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Legalizing Federal Sports Gambling Laws: You Got to Know When to Hold'em

by ROBERT SHAWHAN¹

Abstract

Historically, sports gambling has maintained a precarious position in the United States. Although it was traditionally left to the states to allow gambling, the federal government has limited these rights for the past fifty years. In 1992, federal legislation outlawed gambling in nearly every state. This prohibition included gambling on sports. Despite this prohibition, it is estimated that \$150 billion is produced annually from illegal sports gambling. Generally, professional sports leagues have rejected gambling; however, they are increasingly acknowledging the realities of the black market. As such, they have come to recognize that there may be benefits rendered by such activity. The proliferation of Daily Fantasy Sports (hereinafter “DFS”) and the league sponsorship of this gambling recommend that both fans and sports leagues accept some forms of gambling. Recently, sports leagues, such as the National Football League and the National Hockey League, have introduced professional sports teams to Las Vegas, the once detested city of gambling and corruption. As such, this suggests that some leagues are ready to coexist with sports gambling.

The introduction of a well-regulated and transparent gambling industry may serve greater protections than what is provided by the law. As it is, law enforcement cannot stop illegal sports gambling and few states punish such unlawful activity. However, a well-regulated and transparent gambling industry will protect both betting fans and the integrity of sports leagues.

Furthermore, politicians are sensibly acknowledging the realities of sports gambling and its benefits. The current political climate, under a Trump Presidency, is ideal for legalizing this form of gambling. In the

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past, President Trump, a former casino owner, has expressed his support for legalizing sports gambling. Furthermore, with a Republican controlled Congress and President Trump's support, it is likely that sports gambling may be legalized in the next few years. Pro-gambling lobbyists are privy to these ripe political conditions and are planning their efforts accordingly. Big changes in the realm of American sports are near.

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Introduction

Sports are very popular in the United States. They go hand in hand like a catcher's mitt and a fastball. Many Americans might not be able to name the Speaker of the United States House of Representatives, but they sure can name the winner of the last Super Bowl. The American culture has a profound respect and reverence for athletes. While most Americans may never reach the zenith of being a professional athlete, that does not prevent them from competing at an elite level. Their competition just happens to take a different form – sports gambling. Any individual with a penchant for risk can place a bet on nearly any professional sport, including amateur and collegiate sports.² Furthermore, the development of technology has fostered sports gambling. With easy access to phone

2. *Top USA Sports Betting Sites*, ODDSSHARK.COM, <http://www.oddsshark.com/usa> (last visited Mar. 8, 2017).

applications and online betting sites, gambling is easily accessible to any person who may have a phone within reach.³

Furthermore, most of gambling is not conducted legally. The American Gaming Association (hereinafter “AGA”) estimated that an annual \$150 billion is unlawfully wagered on sports in the United States.⁴ In 2015, the State of Nevada only accounted for \$4.2 billion in sports gambling bets.⁵ This is only a small fraction of the money that is illegally gambled on nationwide. Therefore, there is a larger portion of unlawful bets occurring throughout the country. With such a high rate of unlawful wagering, it begs the question of why this activity is so prevalent? The reason is that sports gambling is legally ambiguous, therefore, often complicating its enforcement.⁶

Pursuant to federal law,⁷ sports gambling is unlawful. Yet, no gambler has been charged with the unlawful act of placing bets with online book makers.⁸ That is because current laws are meant to target the online betting sites and not the members of such sites.⁹ To further complicate matters, DFS has exploded in popularity and have gone largely unquestioned by most states. While DFS is similar to the traditional sports betting framework, there is an arguable legal exception for their existence. The Unlawful Internet Gambling Enforcement Act of 2006 provides this exception. It allows games that require “skill” and “relative knowledge”, as opposed to mere chance.¹⁰ Arguably, DFS falls within this category. Nonetheless, this legal framework will be explored later in this note.

If illegal sports betting and DFS are so popular in the United States, then why not legalize it? The legislative and sports communities are beginning to embrace this conclusion. Part I of this note will reflect on the most recent history of sports gambling laws. It will draw on New Jersey’s legal struggles, the sports evolution of Las Vegas, and the relevant Daily Fantasy Sports controversy. Part II will address the current reality of sports

3. *Online Gambling Sites*, GAMBLEONLINE.COM, <http://www.gambleonline.co/sports-betting/> (last visited Mar. 8, 2017).

4. *Memo To President-Elect Trump Details Casino Gaming Industry’s Priorities*, AMERICAN GAMING ASSOCIATION (Dec. 20, 2016), <https://www.americangaming.org/new-room/press-releases/memo-president-elect-trump-details-casino-gaming-industry%E2%80%99s-priorities>.

5. Brian Pempus, *Nevada Sports Betting To Approach \$5B in 2016*, CARD PLAYER: THE POKER AUTHORITY (May 10, 2016), <http://www.cardplayer.com/poker-news/20334-nevada-sports-betting-handle-to-approach-5b-in-2016>.

6. *Is Online Sports Betting Legal in The United States?*, USAONLINESPORTSBOOKS.COM, <http://www.usaonlinesportsbooks.com/is-sports-betting-legal-in-the-united-states.html> (last visited Mar. 7, 2017).

7. 31 U.S.C. §§ 5361-5366 (2006).

8. *Is Online Sports Betting Legal in The United States?*, *supra* note 6.

9. *Id.*

10. 31 U.S.C. §5362(1)(E)(ix)(II) (2006).

gambling in the United States and the changing views amongst politicians, sports leagues, and the general public. Part III will focus on the risks of illegal gambling in the black market. Part IV will discuss the developing efforts of states, lobbyists, and politicians to update and repeal outdated federal legislation. Part V will discuss the potential legal framework of a sports gambling market.

I. A History of Sports Gaming Laws in the United States

The United States has a long and tumultuous history with gambling.¹¹ Initially, English colonists brought gambling to the United States.¹² Although early Puritan's prohibited any form of gambling, other English colonists brought various forms of gambling, such as: dice, card games, and the tradition of betting on animals.¹³ Some of the early historic figures in the Nation's history were involved in some form of gambling. For example, Benjamin Franklin, John Hancock, and George Washington were all prominent sponsors of specific lotteries for public works projects that constructed churches, libraries, and other public institutions.¹⁴ These lotteries were often used to finance and bail out the original thirteen colonies.¹⁵ It is speculated by historians that the appeal of gambling was heightened by the frontier spirit, which required adventure, risk-taking, and extreme opportunism.¹⁶ Despite the early popularity of gambling in the United States, social views and laws have waxed and waned.¹⁷

The power to legalize gambling is reserved to the states under the Tenth Amendment.¹⁸ As such, in 1931, Nevada, a largely barren, desert state legalized most forms of gambling to increase tourism.¹⁹ Furthermore, in the late nineteenth and early twentieth century, sports gambling gained traction with the increased popularity of baseball and the organized networks of underground bookmaking.²⁰

Although religious groups generally rejected gambling, most Americans were not concerned with the dangers of sports betting.

11. Roger Dunstan, *Gambling in California: History of Gambling in the United States*, CALIFORNIA RESEARCH BUREAU, CALIFORNIA STATE LIBRARY (Jan. 1997), <https://www.library.ca.gov/CRB/97/03/Chapt2.html>.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. JOHN M. FINDLAY, *PEOPLE OF CHANCE* 4 (1986).

17. Dunstan, *supra* note 11.

18. *Id.*

19. *Id.*

20. Joshua Peles, Note, *NCAA v. N.J.: New Jersey Rolls The Dice On A Tenth Amendment Challenge To The Professional and Amateur Sports Act*, 22 JEFFREY S. MOORAD SPORTS LAW JOURNAL 149, 155–156 (2015).

