

Pace Intellectual Property, Sports & Entertainment Law Forum

Volume 8
Issue 1 *Fall 2017*

Article 4

September 2017

With Major Professional Sports Franchises on Their Way into Las Vegas, the Problems with the Professional and Amateur Sports Protection Act (PASPA) Need to be Addressed

Anthony J. Sanfratello

Follow this and additional works at: <https://digitalcommons.pace.edu/pipself>

 Part of the [Entertainment, Arts, and Sports Law Commons](#), and the [Gaming Law Commons](#)

Recommended Citation

Anthony J. Sanfratello, *With Major Professional Sports Franchises on Their Way into Las Vegas, the Problems with the Professional and Amateur Sports Protection Act (PASPA) Need to be Addressed*, 8 Pace. Intell. Prop. Sports & Ent. L.F. 79 (2017).

Available at: <https://digitalcommons.pace.edu/pipself/vol8/iss1/4>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Intellectual Property, Sports & Entertainment Law Forum by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

With Major Professional Sports Franchises on Their Way into Las Vegas, the Problems with the Professional and Amateur Sports Protection Act (PASPA) Need to be Addressed

Abstract

This note will set out to prove why PASPA is no longer effective and why reform is needed. With the state of New Jersey leading the fight, change is on the horizon. First, the history of gambling laws in the United States will be covered. Next, the legal and other supplemental arguments for and against PASPA will be discussed. Additionally, the pivotal role that each major professional sports league plays in the arguments for and against reform, with specific focus on professional teams moving to Las Vegas, will be examined. Lastly, the current state of gambling laws in this country will be addressed and suggestions and predictions will be introduced.

Keywords

Professional and Amateur Sports Act, PASPA, gambling, La Vegas, sports

PACE INTELLECTUAL PROPERTY, SPORTS & ENTERTAINMENT LAW FORUM

VOLUME 8

FALL 2017

NUMBER 4

WITH MAJOR PROFESSIONAL SPORTS FRANCHISES ON THEIR WAY INTO LAS VEGAS, THE PROBLEMS WITH THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT (PASPA) NEED TO BE ADDRESSED

Anthony J. Sanfratello

I. INTRODUCTION

Starting as early as the 1900s, professional sports have been a major pastime in the United States. Popularity of leagues such as Major League Baseball (MLB), the National Football League (NFL), the National Basketball Association (NBA) and National Hockey League (NHL), as well as college sports with the National Collegiate Athletic Association (NCAA), has grown exponentially over the years. The billions of dollars of revenue prove the popularity that these sports leagues possess.

For as long as sports have been a part of this country, so has the practice of fans gambling on them. As the popularity of professional sports has increased, so has the public's desire to wager. The sports betting industry is quite complicated due to the legal landscape and a handful of other reasons.

The Professional and Amateur Sports Protection Act (PASPA), a federal law, is the major piece of legislation that governs sports betting in the United States. It was enacted to curtail the growth of gambling, and in turn, ensure the integrity and fairness of professional sporting events¹. "The Professional and Amateur Sports Protection Act (PASPA) passed in 1992 prevented states from offering gambling lines on sports. Nevada, Oregon, Delaware, and Montana were granted special exemptions, as all four of those states were

¹ Chill Woo, *All Bets Are Off: Revisiting The Professional And Amateur Sports Protection Act (PASPA)*, 31 CARDOZO ARTS & ENT. L.J. 569 (2013).

offering some variation of sports lotteries in 1992.”² Because of this special exemption and because they previously allowed the broadest range of gambling options, the epicenter of sports betting is the United States is Nevada (specifically Las Vegas). However, there is a huge black market for illegal sports gambling throughout the country. “While nearly \$4 billion is bet on sports legally in Las Vegas yearly, an estimated \$80 billion to \$380 billion is wagered illegally through a shadow industry of offshore online betting houses, office pools and neighborhood bookmakers.”³

While the reasons for enacting PASPA seemed to be warranted in 1992, there are many reasons why it needs to be reevaluated today. The main reason is that the social climate and public perception with regards to gambling is vastly different today than it was at the time PASPA was enacted. The evils that PASPA was set out to protect against are not nearly as prevalent anymore. The intent of this act was to maintain integrity in sporting events and to protect athletes from pressure and coercion from outsiders, mainly organized crime organizations.⁴ This is something that was a problem in the 1990s, but has since curtailed. A major piece of evidence to further support the need for reform in this area of the law is the movement of professional sports teams into the mecca of sports gambling, Las Vegas. The NHL is set to unveil an expansion franchise in the city starting in 2018. Additionally, the Oakland Raiders of the NFL will be relocating to Las Vegas for the start of either the 2019 or 2020 season. These leagues migration to Nevada, along with a bevy of other reasons, show that the commissioners of these billion dollar leagues do not fear gambling the way they once did.

This note will set out to prove why PASPA is no longer effective and why reform is needed. With the state of New Jersey leading the fight, change is on the horizon. First, the history of gambling laws in the United States will be covered. Next, the legal and other supplemental arguments for and against PASPA will be discussed. Additionally, the pivotal role that each major professional sports league plays in the arguments for and against reform, with specific focus on professional teams moving to Las Vegas, will be examined. Lastly, the current state of gambling laws in this country will be addressed

² David Sheldon, *American Gaming Association Recommends Repealing Sports Betting Ban*, CASINO.ORG (Sept. 24, 2016), <https://www.casino.org/news/american-gaming-association-sports-betting-ban>.

