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# Online Sports Betting: The Opportunities and Risks for Banks

## I. INTRODUCTION

Sports betting has existed almost as long as sports themselves, with ancient Romans placing wagers on the results of chariot races at the Circus Maximus centuries ago.<sup>1</sup> Sports betting is the process of allowing individuals to place wagers on the outcomes of specific sporting events.<sup>2</sup> For many years sports betting was illegal in the United States due to the Professional and Amateur Sports Protection Act of 1992 (“PASPA”),<sup>3</sup> which prohibited states from legalizing the process.<sup>4</sup> However, in 2018 this act was found unconstitutional in the decision of *Murphy v. National Collegiate Athletic Association*.<sup>5</sup> Since this ruling, there has been a proliferation of legalization among the states, with twenty-two legalizing sports betting as of 2020.<sup>6</sup>

Today, sports betting is a popular American pastime with \$20 billion in bets placed since 2018,<sup>7</sup> and a sports betting industry projected to be worth \$8 billion by 2025.<sup>8</sup> There have been pushes for further legalization across the nation, with a 2017 survey indicating that 55% of

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1. The circus maximus was the main chariot track in the middle of Rome where the highest level of chariot racing took place. Mark Cartwright, *Circus Maximus*, ANCIENT HIST. ENCYCLOPEDIA (May 16, 2018), [https://www.ancient.eu/Circus\\_Maximus/](https://www.ancient.eu/Circus_Maximus/) [https://perma.cc/3G42-WN5P].

2. Ed Grabianowaski, *How Sports Betting Works*, HOWSTUFFWORKS, <https://entertainment.howstuffworks.com/sports-betting.htm> [https://perma.cc/DK3J-UN36] (last visited Sept. 19, 2020).

3. Professional and Amateur Sports Protection Act of 1992 (“PASPA”), 28 U.S.C. §§ 3701–3704 (2018).

4. *Id.*

5. *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018).

6. Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (June 9, 2020), [https://www.espn.com/chalk/story/\\_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization](https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization) [https://perma.cc/V7MC-FZ72].

7. David Purdum, *Sports Betting’s Growth in U.S. ‘Extraordinary’*, ESPN (May 14, 2020), [https://www.espn.com/chalk/story/\\_/id/29174799/sports-betting-growth-us-extraordinary](https://www.espn.com/chalk/story/_/id/29174799/sports-betting-growth-us-extraordinary) [https://perma.cc/PZ93-HZLD].

8. Associated Press, *Sports Betting Market Expected to Reach \$8 Billion by 2025*, MARKETWATCH (Nov. 4, 2019, 3:42 PM), [https://www.marketwatch.com/story/firms-say-sports-betting-market-to-reach-8-billion-by-2025-2019-11-04#:~:text=NEW%20YORK%20\(AP\)%20%E2%80%94%20Investors,the%20U.S.%20with%20five%20years](https://www.marketwatch.com/story/firms-say-sports-betting-market-to-reach-8-billion-by-2025-2019-11-04#:~:text=NEW%20YORK%20(AP)%20%E2%80%94%20Investors,the%20U.S.%20with%20five%20years) [https://perma.cc/B8KT-3YRM].

the American public supports legalization.<sup>9</sup> However, the banking industry does not share the same positive opinions towards sports betting as the American public, as many financial institutions still refuse to offer their services to the sports betting industry.<sup>10</sup> This refusal is primarily due to fears of being fined for assisting in money laundering, as sports betting has been previously used to cover up money laundering schemes prior to PASPA.<sup>11</sup> There is significant risk to their cautious approach because the sports betting industry is growing rapidly and the banks that act first will protect their current customer base while also capitalizing on new revenue streams.<sup>12</sup>

For many years, sports betting was illegal in the United States on account of the PASPA.<sup>13</sup> This all changed in 2018 with the Supreme Court decision, *Murphy v. National Collegiate Athletic Association*.<sup>14</sup> This decision found that PASPA was unconstitutional under the Tenth Amendment,<sup>15</sup> giving the states the ability to choose their own paths forward regarding whether or not they wanted to create legalized sports betting regimes.<sup>16</sup> Since this decision, there has been a surge in different regulatory schemes aimed at legalizing sports betting among the various states.<sup>17</sup>

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9. Rick Maese & Emily Guskin, *Poll: For First Time, Majority of Americans Approve of Legalizing Sports Betting*, WASH. POST (Sep. 26, 2017), [https://www.washingtonpost.com/sports/poll-for-first-time-majority-of-americans-approve-of-legalizing-sports-betting/2017/09/26/a18b97ca-a226-11e7-b14f-f41773cd5a14\\_story.html](https://www.washingtonpost.com/sports/poll-for-first-time-majority-of-americans-approve-of-legalizing-sports-betting/2017/09/26/a18b97ca-a226-11e7-b14f-f41773cd5a14_story.html) [https://perma.cc/G74W-Q63A].

10. See Amanda Alix, *Bank of America Says "Yes" to Pot, "No" to Online Casinos*, THE MOTLEY FOOL (Nov. 24, 2013, 9:22 AM) (exploring how banks came to interact with the cannabis industry as well as online casinos) <https://www.fool.com/investing/general/2013/11/24/bank-of-america-says-yes-to-pot-no-to-online-casin.aspx> [https://perma.cc/8XDS-XNAC].

11. Jon Prior, *Banks Steer Clear of Sports Gambling Even as More States Legalize It*, AM. BANKER (Nov. 11, 2020, 9:00 PM) <https://www.americanbanker.com/news/banks-steer-clear-of-sports-gambling-even-as-more-states-legalize-it#:~:text=While%20banks%20are%20more%20open,be%20used%20for%20online%20wagers.&text=Even%20with%20the%20regulatory%20concerns,in%20the%20industry%20is%20enticing> [https://perma.cc/7WJZ-23S3].

12. See Kevin Wack, *Sports Gambling is Next Hot-Button Issue for Banks*, AM. BANKER (May. 15 2018, 2:10 AM), <https://www.americanbanker.com/opinion/just-what-banks-need-another-hot-button-issue-in-sports-gambling> [https://perma.cc/Y965-KSZP] (arguing that banks may lose customers and ceded opportunity for revenue by not getting involved with sports betting).

13. Professional and Amateur Sports Protection Act of 1992 ("PASPA"), 28 U.S.C. §§ 3701–3704 (2018).

14. *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018).

15. *Id.*

16. *Id.*

17. Rodenberg, *supra* note 6.

During all of this, banks have remained wary of sports betting and many have not yet decided whether they wish to do business with sports betting operators.<sup>18</sup> In this way, banks have avoided the fledgling industry in the same way they have avoided the growing cannabis industry, another industry being legalized at the state level after a long period of illegality everywhere.<sup>19</sup> However, unlike the cannabis industry, which has the unmitigable risk of federal intervention,<sup>20</sup> the risk of money laundering in sports betting can be reduced by state action.<sup>21</sup> Because of this, banks should focus on what states and sportsbooks are doing to mitigate the risk of money laundering rather than waiting for the risk to fully eliminated.<sup>22</sup>

This Note proceeds in six parts. Part II describes the history of sports betting in the United States and how *Murphy* upended that system and left regulation up to the states. Part III explores federal anti-money laundering law and the effect it has on the sports betting industry. Part IV examines the cannabis industry and the reaction banks have had to legalization by the states, as well as how the cannabis and sports betting industries are different. Part V considers some of the current regulations and industry practices that protect online sports betting from the negative issues associated with gambling. Finally, Part VI provides a brief conclusion of why banks should not treat sports betting the same as they do cannabis.