However, this would change after the 1919 World Series. On October 9, 1919, the Cincinnati Reds defeated the heavily favored Chicago White Sox to clinch an unlikely World Series win.²¹ The Black Sox scandal alleged that eight members of the Chicago White Sox conspired to fix the World Series by losing games.²² As a result, public support and confidence in sports betting dwindled. Sports leagues and fans would continue to view sports gambling skeptically and apprehensively throughout the twentieth century.²³ As an attempt to salvage the credibility and integrity of sports, professional sports leagues have taken a strong stance against gambling.²⁴ This has allowed sports leagues to groom their public image in order to maintain the fan and public support.²⁵

In the second half of the twentieth century, the federal government decided to confront sports gambling. The United States Congress prohibited interstate sports wagering through the Federal Wires Act of 1961 (hereinafter “Wire Act”).²⁶ This law banned the use of “wire communication facilities”, such as telephones, to transmit bets and information relating to wagering on sporting events.²⁷ Wire transfers would later include the internet. This law was intended to assist states and territories to enforce their respective laws on suppressing organized gambling activities.²⁸ In 1992, pressure from professional and collegiate sports leagues would further suppress sports gambling,²⁹ with the passage of the Professional and Amateur Sports Protection Act (“PASPA”).³⁰ This act made sports gambling illegal in all states with a grandfather clause providing an exception to Nevada, Oregon, Montana, and Delaware, which already had established sports books.³¹ Also, exceptions were made to

21. Evan Andrews, *The Black Sox Baseball Scandal, 95 Years Ago*, HISTORY STORIES (Apr. 9, 2018, 11:34 AM), <http://www.history.com/news/the-black-sox-baseball-scandal-95-years-ago>.

22. *Id.*

23. *See* Peles, *supra* note 20.

24. Jeffrey Rodefer, *Federal Wire Wager Act: Wire Act*, GAMBLING-LAW-US.COM <http://www.gambling-law-us.com/Federal-Laws/wire-act.htm> (last visited Mar. 6, 2017).

25. *Id.*

26. *Id.*

27. Rodefer, *supra* note 24.

28. *Id.*

29. *See* Bill Bradley, *The Professional and Amateur Sports Protection Act-Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORT L. 5, 8 (1992) (noting that in 1992 at least thirteen states were considering measures to legalize state-sponsored sports betting); *see* S. Rep. No. 102-248, at 3 (1991) (listing individuals who testified at public hearing voicing support for legislation prohibiting sports gambling including, but not limited to, commissioners of NFL, NBA, NHL, and MLB).

30. 28 U.S.C.A. §§ 3702-3704 (1992).

31. 28 U.S.C.A. § 3704 (1992). “[A] lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the

allow gambling on specific sports, which included pari-mutuel animal racing (horse racing and dog racing) and jai-alai.³² Currently, Delaware offers parlay bets on the National Football League (hereinafter “NFL”), but neither Oregon nor Montana have any regulated bookmaking operations.³³ Other than Delaware’s involvement with sports gambling, Nevada solely benefits from PASPA.

The latest legislative attempt to address internet gambling was the Unlawful Internet and Gambling Enforcement Act of 2006 (hereinafter “UIGEA”).³⁴ This legislation had its largest impact on online poker, which it has largely eliminated. It impacted sports gambling by introducing new definitions. It redefined a “bet” as any game “subject to chance”.³⁵ This law also left an express exception for DFS, when it prescribed that:

All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.³⁶

Essentially, this “relative knowledge and skill” passage leaves the legality of DFS contests up to each individual state to determine.³⁷ Most states have not challenged this notion in a court of law. However, only two states have passed laws dealing with fantasy sports, which are Kansas and Maryland.³⁸

Ultimately, the UIGEA was intended to be a punitive measure that added a layer of enforcement against individuals and companies that processed payments for illegal internet gambling, which had not been previously defined by the law.³⁹ Lawmakers did not see the harm in exempting DFS since it does not incentivize athletes to change their performance on the field.⁴⁰ For this reason, they do not feel like the integrity of the game is threatened.⁴¹ In effect, the UIGEA did not

scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990.”

32. See *id.* § 3704 (1992).

33. *Is Online Sports Betting Legal in The United States?*, *supra* note 6.

34. 31 U.S.C. §§ 5361-5366 (2006).

35. 31 U.S.C. § 5362(1)(A) (2006).

36. 31 U.S.C. §5362(1)(E)(ix)(II) (2006).

37. *Unlawful Gambling Enforcement Act Of 2006*, ONLINEGAMBLINGSITES.COM, <http://www.onlinegamblingsites.com/law/uigea/> (last visited Mar. 7, 2017)

38. *Id.*

39. *Id.*

40. See, e.g., Ryan Rodenberg, *The true Congressional origin of daily fantasy sports*, ESPN (Oct. 28, 2015), http://www.espn.com/chalk/story/_/id/13993288/daily-fantasy-investigating-when-re-fantasy-carve-daily-fantasy-sports-actually-came-congress.

41. *Id.*

criminalize any new forms of gambling, but in some respects it further confused the legal landscape. As things currently stand, DFS is thriving, but it appears to be a masquerade of its more omnipresent activity –illegal sports gambling.

A. The New Jersey Flop

When PASPA was enacted in 1992, it offered a one year loophole for the New Jersey State’s Assembly to make sports gambling legal, as an exception to the federal ban.⁴² Amidst political turmoil and arguments, the State did not pass a sports gambling law during the one year window.⁴³ The argument against legalizing sports gambling was the same as it had been on the national stage. It was “bad public policy” that would ruin the integrity of professional sports.⁴⁴ The anti-gambling stance garnered support from the four American professional sports leagues (Major League Baseball, National Basketball Association, National Football League, and the National Hockey League), the National Collegiate Athletic Association (hereinafter “NCAA”), church groups, and law enforcement officials.⁴⁵ On the contrary, the argument for legalizing such activity was to increase tax revenue and to eliminate illegal competition with casinos.⁴⁶ This would have benefited New Jersey who had relatively little success in comparison to Las Vegas.⁴⁷

In 2011, the battle for sports betting was reignited when the people of New Jersey voted in favor of a referendum that encouraged then Governor Chris Christie to sign sports wagering into law.⁴⁸ However, sports leagues sued in federal court, which resulted in two big wins in their favor.⁴⁹ In 2014, the Third Circuit shut down New Jersey’s attempt to allow unregulated sports betting in *National Collegiate Athletic Ass’n v. Governor of New Jersey*, 730 F.3d 208, (3d Cir. 2013) (“Christie I”).⁵⁰ If the Third Circuit would have ruled differently, then this would have pathed the way for other states to follow similar legislation.⁵¹ In 2016, a second

42. Brent Johnson, *The Story of When N.J. Almost Legalized Sports Betting in 1993*, NJ.COM (Mar. 15, 2015, 6:00 AM), http://www.nj.com/politics/index.ssf/2015/03/the_story_of_njs_missed_opportunity_on_sports_bett.html.

43. *Id.*

44. *See* Johnson, *supra* note 42.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *See* Zachary Zaggar, *Despite Setback, Odds Still Favor National Sports Betting*, LAW 360 (Aug. 25, 2015, 9:57 PM), <http://www.law360.com/articles/695075/despite-setback-odds-still-favor-national-sports-betting>.

51. *Id.*

case followed in *National Collegiate Athletic Ass'n v. Governor of New Jersey*, 832 F.3d 389 (3d Cir. 2016) (“Christie II”). This case resulted in a rare en banc panel, in which nine judges ruled against the state and three dissented.⁵² Currently, this decision is being appealed to the United States Supreme Court.⁵³ However, it is unlikely that the Supreme Court will review this matter because of the overwhelming en banc majority and because there are no other circuit court decisions that conflict with this opinion.⁵⁴ Nonetheless, these lawsuits have brought national attention towards efforts to legalize federal sports gambling.

B. The Las Vegas Limits

Over the past couple of years, Las Vegas has been one of the fastest growing cities in the United States. The last Census, taken in 2015, reported the entire Clark County metropolitan area to have a population of approximately 2.1 million people.⁵⁵ This makes Las Vegas the largest city in the United States without a major professional sports team.⁵⁶ This is shocking since it is often considered the entertainment capital of the world. However, Las Vegas has never had a team from any of the four major sports leagues: the National Football League (hereinafter “NFL”), National Basketball Association (hereinafter “NBA”), Major League Baseball (hereinafter “MLB”), and the National Hockey League (hereinafter “NHL”).⁵⁷ The biggest concern about Las Vegas is the proximity between sports books and athletes. This threatens the integrity of sports since athletes can be influenced to point shave or throw games.⁵⁸ Additionally, the stigma of Las Vegas, as the city of temptation and sin, concerns sports leagues who have spent decades grooming their wholesome and family-friendly public image.⁵⁹ As a sign of distrust, the NFL has extended bans against Las Vegas in the past. In 2003, the NFL banned Las Vegas from

52. Dustin Gouker, *Hail Mary: New Jersey Will Appeal Sports Betting Case To US Supreme Court*, LEGAL SPORTS REPORT (Oct. 4, 2016), <http://www.legalsportsreport.com/11723/nj-sports-betting-supreme-court-appeal/>.