³ Will Hobson, *Sports gambling in U.S.: Too prevalent to remain illegal?*, THE WASHINGTON 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.

⁴ Matthew D. Mills, *The Failure of the Professional and Amateur Sports Protection Act*, 16 UNIV. DENVER SPORTS & ENT. L.J. 89 (2014).

and suggestions and predictions will be introduced.

II. HISTORY OF GAMBLING LAWS IN THE UNITED STATES

In order to understand the history of gambling laws in the United States, one must first understand the history of gambling. “People have been betting on sporting events for a long time. Both the Greeks and Romans engaged in the practice. In more recent times, sports betting has grown into a multi-billion dollar industry. Betting on sports became popular in the United States in the 19th Century.”⁵

“The most popular sport to bet on in the 19th century was horse racing. Hundreds of racetracks popped up throughout the country after the Civil War, widening the pool of bettors to include average citizens. The popularity of horse racing reached its peak in the early 20th Century. By this point, baseball had seen a dramatic increase in popularity and subsequently betting.”⁶

“The advent of television made betting on sports like baseball, football and basketball more popular among gamblers.”⁷

The rise in the popularity of sports, and subsequently betting, unfortunately led to many gambling related scandals in sports. Two of the most notable scandals involved professional baseball. The first, known as the Black Sox Scandal, occurred in 1919. At this time, almost all sports wagering was handled through underground bookmakers backed by organized crime syndicates.⁸ The power of these organized crime groups set the stage for this scandal. In an attempt to fix games and profit through gambling, “notorious gangster, Arnold Rothstein [and other conspirators], paid members of the Chicago White Sox professional baseball team to try and lose games during the World Series.”⁹ As a result of the scandal, eight players on that Chicago White Sox team received lifetime bans from baseball. Additionally, the MLB introduced many strict rules against players associating themselves with gambling in any form.¹⁰ A few decades later, another gambling scandal rocked the baseball community. “...In August of 1989, Pete Rose, a professional baseball player and manager was banned from Major League Baseball amid allegations that he gambled on baseball games in which he

⁵ Darren Heitner, *The History Of Sports Betting*, SPORTS AGENT BLOG (July 28, 2009), <http://sportsagentblog.com/2009/07/28/the-history-of-sports-betting/>.

⁶ *Id.*

⁷ *Id.*

⁸ Woo, *supra* note 1.

⁹ *Id.* at 572.

¹⁰ *Black Sox Scandal*, BASEBALL REFERENCE, http://www.baseball-reference.com/bullpen/Black_Sox_Scandal (last visited Apr. 7, 2017).

participated.”¹¹ Scandals like these ultimately caused sports betting to receive a negative connotation. “...The public perception of sports betting became associated with criminal activities and the notion that gangsters could ruin the sanctity of a cherished national pastime.”¹² The negative public perception of sports betting combined with the anger and fear it caused those in charge of professional sports leagues is what ultimately led to the implementation of many of the federal laws that are in place today.

“Gambling in the United States has traditionally been a state regulated activity.”¹³ It was not until 1961 that Congress decided to get involved and pass federal laws against organized gambling activity. This action came in the form of the Wire Act of 1961 (Wire Act). “Congress enacted the Wire Act as a part of series of antiracketeering laws.”¹⁴ “The Wire Act was intended to assist the states, territories and possessions of the United States, as well as the District of Columbia, in enforcing their respective laws on gambling and bookmaking and to suppress organized gambling activities.”¹⁵ Subsection (a) of the act states in pertinent part:

“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”¹⁶

This act is aimed at punishing the bookmaker, the person in charge of taking bets from casual bettors. The legislative intent of the Wire Act was not to punish casual bettors. This was done to counteract the rise of “...illegal bookmaking services that accepted bets through wired communications, also known as the telephone.”¹⁷ Organized crime groups were the driving force behind these illegal services, and this is whom Congress intended to punish. Congress “...was indeed successful in this intent, and was able to severely

¹¹ Woo, *supra* note 1, at 575.

¹² *Id.* at 573.

¹³ *Id.* at 571.

¹⁴ Jeffrey Rodefer, *Federal Wire Wager Act*, GAMBLING LAW US, <http://www.gambling-law-us.com/Federal-Laws/wire-act.html> (last visited Apr. 7, 2017).

¹⁵ *Id.*

¹⁶ 18 U.S.C. § 1084.

¹⁷ *Federal Wire Act of 1961 Explained*, LEGALBETTINGONLINE.COM, <http://www.legalbettingonline.com/laws/federal-wire-act.html> (last visited Apr. 7, 2017).

damage the mob's illegal bookmaking activities and minimize organized crime's reach in this area of criminal activity.”¹⁸ Today, the Wire Act has a much different affect than the one that was intended from its enactment. The main function of the Wire Act comes in the form of regulating online gambling. In 2011, the Department of Justice issued their legal opinion of this law. “In essence, they determined that the law only applies to US based [online] sports betting, and that [online] casino gambling and poker gambling activities fall outside of the range of application of the Federal Wire Act.”¹⁹

About 30 years after the Wire Act, Congress enacted the Professional and Amateur Sports Protection Act of 1992 (PASPA).

