

Winter 10-15-2022

Reshaping College Athlete Sports Betting Education

Becky Harris

John T. Holden

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Becky Harris and John T. Holden, *Reshaping College Athlete Sports Betting Education*, 47 *BYU L. Rev.* 389 (2022).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol47/iss2/5>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in *BYU Law Review* by an authorized editor of *BYU Law Digital Commons*. For more information, please contact hunterlawlibrary@byu.edu.

Reshaping College Athlete Sports Betting Education

Becky Harris & John T. Holden***

Legal sports wagering has been rapidly expanding across the United States since 2018. In the wake of the Supreme Court's Murphy decision, more than twenty-five states have legalized sports betting and billions of dollars have followed the cascades of legalization. As the legal market continues to grow, professional sports leagues have been quick to embrace the regulated expansion, but the National Collegiate Athletic Association (NCAA) has not changed their steadfast opposition. Despite the NCAA's vehement opposition, the organization has seemed to gain little traction in getting states to either wholly exclude wagering on collegiate sports or getting the federal government to preempt these nascent state initiatives.

The NCAA's opposition to sports betting expansion is futile. Despite the organization's reluctance to embrace the now mainstream activity, the time has come for the organization to acknowledge the reality of the situation and create an environment that provides a modernized means of protecting college athletes from those who may wish to do them harm for gambling purposes. The expansion of legal sports betting is likely to be a net positive for the integrity of both betting markets and sporting events. As sports bettors begin accessing the legal regulated sports wagering market in larger numbers, illegal products and markets will likely become less attractive alternatives. The time has come for the NCAA, collegiate athletic conferences, and colleges and universities to

Both authors contributed equally to this Article. Names appear in random order.

* Becky Harris is a Distinguished Fellow in Gaming & Leadership at the International Gaming Institute at the University of Nevada, Las Vegas (UNLV). She collaborates with regulators, academicians, and other stakeholders on a host of gaming and leadership related issues and projects. She is also an adjunct law professor at the Boyd School of Law at UNLV, where she teaches Gaming Law and Policy. A former Nevada state senator, she had the privilege of being named the first female chair of the Nevada Gaming Control Board.

** John T. Holden is an assistant professor in the Department of Management in the Spears School of Business at Oklahoma State University.

take the steps necessary to coexist with widespread legal betting markets. This Article provides the necessary framework for collegiate sports organizations to move forward with modernizing sports wagering education and awareness for collegiate athletes through (a) adopting best practices; (b) establishing reporting processes; and (c) creating a necessary system of education that provides additional measures of protection and awareness of the threats brought on by nefarious individuals.

CONTENTS

INTRODUCTION	391
I. SPORTS BETTING ACROSS THE UNITED STATES OVER TIME.....	395
A. Pre-World War II Era in the United States	396
B. The Rise of a Monopoly in the Desert	398
C. Congress Takes Aim at Sports Betting	399
D. A Shift in Federal Priorities.....	402
E. Changing Times Across the Country	403
F. The Supreme Court Opens the Door.....	406
II. COLLEGIATE SPORTS AND MATCH-FIXING	408
A. What is Match-Fixing?.....	409
B. Why Does Match-Fixing Happen?	412
C. History of Prominent Collegiate Match-Fixing Scandals.....	413
D. Why Are College Athletes Disproportionately Targeted?.....	418
III. IGNORING THE REALITIES OF LEGAL REGULATED SPORTS BETTING IS COUNTER-PRODUCTIVE.....	420
A. Regulatory Structures.....	420
1. States with prohibitions on collegiate athletics generally	420
2. States with prohibitions on collegiate athletics for home-state schools.....	421
3. States with prohibitions on proposition bets for collegiate sporting events	423
4. States prohibiting wagers on home-state collegiate sports proposition bets	423
5. States that do not impose limitations on sports wagers	424
B. Federal Lobbying.....	425
C. NCAA Position on Sports Betting Remains Unchanged.....	426

D. Despite the NCAA’s Animosity Toward Sports Betting, the NCAA Attempts to Profit Financially	427
E. Integrity Efforts by Professional Sports Leagues, the NCAA, and College Conferences Underwhelm	427
F. The Value of Sports.....	430
G. An Independent Integrity Body Should Be Created for Sports Organizations.....	430
H. Inherent Threats to Sports Integrity	431
1. Athletes.....	431
2. Coaches and coaching staff	434
3. Officials.....	435
4. Insider information	436
5. Failure to provide an adequate gambling education and awareness program.....	437
IV. EXTERNAL THREATS TO SPORTS INTEGRITY	438
A. Athlete Education Programs.....	439
1. NCPG –Safer sports betting initiative.....	439
2. Collegiate education programs – NCAA – Don’t Bet On It (2005–present).....	439
V. A BETTER SYSTEM OF EDUCATION.....	441
A. Best Practices for Sports Integrity, and Gambling Education and Awareness Programs	443
B. Minimum Requirements Should Be Established	444
1. Education delivery	445
2. Information management.....	446
3. Integrity reporting	447
CONCLUSION	449

INTRODUCTION

On October 3, 2019, the United States Attorney for the Eastern District of New York filed a letter to Judge Vera Scanlon in support of its motion for permanent orders of detention for five defendants

awaiting trial.¹ The motion for permanent detention followed a lengthy multi-agency investigation into the Colombo crime family in New York.² The letter from the U.S. Attorney described a range of crimes that had been unsealed as part of a thirty-one-count indictment the day before, including racketeering, extortion, loan-sharking, and operating illegal gambling businesses.³ The letter, however, also revealed conversations picked up as part of a wiretap, including one with a man charged in a separate indictment named Benjamin Bifalco.⁴ According to the letter, Bifalco “laid out his plan to fix the outcome of an NCAA men’s basketball game by offering to pay thousands of dollars to multiple members of a basketball team so that they would intentionally lose by a lot”⁵ The plan fell through and, according to the letter, the charged defendants were skeptical of Bifalco’s abilities to accomplish a fix, with one defendant referring to him as “an idiot.”⁶

On February 20, 2020, Bifalco would withdraw his original not guilty plea and enter a guilty plea to a single count of the federal Sports Bribery Act.⁷ On entering his guilty plea, Bifalco acknowledged that he had approached a men’s National Collegiate Athletic Association (NCAA) player and offered him money to shave points, or lose by more than the point spread on the game.⁸

1. Letter from Richard P. Donoghue, U.S. Attorney, to Vera M. Scanlon, U.S. Mag. J., in Support of Motion for Permanent Orders of Detention, *United States v. Amato*, No. 19-442 (E.D.N.Y. Oct. 3, 2019) [hereinafter Letter to Judge Scanlon].

2. *Id.* at 2. The Colombo family is one of five New York organized crime families. It was founded in 1928, by Joseph Profaci. Lydia Venn, *Everything You Need to Know About the Colombo Family in Netflix’s Fear City*, THE TAB, <https://thetab.com/uk/2020/07/23/everything-you-need-to-know-about-the-colombo-family-in-netflixs-fear-city-167794> (last visited Oct. 27, 2021). Amongst the Colombo crime family’s historical criminal activities are fixing and manipulating the outcomes of sporting events. See Dennis Dodd, *How to Fix a College Football Game and Influence Its Outcome—in Four Steps*, CBS SPORTS (Aug. 17, 2018, 12:26 PM), <https://www.cbssports.com/college-football/news/how-to-fix-a-college-football-game-and-influence-its-outcome-in-four-steps/>.

3. Letter to Judge Scanlon, *supra* note 1, at 4–5.

4. *Id.* at 5–6.

5. *Id.* at 6.

6. *Id.*

7. Criminal Cause for Pleading, *United States v. Bifalco*, No. CR-19-00444 (E.D.N.Y. Feb. 20, 2020); see also 18 U.S.C. § 224.

8. David Purdum, *Man Pleads Guilty for Trying to Bribe Player to Fix a Division I Game in 2018*, ESPN (Feb. 20, 2020), https://www.espn.com/mens-college-basketball/story/_/id/28744266/man-pleads-guilty-trying-bribe-player-fix-division-game-2018. A point-spread bet is a type of wager that is meant to equalize both teams. The favorite in this type of wager needs to win by more than the advantage prescribed by the bookmaker, a failure to win by

The purported plan was for Bifalco to make payments to three Wagner College basketball players, paying them a total of \$7,500 to lose by more than 20 points in a December 2018 game against St. John's University.⁹ In the end, Bifalco was unable to pull the strings necessary to accomplish, as his own attorney referred to it, the "half-hearted and hair-brained" fix.¹⁰ Despite Bifalco's failed endeavor, attempts to fix college sporting events have been a cottage industry for criminal organizations and some neighborhood bookies for more than seventy years in the United States.¹¹

Contemporary American match-fixing scandals have occurred overwhelmingly at collegiate institutions.¹² While match-fixing scandals are not an everyday occurrence in collegiate sports, scandals have arisen, on average, several times a decade dating back to the 1950s.¹³ Indeed, the NCAA's fear of an increase in match-fixing was one of the prominent reasons that the organization advocated for a ban on sports wagering.¹⁴

more than that amount results in a "win" for the other team. It creates a handicap on one team to theoretically make the two teams evenly matched. *What Is a Point Spread? Betting Odds and Strategy*, LINES, <https://www.thelines.com/betting/point-spread/> (last visited Oct. 27, 2021).