53. See Gouker, *supra* note 52.

54. *Id.*

55. *Quick Facts, Clark County, NV*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045215/32003> (last visited Mar. 6, 2017).

56. DePersio, Greg, *Why Professional Sports Hasn't Worked in Las Vegas*, INVESTOPEDIA (June 29, 2015) <http://www.investopedia.com/articles/investing/062915/why-professional-sports-hasnt-worked-las-vegas.asp>.

57. *Id.*

58. *Id.*

59. *Id.*

running ads during the Super Bowl.⁶⁰ They also threatened to file suit against any local hotels holding Super Bowl parties.⁶¹ In addition to these concerns, leagues have been wary of the unstable and unpredictable fan base in Las Vegas. Most residents work odd hours, typically on the weekends⁶² Furthermore, these same locals have many entertainment options to choose from.⁶³

In the past, Las Vegas has introduced short-lived, experimental sports leagues that have ultimately failed. For example, the Canadian Football League attempted an expansion into the U.S. market in 1994 with the Las Vegas Posse.⁶⁴ It failed miserably after one short season.⁶⁵ In 2001, the Extreme Football League's debut included the Las Vegas Outlaws.⁶⁶ Due to a lack of profitability, the league dissolved after its first season.⁶⁷ The most successful attempt was with the Las Vegas Locomotives, which was part of the United Football League.⁶⁸ They emerged as a hopeful contender to the NFL.⁶⁹ They played from 2009-2012 before the league failed.⁷⁰

To help ease the concern about athletes throwing games or point-shaving, Nevada banned sports betting on collegiate Nevada sports for forty years.⁷¹ In 2001, this betting ban on Nevada college sports was lifted.⁷² Ever since the ban was lifted, there has not been any proven scandals in connection to Las Vegas.⁷³ Despite the ban, illegal bookmaking and sports betting were still operating in the State, much like in most other states. Yet, there were no allegations of fixed games.⁷⁴ National attention on Las Vegas collegiate sports peaked in the '80s and

60. *Mayor May File a Lawsuit Against the NFL For Banning Vegas Ads During Super Bowl*, LASVEGASNOW.COM (Jan. 14, 2003), <http://www.lasvegasnow.com/news/mayor-may-file-a-law-suit-against-the-nfl-for-banning-vegas-ads-during-super-bowl/79604638>.

61. Chris Smith, *How To Host A Super Bowl Party Without Getting Sued*, FORBES (Jan. 30, 2013, 1:50 PM), <https://www.forbes.com/sites/chris-smith/2013/01/30/how-to-host-a-super-bowl-party-without-getting-sued/#48933bd67687>.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Steve Carp, *Locomotives work phones, cultivate fans far and wide*, LAS VEGAS REVIEW JOURNAL (June 25, 2011), <http://www.reviewjournal.com/locomotives-work-phones-cultivate-fans-far-and-wide?ref=499>.

70. *Id.*

71. Darren Heitner, *What's the Big Deal With A Pro Sports Team In Las Vegas?*, FORBES (Apr. 9, 2016, 12:45 PM), <https://www.forbes.com/sites/darrenheitner/2016/04/09/whats-the-big-deal-with-a-pro-sports-team-in-las-vegas/#6af3bd435099>.

72. See Heitner, *supra* note 71.

73. *Id.*

74. *Id.*

early '90s during the golden years of the University of Nevada, Las Vegas (hereinafter "UNLV") men's basketball team.⁷⁵ Perhaps better known as the Running Rebels.⁷⁶ In 1991, after UNLV won the NCAA basketball tournament with a dominating win over Duke, a scandal erupted.⁷⁷ A photograph was published showing three UNLV basketball players in a hot-tub with a bookie, nicknamed the "fixer", who had been caught for the Boston College point-shaving scandal a few years prior.⁷⁸ In spite of these concerns, both the FBI and NCAA conducted an investigation that resulted in no evidence of any cheating. The closest proven scandal in connection to Las Vegas, within the last couple of years, have involved teams in other states.⁷⁹ This includes the scandal in 1994 that involved five Arizona State University basketball players accused of point-shaving.⁸⁰ Here, the accusations were proven true.⁸¹ After this scandal, the NCAA and the public became even more skeptical of integrating college basketball into Sin City, or any other sport for that matter.⁸²

Despite these fears with Las Vegas, sports leagues have increasingly held events in the city. In 2007, the NBA All-Star game was held in Las Vegas.⁸³ Furthermore, since 2013, the college Pac-12 Conference has held its men's basketball championship in Las Vegas.⁸⁴ In 2017, the Pac-12 championships took place at the new T-Mobile arena on the Las Vegas strip.⁸⁵ This new \$375 million arena on the Las Vegas strip opened in April 2016.⁸⁶ It is the catalyst for serious professional sports interest in the city. The NHL voted on creating an expansion team, the Golden Knights,

75. Greg Garber and Kory Kozak, *Twenty Years Later, UNLV still indignant*, ESPN (Apr. 1, 2010), <http://www.espn.com/mens-college-basketball/tournament/2010/columns/story?id=5045144>.

76. *Id.*

77. *Id.*

78. *Id.*

79. Will Hobson, *Sports Gambling in the 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-f3d0a1ec335c_story.html?utm_term=.7a19bfbc9f99.

80. *Id.*

81. *Id.*

82. *Id.*

83. Ed Graney, *Ten years later, memories of NBA All-star Game in Las Vegas Remains Fresh*, LAS VEGAS REVIEW JOURNAL (Feb. 18, 2017), <http://www.reviewjournal.com/sports/columns/ed-graney/ten-years-later-memories-nba-all-star-game-las-vegas-remain-fresh>.

84. Ryan M. Rodenberg & Anastasios Kaburakis, *Legal and Corruption Issues in Sports Gambling*, 23 J. LEGAL ASPECTS SPORT 8, 31 (2013).

85. *T-Mobile Events Calendar*, T-MOBILE ARENA, <http://www.t-mobilearena.com/> (last visited Apr. 2, 2017).

86. *Id.*

which will begin to play in the T-Mobile arena in the fall of 2017.⁸⁷ This is Las Vegas' first professional sports franchise.⁸⁸ As such, it is playing a major role in influencing other leagues to move to Las Vegas.⁸⁹

Following the NHL's footsteps, the NFL is bringing a team to Las Vegas. Despite the NFL Commissioner, Jim Goodell's previous strong opposition to sports gambling,⁹⁰ the Raiders are moving from Oakland to Las Vegas for the 2020 season.⁹¹ In exchange, Las Vegas is offering to pay \$750 million in public funds, from increased hotel taxes, to build a \$1.9 billion stadium.⁹² The Raiders and their owner, Mark Davis, found a financial backer in the Bank of America to help them fund the rest of the stadium.⁹³ On March 27, 2017, all 32 NFL team owners held their annual owners meeting, where they voted on the Raider's proposed move to Las Vegas.⁹⁴ This resulted in a 31 to 1 vote in favor of the Raiders.⁹⁵ This decision is monumental for pro sports gambling advocates. Having two major professional teams in Las Vegas will serve as a test as to whether sports leagues can co-exist with sports gambling.

C. Daily Fantasy Trading Troubles

The United States Congress passed the Unlawful Internet Gambling Enforcement Act in 2006.⁹⁶ The four major American sports leagues (NFL, NBA, NHL, and MLB) and the NCAA showed their support for the Act through a joint letter that was sent to Congress before the vote was cast.⁹⁷ The language in the Act provided a loophole that enabled DFS to proliferate.⁹⁸ It is unlikely that the sports leagues realized how popular

87. Alex Prewitt, *All In: Behind the scenes with the Golden Knights, Vegas's first major sports franchise*, SPORTS ILLUSTRATED (Jan. 9, 2017), <http://www.si.com/nhl/2017/01/23/las-vegas-golden-knights-behind-scenes>.

88. *Id.*

89. *Id.*

90. Dustin Gouker, *NFL's Goodell: 'We Remain Very Much Opposed To Gambling On Sports'*, LEGALSPORTSREPORT.COM (Oct. 19, 2017), <http://www.legalsportsreport.com/11854/nfl-goodell-on-sports-betting/>.

