https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html?smid=tw-share&_r=0) [<https://perma.cc/4JAE-YA5C>].

60. *Id.*

61. *Id.* (contending that sports betting “has increasingly become a popular and accepted form of entertainment in the United States” and that “[t]here is an obvious appetite . . . for a safe and legal way to wager on professional sporting events”).

62. *History of a Failed Law*, AM. SPORTS BETTING COAL., <http://www.sportsbettinginamerica.com/history> [<https://perma.cc/D86R-6APX>].

63. *Id.*

1. *Murphy v. NCAA*

Eventually, the growing dissatisfaction with PASPA led to a court challenge. In 2011, around 63 percent of New Jersey citizens voted to approve a referendum that would allow sports betting in the state.<sup>64</sup> The following year, Governor Chris Christie approved sports betting for race tracks and casinos.<sup>65</sup> The National Collegiate Athletic Association (“NCAA”) and major professional sports leagues sued the state after the referendum.<sup>66</sup> The challengers claimed that allowing sports betting would threaten the integrity of sports.<sup>67</sup> The NCAA and the other leagues won their case against New Jersey in federal court, and the U.S. Supreme Court refused to grant review of the case.<sup>68</sup>

However, New Jersey continued the fight to legalize sports betting when Raymond Lesniak, a state senator, seemingly found a loophole in PASPA.<sup>69</sup> Senator Lesniak claimed “the federal ban didn’t prevent New Jersey from legalizing sports betting at casinos and tracks as long as the state [didn’t] sanction or regulate it.”<sup>70</sup> The New Jersey legislature capitalized on this loophole, fast-tracking a bill that was quickly signed by Governor Christie.<sup>71</sup> Unsurprisingly, the NCAA and major professional sports leagues sued again in federal court.<sup>72</sup> As had happened in 2012, the NCAA won at both the district court level and at the Third Circuit.<sup>73</sup> The case was once again appealed to the U.S. Supreme Court, and the Court granted review in order

64. Alexandra Berzon, *Betting Against a Gambling Ban: New Jersey Flouts Law on Sports Wagers, Draws Challenge from Athletic Leagues*, WALL ST. J., <https://www.wsj.com/articles/SB10001424127887324677204578185734003879740> [<https://perma.cc/8HAB-HG2H>] (last updated Dec. 17, 2012, 10:05 PM).

65. *Id.* (stating that Governor Chris Christie claimed the federal ban on sports betting was unconstitutional).

66. See Kate King, *N.J. Gears Up for Sports Betting Before Court Ruling*, WALL ST. J. (May 13, 2018, 10:00 AM), [https://www.wsj.com/articles/n-j-gears-up-for-sports-betting-before-court-ruling-1526220001?mod=searchresults&page=1&pos=2&mod=article\\_inline](https://www.wsj.com/articles/n-j-gears-up-for-sports-betting-before-court-ruling-1526220001?mod=searchresults&page=1&pos=2&mod=article_inline) [<https://perma.cc/S49P-QKMN>] (stating that the legal battles have cost the taxpayers of the state more than \$8.5 million since Governor Christie green lit the referendum in 2012); Statehouse Bureau Staff, *4 Major Pro Sports Leagues, NCAA Sue to Stop N.J. from Allowing Betting*, NJ.COM, [https://www.nj.com/politics/2012/08/4\\_major\\_pro\\_sports\\_leagues\\_sue.html](https://www.nj.com/politics/2012/08/4_major_pro_sports_leagues_sue.html) [<https://perma.cc/N5YS-FWD6>] (last updated Mar. 30, 2019).

67. Brent Johnson, *The Story of When N.J. Almost Legalized Sports Betting in 1993*, NJ.COM, [https://www.nj.com/politics/index.ssf/2015/03/the\\_story\\_of\\_njs\\_missed\\_opportunity\\_on\\_sports\\_bett.html](https://www.nj.com/politics/index.ssf/2015/03/the_story_of_njs_missed_opportunity_on_sports_bett.html) [<https://perma.cc/QQ6V-KMUU>] (last updated Mar. 29, 2019) (discussing the lawsuit filed by sports leagues after Governor Christie signed sports betting into law).

68. *Id.* (stating that this seemed to signal the end of New Jersey’s fight against PASPA and state-sponsored sports betting).

69. *Id.*

70. *Id.*

71. *Id.* (“The state Legislature fast-tracked the measure, and Christie signed it into law.”).

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

73. *Id.* at 1472 (“[The Plaintiffs] won in the District Court . . . and the case was eventually heard by the Third Circuit sitting en banc. The en banc court affirmed.” (citation omitted)).

to decide the constitutional question of whether PASPA contravened anticommandeering principles.<sup>74</sup>

In a 6–3 decision, the Supreme Court reversed the decision of the Third Circuit and declared PASPA unconstitutional.<sup>75</sup> The Court initially focused on whether provision 3702(1) violated the anticommandeering doctrine.<sup>76</sup> Justice Alito, writing for the Court, stated the PASPA provision at issue did in fact violate the anticommandeering doctrine, claiming that “[a] more direct affront to state sovereignty is not easy to imagine.”<sup>77</sup> The Court also concluded “that the PASPA provision prohibiting state authorization of sports gambling [was] not a preemption provision because there [was] no way in which this provision [could] be understood as a regulation of private actors.”<sup>78</sup> Finally, the Court considered whether the provision at issue was severable from the rest of the Act.<sup>79</sup> Here, the Court found that the provisions of PASPA “were . . . meant to work together” and “[i]f Congress had known that the [3702(1)] provisions would fall, we do not think it would have wanted the [3702(2) provisions] to stand alone.”<sup>80</sup>

## 2. State Action Post-PASPA

The Supreme Court opinion, while striking down PASPA as unconstitutional, still left the door open for Congress to directly regulate sports betting.<sup>81</sup> In the aftermath of the decision, Senator Orrin Hatch proposed a bill “that [would] seek[] to create a federal sports betting framework.”<sup>82</sup> One of the biggest hurdles for Congress “would be undoing legislation in multiple states,” as states could have already moved to legalize sports betting by the time the bill made its way to the floor, because, as stated earlier, “[g]ambling policy is historically left up to the states.”<sup>83</sup> As a result, states were, and still are, in a good position to start rolling out new gambling

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74. *Id.* at 1473 (“We granted review to decide the important constitutional question presented by these cases.”).

75. *Id.* at 1485 (“Our job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not.”).

76. *Id.* at 1474–79 (“The anticommandeering doctrine may sound arcane, but it is simply the expression of . . . the decision to withhold from Congress the power to issue orders directly to the States.”).

77. *Id.* at 1478.

78. *Id.* at 1481.