9. Zach Braziller, *Alleged Wagner Basketball 'Fixer' Didn't Have Connections to Pull Off Bribe*, N.Y. POST (Aug. 7, 2020, 7:33 PM), <https://nypost.com/2020/08/07/alleged-wagner-basketball-fixer-didnt-have-connections-to-pull-off-bribe/>.

10. Letter from Vincent J. Martinelli, Att'y at Law, to I. Leo Glasser, U.S. Senior Dist. J., Bifalco Sentencing Memorandum 4, United States v. Bifalco, No. 19-CR-444 (E.D.N.Y. Oct. 7, 2020).

11. See Ante Z. Udovicic, *Special Report: Sports and Gambling a Good Mix – I Wouldn't Bet on It*, 8 MARQ. SPORTS L.J. 401, 424-27 (1998) (outlining many of the prominent game-fixing scandals in collegiate sports between 1945 and 1998); see also *A Look at Some Notable US Game-Fixing Scandals*, ASSOCIATED PRESS (Sept. 17, 2018), <https://apnews.com/article/203c6e115d464363b4d39c6a4451bf1d> (detailing a timeline of American college and professional match-fixing incidents).

12. Udovicic, *supra* note 11, at 424-27.

13. See Becky Harris, *Regulated Sports Betting: A Nevada Perspective*, 10 UNLV GAMING L.J. 75, 83-86 (2020).

14. The NCAA and its member institutions have argued repeatedly that sports betting should be prohibited as a means to protect the integrity of NCAA sporting events. See *Legislation Prohibiting State Lotteries from Misappropriating Professional Sports Service Marks: Hearing on S. 1772 Before the Subcomm. on Pats., Copyrights and Trademarks of the S. Comm. on the Judiciary*, 101st Cong. 68 (1990) (statement of Richard Hilliard, Director of Enforcement NCAA) ("There is no doubt that the institution of State-sponsored gambling schemes would demean not only the integrity of intercollegiate sports, but also would invade the property rights of our member institutions."); see also David Porter & Regina Garcia-Cano, *Easier Gambling Has Sports Worried About Fighting the Fix*, ASSOCIATED PRESS (Sept. 17, 2018), <https://apnews.com/article/42b09c7fd1764bf196b13d5c44b2a188> (noting the historical

The NCAA's vocal opposition to legalized sports wagering was supported by their professional league counterparts for most of the last seventy years, until 2014 when the National Basketball Association (NBA) Commissioner, Adam Silver, announced in a prominent *New York Times* op-ed that his league no longer supported a broad-based ban.¹⁵ While legalization would not broadly begin to take foot until nearly four years later, when the Supreme Court ruled in *Murphy v. NCAA* that the Professional and Amateur Sports Protection Act (PASPA) violated the Constitution's anti-commandeering clause,¹⁶ the Silver op-ed marked a noticeable shift in attitudes from professional sports leagues.¹⁷ While the NCAA continues to oppose any form of wagering, legal or illegal, the reality is that legalized sports betting continues to grow in popularity across the United States.¹⁸ Many states view sports betting as an opportunity to generate revenue without raising income or property taxes, something that is increasingly attractive as state budgets become strapped.¹⁹

Despite the changing stance of jurisdictions around the country, the NCAA has remained steadfast in its opposition to wagering in both its legal and illegal forms, choosing to continue its "Don't Bet

opposition to legal gambling being, in part, based on fears that more gambling would lead to an increased number of fixed games). The opposition to legal sports gambling by an organization like the NCAA is, perhaps, ironic because legal betting operators have both an interest and in many instances an obligation to notify sports leagues of suspicious activity, something that is not present in illegal markets. See Guy Bentley, *Legalized Sports Betting: The Best Defense Against Corruption*, REASON (May 11, 2018), <https://reason.org/commentary/legalized-sports-betting-the-best-defense-against-corruption/> (describing how a legal market encourages cooperation between law enforcement, bookmaking operators, and sports leagues).

15. Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html>.

16. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1481 (2018).

17. David Purdum, *The Impact of Adam Silver's Sports Betting Op-Ed Five Years Later*, ESPN (Nov. 12, 2019), https://www.espn.com/chalk/story/_/id/28068000/the-impact-adam-silver-sports-betting-op-ed-five-years-later.

18. See *Legislative Tracker: Sports Betting*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sportsbetting-bill-tracker/> (last visited Oct. 27, 2021) (noting legislative initiatives to legalize sports betting across the United States).

19. See Rey Mashayekhi, *As States Face Budget Shortfalls, Cannabis and Sports Betting Could Flourish*, FORTUNE (Oct. 31, 2020, 1:37 PM), <https://fortune.com/2020/10/31/state-budget-shortfalls-cannabis-sports-betting> (describing ballot measures allowing both sports betting and the legalization of recreational marijuana).

On It” education program.²⁰ While “Don’t Bet On It” may be well intended, the program, which can be completed in about fifteen minutes,²¹ lacks a connection to the current reality that is the presence of widespread legal gambling around the country.²² Regardless of the NCAA’s position on the wisdom of legal sports betting, the reality is that legal sports betting is here, and the majority of states have legalized the activity while the NCAA remains committed to an outdated program that is suboptimal in terms of both the betting markets and protecting student athletes.

This Article proposes that the NCAA should take meaningful steps to acknowledge the existence of the legal betting market and play a meaningful role in safeguarding the integrity of legal betting markets while providing enhanced education and reporting outlets for athletes at their member schools. This Article proceeds in four parts. Part I briefly examines the history of sports gambling in the United States. Part II discusses the relationship between sports gambling and match-fixing and why this has been a concern for the NCAA. Part III describes the shortcomings of the current programs used by the NCAA. Finally, Part IV provides the guideposts to a system that better protects student athletes and adds additional protections for regulated betting markets.

I. SPORTS BETTING ACROSS THE UNITED STATES OVER TIME²³

Sports and betting on sports is a practice that dates back to some of the earliest competitions.²⁴ Sporting events in Ancient Greece frequently saw spectators place wagers on the expected winners in

20. *Sports Wagering*, NCAA, <http://www.ncaa.org/enforcement/sports-wagering> (last visited Oct. 27, 2021).

21. See Timothy Mowrer, Jeffrey W. Wimer, Rebecca J. Mowrey & Daniel F. O’Neill, *A Study of NCAA Gambling Prevention Videos on Gambling Perceptions Within a NCAA Division II Baseball Team*, 9 J. INTERCOLLEGIATE SPORT 379, 388 (2016) (describing the length of the main “Don’t Bet On It” program being “about 15 minutes”).

22. Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Apr. 7, 2021), https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization (describing the status of sports betting in all fifty states).

23. For a more in-depth overview of sports gambling in the United States, see John T. Holden & Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates Its Most Lucrative Vice*, 2020 WIS. L. REV. 907, 910–24 (2020).

24. Arthur Charpentier, *A Brief History of Sports Betting*, FREAKONOMETRICS (Apr. 18, 2019), <https://freakonometrics.hypotheses.org/58041>.

the venues where the competitions took place.²⁵ In the 1600s, bookmakers began to handicap horse races for the British aristocracy.²⁶ Horse racing would also become a popular activity in the American colonies, which would host their first race in New York in 1665.²⁷ Horse racing would become a popular leisure pursuit in all thirteen colonies, and interstate horse racing gained popularity with the invention of the telephone and totalizer machines in the 1800s.²⁸ In addition to horse racing, pedestrian races were hugely popular in Britain and the United States.²⁹ By the late 1800s, Americans had expressed an interest and willingness to wager on seemingly any contest, placing bets amongst themselves in the stands of amateur, collegiate, and eventually professional games.³⁰

A. Pre-World War II Era in the United States

America, in the early part of the 1900s, was reeling from a series of lottery scandals that had resulted in Congress banning the use of the Postal Service from distributing lottery materials, and then banning the distribution of lottery materials through interstate commerce.³¹ The Supreme Court upheld Congress's Commerce Clause powers in the 1903 *Lottery Case*.³² During this early part of the twentieth century, the NCAA was founded with the early goals of protecting the health and safety of athletes and drawing a line between amateurs and professionals.³³ The lottery scandals would be followed by allegations that eight members of the Chicago White Sox conspired with gamblers to throw the 1919 World Series

25. *Id.*; see also Holden & Edelman, *supra* note 23, at 910-11 (tracing betting on sports to competitions in 3,000 B.C.).

26. Charpentier, *supra* note 24.

27. Holden & Edelman, *supra* note 23, at 911.

28. *Id.* The totalizer system differs from a fixed-odds system as pari-mutuel odds are adjusted based on how much is being wagered on each horse (or subject matter of the wager). The total amount wagered is split amongst the winning bettors after subtracting the house's commission. See Kit Chellel, *The Gambler Who Cracked the Horse-Racing Code*, BLOOMBERG (May 3, 2018, 3:00 AM), <https://www.bloomberg.com/news/features/2018-05-03/the-gambler-who-cracked-the-horse-racing-code>.

29. DAVID G. SCHWARTZ, *ROLL THE BONES: THE HISTORY OF GAMBLING* 337-38 (2006).

30. *Id.* at 338.

31. Holden & Edelman, *supra* note 23, at 912.

32. *Champion v. Ames (Lottery Case)*, 188 U.S. 321 (1903); Holden & Edelman, *supra* note 23, at 912.

33. Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS. L. REV. 9, 10-12 (2000).

against the Cincinnati Reds.³⁴ The *fixing* of the 1919 World Series is likely America's most prominent sporting event manipulation, while the corruption of college sports in the United States has been far more common than in their professional counterparts.³⁵ The scandal shocked the country, and led to a trial of eight members of the White Sox team and caused Major League Baseball (MLB) to establish the Office of the Commissioner, who was tasked with ensuring that the future integrity of the game would be maintained.³⁶ By the early 1920s, a movement similar to that which pushed for the prohibition of alcohol succeeded in pushing out nearly all legal horse racing while many other gambling activities continued to persist illegally.³⁷ By the turn of the decade, however, numerous states had begun to allow pari-mutuel betting on horse races as a way to raise revenue.³⁸ The 1930s saw the rise in popularity of football pool betting, where participants would "select several winners from a pool."³⁹

In March of 1931, in the midst of the Great Depression, the Nevada legislature voted to legalize casino gambling.⁴⁰ Other states also flirted with expanding the legalization of gambling offerings for residents, including Florida and Maryland who authorized slot machines, and Montana which allowed religious and charitable

34. Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, SPORTS HANDLE (Nov. 13, 2017), <https://sportshandle.com/gambling-laws-legislation-united-states-history/>; Holden & Edelman, *supra* note 23, at 912-13.

35. See John T. Holden & Ryan M. Rodenberg, *The Sports Bribery Act: A Law and Economics Approach*, 42 N. KY. L. REV. 453, 455-58 (2015) (describing, briefly, the impetus for the Sports Bribery Act and illustrating some high-profile incidents in the first half of the 20th century).

36. Holden & Edelman, *supra* note 23, at 912-13. The scandal was not the first to affect professional baseball. Indeed, it was revealed that the previous year's World Series had also potentially been fixed and at least one White Sox fixer was jealous that he was not paid as much as players had been to execute the prior fix. *Id.* During the early years of professional baseball, the sport was regarded as "innately corrupt." SCHWARTZ, *supra* note 29, at 338. Indeed, the 1919 fix was one of a number of fixes during that time period of professional baseball. In fact, the first match-fixing scandal involving professional baseball teams is believed to have arisen in 1877, when four members of the Louisville Grays accepted money from a gambling ring to intentionally lose games. *Id.*

37. DAVID G. SCHWARTZ, CUTTING THE WIRE: GAMING PROHIBITIONS AND THE INTERNET 26 (2005).

38. *Id.*

39. SCHWARTZ, *supra* note 29, at 339-40.

40. *Nevada Legalizes Gambling*, HISTORY (Mar. 17, 2021), <https://www.history.com/this-day-in-history/nevada-legalizes-gambling>; Holden & Edelman, *supra* note 23, at 914-15.

organizations to operate slot machines and punch board games.⁴¹ The 1940s would also see the rise of racing wire services that would transmit not only horse race results on an interstate basis, but also the results of sporting events.⁴² The wire services enabled the rapid dissemination of sports information around the country at a time when many would not be able to learn about the results of a game or race until the arrival of a newspaper the following day.⁴³

B. The Rise of a Monopoly in the Desert

In the 1940s, point-spread betting began to grow in popularity around the country.⁴⁴ The increased interest in sports betting saw Nevada bookmakers accepting wagers on professional sports.⁴⁵ The practice of allowing sports betting as well as casino-style gambling would establish Nevada as the only state accepting legal wagers on professional sporting events until Delaware began accepting parlay-style wagers on National Football League games in 1976.⁴⁶ Initially, legal sports wagers in Nevada were placed at so-called Turf Clubs, which operated as separate entities from casinos.⁴⁷ While Nevada regulated casino gambling in the state, sports betting was initially permitted, but not regulated by the state government.⁴⁸ Nevada's regulation was an anomaly, as in much of the country's organized crime ran the gambling operations. In 1951, Congress sought to fight back against organized crime's profits by imposing a ten percent tax on sports betting revenues.⁴⁹ The ten percent tax likely had little deterrent effect on illegal gambling, but because the federal government's tax did not discriminate between legal and illegal sports gambling revenue, the illegal operators who did not pay the tax and risk identifying their *illegal* business

41. SCHWARTZ, *supra* note 37, at 26–27.

42. Holden & Edelman, *supra* note 23, at 415–16.

43. *Id.*

44. SCHWARTZ, *supra* note 29, at 372–73.

45. Harris, *supra* note 13, at 76.

46. *See Nat'l Football League v. Governor of Del.*, 435 F. Supp. 1372, 1375 (D. Del. 1977) (noting that the Delaware lottery's football games commenced during the week of September 12, 1976); *see also* Holden & Edelman, *supra* note 23, at 924–25.

47. Harris, *supra* note 13, at 76; Holden & Edelman, *supra* note 23, at 415.

48. Harris, *supra* note 13, at 76.

49. *Id.*; Holden & Edelman, *supra* note 23, at 915.

continued to operate, retaining all their profits, whereas legal operations were rendered unprofitable by the tax.⁵⁰

C. Congress Takes Aim at Sports Betting

To counter illegal gambling facilitated by organized crime, in the early 1950s, Congress established the Kefauver Committee, headed by Tennessee Senator Estes Kefauver, to travel the country and hold hearings to investigate the scope of organized crime in the United States.⁵¹ The televised hearings had tens of millions of viewers and reached the determination that much of organized crime's activities were financed through their illegal gambling endeavors.⁵² The Kefauver Commission would produce a number of recommendations, though it would not be until 1961 that Congress would pass the first derivative legislation.⁵³ In 1961, Congress would pass a series of laws aimed at organized crime's gambling operations: the Wire Act,⁵⁴ the Wagering Paraphernalia Act,⁵⁵ and the Travel Act.⁵⁶

The Wire Act prohibited the interstate transmission of bets, as well as the interstate transmission of information that assists in the placing of bets.⁵⁷ The Wagering Paraphernalia Act prohibited the interstate transportation of materials that assist in operating bookmaking operations as well as operating sports betting pools.⁵⁸ Relatedly, the Travel Act criminalized interstate travel with intent to engage in unlawful activity, effectively allowing the federal government to federalize state crimes that were committed by

50. Harris, *supra* note 13, at 76; Holden & Edelman, *supra* note 23, at 915.

51. John T. Holden, *Through the Wire Act*, 95 WASH. L. REV. 677, 693 (2020); Holden & Edelman, *supra* note 23, at 915-16.

52. SCHWARTZ, *supra* note 37, at 71-72.

53. Holden, *supra* note 51, at 693.

54. 18 U.S.C. § 1084 (1961); Holden & Edelman, *supra* note 23, at 917.

55. 18 U.S.C. § 1953 (1961); Holden & Edelman, *supra* note 23, at 917.

56. 18 U.S.C. § 1952 (1961); Holden & Edelman, *supra* note 23, at 917.

57. 18 U.S.C. § 1084; *see also* Holden, *supra* note 51, at 722-23 (describing what information courts have found assists in placing of bets or wagers). The Wire Act has been held to apply exclusively to sports wagers. *N.H. Lottery Comm'n v. Rosen*, 986 F.3d 38, 62 (1st Cir. 2021).

58. 18 U.S.C. § 1953(a); Holden & Edelman, *supra* note 23, at 917.

out-of-state residents.⁵⁹ This trifecta of statutes were the Kennedy administration's first efforts to disrupt the revenue-generating capacity of organized crime.⁶⁰

In 1964, Congress would shift their interest from betting to the related organized crime activity of game fixing.⁶¹ The Sports Bribery Act made it a federal crime to "influence, in any way, by bribery any sporting contest."⁶² The legislation came on the back of a law passed in 1947, which covered the District of Columbia, that prohibited bribing players to lose a game.⁶³ The Sports Bribery Act was endorsed and lobbied for by both the President of the NCAA, as well as then Commissioner of the National Football League (NFL), Pete Rozelle, who cited a growing number of sports scandals brought about by gamblers as a reason necessitating the statute.⁶⁴ The 1950s had seen the NCAA plagued by a number of game fixing scandals, including allegations involving some of the organization's top men's basketball programs.⁶⁵ The passage of the Sports Bribery Act in 1964 was the last major federal statute that impacted sports betting during the 1960s.⁶⁶

59. The intent of the travel would require being engaged in illegal activity; however, the law remains a broad expansion of the federal government's criminal law authority. See 18 U.S.C. § 1952.

60. See Brett Smiley, *Mailbag Mythbusting: The 'Kitchen Sink' Statutes*, SPORTS HANDLE (June 25, 2018), <https://sportshandle.com/mailbag-mythbusting-the-kitchen-sink-statutes/> (noting that the Wire Act, Travel Act, and Wagering Paraphernalia were part of at least seven different bills introduced in 1961 to target organized crime).

61. See John T. Holden & Ryan M. Rodenberg, *The Sports Bribery Act: A Law and Economics Approach*, 42 N. KY. L. REV. 454, 454-57 (providing an overview of the climate that led to passage of the Sports Bribery Act); Holden & Edelman, *supra* note 23, at 13.

62. 18 U.S.C. § 224(a) (1994).

63. John Holden, *The Sports Bribery Act: A Look Back at Attempts to Aid Integrity*, LEGAL SPORTS REP. (May 30, 2018), <https://www.legalsportsreport.com/20813/sports-integrity-in-the-us-history/>.

64. *Id.* Rozelle testified,

American athletes are being subjected to guile and temptation by some of America's most despicable element [sic], the bribers, the fixers, and gamblers. Though only a comparatively few of the tens of thousands of honest professional and collegiate athletes of this country have succumbed to the mounting pressures and enticements brought to bear by the gambling fraternity, the increasing number of sports scandals, uncovered in recent years have been a source of chagrin and dismay to all of us.