91. Albert Breer, *The Raiders' Road to Vegas Relocation Appears All Clear*, THE MM QB (Mar. 23, 2017), <http://mmqb.si.com/mmqb/2017/03/23/oakland-raiders-las-vegas-relocation-nfl-owner-meetings>.

92. *Id.*

93. *Id.*

94. Paul Gutierrez, *Owners vote 31-1 to OK Raiders move; Dolphins vote against*, ESPN (Mar. 27, 2017), http://www.espn.com/nfl/story/_/id/19016323/raiders-move-las-vegas-approved-31-1.

95. *Id.*

96. *See, e.g.*, Rodenberg, *supra* note 40.

97. *Id.*

98. *Id.*

DFS would become.⁹⁹ It is less likely that they understood how useful DFS would be towards promoting and increasing viewership for their sports.¹⁰⁰ Congressional records do not show any influence by professional sports leagues for the carve-out language included in the Act, other than their support.¹⁰¹ It is further declared by the author of the federal law, Representative Jim Leach (R-IA), that allowing DFS was not his intention.¹⁰² This is likely, since in 2006, season-long fantasy sports were already popular, but were viewed as a game played amongst friends and did not involve the exchange of much money.¹⁰³ While online poker was effectively made illegal and was pushed out in the following years, DFS erupted in popularity.¹⁰⁴ It emerged under the façade of a friendly, fan-crazed game that people would play with friends and co-workers in the office.¹⁰⁵ Famous poker player, Christopher Fargis, shared his observations of DFS in more colloquial terms:

D.F.S. is the bastard child of online poker, with its dizzying prize pools, fast action and, perhaps most important, the dream of an easy living. The only difference is that poker, despite its seedy glamour, is associated with casinos and shady underground games. Fantasy sports, by contrast, evokes visions of dads sitting in basements with their college friends, yelling out the names of their favorite athletes.¹⁰⁶

In 2017, two of the most popular DFS businesses, FanDuel and DraftKings, were each valued at \$1.2 billion.¹⁰⁷ According to the Fantasy Sports Trade Association, fifty million Americans played some sort of fantasy sport in 2015.¹⁰⁸ It is clear that DFS have become a lucrative business and a part of American fan culture.

Despite the false guise with which DFS operates, statements by the NFL Commissioner and the NBA Commissioner confirm the belief that

99. *Id.*

100. *Id.*

101. *Id.*

102. Dustin Gouker, *UIGEA Author: "No One Ever Conceived" That Law Would Allow Daily Fantasy Sports*, LEGALSPORTSREPORT.COM (May 8, 2015, 8:15 PM), <http://www.legal-sportsreport.com/1369/uigea-author-did-not-intend-daily-fantasy-sports-carveout/>.

103. *Id.*

104. Jay Caspian King, *How the Daily Fantasy Sports Industry Turns Fans Into Suckers*, N.Y. TIMES MAGAZINE (Jan. 6, 2016), https://www.nytimes.com/2016/01/06/magazine/how-the-daily-fantasy-sports-industry-turns-fans-into-suckers.html?_r=0.

105. *Id.*

106. *Id.*

107. Dustin Gouker, *FanDuel vs. DraftKings- Who's Number 1 In Daily Fantasy?*, LEGAL SPORTS REPORT (Feb. 6, 2017, 12:00 PM), <http://www.legalsportsreport.com/3832/fanduel-or-draftkings/>.

108. Pempus, *supra* note 5.

fantasy sports are legal and operate under the law.¹⁰⁹ Of course, this is influenced by the increased viewership DFS betting brings towards these sports. A few states have challenged the legality of DFS and many more have become increasingly concerned with DFS after an employee of one of the major DFS companies was caught cheating.¹¹⁰ On September 27, 2016, Ethan Haskell, an employee of DraftKings, inadvertently published information that could have given him an edge over his competitors.¹¹¹ That day he won \$350,000 in prizes on FanDuel.¹¹² An internal investigation was conducted by a former United States Attorney who determined that Haskell cheated the system by submitting information after the deadline that required all players to submit relevant information.¹¹³ This story made headlines and casted doubt on the authenticity of DFS.¹¹⁴ On October 2016, shortly following the aforementioned scandal, Nevada joined the list of states that prohibit DraftKings and FanDuel from operating in their jurisdiction, which included: Arizona, Iowa, Louisiana, Montana, and Washington.¹¹⁵ On November 10, 2016, the New York Attorney General issued a cease-and-desist letter to FanDuel who is based in New York.¹¹⁶ The New York Attorney General later filed lawsuits.¹¹⁷ The judge's initial orders were to stop all bets in the State.¹¹⁸ Since then, the order has been stayed.¹¹⁹

The future of DFS is in a precarious position. It continues to defend itself by declaring that it is a game of "skill" and "knowledge".¹²⁰ Until DFS is further challenged in court, it will continue to pass as an exception to the UIGEA.¹²¹ Even DFS sites do not have a uniform legal definition for this form of betting. This lack of uniformity and regulation is what legislatures should be concerned with and should be addressing. The current legal status of DFS supports the legalization of sports gambling. It

109. *Id.* NFL spokesman, Brian McCarthy confirmed Roger Goodell's testimony on Nov. 12, 2012, while being deposed by lawyers for New Jersey Gov. Chris Christie in still on-going litigation. The statement is as follows: "Fantasy games are considered legal, and we operate under the law."

110. King, *supra*, note 104.

111. *Id.*

112. King, *supra*, note 104.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. Chris Grove, *Here's the Truth About the Legality Of Daily Fantasy Sports*, LEGAL SPORTS REPORT (Sept. 17, 2015, 11:00 PDT), <http://www.legalsportsreport.com/3967/are-daily-fantasy-sports-legal/>.

121. *Id.*

currently serves as a small sample size for what sports gambling has to offer to leagues, fans, and the public.

II. Current Realities of Sports Betting

The American Gaming Association (hereinafter “AGA”) is the premier national trade group representing the \$240 billion U.S. casino industry. It estimated that \$149 billion was illegally wagered by Americans in 2015.¹²² A National Gambling Impact Study Commission estimated that the scope of illegal gambling may range anywhere from \$80 to \$400 billion annually.¹²³ It is further estimated that \$10.4 billion was illegally wagered on March Madness in 2017.¹²⁴ Moreover, it is estimated that \$4.2 billion was illegally wagered on Super Bowl 50 in 2016.¹²⁵ Only three percent of the wagers for both of these events were legal.¹²⁶ The AGA has been closely tracking these illegal gambling numbers for years.¹²⁷ Their studies are currently the most comprehensive. The AGA’s mission is to be the single most effective champion of the gaming industry.¹²⁸ It is relentlessly fighting against harmful and often misinformed public policies.¹²⁹ It is paving a path for growth, innovation, and reinvestment.¹³⁰

Professional sports leagues, which have historically opposed sports gambling, are changing their views. Such leagues have generally feared that sports betting would threaten the integrity of sports. This includes throwing games, point-shaving, prejudicial refereeing, and any other acts of cheating that may be committed by athletes, officials, and any person who has the ability to influence the game. These actions could harm the image of the sport and ruin its integrity. This would result in the loss of trust and interest from fans. However, these fears are quickly fading. For example, the NBA Commissioner has expressed his views of sports gambling when recently stating that the “[t]imes have changed . . . I believe sports betting

122. Darren Heitner, *\$4.2 Billion To Be Wagered On Super Bowl 50*, FORBES (Jan. 27, 2016, 5:39 PM), <https://www.forbes.com/sites/darrenheitner/2016/01/27/4-2-billion-to-be-wagered-on-super-bowl-50/#3d2baf1449df>.

123. Joran Weissmann, *Big Bucks or Bogus Betting Baloney?*, SLATE (Nov. 21, 2014, 2:19 PM), http://www.slate.com/articles/business/moneybox/2014/11/adam_silver_says_there_s_400_billion_per_year_of_illegal_sports_betting.html.

124. *Id.*

125. *Id.*

126. *Id.*

127. *About AGA*, AMERICAN GAMING ASSOCIATION, <https://www.americangaming.org/about> (last visited Mar. 29, 2017).

