

**UNTANGLING THE CONFUSING WEB OF SPORTS
GAMBLING REGULATION IN THE WAKE OF
*MURPHY V. NCAA***

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Abstract: *Sports gambling's tumultuous and cyclical history in the United States has created a complex web of current and outdated legislation. In the wake of the Supreme Court's landmark ruling in *Murphy v. NCAA*, half-century old legislation, originally intended to thwart organized crime, now threatens to stifle legitimate, lucrative businesses with the potential to cost states millions of dollars in tax revenue each year. The most oft-cited piece of outdated anti-gambling legislation—the Wire Act of 1961—must be updated in order to ensure state-licensed gambling shops can operate without undue interference. The Wire Act currently does not require a predicate state law violation, meaning if a state where gambling is legal uses a vendor who employs servers in a state where gambling is illegal, the Department of Justice could direct the internet service provider to cease service to that vendor. Furthermore, the Department of Justice interprets the Wire Act to apply to all forms of gambling, despite clear legislative intent for the Act to only apply to wagers on a sporting event or contest, threatening national lotteries such as Powerball and Mega Millions.*

In order to modernize the Wire Act while bringing it in line with its legislative intent as well as other prominent, Federal gambling legislation, the Wire Act should be amended and restated to require a predicate state law violation, to include a modern definition of a “wire communication,” and to clearly indicate that all illegal wagers relate to a sporting event or contest.

To ensure gambling customers take their business to legitimate state-licensed sports books, and not to local black-market bookies, careful national baseline regulations must be put in place. To do

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so, the Game Act of 2017 should be strengthened and reintroduced to provide consumer protections such as bet limits, underage gambling prohibitions, and game integrity initiatives. To ensure leagues do not have a monopoly over game data, while providing consumer protective transparency, sports books should be required to use a pre-identified third-party statistics vendor to settle all wagers.

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Introduction

The United States has a long, storied, and cyclical history when it comes to gambling.¹ Dating back to the original thirteen colonies, government-sponsored lotteries helped to fund the Revolutionary War and were common throughout what would become the United States.² In the 1800s, these lotteries were abandoned as centralized and more efficient forms of taxation and public bonds were developed as effective revenue sources.³ In 1893, the Librarian of Congress went as far as to declare “a general public conviction that lotteries are to be regarded, in direct proportion to their extension, as among the most dangerous and prolific sources of human misery.”⁴ However, in 1964, New Hampshire reintroduced America to the state-run lottery with New York and New Jersey following suit soon after.⁵ Today, there are national and state lotteries in 44 states and Washington D.C.⁶ While state regulations vary, generally each statute defines gambling or lotteries as games that include three basic elements: (i) consideration, meaning something of value, usually in the form of money, is wagered; (ii) that consideration is given for a reward of value (prize); and (iii) on a game or contest of chance where the bettor has no control

¹ Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, SPORTS HANDLE (Nov. 13, 2017), <https://sportshandle.com/gambling-laws-legislation-united-states-history/> [<https://perma.cc/QBB8-NDM9>] (detailing the history of sports gambling in America starting with the American Revolution).

² Ronald J. Rychlack, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11 (Dec. 1, 1992) (explaining the history of gambling and its impacts on society).

³ *Id.* (“Lottery proceeds were used to build cities, establish universities, and even to help finance the Revolutionary War. They were gradually abandoned throughout the 1800s as governments developed better forms of taxation.”).

⁴ *Id.* at 12–13.

⁵ *Id.* at 44–45 (“Then, in 1964, more than a century after most states had banned all lotteries, New Hampshire reintroduced America to the state-run lottery.”).

⁶ John Harrington, *States that are Addicted to the Lottery Have a lot in Common*, USA TODAY (Oct. 26, 2018, 2:00 PM), <https://www.usatoday.com/story/money/economy/2018/10/26/states-spend-most-per-capita-lottery/38272791/> [<https://perma.cc/G6JA-FGPR>] (listing the states who allow lottery tickets to be sold).

over the outcome.⁷ While the third element spurs much debate centered around whether a player can control the outcome of a poker hand through their play, a gambler placing a wager on a sporting event certainly has no control over the outcome, thus bringing sports gambling into the ambit of most state gambling statutes.⁸

Despite falling within the jurisdiction of most state gambling statutes, sports gambling regulation has experienced a back-and-forth tug-of-war in the United States.⁹ Horse racing in the United States dates back to the establishment of the first racetrack in North America on Long Island in 1665.¹⁰ For the most part, horse racing has remained legal across most of the United States ever since.¹¹ Around the same time the Triple Crown horse races began in the 1860s and 70s, other forms of gambling began to bloom, including wagers on boxing.¹² Uneasiness around social ills, such as underage children and teens gambling, as well as gambling addiction, and frauds of sports gambling came to a head in 1919 when eight members of the Chicago White Sox were accused of intentionally throwing the World Series in exchange for bribes.¹³ In the wake of this scandal, a cyclical string of events and legislation ensued; first, anti-gambling legislation founded in morality took hold, which led to the proliferation of illegal sports

⁷ Roxanne Christ, Raymond Lin & Alice Fisher, *Online Gambling: The Geolocated Road Ahead*, LAW360 (April 24, 2012), <https://www.lw.com/thoughtLeadership/online-gambling-the-geolocated-road-ahead> (explaining the federal analysis for determining what constitutes gambling or lotteries).

⁸ *Id.* (providing examples of the gambling analysis).

⁹ Smiley, *supra* note 1 (detailing the back-and-forth history of sports gambling legislation in the U.S.).

¹⁰ *Id.* (quoting Roger Dunstan, stating “the first racetrack in North America was built on Long Island in 1665”).

¹¹ *Id.* (“Horse racing is an ancient sport and for the most part, has remained legal across U.S. with regulations established at the state level.”).

¹² *Id.* (“Thoroughbreds ran the Belmont Stakes for the first time in 1867, the Preakness Stakes followed in 1873 and the first jewel of the Triple Crown, the Kentucky Derby, debuted at Churchill Downs in 1875. Other forms of gambling took root and became popular around this time as well Betting on boxing was not legal, but was not illegal, when the sport saw one of its golden ages as fighters like Jack Dempsey and Gene Tunney rose to prominence.”).

¹³ *Id.* (“But uneasiness grew in the wake of lottery scandals and frauds and concerns over social ills associated with gambling. And of course, there was the 1919 Black Sox Scandal, in which eight members of the heavily-favored Chicago White Sox were accused of intentionally throwing the World Series against the Cincinnati Reds in exchange for a bribe of about \$10,000 apiece.”).

gambling, which was followed by more anti-gambling legislation in response to new technology, until finally the circle was complete with the public's re-acceptance of sports gambling.¹⁴ This cyclical tug-of-war, between condemning and embracing sports gambling, left a confusing web of regulations in its wake including the Wire Act of 1961, the Professional and Amateur Sports Protection Act of 1992, and the Unlawful Internet Gambling Enforcement Act of 2006.¹⁵ On May 14, 2018, the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act of 1992,¹⁶ spurring states to establish state-sponsored or licensed sports gambling infrastructure (sports books).¹⁷ It is now time to untangle the confusing web to unambiguously allow these legal, state-sponsored operations to operate within a well-defined set of regulations.

In Section I, this Note lays out the current web of regulations pertaining to sports gambling, which includes an analysis of the landmark Supreme Court case, *Murphy v. NCAA*.¹⁸ This case disrupted the sports gambling landscape in a manner that has quickly prompted a number of states to consider enacting their own sports gambling legislation.¹⁹ Section II discusses the state-by-state response to *Murphy* and paints a picture of the new, dynamic sports gambling landscape in

¹⁴ *Id.* (“In the wake of the Black Sox scandal, a sort-of sports betting cycle started: First comes the anti-gambling sentiment founded in morality and a general aversion to gambling. But then illegal sports betting persists in response to steadfast demand, aided by operators eager to fill the void. Then comes anti-gambling legislation, driving sports betting further underground, followed by the belief that outright prohibition is impossible. General acceptance by the public completes the cycle.”).

¹⁵ *Id.* (explaining each of the prominent sports gambling laws left as a result of gambling's history).

¹⁶ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018) (ruling PASPA to be unconstitutional because it violated the anticommandeering rule under the Tenth Amendment).

¹⁷ Ryan Rodenberg, *United States of sports betting: An updated map of where every state stands*, ESPN.COM (Sept. 1, 2019), http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states [<https://perma.cc/FPN7-XZFU>] (providing a state by state climate survey on sports gambling laws).

¹⁸ 138 S. Ct. 1461 (ruling PASPA to be unconstitutional under the Tenth Amendment, thus opening the door for states to implement their own laws regarding the legalization of sports betting).

¹⁹ Rodenberg, *supra* note 17 (detailing states' response to *Murphy* in the form of legislative bills and debates on sports gambling).

the United States. Finally, Section III provides recommendations for new regulations that will untangle the current web and allow states to operate sports books, if they so choose, in a manner consistent with states' sovereignty principles.

I. Modern Sports Gambling Regulation Landscape

The federal and state legal and regulatory waters surrounding sports gambling in the United States, especially via the Internet, are murky and complex.²⁰ Some commenters have described the web of federal and state laws and regulations, from both before and after the conception of the Internet, as “unnavigable,” forcing users and casinos to “throw the dice.”²¹ The most prominent federal regulations governing sports gambling in the United States include the Wire Act of 1961, the Travel Act of 1961, the Illegal Gambling Business Act of 1970, the Interstate Transportation of Wagering Paraphernalia Act of 1961, and the Professional and Amateur Sports Protection Act of 1992.²² This section discusses each of these regulations.

A. The Wire Act of 1961

The Wire Act of 1961 (the Wire Act, or the Act) is often cited as a statute intended to stifle illegal gambling.²³ Essentially, the Wire Act makes it illegal for any person operating a sports gambling business to accept a wager on a sporting event through a wire transfer across state lines.²⁴ At the time, the Act aimed to stop organized crime

²⁰ Charles O. Ciaccio, Jr., *Internet Gambling: Recent Developments and State of the Law*, 25 BERK. TECH. L. J. 529, 529 (2010) (describing the complexity and grey areas pertaining to sports gambling legislation in the U.S.).

²¹ *Id.* (“Federal and state laws from both before and after the conception of the Internet have created an unnavigable patchwork of regulation.... [T]he uncertainty of the law forces would-be bettors and companies to either play it safe or throw the dice.”).

²² Wire Act of 1961, 18 U.S.C. § 1084 (2019); Travel Act of 1961, 18 U.S.C. § 1952 (2019); Illegal Gambling Business Act of 1970, 18 U.S.C. § 1955 (2019); Interstate Transportation of Wagering Paraphernalia Act of 1961, 18 U.S.C. § 1953 (2019); Professional and Amateur Sports Protection Act of 1992, 28 U.S.C. §§ 3701–3704 (2019).

²³ Todd A. Lubben, *The Federal Government and Regulation of Internet Sports Gambling*, SPORTS LAW. J. 317, 320 (2003) (describing the Wire Act as the most important legislative prohibition pertaining to sports gambling).

²⁴ *Id.* (explaining the Wire Act's prohibitions).

by prohibiting the taking of a bet via telephone or telegram.²⁵ However, the Wire Act does expressly provide a safe harbor which allows “the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.”²⁶ Essentially, the safe harbor permits the sharing of information used in the reporting of sporting event outcomes or other information that assists others in the placing of bets, such as information about player injuries or statistics.²⁷ The scope of this safe harbor was tested in the landmark Internet gambling case, *United States v. Cohen*.²⁸

1. *United States v. Cohen*

Jay Cohen, a former trader on the Pacific Stock Exchange, founded an offshore gambling enterprise known as World Sports Exchange, (WSE) which offered bookmaking solely on American sporting events.²⁹ To place wagers on either WSE’s website or by phone, a user was required to set up an account and wire a minimum balance of \$300 into the account.³⁰ Following an FBI investigation in which agents opened accounts and placed bets by Internet and phone, Cohen was arrested in March 2000 and charged with violating the

²⁵ C. Jeremy Pope, *Losing the Battle But Winning the War: The Federal Government’s Attempt to Regulate Internet Gambling Through Utilization of the Wire Act and Other Means*, 74 MISS. L.J. 903, 907 (2005) (“[The Wire Act] was aimed at the increasing use of telephones and other communications facilities by illegal sports-betting operations.”).

²⁶ 18 U.S.C. § 1084(b) (2019) (“Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.”).

²⁷ Pope, *supra* note 25 (describing the Wire Act’s safe harbor).