79. *Id.* at 1482.

80. *Id.* at 1483.

81. Brent Kendall et al., *Supreme Court Ruling for New Jersey Opens Door to Sports Betting*, WALL ST. J., <https://www.wsj.com/articles/supreme-court-ruling-for-new-jersey-opens-door-to-sports-betting-1526308430?ns=prod/accounts-wsj> [https://perma.cc/CUH2-G3ES] (last updated May 14, 2018, 7:17 PM) (discussing the Supreme Court opinion written by Justice Alito).

82. Steve Ruddock, *Why a Congressional Sports Betting Bill Will Fail in 2018*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/20516/federal-sports-betting-bill> [https://perma.cc/2R5V-5EAN] (last updated May 21, 2018, 4:30 AM).

83. *Id.*

laws post-PASPA. For New Jersey, there are “questions about tax rates and rules for mobile gaming as it decides how to license and regulate sports betting.”<sup>84</sup> Lawmakers vowed to move quickly on the issue.<sup>85</sup> Other states, such as New York and Connecticut, have also decided to act fast to pass legislation to regulate and tax sports betting.<sup>86</sup> As of March 4, 2018, five states had passed laws allowing sports betting, with 14 other states considering legislation concerning the issue.<sup>87</sup> Eilers & Krejcik Gaming, a research firm, estimated that 32 states would pass legislation enabling some sort of sports betting by 2023 if PASPA were struck down.<sup>88</sup>

The state of public attitude towards sports betting has changed drastically since PASPA was first enacted in 1992, with “nearly six in ten Americans agree[ing] regulated sports betting would protect consumers and two in three believ[ing] it would deliver new tax revenues and create new jobs.”<sup>89</sup> Every year, Americans spend billions of dollars placing illegal bets.<sup>90</sup> This has become a “national problem that’s siphoning tax revenues from” the American economy.<sup>91</sup> Some studies have placed the number as high as \$380 billion dollars a year.<sup>92</sup> Since the Supreme Court ruling, Americans have “[begun] envisioning a world in which legal, state-sanctioned wagers become a central part of the American sports landscape.”<sup>93</sup>

### C. THE HISTORY OF SPORTS BETTING IN EUROPE

While the United States has a long, rich history of sports betting, unsurprisingly, the history of sports betting in Europe is even longer.<sup>94</sup> Beginning in the late twelfth century, betting on cock fights and bird races

84. Ira Boudway, *Why U.S. Sports Betting Was Mostly Illegal, Until Now*, BLOOMBERG BUSINESSWEEK, <https://www.bloomberg.com/news/articles/2018-03-05/how-us-sports-betting-is-rampant-and-mostly-illegal-quicktake> [<https://perma.cc/T3EX-7CYC>] (last updated May 14, 2018, 11:45 AM).

85. Kate King, *New Jersey Lawmakers Pledge to Act Fast on Sports-Betting Rules*, WALL ST. J., [https://www.wsj.com/articles/new-jersey-lawmakers-pledge-to-act-fast-on-sports-betting-rules-1526323853?mod=searchresults&page=1&pos=1&mod=article\\_inline](https://www.wsj.com/articles/new-jersey-lawmakers-pledge-to-act-fast-on-sports-betting-rules-1526323853?mod=searchresults&page=1&pos=1&mod=article_inline) [<https://perma.cc/9JNX-AJ3T>] (last updated May 14, 2018, 8:01 PM).

86. *Id.*

87. Boudway, *supra* note 84.

88. *Id.*

89. *History of a Failed Law*, *supra* note 62.

90. *Id.* (“\$58 billion will be wagered on NFL and college football games this season—\$56 billion of it through illegal channels.”).

91. *Illegal Gambling*, AM. GAMING ASS’N, <https://www.americangaming.org/policies/illegal-gambling> [<https://perma.cc/D9CC-MKMJ>].

92. Boudway, *supra* note 84 (“A 1999 study commissioned by Congress put the range at \$80 billion to \$380 billion annually.”).

93. Kendall et al., *supra* note 81.

94. James Carter, *Gambling in Europe*, GAMING THE ODDS (Feb. 19, 2015), <http://www.gamingtheodds.com/europe> [<https://perma.cc/936V-P88H>].

became commonplace throughout Western Europe.<sup>95</sup> Gambling continued to develop with many different European countries being credited for creating games that are still seen today in modern casinos.<sup>96</sup> France is credited with inventing the roulette game, as well as pari-mutuel gambling, while Italy is credited with inventing the game of baccarat, to name a few.<sup>97</sup> Due to these strong roots in gambling, it is no surprise that in Europe, “sports betting has been widely available and regulated for years.”<sup>98</sup>

The EU has its origins dating back to post-World War II, with the creation of the Council of Europe in 1949 being the first real effort at creating a unified Europe.<sup>99</sup> Recognizing a need for European unification, a series of treaties were signed by major Western European countries in an effort to “creat[e] a ‘single market’ for trade.”<sup>100</sup> It is generally accepted that “the modern day European Union arose due to the Treaty of Maastricht on the European Union—which was signed on February 7, 1992, and put into action on November 1, 1993.”<sup>101</sup> As of 2020, the EU has 27 Member States, with the United Kingdom becoming the first country to leave the union on January 31, 2020.<sup>102</sup>

### 1. Sports Betting for European Union Member States

The Rome Treaty, otherwise known as the Treaty Establishing the European Economic Community, established “the basic principle[] of . . . the ‘free movement of services.’”<sup>103</sup> However, when it came to gambling, “the European Community was unclear on whether gambling should be

95. *Id.*

96. See *Gambling Legislation in Western European Countries*, EVERY MATRIX (Sept. 1, 2016), <https://everymatrix.com/blog/gambling-legislation-western-europe.html> [<https://perma.cc/XCD3-K94Z>].

97. *Id.*

98. Luke Haward, *What Can the US Learn from European Sports Betting?*, CDC GAMING REP. (May 18, 2018, 1:55 AM), <https://www.cdcgamingreports.com/commentaries/what-can-the-us-learn-from-european-sports-betting> [<https://perma.cc/S2qJ-7NFH>].

99. See Amanda Briney, *The European Union: A History and Overview*, THOUGHTCO., <https://www.thoughtco.com/european-union-history-and-overview-1434912> [<https://perma.cc/CS2C-L44V>] (last updated Apr. 10, 2019) (“The precursor to the European Union was established after World War II in the late 1940s in an effort to unite the countries of Europe and end the period of wars between neighboring countries.”).