## II. SPORTS BETTING: WHAT IT IS, HOW IT DEVELOPED, AND WHERE IT IS GOING

### A. *The Mechanics of Sports Betting*

At its core, sports betting is the act of placing a wager on who will win a sporting event.<sup>23</sup> Today, however, people are able to bet on all

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18. Wack, *supra* note 12.

19. See Alix, *supra* note 10 (exploring how banks came to interact with the cannabis industry as well as online casinos).

20. See 21 C.F.R. § 1308.11 (2020) (making cannabis illegal to own under federal law, which means the market could be shut down at any time).

21. See *e.g.*, 230 ILL. COMP. STAT. 45/25-25 (2020) (providing all the protections Illinois requires from sports betting); see also 42 R.I. GEN. LAWS ANN § 42-61.2-16 (2020) (adding sports betting to the list of activities under the eye of the Rhode Island Lottery).

22. See *Why We Won't See a Federal Sports Betting Bill Soon*, IFRAHLAW (July 30, 2018) <https://www.ifrahlaw.com/ifrah-on-igaming/wont-see-federal-sports-betting-bill-soon/> [https://perma.cc/F2PM-KP73] (explaining the reasons why a federal response will take a long time).

23. Grabianowski, *supra* note 2.

aspects of the event, such as the particular score, participant performance, and even the first participant to get a foul.<sup>24</sup> Bets are created by oddsmakers, individuals who use previous matches' statistics to create odds.<sup>25</sup> These odds are then made into a bet when they are offered to the public by a bookmaker who is working for a casino or other betting provider.<sup>26</sup> The odds are not the oddsmaker's prediction of what will occur but are actually an oddsmaker's prediction of what bet is most likely to get the same amount of people on each side of the bet.<sup>27</sup> Sports betting operators make their money by taking a small fee for their services.<sup>28</sup> As sports betting has progressed, bets have grown more sophisticated, with many bookmakers now responsible for drawing up the spreads on sporting events, which allows people to bet on a sporting event between two mismatched teams.<sup>29</sup> Bookmakers are also tasked with creating parlay bets, which are a collection of minor bets that all must be correct to payout.<sup>30</sup>

*B. History of Sports Betting and the Federal Ban*

In the United States, sports betting has had a long and often unsavory history.<sup>31</sup> Perhaps the most infamous sports betting event is the "Black Sox" Scandal,<sup>32</sup> in which eight members of the Chicago White

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24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. See generally Richard Johnson, *The Centuries-Old History of How Sports Betting Became Illegal in the United States in the First Place*, SB NATION, (May 18, 2018, 8:00 AM) <https://www.sbnation.com/2018/5/18/17353994/sports-betting-illegal-united-states-why> [<https://perma.cc/6NEL-8LU5>] (exploring the long standing history of sports betting and the drive to make it illegal).

32. The Black Sox Scandal concerned eight members of the Chicago White Sox baseball team, who allegedly threw the World Series against the Cincinnati Reds after the Sox were favored as much as 3-to-1 before the series. There have been extensive discussions about how involved eight players were in the fix. Some have claimed the Sox tried to rally with one game left in the series but ultimately continued the fix because of threats to their families. The scandal may have remained rumors forever, until one of the gamblers, Bill Mahrag, went public with his account of the fix that led to the testimony of the players before a grand jury. Surprisingly, they were never convicted in court because all the grand jury testimony papers were stolen before trial, leaving the prosecution with no evidence. In any event, Judge Landis, who had just been appointed the commissioner of baseball, handed down an internal decision of a lifetime ban for each player. Since then, there has been much discussion around whether the players should be allowed to finally, enter the hall of fame but nothing has ever come of

Sox were accused of throwing the 1919 World Series after allegedly being paid off by the New York mobster Arnold Rothstein.<sup>33</sup> Although none of the players were found guilty of a crime at trial, all were permanently banned from professional baseball.<sup>34</sup> After this scandal, no state would endorse or legalize sports betting in any form until 1955, when Nevada created a state gaming board and began to accept wagers on sporting events.<sup>35</sup> Such scandals have persisted even after PASPA was passed: in 2007 the National Basketball Association (“NBA”) discovered that one of its referees, Tim Donaghy, had been making bets for years on sporting events that he had officiated.<sup>36</sup> Donaghy had also worked on behalf of a professional sports gambler to influence both the outcome of the event and the actual scores for each team, earning \$2,000 for each event he influenced.<sup>37</sup> Eventually, the scheme fell apart, and Donaghy was arrested.<sup>38</sup> These types of incidents that demonstrated how sports betting could potentially lead to rigged games created the negative perceptions that influenced public perception for many years.<sup>39</sup> Scandals like the Black Sox and Tim Donaghy exemplify the harm to competitive integrity that Congress leveraged in banning sports betting following a 1989 breach of integrity with Major League Baseball (“MLB”) star Pete Rose.<sup>40</sup> In response to the Rose situation, and with broad support from the professional sports leagues,<sup>41</sup> Congress decided to act and in 1992 PASPA was signed into law.<sup>42</sup>

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it. To this day this scandal remains one of the most publicized accounts of gambling can influence the outcome of a professional match. See Evan Andrews, *The Black Sox Baseball Scandal*, HISTORY, <https://www.history.com/news/the-black-sox-baseball-scandal-95-years-ago> [https://perma.cc/S9NF-8J9X] (last updated Oct. 22, 2018).

33. *Id.*

34. *Id.*

35. See James C. W. Goodall, *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, 1103 n.25 (2015) (“Nevada created a state gaming board and authorized sports wagering in standalone locations.”).

36. Scott Eden, *How Former Ref Tim Donaghy Conspired to Fix NBA Games*, ESPN (July 9, 2020), [https://www.espn.com/nba/story/\\_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games](https://www.espn.com/nba/story/_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games) [https://perma.cc/5L6D-ZY8G].

37. *Id.*

38. *Id.*

39. See *id.* (“[T]he more money there is inflowing to sport, the greater the sport corruption.”).

40. See Goodall, *supra* note 35, at 1101–04 (previewing what came before PASPA as well as what was discussed during the formation of the legislation).

41. S. REP. NO. 102–248 at 3 (1991).

42. See Goodall, *supra* note 35, at 1103 (Reviewing the two precursor bills to PAFSA that took aim at state sports lotteries).