128. *Id.*

129. *Id.*

130. *Id.*

should be brought out of the underground and into the sunlight where it can be appropriately monitored and regulated.”¹³¹

Relationships between the NFL and sports gambling properties already exist. In 2012, the NFL changed its policy towards gambling advertisements by allowing teams to form commercial relationships with casinos with some restrictions regarding content and placement.¹³² In an effort to demonstrate that casinos and sports leagues can coexist, more than eighty percent of NFL teams currently play their home games within a one-hour drive of a casino.¹³³ These casinos are owned and operated by sovereign Indian nations.¹³⁴ Also, betting drives massive ratings for NFL games.¹³⁵ People who bet on games instantly become interested in their outcomes, which increases viewership. This has been observed with the increase in DFS. With the NFL’s approval of the Raiders moving to Las Vegas, it is apparent that the NFL is warming up to sports betting.¹³⁶ Although the NFL Commissioner still says the NFL does not support sports betting, its recent actions suggest these views are fading.¹³⁷

Even the MLB, which has crusaded against sports gambling since the Civil War,¹³⁸ is warming up to the possibility of coexisting with legal sports gambling.¹³⁹ MLB Commissioner, Rob Manfred, acknowledges the existence of sports gambling stating that “[s]ports betting happens . . . [w]hether it’s legal here or not, it’s happening out there.”¹⁴⁰ Furthermore, he has expressed an open mind when he said that “[w]e are reexamining our stance on gambling. It’s a conversation that’s ongoing with the owners.”¹⁴¹ As mentioned previously, the MLB has in the past taken a

131. *Sports Betting In America*, AMERICAN GAMING ASSOCIATION, <http://www.sportsbettinginamerica.com/> (last visited Mar. 8, 2017).

132. Daniel Kaplan, *NFL Removes Ban On Casino Advertising For ‘12, ‘13 Seasons*, SPORTS BUSINESS DAILY (Apr. 12, 2012), <http://www.sportsbusinessdaily.com/Daily/Closing-Bell/2012/04/12/NFL-casino.aspx>.

133. *Ahead of 24th Anniversary, American Gaming Association Highlights 24 Reasons Why The Federal Sports Betting Ban Should Be Overturned*, AMERICAN GAMING ASSOCIATION (Oct. 27, 2016), <https://www.americangaming.org/newsroom/press-releases/ahead-24th-anniversary-american-gaming-association-highlights-24-reasons>.

134. *Id.*

135. *Id.*

136. Gutierrez, *supra* note 94.

137. Rob Goldberg, *Roger Goodell Says NFL Isn’t Changing Position On Legalized Sports Gambling*, BLEACHER REPORT (Mar. 26, 2017), <http://bleacherreport.com/articles/2700191-roger-goodell-says-nfl-isnt-changing-position-on-legalized-sports-gambling>.

138. Ryan Rodenberg, *Legal and Corruption Issues in Sports Gambling* (2013) 23 J. LEGAL ASPECTS SPORT 8, 9 (2013).

139. Joe Giglio, *Baseball finally sounds ready to embrace sports gambling*, NJ.COM (Feb. 10, 2017, 11:16 AM), http://www.nj.com/sports/index.ssf/2017/02/baseball_finally_sounds_ready_to_embrace_sports_ga.html.

140. *Id.*

141. *Id.*

stronger stance than any other league, yet it is currently willing to compromise. This was thought by many to be the last league to support gambling. The only major U.S. sports league that has not made a comment in support of legalizing sports gambling is the National Hockey League.¹⁴² However, the NHL is allowing a new franchise team to begin playing in Las Vegas in the Fall of 2017.¹⁴³ This action suggests they are comfortable with coexisting with legal sports gambling.

Recently, U.S. leagues and professional sports organizations have been partnering with lotteries, daily fantasy sports, and international gambling analytic companies. Leagues have partnered with state lotteries, which frequently feature the most popular sports franchises on major revenue-producing scratch cards and related lottery products.¹⁴⁴ Professional teams and leagues are opting into contracts and sponsorships with Daily Fantasy Sports.¹⁴⁵ All four major sports in the United States have either an individual team, single-year contracts, or league-wide multi-year contracts with FanDuel or DraftKings. Also, sports betting in the United Kingdom (hereinafter “UK”) has become commonplace and is done in a legal, regulated market.¹⁴⁶ This regulated market has not tarnished the popularity of sports in the UK. These relationships prove that sports are already investing in forms of gaming that allow for the two industries to coexist. Furthermore, the NFL, NBA, and NHL have existing deals with Sportradar, a Switzerland-based conglomerate that is the parent company of Betrader, a major player in the global sports betting industry.¹⁴⁷ As a safety precaution, these companies exist to provide leagues with analytical data that they may use to identify unusual moves or unnatural money.¹⁴⁸ As recently as 2007, representatives from all the major leagues have sent a letter to Congress dismissing the value of line monitoring.¹⁴⁹ Clearly, this view has changed with their investment in line monitoring analytics.

Evolving public attitudes indicate strong support for sports betting. There is evidence that the public opinion on the legality of sportsbooks has

142. Prewitt, *supra* note 87.

143. *Id.*

144. See Stephen M. McKelvey, *US Professional Sport Organization Policies Shift to Embrace Legalized Gambling Entities: A Roll of the Dice?*, 14 J. LEGAL ASPECTS OF SPORT 23 (2004).

145. Dustin Gouker, *DFS Partnership/Sponsorship Tracker*, LEGAL SPORTS REPORT, <http://www.legalsportsreport.com/dfs-sponsorship-tracker/> (last visited Mar. 27, 2017).

146. *Ahead of 24th Anniversary*, *supra* note 133.

147. David Purdum and Ryan Rodenberg, *Future of sports betting: the marketplace*, ESPN (Oct. 28, 2016), http://www.espn.com/chalk/story/_/id/17892685/the-future-sports-betting-how-sports-betting-legalized-united-states-the-marketplace-look-like.

148. *Id.*

149. *Id.*

begun to shift.¹⁵⁰ A November 2016 poll by researchers from Fairleigh Dickinson University found that forty-eight percent of respondents were in favor of federal legalization, in comparison, to thirty-nine percent who remain opposed.¹⁵¹ Surveys conducted by the Mellman Group, commissioned by the AGA, show strong public opinions in favor of repealing PASPA.¹⁵² Two-thirds of surveyors believe that states should be the decision makers on whether or not to legalize sports betting.¹⁵³ Eighty percent of the surveyors want to change the current sports betting law and sixty-five percent believe transparent, regulated wagering will either strengthen the integrity of the game or have no impact on games at all.¹⁵⁴ Furthermore, sixty-eight percent of surveyors believe legal, regulated sports betting will generate tax funds for the much needed local and state programs, such as education and public safety.¹⁵⁵

Legalizing sports gambling will have enormous financial benefits for the federal and state governments. It will create tax revenue that is in demand from states. Global gaming research firm, GamblingCompliance, projects that a fully developed legal market would produce \$12.4 billion in annual revenue.¹⁵⁶ All this revenue would be subject to taxation.¹⁵⁷ An example can be made from Colorado when the State decided to tax marijuana in 2015.¹⁵⁸ Seventy million dollars were raised as a result from marijuana sales.¹⁵⁹ This recent example demonstrates the economic benefit derived from activities that law-abiding citizens enjoy in private.¹⁶⁰

Building stadiums in locations like Las Vegas can benefit local economies in many ways.

The Governor of Nevada, Brian Sandoval, mentioned some of these benefits at the Nevada Governor's Global Tourism Summit by saying that the new Raider's NFL stadium in Las Vegas will be the best in the world for an NFL franchise and its impact will be: \$625 million in new revenue,

150. Thomas Barrabi, *How Donald Trump Could Help Legalize Sports Betting*, FOXBUSINESS.COM (Jan. 13, 2017), <http://www.foxbusiness.com/features/2017/01/13/how-donald-trump-could-help-legalize-sports-betting.html>.

151. *Id.*

152. *Law Enforcement Summit On Illegal Sports Betting: After-Action Report: Illegal Gambling Advisory Board*, AMERICAN GAMING ASSOCIATION, https://www.americangaming.org/sites/default/files/After%20Action%20Report_PDF-Web.pdf (last visited Apr. 4, 2017).

153. *See Law Enforcement Summit On Illegal Sports Betting*, *supra* note 152.