“PASPA makes it a federal crime for states to license sports gambling. Congress passed PASPA with the intent of prohibiting state authorized sports gambling. 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.’”²⁰

The legislative record revealed that one of the major concerns and reasons for outlawing state-sponsored sports betting was “that any increase in sports gambling, be it regulated or not, would increase the likelihood of corruption and the possibility of destroying the integrity crucial to professional and amateur sports.”²¹ Specifically, PASPA makes it 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.”²²

PASPA did not seek to prohibit any lawful sports gambling schemes that were in place prior to the passing of this act. “Congress manifested this intent in section 3704 of PASPA by providing a grandfather provision for states that either had (1) operated a legalized sports wagering scheme prior to August 31, 1990, or (2) legalized sports wagering and such operations were

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Mills, *supra* note 4, at 216.

²¹ Woo, *supra* note 1, at 575.

²² 28 U.S.C. § 3702.

conducted during the period of September 1, 1989, through October 2, 1991.”²³ Ultimately, this exemption provision has allowed the sports lotteries that are conducted in Oregon, Delaware and Montana to continue. The most important beneficiary of PASPA’s exemption provision is Nevada.²⁴ “Nevada authorized sports betting in standalone locations in 1955 and hotel sportsbooks in 1975.”²⁵ “Reading PASPA together with section 1084(b) of the Wire Act, sports wagering is effectively limited to Nevada”²⁶ This has turned Las Vegas into the mecca of sports betting within the United States.

For most of its existence, PASPA has rarely been challenged. However, the State of New Jersey has recently lead the fight to reassess the statute and spark a reform of the sports betting laws in the United States. New Jersey’s efforts started in 2014, when Governor Chris Christie passed a law that “partially repeals the state's sports betting prohibitions and clears the way for casinos and racetracks to begin taking bets... .”²⁷ In response to New Jersey passing this law, the NCAA, MLB, NBA, NFL and NHL all banned together to file a lawsuit against Governor Christie. The leagues argued that New Jersey’s new law violated PASPA.²⁸

“New Jersey counters that the leagues lack standing to bring this case because they suffer no injury from the State's legalization of wagering on the outcomes of their games. In addition, alongside certain intervening defendants, New Jersey argues that PASPA is beyond Congress' Commerce Clause powers to enact and that it violates two important principles that underlie our system of dual state and federal sovereignty: one known as the "anti-commandeering" doctrine, on the ground that PASPA impermissibly prohibits the states from enacting legislation to license sports gambling; the other known as the "equal sovereignty" principle, in that PASPA permits Nevada to license widespread sports gambling while banning other states from doing so.”²⁹

Ultimately, the District Court ruled in favor of the plaintiffs and that the

²³ Jeffrey Rodefer, *Professional and Amateur Sports Protection Act of 1992*, GAMBLING LAW US, <http://www.gambling-law-us.com/Federal-Laws/sports-protection.htm> (last visited Apr. 7, 2017).

²⁴ *Id.*

²⁵ Woo, *supra* note 1, at 573.

²⁶ Rodefer, *supra* note 23.

²⁷ David Purdum, *Governor signs NJ sports betting bill*, ESPN (Oct. 17, 2014), http://www.espn.com/espn/chalk/story/_/id/11718151/governor-chris-christie-signs-new-jersey-sports-betting-bill-law.

²⁸ *NCAA v. Governor of N.J.*, 730 F.3d 208, 214 (3d Cir. N.J. 2013).

²⁹ *Id.* at 214.

New Jersey law is in violation of PASPA.³⁰ New Jersey ultimately appealed this ruling. In August of 2015, a 3-judge panel of the Court of Appeals for the Third Circuit affirmed in a 2-1 decision. In response, New Jersey sought an “en banc” review of the decision by all of the judges in the Third Circuit.³¹ To the surprise of many, this “en banc” review was granted.³² However, upon review, the 12 judges of the Third Circuit again ruled against New Jersey in a 9-3 decision. New Jersey, however, is yet to abandon their fight against PASPA. Governor Chris Christie has now petitioned to the Supreme Court of the United States. “The requests for SCOTUS to hear the case center around the idea that PASPA is unconstitutional, as it usurps the Tenth Amendment.”³³ “In January [of 2017], the [US Supreme] court declined to either hear or dismiss the case, instead opting to request a brief from the US Solicitor General regarding the government’s position.”³⁴

In addition to New Jersey, many other state senators have sponsored bills in the attempt to push for legalized gambling in their respective states. States including New York, Pennsylvania, South Carolina and Michigan have all proposed bills to legalize sports gambling in some form.³⁵ “The New York bill seeks to amend the state constitution to exempt sports wagering from the New York's existing gambling ban... South Carolina's legislation would similarly amend the state constitution. Both states require that the public approve any amendments to the state constitution.”³⁶ “In Michigan, the proposed legislation would submit a referendum to the voters on whether to

³⁰ Dustin Gouker, *New Jersey Sports Betting*, LEGAL SPORTS REPORT, <http://www.legalsportsreport.com/nj/> (last visited Apr. 7, 2017).