PASPA outlawed any state from authorizing sports gambling on both the professional and amateur level throughout the United States.<sup>43</sup> There were a few exceptions, including allowing existing sports betting systems in Nevada, Delaware, Montana, and Oregon to continue<sup>44</sup> and providing safe harbors for two specific sports—horse racing and jai alai.<sup>45</sup> The most crucial exception allowed any state to authorize sports betting within one year of PASPA's enactment.<sup>46</sup> However, a state could only authorize sports betting within a municipality that had operated casino gaming for at least ten years prior to PASPA and was the only municipality allowed to operate casinos in the state's constitution.<sup>47</sup> This extremely narrow exception was crafted to only apply to Atlantic City, New Jersey.<sup>48</sup> The state of New Jersey, however, was unable to pass sports betting legislation within one year and was unable to qualify for the carve out.<sup>49</sup>

### C. *Market and Public Response to PASPA*

While sports betting outside of these exempted states was illegal under PASPA, the market for sports wagering continued to evolve.<sup>50</sup> When PASPA was first enacted in 1992, public perception of sports betting was predominately negative, with 56% of Americans

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43. Professional and Amateur Sports Protection Act of 1992 ("PASPA"), 28 U.S.C. §§ 3701–3704 (2018).

44. The only states which this covered were Nevada, Oregon, Montana, and Delaware. *See id.* § 3704. (allowing for games to continue in places where there were already established regimes).

45. *Id.* (allowing for betting on horse races and the little-known sport of jai-alai).

46. *Id.*

47. *Id.*

48. Ryan Rodenberg, *Sports Betting Myth Busters: All of New Jersey Could Have Been Exempt From PASPA'S Ban*, LEGAL SPORTS REP., (last updated Jan. 8, 2018) <https://www.legalsportsreport.com/17271/sports-betting-mythbusters-nj-and-paspa/> [<https://perma.cc/6QKJ-3N7W>].

49. *See N.J. Gov. Chris Christie: "Let Them Try to Stop Us" from Sports Betting*, CBS (May 25, 2012, 1:02 PM), <https://www.cbsnews.com/news/nj-gov-chris-christie-let-them-try-to-stop-us-from-sports-betting/> [<https://perma.cc/DYE6-JLZL>] (exploring the challenges that New Jersey was bringing against PASPA, including why such challenges were necessary after getting a statutory carve out originally).

50. Adam Silver, *Opinion, Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 14, 2014), <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html> [<https://perma.cc/5HCF-96FK>]; *see also* Bret McCormick, *Rise of Fantasy Football Played a Big Part in League's Growth*, SPORTS BUS. J., (Sept. 2, 2019) <https://www.sportsbusinessdaily.com/Journal/Issues/2019/09/02/Media/Fantasy.aspx> [<https://perma.cc/5SW5-2ZZC>] (examining how perception shifted in the population and the growth of betting alternatives began); Maese, *supra* note 9.



disapproving of its legalization.<sup>51</sup> By 2017, however, that perception had shifted to 55% of Americans now in favor of legalizing some form of sports betting.<sup>52</sup> Furthermore, in stark contrast to prior testimony before the Senate Judiciary Committee when PASPA was being considered by Congress, the NBA reversed course and began to advocate for regulated sports betting.<sup>53</sup> While other leagues were not willing to go as far as the NBA, in 2015 MLB's commissioner also began to publicly comment on reassessing the league's existing position on sports betting.<sup>54</sup>

In the absence of legal sports betting options, many consumers began to turn to fantasy sports.<sup>55</sup> Fantasy sports involve participants putting in a few dollars to form a pot and then selecting professional athletes from real teams to create a fantasy team on paper.<sup>56</sup> A fantasy team scores points based on how well the players that were "drafted" perform in any real games they play.<sup>57</sup> The fantasy participants then track their players for an entire season and at the end distribute the pot depending on which fantasy team performed the best.<sup>58</sup> The rise of fantasy sports was encouraged after a 2002 study found that fantasy sports participants watched more football than non-fantasy participants.<sup>59</sup> Indeed the National Football League ("NFL") began to actively promote fantasy sports by creating their own licensed fantasy league.<sup>60</sup> The primary growth in the fantasy sports market was driven by daily fantasy sports ("DFS"), which shortens the length from a season to a single weekend or day of games.<sup>61</sup> DFS works the same as traditional fantasy

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51. Maese, *supra* note 9.

52. *Id.*

53. Compare Silver, *supra* note 50 (providing support for the legalization of sports betting from the perspective of the professional sports leagues) with S. REP. NO. 102-248, at 3 (testifying in support of the bill which would become PASPA).

54. David Purdum, *MLB to Talk Betting with Owners*, ESPN (Feb. 5, 2015), [https://www.espn.com/chalk/story/\\_/id/12286521/mlb-commissioner-rob-manfred-says-legalized-sports-betting-needs-fresh-consideration](https://www.espn.com/chalk/story/_/id/12286521/mlb-commissioner-rob-manfred-says-legalized-sports-betting-needs-fresh-consideration) [<https://perma.cc/M8RP-HGBZ>].

55. Fantasy sports consist of people drafting players to make up fantasy teams to compete against each other. The better that a player statistically does in an individual match, the more points the fantasy team owner will get for that week. Joseph Stromberg, *Fantasy Football, Explained for Non-Football Fans*, VOX, <https://www.vox.com/2014/8/15/6003131/fantasy-football-how-to-play-draft-rankings> [<https://perma.cc/L2H3-G8KW>] (last updated Aug. 24, 2015, 10:15 AM).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Christian Rigg, *What are Daily Fantasy Sports?*, TECHRADAR (March 11, 2020), <https://www.techradar.com/news/what-are-daily-fantasy-sports#:~:text=Daily%20fantasy%20sports%20are%20a%20subset%20of%20fantasy%20sp>



sports but with teams drafted every day rather than every season.<sup>62</sup> The two largest providers of DFS are DraftKings and FanDuel.<sup>63</sup> The two companies have worked hard establishing themselves; at one point, between the two companies, they were airing a national advertisement every ninety seconds.<sup>64</sup>

D. *Demise of PASPA and Proliferation of Sports Betting*

While the world changed rapidly around it, PASPA remained relatively unchallenged for many years,<sup>65</sup> and sports betting was relegated to the sports halls of Nevada, while DFS grew as the favored sports-based gaming pastime.<sup>66</sup> This changed in 2011 when New Jersey put sports betting on the ballot in a referendum to legalize sports betting in Atlantic City casinos.<sup>67</sup> After the referendum was approved by 64% of its voters, New Jersey passed the New Jersey Sports Wagering Law.<sup>68</sup> The professional sports leagues moved fast and sought an injunction in an effort to void the law, eventually leading to *NCAA v. Christie*.<sup>69</sup> In this case, the federal district court held that PASPA did not violate the Tenth Amendment—which reserves all power not delegated to the federal government for the states—and that the New Jersey law was impermissible,<sup>70</sup> a decision upheld on appeal by the United States Court

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orts%20betting,team%20selection%2C%20betting%20and%20prizes  
[<https://perma.cc/94WL-K8RQ>].

62. *Id.*

63. *Legal US Online Sports Betting and Mobile Betting Apps*, PLAYUSA, <https://www.playusa.com/sports-betting/> [<https://perma.cc/TXK5-TAH4>] (last visited Sept. 19, 2020).