²⁸ *United States v. Cohen*, 260 F.3d 68, 73 (2d Cir. 2001) (involving an appeal of federal Wire Act conviction on the grounds the illegal actions fell under the Wire Act’s safe harbor).

²⁹ Lubben, *supra* note 23, at 321 (describing the backdrop to *U.S. v. Cohen*).

³⁰ *Id.* at 322 (“The ‘account wagering system’ that WSE operated required a new customer to set up an account with WSE and wire a minimum of \$300 into their account.”).

Wire Act.³¹ Cohen unsuccessfully argued that the Wire Act's safe harbor should be applied because New York law did not prohibit placing bets, only profiting from unlawful gambling activity.³² Because the court rejected Cohen's argument, having concluded New York law prohibited placing wagers, the decision does not reach the issue of whether it is legal to place a bet across state lines between two states where sports gambling is legal.³³ While this nuance was not argued in *Cohen*, the Wire Act, which was drafted long before the concept of the Internet, includes a definition of "wire communication facility" which leaves the door open to make the argument that wireless Internet transactions are not actually wire transfers.³⁴

2. *Department of Justice Office of Legal Counsel Opinion Reversal*

A November 2018 memorandum published by the Department of Justice Office of Legal Counsel (OLC) placed the traditional interpretation of the Wire Act's scope, barring only wagers on sporting events, into controversy.³⁵ During the deliberations of the Wire Act in 1961, it appeared abundantly clear that the Wire Act was intended to

³¹ *Id.* ("During an investigation, the Federal Bureau of Investigation (FBI) actually opened accounts and placed bets with WSE over the Internet and telephone. Then, in March 2000, Cohen and twenty other Internet gambling Web site operators were charged with violating the Act. Cohen was arrested under an eight-count indictment charging him with conspiracy and substantive offenses in violation of the Act.").

³² *Id.* at 322-23 (describing Cohen's failed attempt to persuade the appeals court that the district court judge erred in instructing the jury to ignore the Wire Act's safe harbor provision).

³³ *Id.* (finding the court does not reach the topic of cross-border wagers in their decision).

³⁴ *Id.* at 321 ("[A]s stated above, the definition of "wire communication" includes a system that transmits "by aid of wire, cable, or other like connection." The "other like connection" language could arguably be considered a "catch-all" phrase that includes wireless Internet connections. Although there are possible arguments to refute this defense, the Department of Justice desires to have the Act amended to cover wireless Internet transmissions that may not be included in the original definition of "wire communication."").

³⁵ Steven A. Engel, *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, Memorandum Opinion for the Acting Assistant Attorney General, Criminal Division, U.S. DEPT. JUST. 23 (Nov. 2, 2018) (finding the Wire Act only applies to wagers placed on a sporting event).

only govern illegal sports gambling.³⁶ First of all, the title of the House Judiciary Committee’s report on the Wire Act is “Sporting Events – Transmissions of Bets, Wagers, and Related Information,” which clearly expresses an intent for bets, wagers, and related information to be related to sporting events.³⁷ The purpose of the Wire Act, according to the 1961 House report, is to “assist the various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses”³⁸ During the Senate hearings that took place after the Wire Act was proposed, when asked if the law would apply to anything other than sports gambling, the Department of Justice representative testified that the Act “would not cover [other gambling games, such as state lotteries] because it is limited to sporting events or contests.”³⁹ Further, during the hearing, Senator Estes Kefauver of Tennessee asked Assistant Attorney General Henry J. Miller whether the Wire Act would bar the use of telephone lotteries, to which Miller responded in the negative, stating the Wire Act would be limited to sporting events or contests.⁴⁰

3. *Department of Justice Office of Legal Counsel 2011 Opinion*

In 2011, New York and Illinois asked the OLC’s Criminal Division for guidance on whether the Wire Act prohibited transmissions unrelated to sports gambling, and thus would prohibit the sale of lottery tickets to out-of-state purchasers.⁴¹ In their 2011 opinion, to

³⁶ Michelle Minton, *Department of Justice Disregards Intent of Congress on Internet Gambling*, COMPETITIVE ENTER. INST. (Jan. 16, 2019), <https://cei.org/blog/departement-justice-disregards-intent-congress-internet-gambling> [<https://perma.cc/6R9M-UP67>] (describing the statutory history of the Wire Act).

³⁷ Sporting Events – Transmissions of Bets, Wagers, and Related Information, H.R. REP. NO. 87-967, at 2631 (1961).

³⁸ *Id.*

³⁹ Minton, *supra* note 36.

⁴⁰ *Id.* (“Sen. Estes Kefauver (D-TN) asked Assistant Attorney General Henry J. Miller if the Wire Act would prohibit the use of telephone for ‘numbers games,’ to which Miller responded that it would not ‘because it is limited to sporting events or contests.’”).

⁴¹ Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, 35 Op. Att’y Gen. (Sept. 20, 2011) (hereinafter “Attorney General’s Opinion on Illinois and New York Proposals”) (concluding the

answer this question, the OLC undertook a textual analysis of the Wire Act's two relevant clauses.⁴² The first clause of the Wire Act's Section (a) prohibits the use of a wire communication "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*."⁴³ In the 2011 opinion, the OLC determined that the phrase "on any sporting event or contest" in the first clause of the Wire Act modifies "bets or wagers" as well as "information assisting in the placing of bets or wagers."⁴⁴ Although the report noted that it was possible to read the clause either way, the OLC ultimately found it was unreasonable for Congress to intend for only "bets and wagers," and not also the "information assisting in the placing of the bets," to concern sports.⁴⁵ The Wire Act's second clause bars 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."⁴⁶ The 2011 OLC opinion concluded "on any sporting event or contest" also modified the reference to "bets or wagers" in this second clause, and thus concluded the Wire Act, as a whole, only prohibits wire transfers which relate to wagers on sporting events.⁴⁷

Wire Act pertains to all gambling wagers, not just those which are connected to a sporting event).

⁴² *Id.* (undertaking a textual analysis of the Wire Act to determine if "on any sporting event or contest" modifies both clause (a) and (b) of the Wire Act).

⁴³ 18 U.S.C. § 1084(a) (2012) (*emphasis added*).

⁴⁴ Attorney General's Opinion on Illinois and New York Proposals, Op. Att'y Gen., *supra* note 41 ("The more reasonable inference is that Congress intended the Wire Act's prohibitions to be parallel in scope, prohibiting the use of wire communication facilities to transmit both bets or wagers and betting or wagering information on sporting events or contests.").

⁴⁵ *See id.* at 8 ("Reading subsection 1084(a) to contain some prohibitions that apply solely to sports related gambling activities and other prohibitions that apply to all gambling activities, in contrast, would create a counterintuitive patchwork of prohibitions.").

⁴⁶ *Id.* ("Given that this interpretation is an equally plausible reading of the text and makes better sense of the statutory scheme, we believe it is the better reading of the first clause.").

⁴⁷ *Id.* ("The qualifying phrase "on any sporting event or contest" does not appear in this clause. But in our view, the references to "bets or wagers" in the second clause are best read as shorthand references to the "bets or wagers on any sporting event or contest" described in the first clause.").

4. *Department of Justice Office of Legal Counsel 2018 Opinion*

In 2018, the OLC reconsidered whether the Wire Act prohibits only sports wagers via wire transmissions, this time taking a stark departure from the 2011 opinion by concluding the Wire Act *does* prohibit bets or wagers that do not relate to sports gambling.⁴⁸ The 2018 opinion concludes that the 2011 interpretation of the Wire Act's first clause was incorrect.⁴⁹ The OLC's reasoning points to the plain text of the Wire Act's first clause, which unambiguously states "bets and wagers" in relation to sporting events, but does not require "information assisting in the placing of bets or wagers" to relate to sports.⁵⁰ Following that logic, the report concluded that likewise, the second clause of the Wire Act is not modified by the phrase "on any sporting event or contest" in the first clause, and thus the Wire Act reaches all types of bets and wagers, not only those placed on sporting events.⁵¹

The OLC's 2018 reasoning leans heavily on a canon of statutory interpretation called the "last-antecedent rule," which calls for a limiting or modifying clause to ordinarily be read to modify only the noun or phrase that it immediately follows where no contrary

⁴⁸ Reconsidering Whether the Wire Act Applies to Non-Sports Gambling, Memorandum Opinion for the Acting Assistant Attorney General, Criminal Division, 42 Op. Att'y Gen. (Nov. 2, 2018) (hereinafter "Attorney General's Opinion Reconsidering Applicability of the Wire Act") (overturning the 2011 Opinion while finding the Wire Act applies to all wagers, not only those relating to sports gambling).

⁴⁹ *Id.* ("We do not lightly depart from our precedents, and we have given the views expressed in our prior opinion careful and respectful consideration. Based upon the plain language of the statute, however, we reach a different result.").

⁵⁰ *Id.* ("There was no need for Congress to add a comma to clarify that the sports-gambling modifier applies only to the second prohibition in the first clause, because the grammar of the provision itself accomplishes that task. The sports-gambling modifier comes at the end of a complex modifier that defines the type of 'information' reached by section 1084(a)'s second prohibition: 'information assisting in the placing of bets or wagers on any sporting event or contest.'").

⁵¹ *Id.* ("Since 'assisting in the placing of bets or wagers' modifies only the prohibition on transmitting information, it follows that 'on any sporting event or contest'—a component of the same modifier—is similarly limited.").

intention appears.⁵² For example, if a local police department hiring manual reads “to qualify for police officer, a candidate must score 85 on the entrance exam, and achieve an 85% accuracy score on the shooting range *within six weeks of hire*” under the rule of last antecedent, the qualifier “within six weeks of hire” would only apply to the accuracy score and not the entrance exam. Using this logic, the OLC concludes that if Congress wished to limit all of the Wire Act’s prohibitions to only those wagers relating to sports, they would have followed each set of prohibitions with the modifier “on any sporting event or contest.”⁵³ While making this conclusion, the 2018 opinion does concede that the Wire Act, “is not a model of artful drafting.”⁵⁴

Commenters staunchly disagree with the OLC’s reevaluation of the Wire Act.⁵⁵ As previously discussed, there is substantial evidence of Congress’s intent for the Wire Act to only cover gambling activities and transmissions relating to sporting events.⁵⁶ While the OLC relies on the last-antecedent rule, the rule only applies when there is no evidence of a contrary intention.⁵⁷ Instead of using the last-antecedent rule, the OLC should have taken a purposivist interpretive approach. A purposivist approach focuses on the legislative process, determining what problem Congress was trying to solve (the purpose),

⁵² *Id.* (describing the last antecedent rule and applying it to the Wire Act’s statutory text).

⁵³ *Id.* (“Simply by adding two commas, Congress could have unambiguously extended both prohibitions in the first clause to sports-related gambling: ‘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.’”).

⁵⁴ *Id.* (“While the Wire Act is not a model of artful drafting....”).

⁵⁵ Minton, *supra* note 36 (“For those familiar with the history of U.S. gambling law, the opinion is mind-boggling. But what is worse is the pretzel-logic OLC used to reach this conclusion. At once, it argues that it is inappropriate to rely on the stated intent of the 87th Congress to interpret the Act as limited to sports betting while, at the same time, the new memo uses grammatical analysis to support the claim that Congress intended to create a sweeping prohibition on all gambling wire communications.”).

⁵⁶ *Id.* (detailing the legislative history evidencing Congress’s intent to limit the Wire Act’s scope to only sports wagering).

⁵⁷ *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (“Referential and qualifying words and phrases, *where no contrary intention appears*, refer solely to the last antecedent”) (emphasis added).

and asking how the statute accomplished that goal.⁵⁸ Any ambiguous text is interpreted in a manner that is faithful to Congress's intent or purpose.⁵⁹ It would appear, if the OLC looked to the congressional record, that ample contrary evidence existed that Congress's intent was for the Wire Act to only prohibit wagers relating to sporting events.⁶⁰ However, the OLC opinion ignores Congress's intent while conceding that Congress's intent to prohibit only transmissions related to sports gambling, "[m]ay well have been true. But 'statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.'"⁶¹

5. *New Hampshire Lottery Commission v. Barr*

On January 15, 2019, the Deputy Attorney General instructed federal prosecutors to adhere to the 2018 OLC opinion's interpretation of the Wire Act.⁶² For any infractions in reliance on the 2011 opinion, and for a ninety day grace period from the date of the Deputy Attorney General's enforcement directive (later extended through June 2019 and then again until December 31, 2019 or sixty days following the final resolution of *New Hampshire Lottery Commission v. Barr*), prosecutors were directed to exercise prosecutorial discretion and refrain from bringing criminal or civil actions to allow businesses time to bring their operations into compliance with the new interpretation of the

⁵⁸ VALERIE C. BRANNON, CONG. RESEARCH SERV., 7-5700, STATUTORY INTERPRETATION THEORIES, TOOLS, AND TRENDS (Apr. 5, 2018) (describing the purposivist approach to statutory interpretation).