³¹ Dustin Gouker, *New Jersey Sports Betting Redux? Rehearing Requested After Court Loss*, LEGAL SPORTS REPORT (Sept. 8, 2017), <http://www.legalsportsreport.com/3634/new-jersey-sports-betting-rehearing/>.

³² Dustin Gouker, *New Life for New Jersey Sports Betting Case: Rehearing Granted By Court*, LEGAL SPORTS REPORT (Oct. 14, 2015), <http://www.legalsportsreport.com/4987/nj-sports-betting-case/>.

³³ Dustin Gouker, *Pair of NJ Sports Betting Appeals To US Supreme Court Officially Filed*, LEGAL SPORTS REPORT (Oct. 7, 2016), <http://www.legalsportsreport.com/11780/nj-sports-betting-appeal-scotus/>.

³⁴ Dustin Gouker, *The US Sports Betting Push Comes to Congress: Pallone and LoBiondo Introduce Bills In House*, LEGAL SPORTS REPORT (Feb. 1, 2017), <http://www.legalsportsreport.com/12893/congress-us-sports-betting/>.

³⁵ Bradley H. Dlatt & James W. Gordon, *United States: Three States Introduce Bills To Legalize Sports Betting While SCOTUS Decides Whether To Hear Suit Challenging Existing Federal Ban*, MONDAY (Feb. 2, 2017), <http://www.mondaq.com/unitedstates/x/565162/Gaming/Three+States+Introduce+Bills+to+Legalize+Sports+Betting+While+SCOTUS+Decides+Whether+to+Hear+Suit+Challenging+Existing+Federal+Ban>; Dustin Gouker, *Michigan Lawmaker Eyes Another Push For Legal Sports Betting With Bill*, LEGAL SPORTS REPORT (Jan. 19, 2017), <http://www.legalsportsreport.com/12725/michigan-sports-betting-bill/>.

³⁶ *Id.*

adopt sports gambling. The Michigan legislation also would require the population of any township or city where sports gambling would take place to approve it by a majority vote.³⁷ Furthermore, another seven states including California, Illinois, Massachusetts, Mississippi, New York, Pennsylvania and Washington have all introduced bills in an attempt to legalize some form of online gaming.³⁸ It is important to note, however, that even if these proposed bills were to become law, they would still currently be in violation of PASPA. However, if the Supreme Court chooses grant certiorari in the case of *NCAA v. Governor of N.J.*, this could potentially change. Regardless of whether the Supreme Court chooses to grant certiorari or not, this action by the legislatures of many states show that many people support legalized gambling and seek some kind of change or reform.

III. ARGUMENTS AGAINST THE REFORM OF GAMBLING LAWS IN THE UNITED STATES

Despite the recent push by the public and many different states for the legalization of sports betting, many sound arguments against this position remain. While a majority of these arguments are social or policy arguments, they nonetheless carry great weight and should be considered.

One argument behind keeping sports gambling illegal is the one that was used to get PASPA passed in the first place; that allowing people to gamble on sports threatens the integrity of these sports. If sports betting were to be legalized, and the practice was to become more widespread with more people involved, some believe that this would increase the likelihood of bettors to attempt to entice players and referees to engage in corruption and cheating, in order to profit.³⁹ In furtherance of the point that gambling threatens the integrity of sports, some opponents believe that its legalization will change the underlying focus of sports and why people watch the games. Instead of people enjoying the game for the great historical reasons, such as the skill involved or the commodore, people will use sports “as a means of measuring and grasping for money”.⁴⁰

Another line of arguments against the legalization of sports betting

³⁷ *Id.*

³⁸ Jonathan Griffin, *2015 Internet Gambling Legislation*, NCSL (Aug. 21, 2015), <http://www.ncsl.org/research/financial-services-and-commerce/2015-internet-gambling-legislation.aspx>.

³⁹ David Blankenhorn, *David Blankenhorn: Plenty of reasons why not to legalize sports betting*, DESERET NEWS (Nov. 28, 2014), <http://www.deseretnews.com/article/865616598/Plenty-of-reasons-why-not-to-legalize-sports-betting.html>.

⁴⁰ *Id.*

considers the possible adverse economic effects that would come with this change. The first economic argument against legalized sports betting is actually more of a counterargument to those who support its legalization. Many supporters of legalized gambling claim that legalization will lead to increased revenue for the state governments that regulate this activity. While this may be true, opponents claim that the added costs that these states will incur due to the adverse affects that gambling will have on residents will outweigh any revenue that is generated. “In cost/benefit analyses, state, national, and international studies indicate that gambling is a losing proposition of at least 3-to-1. That is, for every new dollar the state generates from its share of gambling profits, government incurs three dollars of added expenses.”⁴¹ Many that oppose legal gambling believe that “an increase in gambling results in an increase in crime, unemployment, welfare, homelessness, suicide, and even more social carnage.”⁴² All of these proposed negative effects cost the state money, and in turn, these expenses are passed onto the taxpayers. Another reason that many oppose legalized sports gambling is due to the fact that this industry as a whole “...does not produce anything and lacks the economic multipliers of manufacturing, retail, or service sectors”.⁴³ The gaming sector is a “...sterile transfer of money... producing nothing new and nothing of lasting value”⁴⁴ because it simply “redistributes wealth without creating it”.⁴⁵ Therefore, opponents of reform in this area of law feel that “...policymakers should be focused on ways to generate economic prosperity for all, not enrich narrow special interests that profit at the expense of others.”⁴⁶

IV. ARGUMENTS FOR THE REFORM OF GAMBLING LAWS IN THE UNITED STATES

While there are many valid arguments to support the notion that the current gambling legislation in the United States is sufficient, it seems that there are also countless arguments as to why a serious change is needed. The numerous challengers of PASPA have set fourth various legal arguments as to why PASPA should be repealed. On top of these legal arguments, there are a number of social and policy arguments to support this position.