64. See David Purdum, *Public's Biggest Issue with DFS Industry*, ESPN (Feb. 17, 2016), [https://www.espn.com/chalk/story/\\_/id/14791813/daily-fantasy-origin-hatred-daily-fantasy-sports](https://www.espn.com/chalk/story/_/id/14791813/daily-fantasy-origin-hatred-daily-fantasy-sports) [<https://perma.cc/3FBQ-6NZ9>] (explaining how public perception has changed in regard to DFS and what they do that makes people dislike them).

65. See *OFC Comm Baseball v. Markell*, 579 F.3d 293, 294 (3d Cir. 2009) (discussing how Delaware tried to expand on their sports betting in 2009, but the 3rd circuit held that PASPA (1) barred parts of the proposed system and (2) preempted expansion of the legacy program of exclusive NFL parlays).

66. See Professional and Amateur Sports Protection Act of 1992 (“PASPA”), 28 U.S.C. §§ 3701–3704 (2018) (allowing sports betting in Nevada, as well as a few other states that previously hosted certain types of sports betting).

67. *N.J. Gov. Chris Christie: "Let Them Try to Stop Us" from Sports Betting*, *supra* note 49.

68. N.J. STAT. ANN. § 5:12A-1, *et seq.* (2012).

69. *NCAA v. Christie*, 926 F. Supp. 2d 551, 555 (D.N.J. 2013), *aff'd sub nom.* *NCAA v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013).

70. *Id.*

of Appeals for the Third Circuit.<sup>71</sup> After *Christie*, New Jersey sought to allow sports betting by removing all restrictions on sports betting because PASPA's language prevents authorization.<sup>72</sup> However, this interpretation of the statute was again rejected by the Third Circuit<sup>73</sup> leading to the Supreme Court's decision in *Murphy*.<sup>74</sup> The Court disagreed with the Third Circuit and found that PASPA violated the anticommandeering provision of the Tenth Amendment, which prohibits the federal government from compelling state actors to enforce federal law.<sup>75</sup> While, traditionally, the anticommandeering provision was applied to issues where the federal government was requiring state action, the Court found that a prohibition on state action would fall within the purview just the same.<sup>76</sup> Without the primary ban in place, the Court found that none of the provisions of PASPA were severable and rendered the entire law void.<sup>77</sup>

Many states reacted swiftly following the 2018 decision in *Murphy*, with twenty-two states and D.C. legalizing sports betting by the end of 2020.<sup>78</sup> Without a central model to follow, states adopted different approaches to regulating sports betting.<sup>79</sup> One of the primary differences between these approaches is the decision of whether to allow online sports betting.<sup>80</sup> Despite the fact that online sports betting could theoretically occur anywhere in the world, all states which currently have allowed for online sports betting have also limited it to their own borders.<sup>81</sup> In total, ten states allow for some variation of mobile sports betting off the premises of a licensed casino.<sup>82</sup> An eleventh state,

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71. *NCAA v. Governor of New Jersey*, 730 F.3d 208, 241 (3d Cir. 2013), *abrogated by Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

72. *See Murphy v. NCAA*, 138 S. Ct. 1461, 1473 (2018) (explaining the history of the case up to the Supreme Court).

73. *Id.*

74. *Id.*

75. *See id.* at 1478.

76. *Id.*

77. *Id.* (“[W]e hold that no provision of PASPA is severable from the provision directly at issue in these cases.”).

78. These states are: Oregon, Nevada, Montana, Colorado, New Mexico, Iowa, Arkansas, Illinois, Michigan, Minnesota, Mississippi, Indiana, West Virginia, Pennsylvania, New York, New Jersey, Delaware, Rhode Island, and New Hampshire. *Legal US Online Sports Betting and Mobile Betting Apps*, *supra* note 63.

79. *See id.* (detailing which states allow betting and what type).

80. *Id.* (listing which states mobile betting is allowed and how it may be performed).

81. *See, e.g.*, 230 ILL. COMP. STAT 45/25-25 (requiring certain protections for online sports betting to ensure it occurs within the state).

82. *See Legal US Online Sports Betting and Mobile Betting Apps*, *supra* note 63 (describing New Jersey, Pennsylvania, West Virginia, Rhode Island, Iowa, Oregon, Indiana, Illinois, Colorado, Nevada).

Mississippi, offers mobile betting but only on the premises of a physical casino.<sup>83</sup>

Currently, all states that allow mobile betting still require that it be tied to a physical casino, meaning that all online sportsbooks must operate under the gaming license of a current physical location even if the sportsbook does not offer in person services.<sup>84</sup> DraftKings and FanDuel are the biggest casino partners, with at least one of these two industry giants operating in every state with legalized mobile betting, aside from Oregon and Rhode Island.<sup>85</sup> Their domination of the marketplace has provided the closest thing to uniform regularity in the industry, as these two giants provide most of the bookmakers in the United States.<sup>86</sup>

Sports betting between states can look very different, particularly in regards to registering an account to access online betting, with some states requiring in-person activation before an account may be used.<sup>87</sup> In states which restrict sports betting to physical casinos, DraftKings and FanDuel do not have the same type of presence, as they are only able to offer DFS.<sup>88</sup> Banks that wish to work with sports betting operators need to be aware of the state regulatory framework applicable to their customers.<sup>89</sup>

### III. FEDERAL ANTI-MONEY LAUNDERING LAW

With the end of PASPA, there is no longer any federal law that limits state-based sports betting, whether online or in-person.<sup>90</sup> Yet despite this, many banks have decided to wait for federal action before engaging with the industry.<sup>91</sup> The primary reason that banks have been unwilling to move forward is the fear of being tied up in a money

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83. *Id.*

84. *Id.*

85. *Id.* (explaining how Oregon offers their own mobile betting through the state lottery and Rhode Island offers their own sportsbook through the UK provider International Game Technology).

86. See Andrew Bary, *Online Gambling Booms in N.J., Lifting DraftKings' Stock*, BARRONS (June 15, 2020), <https://www.barrons.com/articles/online-gambling-booms-in-n-j-lifting-draftkings-stock-51592236341> [<https://perma.cc/36V4-SRJA>] (holding market shares of 43% for Fanduel and 38% for DraftKings in NJ alone).

87. *Legal US Online Sports Betting and Mobile Betting Apps*, *supra* note 63.

88. *Id.*

89. See Wack, *supra* note 12 (advising banks to start charting a course due to the amount of money that may be in play soon).

90. See, e.g., Federal Wire Act, 18 U.S.C. § 1084 (2018).

91. Prior, *supra* note 11.

laundering scandal.<sup>92</sup> At the federal level, there are still an array of anti-money laundering laws that keep banks waiting on the sidelines.<sup>93</sup> Some of these laws, such as the Wire Act<sup>94</sup> and the Unlawful Internet Gambling Enforcement Act (“UIGEA”),<sup>95</sup> are avoided by the structuring of sportsbook operations in individual states.<sup>96</sup> The Wire Act prohibits the use of wire communication<sup>97</sup> for the interstate transmission of bets.<sup>98</sup> The states have been able to do this by restricting all gambling, even online, to be permitted only within the borders of the state.<sup>99</sup> The UIGEA prohibits any gambling entity from accepting payment that (1) came through the internet and (2) is in violation of any federal or state law.<sup>100</sup> Because sportsbooks begin operation in individual states in accordance with new local laws, no law is being broken and the UIGEA is avoided.<sup>101</sup>

Unlike the Wire Act or UIGEA, the Bank Secrecy Act (“BSA”)<sup>102</sup> is an anti-money laundering statute that is not limited to interstate commerce or reliant on another law to trigger, meaning it is the only federal law that has not been completely bypassed by the states.<sup>103</sup> The BSA requires financial institutions to report two different things: cash transactions over \$10,000 in a single day and any suspicious activity.<sup>104</sup> Suspicious activity is a broad array of conduct but industry experts agree it can include things such as bulk transactions, transactions consistently below reporting thresholds, sudden bursts in low-activity accounts, or dealing between unconnected businesses just to name a few.<sup>105</sup> Banks can be held liable for partner organizations’ money laundering activity, which has led to many banks acting as secondary enforcers of their casino

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92. *Id.*

93. *See, e.g.*, 12 U.S.C. § 1951–1959 (2018).