100. *Id.*

101. *Id.*

102. *European Union*, CITIZENS INFO., [https://www.citizensinformation.ie/en/government\\_in\\_ireland/european\\_government/european\\_union/european\\_union.html](https://www.citizensinformation.ie/en/government_in_ireland/european_government/european_union/european_union.html) [<https://perma.cc/XQ34-BKW9>] (last updated Jan. 31, 2020). This Note treats the United Kingdom as a Member State of the EU, notwithstanding the current efforts between the United Kingdom and the EU concerning Brexit. Regardless of its status within the EU, the United Kingdom still serves as a valuable comparative tool moving forward with sports gambling legalization in the United States.

103. Matthew W. Mauldin, Note, *The European Union, State-Sponsored Gambling, and Private Gambling Services: Time for Harmonization?*, 36 GA. J. INT’L & COMP. L. 413, 417 (2008).

necessarily characterized as a service.”<sup>104</sup> The EU commissioned a study, the results helping to determine whether to classify gambling as a service or not.<sup>105</sup> This study led the EU to conclude it should “not . . . regulate gambling at the EU level, as it found that gambling is better dealt with at the national level.”<sup>106</sup> This “subsidiarity” principle “has led many EU Member States to institute limitations or restrictions on cross-border gambling among EU Member States in an attempt to generate income for themselves.”<sup>107</sup>

As a result, a balance has emerged between European and national authority. Through case law, “the European Court of Justice [(“ECJ”)] has modified the definition of services to include gambling and more specifically online gambling.”<sup>108</sup> The ECJ held that Member States were allowed to impede cross-border gambling through the European free market so long as “the imposed restrictions [we]re: i) not discriminatory; ii) justified by imperative reasons of general interest; and iii) proportional and necessary to achieve the objectives pursued.”<sup>109</sup> However, the ECJ has also determined that it is up to the national courts of each Member State to decide whether or not a challenged law violates the EU policy laid out above.<sup>110</sup>

## 2. Major European Union Sports Betting Issues

One of the main problems Europe faces when it comes to sports betting is match fixing. Match fixing occurs when different sporting events are rigged to produce a certain outcome.<sup>111</sup> The problem of match fixing in Europe is not solely confined to one sport but has instead caused “scandals across multiple major sports.”<sup>112</sup> Recognizing the problem, the EU has instituted new initiatives to help combat it.<sup>113</sup> The EU created the European Social Simulation Association (“ESSA”) “to monitor betting markets and alert sports bodies and regulatory authorities to suspicious betting patterns.”<sup>114</sup> ESSA has

104. *Id.*

105. See Philippe Vlaemminck & Pieter De Wael, *The European Union Regulatory Approach of Online Gambling and Its Impact on the Global Gaming Industry*, 7 GAMING L. REV. 177, 177 (2003).

106. *Id.*

107. Mauldin, *supra* note 103, at 418.

108. *Id.*

109. *Id.* at 420 (footnote omitted) (quoting Thibault Verbiest & Ewout Keuleers, *Gambelli Case Makes It Harder for Nations to Restrict Gaming*, 8 GAMING L. REV. 9, 10 (2004)).

110. *Id.* at 421.

111. See John Holden, *Match Fixing and Other Manipulations in Sports Betting: A Primer*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/20922/match-fixing-primer-sports-betting> [<https://perma.cc/5LJC-6FQS>] (last updated June 6, 2018, 8:06 AM); see also Haward, *supra* note 98.

112. Haward, *supra* note 98.

113. *Id.*

114. Press Release, CalvinAyre.com, ESSA Nets Hat-Trick of EU Projects to Combat Match-Fixing (Sept. 27, 2017), <https://calvinayre.com/2017/09/27/press-releases/essa-nets-hat-trick-eu-projects-combat-match-fixing> [<https://perma.cc/XJ69-N2ES>].

instituted three new initiatives that have received funding.<sup>115</sup> One project, the PROtect Integrity+ project, “aim[s] . . . to combat the cross-border match-fixing threat to European sport by providing the first European-wide, athlete-led whistleblowing system.”<sup>116</sup>

The EU has also struggled with the emergence of online forms of sports betting.<sup>117</sup> “[A]ppl[ying] . . . the subsidiarity principle[,] . . . the EU decided that . . . online gambling services [are] not subject to a specific regulation at EU level.”<sup>118</sup> This has led to a “patchwork of national rules and regulations which differs from one country to another, from the very prohibitive to the more liberal systems.”<sup>119</sup> This uneven system of rules is “highly inefficient and costly for the internal market” and creates an unclear and unpredictable legal framework, leaving gamblers with a risk of misunderstanding or not knowing the applicable laws.<sup>120</sup>

The European Commission has recently stated that the challenges that arise from online gambling are significant and that “it is not possible for Member States to effectively address these challenges alone and to provide individually a properly regulated and sufficiently safe offer of online gambling services.”<sup>121</sup> As such, the Commission is pushing for “administrative cooperation between Member States . . . for sharing general information, [and] best practices.”<sup>122</sup>

Many European countries have also had issues with advertisement placements for gambling services.<sup>123</sup> The United Kingdom in particular has had a number of scandals in recent years.<sup>124</sup> One of the worst scandals involved “gambling sponsors’ ads featured on the uniform shirts of junior players (which, of course, couldn’t help but be viewed by numerous children.)”<sup>125</sup> Critics argue this greater exposure to the subject of gambling can normalize gambling, increasing the cases of gambling addictions.<sup>126</sup>

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115. *Id.*

116. *Id.* These three new EU-wide initiatives to combat match fixing seem to indicate a move from individual Member States trying to combat the problem to a more international focus. *Id.* With the rise of online gambling as a popular form of placing sports bets, this seems to be the only viable solution to combat match fixing. *Id.*

117. Dr. Salvatore Casabona, *The EU’s Online Gambling Regulatory Approach and the Crisis of Legal Modernity 2* (EU Ctr. in Sing., Working Paper No. 19, 2014), <http://www.eucentre.sg/wp-content/uploads/2014/01/WP19-Online-Gambling-Regulations.pdf> [<https://perma.cc/UF6L-3LTV>].

118. *Id.* at 3.

119. *Id.*

120. *Id.*

121. *Id.* at 7 (citation omitted).

122. *Id.*

123. See Haward, *supra* note 98 (explaining the increase in match fixing and illegal gambling around Europe).

124. *Id.*

125. *Id.*

126. *Id.*

### III. THE POTENTIAL CHALLENGES THAT ACCOMPANY LEGALIZED SPORTS BETTING

This Part considers the current problems that many European countries are experiencing with the legalization of sports betting. These problems bring to light multiple issues that could very well arise in the United States as more states start to legalize sports betting. Section III.A looks at match-fixing issues within the Member States of the EU. Section III.A.1 focuses on match fixing problems occurring in the United Kingdom. Section III.A.2 turns to match fixing in Italy, focusing notably on the Calciopoli scandal. Section III.B looks into issues surrounding advertising of gambling services. Section III.B.1 looks at the problems in the United Kingdom. Section III.B.2 examines Italy and their drastic measures to combat gambling advert problems. Section III.B.3 focuses on Spain and its efforts.