⁴¹ James B. Butler, *Sports Betting is a Dead End*, U.S. NEWS (June 15, 2012), <http://www.usnews.com/debate-club/should-sports-betting-be-legal/sports-betting-is-a-dead-end>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Blankenhorn, *supra* note 39.

⁴⁵ *Id.*

⁴⁶ Butler, *supra* note 41.

The strongest legal arguments against PASPA were set forth by the state of New Jersey in the case of *NCAA v. Governor of N.J.* In this case, New Jersey attempted to prove that PASPA was unconstitutional because it

“...is beyond Congress' Commerce Clause powers to enact and that it violates two important principles that underlie our system of dual state and federal sovereignty: one known as the ‘anti-commandeering’ doctrine, on the ground that PASPA impermissibly prohibits the states from enacting legislation to license sports gambling; the other known as the ‘equal sovereignty’ principle, in that PASPA permits Nevada to license widespread sports gambling while banning other states from doing so.”⁴⁷

The anti-commandeering principle inherent in the Tenth Amendment that essentially “...prohibits Congress from forcing the states "into doing the work of federal officials.”⁴⁸ Federal law is said to violate this constitutional principle when Congress “...coerce[s] the States into enacting or implementing federal standards... .”⁴⁹ New Jersey makes the argument that PASPA directly violates this principle and thus, is unconstitutional. The district and circuit courts did not agree with the state of New Jersey. “The Third Circuit found PASPA does not commandeer state legislatures because it does not affirmatively force states to enact a law.”⁵⁰ However, many believe that this court erred in their analysis. One person who believes that PASPA is unconstitutional for violating the anti-commandeering principle is Judge Vanaskie of the Third Circuit.

“Judge Vanaskie stated in his dissent [in *NCAA v. Governor of N.J.*] that PASPA is an ‘unconstitutional exercise of congressional authority.’ Rather than being a federal statute that directly regulates interstate commerce, as permitted by the Commerce Clause, PASPA does not allow states to authorize sports gambling. Not allowing a state to authorize an activity is the equivalent of controlling how a state treats that activity.”⁵¹

Essentially, PASPA is forcing each state to decide between allowing unregulated gambling to occur within its borders, or a total ban on the activity all together. By enacting this law “...the federal government is overstepping its boundaries and violating states' rights. Allowing the federal

⁴⁷ *NCAA v. Governor of N.J.*, 730 F.3d at 214.

⁴⁸ Joshua M. Peles, *Ncaa V. N.J.: New Jersey Rolls The Dice On A Tenth Amendment Challenge To The Professional And Amateur Sports Protection Act*, 22 JEFFREY S. MOORAD SPORTS L.J. 149, 166 (2015).

⁴⁹ *Id.*

⁵⁰ Mills, *supra* note 4, at 217.

⁵¹ *Id.* at 219.

government to force states to decide between allowing unregulated sports gambling and prohibiting all sports gambling is in violation of the Constitution.”⁵²

The equal sovereignty principle was invoked in the case of *Shelby County v. Holder*, and essentially states, “...that the federal government may not single out states for differential treatment.”⁵³ The State of New Jersey argues that this is exactly what PASPA did when it allowed Nevada and 3 other states to continue licensing sports gambling, yet banning the rest of the states from doing so. However, the Third Circuit distinguished this from the voting scenario in *Shelby County v. Holder*, “...finding the regulation of gambling through the Commerce Clause distinguishable from the regulation of elections....”⁵⁴ Many people believe that the Third Circuit misinterpreted the Supreme Court’s decision in *Shelby County*. “In *Shelby County*, the legislation in question forced some, but not all, states to enforce a federal law similar to the requirements of PASPA.”⁵⁵ The Third Circuit seems to have missed the bigger picture, finding any miniscule reasons it could to distinguish the two cases and thus rule against New Jersey. Based on the Supreme Court’s interpretation and holding in *Shelby County*, it is quite likely that if they were to hear New Jersey’s case, they would come to a different conclusion than the Third Circuit.⁵⁶

In addition to these legal arguments, there are many supporting policy arguments illustrating the reasons for reform. The main argument for reform is that, simply put, PASPA is outdated. Since the enactment of PASPA in 1992, much has changed. Sports betting in the United States has become extremely commonplace and people have generally become much more accepting of it. On top of that, organized crime groups and their control of the sports betting black market has decreased dramatically. The legislative intent behind enacting PASPA was to protect the athletes and the integrity of sports by curtailing corruption.⁵⁷ Historically, organized crime groups fueled most of the corruption and scandals that occurred in sports in order to reap gambling profits. While this reasoning made sense in the 1990’s, times have changed. “Major League Baseball has not admitted a fixed game since 1919, no National Hockey League player is known to have thrown a game since the 1940s, the National Basketball Association states it has not had points shaved since 1954, and the National Football League claims not a single game has

⁵² *Id.* at 220.