⁵⁹ *Id.* ("Purposivists often focus on the legislative process, taking into account the problem that Congress was trying to solve by enacting the disputed law and asking how the statute accomplished that goal. They argue that courts should interpret ambiguous text in a way that is faithful to Congress's purposes.").

⁶⁰ Minton, *supra* note 36 (describing the legislative history of the Wire Act).

⁶¹ Attorney General's Opinion Reconsidering Applicability of the Wire Act, Op. Att'y Gen., *supra* note 48 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998)).

⁶² Memorandum from Deputy Att'y Gen. to U.S. Att'ys, Assistant Att'ys Gen., Dir. F.B.I., Applicability of the Wire Act, 18 U.S.C. § 1084, to Non-Sports Gambling, U.S. DEPT. JUST. (Jan. 15, 2019) ("Department of Justice attorneys should adhere to OLC's [2018] interpretation, which represents the Department's position on the meaning of the Wire Act.").

Wire Act.⁶³ However, as the recent New Hampshire District Court case *New Hampshire Lottery Commission v. Barr* illustrates, compliance with the 2018 opinion is not so simple.⁶⁴

The New Hampshire Lottery Commission offers a multitude of lottery options including in-state and popular multi-jurisdictional games like Powerball and Mega Millions, and in September 2018, began selling tickets through an Internet platform called “iLottery.”⁶⁵ The Commission contracts with a company called Intralot, Inc. to manage the data associated with iLottery and employs servers in New Hampshire, Vermont, and Ohio.⁶⁶ When a brick and mortar store sells a lottery ticket, or when one is purchased through the iLottery online platform, the data is routed through the Internet, a cellular network, or a satellite connection from the New Hampshire buyer to servers in New Hampshire, Vermont, and Ohio.⁶⁷ The Commission cannot guarantee that these transmissions do not cross state lines into a state where lotteries are illegal while in transit to their final destination.⁶⁸ Finally, when a national Mega Millions or Powerball jackpot is won, all of the national jurisdictions offering the games trade data via the Internet, to

⁶³Memorandum from Deputy Att’y Gen. to U.S. Att’ys, Assistant Att’ys Gen., Dir. F.B.I., Updated Directive Regarding the Applicability of the Wire Act, 18 U.S.C. § 1084, to Non-Sports Gambling, U.S. DEPT. JUST. (June 12, 2019) (extending the forbearance period until the later of December 31, 2019 and sixty days following the final judgement in *New Hampshire Lottery Commission v. Barr* to allow the Department of Justice time to weigh their options while the case is appealed).

⁶⁴ 386 F. Supp.3d 132, 160 (D.N.H. 2019) (holding, *inter alia*, that the Wire Act only applies to sports gambling).

⁶⁵ *Id.* at 138 (“games include instant ticket and draw games that offer tickets for sale at brick-and-mortar retailers, multijurisdictional games such as Powerball and Mega Millions that permit tickets to be purchased either in stores or through the internet, and “iLottery” games that sell tickets exclusively through the Internet. Each game involves the use of interstate wire transmissions.”).

⁶⁶ *Id.* (describing Intralot’s data processing logistics which include “providing a computer gaming system (“CGS”) to manage the games and a back-office system (“BOS”) to manage inventory and sales data”).

⁶⁷ *Id.* (“In both types of transactions, the data travels between a lottery terminal in New Hampshire and CGS servers in Vermont and Ohio.”).

⁶⁸ *Id.* at 139 (“Although all financial transactions and bets must begin and end in New Hampshire, the Commission states that it cannot guarantee that intermediate routing of data or information ancillary to a transaction does not cross state lines.”).

determine where each winner is from.⁶⁹ In light of the 2018 OLC opinion, the Commission and another vendor who supports the iLottery system brought this action out of fear that the Federal Communications Commission (FCC) could, at any time, alert an Internet service provider who carries lottery data that their service is being used for the purpose of transmitting or receiving gambling data, compelling the Internet provider to discontinue or refuse the service to the Commission.⁷⁰ This, the Commission argues, would result in an annual loss of over \$90 million in state revenue.⁷¹ Ultimately, the New Hampshire District Court sided with the state Commission, setting aside the 2018 OLC opinion, and declaring the Wire Act applies only to transmissions related to bets on a sporting event.⁷²

This challenge to the 2018 OLC opinion, now pending appeal, has multi-jurisdictional interests as the processes used by the New Hampshire Lottery Commission are substantially similar to those employed by the State of New Jersey, the Commonwealth of Pennsylvania, and the Michigan Bureau of State lottery, all of whom rely on interstate wires in their processing of state and national lottery data.⁷³ Further, New Jersey now offers online casino and sports gambling via

⁶⁹ *Id.* at 139 (“For verification purposes, bets for multi-state games are then sent from those CGS locations to two independent control system servers in New Hampshire over the internet.”).

⁷⁰ *Id.* at 146 (“In other words, once the 2018 OLC Opinion was published, any law enforcement agency could notify in writing a common carrier (such as a telephone or internet service provider) that it was providing services “used for the purpose of transmitting or receiving gambling information” in violation of the Wire Act. Upon receipt of such notice, the provider would be compelled to “discontinue or refuse” that service to the offending subscriber.”).

⁷¹ *Id.* at 139 (“Given the way in which these systems operate, the Lottery Commission contends that the implementation of the 2018 OLC Opinion may result in the suspension of all lottery sales by the Commission, resulting in an annual loss of over \$90 million in state revenue.”).

⁷² *Id.* at 160 (“I hereby declare that § 1084(a) of the Wire Act, 18 U.S.C. § 1084(a), applies only to transmissions related to bets or wagers on a sporting event or contest. The 2018 OLC Opinion is set aside.”).

⁷³ *Id.* at 139 (“The State of New Jersey, the Commonwealth of Pennsylvania, and the Michigan Bureau of State Lottery have filed amicus briefs in support of the plaintiffs. They describe the impact the 2018 OLC Opinion would have on their respective state-run lotteries. The lottery systems in those states are substantially similar to New Hampshire’s, including the types of games offered and their reliance on interstate wires.”).

online platforms and applications.⁷⁴ Under the 2018 OLC opinion, the FCC could theoretically force Internet service providers to block New Jersey sports betting and casino data transfers, effectively shutting down the lucrative operation.⁷⁵

B. The Travel Act of 1961

The Travel Act of 1961 prohibits anyone from traveling in interstate commerce, or using the mail, with the “intent to distribute the proceeds of any unlawful activity, or to otherwise promote, manage, establish, carry on or facilitate any unlawful activity.”⁷⁶ For the purposes of the Travel Act, unlawful activity is explicitly defined, among other things, as any business which involves gambling in violation of the laws of the State in which they are committed.⁷⁷ However, the Travel Act only applies to those actors who are in the business of taking wagers and does not reach those who are actually placing the bets.⁷⁸ Nonetheless, because the Internet is considered an interstate facility, the Travel Act prohibits an offshore sports book from accepting bets placed in a U.S. jurisdiction where the wager would be in violation of state or federal law.⁷⁹

⁷⁴ *Id.* (“In addition, New Jersey and Pennsylvania have legalized some forms of online gambling or “iGaming.” Those states permit state-licensed private companies to offer online casino and poker games to players within the state. New Jersey also has a shared agreement with Delaware and Nevada allowing online poker players from those states to play together.”).

⁷⁵ *Id.* (describing how implementation of the 2018 Opinion could force internet service providers to shut down service to interstate gambling infrastructure).

⁷⁶ 18 U.S.C. § 1952(a)(1)–(3) (2012).

⁷⁷ *Id.* (“As used in this section (i) “unlawful activity” means (1) any business enterprise involving gambling ... in violation of the laws of the State in which they are committed or of the United States”).

⁷⁸ *See Sanabria v. United States*, 437 U.S. 54, 70–71 n.26 (1978) (“Numerous cases have recognized that [the act] proscribes any degree of participation in an illegal gambling business, except participation as a mere bettor.”); *see also United States v. Atiyeh*, 402 F.3d 354, 372 (3d Cir. 2005) (finding “custodianship of gambling-related funds” violates the Act).

⁷⁹ Christ, *supra* note 7 (describing the origins of various federal gambling statutes).

C. The Illegal Gambling Business Act of 1970

The Illegal Gambling Business Act of 1970 (IGBA) was passed in response to the failure of existing legislation, including the Wire Act, to curb organized crime.⁸⁰ The IGBA aimed to arm federal authorities with an enlarged amount of enforcement power to take down these criminal organizations.⁸¹ The IGBA makes it a federal crime to “conduct, finance, manage, supervise, direct, or own all or part of an illegal gambling business.”⁸²

An illegal gambling business is defined as a gambling business which “(i) is in violation of the law of a State or political subdivision in which it is conducted; (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.”⁸³ Unlike the Wire Act, the IGBA does not require wagers to be placed in interstate commerce to trigger it, but rather, the establishment must only be illegal according to the state in which it is located and hit the revenue threshold or 30-day duration threshold.⁸⁴ Thus, because the IGBA specifically provides that the business must be in violation of the law of the state where it operates, the IGBA permits gambling businesses to operate legally in states with gambling friendly laws.

D. Interstate Transportation of Wagering Paraphernalia Act of 1961

Similar to the IGBA, the Interstate Transportation of Wagering Paraphernalia Act of 1961 (Paraphernalia Act) does not aim to interfere with businesses operating in compliance with state gambling

⁸⁰ Brett Smiley, *Mailbag Mythbusting: The Illegal Gambling Business Act and Sports Betting*, SPORTSHANDLE.COM (June 18, 2018), <https://sportshandle.com/mailbag-mythbusting-the-illegal-gambling-businesses-act-and-sports-betting/> [<https://perma.cc/JL5U-7T4J>] (stating the 1970 Act was a “part of an omnibus crime bill” in response to a report that cited “poor coordination for the failure to curb organized crime”).

⁸¹ *Id.* (describing the power of federal authorities as “incredibly expansive”).

⁸² 18 U.S.C. § 1955(a) (2012).

⁸³ *Id.*

⁸⁴ *Cf.* 18 U.S.C. § 1953 (The Paraphernalia Act); 18 U.S.C. § 1084 (The Wire Act).

laws. It does prohibit any non-common carrier from knowingly carrying or sending “any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device” in interstate commerce, “used, or to be used, or adapted, devised, or designed for use” in bookmaking with respect to sporting events or similar games.⁸⁵ The Paraphernalia Act does not apply to legally acquired betting equipment or tickets designed to be used in or transported into a state where gambling is legal under the applicable state law.⁸⁶ Thus, under the foregoing carve out, if a player places a legal wager in Nevada⁸⁷ for a game in the future, then leaves the state before the game is played, the player would not be in violation of the Paraphernalia Act when they traveled to their home state, regardless of whether their home state prohibits sports gambling, with the receipt or “ticket” in their wallet. Similarly, if the player wins the bet, they would not be in violation of the Paraphernalia Act when traveling in states where sports gambling is illegal on their way back to Nevada to legally cash in the ticket to collect their winnings. The player would only violate the Paraphernalia Act if they placed the wager with an unlicensed, black market bookmaker.

E. Unlawful Internet Gambling Enforcement Act of 2006

Further muddying the regulatory waters is the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).⁸⁸ The UIGEA resulted from the post-9/11 concern that money on internet gambling sites was funding terrorist activities. It was the first, and remains the only, federal law specifically addressing Internet gambling.⁸⁹ In order to push the bill through before the 2006 midterm elections, the statute was added to the SAFE Port Act, which includes other popular anti-

⁸⁵ 18 U.S.C. § 1953(a) (2018).

⁸⁶ 18 U.S.C. § 1953(b) (2018) (“This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law”).

⁸⁷ NEV. REV. STAT. § 463.010 (1959) (“Nevada Gaming Control Act”) (providing the regulations for legal sports gambling in Nevada).

⁸⁸ 31 U.S.C. § 5363 (2018) (“The Unlawful Internet Gambling Enforcement Act”).