154. *Id.*

155. *Id.*

156. Steven Titch, *What's the outlook for legal sports betting in the Trump era?*, RSTREET.ORG (Dec. 6, 2016), <http://www.rstreet.org/2016/12/06/16098/>.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

450,000 more visitors, and 18,000 new permanent jobs.¹⁶¹ While Las Vegas' economy will benefit, contrary to popular opinion, Oakland's local economy will not be losing as much money as people expect. Victor Matheson, a professor at the College of the Holy Cross in Worcester, Massachusetts, has expressed similar thoughts.¹⁶² Professor Matheson, who studies the economics of stadiums, sports, and major events, has indicated that Oakland will not be financially deprived when losing their NFL team.¹⁶³ The reasoning is that the majority of revenue collected by their stadium is distributed to their players, many of whom do not live in the city year-round, therefore, it follows that the players do not spend their money earned within the city.¹⁶⁴ As such, the city does not benefit from the revenue collected.¹⁶⁵ Also, Oakland's stadium was not designed well, since it takes the form of a fortress stadium surrounded by a moat of parking lots.¹⁶⁶ This did not provide for game day fans to engage with surrounding small businesses, such as restaurants, bars, and stores.¹⁶⁷

III. Risks of Current Sports Betting

Gambling in an unregulated market is highly risky.¹⁶⁸ Most gambling is conducted through local bookies and online. Online gambling is conducted through overseas internet accounts.¹⁶⁹ Many of these accounts are instituted in the Caribbean.¹⁷⁰ Furthermore, these offshore sites do not provide gamblers with any protections if they run into any problems.¹⁷¹ Also, these sites are known to vanish overnight, therefore, making the collection process nearly impossible.¹⁷² For these reasons, the UIGEA has stopped banks in the U.S. from processing payments related to online gambling sites.¹⁷³ However, online gamblers still get around this obstacle

161. Richard N. Velotta, *Governor Sandoval praised for pursuing Las Vegas stadium for Raiders*, LAS VEGAS REVIEW JOURNAL (Oct. 11, 2016, 9:02 PM), <https://www.reviewjournal.com/business/tourism/governor-sandoval-praised-for-pursuing-las-vegas-stadium-for-raiders/>.

162. Kimberly Veklerov, *If Raiders go to Vegas, Oakland could win financially*, S.F. CHRON. (Mar. 27, 2017), <http://www.sfchronicle.com/bayarea/article/If-Raiders-go-to-Vegas-Oakland-could-win-11029278.php?t=76459e7dd5>.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. Darren Rovell, *UNLV: Betting ban removal won't change much*, ESPN (Feb. 12, 2001), <http://www.espn.com/gen/s/2001/0210/1077033.html>.

169. *Id.*

170. *Id.*

171. *Legal US Online Betting Sites*, LEGAL GAMBLING AND THE LAW, <https://www.legalgamblingandthelaw.com/us/legal-us-online-betting-sites> (last visited Mar. 28, 2017).

172. *Id.*

173. *Is Online Sports Betting Legal in The United States?*, *supra* note 6.

by using prepaid cards and conducting wire transfers that have no connection to U.S. banks.¹⁷⁴ This does not provide gamblers any sort of protection. Determining whether a website is trustworthy can be difficult; however, popular sports betting websites provide advice columns for traits to look for trustworthy gambling websites.¹⁷⁵ It is suggested that the first step is to look at reviews on the website.¹⁷⁶ Websites without reviews do not have them for a reason, which suggests they might be a scam.¹⁷⁷ Also, the longer the online sportsbook has existed, the more likely it pays out earnings, which suggests that it is a legitimate business.¹⁷⁸ It is important to check for an accessible customer service that provides an email or a phone number. Some reliable websites provide these services, but others are still ill-advised and risky.¹⁷⁹

Money spent on illegal gambling may often be used for other illegal activities. The chief for the transnational organized crime unit in the FBI, Jay Bartholomew, points out that “most people don’t understand the ties of organized crime to illegal sports betting.”¹⁸⁰ Illegal gambling operations finance a range of criminal activities that include: money laundering, racketeering, drug trafficking, extortion, and human trafficking.¹⁸¹ The FBI and other investigative criminal organizations have been aware of this reality for decades and want to take proper measures to end it.¹⁸² They have realized that prohibiting or restricting bets allow criminal groups or individuals to take part in match-fixing, which is a low-risk enterprise with a potential for large rewards.¹⁸³ In 2014, there were federal convictions on illegal gambling charges of eighty operators from forty different criminal enterprises across twenty-three states.¹⁸⁴ Legalizing and regulating sports betting would help in suppressing illegal activities by destroying a revenue source they depend on.¹⁸⁵ This has been done in the United Kingdom and Australia, both of which have seen positive results.¹⁸⁶ If the U.S. can legalize sports gambling it can eliminate this source of funding for criminal enterprises, which would result in a drop in crime rates.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Law Enforcement Summit On Illegal Sports Betting, supra* note 152.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

IV. Evolving Efforts to Repeal PASPA

Despite the setbacks in the New Jersey lawsuits argued in the Third Circuit Court of Appeals, this litigation has brought national attention to sports gambling.¹⁸⁷ David O. Klein, a managing partner at Klein Moynihan Turco LLP, indicated that “most segments of the gaming industry did not think New Jersey was going to prevail here . . . it will take more of a federal push to change things.”¹⁸⁸ Future changes are very likely, as many experts think PASPA is outdated and violates states’ rights. Professor I. Nelson Rose of Whittier Law School, a leading gambling law expert, has indicated that the Third Circuit in *Christie I* got it wrong because PASPA is unconstitutional.¹⁸⁹ He also noted that another Court of Appeals would have ruled otherwise.¹⁹⁰ Furthermore, Professor Rose stated, “[PASPA] takes the power away from states to change their public policy towards gambling. It is the first and only federal law in the U.S. that tells states what they can or cannot do when it comes to gambling.”¹⁹¹ Also, sports leagues are sharing some of these similar sentiments with the NBA and MLB, recognizing that a regulated sports betting industry is needed.¹⁹²

A. The Lobbying Redzone

President Donald Trump has first-hand knowledge about the casino industry. He still has many strong ties with casino owners. President Trump owned three casinos in Atlantic City and was a supporter of legalizing sports gambling in New Jersey.¹⁹³ Also, he currently owns Trump International Hotel in Las Vegas.¹⁹⁴ In 1993, Trump explained to an NBC reporter his views towards legalizing gambling stating, “[i]t’s vital to keeping taxes low, it’s vital to the senior citizens, and it’s vital to putting the bookies out of business. Everybody wants it, we do polls showing 80% in favor.”¹⁹⁵ More recently, in an interview with Fox Sports 1, Trump stated, “I’m OK with it, because it’s happening anyway. Whether you have

187. See Zagger, *supra* note 50.

188. *Id.*

189. See Zagger, *supra* note 50.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. Macarena Rodicio, *What Threatens to slow us down is not the U.S. president, but our own inability to get the whole industry on the same page*, YOGONET.COM (Dec. 13, 2016), <http://www.yogonet.com/international/2016/12/13/what-threatens-to-slow-us-down-is-not-the-us-president-but-our-own-inability-to-get-the-whole-industry-on-the-same-page>.

195. Daniel Roberts, *Trump Presidency could spur legalized sports betting*, YAHOO FINANCE (Dec. 20, 2016), <http://finance.yahoo.com/news/trump-presidency-could-spur-legalized-sports-betting-154406142.html>.

it or don't have it, you have it. It's all over the place."¹⁹⁶ These statements suggest that the Trump administration is likely a pro-sports gambling administration. For this reason, the American Gaming Association is increasing its lobbying efforts with the Trump White House to legalize sports gambling.¹⁹⁷

On the other hand, it is possible that Trump will cave to his voting constituency, which consists of a conservative and religious groups that have traditionally rejected sports gambling.¹⁹⁸ This social issue divides the Republican Party, which currently controls Congress. Also, Jeff Sessions, U.S. Attorney General, adheres to strong traditional conservative views, which suggests he would probably fight the repeal of PASPA.¹⁹⁹ Since taking office, President Trump has not made any definitive statements about his stance on legalizing sports gambling. However, more recently he stated, "I have a lot of friends on both sides of the issue."²⁰⁰ On February 5, 2017, President Trump was interviewed by Jim Gray of Westwood One Sports Radio.²⁰¹ After being asked about his stance on legalizing sports gambling he continued to respond with deflecting political rhetoric stating:

Well, what I'd do is I'd sit down with the commissioners. I would be talking to them, and we'll see how they feel about it. Some would not want it, and probably others – and I've read others maybe do. But I would certainly want to get their input and get the input from the various leagues, and we'll see how they feel about it. I'd also get the input from lots of law enforcement officials, because, obviously, that's a big step . . . So we wouldn't do it lightly, I can tell you. It will be studied very carefully. But I would want to have a lot of input from a lot of different people.²⁰²

It appears from President Trump's statements that he wants input from all interested parties. He emphasized the importance of receiving input from the commissioners, NFL Players Association, the leagues, and police enforcement. However, he did not mention some of the other traditional opponents, such as religious and conservative parties. If he gives more weight to the input from the aforementioned actors, it is more likely that he

196. Christopher Palmeri, *Casinos to Seek Legal Sports Betting With Trump in White House*, BLOOMBERG (Nov. 18, 2016, 10:19 AM), <https://www.bloomberg.com/news/articles/2016-11-18/casinos-to-seek-legal-sports-betting-with-trump-in-white-house>.