⁵³ Abigail B. Molitor, *Understanding Equal Sovereignty*, 81 UNIV. CHI. L. REV. 1839 (2014).

⁵⁴ Mills, *supra* note 4, at 222.

⁵⁵ *Id.*

⁵⁶ *Id.* at 223.

⁵⁷ *See infra* note 21.

been influenced.”⁵⁸ Nowadays, the major American sports leagues are so lucrative and generate astronomical amounts of revenue. This large revenue translates into extremely high salaries for players, coaches and referees. Unlike the past, there is very little incentive for anyone involved in sporting events to throw games or shave points. There is even an argument that legalized sports betting would help sports leagues look out for and prevent game fixing. Sports leagues would be able to more effectively monitor betting trends. Doing this would allow each league to “... look for unnatural changes in the odds, as these changes often indicate the presence of an outside influence.”⁵⁹ Leagues are currently monitoring odds and betting trends, however, this is only done using information obtained from legal betting in Las Vegas. This does not account for the billions of dollars being wagered illegally in every other state.⁶⁰

Additionally, many in favor of eliminating PASPA argue that there would be economic incentives for states to implement some form of legalized gambling. The main argument is that states could generate a great deal of tax revenue by legalizing and regulating sports betting. “Revenue from legal betting could potentially go toward to public safety and youth programs, neighborhood development and other forms of local aid, as is currently the case with casinos across the U.S.”⁶¹ “Currently, illegal bets made on sports are shuffled either underground or to the offshore industry mentioned above. Since these operators are avoiding taxes, none of the money has a chance to benefit local communities.”⁶² While opponents will argue that legalizing gambling will end up costing states more money than it will generate, this argument has its flaws. The opponents claim that legalized gambling will cause social deterioration by increasing crime, unemployment, welfare, homelessness, suicide, which will in turn cost states more money than they will generate from taxing the industry.⁶³ However, this argument doesn’t account for the fact that billions of dollars of unregulated, illegal bets are being placed around the country already. These negative social effects, if true, would already be taking their toll due to illegal betting. Therefore, many states are incurring these costs while currently generating no revenue.

⁵⁸ Mills, *supra* note 4, at 226.

⁵⁹ *Id.* at 227.

⁶⁰ *Id.*

⁶¹ Abby Messick, *Top 10 reasons to legalize sports betting*, CASINO CITY TIMES (Nov. 21, 2016), <http://www.casinocitytimes.com/article/top-10-reasons-to-legalize-sports-betting-65660>.

⁶² *Id.*

⁶³ *See infra* note 42.

V. INFLUENCE OF PROFESSIONAL SPORTS LEAGUES

At the time PASPA was enacted, and for many years after, professional sports leagues such as the NBA, MLB, NFL and NHL have seemed to support this act. They felt that outlawing sports betting would increase the integrity in their game and protect their players.⁶⁴ Evidence of this continued support is evidenced from the fact that each of these leagues joined the NCAA in filing a lawsuit against the Governor of New Jersey for attempted to legalize sports betting in his state.⁶⁵ However, in the last year or two, it seems that most of these leagues and their commissioners have become more accepting of the idea reform with respect to gambling on their sports. “At one time, pro leagues distanced themselves from betting like they were walking past a beehive, but in recent years, some have lightened their stance.”⁶⁶ There is a great deal of evidence to show that these leagues are beginning to change their stance. This evidence should be taken with a great deal of weight. Because PASPA was ultimately created to protect their sports, the actions and statements of these leagues should have an effect on whether or not it is time for reform.

Very recently, the NHL has decided to bring an expansion team to Las Vegas for the 2018 season, and the NFL has approved the Oakland Raiders to relocate to Las Vegas for the start of the 2019 or 2020 season. Many people are pointing to these moves as evidence that these leagues no longer see sports betting as a threat to their sports. Gambling reform advocates and optimists would even argue that bringing teams to Las Vegas, the home of sports betting in the United States, means that these leagues are embracing the positive impacts that legalized betting could bring.

“The NHL team in Vegas is more like opening the door a crack, not releasing the floodgates for sports betting.”⁶⁷ Regardless of how much this move has opened the door for this discussion, the door has been opened nonetheless. Geoff Freeman, the CEO of the American Gaming Association (AGA), views this move as a win for those in favor of gambling law reform. He is quoted as saying, “[t]he NHL’s decision is the latest signal that professional sports leagues are increasingly comfortable with legal, regulated sports betting. Nothing threatens the integrity of sports more than the illegal

⁶⁴ See *infra* note 21.

⁶⁵ See *infra* note 27.

⁶⁶ Evan Grossman, *Legal sports gambling is gaining support, and here's why*, NY DAILY NEWS (June 15, 2016, 2:47 PM), <http://www.nydailynews.com/sports/legal-sports-gambling-gaining-support-article-1.2675108>.