94. Federal Wire Act, 18 U.S.C. § 1084.

95. 31 U.S.C. § 5361 *et seq.* (2018).

96. *See, e.g.*, 230 ILL. COMP. STAT. § 45/25-25 (requiring all gambling to take place within the state if it occurs online).

97. A wire communication is any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce. 18 U.S.C § 2510(1) (2018).

98. Federal Wire Act, 18 U.S.C. § 1084.

99. *See e.g.*, § 45/25-25 (restricting all online gambling to within the state’s borders).

100. 31 U.S.C § 5361 *et seq.*

101. *Id.*

102. 12 U.S.C. § 1951–1959 (2018).

103. *Id.*

104. *Id.*

105. Diana Byron, *Suspicious Activity Reporting for Dummies* 8 (Alison Maclean eds., 2013).

partners' anti-money laundering programs by reviewing their procedures and practices to make sure there are no vulnerabilities.<sup>106</sup> Additionally, the Financial Crimes Enforcement Network has indicated its intent to police sports betting just as closely as normal casino functions.<sup>107</sup> However, many states and sports betting companies are taking steps to mitigate this risk in the hopes of assuaging bank's fears.<sup>108</sup>

Historical suggestions for alleviating the burden banks face included the possibility of adding a safe harbor for any bank that unknowingly helps perpetrate money laundering.<sup>109</sup> In 2001 Senator John McCain from Arizona suggested protecting any financial institution that is unknowingly involved in internet gambling, which in this way would protect from any penalty under the Wire Act.<sup>110</sup> However this suggestion, and others like it,<sup>111</sup> never progressed,<sup>112</sup> and there has been no ease in the diligence expected from banks in combating money laundering.<sup>113</sup> This lack of federal action has left many banks waiting on the sidelines, despite the massive amount of growth in sports betting.<sup>114</sup>

While the money laundering risk continues, sports betting is growing at an astounding rate.<sup>115</sup> This has encouraged some banks to bide their time, but the pace of sports betting legalization at the state level is picking up steam quickly.<sup>116</sup> In 2020, that number has risen by seven states to include a total of twenty-five states, including three due to ballot

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106. Peter Rudegeair & Brett Wolf, *Regulators Pushing Banks to Rid Casinos of Money-Laundering*, REUTERS (Aug. 15, 2014, 1:21 AM), <https://www.reuters.com/article/us-banks-casinos-analysis/regulators-pushing-banks-to-rid-casinos-of-money-laundering-idUSKBN0GF0BV20140815> [<https://perma.cc/WD9H-UJK2>].

107. Kenneth Blanco, *Prepared Remarks of FinCEN Director Kenneth A. Blanco, Delivered at the 12th Annual Las Vegas Anti-Money Laundering Conference*, (Aug. 13, 2019) <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-12th-annual-las-vegas-anti> [<https://perma.cc/5DWB-62SU>].

108. See 230 ILL. COMP. STAT. § 45/25-25 (providing all the protections Illinois requires from sports betting), See also 42 R.I. GEN. LAWS ANN. § 42-61.2-16 (2020) (adding sports betting to the list of activities under the eye of the Rhode Island Lottery); See e.g., *How DraftKings Keeps Onboarding Security Swift and Out of Sight*, PYMNTS (Apr. 23, 2019), <https://www.pymnts.com/digital-onboarding/2019/draftkings-sports-betting-identity-verification-security/> [<https://perma.cc/L2YW-9NSS>] (exploring what companies are doing to mitigate money laundering).

109. Amateur Sports Integrity Act, S. 718, 107th Cong. (2001).

110. *Id.*

111. Unlawful Internet Gambling Funding Prohibition Act, H.R. 556 107th Cong. § 3(e) (2001).

112. S. Rep. No. 107-16, at 12.

113. Prior, *supra* note 11.

114. *Id.*

115. *Id.*

116. *Id.*

referendums.<sup>117</sup> Additionally, the COVID-19 pandemic has seen an additional surge in online sports betting, providing states with more betting-related tax revenue than they expected<sup>118</sup> at a time when tax receipts from other sources dropped significantly.<sup>119</sup>

If banks seek to do business in the sports betting industry, the biggest change they must make will be to allow customers to transfer their funds from their bank accounts to betting accounts held by the sportsbook.<sup>120</sup> Because banks have been wary of sports betting, they have not allowed credit card companies to offer their services in funding a bettor's account.<sup>121</sup> While some bank transfers occur,<sup>122</sup> many of the biggest banks still prohibit their customers from making transfers to a sports betting account.<sup>123</sup> As banks prevent their customers from making online transfers, banks force players to either not make bets or to switch to another provider who is willing to do business with bookmakers.<sup>124</sup> Additionally, banks should not just hope that customers will be satisfied with on-site betting only.<sup>125</sup> Mobile betting, in particular, draws in significantly more players, with early reports suggesting that two-thirds of wagers were being made on a mobile application.<sup>126</sup> As online sports betting grows, banks need to act quickly to ensure they do not lose customers.<sup>127</sup>

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117. *Id.*

118. *Id.*

119. Liz Farmer, *Covid-19 Has Cost States \$31 Billion In Tax Revenue—And That's Just The Beginning*, FORBES (Oct. 15, 2020, 8:30 AM), <https://www.forbes.com/sites/lizfarmer/2020/10/15/covid-19-has-cost-states-31-billion---and-thats-just-the-beginning/?sh=474b612b2790> [<https://perma.cc/N448-PQ5T>].

120. *See* Wack, *supra* note 12 (explaining how banks are wary of involving themselves with sports betting).

121. *See* Wack, *supra* note 12 (“If credit card companies dip their toes into these waters, they will need to monitor customer activity closely for signs of problem gambling.”).

122. Prior, *supra* note 11 (“While banks are more open to clearing in-person betting transactions, the hope in the gaming industry is that as more states legalize sports gambling, more financial companies will begin to allow their cards to be used for online wagers.”).

123. *Id.*

124. *See* Wack, *supra* note 12 (“But if banks decide to ban sports gambling on their cards, they will risk alienating many good customers.”).

125. *See* John T. Holden, *Regulating Sports Wagering*, 105 IOWA L. REV. 575, 612-13 (2020) (explaining how online sports betting draws in far more players).

