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Zach Schreiber
Fordham University School of Law, zschreiber@fordham.edu

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J.D. Candidate, Fordham University School of Law, February 2018; Editor-in-Chief, Fordham Sports Law Forum; Notes & Articles Editor, Fordham Intellectual Property, Media & Entertainment Law Journal, Volume XXVII. He is also a sports agent who represents professional athletes worldwide. This Note reflects his views solely as a law student and is not related to his professional position.

The Time Is Now: Why the United States Should Adopt the British Model of Sports Betting Legislation

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INTRODUCTION

Gambling has been the subject of controversy since its inception. While some claim that it is a "gentleman's game"[1] and a means of social entertainment, others argue that it is a sinful endeavor that enables corruption, scandal, and addiction.[2] Today, there are several different types of gambling that occur in the United States—all with varying degrees of legality and regulation. For example, betting on horse racing is legal throughout the United States, and state-sanctioned lotteries are present in forty-four of fifty states.[3] Commercial casinos, like those in Las Vegas and Atlantic City, are regulated on a state-by-state basis, and gambling on card games is legal in over twenty states (and counting).[4] This Note focuses on betting in professional sports, which is more tightly controlled than any of the other games of chance. With the prevalence of daily fantasy sports and the tentative merger between its two largest providers, FanDuel and DraftKings,[5] sports betting has been at the forefront of the news as it relates to gaming law.

The United States has taken a strict regulatory approach toward sports betting,[6] which is inconsistent with its stance toward other types of gambling, such as slot machines, horse racing, lotteries, and, most recently, daily fantasy sports.[7] Federal laws instituted by Congress aim to prohibit sports betting nationwide, granting exception to states that had expressly legalized it before the passage of these laws.[8] However, the federal government leaves the

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1 ROGER DUNSTAN, HISTORY OF GAMBLING IN THE UNITED STATES ch. 2 (1997), http://www.library.ca.gov/crb/97/03/chapt2.html [https://perma.cc/7FJ9-RRYK].

2 CORNELL INST. ON ORGANIZED CRIME, THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776–1976 at 41 (1976) (chronicling colonial period gambling efforts); JOHN M. FINDLAY, PEOPLE OF CHANCE 14–15 (1986).

3 *See* Chris Isidore, *Seven States That Don't Have Lotteries*, CNN (Dec. 17, 2013, 1:16 PM), http://money.cnn.com/2013/12/17/news/economy/states-without-lotteries [https://perma.cc/YG3D-664W].

4 DAVID G. SCHWARTZ, UNLV CTR. FOR GAMING RESEARCH, UNITED STATES COMMERCIAL CASINO REVENUES (2016), http://gaming.unlv.edu/reports/national_annual_revenues.pdf [https://perma.cc/M32A-3XC2].

5 Joe Drape, *DraftKings and FanDuel Agree to Merge Daily Fantasy Sports Operations,* N.Y. Times (Nov. 18, 2016), http://www.nytimes.com/2016/11/19/sports/draftkings-fanduel-merger-fantasy-sports.html [https://perma.cc/A4V4-LUMT].

6 *See* 28 U.S.C. § 3702 (2012).

7 *See generally* DUNSTAN, *supra* note 1.

8 § 3702.

regulation of other types of gambling to individual states.[9] Congress has made its position on sports betting clear with federal statutes such as the Wire Act of 1961 (the "Wire Act")[10] and the Professional and Amateur Sports Protection Act of 1992 ("PASPA").[11] Due in part to the introduction and rise of new betting companies in recent years, such as FanDuel and DraftKings, which have altered the way in which bettors can wager on sports, the public has been more vocal in relation to these restrictive laws.[12]

On the other side of the Atlantic, the United Kingdom has taken a drastically different approach. According to a study on gambling prevalence conducted in 2010, over seventy-three percent of the British population have engaged in some form of gambling.[13] While there were certainly issues of concern with the legalization of sports betting, the U.K. Parliament believed it would be counterintuitive to outright prohibit a multi-billion dollar industry, especially one with overwhelming participation by a majority of the population.[14]

Coincidentally, the United Kingdom passed its first significant betting law at the same time as the United States.[15] In 1960, the United Kingdom enacted the Betting and Gaming Act, which lega-

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9 *See generally* DUNSTAN, *supra* note 1.

10 18 U.S.C. §§ 1081, 1084 (2012).

11 28 U.S.C. §§ 3701–3704 (2012).

12 *See* Marc Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law*, 2016 U. ILL. L. REV. 117, 136. *See generally* James C. W. Goodall, Note, *Bringing Down the House: An Examination of the Law and Policy Underpinning the Professional and Amateur Sports Protection Act of 1992*, 67 RUTGERS U. L. REV. 1097, 1105 (2015); Chil Woo, Note, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)*, 31 CARDOZO ARTS & ENT. L.J. 569, 574 (2013).

13 Rohani Mahyera, Comment, *Saving Cricket: A Proposal for the Legalization of Gambling in India to Regulate Corrupt Betting Practices in Cricket*, 26 EMORY INT'L L. REV. 365, 385 (2012) (citing HEATHER WARDLE ET AL., NAT'L CTR. FOR SOC. RESEARCH, BRITISH GAMBLING PREVALENCE SURVEY 73 (2011)); *see also* Michael Buteau, *Americans Support Legal Gambling on Sports, Poll Says*, BLOOMBERG (Nov. 20, 2014 2:58 PM), http://www.bloomberg.com/news/articles/2014-11-20/americans-support-legal-gambling-on-sports-poll-says [https://perma.cc/J42Q-F7AF].

14 Mahyera, *supra* note 13.

15 Betting and Gaming Act 1960, 8 & 9 Eliz. 2 c. 60 (Eng.).

lized sports betting throughout the nation.[16] Although it was a milestone, the Act did not achieve its specific goals as a result of its "poor drafting and lax enforcement."[17] This prompted Parliament to subsequently pass the Gambling Act of 2005.[18] Currently, sports betting is legal, widespread, and safe from threats of corruption and manipulation throughout the United Kingdom.[19]

Considering the current federal statutes in the United States and the legal framework of sports betting policies in the United Kingdom, this Note recommends that Congress revise the United States sports betting laws and adopt the U.K. model of legalization and regulation. Although it is recognized that the United Kingdom has a single layer of government, as opposed to the United States' dual system of federal and state governments, this Note takes the position that the state governments would likely pass similar legislation once the federal prohibitions are repealed. Since a majority of Americans agree that sports betting should be legalized, it follows that the state governments would recognize the wants and desires of their populations.[20]

Part I of this Note examines the history of sports betting and discusses its origins and the motivations behind the legislation in both countries, such as notorious betting scandals in professional sports. Part II reviews the federal framework currently in place in the United States by surveying the history and implementation of the Wire Act and discussing the legislative history and subsequent enactment of PASPA. Part II also considers one of the latest attacks on these laws by state governments. Part III analyzes the sports betting landscape in the United Kingdom by reviewing the history of sports betting internationally and presenting a discussion of the laws that regulate legal sports gambling in the United Kingdom. Part III also examines the Betting and Gaming Act of 1960—the first major change in the United Kingdom's betting policy—and reviews the Gambling Act of 2005 (on which this Note intends to base its model). Part IV proposes that the United States should

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16 *Id.*

17 Alex Gunning, *Taking a Gamble*, 158 NEW L.J. 837 (2008).

18 Gambling Act 2005, c. 19 (UK).

19 *See generally* Gunning, *supra* note 17.

20 Buteau, *supra* note 14.

adopt the U.K. model of sports betting legislation, wherein Congress should follow the lead set by the U.K. Parliament, and discusses the economic benefits of a legalized sports betting industry. This Note concludes that the United States should set up a gaming commission and legalize sports betting nationwide, while regulating it to protect against corruption.

I. SPORTS GAMBLING IN A HISTORICAL CONTEXT

The act of wagering on the outcome of an event is "one of mankind's oldest activities."[21] Religious texts such as the Jewish Talmud and the Bible provide evidence of gambling in ancient civilizations.[22] Emperor Augustus, the founder and first ruler of the Roman Empire, was well-known for importing great athletes from across the world in order to wager on events ranging from chariot racing, to wrestling, to long-distance footraces of up to 128 miles in the Circus Maximus of Rome.[23] Currently, as has been the case throughout history, gambling encompasses all social classes, but plays its largest role in the lives of the lower class.[24] Barbara Dafoe Whitehead, an opinion writer for the The *New York Times*, recently stated that "[c]asino gambling had by far the most harmful effects on people at the lower end of the income ladder."[25]

The legality and morality of sports betting have always been in question. In the United States, Professor I. Nelson Rose was the first to identify the three waves of gambling regulation in the Unit-

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[21] *See Gambling*, ENCYCLOPEDIA BRITANNICA, http://www.britannica.com/topic/gambling [https://perma.cc/3Z8E-FHQ4] (last visited Sept. 23, 2016).