⁸⁹ Ciaccio, *supra* note 20, at 531 (stating, “The ambiguity in federal law largely stems from the old Wire Act and its interaction with subsequent legislation” while noting the UIGEA is part of subsequent legislation to the Wire Act).

terrorism legislation, and was signed into law by President George W. Bush on October 13, 2006.⁹⁰ The primary purpose of the UIGEA is to “give U.S. law enforcement new, more effective tools for combating offshore [I]nternet gambling sites that illegally extend their services to U.S. residents via the [I]nternet.”⁹¹ Therefore, the legislation directs the Treasury and the Board of Governors of the Federal Reserve (the Fed) to jointly promulgate rules to prohibit gambling businesses from knowingly accepting payments in connection with unlawful Internet gambling.⁹² In other words, the UIGEA does not aim to go after the gambler, as it only prohibits banks from accepting the money, not transmitting it, but instead targets the flow of funds to illegal sites.⁹³ Stated differently, it is not illegal for the gambler to place the bet, it is only impermissible—and punishable—for the bank to accept the transaction. The UIGEA does this by proscribing banks from accepting transactions that are tied to illegal wagers placed over the Internet.⁹⁴ However, the law does not create criminal penalties for financial institutions, but rather mandates that the institutions create methods to identify and block the prohibited transactions and subjects non-compliant institutions to civil penalties.⁹⁵ Experts are skeptical of the

⁹⁰ Brandon P. Rainey, *The Unlawful Internet Gambling Enforcement Act of 2006: Legislative Problems and Solutions*, 35 J. LEGIS 147, 147 (2009) (“In an underhanded political maneuver, the UIGEA was added to the completely unrelated Security and Accountability for Every (“SAFE”) Port Act, antiterrorism legislation which deals with container security in our nation’s ports.”).

⁹¹ *Id.*

⁹² FED. DEPOSIT INS. CORP, UNLAWFUL GAMBLING ENFORCEMENT ACT OF 2006 FACT SHEET 1 (2010), <https://www.fdic.gov/news/news/financial/2010/fil10035a.pdf> (“The Act also requires Treasury and the Federal Reserve Board (in consultation with the U.S. Attorney General) to promulgate regulations requiring certain participants in payment systems that could be used for unlawful Internet gambling to have policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the processing of restricted transactions.”).

⁹³ Ciaccio, *supra* note 20, at 543 (“The UIGEA does not target Joe the Gambler; instead, it targets the flow of funds to internet gambling operators.”).

⁹⁴ Rainey, *supra* note 90, at 150 (“In essence, the UIGEA makes it illegal for banks and financial institutions to process transactions for Internet gambling websites.”).

⁹⁵ *Id.* (“Although the UIGEA stops short of creating criminal penalties for financial institutions, these financial institutions are burdened with creating methods to identify and block restricted gambling transactions.”).

UIGEA's approach.⁹⁶ Gambling law expert Professor Nelson Rose states, "[f]or a law designed to stop the flow of money, it is bizarre to make it a crime only to receive the funds, but not to send them or transmit them."⁹⁷ Because the prohibited transactions are tied to illegal wagers, the UIGEA leans on other laws.⁹⁸ This statutory interpretation exercise complicates efforts to comply with the myriad gambling regulations in this Section, which define and prohibit illegal wagers.⁹⁹ The Treasury and the Fed have designated five payment systems (card systems, automated clearinghouse systems, wire transfer systems, check collection systems, and money transmitting businesses) covered by the UIGEA and provide numerous safe harbors.¹⁰⁰ Further, the UIGEA carves out exceptions for, and does not prohibit, permitted casinos on Native American reservation land, fantasy sports, and horse-racing.¹⁰¹ The UIGEA does not specifically define "unlawful [I]nternet gambling," but instead looks to federal and state laws to determine what actions are prohibited.¹⁰² During the UIGEA's debate, two members of the House Subcommittee on Commercial and

⁹⁶ See I. Nelson Rose, *Viewpoint: The Unlawful Internet Gambling Enforcement Act of 2006 Analyzed*, 10 GAMING L. REV. 537 (2006) (providing a detailed analysis of the UIGEA).

⁹⁷ *Id.* at 539.

⁹⁸ 31 U.S.C. § 5362(10)(A) (2006) (defining "unlawful internet gambling" as to "place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.").

⁹⁹ Rainey, *supra* note 90, at 150 ("Since the UIGEA does not criminalize gambling and there are no federal laws that explicitly prohibit forms of Internet gambling on casino-style games, the UIGEA simply adds to the growing confusion over the legality of online gambling.").

¹⁰⁰ UNLAWFUL GAMBLING ENFORCEMENT ACT OF 2006 FACT SHEET, *supra* note 88, at 1 ("A joint rule has been issued by Treasury and the Federal Reserve Board that designates five payment systems as covered by the Act. The designated payment systems are (i) automated clearing house (ACH) systems, (ii) card systems, (iii) check collection systems, (iv) money transmitting businesses, and (v) wire transfer systems.").

¹⁰¹ Rainey, *supra* note 90, at 149 ("Exceptions for Indian tribal gambling, fantasy-style gaming, and horse-betting are carved out of the general ban.").

¹⁰² Ciaccio, *supra* note 20, at 532 ("However, the government built these laws upon the shaky foundation of the Wire Act, and neither the UIGEA nor the agency regulations provided any real clarity to what types of gambling U.S. law actually prohibits.").

Administrative Law were “deeply concerned” by the lack of a definition of “unlawful [I]nternet gambling.”¹⁰³

Opining that they may be forced to block legitimate transactions, Bank of America also called for a definition of “unlawful [I]nternet gambling,” as well as a government produced list of companies to black list.¹⁰⁴ Other banks also expressed similar concerns about the UIGEA’s effects on the competitiveness of the U.S. payments system, fearing lost business to overseas banks who are not under UIGEA regulation.¹⁰⁵ Ultimately, the final version of the UIGEA still lacked a black list, as drafters determined a black list would be neither efficient nor effective,¹⁰⁶ but a general definition of “unlawful [I]nternet gambling” was added to the definitions section of the UIGEA. For purposes of the UIGEA, unlawful Internet gambling means, “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.”¹⁰⁷ Essentially, by defining “unlawful [I]nternet gambling” as placing a bet or wager that is illegal under applicable Federal or State law, the UIGEA punts the definition to other strands of the confusing web of regulations. Despite this vagueness, the UIGEA survived its first constitutional challenge and was found not void-for-vagueness.¹⁰⁸ One potential source of the definition of “unlawful [I]nternet gambling” may be found in the Professional and Amateur

¹⁰³ *Id.* at 544 (“Two members of the House Subcommittee on Commercial and Administrative Law were “deeply concerned” that the regulations did not provide any definition of “unlawful Internet gambling.”).

¹⁰⁴ *Id.* at 545 (“Bank of America (BOA) also wanted a definition of ‘unlawful Internet gambling’ and, ideally, a government-produced black list of companies to block. Giving substance to iMEGA’s concern, BOA opined that otherwise they would be forced to block legitimate transactions and engage in costly disputes with their customers.”).

¹⁰⁵ *Id.* (“Many depository institutions expressed similar concerns that the proposed regulation would be unduly burdensome and could adversely affect the competitiveness of the U.S. payments system.”).

¹⁰⁶ *Id.* (“[T]he final rules did not provide for a black list, which the agencies determined would be neither efficient nor effective.”).

¹⁰⁷ 31 U.S.C. § 5362(10) (2018).

¹⁰⁸ *Interactive Media Ent. & Gaming Ass’n v. Gonzales*, No. 07-2625, 2008 WL 5586713 (D.N.J. Mar. 4, 2008), *aff’d sub nom.* *Interactive Media Ent. & Gaming Ass’n v. Att’y Gen.*, 580 F.3d 113 (3d Cir. 2009) (denying a void-for-vagueness Constitutional challenge to the UIGEA).

Sports Protection Act of 1992 (PASPA), as described in Section F below.

The UIGEA has a number of functional and practical problems, which in turn lead to enforcement difficulties.¹⁰⁹ In response to the UIGEA, the market for online Internet poker shifted from conservative public companies concerned about shareholder backlash and increased legal risk, to risk-tolerant private companies willing to push the boundaries of the UIGEA through non-traditional banking channels.¹¹⁰ These private companies utilize a number of loopholes in the UIGEA to continue their online gambling operations.¹¹¹ First, private gambling sites set up simple middleman payment intermediaries known as “e-wallets.”¹¹² The site simply routes all money through the often offshore e-wallet so that the bank is not receiving or transmitting transactions directly from the company or from within the United States.¹¹³ NETeller, one of the largest e-wallets in the mid-2000s, processed more than \$7.3 billion in transactions in 2005, with approximately 95% of its revenue coming from Internet gambling sites, according to prosecutors, before its directors were arrested on U.S. soil.¹¹⁴ Despite the shutdown of NETeller, many e-wallets continue to

¹⁰⁹ Rainey, *supra* note 90, at 151 (describing the various loopholes and workarounds to the UIGEA’s prohibitions).

¹¹⁰ *Id.* (“Following the enactment of the UIGEA, several of the most prominent, trusted, publicly traded Internet poker websites stopped accepting bets from United States players. However, the market has been taken over by private Internet gambling operations that do not answer to shareholders and can thus afford to test the real boundaries of the UIGEA.”).

¹¹¹ *Id.* (“In fact, the private gambling operations have utilized several glaring loopholes in the UIGEA.”).

¹¹² *Id.* (“The first loophole in the UIGEA utilized by gambling operations who still accept bets from United States players involves a middleman payment processor. Payments from players’ banks to gambling websites are routed to offshore intermediaries known as ‘e-wallets’...”).

¹¹³ *Id.* at 152 (“The process is simple. A player sets up an account with an e-wallet Internet company and transfers money from their bank account into the e-wallet. Then the player is free to buy simulated poker chips, gambling credit, pay losses and collect winnings. Throughout the chain, the player’s bank never directly transfers money to the gambling website.”).

¹¹⁴ *Id.* (“NETeller was the largest of these e-wallets. U.S. prosecutors said NETeller processed more than \$7.3 billion in transactions in 2005 and more than ninety-five percent of its revenue from transfers involved Internet gambling.”).

exist safely off-shore.¹¹⁵ Although the U.S. could promulgate a “blacklist” of payment processors, it is theorized that gambling companies could simply set up webs of payment processors to hide the flow of money from the gambling companies.¹¹⁶

Another gaping loophole exists in the UIGEA’s provision which provides that institutions do not have to block illegal gambling transactions where they are not reasonably practical to identify.¹¹⁷ In the U.S., approximately 40 billion checks are processed each year.¹¹⁸ The American Bankers Association maintains that asking banks to manually monitor 40 billion checks a year for transactions with illegal gambling companies would be unreasonably cost prohibitive.¹¹⁹ If monitoring paper or electronic checks is impractical, thus exempting checks from UIGEA enforcement, online gambling sites are free to evade the UIGEA by conducting all banking business with checks.¹²⁰ By driving gambling revenue from public to off-shore private companies, the UIGEA deprives the U.S. of billions of dollars in tax revenue, while not curbing the social and financial “evils” of gambling, as people are still able to gamble through these loopholes.¹²¹

¹¹⁵ *Id.* (“Although NETeller no longer processes American gambling transactions, a multitude of other companies still do. Privately held e-wallets like ECheck, Click2Pay, and ePassport are all available remaining payment processing companies.”).

¹¹⁶ *Id.* (“Critics have predicted a potential legislative response: a “blacklist” of noncompliant offshore payment processors from whom United States financial institutions are prohibited from transacting. How far might this list go? Would federal regulators prohibit United States banks from sending funds to an overseas bank, which in turn forwards the money to an e-wallet?”).

¹¹⁷ 31 U.S.C. § 5364(b)(3) (2006) (“The Secretary and the Board of Governors of the Federal Reserve System shall ... exempt certain restricted transactions or designated payment systems from any requirement imposed under such regulations, if the Secretary and the Board jointly find that it is not reasonably practical to identify and block.”).

¹¹⁸ Rainey, *supra* note 90, at 153 (citing the American Bankers Association).

¹¹⁹ *Id.* (“A representative of the American Bankers Association stated, ‘Analyzing forty billion checks a year would be a largely manual process.’”).

¹²⁰ *Id.* (“If paper checks are exempted, gamblers would be free to send checks to gambling websites, and only need to accept and adapt to the inconvenience of waiting for their checks to be received.”).