65. James Piereson, *The Big Fix*, CITY J. (Oct. 1, 2017), <https://www.city-journal.org/html/big-fix-15466.html>.

66. See generally Ryan Rodenberg, *When It's Legal to Rig a Sports Game (and Why It Shouldn't Be)*, ATLANTIC (Feb. 14, 2013), <https://www.theatlantic.com/entertainment/archive/2013/02/when-its-legal-to-rig-a-sports-game-and-why-it-shouldnt->

Congress continued their interest in pursuing gambling, which they viewed as a funding mechanism for organized crime through the 1970s.⁶⁷ Congress also expressed dissatisfaction with state-level efforts to prioritize gambling-related offenses.⁶⁸ The passage of the Illegal Gambling Business Act allowed the federal government to take action against any gambling business that operated in contravention of state law, had more than five associates, and received gross single-day revenue exceeding \$2,000, or was in substantially continuous operation for 30 days or more.⁶⁹ However, during the 1970s while Congress was vastly expanding the federal government's ability to target gambling operations nationwide, Nevada Senator Howard Cannon successfully convinced his colleagues to reduce the gambling excise tax from ten percent to two percent.⁷⁰ The eight percent drop in federal taxation of sports wagers saw casinos take a greater interest in bringing Turf Clubs inside the casino doors, and by the 1980s most Turf Clubs had been replaced by race and sports books.⁷¹ Even with the reduction in the federal excise tax on sports wagers, however, the economics of sports wagering made it difficult to operate profitably.⁷²

be/273152/#:~:text=The%20web%20of%20laws%20applicable,only%20prohibits%20gambling%2Drelated%20corruption.&text=As%20with%20certain%20televised%20quiz,contrived%20in%20profit%2Dmaximizing%20ways (providing an overview of the scope of the Sports Bribery Act).

67. 116 CONG. REC. 503, 588-91 (1970) (statement of Sen. McClellan); Holden & Edelman, *supra* note 23, at 917 (noting passage of the Racketeer Influenced and Corrupt Organizations Act of 1970 and the Illegal Gambling Business Act).

68. See 116 CONG. REC. 503, 588-91 (1970); see also Kaitlyn Dunphy, *Following Suit with the Second Circuit: Defining Gambling in the Illegal Gambling Business Act*, 79 BROOK. L. REV. 1295, 1310 (2014) (noting that historically, regulation of gambling has been within the states' dominion; however, the federal government has sought to involve itself in gambling regulation when it determined that the states were unable to sufficiently enforce their own laws).

69. 18 U.S.C. § 1955 (1970).

70. Harris, *supra* note 13, at 77; Holden & Edelman, *supra* note 23, at 918.

71. Harris, *supra* note 13, at 77. While the transition from Turf Club to sportsbooks resulted in the closure of the majority of Nevada's Turf Clubs, the last of such businesses remained in operation until 1996. *Id.*

72. *Id.* at 78. The conventional wisdom has been that bookmakers seek to attract an equal amount of money on each side of a betting proposition and then make their profit on the vigorish (a type of commission) on each bet. For instance, in order to win \$100, a bettor would place a wager of \$110. If the bettor won, the bettor would receive \$200 with the bookmaker keeping \$10. In practice, some bookmakers undoubtedly seek to exploit their superior knowledge and maximize profits, however, bookmaking as a business is not a high margin business like some other casino games. See Steven D. Levitt, *Why Are Gambling Markets Organised So Differently from Financial Markets?*, 114 ECON. J. 223, 224-26 (2004).

D. A Shift in Federal Priorities

The 1980s brought about a shift away from prioritizing gambling-related offenses, and in 1982, Congress lowered the excise tax for legal operators to 0.25 percent while maintaining the two percent fee for illegal operators.⁷³ By the 1990s, the lobbying power of professional sports leagues increased, and there was a growing concern that a handful of states were considering legalizing sports betting, including New York and Massachusetts.⁷⁴ In 1989, the Oregon Lottery had launched a parlay style wagering game involving NBA games,⁷⁵ and Congress, along with various sports organizations, feared that this would be replicated across the country.⁷⁶ Initial efforts to amend the Lanham Act as a means of prohibiting sports betting across the country would stall, however, and in 1992, Congress succeeded in passing a compromise bill that froze sports betting as it existed in 1992, rather than banning it.⁷⁷ Yet the compromise bill, PASPA, created a one-year window which allowed a jurisdiction that had casino gambling to authorize sports betting.⁷⁸ No state took advantage of the exemption, which effectively confined sports betting to Nevada, with limited forms taking place in a few other states.⁷⁹

The passage of PASPA would stop the spread of legal sports betting, but the rise of the internet and expansion of personal computing saw illegal sports betting shift from corner bookies and

73. Harris, *supra* note 13, at 78.

74. *Legislation Prohibiting State Lotteries from Misappropriating Professional Sports Service Marks: Hearing on S. 1772 Before the Subcomm. on Pats., Copyrights and Trademarks of the Comm. on the Judiciary*, 101st Cong. 1 (1990) [hereinafter *Hearings*] (statement of Sen. Dennis DeConcini); Holden & Edelman, *supra* note 23, at 919–20.

75. Jeff Manning, *Oregon Lottery's Game Changer: Big-League Sports Betting*, OREGON LIVE (Apr. 22, 2019, 12:53 AM), <https://www.oregonlive.com/sports/2019/04/oregon-lotterys-game-changer-big-league-sports-betting.html>.

76. *Hearings*, *supra* note 74, at 1 (statement of Sen. Dennis DeConcini).

77. See John T. Holden, *Prohibitive Failure: The Demise of the Ban on Sports Betting*, 35 GA. ST. U. L. REV. 329, 337–51 (2019) (describing the legislative efforts to pass PASPA); Holden & Edelman, *supra* note 23, at 920–21.

78. 28 U.S.C. § 3704(a)(3) (1992); the language of the exemption effectively confined it to a single municipality in the United States, Atlantic City. Holden & Edelman, *supra* note 23, at 920.

79. John T. Holden, *Regulating Sports Wagering*, 105 IOWA L. REV. 575, 577 (2020); Holden & Edelman, *supra* note 23, at 920.

betting by phone to offshore websites.⁸⁰ The late 1990s through early 2000s would see the federal government devote significant attention to targeting online gambling.⁸¹ On the last day of Congress's 2006 session, it succeeded in passing an internet gambling bill, the Unlawful Internet Gambling Enforcement Act (UIGEA).⁸² The passage of UIGEA did not, however, result in a ban of online gambling; in fact, the bill targeted payment processors.⁸³ Even before passage of the bill, there were concerns about how many exemptions the bill contained, notably, whether an exemption for fantasy sports contests and pari-mutuel racing would defeat the purposes of the bill.⁸⁴ This exemption for fantasy sports and the criticism of the exemption would become prophetic less than a decade later with the rise of daily fantasy sports.⁸⁵

E. Changing Times Across the Country

As Congress was still attempting to pass internet gambling legislation, the Justice Department used existing statutes such as the Wire Act to target online sports betting operations.⁸⁶ In 2006,

80. See I. Nelson Rose, *Gambling and the Law: The Future of Internet Gambling*, 7 JEFFERY S. MOORAD SPORTS L.J. 29, 31 (2000) (noting that the first form of internet gambling was sports betting, where operators would use the websites to advertise their phone numbers to bettors who would then call a number to place a wager); Holden & Edelman, *supra* note 23, at 17–18.

81. See generally John T. Holden, *The Unlawful Internet Gambling Enforcement Act and the Exemption for Fantasy Sports*, 28 J. LEGAL ASPECTS SPORT 97, 103–12 (2018) (discussing the legislative history leading up to the passage of the Unlawful Internet Gambling Enforcement Act); Holden & Edelman, *supra* note 23, at 921.

82. Holden, *supra* note 81, at 102; see also Brandon P. Rainey, Note, *The Unlawful Internet Gambling Enforcement Act of 2006: Legislative Problems and Solutions*, 35 J. LEGIS. 147 (2009) (noting that the UIGEA was a rider to an unrelated port security bill).

83. 31 U.S.C. §§ 5361–66 (2006).

84. See *Internet Gaming: Hearing on S. 692 Before the Comm. on Indian Affairs*, 106th Cong. (1999) (statement of Deputy Assistant Att'y Gen. Kevin DiGregory); see also Holden, *supra* note 81, at 106 (noting that DiGregory and others believed the exemptions may defeat the intent of the bill).

85. See John T. Holden & Simon A. Brandon-Lai, *Advertised Incentives for Participation in Daily Fantasy Sports Contests in 2015 and 2016: Legal Classifications and Consumer Implications*, 15 ENT. & SPORTS L.J. 1, 2–3 (2017) (describing the emergence of daily fantasy sports); see also Marc Edelman, *Navigating the Legal Risks of Daily Fantasy Sports: A Detailed Primer in Federal and State Gambling Law*, 2016 U. ILL. L. REV. 117, 124–29 (2016) (describing the transition from fantasy sports to daily fantasy sports and the different genres of daily fantasy sports contests); Holden & Edelman, *supra* note 23, at 922–24.