[22] *Id.*; *see also Jonah* 1:7 (recounting a story in which sailors casted lots to determine who brought God's wrath upon Jonah's ship); *Joshua* 14:21 (describing the the casting of lots to divide land); Eliezer Danzinger, *What is the Jewish View on Gambling?*, CHABAD (Dec. 1, 2007), http://www.chabad.org/library/article_cdo/aid/604309/jewish/What-is-the-Jewish-view-on-gambling.htm [https://perma.cc/7K8Q-6ZMR].

[23] NIGEL B. CROWTHER, SPORT IN ANCIENT TIMES 83 (Bella Vivante ed., 2007). *See generally* JOHN H. HUMPHREY, ROMAN CIRCUSES: ARENAS FOR CHARIOT RACING (1986).

[24] CROWTHER, *supra* note 23, at 128; Barbara Dafoe Whitehead, Opinion, *Gaming the Poor*, N.Y. TIMES (June 21, 2014, 3:34 PM), http://opinionator.blogs.nytimes.com/2014/06/21/gaming-the-poor/?_r=0 [https://perma.cc/VE8N-YYD7].

[25] Whitehead, *supra* note 24.

ed States.[26] The first wave started with the early settlers of the seventeenth century, who brought with them a varied set of ideologies.[27] In colonies located in New England and Pennsylvania, Puritan values were the most prevalent.[28] The Massachusetts Bay Colony, which was at the center of the Puritan movement, even banned the possession of cards and dice in an effort to protect against what they believed to be a sinful vice.[29] Although America was founded on the principle of religious freedom, the freedom to wager was counter to the values of Puritanism.[30]

Other American colonies, such as the colony of Jamestown in Virginia, however, did not hold the same restrictive beliefs as the Puritans. Many settlers maintained the English attitude toward gambling.[31] Although, at the time, gambling was limited to games considered to be "gentleman's games," the appeal "symbolized the gambling spirit that has characterized" the typical American settler.[32] Both gamblers and settlers relied on high expectations, risk taking, opportunism, and movement.[33] While the first racetrack in America was built on Long Island in 1665, records in the United Kingdom trace horse racing back to the ninth century A.D.[34] Archeological records show that horse racing existed in the civilizations of Ancient Greece, Egypt, and Babylon.[35] Both chariot

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[26] DUNSTAN, *supra* note 1; I. Nelson Rose, *The Rise and Fall of the Third Wave: Gambling Will Be Outlawed in Forty Years*, AM. POL'Y ROUNDTABLE (May 12, 2006), http://www.aproundtable.org/news.cfm?news_ID=1288&issuecode=casino [https://perma.cc/78S3-U675].

[27] Rose, *supra* note 26.

[28] *See* DUNSTAN, *supra* note 1.

[29] *See id.*

[30] CORNELL INST. ON ORGANIZED CRIME, *supra* note 2; BENJAMIN WOODS LABAREE, COLONIAL MASSACHUSETTS: A HISTORY 17 (1979); *see also* I. Nelson Rose, *Gambling and the Law: The Third Wave of Legal Gambling*, 17 VILL. SPORTS & ENT. L.J. 361, 362 (2010).

[31] DUNSTAN, *supra* note 1.

[32] FINDLAY, *supra* note 2.

[33] *Id.*

[34] JAMES CHRISTIE WHYTE, HISTORY OF THE BRITISH TURF: FROM THE EARLIEST PERIOD TO THE PRESENT DAY 19 (1840); *Horse Racing History*, WINNING PONIES, http://www.winningponies.com/horse-racing-history.html [https://perma.cc/7QFN-3ADA] (last visited Sept. 23, 2016).

[35] *Animals in Sports—The Roots of Animal Sports*, LIBR. INDEX, http://www.libraryindex.com/pages/2186/Animals-in-Sports-ROOTS-ANIMAL-SPORTS.html [https://perma.cc/YP29-RX7U] (last visited Sept. 23, 2016).

and mounted horse racing were even featured sports in the Ancient Greek Olympics.[36]

In both the United States and United Kingdom, the public perception toward gambling has swayed over the centuries.[37] At times it was viewed as a welcomed distraction, while at other points it was categorized as a vice that needed to be outlawed. Professor Rose's first wave of gambling came to a close in the mid-1800s as the prevalence of corruption in gambling came to the surface.[38] The unpredictability of the future of America, juxtaposed with the long—and relatively steady—history of the United Kingdom, set the stage for the fluctuation in America's perspectives on social issues, and gambling in particular.[39]

The second wave of gambling emerged with the California Gold Rush of the mid-1800s.[40] The frontier spirit was revitalized, along with a seemingly endless supply of gold with which to gamble.[41] During this time, legal casinos "dominated the heart of Gold Rush San Francisco," and the Louisiana Lottery sold millions of tickets in nearly every city nationwide.[42] This boom of gambling, however, was followed by a resurgence of fraud and corruption.[43]

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[36] *Equestrian Events*, HELLENISM, http://www.hellenism.com/olympics/ancient games/equestrian.htm [https://perma.cc/VBA5-7WZN] (last visited Sept. 23, 2016).

[37] DUNSTAN, *supra* note 1.

[38] Rose, *supra* note 26.

[39] *See generally* Gabrielle A. Brenner & Reuven Brenner, *Gambling: The Shaping of an Opinion*, 6 J. GAMBLING STUD. 297 (1990).

[40] Rose, *supra* note 26.

[41] FINDLAY, *supra* note 2, at 82.

[42] Rose, *supra* note 26.

[43] *See generally* Tom Airey & Paul Burnell, *Man Utd v Liverpool: The 1915 Good Friday Betting Scandal*, BBC NEWS (Apr. 3, 2015), http://www.bbc.com/news/uk-england-manchester-32152534 [https://perma.cc/2X38-JYLL]; Adam Crafton, *Inside the Sensational Match-Fixing Scandal Involving Manchester United and Liverpool*, DAILY MAIL (Feb. 8, 2013), http://www.dailymail.co.uk/sport/football/article-2275060/Manchester-United-Liverpool-incredible-match-fixing-scandal-1915.html [https://perma.cc/L73J-8L9C]; *Eight White Sox Are Indicted; Cicotte and Jackson Confess Gamblers Paid Them $15,000*, N.Y. TRIB. (Sept. 29, 1920), http://chroniclingamerica.loc.gov/lccn/sn83030214/1920-09-29/ed-1/seq-1/#words=Indicted+indicted+Eight+eight+Sox+White [https://perma.cc/732Q-NEEG] [hereinafter *Eight White Sox*]; *Owner of White Sox Terminates Contracts Existing at Time of Suspension*, N.Y. TRIB. (Mar. 17, 1921), http://chroniclingamerica.loc.gov/lccn/sn83030214/1921-03-17/ed-1/seq-12/#words=Owner+Sox+White+Terminates+Contracts [https://perma.cc/7Y3F-996V] [hereinafter *Owner of White Sox*].

In both the United States and the United Kingdom, highly publicized scandals in sports betting diminished public support of the activity.[44] In what was arguably the biggest match-fixing scandal of all time, players on the Chicago White Sox were bribed to throw the 1919 World Series against the Cincinnati Reds in a gambling ring spearheaded by notorious mobster Arnold Rothstein.[45] Infamously known as the "Black Sox," eight players from the Chicago team were subsequently banned from professional baseball for life, and their contracts were immediately terminated.[46] The 1919 World Series was the first major sporting event after World War I, and the fanfare around the series was at an all-time high.[47] However, baseball players at the time were not paid the sizeable salaries that they now earn in the twenty-first century.[48] With the White Sox picked as the favorite to win, and the average player only making a few thousand dollars per season, a high-stakes bettor was able to pay off the team to intentionally lose the series.[49] It is true that there had been other betting scandals in professional sports, such as the throwing of the 1906 Ohio League Football Championship—the first major scandal in professional football.[50] There had even

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[44] Airey & Burnell, *supra* note 43; *Owner of White Sox*, *supra* note 43.

[45] Douglas Linder, *The Black Sox Trial: An Account*, FAMOUS TRIALS (2010), http://law2.umkc.edu/faculty/projects/ftrials/blacksox/blacksoxaccount.html [https://perma.cc/LL8K-AVBM]; Steve Petrella, *Biggest Betting Scandals in American Sports History*, SPORTING NEWS (Jan. 20, 2016), http://www.sportingnews.com/other-sports/list/sports-betting-gambling-scandals-controversies-biggest-worst-point-shaving-pete-rose-white-sox/b0u4t8x9ze3w1ksj7ux1ab7er/slide/10 [https://perma.cc/KW2X-8STU]; *see also* Allen Boyer, *The Great Gatsby, The Black Sox, High Finance, and American Law*, 88 MICH. L. REV. 328, at 329 (1989).