#### A. MATCH FIXING

Opponents commonly criticize legalized sports betting because they fear the potential that participants will increasingly fix matches.<sup>127</sup> The issue is not confined to a single sport, but affects a broad range of sporting events, both at the professional and youth level.<sup>128</sup> Likewise, match fixing is not confined to a single country, but rather exists in some form or another all over the world.<sup>129</sup> An annual report published findings that match fixing is occurring in many sports in many different countries.<sup>130</sup> In the EU, Member States have had varied responses to the epidemic of match fixing.<sup>131</sup> However, no single response “has been [shown] to be [any] more or less efficient than the others.”<sup>132</sup>

127. Match fixing is the practice of completely or partially pre-determining the outcome of a sporting event. *See* Holden, *supra* note 111. While match fixing typically refers to a pre-determination of the overall outcome of a sporting event, it can also refer to fixing of smaller events within the overall sporting event. *Id.* Many sports betting operators provide point spread bets for different sporting events. *Id.* A player can choose to bet that a team may still win the game, but not “cover” the point spread given. *Id.* Point shaving is the practice of fixing a match by losing by less than the point spread but still win the game itself. *Id.*

128. Martin Banks, *Federbet: Match Fixing in Europe Has Reached ‘Epidemic’ Proportions*, PARLIAMENT MAG. (June 15, 2016), <https://www.theparliamentmagazine.eu/articles/news/federbet-match-fixing-europe-has-reached-epidemic-proportions> [<https://perma.cc/RXC5-96FC>].

129. *Id.*

130. *Id.* The report found that football (soccer), volleyball, and tennis had the majority of match fixing issues, but also listed basketball, table tennis, and hockey. *Id.* Similarly, the report found that while Italy experienced match fixing in its football leagues, suspicious betting patterns were found in many other European countries. *Id.*

131. EUROPEAN COMM’N, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 4–5 (2012), *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0596&from=en> [<https://perma.cc/N8VN-57DY>].

132. *Id.* at 15.

## 1. The United Kingdom

In the United Kingdom, match fixing has been a problem throughout the country's many football<sup>133</sup> leagues.<sup>134</sup> In fact, the English football leagues were found to “[have the] worst record [of] match-fixing” during the 2014 season.<sup>135</sup> That year, there was evidence to show that 11 English league games were victim to match fixing, which “provid[ed] a devastating blow to English football's reputation for integrity.”<sup>136</sup> Add in two fixed matches from the League of Wales, and the United Kingdom had 13 “total . . . ‘fixed’ matches.”<sup>137</sup> These numbers came the year after The Telegraph helped uncover a major match-fixing scandal in England.<sup>138</sup> According to the match-fixer, a “lower league [English game] could be fixed for . . . [£]50,000 [pounds].”<sup>139</sup>

## 2. Italy

The United Kingdom is not the only place to feel the sting of match fixing. One of the most famous football match-fixing scandals of all time, Calciopoli, dealt a major blow to Italian football.<sup>140</sup> At the time, Italian football was almost untouchable.<sup>141</sup> The Italian league was packed with superstar talents and seemingly no other country's league teams could compete.<sup>142</sup> However, Italian dominance was cut short after a major match-fixing scandal was uncovered in 2006.<sup>143</sup> In fact, Calciopoli is considered “the biggest match-

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133. Because of the emphasis on European issues, this Note will use the term “football” to refer to soccer. If talking about football in the United States, the term “American Football” will be used.

134. Ben Rumsby, *England Had Worst Record for Match-Fixing This Season, Says Betting Firm Federbet*, TELEGRAPH (June 3, 2014, 10:51 PM), <https://www.telegraph.co.uk/sport/football/10873585/England-had-worst-record-for-match-fixing-this-season-says-betting-firm-Federbet.html> [https://perma.cc/G29C-ME7S].

135. *Id.*

136. *Id.*

137. *Id.*

138. Claire Newell et al., *Football Match-Fixing: Six Arrested by Police Investigating Betting Syndicate as Rigging Hits British Game*, TELEGRAPH (Nov. 27, 2013, 10:00 PM), <https://www.telegraph.co.uk/sport/football/10479667/Football-match-fixing-six-arrested-by-police-investigating-betting-syndicate-as-rigging-hits-British-game.html> [https://perma.cc/A2PZ-AAPE].

139. *Id.*

140. Andrew Richardson, *Football Italia: How Calciopoli Scandal Brought Curtain Down on Serie A's Golden Age—Which Saw World Record Transfers, Colourful Kits, Incredible Depth of Talent and Dominated Europe in 1990s*, SUN, <https://www.thesun.co.uk/sport/football/5937682/football-italia-calciopoli-scandal-serie-a-golden-age> [https://perma.cc/9YVZ-3P2A] (last updated Apr. 6, 2018, 12:56 AM).

141. *Id.*

142. *See id.* During Serie A's golden age in the 90s, there was an Italian team in almost every Champions League final. *Id.* They recorded eight UEFA Cup wins in 11 years and claimed eight Ballon d'Or awards in that same time period. *Id.*

143. *Id.*

fixing scandal in recent football[] history,” with “effects . . . still being felt today.”<sup>144</sup>

The scandal was initially uncovered through an unrelated investigation concerning Juventus (a Serie A team) players allegedly using performance enhancing drugs.<sup>145</sup> Police discovered phone calls between Luciano Moggi, then-Sporting Director for Juventus, “and referee designators in Serie A.”<sup>146</sup> Moggi attempted to pick referees he knew would be favorable to Juventus.<sup>147</sup> Although Moggi was the initial domino that allowed investigators to uncover the scandal, multiple clubs were involved.<sup>148</sup> Following the uncovering of the scandal, the Italian Football Federation “called for all four clubs at the centre of the scandal to be thrown out of Serie A.”<sup>149</sup> After numerous appeals, punishments were handed down to all of the clubs that were found to be involved in the scandal.<sup>150</sup> The punishments led to a wave of talented players leaving the Italian clubs for less scandal-ridden clubs.<sup>151</sup>

While the initial impact of the sanctions and punishments was easy to foresee, lingering effects were more difficult to predict and have left Serie A much worse off.<sup>152</sup> After the Calciopoli sanctions, Italian clubs engaged in a frenzy of irresponsible spending to remain competitive.<sup>153</sup> Couple this with the economic downturn in Italy and many clubs were facing grim futures.<sup>154</sup> Even Parma, one of the more successful Italian clubs of the golden age,

144. Conor Dowley, *A Decade After Italy's Match-Fixing Scandal, Serie A Is Worse than It Was Before*, SBINATION (July 15, 2016, 11:54 AM), <https://www.sbnation.com/soccer/2016/7/15/12197194/calciopoli-scandal-anniversary-juventus-milan-fiorentina-napoli> [https://perma.cc/BDA7-T2G9].