126. *Id.*

127. *See* Wack, *supra* note 12 (“But if banks decide to ban sports gambling on their cards, they will risk alienating many good customers.”).

#### IV. SPORTS BETTING IS NOT RELIANT ON FEDERAL ACTION LIKE CANNABIS

While sports betting continues to be legalized at the state level, many banks have decided to not engage with the industry.<sup>128</sup> Despite this patient approach, federal action, including a safe harbor, seems unlikely to occur any time soon.<sup>129</sup> Even in the face of federal inaction, many banks still view the sports betting industry as too risky, often comparing it to the cannabis industry.<sup>130</sup> Like sports betting, the cannabis industry has grown quickly in recent years in reaction to legislative and regulatory changes at the state level.<sup>131</sup> Prior to these changes, both industries were illegal for a long time at the federal level,<sup>132</sup> and indeed cannabis still is despite the state legalization.<sup>133</sup> Additionally, both industries have been shunned by banks despite the recent proliferation of legalization at the state level.<sup>134</sup> These similarities have resulted in many banks asking for a similar safe harbor to be created in both industries at the federal level before they will get involved in either.<sup>135</sup> While the similarities between cannabis and sports betting make it appealing to treat them both the same way, the differences between the industries require a more nuanced approach.<sup>136</sup> The key distinction between assessing bank activity in the cannabis industry versus bank activity in the sports betting industry is that cannabis remains illegal under federal law<sup>137</sup> while sports betting is currently entirely left up to the states and no longer subject to any overriding federal prohibition.<sup>138</sup>

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128. *Id.*

129. See *Why We Won't See A Federal Sports Betting Bill Soon*, *supra* note 22 (exploring why any federal action would be unlikely).

130. See *Alix*, *supra* note 10 (“Like legal pot, online gambling isn’t going away, and the money involved is expected to be phenomenal.”).

131. Gabriel J. Greenbaum, *What to Do with All This Green: Using Casino Regulations As A Model for Cannabis Industry Banking*, 58 WASHBURN L.J. 217, 218–19 (2019).

132. See 21 C.F.R. § 1308.11 (2020) (making cannabis illegal); see also Professional and Amateur Sports Protection Act of 1992 (“PASPA”), 28 U.S.C. §§ 3701–3704 (2018) (making sports betting illegal).

133. 21 C.F.R. § 1308.11.

134. Greenbaum, *supra* note 130, at 219–20.

135. See H.R. 1595, 116th Cong. (2019) (providing a safe harbor for any bank which unintentionally assists in money laundering).

136. See 21 C.F.R. § 1308.11 (making cannabis illegal to own under federal law, which means the market could be shut down at any time). *But see* *Murphy v. NCAA*, 138 S. Ct. 1461, 1484 (2018) (ending federal regulation of sports betting).

137. 21 C.F.R. § 1308.11 (making cannabis illegal to own under federal law, which means the market could be shut down at any time).

138. *Murphy v. NCAA*, 138 S. Ct. 1461, 1484 (2018).



With cannabis still illegal at the federal level, there are numerous risks banks may face when seeking to do business with a cannabis dispensary even when that dispensary is operated according to state law.<sup>139</sup> All proceeds associated with cannabis are illegal under anti-money laundering statutes, regardless of whether the proceeds are generated in a legal manner.<sup>140</sup> Additionally, cannabis-related assets may be seized under current federal forfeiture law, both in civil suits and criminal cases.<sup>141</sup> Finally, banks face a “reputational risk” as a result of being subject to seizures and forfeitures.<sup>142</sup> In spite of all of these risks, some banks have started to process state cannabis tax revenue.<sup>143</sup> However, banks have moved forward cautiously and analyzed each state independently, weighing the current risks against the long-term benefits of the cannabis industry.<sup>144</sup>

Instead of sitting on the sidelines, banks should focus on evaluating the state-specific protections that make working with sports betting operators less risky.<sup>145</sup> Due to the fact that sports betting has also unfolded in a similar state-by-state fashion, banks can examine each state individually.<sup>146</sup> In fact, the state-by-state analysis will be more effective for sports betting, as there are no overarching federal regulations causing issues, as is the case regarding the cannabis industry.<sup>147</sup> Because the pressure put on the cannabis industry was due to the active federal probation and uncertainty surrounding enforcement, states can do little to assuage banks.<sup>148</sup> Banks’ biggest uncertainties in regards to sports betting stem from the BSA and the potential fines that may be levied if a bank is found to have violated the law.<sup>149</sup> In spite of this uncertainty, it remains possible for sports betting to operate without breaking federal law,

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139. See Katherine P. Franck, *Cannabis Reform: High on the Banking Agenda*, 24 N.C. BANKING INST. 163, 167 (2020) (detailing the risks banks face such a money laundering suits and forfeiture).

140. 18 U.S.C. §§ 1956–1957 (2018).

141. Franck, *supra* note 139.

142. *Id.*

143. Alix, *supra* note 10.

144. *See id.* (explaining that only some states have been chosen to receive bank support as well as the fact that future benefits may be too much for banks to ignore).

145. *See id.* (explaining how sports betting is growing and will likely continue to develop at the state level).

146. *See id.* (explaining that banks will approach online gambling the same way they approached marijuana).

147. *See* Franck, *supra* note 139 (exploring some of the risks the cannabis industry faces from broad federal laws concerning money laundering and forfeiture).

148. *See id.* (suggesting federal actions so that banks may support the cannabis industry).

149. Prior, *supra* note 11.

whereas the cannabis industry is unable to do that because of the federal ban on cannabis proceeds.<sup>150</sup>

#### V. BEST PRACTICES FROM COMPANIES AND STATES IN SPORTS BETTING

Currently over half of the country has legalized sports betting, including three states in the November 2020 election.<sup>151</sup> In spite of this, many banks are still waiting for federal guidance.<sup>152</sup> Much of this hesitation stems from a fear of being targeted by federal authorities for unknowingly assisting in financial crimes, primarily money laundering.<sup>153</sup> This fear is founded on recent history, as banks that did business with casinos were consistently targeted by federal law enforcement in the past.<sup>154</sup> These risks should not stop banks from getting involved with online sports betting, as they have been mitigated by legislation<sup>155</sup> and industry response.<sup>156</sup>

##### A. *Money Laundering Risk Is Mitigated By State Legislation and Market Diligence*

Money laundering involves exchanging money, obtained through illicit means, such as drug trafficking,<sup>157</sup> for something which can later be exchanged, or “laundered”, for “clean” money which is not attributable to the illicit activity.<sup>158</sup> In the traditional casino context, illicitly obtained money is converted into casino chips, which are then laundered into clean money when the chips are cashed out by the casino.<sup>159</sup> While money laundering is difficult to identify, it is not

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150. 21 C.F.R. § 1308.11 (2020).

151. Prior, *supra* note 11.

152. *Id.*

153. *Id.*

154. Rudegear, *supra* note 105 (exploring how banks have begun to bear the brunt of regulation in typical casinos).

155. *See e.g.*, 230 ILL. COMP. STAT 45/25-25 (explaining some of Illinois protections added to online sports betting).