[46] *Owner of White Sox*, *supra* note 43.

[47] Boyer, *supra* note 45, at 335.

[48] Bob Hoie, *1919 Baseball Salaries and the Mythically Underpaid Chicago White Sox*, 6 BASE BALL: J. EARLY GAME 17, 31 (2012); *see also* Flood v. Kuhn, 407 U.S. 258, 264–65 (1972) (noting that petitioner, a professional baseball player, received a $90,000 salary in 1969).

[49] Michael W. Klein, *Rose Is in Red, Black Sox Are Blue: A Comparison of* Rose v. Giamatti *and the 1921 Black Sox Trial*, 13 HASTINGS COMM. ENT. L.J. 551, 557 (1991); *White Sox Favored to Win World's Championship*, N.Y. TRIB. (Sept. 28, 1919), http://chroniclingamerica.loc.gov/lccn/sn83030214/1919-09-28/ed-1/seq-22/#words=CHAMPIONSHIP+FAVORED+WIN+WORLD+SOX+WHITE [https://perma.cc/B34W-9Q9T].

[50] Bob Braunwart & Bob Carroll, *Blondy Wallace and the Biggest Football Scandal Ever*, 6 COFFIN CORNER, 1984, http://profootballresearchers.com/archives/Website_Files/Coffin_Corner/06-An-209.pdf [https://perma.cc/27DY-G7LB].

been previous match fixing within professional baseball.[51] However, nothing changed the landscape of professional sports and sports betting as substantially as the 1919 Chicago Black Sox did.[52] The phrase "say it ain't so, Joe!"—referring to a young boy's plea to star player "Shoeless" Joe Jackson—was heard around the world, and summed up the emotional toll this scandal took on the public.[53]

The United Kingdom was not without its fair share of match-fixing scandals either. In 1915, during the same era as the "Black Sox," two of England's most prestigious and historic soccer clubs[54] took part in what came to be known as "Britain's first authenticated fixed [soccer] match."[55] Manchester United, currently one of the most valuable sports franchises in the world—worth an estimated three billion U.S. dollars—risked coming in last place in 1915, and faced relegation to a lower division, which would have destroyed the reputation of the team.[56] Their opponent, Liverpool, was in the middle of the pack that year and, from a competitive standpoint, the game was more or less meaningless to them.[57] Three Manchester United players, along with four Liverpool play-

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[51] *See generally* DANIEL E. GINSBURG, THE FIX IS IN: A HISTORY OF BASEBALL GAMBLING AND GAME FIXING SCANDALS 37–51 (2004) (explaining the corruption that took place in 1877 within the Louisville Grays organization).

[52] *See* GENE CARNEY, BURYING THE BLACK SOX: HOW BASEBALL'S COVER-UP OF THE 1919 WORLD SERIES FIX ALMOST SUCCEEDED 130 (2007).

[53] *See id.*

[54] This Note uses the term "soccer" in place of the term "football." Outside of the United States, the sport of "soccer" is called "football." "American football" is the sport that is known to Americans as "football." Emily Thomas, *This Is Why We Call It 'Soccer,' Not 'Football,'* HUFFINGTON POST (June 13, 2014, 3:34 PM), http://www.huffingtonpost.com/2014/06/13/soccer-not-football-_n_5492714.html [https://perma.cc/GW5A-YZLJ].

[55] Airey & Burnell, *supra* note 43; *Eight White Sox*, *supra* note 43.

[56] Kurt Badenhausen, *The World's 50 Most Valuable Sports Teams 2015*, FORBES (July 15, 2015, 9:00 AM), http://www.forbes.com/sites/kurtbadenhausen/2015/07/15/the-worlds-50-most-valuable-sports-teams-2015/#68faf4557fd0 [https://perma.cc/B2KD-UGJG]; *see also Relegate*, CAMBRIDGE DICTIONARIES, http://dictionary.cambridge.org/dictionary/english/relegate?a=british [https://perma.cc/UU6C-46AD] (last visited Sept. 23, 2016) (defining relegation as putting "something into a lower or less important rank or position"). Because Liverpool was not threatened by relegation based on its standing near the end of the 1915 season, a loss against Manchester United would not materially affect the team's standing. *See* Airey & Burnell, *supra* note 43.

[57] *Premiere League 1914/1915 Standings*, WORLDFOOTBALL.NET, http://www.worldfootball.net/schedule/eng-premier-league-1914-1915 [https://perma.cc/8E3M-B6X3] (last visited Feb. 13, 2017).

ers, fixed the match to ensure a two-to-zero victory for Manchester United.[58] There are disputed reports as to whether fixing occurred in order to help Manchester United avoid relegation.[59] Others claim that it was merely a financial opportunity for the players, who were likely to be shipped out to war once the season concluded, and therefore had minimal risk exposure.[60] Several months later, after the conclusion of a league-wide investigation into the scandal, the Football League issued a statement: "It is proved that a considerable sum of money changed hands by betting on the match, and that some of the players profited thereby. By their action they have sought to undermine the whole fabric of the game and discredit its honesty and fairness."[61]

The legality of sports betting through history has varied with the gambling waves, but it was not until these notorious betting scandals, amongst many others during this era, that the real shift in policy occurred.[62] The third wave of sports gambling started to take form in the 1930s, when Nevada became the first state to legalize gambling.[63] Over the next three decades, sports gambling followed a similar trajectory in both the United States and the United Kingdom: the majority of states, and all of the United Kingdom, outright prohibited sports betting.[64]

In the United Kingdom, multiple laws and regulations were enacted to control sports betting throughout the country. In 1906, the British Parliament passed the Street Betting Act, which prohibited placing and accepting bets on streets and in public places.[65] Across the Atlantic, up until 1960, sports betting in the United States was regulated on a state-by-state basis, pursuant to the

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[58] Katarzyna Kordas, *Dropping the Ball: How FIFA Can Address the Match-Fixing Problem Facing Professional Football*, 23 SPORTS L.J. 107, 111 (2016).

[59] Crafton, *supra* note 43.

[60] Kordas, *supra* note 58, at 111.

[61] *Id.* (citing Crafton, *supra* note 43).

[62] DUNSTAN, *supra* note 1.

[63] *Id.*; *A Bit of History: Nevada Gambling Legalized*, 15 UNLV GAMING RES. & REV. J. 95, 95 (citing Assemb. B. 98, 35th Sess. (Nev. 1931)).

[64] Street Betting Act 1906, 6 Edw. 7 c. 43 § 1 (Eng.); Jason Goldstein, Note, *Take the Money Line: PASPA, Bureaucratic Politics, and the Integrity of the Game*, 11 VA. SPORTS & ENT. L.J. 362 (2012).

[65] Street Betting Act 1906, 6 Edw. 7 c. 43 § 1 (Eng.).

Tenth Amendment to the U.S. Constitution.[66] Nevada, Delaware, and Montana legalized sports gambling, as decreed by their respective state legislatures.[67] However, during the 1960s, the former British territory and its ancestral monarchy experienced tectonic shifts in opposite directions. The U.S. Congress passed the Federal Wire Act of 1961, a de facto sports betting prohibition,[68] and the British Parliament passed the Betting and Gaming Act of 1960, which legalized betting throughout the country.[69]

II. THE U.S. APPROACH AND POLICY TOWARD SPORTS GAMBLING

Throughout history, the United States has regularly taken a reactionary approach toward societal issues.[70] A classic example is the enactment of the Eighteenth Amendment to the U.S. Constitution, wherein Congress instituted prohibition in the United States, banning the production, transport, and sale of alcohol nationwide.[71] Laws regulating marriage equality, and other social issues, have similarly followed this construct.[72] By the 1960s, corruption and organized crime in sports betting was reaching a level that could not be controlled by the states alone.[73] To help "crack down on organized crime members [who were] using the telegraph to get results on horse races," then-U.S. Attorney General Robert Kennedy recommended that Congress pass legislation—eventually, the Federal Wire Act of 1961 ("Wire Act")[74]—to make interstate gambling illegal.[75]

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66 U.S. CONST. amend. X.

67 Goldstein, *supra* note 64, at 365.

68 18 U.S.C. § 1084 (2012).

69 Betting and Gaming Act 1960, 8 & 9 Eliz. 2 c. 60 (Eng.).

70 *See* U.S. CONST. amend. XVIII (repealed 1933). *See generally* Tom Watts, *From Windsor to Obergefell: The Struggle for Marriage Equality Continued*, 9 HARV. L. & POL'Y REV. S52 (2015).