¹²¹ *Id.* (“Therefore, the real function of the UIGEA has been to drive a booming industry into private hands and turn away from an incredible base of taxable income. Studies suggest the federal government is turning its back on over three billion dollars of tax revenue by outlawing Internet gambling ... Additionally, the main purpose of the UIGEA -protecting citizens from the

F. Professional and Amateur Sports Protection Act of 1992

PASPA is a statute prohibiting states from legalizing state-sponsored sports gambling and was intended to uphold the “integrity of, and public confidence in, amateur and professional sports.”¹²² PASPA does not seek to address the moral issues of gambling or gambling’s potential detriments to society.¹²³

Rather, PASPA attempts to curb the number of people wagering on sports and thus, also curb the suspicion that controversial calls during sporting events are a product of outside pressure from gamblers or sports books.¹²⁴ Further, PASPA reflects Congress’s belief that “[t]he moral erosion [sports gambling] produces cannot be limited geographically” because once one state legalizes, other states will follow.¹²⁵ Despite these intentions, PASPA exempted pre-existing, licensed sports books in Nevada and states with existing sports lotteries, while prohibiting all other states, which did not have lawful sports gambling operations before PASPA was enacted, from legalizing sports gambling.¹²⁶ In 1991, New Jersey attempted to pass gambling legislation prior to PASPA’s effective date (which would have

perceived social and financial evils of gambling-has not been achieved. People are still gambling over the Internet due to the loopholes in the law.”).

¹²² Matthew D Mills, *The Failure of the Professional and Amateur Sports Protection Act*, 16 U. DEN. SPORTS & ENT. L.J. 215, 216 (2014).

¹²³ *Id.* (“Rather than being concerned with the moral issues of gambling or the potential detriment gambling poses to society, Congress’ concern was ‘the integrity of, and public confidence in, amateur and professional sports.’”).

¹²⁴ *Id.* at 216 (“Congress believed that the legalization of sports gambling would increase the number of people who engage in sports betting and, in turn, lead to suspicion over controversial plays causing fans to believe games were being influenced by outside sources.”).

¹²⁵ Matthew A. Melone, *New Jersey Beat the Spread: Murphy v. National Collegiate Athletic Association*, 80 U. PITT. L. REV. 315, 324 (2018) (quoting S. REP. NO. 102-248, at 7).

¹²⁶ S. REP. NO. 102-248, at 5, as reprinted in 1992 U.S.C.C.A.N. 3553, 3559 (“Although the committee firmly believes that all such sports gambling is harmful, it has no wish to apply this new prohibition retroactively to Oregon or Delaware, which instituted sports lotteries prior to the introduction of our legislation. Neither has the committee any desire to threaten the economy of Nevada, which over many decades has come to depend on legalized private gambling, including sports gambling, as an essential industry, or to prohibit lawful sports gambling schemes in other States that were in operation when the legislation was introduced.”).

exempted the state from PASPA's prohibitions) but failed to do so before PASPA was enacted, foreshadowing New Jersey's involvement in the 2018 United States Supreme Court case *Murphy v. NCAA*, which struck down PASPA as against the Constitution's Tenth Amendment.¹²⁷

Following a referendum of New Jersey voters, New Jersey enacted legislation authorizing sports gambling.¹²⁸ Various professional sports leagues and the National Collegiate Athletic Association ("NCAA") filed suit to enforce PASPA and enjoin the state from permitting licensed sports betting.¹²⁹ In response, New Jersey raised three constitutional claims. First, New Jersey claimed PASPA went beyond Congress's power under the Commerce Clause.¹³⁰ The court rejected this argument, citing *United States v. Lopez* and opining that Congress may regulate activity that substantially affects interstate commerce if it arises out of a commercial transaction, in this case both wagering and sports.¹³¹ Second, New Jersey asserted PASPA violated the Constitution's anti-commandeering principles.¹³² According to the court, PASPA did not require, or commandeer, a state to do anything; rather, PASPA prevented a state from passing a law that permits sports

¹²⁷ 138 S. Ct. 1461, 1465 (2018) ("Grandfather' provisions allow existing forms of sports gambling to continue in four States, § 3704(a)(1)–(2), and another provision would have permitted New Jersey to set up a sports gambling scheme in Atlantic City within a year of PASPA's enactment, § 3704(a)(3). New Jersey did not take advantage of that option but has since had a change of heart.").

¹²⁸ Melone, *supra* note 125, at 333 ("The voters of New Jersey approved, by referendum, an amendment to the state's constitution permitting the state legislature to enact legislation authorizing sports gambling.").

¹²⁹ *Id.* ("The National Collegiate Athletic Association and various professional sports leagues brought suit to enjoin the state from licensing sports betting, and the district court rejected the state's claims that the plaintiffs lacked standing to assert a claim and that PASPA was unconstitutional.").

¹³⁰ *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208, 224 (3d Cir. 2013), *aff'g* *Nat'l Collegiate Athletic Ass'n v. Christie*, 926 F. Supp. 2d 551 (D.N.J. 2013), *cert. denied*, 134 S. Ct. 2866 (2014) ("But at least one party raises the specter that PASPA is also beyond Congress' authority under the Commerce Clause of the U.S. Constitution").

¹³¹ *NCAA*, 730 F.3d at 224 ("[F]or one, Congress may regulate an activity that 'substantially affects interstate commerce' if it 'arise[s] out of or [is] connected with a commercial transaction.'"). (quoting *United States v. Lopez*, 514 U.S. 549, 559 (1995)).

¹³² *Id.* at 229–30 (evaluating PASPA's operation to determine if it commandeers the states).

gambling.¹³³ Finally, New Jersey argued PASPA violated the equal sovereignty of the states by singling out Nevada as the only state which can allow sports books.¹³⁴ The Third Circuit rejected this argument, finding that equal sovereignty does not prohibit Congress from differentiating among states in the exercise of commerce power and that PASPA's grandfather clause did not disfavor states due to unique conditions or facts.¹³⁵

Following the Third Circuit's ruling, New Jersey amended their gambling legislation to permit casinos and racetracks to engage in sports gambling without a state license.¹³⁶ Once again, the Third Circuit ruled that the state's actions violated PASPA because, although New Jersey had not passed a law expressly permitting state-sponsored gambling, its actions amounted to state authorization.¹³⁷ The court also found for the reasons set forth in the earlier case that PASPA did not violate the anti-commandeering principle.¹³⁸ The Supreme Court granted certiorari on June 27, 2017, and on May 14, 2018, in a 6-3 decision, the Court held that PASPA was unconstitutional.¹³⁹ In contrast to the Third Circuit's ruling, the Court found that PASPA violated

¹³³ *Id.* at 235 (“But no one contends that PASPA requires the states to enact any laws, and we have held that it also does not require states to maintain existing laws.”).

¹³⁴ *Id.* at 237–40 (“Finally, we address Appellants’ contention that PASPA violates the equal sovereignty of the states by singling out Nevada for preferential treatment and allowing only that State to maintain broad state-sponsored sports gambling.”).

¹³⁵ *Id.* at 239 (“The remedy New Jersey seeks—a complete invalidation of PASPA—does far more violence to the statute, and would be a particularly odd result given the law’s purpose of curtailing state-licensed gambling on sports. That New Jersey seeks Nevada’s preferential treatment, and not a complete ban on the preferences, undermines Appellants’ invocation of the equal sovereignty doctrine.”).

¹³⁶ Melone, *supra* note 125, at 337 (“In 2014 New Jersey enacted legislation that, in effect, permitted casinos and racetracks to engage in sports wagering without a state imprimatur.”).

¹³⁷ *Nat’l Collegiate Athletic Ass’n v. Governor of N.J.*, 832 F.3d 389, 392 (3d Cir. 2016) (en banc), *aff’g by an equally divided court Nat’l Collegiate Athletic Ass’n v. Christie*, 61 F. Supp. 3d 488 (D.N.J. 2014). (“We now hold that the District Court correctly ruled that because PASPA, by its terms, prohibits states from authorizing by law sports gambling, and because the 2014 Law does exactly that, the 2014 Law violates federal law.”)

¹³⁸ *Id.* (finding the state’s actions violated PASPA).

¹³⁹ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1484–85 (2018) (finding PASPA unconstitutional).

the Constitution's anti-commandeering principle.¹⁴⁰ In doing so, the Court clarified that there is no distinction between federal legislation that commands a state to act and legislation that prohibits a state from acting.¹⁴¹ The Court found the legislative prohibition on states from authorizing sports gambling dictates what a state legislature may or may not do, and therefore effectively puts state legislatures under the direct control of Congress.¹⁴²

Another noteworthy section of the *Murphy* opinion could impact the interpretation of other gambling-related legislation, including the interpretation of the Wire Act.¹⁴³ The Supreme Court's discussion of the Wire Act, while brief and merely *dicta*,¹⁴⁴ suggests

¹⁴⁰ *Id.* (“PASPA ‘regulate[s] state governments’ regulation’ of their citizens. The Constitution gives Congress no such power. The judgment of the Third Circuit is reversed.”).

¹⁴¹ *Id.* at 1478 (“This distinction is empty. It was a matter of happenstance that the laws challenged in *New York* and *Printz* commanded “affirmative” action as opposed to imposing a prohibition. The basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event Suppose Congress ordered States with legalized sports betting to take the affirmative step of criminalizing that activity and ordered the remaining States to retain their laws prohibiting sports betting. There is no good reason why the former would intrude more deeply on state sovereignty than the latter.”).

¹⁴² *Id.* (“That provision unequivocally dictates what a state legislature may and may not do ... state legislatures are put under the direct control of Congress.”).

¹⁴³ Daniel Wallach, *Did The Supreme Court Reinterpret The Wire Act To Allow Cross-Border Internet Sports Betting?*, FORBES (Jul. 8, 2018, 10:08 PM), <https://www.forbes.com/sites/danielwallach/2018/07/08/did-the-supreme-court-reinterpret-the-wire-act-to-allow-cross-border-internet-sports-betting/#45fe10a946c5> [https://perma.cc/FKB4-GQTP] (describing how The Court in *Murphy* may have permitted states to accept wagers from individuals in other states).

¹⁴⁴ *Murphy*, 138 S. Ct. at 1483 (“Under [PASPA], private conduct violates federal law only if it is permitted by state law. That strange rule is exactly the opposite of the general federal approach to gambling. Under [the IGBA], operating a gambling business violates federal law only if that conduct is illegal under state or local law. Similarly, [the Paraphernalia Act], which criminalizes the interstate transmission of wagering paraphernalia, and [the Wire Act], which outlaws the interstate transmission of information that assists in the placing of a bet on a sporting event, apply only if the underlying gambling is illegal under state law.... These provisions implement a coherent federal policy: They respect the policy choices of the people of each State on the controversial issue of gambling.”).

that “several federal laws criminalizing gambling-related activity ... outlaw [such] activity to only the extent that the specified conduct or the underlying gambling is illegal under state or local law,” potentially greenlighting mobile and online sports betting, which, until *Murphy*, were “generally considered prohibited.”¹⁴⁵ This discussion appears to suggest that in order for a cause of action to be sustained under each federal gambling law, an underlying violation of state law must be present.¹⁴⁶ If the Wire Act is interpreted in this manner, it would permit states to license Internet-based sports books that accept wagers from gamblers physically located outside of the state because there would not be an underlying state law violation in the locale of the sports book to sustain a Wire Act violation (because the Wire Act only prohibits the taking of an illegal wager).¹⁴⁷ However, there is a flaw in this interpretation.¹⁴⁸ Unlike the Paraphernalia Act, Travel Act, IGBA, and UIGEA, the plain language of the Wire Act makes no express mention of a state law violation.¹⁴⁹ Rather, the Wire Act only makes broad prohibitions on anyone engaged in the “business of betting or wagering.”¹⁵⁰ Courts generally will not write words into a statute while

¹⁴⁵ Brian Carney et al., *Supreme Court and Appellate Alert: Supreme Court Strikes Down Federal Ban on Sports Betting*, AKIN GUMP (May 17, 2018), <https://www.akingump.com/en/news-insights/supreme-court-strikes-down-federal-ban-on-sports-betting.html> [<https://perma.cc/7QZ7-VXY2>] (observing that after *Murphy* “mobile and online sports betting[] may be permitted.”).

¹⁴⁶ Wallach, *supra* note 143 (“Through this passage, the Supreme Court appears to be suggesting that each of these federal gambling laws (including the Wire Act)—in order to give rise to a federal criminal offense—requires an underlying violation of state law.”).

¹⁴⁷ *Id.* (“This could be a groundbreaking development because if the Wire Act is interpreted in this fashion, it would allow states to legalize Internet-based sports betting and permit such wagers to be placed by customers physically located outside the state.”).

¹⁴⁸ *Id.* (“These views, however, do not comport with the plain language of the Wire Act, which makes no reference to state law in the main section of that statute.”).