86. See, e.g., *United States v. Cohen*, 260 F.3d 68, 71 (2001) (noting that Jay Cohen, owner and operator of the online gambling site World Sports Exchange, was convicted under the Wire Act); Holden & Edelman, *supra* note 23, at 24–25.

federal agents arrested the Chief Executive Officer of online betting site BetOnSports, David Carruthers.⁸⁷ In January of 2010, Carruthers was sentenced to thirty-three months in prison after pleading guilty to one racketeering conspiracy charge.⁸⁸ In 2011, federal authorities, in cooperation with multiple states, unsealed indictments and seized ten sports gambling websites.⁸⁹ The day the indictments were released, Monday, May 23, 2011, would be known in the online gambling world as *Blue Monday*.⁹⁰ But, while the federal government was taking aim at some of the websites that illegally offered sports betting to Americans from foreign locales, a small group of entrepreneurs were developing a new gambling-like activity that was coined “daily fantasy sports.”⁹¹ And despite the federal enforcement actions against a limited number of offshore sportsbook operators, there was little impact on the overall size of the offshore market.⁹²

Daily fantasy sports were a hybrid activity that resembled fantasy sports in some respect but also appeared to have more elements associated with gambling.⁹³ Despite the apparent similarities to the widely prohibited sports gambling, daily fantasy sports appeared, in some forms, to conform to the exemption for fantasy sports.⁹⁴

87. Matt Richtel, *BetOnSports, After Indictment, Folds Its Hand and Shifts Focus to Asia*, N.Y. TIMES (Aug. 11, 2006), <https://www.nytimes.com/2006/08/11/technology/11gamble.html>.

88. Bloomberg News, *Gambling Executive Sentenced to Prison*, N.Y. TIMES (Jan. 8, 2010), <https://www.nytimes.com/2010/01/09/business/09gamble.html>.

89. Ryan M. Rodenberg & Anastasios Kaburakis, *Legal and Corruption Issues in Sports Gambling*, 23 J. LEGAL ASPECTS SPORT 8, 9 (2013).

90. *Id.*

91. See John T. Holden, Christopher M. McLeod & Marc Edelman, *Regulatory Categorization and Arbitrage: How Daily Fantasy Sports Companies Navigated Regulatory Categories Before and After Legalized Gambling*, 57 AM. BUS. L.J. 113, 129–30 (2020) (noting that the idea for daily fantasy sports was conceived of by a poker blogger named Kevin Bonnet, however, others—notably FanDuel and DraftKings—were more successful in launching commercially successful products); Holden & Edelman, *supra* note 23, at 922–24.

92. The emergence of the legal betting market has brought with it an interest from former offshore operators looking to enter the regulated market. For example, the widow of the former owner of 5Dimes, a Costa Rican-based sportsbook, reached a settlement with the Department of Justice, and noted plans to apply for licensure in New Jersey. See Matt Rybaltowski, *5Dimes Transition to Legal U.S. Sports Betting Won't Be Easy*, SPORTS HANDLE (Oct. 1, 2020), <https://sportshandle.com/5dimes-u-s-transition/>.

93. See generally Holden et al., *supra* note 91, at 125–32 (describing the emergence of the daily fantasy sports industry); Holden & Edelman, *supra* note 23, at 922–24.

94. The UIGEA exempted fantasy sports contests from the statute that conformed to a three-pronged exemption in the statute:

Even with confusion surrounding the legality of daily fantasy sports and challenges from the New York Attorney General, the daily fantasy sports industry continued to grow in popularity, and by 2015, the two major players in the industry—FanDuel and DraftKings—had attained unicorn status with valuations exceeding \$1 billion each.⁹⁵ The companies would eventually transition into two of the most prominent legal sports betting operators when the Supreme Court’s decision in *Murphy* declared PASPA unconstitutional.⁹⁶ Even before FanDuel and DraftKings captured the attention of Americans looking to bet on sports outside of Nevada and sowed confusion with lawmakers, some of the professional sports leagues were experiencing a change of heart in regard to their long-held opposition to legal sports gambling.⁹⁷ Adam Silver, Commissioner of the NBA, was the first to advocate for such change. Silver said, “the laws on sports betting should be changed. Congress should adopt a federal framework that allows

(ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:

(I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

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

(III) No winning outcome is based—

(aa) on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or

(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

31 U.S.C. § 5362(1)(E)(ix) (2018); *see also* Holden et al., *supra* note 91, at 128.

95. Julia Greenberg, *FanDuel and DraftKings Head to Court as Unicorn Fantasies Falter*, WIRED (Nov. 24, 2015, 9:00 AM), <https://www.wired.com/2015/11/fanduel-and-draftkings-head-to-court-as-unicorn-fantasies-falter>; Holden & Edelman, *supra* note 23, at 923.

96. Holden et al., *supra* note 91, at 114.

97. *See, e.g.*, Adam Silver, *Legalize and Regulate Sports Gambling*, N.Y. TIMES (Nov. 13, 2014), <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html> (describing the National Basketball Association’s change of stance in respect to sports wagering).

states to authorize betting on professional sports, subject to strict regulatory requirements and technological safeguards.”⁹⁸

The NBA, however, was not alone. By February of 2015, Major League Baseball Commissioner Rob Manfred announced that it was time for the league and owners to give “fresh consideration” to supporting legalized sports betting.⁹⁹ The NBA and Major League Baseball would also be joined by the PGA Tour in support of a change to the federal ban on sports betting.¹⁰⁰ Indeed, the shift in position of professional sports leagues appeared to mirror attitudes in society.¹⁰¹ In the sentencing of the founder of one of the largest illegal sports betting operations in American history, the judge read from jury notes which stated: “With all the ‘legal’ sports gambling that goes on in the U.S., coupled with the fact that no one was physically harmed and nobody was forced to place bets, I see no threat to society by allowing both . . . to avoid prison time.”¹⁰²

F. The Supreme Court Opens the Door

On May 14, 2018, the Supreme Court changed the landscape of sports betting across the United States, when it struck down PASPA allowing states to legalize and regulate sports betting for the first

98. *Id.*

99. 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.

100. Eric Ramsey, *Handicapping Who Is Next in Line to Join NBA, MLB and PGA Tour in Supporting Sports Betting*, LEGAL SPORTS REP. (Apr. 6, 2018), <https://www.legalsportsreport.com/19644/joining-nba-mlb-pga-on-sports-betting/>.

101. By September 2018 nearly eight in ten Americans supported legal sports betting. See *American Support for Legal Sports Betting*, AM. GAMING ASS’N (Jan. 30, 2019), <https://www.americangaming.org/resources/american-support-for-legal-sports-betting/>.

102. John Holden, *Breaking Down the Rise and Fall of Legendz Sportsbook, Part II*, LEGAL SPORTS REP. (Aug. 1, 2019), <https://www.legalsportsreport.com/32871/legendz-sportsbook-sports-betting-2>. The case which featured more than a half-dozen defendants centered on what prosecutors alleged was one of the largest illegal bookmaking operations in U.S. history. Prosecutors initially speculated that the operation may have handled more than \$1 billion in wagers. However, court documents revealed that this figure may have been an exaggeration and that the amount was closer to \$250 million. The case, which featured several questionable prosecutorial strategies, resulted in no defendant receiving jail time. *Id.*; see also John Holden, *Breaking Down the Rise and Fall of Legendz Sportsbook, Part I*, LEGAL SPORTS REP. (Aug. 1, 2019), <https://www.legalsportsreport.com/32869/legendz-sportsbook-sports-betting/>.

time in more than twenty-five years.¹⁰³ NBA team owner Mark Cuban speculated that the decision meant that franchises in the major professional leagues could see their values double,¹⁰⁴ and states lined up looking for a first mover advantage or to plug budget holes.¹⁰⁵ The Supreme Court's decision struck down PASPA – though it did leave the door open for Congress to regulate sports betting directly¹⁰⁶ – and with the decision, dozens of states began to explore the possibility of legalizing sports betting within their borders.¹⁰⁷ States took a number of different regulatory approaches to sports betting, with each state having slightly different regulations.¹⁰⁸

As legal sports betting began to expand across the country, federal regulators explored the possibility of establishing a regulatory scheme, but both an initial bill introduced at the end of Congress's 2018 session and a subsequent effort gained little traction.¹⁰⁹ The wave of sports betting legalization across the country has also brought with it the acceptance, if not the endorsement, of all the major professional sports leagues across the

103. Adam Liptak & Kevin Draper, *Supreme Court Ruling Favors Sports Betting*, N.Y. TIMES (May 14, 2018), [https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html#:~:text=WASHINGTON%20%E2%80%94%20The%20Supreme%20Court%20struck,that%20Americans%20make%20every%20year; Holden & Edelman *supra* note 23 at 932–33.](https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html#:~:text=WASHINGTON%20%E2%80%94%20The%20Supreme%20Court%20struck,that%20Americans%20make%20every%20year; Holden & Edelman <i>supra</i> note 23 at 932–33.)

104. Tyler Lauletta, *Mark Cuban: The Top Sports Teams Just Saw Their Values Double After the Supreme Court's Huge Decision on Sports Betting*, BUS. INSIDER (May 14, 2018, 11:16 AM), <https://www.businessinsider.com/mark-cuban-supreme-court-sports-betting-2018-5>.

105. See Kathryn Kisska-Schulze & John T. Holden, *Betting on Education*, 81 OHIO ST. L.J. 465, 475–79 (2020) (describing the states who almost immediately looked to sports betting following the Supreme Court's decision in *Murphy*).

106. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S.Ct 1461, 1485–86 (2020) (“Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.”). Justice Thomas, however, did question Congress's ability to regulate purely intrastate sports wagering, despite the issue not being before the Court. *Id.* at 1485 (Thomas, J., concurring); Holden & Edelman, *supra* note 23, at 932–33.