156. *See How DraftKings Keeps Onboarding Security Swift and Out of Sight*, *supra* note 107 (explaining how DraftKings has sought to protect competitive integrity of sports betting).

157. Dirty money is illegally gotten gains such as money from drug deals. *See*, Ethan Baker, *How Money Laundering Works in Online Gambling*, CASINO.ORG (July 7, 2019), <https://www.casino.org/blog/money-laundering-in-online-casinos/> [<https://perma.cc/B9X2-HKDK>] (“such as the cash proceeds of a drug deal.”).

158. *Id.*

159. Chips are the currency of casinos. *See* Rudegear, *supra* note 105 (exploring how money laundering traditionally works).

impossible.<sup>160</sup> The brightest warning signs include individuals using multiple bank accounts to fund betting, adding funds in multiple small amounts rather than large deposits, wiring money to international subsidiaries, and wiring funds from accounts not linked with the individual.<sup>161</sup> In particular, wiring funds from many different accounts has been noted to be an effective tool for the patient money launderer.<sup>162</sup> The risk of being fined for unknowingly assisting in the process of money laundering remains the biggest motivator for banks to wait for federal law before engaging in sports betting.<sup>163</sup>

The first line of defense against money laundering in sports betting is the sportsbooks themselves.<sup>164</sup> Banks need partner sportsbooks to take precautions so that they do not have a situation where they need to act as secondary regulators as was the case with casinos historically.<sup>165</sup> Currently, many sportsbooks include protections in the process of setting up a betting account, such as identity verification so that the sportsbook has at least one person tied to the account.<sup>166</sup> Additionally, some sportsbooks follow standard know your customer “guidelines.”<sup>167</sup>

Recently, sportsbooks have also taken strides to ensure that these added protections do not cause any interruption on the customer’s behalf.<sup>168</sup> DraftKings has begun using a “data-driven” approach to enrollment which has allowed it to streamline the process of registering new users.<sup>169</sup> This approach entails verifying personal information the sportsbook has collected through outside firms before turning to the customer to seek any information they were unable to collect.<sup>170</sup> This makes it easier for customers to join, as they only need to fill in any

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160. See Joseph Rillotta, *Beyond the Sar-c: Best Practices for Gaming Companies to "Know Their Customer" and Avoid Organizational Money Laundering Liability in the Post-Sands Climate*, 5 UNLV GAMING L.J. 145, 147–49 (2014) (listing what federal prosecutors think are best ways to identify money laundering).

161. See *Id.* (Reciting factors listed by federal prosecutors in the wake of the Las Vegas Sands scandal).

162. Baker, *supra* note 156 (“[the] process is even harder to detect if the criminals are patient enough to break their loot down into small amounts.”).

163. Prior, *supra* note 11.

164. See *How DraftKings Keeps Onboarding Security Swift and Out of Sight*, *supra* note 107 (exploring a few of the ways DraftKings tries to minimize illegal activity).

165. See Rudegeair, *supra* note 105 (exploring how banks have begun to bear the brunt of the regulation when working with typical casinos).

166. *How DraftKings Keeps Onboarding Security Swift and Out of Sight*, *supra* note 107.

167. Ian McKendry, *Are Fantasy Sports Sites a Money Laundering Haven*, AM. BANKER, (Oct. 09, 2015, 3:00 PM) <http://www.americanbanker.com/news/law-regulation/are-fantasy-sports-sites-a-money-laundering-haven-1077178-1.html> [<https://perma.cc/C2HK-VHAR>].

168. *How DraftKings Keeps Onboarding Security Swift and Out of Sight*, *supra* note 107.

169. *Id.*

170. *Id.*

missing information at the end.<sup>171</sup> Changes such as this enable more customers to join than would otherwise be the case, due to the fact the registration process is able to continue moving quickly.<sup>172</sup>

Beyond just the industry itself, individual states have also begun to create systems to combat money laundering.<sup>173</sup> Some of these practices, such as limiting online sports betting to only occurring within the boundaries of the specific state, have already become the standard.<sup>174</sup> For the most part, however, states have gone their own way in deciding what they think would best suit the needs of their citizens.<sup>175</sup> Although the regulatory structure differs between states, Illinois and Rhode Island have adopted several effective measures to combat money laundering which can serve as a template for banks to consider best practices for state action in combatting money laundering.<sup>176</sup>

Illinois requires that all mobile sports bettors first register their accounts in-person at an authorized sports betting parlor.<sup>177</sup> This ensures that a single person cannot create multiple accounts with a single sportsbook and helps to link the flow of money to the required person.<sup>178</sup> Indeed, in the past when casinos have been targeted by money launderers the have often used multiple accounts to fund the gambling.<sup>179</sup> This is done so that it is more difficult to track whether or not the money was ever the proceeds of illicit activity.<sup>180</sup> By linking accounts to a single person, a sportsbook ensures that whenever a bet is placed, there should only be one individual on the other end.<sup>181</sup>

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171. *Id.*

172. *Id.*

173. *See* Murphy v. NCAA, 138 S. Ct. 1461, 1484 (2018) (striking down the federal law and leaving the issue up to the states).

174. *See e.g.*, 230 ILL. COMP. STAT. 45/25-25 (2019) (requiring certain protections for online sports betting to ensure it occurs within the state).

175. *Compare* 230 ILL. COMP. STAT 45/25-25 (putting sports betting under the Illinois gaming board) *with* 42 R.I. GEN. LAWS ANN § 42-61.2-16 (2020) (adding sports betting to the domain of the Rhode Island Lottery).

176. *See* 230 ILL. COMP. STAT 45/25-25 (providing all the protections Illinois requires from sports betting); *see also* 42 R.I. GEN. LAWS ANN § 42-61.2-16 (adding sports betting to the list of activities under the eye of the Rhode Island Lottery).

177. 230 ILL. COMP. STAT 45/25-25.

178. *See* Chris Grove, *In-Person Registration For Online Sports Betting*, IDEVELOPMENT & ECONOMIC ASSOCIATION, <https://ideagrowth.org/impact-of-in-person-registration/> [<https://perma.cc/D9WR-BC5E>] (last visited Sept. 26, 2020) (finding that in-person registration was not used, over half of respondents would create multiple accounts).

179. Rillotta, *supra* note 159, at 148.

180. *Id.*

181. *See* 230 ILL. COMP. STAT 45/25-25 (placing restrictions on sports betting accounts to promote public safety).

Rhode Island also requires in-person registration,<sup>182</sup> but sets itself apart by giving oversight powers to its regulatory body that are much broader than other states' centralized regulatory authorities.<sup>183</sup> The Rhode Island Lottery ("Lottery") is the state's central gaming authority, with powers over the state operated lottery as well as all sports betting.<sup>184</sup> The Lottery may suspend online accounts, suspend account withdrawals, and require the production of statements of account activity.<sup>185</sup> These provisions give the Lottery unparalleled access to accounts, which helps to enforce and maintain compliance.<sup>186</sup> Structures like the one in Rhode Island should be appealing to banks, as it gives the state greater authority to investigate the betting companies which in turn mitigates the risk of money laundering occurring.<sup>187</sup>

*B. States Are Imposing Sweeping Oversight Laws on Sports Betting Operators*

In 2014, when PASPA confined legal gambling to only a few states, federal regulators began to push banks to be more preemptive in investigating their casino partners.<sup>188</sup> Unsurprisingly, banks have opposed this push to take a more active role in monitoring their business partners, as there is no benefit to the banks and they are still punished even if they do everything correctly.<sup>189</sup> Additionally, acting as the enforcers of other businesses took up banks' resources.<sup>190</sup> However, at the state level, regulations on sports betting often put pressure on the sportsbook itself rather than any bank they might be doing business with.<sup>191</sup>

States, such as Nevada, placed the burden of regulation and stamping out match fixing on the bookmakers, rather than the banks.<sup>192</sup>

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182. 42 R.I. GEN. LAWS ANN § 42-61.2-16.