¹⁴⁹ *Id.* (“In contrast to the Wire Act, the Illegal Gambling Business Act, the Interstate Transportation of Gambling Paraphernalia Act, and the Travel Act each *expressly require* that there be an underlying violation of state or local law in order to give rise to a federal criminal prosecution.”).

¹⁵⁰ *Id.* (“This provision contains two broad clauses. The first bars anyone engaged in the ‘business of betting or wagering’ from knowingly using 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.’”).

interpreting their meaning, but instead look only to the words actually written into the statute and their plain meanings.¹⁵¹ Thus, it is unlikely a court would interpret the Wire Act to require a state law violation, absent the inclusion of those words in the statute itself.¹⁵²

In fact, in *United States v. Corrar*, the U.S. District Court for the Northern District of Georgia, confronted this very scenario.¹⁵³ *Corrar* expressly rejects the idea that a sports book located in a state where sports gambling is legal, may accept an online wager from a gambler physically located in a state where gambling is also legal under the Wire Act, stating “even if internet gambling were permissible under state law, using interstate wire communication facilities to promote it would not be.”¹⁵⁴ This is why the Wire Act, unlike the Travel Act and [the IGBA], does not require an underlying violation of state law.¹⁵⁵ Therefore, in order for state-licensed sports books to accept wagers across state lines from gamblers in states where sports gambling is also legal, the Wire Act would need to be amended.

II. *Evolving Sports Gambling Landscape in the Wake of Murphy*

A. State Response to *Murphy*

Following the ruling in *Murphy*, New Jersey casinos and racetracks quickly set up sports books, which began to accept wagers on sporting events.¹⁵⁶ On Thursday, June 14, 2018, exactly one month

¹⁵¹ *Id.* (“Courts interpret statutes in accordance with their plain and ordinary meaning, using the words actually employed in the statute as the interpretive guidepost, and will not rewrite a statute to insert additional words....”).

¹⁵² *Id.* (“Courts ... will not rewrite a statute to insert additional words, as would be the case in engrafting a “state law violation” requirement in Section 1084(a) where no such requirement existed previously.”).

¹⁵³ *United States v. Corrar*, 512 F. Supp. 2d 1280, 1289 (N.D. Ga. 2007) (“den[ying] defendant’s Motion for a Judgment of Acquittal based on the Rule of Lenity.”).

¹⁵⁴ *Id.* at 1289

¹⁵⁵ *Id.* (“The Wire Act, unlike the Travel Act and 18 U.S.C. § 1955, does not require an underlying violation of state law.”).

¹⁵⁶ Ryan Oakes, *William Hill Opens New Jersey’s First Sportsbook*, WILLIAM HILL RACE & SPORTS BOOK (June 12, 2018), <https://www.williamhill.us/william-hill-opens-new-jerseys-first-sports-book/> [https://perma.cc/C7QU-EQ43] (discussing the historic opening of New Jersey’s first legal sportsbook shortly after the ruling in *Murphy*).

after the *Murphy* decision's release, sports book William Hill, "America's leading sports book operator," accepted New Jersey's first legal sports wagers at Monmouth Park Racetrack.¹⁵⁷ Governor Phil Murphy placed the ceremonial first bets in the form of two \$20-dollar futures bets, one on Germany to win the 2018 World Cup, and the other on the New Jersey Devils to win the 2018–19 Stanley Cup.¹⁵⁸ Within five months of *Murphy*, nine sports books and eight mobile apps were accepting bets.¹⁵⁹ Almost immediately, New Jersey became one of the most robust sports gambling markets in the country, and over a year later, boasts fifteen licensed online and mobile sport betting platforms.¹⁶⁰ Although Murphy eventually lost both of his wagers at the hands of France winning the World Cup and the St. Louis Blues winning the Stanley Cup, New Jersey sports books accepted \$318.9 million in wagers, with profits after payouts of \$15.5 million in May of 2019, narrowly exceeding Nevada sports books' total wagers and profits.¹⁶¹ Much of this instant success can be attributed to New

¹⁵⁷ *Id.* ("William Hill, America's leading sports book operator, today accepted New Jersey's first legal sports wagers, officially opening its sports book at Monmouth Park Racetrack.").

¹⁵⁸ *Id.* ("The historic moment was marked by the placing of the ceremonial first bets by Governor Phil Murphy. Governor Murphy's historic wagers were a \$20 futures bet, placed at 7/2 odds, on Germany to win the 2018 World Cup and a \$20 futures bet, placed at 40/1 odds, on the New Jersey Devils to win the 2018-19 Stanley Cup.").

¹⁵⁹ Post Sports Desk, *NJ Sports Betting: Where and how to place bets*, NY POST (Dec. 17, 2018, 11:12 AM), <https://nypost.com/2018/12/17/nj-sports-betting-where-and-how-to-place-bets/> [https://perma.cc/CUS3-TMZ9] ("Almost five months later, there now are nine sports books open at casinos and racetracks across the state where one can place bets. There also are eight different betting apps currently taking action.").

¹⁶⁰ Dustin Gouker, *New Jersey Sports Betting*, LEGAL SPORTS REPORT (last updated October 23, 2019, 9:00 PM), <https://www.legalsportsreport.com/nj/> [https://perma.cc/YGZ4-3ZYV] (listing the legal online and in person gambling options).

¹⁶¹ Eduardo Munoz, *Making a Wager? Half of Americans Live in States Soon to Offer Sports Gambling*, CNBC (July 10, 2019, 3:19 PM), <https://www.cnbc.com/2019/07/10/half-of-americans-live-in-states-soon-to-offer-sports-gambling.html> [https://perma.cc/G455-9LTM] ("Murphy would eventually lose both wagers (France/St. Louis Blues), but less than a year later he and his state hit a lucrative, historic jackpot. For the month of May, New Jersey passed Nevada to become the top state in monthly sports betting for the first time. The Garden State harvested \$318.9 million in handle (the total in bets

Jersey's embrace of mobile wagering, as online and mobile gamblers account for about 80% of all wagers placed in New Jersey, compared to an estimated 50% share in Nevada.¹⁶² Mobile sports betting presents a perfect illustration of how states are differing in their approach to legalized sports gambling.

Many states and Washington D.C. followed in New Jersey's footsteps, and according to an ESPN landscape survey, all but seven states have introduced or enacted bills legalizing sports betting as of May 2019.¹⁶³ So far, "twelve states currently allow legal sports betting of some kind, with online or mobile gambling" allowed in only five of the twelve.¹⁶⁴ At the state level, mobile gambling has spurred debates around its convenience and inconspicuous nature potentially enabling compulsive behavior, while being countered with pleas that mobile gambling via grey market apps already exists as the American Gaming Association estimates the value of illegal bets through offshore websites and neighborhood bookies is approximately \$150 billion.¹⁶⁵

States that allow mobile gambling use a mobile app method called "geofencing" to ensure bets placed on the app are only placed

taken) and \$15.5 million in revenue (what sports books earn after payouts), besting Nevada's \$317.3 million in handle and \$11.6 million in revenue.").

¹⁶² Katherine Sayre, *Online Sports Wagers Bring Big State Payoffs*, WALL ST. J., Sept. 3, 2019, at A1 ("Online gamblers now account for about 80% of all legal wagers on games in New Jersey, which surpassed Nevada for the first time in May in monthly sports bets, according to figures released by the two states Nevada doesn't require casinos to break out mobile-betting revenue in their reports, but regulators estimated that last year about half of sports bets were online, a spokesman for the Nevada Gaming Control Board said.").

¹⁶³ Ryan Rodenberg, *State-by-state Sports Betting Bill Tracker*, ESPN.COM (Sept. 1, 2019) http://www.espn.com/chalk/story/_id/19740480/gambling-sports-betting-bill-tracker-all-50-states [<https://perma.cc/FPN7-XZFU>] (providing a fifty-state survey of sports gambling legislation with summaries of the sports gambling climate in each state).

¹⁶⁴ Sayre, *supra* note 162 ("Twelve states currently allow sports betting of some kind, with online or mobile gambling in five of them: New Jersey, Pennsylvania, West Virginia, Iowa and Nevada.").

¹⁶⁵ *Id.* ("Supporters said mobile sports betting is already widely available in the form of gray-market apps and offshore websites, and states might as well take control and tax the activity. The American Gaming Association has estimated the value of illegal bets made through neighborhood bookies and offshore sites at \$150 billion annually.").

from within the state's lines.¹⁶⁶ While New Jersey and Nevada realize monetary success through mobile betting, Arkansas and Mississippi do not allow mobile betting, forcing all wagers to be placed inside a casino.¹⁶⁷ From a tax revenue perspective, this restriction may not be paying off, as in the first year Mississippi fell short of their projected revenue by approximately \$1 million.¹⁶⁸

B. Professional Sports Leagues' and Sportsbook Operator Response

The national Internet sports gambling regulatory landscape remains unclear as states currently take the lead to regulate gambling within their own states, though the House Judiciary Committee held a formal hearing on the topic in September 2018, to hear testimony from stakeholders including the National Football League (NFL) and the Coalition to Stop Online Gambling.¹⁶⁹ The hearing held by the Subcommittee on Crime, Terrorism, Homeland Security and Investigations is said to be the first step in examining the need and feasibility of national oversight.¹⁷⁰

On the one hand, the NCAA and major professional sports leagues want federal oversight, while sports books and casinos are lobbying for state regulation of sports betting.¹⁷¹ Jocelyn Moore, NFL

¹⁶⁶ *Id.* (“Under [*Murphy*], each state can set up its own betting system, but bets across state lines aren’t permitted. Mobile apps can use a method known as ‘geofencing’ to keep betting action within a state’s borders.”).

¹⁶⁷ *Id.* (“Arkansas and Mississippi have avoided mobile betting altogether, instead allowing sports betting only in casinos.”).

¹⁶⁸ *Id.* (“Mississippi projected the state would receive about \$5 million from taxes on sports betting; the first year brought in under \$4 million, said Allen Godfrey, the Mississippi Gaming Commission’s executive director. Gamblers in the state can use a mobile app while inside a casino.”).

¹⁶⁹ David Purdum, *Congress Indicates It May Act on Sports Betting*, ESPN.COM (Sept. 27, 2018), https://www.espn.com/chalk/story/_/id/24814518/congress-indicates-act-sports-betting [<https://perma.cc/GVL4-CHKP>] (detailing the House Judiciary Committee’s hearing).

¹⁷⁰ *Id.* (“The hearing, held by the Subcommittee on Crime, Terrorism, Homeland Security and Investigations, is the first step in examining whether federal oversight is needed in the new landscape, with committee chairman Bob Goodlatte (R-Va.) calling the issue ‘ripe for consideration’”).

¹⁷¹ *Id.* (“The NCAA and major professional sports leagues want federal guidelines, while gaming interests feel that states are in the best position to regulate sports betting.”).

executive Vice President of Public Affairs, told members of the committee, “[w]e are very concerned leagues and states alone cannot fully guard against the harms Congress has long associated with sports betting.”¹⁷² These comments reflect the NFL’s desire to protect the integrity of the game, ensuring it remains free from outside influence on referees, players, coaches, and other league actors.¹⁷³ The NFL is also lobbying for federal guidelines which require sports books to use official league statistics to settle wagers, league authority over what types of wagers are allowed (for example control over sports books’ ability to offer prop, or exotic, bets where gamblers bet on the performance of two players against each other when they are not playing in the same game), and beefed-up tools for law enforcement to go after bad actors who do accept outside money to influence game results or statistics.¹⁷⁴

On the other hand, the American Gaming Association (AGA), representing the casino industry and the Nevada Gaming Control Board, testified before the committee that strict, effective regulations are already in place, and therefore, there is no need to overcomplicate the system.¹⁷⁵ In addition, not all testimony was as accepting of the changing stance on sports gambling.¹⁷⁶ The Coalition to Stop Online Gambling and Stop Predatory Gambling each provided opposition testimony to embracing sports gambling.¹⁷⁷ They lobbied the committee to ensure protection for states that do not choose to authorize sports betting, especially to shield children from the potential harms of gambling.¹⁷⁸

¹⁷² *Id.*

¹⁷³ *Id.* (“The NFL’s concerns are centered on protecting game integrity.”).

¹⁷⁴ *Id.* (“In any federal guidelines, the league wants sports betting operators to be required to use official NFL data to settle wagers; authority over what types of wagers are allowed, and beefed-up tools for law enforcement to go after bad actors, among other requests.”).

¹⁷⁵ *Id.* (quoting Sara Slane, senior vice president of the AGA’s testimony, “[t]he bottom line is, with such robust and rigorous regulatory oversight at both the state and federal levels, there is no need to overcomplicate or interfere with a system that is already working.”).