197. Barrabi, *supra* note 150.

198. Roberts, *supra* note 195.

199. *Id.*

200. Wayne Parry, *Rolling the dice on Donald Trump: Gambling industry hopes casino mogul in White House pays off*, SALON.COM (Dec. 20, 2016, 8:15 AM), <http://www.salon.com/2016/12/20/gambling-industry-hopes-casino-mogul-in-white-house-pays-off/>.

201. Craig Bannister, *Trump Punts on Issues of Legalizing Pot for NFL Players*, *Sports Gambling*, CNSNEWS.COM (Feb. 15, 2017, 11:34 AM), <http://www.cnsnews.com/blog/craig-bannister/trump-punts-issues-legalizing-pot-nfl-players-sports-gambling#.WJfTXkATydU.twitter>.

202. *Id.*

will support legalizing sports betting. That is because many of the major American leagues are in favor of legalizing sports betting. Also, there is support from the United States law enforcement who favor eliminating this source of criminal income, by making a legally transparent and regulated gambling market.²⁰³

Furthermore, with some of the failures that the Trump administration has experienced, such as repealing Obamacare and applying stronger restrictions on immigration,²⁰⁴ it might be easier for President Trump to take on a domestic policy that he has personal experience with. Ultimately, it will be up to Congress to repeal the current prohibitions on sports gambling, but with presidential backing and a Republican controlled Congress, the political climate could not be more appropriate. Still, this runs into classic divides within the Republican Party.

Shortly after President Trump was elected in November, the AGA sent a memorandum to the presidential transition team laying out its priorities and objectives.²⁰⁵ The AGA memorandum stated that “[t]he gaming industry has never been more united and better positioned to advocate for policies that promote growth and reinvestment.”²⁰⁶ In the memo, the AGA outlined its objectives. First, it wants to eliminate illegal gambling activities which often fund large criminal enterprises involved in human trafficking, racketeering, money laundering, extortion, and fraud.²⁰⁷ It proposes to work with the U.S. Justice Department and the FBI to focus on illegal gambling enforcement.²⁰⁸ Second, it aims to protect gamblers by establishing a regulated and uniform federal sports betting market, which will eliminate the illegal underground market that currently exists. A regulated market will provide transparency and oversight that will benefit both sport book operators and gamblers.²⁰⁹ Increased accountability and

203. *Law Enforcement Summit On Illegal Sports Betting*, *supra* note 152.

204. See Miriam Jordan, *U.S. Must Keep DACA and Accept New Applications*, *Federal Judges Rules*, N.Y. TIMES (April 24, 2018), <https://www.nytimes.com/2018/04/24/us/daca-dreamers-trump.html> (This article is related to DACA and how a district court in D.C. ruled in favor of keeping DACA at least temporarily.); see also Mythili Sampathkumar, *Trump's Biggest Achievements and Failures a Year Since His Election*, INDEPENDENT (Nov. 7, 2017), <https://www.independent.co.uk/news/world/americas/us-politics/trump-achievements-failures-list-success-us-president-a8042756.html> (This article provides a comprehensive list of Trump administration failures and achievements.)

205. *Memo To President-Elect Trump*, *supra* note 4.

206. *Id.*

207. *Id.*

208. *Memo To President-Elect Trump*, *supra* note 4.

209. *UK Experts: Thriving Illegal Market and Lack of Regulation Create Atmosphere Ripe for Manipulation*, AMERICAN GAMING ASSOCIATION (Sept. 27, 2016), <https://www.american-gaming.org/newsroom/press-releases/uk-experts-thriving-illegal-market-and-lack-regulation-create-atmosphere>.

enforcement of collections will increase consumer protections.²¹⁰ Also, regulation of the sports betting market will ensure the integrity of sports.²¹¹ This can be achieved by having legal gambling companies work closely with sports leagues and law enforcement to crack down on corruption.²¹² Third, it intends to increase tax revenue that will benefit all states and social programs.²¹³ Fourth, it plans to create more jobs.²¹⁴ Also, it desires to shape reasonable immigration reform.²¹⁵ This is because the diverse workforce in gaming is composed of many gamblers who are foreign tourists.²¹⁶ This year, the AGA plans on lobbying aggressively for these changes.²¹⁷

Although there have been signs that professional sports leagues are in favor of legalizing sports gambling, they have not explicitly committed themselves towards participating in lobbying efforts.²¹⁸ However, it would be reasonable for the leagues to commit to such efforts since they only stand to benefit from this. A recent AGA study, using Nielsen data, concluded that if sports betting were to be legalized then the number of regular-season viewers would jump from forty million to fifty million.²¹⁹ This is thirty-six percent of the NFL audience.²²⁰ In other words, big TV networks have a stake in this movement as well.²²¹ Furthermore, current league participation with DFS and international sports gambling monitoring sites²²² indicate that developing a good working relationship between the leagues and the gambling industry will not be difficult.²²³ It is very likely that these sports leagues will begin supporting lobbying efforts in the next few years due to the inevitable reality that betting will be legalized and that the leagues stand to profit considerably.²²⁴

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. Rodenberg, *supra* note 147.

219. Roberts, *supra* note 195.

220. *Id.*

221. *Id.*

222. Rodenberg, *supra* note 147.

223. *OTL discussions: Gambling and pro leagues*, ESPN, <http://www.espn.com/video/clip?id=14667214> (last visited Apr. 3, 2017).

224. Roberts, *supra* note 186.

B. Federal and State Legislative Dual-Threat

Legal sports betting is slowly becoming a matter of “when” rather than “if.”²²⁵ Legislative committees in both the state and federal levels are considering changing sports gambling laws. State and federal legislatures realize that PASPA, the Wire Act, and the UIGEA of 2006 have outdated reasoning that need to be repealed or rewritten.²²⁶ New Jersey Representative Frank Pallone is having the Federal House and Energy and Commerce Committee look at all three Acts to see how they can work together to ensure effective accountability and consumer protection.²²⁷ This is not the most promising committee to ensure the passage of a new bill on matter related to gambling, but it does show legislative proactivity.²²⁸ Pennsylvania recently passed a resolution urging Congress to lift the federal ban on sports betting.²²⁹ States such as Florida, Maryland, Mississippi, and Nebraska are looking for ways to create gambling revenues within their states.²³⁰ Some legal experts are even talking about a possible nuclear option, which would be similar to Colorado disobeying federal law outlawing recreational marijuana.²³¹ If enough states ignore the federal law on sports gambling, then it may force the federal government’s hand to reconsider and repeal PASPA.²³² Although this is a possibility, it is extremely unlikely. If state opposition to the federal law develops, then Congress will more than likely consider its repeal.

Nevada, a state that almost exclusively benefits from PASPA, supports legalizing gambling federally.²³³ The Governor of Nevada, Brian Sandoval, has provided his support to those in favor of repealing PASPA.²³⁴ Also, he has acknowledged that this would help the fight towards reducing illegal gaming and would do little to hurt the Silver State’s position as a global destination for gambling and entertainment.²³⁵

225. Steve Silver, *The Nuclear Path To Legal Sports Betting*, ABOVE THE LAW (Nov 7, 2016, 11:27 AM), <http://abovethelaw.com/2016/11/the-nuclear-path-to-legal-sports-betting/>.