145. *The Greatest Scandal to Ever Occur—The Calciopoli Scandal of 2006*, CAUGHT OFFSIDE! (Apr. 21, 2017), <http://sites.psu.edu/unmeshdatta138h/2017/04/21/the-greatest-scandal-to-ever-occur-the-calciopoli-scandal-of-2006> [https://perma.cc/WJ6T-HGC5].

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* The clubs were demoted from Serie A, the top Italian football league, to Serie B. *Id.* They were also stripped of any titles they may have won during the time period that the scandal covered, and many were fined and “deducted . . . points for the upcoming season.” *Id.*

151. *Id.*

152. Dowley, *supra* note 144.

153. *Id.*

154. *Id.*

declared bankruptcy in 2015.<sup>155</sup> To make matters worse, top talent still tends to avoid Serie A because of the shadow of match fixing that still looms.<sup>156</sup>

### 3. Other Examples

The match-fixing situation for tennis is apparently much worse, “where a blend of factors came together to create ‘a fertile breeding ground.’”<sup>157</sup> This information came from a report commissioned to investigate the integrity of tennis matches at both the lower and elite levels.<sup>158</sup> Following this report, 13 people were detained in Belgium in connection with match fixing in tennis.<sup>159</sup> “[A] Belgian-Armenian [match-fixing] ring ha[d] been bribing players since 2014, with criminals winning bets on the fixed results.”<sup>160</sup>

As mentioned above, football is not the only sport to suffer from match fixing.<sup>161</sup> Evidence of match fixing “has emerged in cricket, baseball, tennis, snooker, and, most recently, e-gaming.”<sup>162</sup> In fact, two South Korean StarCraft<sup>163</sup> players were recently charged with accepting money to throw matches.<sup>164</sup> While corruption in sports has always existed, there is little doubt that the growth of sports betting will have an impact on the incentive to engage in match fixing.<sup>165</sup> Match fixing can have terrible long-term effects on a sport. It is thus incredibly important that governments explore and

155. Ben Gladwell, *Parma Declared Bankrupt, Face Relegation to Amateur Leagues*, ESPN (June 22, 2015), <https://www.espn.com/soccer/parma/story/2500817/parma-declared-bankrupt-will-be-relegated-to-amateur-leagues> [<https://perma.cc/HYB2-4D98>]. The club, once a powerhouse of Serie A, was forced to re-found in Serie D. *Id.* The club finally worked their way back up to Serie A in 2018. Yousef Teclab, *‘It Can’t Be True’: Parm Return to Serie A After Three Straight Promotions*, GUARDIAN (May 24, 2018, 9:30 AM), <https://www.theguardian.com/football/the-gentleman-ultra/2018/may/24/parma-serie-a-three-straight-promotions-italy> [<https://perma.cc/KJF7-M3FU>].

156. Dowley, *supra* note 144.

157. Alistair Magowan, *Tennis Match-Fixing: ‘Tsunami’ of Corruption at Lower Levels Says Report*, BBC SPORT (Apr. 25, 2018), <https://www.bbc.com/sport/tennis/43894806> [<https://perma.cc/7THW-Q6UA>].

158. *Id.*

159. *Tennis Match-Fixing Investigators Detain 13 in Belgium Raids*, BBC NEWS (June 5, 2018), <https://www.bbc.com/news/world-europe-44366357> [<https://perma.cc/X8KM-J3QP>].

160. *Id.*

161. *Match-Fixing in Italy: You Betcha*, ECONOMIST (Aug. 20, 2016), <https://www.economist.com/europe/2016/08/20/you-betcha> [<https://perma.cc/J83A-F8VU>] [hereinafter *Match-Fixing in Italy*].

162. *Id.* Snooker is a game similar to pool.

163. StarCraft is an immensely popular video game that has been on the forefront of the rise of e-sports. Will Partin, *‘StarCraft II’: How Blizzard Brought the King of Esports Back from the Dead*, VARIETY (July 13, 2018, 3:46 PM), <https://variety.com/2018/gaming/features/starcraft-ii-esports-history-1202873246> [<https://perma.cc/TGZ3-E2VW>] (“If you’re an esports fan today, there’s a decent chance that your interest in competitive gaming began with Activision-Blizzard’s legendary strategy franchise, ‘StarCraft.’”).

164. *Match-Fixing in Italy*, *supra* note 161.

165. *Id.*

implements mechanisms to combat this negative side effect of legalized sports betting.

### B. ADVERTISING

In addition to the more concrete problems posed by match fixing, a number of European states have also had trouble deciding how to regulate the advertising of gambling services.<sup>166</sup> Much like the approach to match fixing, the rules and regulations vary among the Member States of the EU.<sup>167</sup> In fact, not all Member States even have regulations that deal with advertising for gambling specifically.<sup>168</sup> While some Member States have implemented dedicated codes of conduct for advertising regulations on gambling, others have allowed the industries to self-regulate.<sup>169</sup>

Addiction is not limited to substance addiction—it can take many forms.<sup>170</sup> While addiction is commonly associated with a physical dependence on a chemical substance, “behavioral addiction can occur with all the negative consequences in a person’s life.”<sup>171</sup> An individual who suffers from behavioral, or process, addiction engages in compulsive behavior that may reward them with a psychological high.<sup>172</sup> Problem gambling falls under this definition of addiction.<sup>173</sup>

Many experts believe higher rates of gambling addiction will follow sports betting legalization.<sup>174</sup> Some figures placed the social cost of gambling addiction at \$7 billion for 2017.<sup>175</sup> Accompanying this statistic is the fact that the highest rates of gambling addiction occur in young people—“people between the ages [of] 20 and 30.”<sup>176</sup> Further, “[a]s many as 750,000 young

166. Alex Hess, *English Soccer Has a Gambling Problem—Is It Time to Seek Help?*, VICE SPORTS (June 12, 2017, 9:42 AM), [https://sports.vice.com/en\\_us/article/qv4kyv/english-football-has-a-gambling-problem-is-it-time-to-seek-help](https://sports.vice.com/en_us/article/qv4kyv/english-football-has-a-gambling-problem-is-it-time-to-seek-help) [<https://perma.cc/H5SB-X4R7>].