¹⁷⁶ *Id.* (“There was opposition testimony from organizations Stop Predatory Gambling and the Coalition to Stop Online Gambling.”).

¹⁷⁷ *Id.* (“There was opposition testimony from organizations Stop Predatory Gambling and the Coalition to Stop Online Gambling.”).

¹⁷⁸ *Id.* (quoting Jon Bruning, the former Attorney General of Nebraska and now a counselor for the Coalition to Stop Online Gambling stating, “[i]t’s

C. United States Senate Response

In December 2018, Senate Minority Leader Chuck Shumer of New York, and now retired Utah Senator Orrin Hatch, introduced the Sports Wagering Market Integrity Act of 2018.¹⁷⁹ Under the proposed framework, sports betting companies would be required to base the outcomes on wagers based on official league data, in alignment with the NFL's proposals before the House Judiciary Committee.¹⁸⁰ The major sports leagues argue data regulations would guard against sports books using their own fraudulent data to rip off bettors.¹⁸¹

However, this data would need to be purchased from the leagues, at a potentially high price.¹⁸² According to Michelle Minton, Senior Fellow at the Competitive Enterprise Institute, this would give leagues the ability to fix prices at exorbitant rates due to the monopoly the arrangement inherently creates.¹⁸³ Minton also expresses concern over data restrictions growing the already rampant gambling black market, as leagues would control the types of prop bets that bettors can make.¹⁸⁴ If legal gambling operations cannot offer the same types of

going to be up to you to protect states that don't authorize sports betting, to protect the most vulnerable among us, particularly kids.”).

¹⁷⁹ David Purdum & Ryan Rodenberg, *What You Need to Know about the New Federal Sports Betting Bill*, ESPN.COM (Dec. 20, 2018), https://www.espn.com/chalk/story/_/id/25581529/what-need-know-sports-wagering-market-integrity-act-swmia-2018 [https://perma.cc/TH3V-X5YR] (“On Wednesday, U.S. Senators Orrin Hatch (R-Utah) and Chuck Schumer (D-New York) introduced the Sports Wagering Market Integrity Act (SWMIA) of 2018, a comprehensive bill that aims to provide federal oversight to the expanding American legal sports betting market.”).

¹⁸⁰ Patrick Moran, *Anyone's Game: Sports-Betting Regulations after Murphy v. NCAA*, LEGAL POL'Y BULL., (CATO Institute), Mar. 11, 2019, at 5 (“Under Hatch and Schumer's proposed framework, purveyors of sports betting would have to base their betting outcomes on league data—the official results of every play, referee call, and game win—coming from a league itself.”).

¹⁸¹ *Id.* (“Sports leagues argue that data regulations would guard against cheating and prevent purveyors from using fraudulent data to rip off bettors.”).

¹⁸² *Id.* (“Although most people find out the score of a game from third parties such as TV networks or apps, under this type of regulation, purveyors would have to purchase the data, which could be highly valuable, from the leagues.”).

¹⁸³ *Id.* (“according to Michelle Minton, senior fellow at the Competitive Enterprise Institute, it would give the leagues a monopoly over data and allow them to fix prices at an exorbitant rate.”).

¹⁸⁴ *Id.* (“In addition to it having anti-competitive effects, Minton also notes that a league-data purchasing mandate may grow the already prolific sports-

games, odds, and payouts as the illegal market, gambling customers may opt to continue to place wagers illegally, bolstering illegal gambling at the expense of legal sports books.¹⁸⁵ This may further jeopardize the legitimacy of professional and amateur sports as criminal organizations have an increased incentive and revenue stream to attempt to corrupt players and officials.¹⁸⁶ The Hatch-Schumer Bill faces political challenges, however, as in the wake of Hatch's retirement, the bill lacks a Republican sponsor.¹⁸⁷

Concern over the integrity of game outcomes is not a new subject, as it was a policy driver behind PASPA.¹⁸⁸ "Game-fixing" is perceived as one of the greatest issues considered inherent to sports gambling and is rampant in Europe where sports gambling is legal in many countries.¹⁸⁹ It is worth noting that the average salary of a European professional soccer player is \$154,852 compared to the \$2.1 million average salary for an NFL player, which provides a possible increased incentive to take bribes.¹⁹⁰

gambling black market. Her reasoning is straightforward: if leagues control the flow of data, they control the types of bets that bettors can make, and can greatly restrict sports betting.”).

¹⁸⁵ *Id.* (“This type of policy could thus bring an unintended consequence: bolstering the illegal sports-betting market, making it ‘harder ... for legal gambling operators to offer the same types of games, odds, and payouts as the illegal market, ensuring that customers continue to spend their money illegally.’”).

¹⁸⁶ *Id.* (“As a result, match-fixing—the oft-cited fear that accompanies sports-betting legalization—could become more prevalent because ‘it is easier for criminals to hide their behavior and profit in unregulated markets. And, the more the criminals profit ... the more money and incentive they have to attempt to corrupt players and officials.’”).

¹⁸⁷ *Id.* (“The bill would need to be reintroduced in 2019 to move forward, and there is currently no Republican sponsor for it in the wake of Hatch’s retirement.”).

¹⁸⁸ Mills, *supra* note 122, at 216 (describing Congress’s intent behind PASPA to guard the integrity of sports).

¹⁸⁹ Moran, *supra* note 180, at 6 (“They may have some cause for concern: after all, sports betting is legal in many European countries, and their soccer leagues are burdened with a match-fixing problem”).

¹⁹⁰ *Id.* (“But salary discrepancies between U.S. and European athletes have a strong effect on the prevalence of cheating. European soccer players, on average, bring home \$154,852, compared to an average salary of \$2.1 million for an NFL (National Football League) player.”).

However, although athletes in the four major U.S. professional leagues are paid far higher than those in Europe,¹⁹¹ the same cannot be said for U.S. college athletes who are notoriously uncompensated beyond certain scholarships and meal stipends.¹⁹² In the late 1970s and early 1980s, the Boston College point shaving scandal and ensuing federal trial captivated the nation.¹⁹³ Three Boston College players were implicated in assisting New York mob members to fix games by manipulating the final game score in exchange for cash (and their physical safety), landing the leader of the three a 10-year jail sentence.¹⁹⁴ While the actual results of the point shaving scheme were mixed, the story involving “the mob, a rat, gambling, and athletes on the take” inspired Hollywood elite Martin Scorsese to model his 1990 mob classic “Goodfellas” after the gangsters involved.¹⁹⁵ The Boston College point shaving scandal represents the exact paradigm that professional leagues, sports books, and Congress need to avoid as sports gambling becomes widely legalized.¹⁹⁶

¹⁹¹ *Id.* at 6–7 (“But salary discrepancies between U.S. and European athletes have a strong effect on the prevalence of cheating.”).

¹⁹² While college “student-athletes” have long been unable to be paid for play or to profit off their likeness under NCAA rules, this area is largely in flux due to a California law prompting policy changes from the NCAA, the effects of which are yet to be seen. Colin Dwyer, *NCAA Plans to Allow College Athletes to get Paid for use of their Names, Images*, NPR (Oct. 29, 2019), available at <https://www.npr.org/2019/10/29/774439078/ncaa-starts-process-to-allow-compensation-for-college-athletes> [<https://perma.cc/MR8P-KJ9J>].

¹⁹³ David Purdum, *The Worst Fix Ever*, ESPN.COM (Oct. 3, 2014), available at https://www.espn.com/espn/chalk/story/_/id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal [<https://perma.cc/2B6M-3MKV>] (“Attorney Leonard Sharon represented Mazzei in the federal trial that began in the fall of 1981 in New York City. The case captivated the public, making the national news.”).

¹⁹⁴ *Id.* (“Three Boston College players—leading scorer Ernie Cobb, forward Richard Kuhn and Sweeney, the team’s point guard—were fingered by Hill for participating in the point-shaving scheme. Kuhn acknowledged his role and was the only player convicted, Cobb admitted to accepting \$1,000 and Sweeney said he took \$500. But both deny willingly participating on the court. Cobb was indicted, but acquitted. Sweeney was never charged. Kuhn received a 10-year sentence.”).

¹⁹⁵ *Id.* (“It had all the sexy storylines: the mob, a rat, gambling and athletes on the take. Hollywood great Martin Scorsese framed his 1990 classic “Goodfellas” on the gangsters involved.”).

¹⁹⁶ See Moran, *supra* note 180, at 6 (exemplifying the importance of creating careful policy surrounding sports betting to deter criminal activity).

To compensate for the anticipated increase in costs required to protect the integrity of professional sports leagues, the leagues are proposing an integrity fee in the form of 1% of the total amount bet on their sport.¹⁹⁷ Sports gambling purveyors oppose the notion that they do not already fight to protect the integrity of the leagues, stating they have fought to protect integrity for decades as their interest in games free from fixing is in line with the league's concerns.¹⁹⁸ Essentially, sports books argue against the integrity fee, which would eat into their margins, because they contend that gamblers will not spend money to wager on a game they perceive is fixed, thus games free from outside influences are and always have been in the gamblers' best interest.¹⁹⁹ Nonetheless, the leagues further argue the integrity fee would compensate them for the value and revenue the sports books derive from their contests.²⁰⁰

III. Recommended Regulation

In the wake of *Murphy*, one thing is clear: an increasing number of states will continue to legalize sports gambling across the country.²⁰¹ However, due to the importance of sports in the culture of the United States, and the weight given by lawmakers to the inherent stigma that gambling leads to corruption, it is integral that regulations

¹⁹⁷ *Id.* at 7 (“In short, the leagues admittedly want to be paid for supporting a sports-related industry. A 1 percent integrity fee, they argue, is reasonable, considering that sports leagues host the competitive events from which purveyors and bettors profit.”).

¹⁹⁸ *Id.* (quoting Jay Kornegay, vice president of the Race and Sports Super-Book at the Westgate Las Vegas Resort and Casino, stating “[w]e’ve been protecting the games and the product for four decades. Some have been acting like we haven’t been doing this . . . we want to protect the game like you do. Integrity is the name of the game for us.”).

¹⁹⁹ *Id.* (“Since “a legal Nevada sports book” sees just 3.5–5 percent in revenue, however, a 1 percent fee would actually be 20–29 percent of a purveyor’s total revenue”).

²⁰⁰ *Id.* (“The second purpose of an integrity fee, apart from covering the increased costs of enforcement, is to compensate the leagues for the value that betting purveyors derive from the game itself.”).

²⁰¹ Scott Scherer, *Sports Betting After Murphy v. NCAA*, NEVADA GAMING LAWYER (Sept. 2018) (discussing states’ responses to *Murphy* and outlining which states are currently debating legalization).

address the concerns surrounding integrity.²⁰² While experts suggest that the salaries paid to American professional athletes may curb the game-fixing seen in less lucrative European soccer leagues, this justification does not hold true for student athletes who are notoriously unpaid for their participation in high profile NCAA competitions.²⁰³ In order to address this concern, sports gambling companies involved in U.S. college sports betting must be required to investigate and disclose any integrity problems they become aware of.²⁰⁴ As the purveyors already claim to have integrity incentives aligned with the leagues, the best approach is for the two cohorts to work together to establish anti-game-fixing policies and procedures.²⁰⁵ To do so, lawmakers should strengthen a pre-existing bill—the Gaming Accountability and Modernization Act of 2017—to better address the leagues and casinos concerns, while also removing ambiguity from the sports gambling web of legislation by amending and restating the Wire Act.

A. Anti-Game Fixing Regulations through the GAME Act

To alleviate anti-competition concerns surrounding data restrictions, regulation paralleling securities “blue sky” laws should be put in place to increase disclosure.²⁰⁶ Blue sky laws vary from state to state, but generally require companies offering securities to register their offerings and require a number of standard disclosures to be made

²⁰² *Id.* (“A major [cheating] scandal, however, would halt the spread of legal sports wagering in its tracks and could be the type of outside force necessary to get Congress to act, either to prohibit sports betting directly, as the majority in *Murphy* suggested would be permissible, or to regulate sports betting more strictly (and impose its own additional taxes).”

²⁰³ Moran, *supra* note 180, at 7 (referencing remarks from Scott Minto, director of the sports master’s of business administration program at San Diego State University, who believes the American economy and high salaries relieve the temptation to take bribes to fix games).

²⁰⁴ *Id.* at 6–7 (emphasizing that it is the large salary paid to professional athletes that is the primary deterrent to game-fixing).

²⁰⁵ See *supra* text accompanying notes 197–99 (explaining the aligned interests between sports purveyors and sports leagues).