183. *See id.* (allowing for the lottery to mandate an audit of any account); *see also*, 230 ILL. COMP. STAT 45/25-25 (providing grants of authority to regulatory institutions created by the state).

184. 42 R.I. GEN. LAWS ANN § 42-61.2-2.4.

185. *Id.* § 42-61.2-16.

186. *See id.* (providing access to the private accounts in order to ensure compliance).

187. *See id.* (providing access to the private accounts in order to ensure compliance).

188. Rudegeair, *supra* note 105.

189. *Id.*

190. *See id.* ("bank executives grumble about the extent of the work they have to do for government enforcement agencies now, and the penalty for failure.')

191. *See Legal US Online Sports Betting and Mobile Betting Apps*, *supra* note 63 (listing all the different ways in which sports betting is regulated).

192. Andrew Smith, *Why Georgia Should Get Off the Bench and Profit from the Inevitability of Sports Betting*, 36 GA. ST. U. L. REV. 845, 856 (2020).

In particular, the state mandates submissions to the central gaming authority of suspicious activity that is observed by any employees.<sup>193</sup> While there could be problems with such a practice in online betting—namely the fact that employees will not be able to see the players, Nevada has gone one step further and implemented the regulation against all sportsbooks, no matter if they are online or in person.<sup>194</sup> This means that online sportsbooks will still be required to track the amounts being added to accounts and from which sources, even if they are not physically present when such activity takes place.<sup>195</sup> Finally, Nevada has added some actions that are defined as suspicious, such as betting over \$5000 in the aggregate.<sup>196</sup> Protections such as this should not impose additional work on the banks for the sportsbooks, as the onus is on the sportsbooks to make all mandatory reporting.<sup>197</sup> Because of the BSA requirements, banks will still be at risk of penalty if they do not conduct their own due diligence.<sup>198</sup> These requirements will reduce the risk of money laundering occurring in sports betting, the primary motivator for banks seeking to keep out of the industry.<sup>199</sup>

### C. *Potential for a Safe Harbor*

Despite everything states are doing to mitigate the risk of money laundering they will never be able to fully eliminate the risk, as federal law will still punish any bank which facilitates money laundering.<sup>200</sup> Because of this, many banks have decided that sports betting is too risky due to the federal fines associated with money laundering.<sup>201</sup> This “de-risking” is an issue that has stemmed from the lack of a safe harbor for banks that unknowingly assist in money laundering, which in turn prevents growing industries from accessing much needed funds.<sup>202</sup> There have already been several proposals that would give banks such a safe

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193. NEVADA ADMIN. CODE 22.121 (2020).

194. *Id.*

195. Byron, *supra* note 104.

196. NEV. ADMIN. CODE 22.121.

197. *Id.*

198. *See* 12 U.S.C. § 1951–1959 (2018) (requiring penalties for all violations regardless of whether or not the bank was at fault).

199. Prior, *supra* note 11.

200. 12 U.S.C. § 1951–1959.

201. Prior, *supra* note 11.

202. Sharon Levin, *AML and Sanctions Reform: A Safe Harbor Proposal*, THE CLEARING HOUSE, <https://www.theclearinghouse.org/banking-perspectives/2016/2016-q3-banking-perspectives/articles/aml-safe-harbor> [<https://perma.cc/5FKU-M57W>] (last visited Dec. 26, 2020, at 3:37 PM).

harbor which could provide the basis for any future legislation.<sup>203</sup> However, while a safe harbor would be the best case scenario for banks, federal action seems unlikely in the foreseeable future.<sup>204</sup> Because of this banks should focus on the protections that are available, rather than waiting on protections that may not come for many years.<sup>205</sup>

## VI. CONCLUSION

Sports betting is a large and growing industry,<sup>206</sup> and banks will need to address not only whether to accept sportsbooks as customers but also in what capacity.<sup>207</sup> Online sports betting presents a great opportunity for banks to make money in a rapidly expanding market, that has tailored itself to avoid money laundering.<sup>208</sup> Currently, many banks have taken the same approach they had with the cannabis industry towards the sports betting industry and adopted a wait and see mentality.<sup>209</sup> However, there are key differences between the two industries, and treating them the same could cost banks a valuable opportunity.<sup>210</sup> At the same time, the states have taken it upon themselves to do their best at enticing banks by limiting the money-laundering risk.<sup>211</sup>

There is no one state which has created a perfect sports betting system, but many states have begun to implement smart and prudential regulations.<sup>212</sup> Banks should work with casinos in states that provide strong centralized gaming boards that have broad mandates to police for illegal activity.<sup>213</sup> Additionally, banks should look to partner with sports

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203. *See e.g.*, Amateur Sports Integrity Act, S. 718, 107th Cong. (2001).

204. *See Why We Won't See A Federal Sports Betting Bill Soon*, *supra* note 22 (exploring the reasons why federal action for sports betting will be slow).

205. *See id.* (exploring the reasons why federal action for sports betting will be slow).

206. Associated Press, *supra* note 8.

207. *See* Wack, *supra* note 12 (“the large size of the revenue opportunity in sports gambling could change bankers’ thinking.”).

208. *See* Rudegeair, *supra* note 105 (exploring how banks have issues with money laundering).

209. Alix, *supra* note 10 (exploring how banks came to interact with the cannabis industry as well as online casinos).

210. *See* Holden, *supra* note 124, at 600 (explaining that high taxes actually decreased competition).

211. *See e.g.*, 42 R.I. GEN. LAWS ANN § 42-61.2-16 (2020); *see also* 230 ILL. COMP. STAT 45/25-25 (2019) (providing examples of laws to prevent money laundering in the newly legalized sports betting market).

212. *See* NEV. ADMIN. CODE 22.121 (2020); *see also* 42 R.I. GEN. LAWS ANN § 42-61.2-16; *see also* 230 ILL. COMP. STAT 45/25-25 (providing examples of well written laws to protect banks from the risks associated with sports betting).

213. *See* 42 R.I. GEN. LAWS ANN § 42-61.2-16 (allowing for the state lottery to investigate and freeze any transactions).



betting operators in states where the onus is not on the bank but on the betting operator to police the transactions, as this should avoid a situation where the banks are being pushed to regulate the sports betting operators.<sup>214</sup> The *Murphy* decision created a wild west of sorts in sports betting, and banks should begin a state-by-state analysis to find those which provide the best protection against money laundering rather than wait for federal intervention.

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214. Rudegeair, *supra* note 105.

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