167. EUROPEAN COMM’N, *supra* note 131, at 11.

168. *Id.*

169. *Id.*

170. *Behavioral Addictions*, AM. ADDICTION CTRS., <https://americanaddictioncenters.org/behavioral-addictions> [<https://perma.cc/63XL-LVYD>] (last updated Feb. 3, 2020).

171. *Id.*

172. *Id.*

173. *Id.*; *Gambling Addiction Treatment*, AM. ADDICTION CTRS., <https://americanaddictioncenters.org/gambling-addiction> [<https://perma.cc/BXJ3-RMZW>] (last updated June 17, 2019) (“The National Council on Problem Gambling (NCPG) estimates that although approximately 5 million Americans meet the criteria for compulsive gambling, only around 8 percent of these individuals will ever seek help for their problem. Yet according to the NCPG, gambling addiction is very treatable once it has been identified.”).

174. Josh Peter, *Sports Betting Ruling Will Lead to Costly Rise in Gambling Addiction, Experts Warn*, USA TODAY, <https://www.usatoday.com/story/sports/2018/05/14/sports-betting-rise-gambling-addiction/608989002> [<https://perma.cc/C43K-7MLP>] (last updated May 14, 2018, 5:12 PM).

175. *Id.*

176. *5 Alarming Gambling Addiction Statistics*, ADDICTIONS.COM, <https://www.addictions.com/gambling/5-alarming-gambling-addiction-statistics> [<https://perma.cc/HW8V-39A5>] (last

people, ages 14 to 21 have a gambling addiction.”<sup>177</sup> These statistics show that gambling addictions disproportionately affect young people. As referenced above, in the United Kingdom, much of the rise in sports betting in young people can be directly attributed to advertising.<sup>178</sup> It is not a very large logical leap to think that the same problems that young people are experiencing in the U.K. due to sports betting advertisements could occur in the United States.

All this is not to say that sports gambling should be outlawed. In fact, behavioral addiction can occur with many different activities—shopping, gaming, internet usage, sex, and eating—that are not inherently negative activities.<sup>179</sup> The possibility of behavioral addiction on its own should not be grounds to ban an activity. The government should worry about those activities that have higher rates of addiction. Laws should be passed that limit the most vulnerable to bombardment of advertisements by those industries that do have higher rates of addiction.<sup>180</sup>

As such, sports betting advertising should be treated similarly to the way tobacco and alcohol advertising is treated.<sup>181</sup> As is the case for many activities accompanied by negative side effects, keeping the advertisements away from children and teenagers should be a priority.

### 1. The United Kingdom

On this spectrum, the United Kingdom takes a moderate regulatory approach. The Advertising Standards Authority (“ASA”) is an independent regulatory body in the United Kingdom<sup>182</sup> that sets forth rules for gambling advertisements.<sup>183</sup> The rules mostly regulate the content of the

updated Aug. 5, 2019) (“The risk of developing a gambling addiction more than doubles for young adults in college settings [and] . . . [a]n estimated six percent of American college students struggle with gambling problems.”).

177. *Id.*

178. *See infra* Section III.B.1.

179. *Behavioral Addictions*, A FOREVER RECOVERY, <https://aforeverrecovery.com/addiction/behavioral-addictions> [<https://perma.cc/VJG6-LNT2>].

180. *See* Simon Planzer et al., *Associations Between National Gambling Policies and Disordered Gambling Prevalence Rates Within Europe*, 37 INT’L J.L. & PSYCHIATRY 217, 217 (2014) The article observed a statistically significant correlation between gambling addiction rates and less strict advertising regulations.

181. *See Rules & Regulations About Marketing Alcohol*, ALCOHOL.ORG, <https://www.alcohol.org/laws/marketing-to-the-public> [<https://perma.cc/AUP6-P6DN>] (last updated Jan. 16, 2020) (explaining the types of restrictions applicable to alcohol advertisers, as well as self-imposed regulation by alcohol trade associations); *see also Advertising and Promotion*, FDA, <https://www.fda.gov/tobacco-products/products-guidance-regulations/advertising-and-promotion> [<https://perma.cc/7TCX-GZZA>] (last updated Jan. 30, 2020) (describing tobacco products restrictions).

182. *The Advertisement of Online Gambling Services*, EGBA NEWS, March 2017, at 1, 3, *available at* <https://sponsorship.org/resources/egba-newsletter-23-june-2017> [<https://perma.cc/EH25-KX9N>].

183. *Id.*

advertisements, such as banning ads portraying socially irresponsible gambling behavior, suggesting gambling as a solution to financial concerns, appealing particularly to youth, or featuring any actor who is or appears to be below the age of 25<sup>184</sup> (even though the general gambling age in the United Kingdom is 18, and the age for football pools is even lower at 16).<sup>185</sup>

Despite these rules and a dedicated enforcement agency, the advertisement of gambling services continues to be an issue in the United Kingdom.<sup>186</sup> The Premier League, the top football league in England, is composed of 20 clubs.<sup>187</sup> Of those, over half played “with the logo of a betting company emblazoned on their shirt.”<sup>188</sup> Even more problematic in England, despite the ASA’s rules, are the television adverts.<sup>189</sup> The advertisements vary in form, “but their core message remains the same: if you’re young, male and you want the respect of the lads, having a flutter on the match should be little more than a happy obligation.”<sup>190</sup> The research on the effects of these advertisements in the U.K. is grim; the Gambling Commission—created to study the effects of gambling advertisements—found that the number of people who identify as problem gamblers in the 16–24 age range has nearly doubled from 2014 to 2017.<sup>191</sup> In that age range, two-thirds of online gamblers directly attribute their betting to advertisements.<sup>192</sup>

## 2. Italy

Because of the problems that arise from advertising of gambling services, some Member States are starting to look into more aggressive options.<sup>193</sup> The most aggressive rules can be found in Italy, where the nation now totally bans any advertising for gambling services.<sup>194</sup> Advertisements for gambling products can no longer be shown on television, radio, or the internet.<sup>195</sup> The ban does not stop there but also reaches sports sponsorships by gambling operators.<sup>196</sup> The ban went into effect on January 1, 2019, with partnerships

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184. *Id.*

185. *How Is Gambling Regulated?*, BEGAMBLEAWARE, <https://www.begambleaware.org/understanding-gambling/how-is-gambling-regulated> [<https://perma.cc/767V-Q7D5>].

186. Hess, *supra* note 166.

187. *Premier League Explained*, PREMIER LEAGUE, <https://www.premierleague.com/premier-league-explained> [<https://perma.cc/8BSZ-QWVV>].