71 U.S. CONST. amend. XVIII (repealed 1933).

72 *See* Watts, *supra* note 70.

73 *See* Edelman, *supra* note 12, at 120.

74 18 U.S.C. § 1084 (2012).

75 Janet Whitman, *Game of Chance: Prosecutors Gamble with Online Probes*, N.Y. POST (Sept. 10, 2006), www.pressreader.com/usa/new-york-post/20060910/282089157251452 [https://perma.cc/8UA5-4ST8]; *see also* I. Nelson Rose, *The DOJ Gives States a Gift*, 4 UNLV GAMING L.J. 1, 1 (2013).

A. The Federal Wire Act of 1961

Under the Wire Act, a wire communication is defined as any communication made through "any and all instrumentalities, personnel, and services . . . used or useful in the transmission of writings, signs, pictures, and sounds . . . by aid of wire, cable, or other like connection between the points of origin and reception of such transmission."[76] The bill was passed in part to assist states in the enforcement of their own state gambling laws.[77] By prohibiting wire transmissions of sports scores and results, the goal was to reduce or eliminate betting on sports, particularly via large, interstate criminal enterprises.[78] However, the Wire Act was part of a larger "omnibus crime bill that recognized the need for independent federal action to combat interstate gambling operations."[79]

The Wire Act's main intent—as made clear by its legislative history, as well as by speeches and letters of policy makers—was directed toward combatting organized crime, not the everyday sports bettor.[80] Nevertheless, "the U.S. Department of Justice . . . has used this [A]ct to prosecute professional gamblers."[81] Although the Wire Act "helped to prevent large syndicate operations from participating in interstate gambling activities," it did not regulate any intrastate gambling activities, subsequently allowing the respective state governments to enforce their own laws regarding sports betting as they saw fit.[82]

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[76] 18 U.S.C. § 1081 (2012).

[77] Martin v. United States, 389 F.2d 895, 898 & n.6 (5th Cir. 1968); Goodall, *supra* note 12, at 1105 (citing Jeffrey Rodefer, *Federal Wire Wager Act*, GAMBLING LAW US, http://www.gambling-law-us.com/Federal-Laws/wire-act.htm [https://perma.cc/WLJ4-VZP5] (last visited Sept. 23, 2016)).

[78] Goodall, *supra* note 12, at 1105.

[79] *Martin*, 389 F.2d at 898.

[80] *See* Letter from Robert F. Kennedy, Att'y Gen., to Samuel Rayburn, Speaker of the U.S. House of Representatives (Apr. 6, 1961), *as reprinted in* H.R. REP. NO. 87-967 (1961), *as reprinted in* 1961 U.S.C.C.A.N 2631, 2633.

[81] Edelman, *supra* note 12, at 136 (citing United States v. Donaway, 447 F.2d 940, 944 (9th Cir. 1971); Cohen v. United States, 378 F.2d 751, 756–57 (9th Cir. 1967)).

[82] Jeffrey R. Rodefer, *Internet Gambling in Nevada: Overview of Federal Law*, 6 GAMING L. REV. 393, 394 (2002); Woo, *supra* note 12, at 574 (citing Rodefer, *supra* note 77).

Forty years later, in 2001, the scope of the Wire Act was narrowed as it pertained to Internet gambling.[83] *In re MasterCard International Inc., Internet Gambling Litigation*, a federal district court in Louisiana held that "[I]nternet gambling in connection with activities other than sports betting is not illegal under federal law. . . ."[84] The Fifth Circuit affirmed the district court holding the following year.[85] Subsequent to the Fifth Circuit's decision, the U.S. Department of Justice further elaborated on the specific enforcement of the Wire Act.[86] Virginia A. Seitz, the Assistant Attorney General for the Office of Legal Counsel in the Department of Justice, issued a memorandum in 2011 regarding the applicability of the Wire Act as it related to state-sponsored lotteries.[87] A lottery is defined as "a drawing of lots in which prizes are distributed to the winners among persons buying a chance."[88] In state-sponsored lotteries, participants select a combination of numbers, and if the chosen combination matches their selection, the entrant can win a large sum of money.[89] Forty-four of the fifty states have state-sponsored lotteries, and all forty-four also participate in an inter-

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[83] In re MasterCard Int'l Inc., Internet Gambling Litig., 132 F. Supp. 2d 468, 481 (E.D. La. 2001), *aff'd*, 313 F.3d 257 (5th Cir. 2002). The legality of Internet gambling, and the accompanying laws that regulate it, is outside the scope of this Note. For a further analysis of Internet gambling regulations, see Edelman, *supra* note 12, at 142, and Brant M. Leonard, *Highlighting the Drawbacks of the UIGEA: Proposed Rules Reveal Heavy Burdens*, 57 DRAKE L. REV. 515, 519–520 (2009).

[84] *In re MasterCard*, 132 F. Supp. 2d at 481.

[85] In re MasterCard Int'l Inc., 313 F.3d 257, 264 (5th Cir. 2002).

[86] *See* U.S. DEP'T OF JUSTICE, 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 (2011), https://www.justice.gov/sites/default/files/olc/opinions/2011/09/31/state-lotteries-opinion.pdf [https://perma.cc/Q6X2-78SM].

[87] *Id.* A discussion of the legality of state lotteries is beyond the scope of this Note. For a discussion on lottery games at both the intrastate and interstate levels, see generally Benjamin Miller, *The Regulation of Internet Gambling in the United States: It's Time for the Federal Government to Deal the Cards*, 34 J. NAT'L ASS'N ADMIN. L. JUDICIARY 527 (2014), and Ronald J. Rychlack, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11 (1992).

[88] *Lottery*, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/lottery [https://perma.cc/7P9M-LWWH] (last visited Sept. 23, 2016).

[89] *See generally* Jackie Wattles, *Biggest Lottery Jackpots in U.S. History*, CNN (July 31, 2016, 3:17 AM), http://money.cnn.com/2016/05/01/news/largest-lottery-jackpots/ [https://perma.cc/3FHN-E7V4].

state lottery known as the "Powerball."[90] In January 2016, the largest single lottery jackpot in U.S. history—$1.6 billion—was disbursed by the Powerball.[91] Even though the Wire Act was written to cover "the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers," the Department of Justice memorandum declared that "[t]he Act's prohibitions relate solely to sports-related gambling activities in interstate and foreign commerce."[92]

After the Department of Justice issued its 2011 memo regarding sports betting, the level of federal intervention was heightened.[93] However, under the Wire Act, it was still a matter of state law as to whether or not sports betting was legal.[94] The strongest federal deterrent against sports betting, though, came by way of another federal statute passed by Congress in 1992: The Professional and Amateur Sports Protection Act,[95] a response to the pressures set forth by the four major American sports leagues.[96]

B. Professional and Amateur Sports Protection Act of 1992

PASPA was the direct result of Congress's attempt "to prohibit 'outright the sponsorship or authorization of sports gambling.'"[97] The main section of PASPA states:

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[90] *See* Isidore, *supra* note 3; *see also The 6 States Where You Can't Play Powerball*, ABC NEWS (Jan. 13, 2016, 12:47 PM), http://abcnews.go.com/US/states-play-powerball/story?id=36267614 [https://perma.cc/J467-2RLU].

[91] Wattles, *supra* note 89.

[92] 18 U.S.C. § 1084 (2012); U.S. DEP'T OF JUSTICE, *supra* note 86, at 12.

[93] U.S. DEP'T OF JUSTICE, *supra* note 86.

[94] Woo, *supra* note 12, at 574.

[95] 28 U.S.C. §§ 3701–3704 (2012); *see also* Woo, *supra* note 12, at 574.

[96] Edelman, *supra* note 12, at 139. The National Collegiate Athletic Association's ("NCAA") status as an amateur organization is a term used loosely throughout legal and academic circles. For further reading on the amateur status of the NCAA, see generally Kristen R. Muenzen, Comment, *Weakening Its Own Defense? The NCAA's Version of Amateurism*, 13 MARQ. SPORTS L. REV 257 (2003), and Lindsay J. Rosenthal, Comment, *From Regulating Organization to Multi-Billion Dollar Business: The NCAA is Commercializing the Amateur Competition It Has Taken Almost a Century to Create*, 13 SETON HALL J. SPORT. L. 321 (2003).

[97] Bill Bradley, *The Professional and Amateur Sports Protection Act—Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORT L. 5, 9 (1992) (citing 137 CONG. REC. (daily ed. Jan. 3, 1991) (introductory remarks by Representative Bryant)).