107. See Becky Harris, *Federal Interference with State and Tribal Sports Betting Regulations Will Not Work: Where the Sports Wagering Integrity Act of 2018 Went Wrong and How Federal Legislation Might Be Effective*, 30 J. LEGAL ASPECTS SPORT 106, 109–10 (2020) (describing the states that acted quickly to legalize sports betting).

108. See, e.g., Holden, *supra* note 79, at 596–609 (describing the varied approaches that states have taken to regulate sports betting).

109. Anthony Cabot & Keith Miller, *Moving Faster Than the Speed of Regulation: Can State-Authorized Sports Wagering Dodge a Game-Fixing Bullet Without the Help of the Feds?*, 30 J. LEGAL ASPECTS SPORT 85, 102–04 (2020) (describing the Sports Wagering Market Integrity Act).

United States.¹¹⁰ However, one major sports organization has remained steadfast in its opposition to sports betting expansion – the NCAA.¹¹¹

The NCAA is, in fact, the facilitator of one of the most wagered on events on an annual basis.¹¹² The NCAA's connection to gambling is inseparable, and with the rise of the legal market, that connection is likely to grow even stronger.¹¹³ From the perspective of protecting integrity, the NCAA should embrace the rise of legal sports gambling, as regulators, sports bettors, sportsbook operators, and sports organizations all share a common interest in preventing sporting events and athletes from being corrupted.¹¹⁴

II. COLLEGIATE SPORTS AND MATCH-FIXING

The NCAA's hesitation to embrace legal gambling is driven in large part because of the organization's long history of seeing teams

110. See Charles Watson, *NFL, NBA and MLB Come Around to Sports Betting as Leagues Could Win Big*, FOX NEWS (Jan. 16, 2019), <https://www.foxnews.com/sports/sports-leagues-cautiously-coming-around-to-sports-betting-as-financial-picture-comes-into-focus> (describing the expected benefits that leagues would see with legal sports betting).

111. See *NCAA Examining Impact of Sports Wagering*, NCAA (July 19, 2018), <https://www.ncaa.org/about/resources/media-center/news/ncaa-examining-impact-sports-wagering> (NCAA Chief Legal Officer Donald Remy stated: "While we certainly respect the Supreme Court's decision, our position on sports wagering remains."). The NCAA's position, is, of course, opposed to any gambling. See John Chick, *NCAA Remains Opposed to Legalized Gambling; Some Schools Want a Cut*, SCORE, <https://www.thescore.com/ncaab/news/1573365> (last visited Oct. 27, 2021).

112. See Hilary Russ, *Americans to Bet \$8.5 Billion on NCAA's 'March Madness' Basketball Tournament: Report*, REUTERS (Mar. 18, 2019, 4:08 AM), <https://www.reuters.com/article/us-basketball-ncaa-gambling/americans-to-bet-8-5-billion-on-ncaas-march-madness-basketball-tournament-report-idUSKCN1QZ0YH> (noting Americans were expected to wager \$8.5 billion on the 2019 Men's collegiate basketball tournament). The NCAA Men's Basketball Championship Tournament has been associated with a \$13.3 billion loss in productivity in addition to the amount wagered on the event. Thomas Barrabi, *NCAA March Madness to Cost Employers \$13.3B in Lost Productivity, Firm Says*, FOX BUS. (Mar. 21, 2019), <https://www.foxbusiness.com/markets/ncaa-march-madness-to-cost-employers-13-3b-in-lost-productivity-firm-says>.

113. Ben Nuckols, *NCAA Can't Keep Tournament Games Away from Legal Gambling*, SEATTLE TIMES (Mar. 19, 2019), <https://www.seattletimes.com/business/ncaa-cant-keep-tournament-games-away-from-legal-gambling/#:~:text=But%20it%20won't%20be,to%20become%20fewer%20and%20fewer>.

114. Martin Rogers & Kim Hjelmgaard, *What the U.S. Can Learn About Legalized Sports Betting from the U.K.*, USA TODAY (June 6, 2018, 8:01 AM), <https://www.usatoday.com/story/sports/2018/06/06/sports-betting-what-u-s-can-learn-legalization-u-k/664382002>.

and players victimized by match-fixers.¹¹⁵ Indeed, the NCAA has been plagued by more match-fixing scandals than other American leagues, perhaps, because of the fact that NCAA athletes only receive compensation in the form of tuition scholarships and meager stipends that are meant to cover only the most basic of expenses, in theory making the practice of bribing a collegiate athlete more cost effective than attempting to induce a millionaire professional athlete to throw a game.¹¹⁶ A healthy fear of match-fixing is something that all sport organizations should have, as fixes have affected all levels of sport. But the legal betting market has long served as the proverbial canary in the coal mine for detecting match-fixing, and because of the added liquidity in a broad legal market, integrity of both the legal betting markets and the underlying sporting events should be improved rather than diminished.¹¹⁷

A. What is Match-Fixing?

Match-fixing has been defined as an effort “to deliberately distort the outcome of a sporting contest (or an element within the contest) for the personal material gain of one or more parties.”¹¹⁸ Researchers Ian Preston and Stefan Szymanski noted that “individual contestants may be willing to reduce their effort contribution for specific matches if the rewards for doing so are large enough.”¹¹⁹ Match-fixing can take place for a variety of reasons, including one team values a victory more than another, or “there is an opportunity to generate returns on insider information,” most commonly through exploiting an information

115. See, e.g., *A Look at Some Notable US Game-Fixing Scandals*, ASSOCIATED PRESS (Sept. 17, 2018), <https://apnews.com/article/203c6e115d464363b4d39c6a4451bf1d>.

116. See John Holden, *Match Fixers Have More Tools to Manipulate Sports Betting Outcomes than Just Bribery*, LEGAL SPORTS REP. (June 6, 2018), <https://www.legalsportsreport.com/20984/match-fixing-primer-part-ii> (explaining why the belief that professional athletes are protected by their high salaries may be misguided).

117. See *Post-PASPA: An Examination of Sports Betting in America: Hearing Before the Subcomm. on Crime Terrorism, Homeland Sec. & Investigations of the H. Comm. on the Judiciary*, 115th Cong. 1–2 (2018) (statement of Becky Harris, Chair, Nevada Gaming Control Board) (detailing Nevada’s history of detecting fixed games); see also Holden, *supra* note 79, at 597–98 (describing Harris’s testimony).

118. Mike Huggins, *Match-Fixing: A Historical Perspective*, 35 INT’L J. HIST. SPORT 123, 124 (2018).

119. Ian Preston & Stefan Szymanski, *Cheating in Contests*, 19 OXFORD REV. ECON. POL’Y 612, 613 (2003).

inefficiency in a gambling market.¹²⁰ Common scenarios where match-fixing occurs include a variety of situations: firstly, where players are influenced to perform sub-optimally for economic benefits, secondly, where a referee is influenced to favor or punish one team or another, and thirdly, where tournament structures create perverse incentives.¹²¹

Match-fixing comes in a variety of typologies.¹²² The most obvious type of fix would be a team or player intentionally losing a match, like the heavily favored 1919 Chicago White Sox team. But in reality, match-fixing happens in many different ways, with some not even seeing a team need to lose the game to accomplish a fixer's objective.¹²³ One type of fix that has often been associated with corruption in NCAA basketball is point-shaving.¹²⁴ Point-shaving occurs when a gambler convinces a player, or players, to reduce their effort such that their team wins by less than the bookmakers' point-spread.¹²⁵ As bookmakers establish point-spreads based on the idea that players will play at maximum available effort, even a marginal diminishment in effort can result in a sufficient reduction

120. *Id.*

121. John T. Holden & Ryan M. Rodenberg, *Lone-Wolf Match-Fixing: Global Policy Considerations*, 9 INT'L J. SPORT POL'Y & POL. 137, 138 (2017); see also Preston & Szymanski, *supra* note 119, at 617-18 (2003). Preston & Szymanski highlight a 1994 soccer match that took place as part of the Shell Caribbean Cup as evidence of a tournament structure creating a problematic scenario. In the event, Barbados and Grenada faced off, with Barbados needing to win the match by at least two goals to advance to the final. Any other result and Grenada would advance instead. Tournament rules said that if a match went to sudden death overtime the first team to score would be declared the winner by two goals. In the 83rd minute, Grenada scored a goal, making the score 2-1. Unlikely to score another goal to secure a two-goal lead, Barbados players scored on their own goal to send the game to overtime, the final minutes of regulation time were spent with Barbados defending both goals, as a goal either way would result in Grenada advancing. *Id.*

122. See John Holden, *Match-Fixing and Other Manipulations in Sports Betting: A Primer*, LEGAL SPORTS REP. (June 4, 2018), <https://www.legalsportsreport.com/20922/match-fixing-primer-sports-betting/>.

123. See *id.* (noting that fixes that involve point-shaving because the team only needs to win by less than the established point-spread—something which may be psychologically relieving to a player who does not want to let teammates down by losing a game outright).

124. See, e.g., David Purdum, 'The Worst Fix Ever', ESPN (Oct. 3, 2014), https://www.espn.com/espn/chalk/story/_/id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal (describing the point-shaving scheme perpetrated by members of the Boston College men's basketball team in the 1978-1979 season).