⁶⁷ Dustin Gouker, *Is Las Vegas NHL Franchise Really A Big Win For Sports Betting Advocates?*, LEGAL SPORTS REPORT (June 16, 2016), <http://www.legalsportsreport.com/10472/las-vegas-nhl-team-and-sports-betting/>

sports betting marketplace where Americans spent at least \$150 billion over the last year through bookies and illegal, and often offshore, websites.”⁶⁸ Going forward, something that will give more insight into the NHL’s true feelings towards gambling will be whether or not the league asks Las Vegas sports books to ban betting on the NHL’s Las Vegas team. Currently, the NHL has not yet asked for this ban, and many of the leading sports books in Las Vegas and others close to the situation do not foresee this happening.⁶⁹

The NFL’s approval of the Raiders’ relocation to Las Vegas came after the NHL’s announcement. A second team in Las Vegas from one of the big four professional sports leagues has only increased the discussions on the possibility of widespread legalized gambling. After this move was approved by a 31-1 vote by the NFL owners, NFL commissioner Roger Goodell publically stated, “... the NFL remain[s] opposed to legalized sports wagering.”⁷⁰ “The NFL commissioner’s reasons were trite, outdated and mocked by experts...”⁷¹ Despite what the commissioner says publically, the actions taken by the league have led many to believe that any risks associated with sports wagering are no longer a concern of the NFL. “As recently as 2013 [...] the NFL was so opposed to sports wagering that it wouldn’t even let Las Vegas bid for the Pro Bowl – which isn’t even a real game. It also wouldn’t allow a preseason game to be played there, by (presumably) a California team seeking to expand its fan base.”⁷² In only four years, the NFL is now taking a completely opposite stance regarding their relations with the city of Las Vegas. Additionally, legal experts believe that this relocation to Las Vegas hurts the NFL’s arguments against legalizing sports betting. “From a legal standpoint, the NFL has traditionally maintained that the legalization of sports betting on a national level would cause irreparable harm by impacting the integrity of its competitions. With one of its franchises headed to Las Vegas on a permanent basis by the end of the decade, the NFL could soon lose its rights to that argument...”⁷³ “As several states, including

⁶⁸ *Id.*

⁶⁹ Matt Youmans, *Sports books don’t expect betting ban on NHL’s Las Vegas team*, LAS VEGAS REVIEW-JOURNAL (June 22, 2016, 7:52 PM), <https://www.reviewjournal.com/sports/golden-knights-nhl/sports-books-dont-expect-betting-ban-on-nhls-las-vegas-team/>.

⁷⁰ Dan Wetzel, *As Raiders rush to Las Vegas, try not to laugh at Roger Goodell’s stance against gambling*, YAHOO! SPORTS (Mar. 27, 2017, 11:18 PM), <http://sports.yahoo.com/news/as-raiders-rush-to-las-vegas-try-not-to-laugh-at-roger-goodells-stance-against-gambling-031802008.html>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Thomas Barrabi, *What Raiders’ Las Vegas Move Means for Sports Betting*, FOX BUSINESS (Mar. 27, 2017), <http://www.foxbusiness.com/features/2017/03/27/what-raiders-las-vegas-move-means-for-sports-betting.html>.

New Jersey and South Carolina, [...] challenge[] to the federal gambling ban, [...] the Raiders' move to Vegas may undermine the NFL's primary defense – and open the door for legalization.”⁷⁴

In addition to the actions of the NHL and NFL, the words of NBA commissioner Adam Silver are definitive proof that at least one of the big four professional sports leagues is in favor of legalized gambling. In an op-ed he wrote for the New York Times, Commissioner Adam Silver outlined many reasons why he supports reform with respect to PASPA and why his league is no longer in opposition of legalized and regulated sports gambling in the United States.⁷⁵ Silver discusses how times have changed since the enactment of PASPA and how sports betting is now an accepted form of entertainment in this country.⁷⁶ “There is an obvious appetite among sports fans for a safe and legal way to wager on professional sporting events.”⁷⁷ Additionally, Silver outlines his suggestions on how to properly and effectively legalize sports betting without hurting the integrity of any of the games being wagered on.

“In light of these domestic and global trends, the laws on sports betting should be changed. Congress should adopt a federal framework that allows states to authorize betting on professional sports, subject to strict regulatory requirements and technological safeguards. These requirements would include: mandatory monitoring and reporting of unusual betting-line movements; a licensing protocol to ensure betting operators are legitimate; minimum-age verification measures; geo-blocking technology to ensure betting is available only where it is legal; mechanisms to identify and exclude people with gambling problems; and education about responsible gaming.”⁷⁸

Silver defends the NBA's decision to oppose the state of New Jersey's attempt to authorize sports betting in the case of *NCAA v. Governor of N.J.* due to the fact that this attempt violates PASPA, even though Silver himself would like to see PASPA repealed and replaced. “Without a comprehensive federal solution, state measures such as New Jersey's recent initiative will be both unlawful and bad public policy.”⁷⁹