> It shall be unlawful for (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.[98]

Furthermore, in what some scholars deem a controversial delegation of power, PASPA grants direct authority to the National Basketball Association ("NBA"), the National Football League ("NFL"), Major League Baseball ("MLB"), the National Hockey League ("NHL"), and the National Collegiate Athletic Association ("NCAA") to bring a lawsuit against any individual or state that allows or enables such a sports betting scheme.[99] PASPA goes even further than the Wire Act, as it is directed toward betting on any sports game nationwide.[100] Senator Bill Bradley, a former professional basketball player for the New York Knicks, was the leading advocate of the new bill, commonly known as the "Bradley Bill."[101]

There have been several legal challenges to this law, which Senator Bradley addressed head on in what some may view as a propaganda article.[102] PASPA has been criticized, in one regard, for its grandfather clause that exempts four states, allowing "Delaware, Montana, Nevada, and Oregon to maintain certain forms of sports gambling" that would otherwise be prohibited under the Act due to the fact that they had previously legalized betting.[103] Senator

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98 § 3702.

99 Edelman, *supra* note 12, at 140.

100 *See generally* Bradley, *supra* note 97.

101 *Id.* at 18; *see* I. Nelson Rose & Rebecca Bolin, *Game On for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets*, 45 CONN. L. REV. 653, 663 (2012).

102 Bradley, *supra* note 97, at 10.

103 Edelman, *supra* note 12, at 140.

Bradley addressed these Fourteenth Amendment challenges by arguing that PASPA's "unequal geographical enforcement" is constitutionally valid because the Supreme Court has held that there is no requirement of uniformity when Congress exercises its power pursuant to the Commerce Clause.[104]

On the other side of the debate, however, scholars have applied the equal sovereignty doctrine as an argument against PASPA's pick-and-choose enforceability.[105] Senator Charles Grassley argued on the Senate floor that the bill "would blatantly discriminate between the [s]tates" by permitting a few to be exempt from its enforcement.[106] He went on to point out that, as a result, these states "would be granted a [f]ederal monopoly on lawful sports wagering to the exclusion" of all the other states."[107]

Senator Bradley also addressed concern over whether PASPA was within the bounds of the Commerce Clause, or whether it was a usurpation of states' rights protected by the Tenth Amendment.[108] The Commerce Clause has been subject to long and significant political debate, and the congressional power that stems from it has been subject to myriad jurisprudence.[109] In a seminal Supreme Court case, *Gonzales v. Raich*, the Court discussed the significance and intent of the Commerce Clause:

> The Commerce Clause emerged as the Framers' response to the central problem giving rise to the Constitution itself: the absence of any federal commerce power under the Articles of Confederation. For the first century of our history, the primary use of the Clause was to preclude the kind of discriminatory state legislation that had once been permissible. Then, in response to rapid industrial development and an increasingly interdependent national

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[104] *See* Bradley, *supra* note 97, at 17 (citing Currin v. Wallace, 306 U.S. 1 (1939); Clark Distilling Co. v. W. Md. Ry. Co., 242 U.S. 311 (1917)).

[105] Goodall, *supra* note 12, at 1123.

[106] S. REP. NO. 102-248, at 13 (1991), *as reprinted in* 1992 U.S.C.C.A.N. 3553, 3563.

[107] *Id.*

[108] *See* Bradley, *supra* note 97, at 12 (citing U.S. CONST. art. I, § 8; *id.* amend. X).

[109] *See generally* Gonzales v. Raich, 545 U.S. 1 (2005); Gibbons v. Ogden, 22 U.S. 1 (1824).

> economy, Congress "ushered in a new era of federal regulation under the commerce power," beginning with the enactment of the Interstate Commerce Act in 1887 and the Sherman Antitrust Act in 1890.[110]

As it relates to gambling, the Supreme Court has previously held that the Commerce Clause grants Congress the ability to legislate against "an evil . . . carried on through interstate commerce."[111] The PASPA faced a recent challenge, including claims of unconstitutionality under the Commerce Clause, as well as the Tenth Amendment's anti-commandeering principle, in *National Collegiate Athletic Association v. Governor of New Jersey*.[112]

C. NCAA v. Governor of New Jersey *and its Constitutional Attack on PASPA*

In January 2012, New Jersey Governor Chris Christie signed into law the New Jersey Sports Wagering Law.[113] This legislation was an attempt to circumvent the restrictions imposed by PASPA and legalize sports betting at New Jersey racetracks and, in particular, Atlantic City casinos.[114] Under the authorization granted by PASPA, the "conglomerate of sports leagues, displeased at the prospect of State-licensed gambling on their athletic contests" filed a lawsuit to halt these efforts.[115] New Jersey attempted to enact a law at the state level that would essentially circumvent PASPA, based upon the textual interpretation of the law itself.[116] As stated earlier, the law forbids "a governmental entity to sponsor, operate, advertise, promote, license, or *authorize* [sports betting,] *by law* or compact."[117]

The New Jersey Sports Wagering Law, however, was actually a repeal of the state's prior anti-wagering laws; the State "maintained that New Jersey's plan [was] not to authorize an act in viola-

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110 *Gonzales*, 545 U.S. at 16.

111 Bradley, *supra* note 97, at 13 (citing Champion v. Ames, 188 U.S. 321, 355–58 (1903)).

112 730 F.3d 208 (3d Cir. 2013).

113 N.J. STAT. ANN. §§ 5:12A-1 to 5:12A-6 (West 2012) (repealed 2014).

114 *Id.*; *see also* Goodall, *supra* note 12, at 1099.

115 *Nat'l Coll. Athletic Ass'n*, 730 F.3d at 214.

116 *Id.* at 232.

117 28 U.S.C. § 3702 (2012) (emphasis added).

tion of the federal government but rather to repeal an existing prohibition."[118] Therefore, New Jersey argued, there was no affirmative authorization of sports betting, and thus no violation of PASPA.[119] The Third Circuit recognized that "having *no law* in place governing sports wagering is [not] the same as authorizing it by law," while also opining that "the argument ignores that, in reality, the lack of an affirmative prohibition of an activity does not mean it is *affirmatively* authorized by law."[120] However, the court still ruled in favor of the leagues.[121]

New Jersey subsequently petitioned the Supreme Court for a constitutional ruling on PASPA, but the Court denied certiorari in the case.[122] As the landscape for professional sports betting changes, and society, along with its elected officials, begins to realize the value of a legalized and regulated sports betting industry in the United States, challenges such as these may become more common and have a higher likelihood of success.[123] With at least $140 billion wagered "on sports *illegally* each year, [it is] clear that [the] current law" is not in line with the demands of the population.[124]

III. THE UNITED KINGDOM'S APPROACH: LEGALIZE AND REGULATE

The United Kingdom has taken a far different approach regarding the legality of sports betting.[125] While the United States and the

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[118] Michael McCann & Will Green, *New Jersey Sports Wagering Hopes Facing Uphill Climb After Hearing*, SPORTS ILLUSTRATED (Feb. 18, 2016), http://www.si.com/nfl/2016/02/17/new-jersey-sports-betting-hearing-chris-christie [https://perma.cc/NL3L-6ZTQ].

[119] *Id.*

[120] *Nat'l Coll. Athletic Ass'n*, 730 F.3d at 232.

[121] *Id.* at 240–41.

[122] Petition for Writ of Certiorari, Christie v. Nat'l Coll. Athletic Ass'n, 134 S. Ct. 2866 (2014) (No. 13-967).

[123] *See* Megan Davies, *U.S. Appeals Court Rules Against New Jersey Sports Betting Law*, REUTERS (Aug. 25, 2015, 1:38 PM), http://www.reuters.com/article/us-usa-new-jersey-gambling-idUSKCN0QU1WC20150825 [https://perma.cc/6G8D-L9WR].

[124] *Id.* (emphasis added).

[125] *See generally* Patrick Doughty, Comment, *Pound for Pound: A Legal Analysis of the Gambling, Alcohol, and Taxation Issues the NFL Must Weigh as It Expands to London*, 22 JEFFREY S. MOORAD SPORTS L.J. 593 (2015).

United Kingdom "are morally opposite in their views towards gambling," at least from a legal perspective, the United Kingdom does have a different political framework that shapes its laws.[126] The most significant difference is the United States' system of dual federalism, compared to the United Kingdom's bicameral parliamentary system.[127] There is no conflict of federalism or states' rights, and therefore whatever legislation is passed through Parliament is the law of the land.[128] Nevertheless, the laws in the United Kingdom regarding sports betting show a stronger respect for the government's recognition of societal demands.[129]

A. The Betting and Gaming Act of 1960

Like the United States, the United Kingdom took a major step in addressing the issues that revolved around sports betting in the 1960s.[130] The Betting and Gaming Act of 1960 was a British Act of Parliament that legalized betting shops in an attempt to "take gambling off the streets and end the practice" of illicit bookmakers and street betting.[131] The Betting and Gaming Act was lauded by both the public and government officials.[132] The Commissioner of the Metropolitan Police Service even described the decriminalization as "welcome legislation which removed from the police a distasteful duty which tended to strain relations with the general public."[133] Private businesses that were previously "issued . . . licenses

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[126] *Id.* at 605–06. *See generally How Laws Are Made*, UK PARLIAMENT, http://www.parliament.uk/education/about-your-parliament/how-laws-are-made/ [https://perma.cc/57N3-978R] (last visited Sept. 23, 2016).