125. Justin Wolfers, *Point Shaving: Corruption in NCAA Basketball*, 96 AM. ECON. REV. 279, 279-80 (2006).

to win by less than the established point-spread.¹²⁶ A related type of fix, which can occasionally be sold to athletes as unproblematic, is spot-fixing, where the fix involves a manipulation of an aspect within a contest that need not affect the end result.¹²⁷ Spot-fixing can be lucrative for fixers because of the existence of prop bets, which are discrete wagers placed on events within the contest, other than final score of the game.¹²⁸ Finally, tanking is a means of playing to a sub-maximal effort either because a contest is meaningless, or a future benefit could be gained.¹²⁹ Commonly, teams have been incentivized in professional sports to tank in order to receive a higher draft pick, but tanking could conceivably occur in college sports by fielding an inferior team if playoff seeding were already established.¹³⁰

126. *Id.*

127. Holden, *supra* note 122. Spot-fixing is like match-fixing except it only involves manipulating one aspect of the game. The manipulation may have little impact on the overall result of the game. One contemporary example of spot-fixing occurred when the fifth-tier English soccer team Sutton United played Premier League team Arsenal. Sutton United's goalie had attracted attention because of his atypical soccer physique, as a result the bookmaker Sun Bets offered wagers on whether the goalie would eat a pie. Learning of the unique proposition, the goalie began eating a pie on the sidelines during the 83rd minute of the game. The incident, obviously, had no impact on the result of the game, but was significant for bettors and bookmakers. See Victor Mather, *Goalie Eats Pie and Loses His Job, While Bettors' Wallets Fatten*, N.Y. TIMES (Feb. 21, 2017), <https://www.nytimes.com/2017/02/21/sports/soccer/wayne-shaw-sutton-soccer-pie.html>.

128. See *What Is a Prop Bet?*, LINES, <https://www.thelines.com/betting/prop-bets/> (last visited Oct. 27, 2021) (noting that prop bets in the United States became popular in association with the Super Bowl, and can include things such as the result of the coin toss or the length of the rendition of the national anthem).

129. Mark Deeks, *What Actually Is Tanking, and Which NBA Teams Actually Do It?*, SB NATION (Jan. 10, 2014, 10:52 AM), <https://www.sbnation.com/2014/1/10/5266770/nba-draft-lottery-tanking-gm>.

130. One of the more infamous alleged tanking campaigns was dubbed "suck for Luck." Three NFL teams purportedly sought to finish with the worst record in order to be able to draft Stanford University quarterback Andrew Luck. Bill Barnwell, *Breaking Down the Suck for Luck Campaign*, GRANTLAND (Nov. 7, 2011), <https://grantland.com/features/breaking-suck-luck-campaign/>. In college sports tanking could occur for a college football team that is unlikely to reach six wins, and therefore qualify for a bowl game, as a result of requiring six wins to advance many teams end up playing, effectively, meaningless games at the end of the season. These games could be targeted by match-fixers. See Eddie Timanus & Paul Myerberg, *Get Ready Teams with Losing Records in Bowl Games After NCAA Waives Win Requirement*, USA TODAY (Oct. 14, 2020, 7:04 PM), <https://www.usatoday.com/story/sports/ncaaf/2020/10/14/ncaa-waives-college-football-bowl-win-eligibility-requirement/3656916001/> (noting that the NCAA waived their typical requirements for bowl eligibility in 2020 in light of the coronavirus pandemic and teams playing differing numbers of games).

B. Why Does Match-Fixing Happen?

While tournament structures may be one scenario that can lead players or teams to engage in sub-optimal performance, or even cause match-fixers to target those games, there are some factors that can make match-fixing more likely to occur.¹³¹ Professor Declan Hill, one of the foremost experts on match-fixing, has argued that three conditions lead to some leagues seeing more match-fixing than others: illegal gambling networks; expectations of corruption, or a distrust in the league; and poorly paid players.¹³² While the major American professional sports leagues compensate their players handsomely, collegiate athletes remain unpaid absent scholarships and stipends covering the cost of attendance.¹³³ Recent changes allowing athletes to monetize their name, image, and likeness (NIL) will provide some college athletes with additional sources of revenue. But those athletes able to earn a living on NIL deals are likely to be in the minority.¹³⁴ Despite growing legalization of sports gambling in the United States, the illegal gambling market remains dominant.¹³⁵ The second criteria regarding the presence of a view that leagues are corrupt is likely questionable, though there have been criticisms leveled at the NCAA over what some view as a hypocritical system, which sees athletes generate billions in revenue, while effectively receiving only a scholarship as compensation.¹³⁶

131. Holden, *supra* note 122.

132. Declan Hill, *A Critical Mass of Corruption: Why Some Football Leagues Have More Match-Fixing than Others*, 11 INT'L J. SPORTS MKTG. & SPONSORSHIP 221, 225–29 (2010).

133. See Holden, *supra* note 122 (noting that the NCAA does not allow for “compensation beyond tuition and grants in aid”).

134. See Dan Murphy, *Higher Earning*, ESPN, https://www.espn.com/espn/feature/story/_/id/29388424/how-much-money-college-athletes-make-nil-rights (last visited Oct. 27, 2021) (describing the variance in expected NIL earnings).

135. See Andrew J. Silver, *Legal Sports Betting Still Faces Competition from Illegal Market: Low State Taxes Could Turn the Tide*, FORBES (Apr. 7, 2020, 9:02 AM), <https://www.forbes.com/sites/andrewsilver/2020/04/07/legal-sports-betting-still-faces-competition-from-illegal-market-low-state-taxes-could-turn-the-tide/?sh=15c40ab223e3> (noting that some of the tax policies and rates in states that legalized sports betting following the *Murphy* decision may make it difficult for operators to offer pricing that is competitive with the illegal market).

136. Holden & Rodenberg, *supra* note 35, at 466 (discussing criticism of how major American sports leagues have handled certain high-profile situations); see also Holden, *supra* note 122. Hill notes that collapsed leagues are those “where there is a widespread public perception that the sport is not a competition, but effectively a theatrical exercise[.]” and “this

While much of the discussion on match-fixing has historically centered on bribery, in reality, match-fixers typically employ a variety of different tactics to accomplish their goals, particularly if one approach proves ineffective.¹³⁷ Bribery is often used to induce players to fix matches, but match-fixers have also been known to use threats of extortion or blackmail to accomplish their objectives.¹³⁸ In some instances, such as when a player is dissatisfied with his or her organization, a game can be impacted without a third-party's influence.¹³⁹ Regardless of the motivations, match-fixing threatens the integrity of not only the underlying sport, but of the betting markets that operate on the assumption that the games are being played by competitors exerting a good faith effort.¹⁴⁰

C. History of Prominent Collegiate Match-Fixing Scandals

Match-fixing has affected nearly every major sport at some point in time, and collegiate sports have seemingly been disproportionately targeted in the United States.¹⁴¹ Former *Marquette University Sports Law Review* editor Ante Udovicic chronicled thirty gambling-related incidents between 1945 and 1998 involving collegiate sports, with many involving allegations of match-fixing.¹⁴² Collegiate match-fixing scandals date back to at least 1945, when two Brooklyn College players accepted \$1,000 to throw a game against the University of Akron.¹⁴³ In 1951, the college basketball world was shocked when the New York District Attorney indicted players from four New York schools.¹⁴⁴ Caught up in the sweep was the defending champion of both the NCAA

public perception is marked by a significant (over 40%) decline in attendance . . . " as well as a loss of sponsorship and a reorganizing of league management. See Hill, *supra* note 132, at 225.

137. Holden & Rodenberg, *supra* note 35, at 464.

138. *Id.* at 465.

139. See Holden & Rodenberg, *supra* note 121, at 138 (describing the typology of match-fixing referred to as *lone-wolf match-fixing*).

140. See, e.g., *id.* at 141 (discussing different rationales for match-fixing).

141. See Udovicic, *supra* note 11, at 424-27.

142. See *id.*

143. Joe Goldstein, *Rumblings: The Brooklyn Five*, ESPN (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_rumblings.html.

144. Joe Goldstein, *Explosion: 1951 Scandals Threaten College Hoops*, ESPN (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_explosion.html.

men's basketball tournament and National Invitation Tournament, City College of New York.¹⁴⁵ The 1951 scandal, however, was not confined to New York. In fact the University of Kentucky, a team once called "untouchable," was suspended for the entirety of the 1952–53 season because of the alleged involvement in the point-shaving scheme.¹⁴⁶ In 1961, Philadelphia's St. Joseph's University was accused of fixing several games during the season, despite playing in the NCAA's third-place game that season.¹⁴⁷ The year 1961 also saw dozens of individuals arrested in connection with a match-fixing ring orchestrated by disgraced NBA player and referee Jack Molinas.¹⁴⁸

The 1970s were largely quiet with regard to high profile scandals involving match-fixing coming to light.¹⁴⁹ That was, however, until it was revealed that the Boston College men's basketball team had been implicated in a point-shaving scheme in 1978–79.¹⁵⁰ In a scheme orchestrated by organized crime figure Henry Hill, who was later the inspiration for Ray Liotta's character in the 1990 film *Goodfellas*, several Boston College players shaved points at Hill's request.¹⁵¹ Boston College, however, proved somewhat inept at controlling the score of the games.¹⁵² In 1985, a Tulane University student approached a player on the basketball team, who he had previously provided with cocaine, with an idea to shave points against Southern Miss.¹⁵³ The Tulane student paid five members of the team between \$400 and \$900 for the fix and wagered \$7,000 across various bookmakers.¹⁵⁴ Certain games during the 1985 season involving Memphis State University were

145. *Id.*

146. *Id.*

147. Patrick Sauer, *A Forgotten Classic and the Complicated Legacy of the 1961 St. Joe's Hawks*, VICE (Apr. 4, 2016, 10:28 AM), <https://www.vice.com/en/article/wnm58m/a-forgotten-classic-and-the-complicated-legacy-of-the-1961-st-joes-hawks>.