188. Hess, *supra* note 166.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. Erik Gibbs, *Gambling Advertising in Italy Officially Dead*, CALVINAYRE.COM (Aug. 10, 2018), <https://calvinayre.com/2018/08/10/business/gambling-advertising-italy-officially-dead> [<https://perma.cc/T4EU-WPW2>].

194. *Id.*

195. *Id.*

196. *Id.*

between football clubs in Italy's Serie A league and gambling companies allowed to continue until July 2019.<sup>197</sup>

The effects of the ban remain to be seen, but its critics are certainly not staying quiet.<sup>198</sup> Italian football clubs have “warned that the decrease in their sponsorship funding would likely make it more difficult to provide match broadcasts over free-to-air television networks.”<sup>199</sup> LeoVegas, a Swedish gambling company, argued the ban will “only prove to be beneficial to unlicensed gambling operators.”<sup>200</sup> Many are also predicting gambling operators will move into international jurisdictions to minimize the negative economic effects of the ban.<sup>201</sup>

### 3. Spain

Spain is also in the process of significantly restricting gambling operators' ability to advertise.<sup>202</sup> Prior to the current considerations, Spain had been operating under a self-regulatory model.<sup>203</sup> In 2017, Spain had seen an increase of gambling advertisements—around 2.5 million across all media platforms—more than three times the 800,000 gambling advertisements in 2016.<sup>204</sup> Official statistics from Spain's regulatory body, the Dirección General de Ordenación del Juego (“DGOJ”), found that operators had spent 41.1 million euros on advertising in the first half of 2018.<sup>205</sup>

197. *Id.*; see Nick Friend, *Serie A Gambling Sponsor Ban Delayed Until July*, SPORTSPRO (Jan. 15, 2019), <http://www.sportspromedia.com/news/serie-a-gambling-sponsor-ban> [https://perma.cc/2PQZ-C42L].

198. See Gibbs, *supra* note 193.

199. Steven Stradbroke, *Italy Gambling Ad, Sponsorships Must Conclude by June 30, 2019*, CALVINAYRE.COM (July 3, 2018), <https://calvinayre.com/2018/07/03/business/italy-gambling-ad-sponsorship-ban-deadline> [https://perma.cc/974D-9F7D].

200. Gibbs, *supra* note 193.

201. *Id.*

202. Steven Stradbroke, *Spain to Treat Online Gambling Advertising the Same as Tobacco*, CALVINAYRE.COM (Oct. 16, 2018), <https://calvinayre.com/2018/10/16/business/spain-online-gambling-advertising-restrictions-tobacco> [https://perma.cc/XK37-D46H] [hereinafter Stradbroke, *Spain to Treat Online Gambling Advertising the Same as Tobacco*].

203. *Id.*

204. *Id.*; see Javier Portillo Suárez, *El Acuerdo de Presupuestos Iguala la Publicidad del Juego 'Online' a la del Tabaco*, EL PAIS (Oct. 11, 2018, 9:13 PM), [https://elpais.com/sociedad/2018/10/11/actualidad/1539266871\\_856575.html](https://elpais.com/sociedad/2018/10/11/actualidad/1539266871_856575.html) [https://perma.cc/4RU7-W7XR] (« El sociologo anade . . . que en 2017 se emitieran más de dos millones y medio de anuncios en todos los soportes, frente a los 800.000 de 2016. ») (This translates as “The sociologists adds . . . that in 2017 more than two and a half million ads were issued across all media platforms, compared to 800,000 in 2016.”) (translated by the author of this Note).

205. Stradbroke, *Spain to Treat Online Gambling Advertising the Same as Tobacco*, *supra* note 202.

#### IV. HOW THE UNITED STATES CAN USE THE MEMBER STATES OF THE EUROPEAN UNION TO CRAFT BETTER SPORTS BETTING LEGISLATION

This Part discusses how the issues presented above can manifest themselves in the United States and proposes solutions for how the United States can address them. Section IV.A discusses match fixing and offers two solutions for combatting it, whether through individual state legislation or through a federal agency. Section IV.B discusses how the Federal Trade Commission can implement rules and regulations to avoid the advertising issues that have arisen in EU Member States.

##### A. MATCH FIXING

As previously stated, the United States has been no stranger to match-fixing scandals throughout its history.<sup>206</sup> It has existed as long as the United States has had major sports leagues, regardless of whether sports betting was legal or not.<sup>207</sup> This is a reality of the modern sports-betting world. That said, it is a reality that States must be aware of, while also being prepared to shoulder responsibility by filling the role that they will play in fighting match fixing. As guardians of health, safety, morals, and general welfare,<sup>208</sup> states who legalize sports betting owe a duty of care to their citizenry to combat match fixing to maintain the integrity of the sports leagues and the betting operations.<sup>209</sup>

In order to effectively regulate betting operations, states will have to work closely with the licensed operators and the sports leagues. States should implement regulatory agencies, independent of the casino operators, to monitor all bets placed. While licensed sports-betting operators seemingly have every incentive to combat match fixing, the nature of match fixing allows for implication of many people across the board. Thus, it makes the most sense to have an independent state regulatory agency monitoring the bets placed to maintain the highest degree of separation. Using these monitoring systems, states can look for suspicious betting patterns and notify the casinos or sports-betting operators.

Under this system, states should establish procedures for when a suspicious betting pattern has been identified for any licensed sports betting operator within their jurisdiction. This policy could include requiring casinos and other sports-betting operators to fully refund all bets placed on any sporting event deemed “suspicious” by the regulatory agency. It could also

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206. See *supra* Section II.B.

207. See, e.g., *supra* Section II.B.

208. *Police Powers*, NOLO, <https://www.nolo.com/dictionary/police-powers-term.html> [<https://perma.cc/5KYY-QBKC>].

209. Please note that this Note is not advocating for exclusive responsibility of the states to combat match fixing. This is a complex issue that requires effort from all parties involved; the states, the licensed casino operators, the sports leagues, and any federal enforcement agency that may be involved.

include placing a “freeze” on all the bets placed until an investigation can be conducted by the regulatory agency. Depending on the result of that investigation, the casino or licensed sports betting operator could either pay out the winnings or refund all bets placed without consideration of winning or losing the bet placed. These conditions should be imposed on the casino or other sports betting operators at the time of licensing. This undertaking will require significant resources, which will aid state legislatures in deciding whether legalizing sports betting is an intelligent decision.<sup>210</sup>

States may have to work together to combat match fixing. As complex an issue as match fixing is, the complexity is further increased by blurring bets through state lines. If states are only monitoring bets placed in their jurisdictions, and not sharing their information with other states, this creates a very easy method for would-be match fixers to avoid detection. If State A, B, and C are all offering relatively similar odds on a particular sporting event, match fixers can spread the bets placed throughout the three states, greatly reducing the probability of the bets being identified as suspicious. By sharing information about bet monitoring with other states, regulatory agencies are much more likely to deter would-be match fixers and identify suspicious betting patterns. Without the ability to work together, states will leave themselves susceptible to the harms that accompany match fixing.