[127] *See generally* UK PARLIAMENT, *supra* note 126.

[128] *Id.*

[129] Buteau, *supra* note 14.

[130] Betting and Gaming Act 1960, 8 & 9 Eliz. 2 c. 60 (Eng.).

[131] *1960: Game On for British Betting Shops*, BBC (Sept. 1, 2005), http://news.bbc.co.uk/onthisday/hi/dates/stories/september/1/newsid_2969000/2969846.stm [https://perma.cc/7UE7-HDT8]. A betting shop is a store where a bettor may walk in, off the street, and place a wager on a sporting event. *See Betting Shop*, CAMBRIDGE DICTIONARY, http://dictionary.cambridge.org/us/dictionary/english/betting-shop [https://perma.cc/UR8W-SZU6] (last visited Sept. 23, 2016).

[132] Ian Loader & Aogan Mulcahy, *The Power of Legitimate Naming*, 41 BRIT. J. CRIMINOLOGY 41, 46 (2001).

[133] *Id.*

and permits from the Racecourse Betting Control Board [were] allowed to [begin] tak[ing] bets."[134]

Under the Betting and Gaming Act, the government established a Gaming Commission, which had the primary responsibility of overseeing and regulating gambling in the United Kingdom.[135] In addition, the betting shops were duty bound to scrutinize bettors, who were required to "demonstrate [that] they ha[d] enough credit to set up an account with a bookmaker . . . ."[136] This was a significant element of the Betting and Gaming Act, as its intent was to protect compulsive gamblers from accruing mountains of debt, and it also represented a way to bring "the gambling habits of the country under greater government control."[137] In addition to the Gaming Commission—along with the legalization that the Betting and Gaming Act paved the way for—the Act further criminalized illegal street betting, instituting higher penalties for those who circumvented the regulators.[138]

However, the Act also had its drawbacks.[139] Rab Butler, who was the Leader of the United Kingdom's House of Commons at the time of the passage of the Betting and Gaming Act, "noted in his memoirs that 'the House of Commons was so intent on making betting shops as sad as possible, in order not to deprave the young, that they ended up more like undertakers' premises.'"[140] By legalizing betting shops, it was the hope of Parliament that it would put an end to "bookies" that ran amuck throughout England, collecting money in pubs and restaurants, and on street corners.[141] William Hill, currently the United Kingdom's "number one provider of licensed betting offices,"[142] was initially opposed to the Betting

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134 *1960: Game On for British Betting Shops*, *supra* note 131.

135 Gunning, *supra* note 17.

136 *1960: Game On for British Betting Shops*, *supra* note 131.

137 *Id.*

138 *Id.*

139 *See* Stan Hey, *Our National Love Affair: A History of the Betting Shop*, INDEPENDENT (Apr. 4, 2008), http://www.independent.co.uk/sport/racing/our-national-love-affair-a-history-of-the-betting-shop-804966.html [https://perma.cc/LCV4-SAV4].

140 *Id. See generally* ANTHONY HOWARD, RAB: THE LIFE OF R.A. BUTLER (Jonathan Cape ed., 1987).

141 Hey, *supra* note 139.

142 *Our Businesses: Retail*, WILLIAM HILL, http://www.williamhillplc.com/about/our-businesses/retail/ [https://perma.cc/8CM6-969V] (last visited Sept. 23, 2016).

and Gaming Act, in part due to the significant capital investment required.[143]

The Betting and Gaming Act, however, was not as successful as Parliament would have hoped.[144] By 1968, only eight years after the passage of the Act, there were still nearly one thousand illegal and unregulated gambling clubs in operation.[145] This was apparently a result of the Act's "poor drafting and lax enforcement."[146] However, during the same year, Parliament passed a revised version of the Act.[147] The revisions included a new system for the control and supervision of gambling, which primarily granted the Gaming Board more influence and power to "vet potential casino operators, to make representations at licensing hearings[,] and to monitor gaming within [the] casinos" themselves.[148] Ultimately, the real change in British gambling law came in the form of a modern update.[149]

B. The Gambling Act of 2005

As of 2017, sports betting in the United Kingdom is regulated by the Gambling Act of 2005 (the "Gambling Act").[150] The objectives of the Gambling Act are "to prevent gambling from being a source of crime or disorder, [to] ensure that gambling is conducted in a fair and open way, and [to] protect 'children and other vulnerable persons from being harmed or exploited by gambling.'"[151] Although the Gambling Act establishes a regulatory scheme to protect and legitimize sports betting, it also legalizes gambling only for adults over the age of eighteen.[152] The Gambling Act created a new and improved Gambling Commission, which was assigned to work in conjunction with the U.K. Department for Culture, Media, and Sport, as well as local authorities, to ensure the complete and prop-

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143 Hey, *supra* note 139.
144 *See generally* Gunning, *supra* note 17.
145 *Id.*
146 *Id.*
147 *Id.*
148 *Id.*
149 *Id.*
150 Gambling Act 2005, c. 19 (UK).
151 Mahyera, *supra* note 13, at 378 (citing Gambling Act 2005, c. 19, § 1).
152 *Id.* (citing Gambling Act 2005, c. 19, § 46).

er implementation of the new regulations.[153] It also allowed for an increase in the number of legal casinos throughout Great Britain, while delegating certain regulatory power to local authorities.[154] Now, casinos and sportsbooks can open on any street corner, and a bettor may walk in and place a wager on any sporting event.[155]

The success of legalized gambling in the United Kingdom has been discussed by scholars in terms of both societal and scientific means.[156] The betting industry in the United Kingdom employs over 100,000 people, and generates at least £6 billion in gross domestic product for the country (more than $7 billion).[157] A study by H2 Gambling Capital in 2011 estimated that the global gaming sector reached €24.6 billion (more than $26 billion)—nearly half of which was attributed to sports betting.[158] Establishing a Gambling Commission, with the sole responsibility of regulating and monitoring betting, also allows for increased scrutiny on the negative side of the industry.[159]

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[153] Joseph J. McBurney, Note & Comment, *To Regulate or To Prohibit: An Analysis of the Internet Gambling Industry and the Need for a Decision on the Industry's Future in the United States*, 21 CONN. J. INT'L L. 337, 357 (2006).

[154] *Id.*

[155] *See id.* For a description of a betting shop, see Tamara Cohen, *We Need Curb on Betting Shops, Says William Hill: Bookmaker's Chief Executive Says Clusters of Outlets Can Cause Harm*, DAILY MAIL (Jan. 28, 2014), http://www.dailymail.co.uk/news/article-2547767/We-need-curb-betting-shops-says-William-Hill-Bookmakers-chief-executive-says-clusters-outlets-cause-harm.html [https://perma.cc/D33X-X22S].

[156] *See* Jon Parker, *Deloitte: UK Betting Worth £6bn, 100,000 Jobs*, EGR MAG. (Jan. 27, 2010), http://www.egrmagazine.com/news/deloitte_uk_betting_worth_pound6bn_100000_jobs [https://perma.cc/3U2Z-CCBB]; *see also* Woo, *supra* note 12, at 593.

[157] *See* Parker, *supra* note 156; *see also* Woo, *supra* note 12, at 593. The conversion is based on Bloomberg Financial's prevailing rate of $1.1988 US Dollars to £1 Pound Sterling. *GBPUSD Spot Exchange Rates*, BLOOMBERG MARKETS, http://www.bloomberg.com/quote/GBPUSD:CUR [https://perma.cc/HL2Q-6CTD] (last visited Jan. 15, 2017).

[158] *Preliminary Results 2011 H2 eGaming Dataset Now Available*, WTM NEWS (Feb. 20, 2012), http://www.wtmnews.gr/games-07/10664-Preliminary-Results-2011-H2-eGaming-Dataset-Now-Available.html [https://perma.cc/MQ7M-LXWF]. The conversion is based on Bloomberg Financial's prevailing rate of $1.0607 to €1 Euro. *EURUSD Spot Exchange Rates*, BLOOMBERG MARKETS, http://www.bloomberg.com/quote/EURUSD:CUR [https://perma.cc/UAD2-456P] (last visited Jan. 15, 2017).

[159] Woo, *supra* note 12, at 593.