The MLB seemed to be the league most unwilling to change their stance

⁷⁴ *Id.*

⁷⁵ Adam Silver, *Legalize and Regulate Sports Betting*, THE NEW YORK TIMES (Nov. 13, 2014), https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html?_r=2.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

regarding sports betting. This is understandable due to the fact that baseball is the sport that has been hit with some of the most well known gambling scandals in history, including the Black Sox scandal and Pete Rose gambling on games in which he played and managed.⁸⁰ However, since the news of the NHL and NFL's migration to Las Vegas, it seems that commissioner Rob Manfred and the MLB are starting to loosen up. In an interview with Fox Business, Manfred discussed how that the MLB is past the stigma associated with Las Vegas and implied that the city's "...status as the United States' gambling capital would not be a major factor in determining whether the league will join the NHL and NFL in placing a franchise in Sin City."⁸¹ While this is not an outright indication that the MLB is actually changing their stance on sports betting, it shows that each of the four major sports leagues understands that Las Vegas has a lot of benefits to offer and because of this, they are willing to put whatever concerns about gambling they have on the back burner while considering expanding their outreach to Las Vegas.

VI. CONCLUSION

When examining the current legal framework regarding sports betting alongside the public's rapidly increasing fascination with this activity, common sense alone indicates that now is the time for change. PASPA is outdated and ineffective. Whether it is illegal or legal, sports betting is happening in every state and will continue to happen for as long as professional and college sports are being played. Moving past just common sense, there are very good legal arguments, and even better societal reasons as to why reform is needed. No reason is more eye opening than the recent actions taken by many of the major professional sports leagues themselves. The integrity of these sports, and the fear that gambling on these games would pose a threat to this integrity was the sole reason for enacting PASPA is the first place.⁸² Now, with two of the four major professional sports leagues (the NHL and the NFL) allowing franchises to move into Las Vegas, the only city where single sport betting is legal, and a third commissioner openly advocating for the legalization of sports betting, this fear is gone.

But what are the next steps? What is the best way to incorporate this reform that is so badly needed? The first and most crucial step would be for Congress to repeal PASPA. This is a process that Congress could begin voluntarily, or perhaps the US Supreme Court will grant certiorari in the case

⁸⁰ See *infra* note 9 and 11.

⁸¹ Thomas Barrabi, *MLB's Manfred on Las Vegas: 'We're Past the Stigma'*, FOX BUSINESS (Mar. 28, 2017), <http://www.foxbusiness.com/features/2017/03/28/mlbs-manfred-on-las-vegas-were-past-stigma.html>.

⁸² See *infra* note 21.

of *NCAA v. Governor of N.J.* and rule that PASPA is unconstitutional. While it does seem likely that the Supreme Court will grant certiorari and hear the case, nobody can be sure of what the outcome will be if this happens. If the Supreme Court decides against granting certiorari or they do grant certiorari but ultimately rule in favor of the NCAA and the other plaintiffs, there is still a good chance that Congress will eventually attempt to repeal PASPA at some point down the road.

If and when PASPA is repealed, the most logical and beneficial course of action would be to allow each state to decide if they will and how they will legalize sports gambling. It is highly likely that many, if not every state would eventually create some form of legalized sports betting. “[If] PASPA gets amended, I think you’ll see five to 10 states opt in quickly and offer it,” Tim Wilmott, president and CEO of Penn National Gaming, Inc., said. “There are places like Utah, Hawaii, Tennessee, some states down in the South, that I think are going to be slower to accept it.”⁸³ There are many reasons why allowing states to control and regulate this new industry is the best course of action. First, this system would allow each state to generate huge sums of revenue.

“In Delaware, for example, where only a minor form of sports gambling is allowed under PASPA, revenues generated during the 2009 NFL season totaled \$ 1.2 million, along with an additional \$ 6.2 million in cross-over betting increases. Oregon’s now defunct sports lotteries brought in an estimated \$ 2 to \$ 2.5 million in revenue earmarked for state school scholarships. PricewaterhouseCoopers estimated that legalized online gambling in the United States could ‘yield[] as much as \$ 43 billion in tax revenue.’”⁸⁴

The public demand sports betting already exists in every state and the industry is thriving underground. However, instead of these profits being realized by state and local governments, the money is going straight into the pockets of criminals. Additionally, allowing states to self-regulate sports gambling would create tons of new jobs in each state. Creating new jobs through the establishment of a new sports betting industry would go a long way towards stimulating the economy and increasing the quality of life for many people in the United States.

In addition to the states and their residents benefitting, professional sports leagues would benefit as well. By allowing states to legalize and tightly

⁸³ David Purdum & Ryan Rodenberg, *Future of sports betting: the marketplace*, ESPN (May 4, 2017), http://www.espn.com/chalk/story/_/id/17892685/the-future-sports-betting-how-sports-betting-legalized-united-states-the-marketplace-look-like.

⁸⁴ Woo, *supra* note 1, at 592.

regulate sports betting, monitoring suspicious gambling activity will be much easier for the professional sports leagues. While each league currently works with Las Vegas to monitor gambling lines and activity⁸⁵, this information does not reflect the illegal gambling occurring everywhere else throughout the United States, and thus, these efforts are useless. Many believe that the increase in available, accurate information that legal sports gambling would provide will enhance each league's ability to detect suspicious activity such as point shaving or fixing of games. While increasing the integrity of professional and amateur sports was the intention of PASPA, it seems that repealing PASPA and legalizing sports gambling is the best way to achieve all that PASPA never could.

⁸⁵ Mills, *supra* note 4, at 227.