However, while it would be possible to place the responsibility for combatting match fixing on each individual state who legalizes sports betting and subsequently hope for efficient communication between states, it is far from ideal. After decades of dealing with the negatives of match fixing, the EU recently started promoting a Convention on the Manipulation of Sports Competitions, which has been signed by 17 States.<sup>211</sup>

Taking a page out of the EU’s book, the United States should consider creating a federal agency dedicated to gambling—combatting match fixing in particular. The reality is that sports betting is a large market that is only going to continue to grow at exponential rates. With the rise of online gambling, it is impossible to counteract any suspicious activity at the state level, despite even the best efforts. The rise of the Internet has created a need for international cooperation, and the federal government is best equipped to handle the issues surrounding match fixing.

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210. See Magowan, *supra* note 157 for a further list of possible reforms. The two-year review that helped uncover the “tsunami” of match fixing in tennis cost close to 20 million pounds. *Id.* The reviewing body spoke to 100 players and more than 3,200 professionals. *Id.* Considerable resources were spent on tennis alone. *Id.*

211. *Corruption in Sport: European Commission Adopts Two Proposals for Council Decisions on Signing of Council of Europe Convention on Manipulation of Sports Competitions*, PRACTICAL LAW EU (Mar. 12, 2015). The signing of this convention is open to both Council of Europe Member States and Non-Member States. *Id.* As of the last update, the States that have signed the Convention are Armenia, Azerbaijan, Bulgaria, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, Lithuania, Montenegro, the Netherlands, Norway, Russia, Serbia, and Switzerland. *Id.*

A federal agency can more effectively monitor the bets placed in the several states, as well as communicate the information collected with other international regulatory bodies. This is particularly true because not every state will have a major sports league presence. Iowa, for example, has passed sports-betting legislation,<sup>212</sup> with no major sports league team in the state. Nor will every state have an equal market for gambling. A federal agency would be able to ensure that all markets have equal communication access with the major sports leagues. A federal agency would also communicate more effectively with casinos throughout the country, allowing for the government to keep more tabs on more bets at all times. This will provide a more comprehensive and thorough check on match-fixing practices around the world, helping to reduce the problem while avoiding a patchwork of different regulations that arise throughout the country.

### B. ADVERTISING

With the heightened possibility of gambling addiction in mind, regulating advertisements is crucial in this process. The first step to regulating gambling advertisements is identifying the appropriate regulatory body. In the United States, the Federal Trade Commission (“FTC”) and the Federal Communications Commission (“FCC”) are the main regulatory bodies in charge of the rules and regulations surrounding advertising practices.<sup>213</sup> While advertisers are still protected under the First Amendment Free Speech laws, the courts have ruled that advertising “can be regulated more strictly than any other form[s] of [speech].”<sup>214</sup> There should be restrictions placed upon when advertisements for sports betting services are allowed to air, as well as the content of the advertisements.

A complete and outright ban on advertisements for sports betting services, such as what Italy has done, is not the best solution. There is no reason why a legal operation licensed by the state or federal government should have their commercial speech rights taken away.<sup>215</sup> The emphasis should be placed on advertising services in a *socially responsible* way. This approach would include disclaimers about the dangers of gambling addictions, information about services available to those who suffer from gambling addictions, avoiding appealing to impressionable youth, and not advertising during times of peak viewership by children.

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212. IOWA CODE § 99F (2020).

213. See Denis Vaskov, *General Provisions on Regulation of Advertisement Activities in the US*, ADCONSUL, <http://adconsul.org/en/articles/6> [https://perma.cc/ES42-N67T].

214. *Id.*

215. This would almost certainly violate the corporation’s freedom of speech rights under the First Amendment using the *Central Hudson* test. See generally *Cent. Hudson Gas & Elec. v. Pub. Serv. Comm’n*, 447 U.S. 557 (1980) (outlining the requirements for the government to constitutionally regulate commercial speech). This Note argues that legal commercial entities should be allowed to advertise their services in a socially responsible manner.

Implementing these regulations would ensure that those in our society who are the most vulnerable and impressionable will not be bombarded by sports betting advertisements. Further, mandating that any advertisement for these services includes resources for those who are experiencing gambling addictions may lead more people to get the help they may need. These regulations would not come as a surprise to the industry. The American Gaming Association, following the Supreme Court's PASPA decision, updated its code of conduct to include more provisions on sports betting.<sup>216</sup> However, relying exclusively on private associations to dictate the rules and regulations, as well as enforce them, can lead to non-compliance. The importance of having the government continue to regulate and enforce these types of provisions cannot be overstated. There is no more effective way of ensuring compliance by the relevant parties.

Due to the necessity of a base floor of uniformity in these rules, particularly in the age of internet advertisements, where the lines between states are again blurred, the FTC and FCC should be in charge of promulgating and enforcing these rules. States would be free to impose harsher restrictions through their own regulatory bodies.

## V. CONCLUSION

The Supreme Court ruling on PASPA has opened the door for many states to a new way to generate tax revenue. However, there are many considerations that legislators need to examine before rushing through legislation. There are significant issues that accompany legalized sports betting and without thoughtful legislation, the negatives could vastly outweigh the positives. Looking to the EU, where sports betting has been legal for quite some time, legislators can gain valuable insight to help craft legislation that allows states to enjoy this new source of tax revenue while making sure the American people have legal access to what is currently an underground national pastime. Given the issues that accompany legalized sports betting, as well as an increasingly interconnected world, legislators may need to rethink whether sports betting should remain under the purview of each individual state. Federal involvement—at least in the two issues discussed in this Note—could smooth the transition for sports betting into the legal market.

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216. AM. GAMING ASS'N, AGA CODE OF CONDUCT FOR RESPONSIBLE GAMING 3 (2018), available at <https://www.americangaming.org/sites/default/files/AGA%20Code%20of%20Conduct%20for%20Responsible%20Gaming%202018.pdf> [https://perma.cc/CRR2-PYTW] (“Casino gambling including sports betting advertising and marketing will: Contain a responsible gaming message and/or a toll-free help line number where practical . . . Strictly comply with all state and federal standards . . . Casino gambling including sports betting advertising and marketing will not: . . . Be placed before any audience where most of the audience is ordinarily expected to be below the legal age to participate in gambling or sports betting activity.” (emphasis omitted)).