A betting shop, also known as a sportsbook, is a company that takes bets placed by a bettor on the outcome of a sporting event.[160] The betting shop will set the betting line for an event—for example, predicting that one team will win a given game—and set proportionate odds that a bettor can wager on.[161] Illegal betting activities, such as match fixing, line altering, or any other myriad opportunities for wrongdoing are closely monitored, not only by the commissions, but also by the betting shops themselves.[162] One example occurred in 2007, when British sportsbook company Betfair "noticed irregular betting patterns of a professional tennis match in Europe, prompting a subsequent investigation by the Association of Tennis Professionals."[163] Although the players were later found innocent, an investigation which was initially prompted by a regulated sportsbook led to the "revelation that match fixing occurred in professional tennis."[164]

The first time that the U.K. Gambling Commission pursued prosecution for cheating under the Gambling Act involved the case of three high-profile Pakistani cricketers.[165] The cricketers fixed the match as a result of a payoff from a bettor, and were caught delivering three "no balls" during the course of a match between the Pakistani National Team and the British National Team.[166] It is important to note, however, that the Gambling Commission's power and oversight go hand in hand with that of the sportsbooks.[167] A prime example of this is seen in section 88(1) of the Gambling Act,

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[160] *Sportsbook*, SPORTINGCHARTS, http://www.sportingcharts.com/dictionary/sports-betting/sportsbook.aspx [https://perma.cc/9YE7-YQV5] (last visited Sept. 23, 2016).

[161] *Betting Shop*, CAMBRIDGE DICTIONARIES, http://dictionary.cambridge.org/dictionary/english/betting-shop [https://perma.cc/A5BR-UFHU] (last visited Jan. 16, 2017) (defining betting shop as "a place where people go to risk money on horse races or other sports events").

[162] Woo, *supra* note 12, at 593 (citing Joe Drape, *Talk of Efforts to Fix Matches Rattles Pro Tennis*, N.Y. TIMES (Nov. 25, 2007), http://www.nytimes.com/2007/11/25/sports/tennis/25tennis.html [https://perma.cc/F36C-CG7E]).

[163] *Id.*

[164] *Id.*

[165] Richard H. McLaren & Tori Crawford, *The Role of CAS in Sports Fraud*, 2 INT'L SPORTS L. REV. 35, 40 (2014).

[166] *Id.* A "no ball" is a cricket term. It is an "infringement[] against the fielding team which result[s] in one run being added to the batting team's score." *Id.*

[167] For an analysis of the Gambling Commission, see *id.* at 40, and Woo, *supra* note 12, at 593, which discusses the roles of sportsbooks in self-regulation.

which requires that "licensed betting companies report any suspicious gambling patterns."[168] The cooperation between the government and private companies is critical; "governments have an interest in ensuring gambling remains fair and free of the influence of organi[z]ed crime, while [sportsbooks] must maintain their" integrity."[169] The U.K. model not only allows society to partake in what has been deemed a "national love affair" with betting, but also ensures a fair and safe environment in which to do so.[170]

IV. A PROPOSAL FOR THE UNITED STATES: ADOPT THE UNITED KINGDOM'S MODEL OF LEGALIZATION AND REGULATION

The United States is long overdue for a change in gambling legislation. While $4 billion is wagered annually on sports through legal channels in places like Las Vegas, it is estimated that the black market for sports betting is at least twenty times larger.[171] While the country has "undergone an unprecedented expansion of legalized gambling, sports betting has been the only holdout, a testament to the impact of game-fixing scandals and the political power of the country's professional sports leagues."[172]

Even though the leagues brought on strong legislation in the form of PASPA, their attitude has begun to change as younger and more socially conscious commissioners have taken the reigns.[173] Adam Silver, who was named commissioner of the NBA in 2014, explained his disapproval of PASPA and the current U.S. regulatory framework on sports betting in an op-ed piece in *The New York Times*.[174] Silver cited England's sports betting laws, specifically

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168 McLaren, *supra* note 165, at 42.

169 *Id.*

170 Hey, *supra* note 139.

171 Will Hobson, *Sports Gambling in U.S.: Too Prevalent to Remain Illegal?*, WASH. POST (Feb. 27, 2015), https://www.washingtonpost.com/sports/sports-gambling-in-us-too-prevalent-to-remain-illegal/2015/02/27/f1088e4c-b7d3-11e4-9423-f3d0a1ec335c_story.html [https://perma.cc/6TVC-RUZP].

172 *Id.*

173 *See* Adam Silver, Opinion, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), http://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html?smid=tw-share&_r=1 [https://perma.cc/3ANS-7C4T].

174 *Id.*

wherein a bettor can place a sports bet "on a smartphone, at a stadium kiosk[,] or even using a television remote control."[175] Based on his op-ed, Silver demonstrated that he favors Congress adopting new federal regulations similar to that of the United Kingdom.[176] These laws, however, should have "strict regulatory requirements and technological safeguards."[177] Silver has explicitly called for a repeal of PASPA and was the first head of a major American sports league to voice his support for what the majority of Americans want.[178] Just one week after Commissioner Silver published his piece, Seton Hall University conducted a poll, finding that fifty-five percent of the population agreed with Silver's position.[179]

The laws of the United States are intended to help Americans, whether they agree or not with the impact of a specific law.[180] However, some may argue that Congress cannot help Americans without following the majority.[181] Therefore, the framework currently implemented by the United Kingdom, as well as laid out by Silver, is the proposal that this Note sets forth.[182]

The United States does not have an easy path to legalization. Because there are two layers of government—federal and state—as opposed to one level in the United Kingdom, nationwide legality of sports betting would require an overhaul of federal legislation by Congress, in addition to approval of the activity within the governments of all fifty states. While this Note focuses on the federal aspects of sports betting, it is important to call attention to the fact that even with a complete repeal of PASPA, each state could enact their own laws to regulate sports betting as strictly or as loosely as they would like.

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175 *Id.*
176 *Id.*
177 *Id.*
178 *Id.*; *see also* Buteau, *supra* note 14.
179 Buteau, *supra* note 14.
180 For an example of a controversial bill that was intended to help Americans, see Patient Protection and Affordable Care Act, 42 U.S.C. §§ 18001–18122 (2012).
181 *See* Buteau, *supra* note 14.
182 Silver, *supra* note 173.

A. Match-Fixing Concerns

The Wire Act was implemented to protect against organized crime.[183] The concerns of match fixing and corruption in the game itself, however, are overstated. While it is true that "no single incident in British sports history compares to America's worst sports gambling scandal," match fixing would likely decrease if sports betting was legal.[184]

To this day, match fixing is an "anomaly in U.S. sports—and will remain so even with legalized sports betting."[185] American sports leagues already take gambling very seriously: The NCAA has instituted a zero-tolerance policy, and the MLB and NFL strictly prohibit gambling by all players, coaches, and officials.[186] The repercussions of fixing a match also carry with it serious consequences.[187] For example, in 2007, an NBA referee was found to have leaked information on officiating to bettors.[188] Tim Donaghy, a once highly regarded and tenured official, was sentenced to fifteen months in prison for his role in the scandal.[189] Eighteen years earlier, in 1989, the all-time hits leader in professional baseball, Pete Rose, was given a lifetime ban from the sport, as well as a prohibition from election into the Hall of Fame, for betting on baseball.[190] During the Donaghy investigation, it was alleged that a 2002 NBA playoff game was fixed; whereas in the case of Rose, he only

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[183] *See* Edelman, *supra* note 12, at 136.

[184] Hobson, *supra* note 171; *see also* Michelle Minton, *Let Chris Christie Legalize Sports Gambling. It Won't Ruin the Game*, NEW REPUBLIC (Oct. 22, 2014), https://newrepublic.com/article/119940/new-jerseys-legalizing-sports-gambling-wouldnt-cause-match-fixing [https://perma.cc/42VZ-8FBR]. The worst sports gambling scandal in American history is overwhelmingly accepted as the Black Sox Scandal of 1919. *See supra* notes 45–53 and accompanying text.

[185] Minton, *supra* note 184.

[186] *Id.*

[187] *See, e.g.*, John Marzulli, *Judge Sentences Disgraced NBA Ref Tim Donaghy to 15 Months*, N.Y. DAILY NEWS (July 29, 2008, 1:54 PM), http://www.nydailynews.com/news/crime/judge-sentences-disgraced-nba-ref-tim-donaghy-15-months-article-1.346735 [https://perma.cc/GF3H-HL3P].

[188] *See* Minton, *supra* note 184.

[189] Marzulli, *supra* note 187.

[190] Christian Red & Michael O'Keeffe, *Lifetime Ban Upheld for Pete Rose, Rob Manfred Says Reds Legend Told Him He Still Bets on Baseball*, N.Y. DAILY NEWS (Dec. 15, 2015, 8:17 AM), http://www.nydailynews.com/sports/baseball/pete-rose-lifetime-ban-upheld-mlb-article-1.2465390 [https://perma.cc/NC5R-AMVR].

bet on his team to win, which would not have actually altered the outcome of the game in theory.[191] Nevertheless, the punishment received for this type of conduct should have a significant deterrent effect on future match-fixing opportunities.