²⁰⁶ Securities and Exchange Commission, *Blue Sky Laws*, Fast Answers, SEC.gov (Oct. 14, 2014), available at <https://www.sec.gov/fast-answers/answers-blueskyhtm.html> [<https://perma.cc/DF5D-MTBA>] (providing a general description the purpose and requirements of Blue Sky Laws).

to the public.²⁰⁷ These measures are designed to protect investors against fraudulent sales practices and activities.²⁰⁸ In the sports gambling context, standard required disclosures would include publishing the official data provider the sports book will use to settle the results of all wagers, before the bet is placed. The data may then further be required to be procured from an independent, verified third-party provider. By requiring third-party data, the leagues would not have a monopoly over the data, and thus competitive pricing would be obtained.²⁰⁹ In addition, the casino would not have sole control over the data, and thus the wager outcomes, removing the semblance of fraud in controversial determinations, while still allowing the purveyors to offer a wide array of prop bets.²¹⁰

One avenue for implementing these measures is through a bill already introduced, but not acted upon, in the House of Representatives.²¹¹ In December of 2017, New Jersey Representative Frank Pallone, Jr. introduced the Gaming Accountability and Modernization Enhancement Act of 2017 (the GAME Act).²¹² Introduced pre-*Murphy* and referred to both the Committee on Energy and Commerce and the Committee on the Judiciary, the bill:

²⁰⁷ *Id.* (“In addition to the federal securities laws, every state has its own set of securities laws—commonly referred to as “Blue Sky Laws”—that are designed to protect investors against fraudulent sales practices and activities. While these laws do vary from state to state, most state laws typically require companies making offerings of securities to register their offerings before they can be sold in a particular state, unless a specific state exemption is available. The laws also license brokerage firms, their brokers, and investment adviser representatives.”).

²⁰⁸ *Id.* (noting that these laws seek to protect investors through their antifraud provisions).

²⁰⁹ *See Moran, supra* note 180, at 5–6 (stating that using league provided data would “give the leagues a monopoly over data and allow them to fix prices at an exorbitant rate”).

²¹⁰ *See id.* at 5 (“Sports leagues argue that data regulations would guard against cheating and prevent purveyors from using fraudulent data to rip off bettors ...”).

²¹¹ Gaming Accountability Modernization Enhancement Act of 2017, H.R. 4530, 115th Cong. (2017) (“The GAME Act of 2017”) (proposing new regulations that would exempt a person or entity from “civil or criminal liability under Federal law for gaming activity that is lawful under State law”).

²¹² *Id.* at 1 (“Mr. Pallone introduced the following bill ... for consideration of such provisions as fall within the jurisdiction of the committee concerned.”).

... (1) prohibits federal liability for gaming activity that is lawful under state law if such law provides for certain consumer protections with respect to the activity, (2) makes it unlawful to accept a credit card payment for age verification for placing any bet or wager, (3) amends the Public Health Service Act to require the Department of Health and Human Services to establish and implement programs for prevention and treatment of gambling addiction, and (4) repeals the professional and amateur sports protection prohibition (commonly referred to as the Professional and Amateur Sports Protection Act) ...²¹³

among other purposes.²¹⁴

Under the GAME Act, a gambler is not subject to civil or criminal liability under any federal law so long as they engage in gambling activities through a sports book that is legal and licensed in their state of operation and meets certain minimum consumer protections.²¹⁵ Other than licensing, the first consumer protection requirement of the GAME Act is for gaming facilities to adhere to reporting requirements which ensure gaming facilities operate in a fair and transparent manner.²¹⁶

The broad and underdeveloped requirements alluded to in the GAME Act could be strengthened by expressly including the requirement that sports books use a verified third-party statistics provider to settle all wagers. The name of the third-party provider employed by the sportsbook should be available to the gambler before they place the wager to allow them the opportunity to do their own diligence on the statistics provider before placing the wager. Using a third-party ensures that consumers are protected by having an identifiable body tasked with publishing the statistics used to settle wagers, while not allowing the professional leagues to have a monopoly on the data.

²¹³ *Id.* at 2, 5, 8, 25 (describing the purposes for which the legislation is proposed).

²¹⁴ *Id.*

²¹⁵ *Id.* at 2(b) (ensuring gambling consumers are free from civil or criminal penalties so long as their state complies with minimum consumer protection standards).

²¹⁶ *Id.* at 2(b)(2) (“REPORTING REQUIREMENTS FOR GAMING FACILITIES.—Appropriate mechanisms, including reporting requirements, to ensure, to a reasonable degree of certainty, that gaming facilities are operating in a fair and transparent manner”).

The GAME Act further aims to protect consumers by requiring sports books to employ safeguards to ensure they do not accept wagers from underage persons and from persons located in a jurisdiction where such sports gambling is prohibited.²¹⁷ In addition, the GAME Act requires sports books to employ safeguards designed to combat compulsive gambling and forces the sports book to collect all federal and state taxes associated with customer gambling wagers at the time of any payout of the proceeds of such wager.²¹⁸ Finally, the GAME Act further requires sports books to employ appropriate safeguards to protect the integrity of sporting events.²¹⁹ While this requirement is a solid start to address the integrity of sporting events, the language of the GAME Act could be strengthened by requiring mandatory investigations when reasonable suspicion exists that game or line fixing has occurred. Further, safeguards could be required where sports books are required to file integrity reports when a gambler or number of gamblers appear to be engaging in gambling patterns which are consistent with game fixing or money laundering.

B. Amendment and Restatement of the Wire Act

The most effective way to untangle the messy web of outdated federal legislation pertaining to sports gambling is to amend the Wire Act. The OLC put it best in their 2018 report when they stated that the Wire Act is, “not a model of artful drafting.”²²⁰ Due to the lackluster drafting, the OLC was afforded the opportunity to conclude that the Wire Act extends beyond wagers pertaining to sporting events, to all gambling transactions.²²¹ This interpretation stands in stark contrast to the legislative intent of the statute, which clearly intended for the Wire Act to only control bets and wagers that relate to sporting events.²²² As

²¹⁷ *Id.* at 2(b)(3) (proscribing sports books take reasonable measures to prohibit underage gambling).

²¹⁸ *Id.* at 2(b)(5) (describing the need to collect appropriate federal and state taxes).

²¹⁹ *Id.* at 2(b)(10)–(11) (requiring safeguards against cheating and to protect the integrity of sporting events such as wager limits).

²²⁰ Engel, *supra* note 35, at 2.

²²¹ *Id.* (finding the Wire Act applies to all forms of illegal gambling).

²²² Minton, *supra* note 36 (detailing the Wire Act’s legislative history which stands to support the assertion that the intent of the Wire Act was to control only sports gambling).

noted in the 2011 OLC opinion, which interpreted non-sports gambling to be beyond the scope of the Wire Act:

[A]lthough Congress was most concerned about horse racing, testimony during the hearings also highlighted the increasing importance of rapid wire communications to “large-scale” betting operations’ involving other professional and amateur sporting events, such as baseball, basketball, football, and boxing.... This focus on sports-related betting makes sense, as the record before Congress indicated that sports bookmaking was the principal gambling activity for which crime syndicates were using wire communications at the time.²²³

Given the more recent OLC interpretation of the Wire Act which is not in line with the legislative intent, the Wire Act should be amended to unambiguously bring the statute in line with its original intent. To do so, the first and second clause of the Wire Act should be amended such that the modifier “on any sporting event or contest” should immediately follow all instances of the phrase “bets or wagers” in each of the Wire Act’s four statutory prohibitions, where it does not already occur following the second. The relevant text of the Wire Act would therefore read:

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 [on any sporting event or contest] 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 [on any sporting event or contest], or for information assisting in the placing of bets or wagers [on any sporting event or contest], shall be fined under this title or imprisoned not more than two years, or both.²²⁴

²²³ Attorney General’s Opinion Reconsidering Applicability of the Wire Act, Op. Att’y Gen., *supra* note 48, at 10.

²²⁴ 18 U.S.C.A. § 1084(a) (proposed language added).

In the OLC's 2018 opinion, great weight was given to the canon of statutory construction known as the "last-antecedent rule."²²⁵ Under that rule, a modifier is only interpreted to modify the noun or phrase that it immediately follows.²²⁶ Adding the modifier "on any sporting event or contest" unambiguously requires the interpretation that non-sports related gambling activity is beyond the scope of the Wire Act.

In addition, the Wire Act should be amended to require a state law violation in order to sustain a cause of action. By adding this qualification, the Wire Act would be brought in line with other federal gambling law statutes, such as the Travel Act, the Paraphernalia Act, the IGBA, and the UIGEA, which all require a state law violation.²²⁷ Lastly, the Wire Act should be amended to add a modern definition of "wire communication facility transmission," which clearly indicates that uses of the Internet, both wired and wireless, are considered wire transmissions. The definition should also include a carve out for the transmission of data simply for processing, such as routing of data through a server or data center located in another state. This change would make clear that only two states are relevant in the analysis: the state where the bettor completed the act of placing the online wager and the state where the sportsbook is licensed. In doing so, the Wire Act would unambiguously open the door for states to permit Internet gambling, if they so choose.

The combination of an improved GAME Act, which strives to protect consumers who wager on sporting events, with a modernized Wire Act that permits—but does not compel—states to allow Internet gambling would shift the U.S. sports gambling landscape in a manner which would allow each state to make individual decisions on if and how they decide to implement sports gambling, with a baseline set of regulations they must follow.

²²⁵ Engel, *supra* note 35, at 6 (interpreting the Wire Act using the last-antecedent rule to conclude "on a sporting event or contest" does not carry through to all of the Wire Act's prohibitions).

²²⁶ *Id.* at 8 ("That rule, the 'last-antecedent rule,' 'reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it.'").

²²⁷ Wallach, *supra* note 143 (explaining how the Wire Act stands in contrast with other anti-wagering statutes which require a predicate state law violation).

Conclusion

The current web of confusing and outdated federal sports gambling laws force states and sports books to “roll the dice” when it comes to staying in line with the law.²²⁸ In the wake of *Murphy*, a majority of U.S. states are evaluating if and how to implement sports gambling in order to take advantage of the billion-dollar industry they are now able to tap into.²²⁹ Standing between them and millions of dollars of annual tax revenue are a number of outdated federal laws designed to curb black-market, illegal gambling operations and a number of questions surrounding their interpretation.²³⁰ Beyond that are numerous concerns about the implications of sports gambling on consumers and the sports from which the wagers are placed on.²³¹

The most important step in untangling this web of federal regulations is to amend the Wire Act. The plain language of the Wire Act remains outdated, from a time long before the Internet, and from an era where all anti-gambling legislation was intended to stifle organized crime.²³² Updating the Wire Act’s language to acknowledge the existence of the Internet, limit the Act’s scope to only sports gambling, and to only prohibit transmissions into and from states where gambling is illegal on the state level is paramount. Doing so will allow states to enact legislation that affords them full control over sports gambling in their state without fear of their licensed establishments or patrons running afoul of federal law.

In order to address concerns over consumer protection and the preservation of the integrity of American sports as we know them, a national set of baseline regulations needs to be put in place. To do this, the GAME Act of 2017 should be strengthened and reintroduced to Congress.²³³ The improved GAME Act will provide minimum safe-

²²⁸ Ciaccio, *supra* note 20, at 529 (“the uncertainty of the law forces would-be bettors and companies to either play it safe or throw the dice”).

²²⁹ Scherer, *supra* note 201, at 40 (describing various states’ responses to *Murphy* and theorizing sorts gambling will spread to most states).

²³⁰ Ciaccio, *supra* note 20, at 532, 539, 543 (describing the various federal laws pertaining to gambling).

²³¹ Smiley, *supra* note 1 (describing the social and moral implications of sports gambling).

²³² Sporting Events—Transmissions of Bets, Wagers, and Related Information, H.R. Rep. 87-967 (1961) (stating the purpose of the bill was to suppress organized gambling crime).

²³³ See generally Gaming Accountability Modernization Enhancement Act of 2017, H.R. 4530, 115th Cong. (2017)

guards that all U.S.-based sports books need to follow and will provide U.S. consumers the peace of mind and freedom from prosecution for placing a sports wager at a licensed sportsbook.²³⁴ The regulations will ensure traditional social concerns, such as underage and compulsive gambling, are minimized, while also taking measures to combat game fixing and money laundering. Once these steps are taken, states will be free to leave the gambling to wagers on sports, and not on betting on federal penalties.

²³⁴ *Id.* (requiring states meet minimum consumer protection standards in order to legally license sports gambling).