226. Rodenberg, *supra* note 147.

227. *Id.*

228. Titch, *supra* note 156.

229. Titch, *supra* note 156.

230. Megan Elliott, *5 States That May Be Changing Their Laws on Gambling*, THE CHEAT SHEET (July 13, 2016), <http://www.cheatsheet.com/culture/changing-gambling-laws.html/?a=viewall>.

231. Silver, *supra* note 217.

232. *Id.*

233. Gary Martin, *Nevada awaits Supreme Court ruling on sports betting*, LAS VEGAS REVIEW JOURNAL (Jan. 31, 2017, 4:33 PM), <http://www.reviewjournal.com/sports/betting/nevada-awaits-supreme-court-ruling-sports-betting>.

234. *Id.*

235. *Id.*

People who want to bet on sports already do in their home state.²³⁶ Betting in Vegas just happens to be a bonus to the entertainment offerings of the city. Furthermore, several Nevada companies are ready to lobby for federal legalization.²³⁷ These companies want to expand the gambling jurisdictions that they can tap into.²³⁸ This is largely because they already have platforms and mobile sites ready to be used.²³⁹ Regardless of Nevada's motives, it will undoubtedly serve as one of the biggest allies for legalizing sports gambling federally.

C. The Previous Play is Under Judicial Review

Legalizing sports gambling through the courts is still a strong possibility. The United States Supreme Court would likely consider reviewing PASPA and the decision in *Christie II* if another federal appellate district court reviews the law and opines differently. Even without a Supreme Court review of the law, any favorable court ruling can have a large impact.²⁴⁰ One state court victory can change everything.²⁴¹ Daniel Wallach, a Florida-based lawyer who specializes in sports-related litigation, has indicated that a favorable court ruling on even one state's gambling bill "could blow the doors wide open for sports betting nationally." To get a meaningful victory, a state merely needs to avoid a preliminary injunction during the early stages of the case.²⁴² If a state can avoid this, it will have sports betting right away.²⁴³

While the courts could render a decision that could repeal PASPA, Congress ultimately has the power to do so. Keith Miller, a professor of law at Drake University Law School, suggests that the courts do not want to oversee this change and prefer this job be left to Congress.²⁴⁴ Furthering this opinion, Florida attorney Daniel Wallach projects that Congress will directly address the issue of sports betting within President Trump's first term in office.²⁴⁵ He does not believe a federal law is immediately required to clear a path.²⁴⁶

236. *Id.*

237. Rodenberg, *supra* note 138.

238. Martin, *supra* note 233.

239. Rodenberg, *supra* note 138.

240. Barrabi, *supra* note 150.

241. *Id.*

242. *Id.*

243. *Id.*

244. *See* Zagger, *supra* note 50.

245. Barrabi, *supra* note 150.

246. *Id.*

V. Future Framework of a Legal Sports Gambling Market

A. Game Time

The next question is when might sports gambling be legalized? In September 2016, ex-NBA Commissioner, David Stern, gave his prediction for legalization by stating, “[m]y heart says it should be one to three [years]. My head says it’s between five and ten.”²⁴⁷ Gaming and appellate law expert, Daniel Wallach, agrees that had the New Jersey cases ruled in favor of sports gambling, congressional consideration of repealing PASPA would have been in the next year or two.²⁴⁸ Instead, serious congressional consideration will be more than two years.²⁴⁹ Even with this time frame, legalizing sports gambling could potentially be done in President Trump’s first term.

B. The Las Vegas Rulebook

When sports gambling is legalized in the United States, how should it look? First, it will likely be delegated to individual states to decide whether they want to allow sports gambling. Although many religious states may oppose sports gambling, some like Mississippi, recognize the potential tax revenue that they will be missing out on by not capitalizing on this underground gambling market.²⁵⁰ States that decide to allow sports gambling will probably follow Nevada’s framework, which has developed an international reputation as the leader of gaming regulations for over eighty years.²⁵¹ All Nevada gaming is controlled through strict regulations established by the Nevada Gaming Commission and the Nevada Gaming Control Board.²⁵² These institutional bodies protect the stability of the gaming industry through investigations, licensing, and enforcing laws and regulations.²⁵³ They ensure the collection of gaming taxes and fees, which are an essential source of state revenue.²⁵⁴ Also, they maintain public confidence in gaming.²⁵⁵ Additionally, other states can adopt Nevada’s

247. Rodenberg, *supra* note 138.

248. *See* Zagger, *supra* note 50.

249. *See, id.*

250. Geoff Pender, *Mississippi joins fight for legal sports betting*, THE CLARION-LEDGER (Nov. 17, 2016, 4:50 PM), <http://www.clarionledger.com/story/news/politics/politicalledger/2016/11/17/sports-betting-ms/94024106/>.

251. *About Us*, NEVADA GAMING CONTROL BOARD AND GAMING COMMISSION, <http://gaming.nv.gov/> (last visited Apr. 3, 2017).

252. NEVADA GAMING CONTROL BOARD AND GAMING COMMISSION, <http://gaming.nv.gov/> (last visited Apr. 3, 2017).

253. *About Us*, NEVADA GAMING CONTROL BOARD, *supra* note 252.

254. *Id.*

255. *Id.*

casino operations of sportsbooks.²⁵⁶ The Las Vegas sportsbooks have set the international model for odds making and betting options.²⁵⁷ It has also mastered the integration of sports books with other casino operations and hospitality.²⁵⁸

Experts predict that Las Vegas will remain the central hub of sports betting in the United States after legalization. The state's strong regulatory infrastructure supports national bets to be safely placed with the state.²⁵⁹ Recently, the state has taken steps to ensure this scenario, by offering mobile sports betting and the state's licensed operators can now legally manage sports pools in other jurisdictions.²⁶⁰ Even if Nevada remains the ideal sports gambling state, any bets placed through the state will still award other states a portion of their tax revenue for out of state bets.²⁶¹ This will ensure other states are still benefiting if Nevada remains a sports gambling juggernaut.

C. The United Kingdom Model

The sports gambling market in the United Kingdom may also serve as an ideal regulatory model. This model may better replicate the federal legal framework that would apply to all states. NBA Commissioner, Adam Silver, is in favor of enacting a single federal law that will create consistent regulations for sports betting throughout the United States, instead of a hodgepodge of state-by-state regulations.²⁶² The U.K. has a transparent and regulated sports betting market.²⁶³ Under the terms of the Gambling Act of 2005, the industry is controlled by the Gambling Commission, which is overseen by the government's Department for Culture, Media, and Sport.²⁶⁴ This government regulation has effectively shut down illegal gambling operations by providing law enforcement with critical tools to monitor and investigate betting.²⁶⁵ It is also protecting consumers and the integrity of

256. Dennis Gutwald, *The Legalization of Sports Betting: Lessons From Nevada*, LAW360 (Mar. 21, 2017), <https://www.law360.com/articles/903932/the-legalization-of-sports-betting-lessons-from-nevada>.

257. *Id.*

258. *Id.*

259. Rodenberg, *supra* note 138.

260. *Id.*

261. *Id.*

262. Steve Carp, *NBA commissioner Silver supports legalized gambling*, LAS VEGAS REVIEW JOURNAL (July 14, 2015), <http://www.reviewjournal.com/sports/basketball/nba-commissioner-silver-supports-legalized-gambling>.

263. *UK Gambling Jurisdiction and Regulations*, GAMBLINGSITES.COM, <https://www.gamblingsites.com/online-gambling-jurisdictions/uk/> (last visited Apr. 4, 2017).

264. *Id.*

265. *Law Enforcement Summit On Illegal Sports Betting*, *supra* note 152.

sports.²⁶⁶ A new federal framework will have the luxury of viewing any mistakes the United Kingdom made and can improve upon them.²⁶⁷ Both the United Kingdom and Las Vegas markets will serve as helpful templates for the inevitable future of legal sports gambling in the United States.

Conclusion

The repeal of the federal prohibition on sports gambling is fast approaching. The political climate is ideal and strong lobbying efforts are kicking off. The public and law enforcement are in favor of prohibition. Sports leagues and politicians are increasingly recognizing its benefits and are in favor of creating a transparent and regulated sports gaming market. Also, states are becoming aware of the enormous tax benefits they would receive. Although there are still some obvious hurdles before legalization can occur, it is bound to happen soon. It is time to stop folding to the realities of illegal sports gambling and make the call.

266. *Id.*

267. *UK Experts, supra* note 209.