The infrequency of betting scandals to this day—at least those known in the "age of information"—should further this claim. Significant betting scandals do not occur often, and when they do, it draws significant attention.[192] However, with limited government oversight, the ability to fix a match is even higher now than it would be if the United States were to adopt the proposed changes.[193]

The legitimate and legal sportsbooks would take further precaution to protect the integrity of the sport to further combat the concerns over match fixing.[194] Given the economic stake that the sportsbooks have in the game, their interests may even be considered stronger than the interests of the leagues because a fixed match can be directly attributed to a dollar amount on that game's wagers.

In addition, the federal commission established under the new framework would oversee the entirety of this process. This commission would resemble that of the United Kingdom, where government regulation ensures safe and fair play. The proposed commission could also be composed of a combination of public and private parties. For example, representatives from large bookmakers, the federal government, and state governments could all collaborate on best practices and ways to address both existing concerns regarding sports betting, as well as any future issues that may arise. The proposal that this Note sets forth does not seek to *eliminate* government from the sports betting industry, but rather to *include*

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[191] *See Rose Admits to Betting on Reds 'Every Night,'* ESPN (Mar. 16, 2007), http://www.espn.com/mlb/news/story?id=2798498 [https://perma.cc/MWJ6-ZD4A]; Chris Sheridan, *2002 Lakers-Kings Game 6 at Heart of Donaghy Allegations*, ESPN (June 11, 2008), http://www.espn.com/nba/news/story?id=3436401 [https://perma.cc/W5AR-F7HV].

[192] *See* Marzulli, *supra* note 187; Red & O'Keefe, *supra* note 190.

[193] *See generally* Silver, *supra* note 173.

[194] *See supra* Section III.B; *see also* Woo, *supra* note 12, at 593.

it as a regulator—a role the U.S. government so freely plays in countless other industries.[195]

B. Economic Windfall

The leagues themselves have the greatest motivation for protecting sports from corruption. With ninety percent of U.S. sports bettors using the black market to place bets, modern corruption is actually easier than the government and the leagues have attempted to make it seem.[196] PASPA was passed by a strong lobby of the professional sports leagues, but it is clear that the burden to regulate sports betting should lie with both the private sector and government.[197] In 2014 alone, the NFL spent $1.2 million on lobbying, according to the Center for Responsive Politics.[198] The NCAA spent another $580,000, and the NBA, NHL, and MLB spent an additional $700,000 combined on similar efforts.[199]

The leagues and teams are private entities, whose interests in protecting the integrity of the game revolve around economics.[200] If fixed matches were proven to be a boon to the leagues' revenues, it is conceivable that the leagues would not be as inclined to stop it. For example, professional wrestling—the most famous league of which is World Wrestling Entertainment ("WWE")—is notorious for producing scripted matches.[201] Even so, *WWE Monday Night Raw*, the leading WWE television program, "is consistently one of the highest rated programs on television[,] and actively competes with the goliath that is *Monday Night Football* during the NFL's regular season."[202] Although it is not suggested here that the major professional sports leagues would fix games if such activity led to

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195 *See generally* Patrick McLaughlin & Oliver Sherouse, *The McLaughlin-Sherouse List: The 10 Most Regulated Industries of 2014*, MERCATUS CTR. (Jan. 21, 2016), http://mercatus.org/publication/mclaughlin-sherouse-list-10-most-regulated-industries-2014 [https://perma.cc/7PXL-MVVV].

196 Buteau, *supra* note 14. *See generally* Bradley, *supra* note 97.

197 *See generally* Bradley, *supra* note 97.

198 Hobson, *supra* note 171.

199 *Id.*

200 Minton, *supra* note 184.

201 Kyle Fowle, *You Know It's Fake, Right?: How WWE Constructs Reality*, A.V. CLUB (Aug. 20, 2015, 12:00 AM), http://www.avclub.com/article/you-know-its-fake-right-how-wwe-constructs-reality-223692 [https://perma.cc/X7KZ-M6KR].

202 *Id.*

higher ratings, it is clear that most decisions made by the leagues are based on economics, not for a "love of the game," as the leagues suggest.

Since 2014, many of the major professional sports leagues have begun to partner with companies that promote gambling.[203] In November 2014, for example, FanDuel, a fantasy sports betting website, announced that the NBA had become an equity investor in the business.[204] Furthermore, two other leagues, the MLB and the NHL, currently have endorsement deals with DraftKings, the main competitor to FanDuel.[205] The question faced here, however, is whether a league has the ability to take an economic interest in sports betting companies, while also having power to shut them down under PASPA?[206] Under this theory, the legal risks under PASPA for any sports betting company seem to "relate to the whims of professional sports league ownership."[207] In a private economy, where gambling is regulated based on the U.K. model to protect from organized crime and corruption, as opposed to an outright ban, this would not be a conflict. In the United Kingdom, sportsbooks and betting companies partner with clubs regularly.[208] In a well-regulated U.S. sports betting economy, there would be no concern over a bettor going to a kiosk in the stands before a game begins.[209] He or she could place a wager, and then sit down to enjoy the match, while everyone profits.[210]

A proposed regulatory scheme for the legalization of sports betting would certainly include financial incentives for the government as well.[211] According to one study, legalizing sports betting in New Jersey, as Governor Chris Christie proposed, would generate

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[203] Edelman, *supra* note 12, at 127.

[204] *Id.* Although calling FanDuel a betting website is a subject of much debate, it is outside the scope of this Note. For further reading on the legality of daily fantasy sports websites, see generally *id.*

[205] *Id.*

[206] *Id.* at 141.

[207] *Id.*

[208] *See id.* at 127; *see also All 20 Premier League Club Shirt Sponsorship Deals 2016-17*, TOTAL SPORTEK (Aug. 21, 2016), http://www.totalsportek.com/football/premier-league-shirt-sponsorship-deals/ [https://perma.cc/G84E-8XZS].

[209] *See generally* Silver, *supra* note 173.

[210] *Id.*

[211] Goodall, *supra* note 12, at 1099.

$1.3 billion in revenue and, "at a proposed tax rate of 9.25%, net the state government $120 million in tax revenue."[212] This tax revenue would be in addition to licensing fees, higher income taxes on winners, and an increase of indirect revenue from additional travel and tourism.[213] Extrapolating these figures, even roughly, paints a clear picture: Both state and federal governments would realize significant financial benefits from the legalization of sports betting nationwide.[214] Given that, as of 2013, thirty-one states experienced a budget deficit totaling $55 billion, "PASPA has become a prohibition that the United States can no longer afford."[215]

CONCLUSION

There are several factors that prove why the United Kingdom's model of sports betting legislation is superior to that of the United States. First and foremost, studies have shown that the majority of Americans want to follow the United Kingdom's system of legalization and regulation.[216] No American policy change should be successfully enacted if it goes against the wishes of the population, but, contrarily, if there is a policy in place that runs counter to the wants of society, it should be changed.

Next, the concerns that were the foundation of the initial regulations should no longer be given the same weight.[217] The U.K. model has shown that match fixing can be controlled and regulated.[218] While it is inevitable that individuals will always *attempt* corruption—not just in sports betting, but in any economic market—the regulations and precautions currently in place, in addition to further safeguards that would be put implemented by big sportsbooks, would ensure the highest level of sporting integrity.[219]

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212 *Id.*

213 *Id.* at 1134.

214 *Id.* at 1099.

215 *Id.* at 1138 (citing PHIL OLIFF ET AL., CTR. ON BUDGET AND POL'Y PRIORITIES, STATES CONTINUE TO FEEL RECESSION'S IMPACT 1 (2012)).

216 Buteau, *supra* note 14.

217 *See supra* Section III.B; *see also* Woo, *supra* note 12, at 593.

218 Woo, *supra* note 12, at 593.

219 *Id.*

Last, the financial impact of legalized sports betting would have a significant impact on the U.S. economy. With a national debt of more than $19 trillion, [220] a new source of tax revenue would not only sustain a proposed federal gambling commission, but may also provide resources for other aspects of the economy. It is clear that the time for change in now. The United States should adopt the U.K. model of sports betting legislation and regulation and allow the government to catch up to societal demand.[221] The United States can change the landscape for the better by repealing PASPA and adopting the framework set forth across the pond.

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[220] U.S. DEBT CLOCK, http://www.usdebtclock.org [https://perma.cc/7RBM-W5KW] (last visited Jan. 6, 2016).

[221] Buteau, *supra* note 14.