148. The Molinas scandal saw thirty-seven players from twenty-two different colleges arrested in connection with the incident. See Joe Goldstein, *Explosion II: The Molinas Period*, ESPN (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_molinas.html.

149. Udovicic, *supra* note 11, at 424–25.

150. Purdum, *supra* note 124.

151. *Id.*

152. *Id.*

153. Lenny Vangilder, *A Sad Anniversary: 25 Years Since Tulane Basketball's Point Shaving Scandal*, CRESCENT CITY SPORTS (Mar. 26, 2010), <https://crescentcitysports.com/a-sad-anniversary-25-years-since-tulane-basketballs-point-shaving-scandal/>.

154. *Id.*

also called into question when allegations involving point-shaving came out in grand jury testimony investigating a gambling operation in the Memphis area; however, the allegations were never substantiated.¹⁵⁵

In 1996, thirteen Boston College University football players were suspended for placing sports bets.¹⁵⁶ While the Middlesex, Massachusetts District Attorney found no evidence of point-shaving, two of the players were reported to have bet against their own team.¹⁵⁷ The 1990s also saw an alleged conspiracy involving members of the Fresno State men's basketball team, when one informant reported two members had received between \$1,000 and \$2,000 in jewelry for shaving points.¹⁵⁸ The same year, it was revealed Stevin Smith, an Arizona State University point guard, shaved points after becoming indebted more than \$10,000 to a campus bookie.¹⁵⁹ In 1998, two former Northwestern University basketball players were indicted on charges related to a point-shaving scheme in 1995.¹⁶⁰

In 2006, a point-shaving scheme involving the University of Toledo Rockets was detected by Nevada odds-makers after observing unexplained betting patterns.¹⁶¹ The point-shaving scheme that was executed between 2004–2006 involved at least six players, three from the football team and three from the men's basketball team, and two Detroit-area business men.¹⁶² In 2011, the

155. SI Staff, *Troubled Times at Memphis State*, SPORTS ILLUSTRATED (June 24, 1985), <https://vault.si.com/vault/1985/06/24/troubled-times-at-memphis-state>.

156. Malcolm Moran, *Boston College Bans 13 Football Players Over Bets*, N.Y. TIMES (Nov. 7, 1996), <https://www.nytimes.com/1996/11/07/sports/boston-college-bans-13-football-players-over-bets.html>.

157. *Id.*

158. Mark Arax, *Fresno Reels Amid Probe of Point-Shaving Allegations*, L.A. TIMES (Mar. 27, 1997, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1997-03-27-mn-42668-story.html>.

159. Stevin (Hedake) Smith, *Confessions of a Point Shaver Former Arizona State Star Hedake Smith Reveals How He and His Accomplices Fixed Basketball Games*, SPORTS ILLUSTRATED (Nov. 9, 1998), <https://vault.si.com/vault/1998/11/09/confessions-of-a-point-shaver-former-arizona-state-star-hedake-smith-reveals-how-he-and-his-accomplices-fixed-basketball-games>.

160. Pam Belluck, *College Basketball; Ex-Northwestern Players Charged in Point-Shaving*, N.Y. TIMES (Mar. 27, 1998), <https://www.nytimes.com/1998/03/27/sports/college-basketball-ex-northwestern-players-charged-in-point-shaving.html>.

161. Harris, *supra* note 13, at 85.

162. Mike Fish, *Six Ex-players Charged with Conspiracy*, ESPN (May 6, 2009), <https://www.espn.com/college-sports/news/story?id=4146980>.

FBI conducted an investigation into the University of San Diego's men's basketball team concluding that between five and six games had been fixed.¹⁶³ The University of San Diego scheme involved a former assistant coach bringing a player into the conspiracy and inducing him to shave points for \$1,000. Two years later, former Auburn University basketball star Varez Ward was indicted on conspiracy to commit a violation of the Sports Bribery Act.¹⁶⁴ The Grand Jury indictment alleged that Ward sought to conspire to commit sports bribery.¹⁶⁵ However, after entering into a pretrial diversion program the indictment was dismissed on February 13, 2015.¹⁶⁶ In a scheme similar to that at Arizona State University, a University of Texas El Paso student and campus bookie tried to corrupt college basketball games taking advantage of relationships he had with players on the men's basketball team.¹⁶⁷ The scheme was uncovered after a team coach alerted authorities when learning that team members had been betting on sports with the campus bookie.¹⁶⁸ In the ranks of professional sports National Hockey League (NHL) player Evander Kane was accused of betting on his own games by his wife in an Instagram post.¹⁶⁹ While it is undoubtedly true that many match-fixing schemes are unsuccessful, any level of corruption threatens to undermine trust in a sports organization, which can have disastrous commercial consequences for an organization and life changing consequences for an athlete who finds themselves caught up in a scheme.¹⁷⁰

163. Harris, *supra* note 13, at 86.

164. Alex Kay, *Former Auburn Player Varez Ward Indicted in Point-Shaving Scandal*, BLEACHER REP. (June 4, 2013), <https://bleacherreport.com/articles/1661262-former-auburn-player-varez-ward-indicted-in-point-shaving-scandal?m=0>.

165. Indictment, United States v. Ward, No. 2:13-cr-00089 (M.D. Ala. May 30, 2013).

166. *Id.*

167. Aaron Martinez, *Bookie in UTEP Betting Scandal Pleads Guilty*, EL PASO TIMES (Oct. 21, 2016, 12:11 PM), <https://www.elpasotimes.com/story/news/crime/2016/10/21/bookie-utep-betting-scandal-pleads-guilty/92487014>.

168. *Id.*

169. ESPN News Services, *NHL to Investigate Allegation that San Jose Shark's Evander Kane Bet on His Own Games*, ESPN (July 31, 2021), https://www.espn.com/nhl/story/_/id/31929787/nhl-investigate-allegation-san-jose-sharks-evander-kane-bet-own-games.

170. *See, e.g.*, 18 U.S.C. § 224 (2014) (noting that the Sports Bribery Act carries with it fines and up to five years in prison); *see also* Holden & Rodenberg, *supra* note 35, at 461 (discussing how the commercial viability of sports is tied to the idea of "uncertainty of outcome").

TABLE 1: POINT-SHAVING PAYMENTS IN COLLEGIATE SPORTS 1945–2012

<i>Year</i>	<i>Team Fixing</i>	<i>Amount Paid</i>
1945	Brooklyn College	\$1,000 ¹⁷¹
1949–50	Manhattan College	\$50 per week off-season and \$3,000 in association with three specific games at MSG ¹⁷²
1949	University of Kentucky	\$500 ¹⁷³
1961	St. Joseph’s University	\$2,750 ¹⁷⁴
1978–79	Boston College	\$1,000 and \$500 ¹⁷⁵
1985	Tulane University	\$400 to \$900 ¹⁷⁶
1994	Arizona State University	\$10,000 in debt forgiveness and \$10,000 ¹⁷⁷
1995	Northwestern University	\$4,000 ¹⁷⁸
1997	Fresno State University	Jewelry and \$1,000 to \$2,000 payments ¹⁷⁹
2004–06	University of Toledo	At least \$500 ¹⁸⁰
2009–10	University of San Diego	\$1,000 ¹⁸¹
2012	Auburn University	N/A

171. Joe Goldstein, *Rumblings: The Brooklyn Five*, ESPN (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_rumblings.html.

172. Joe Goldstein, *Explosion: 1951 Scandals Threaten College Hoops*, ESPN (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_explosion.html (discussing point shaving at Madison Square Garden (MSG)).

173. *Id.*

174. Patrick Sauer, *A Forgotten Classic and the Complicated Legacy of the 1961 St. Joe’s Hawks*, VICE (Apr. 4, 2016, 10:28 AM), <https://www.vice.com/en/article/wnm58m/a-forgotten-classic-and-the-complicated-legacy-of-the-1961-st-joes-hawks>.

175. Purdum, *supra* note 124.

176. Vangilder, *supra* note 153.

177. Smith, *supra* note 159.

178. Belluck, *supra* note 160.

179. The fixing involving Fresno State University players is only alleged. Arax, *supra* note 158.

180. Fish, *supra* note 162.

181. Shaun Assael, *Portrait of a Point Shaver*, ESPN (Mar. 6, 2014), https://www.espn.com/mens-college-basketball/story/_/id/10545391/former-assistant-tj-brown-brandon-johnson-center-university-san-diego-point-shaving-scandal-espn-magazine.

D. Why Are College Athletes Disproportionately Targeted?

Why college athletes are disproportionately the perpetrators of American match-fixing schemes is likely the result of a combination of factors.¹⁸² There remains a great deal of debate in academic circles over the prevalence of point-shaving, particularly in college basketball.¹⁸³ However, there are several observable trends that may indicate why college athletes appear more susceptible; firstly, the fact that college athletes are unpaid, beyond scholarships, grants in aid, and money they receive for their NIL rights, may mean that athletes, particularly those in need of money, can be induced economically to alter their performance.¹⁸⁴ Secondly, the absence of direct payment may create a situation whereby a college athlete in need of money is willing to engage in a prohibited act in order to satisfy that need.¹⁸⁵ Thirdly, student-athletes interact frequently with other students on campus in a way that professional athletes typically do not. This may make athletes more vulnerable to match-fixers' advances.¹⁸⁶ In contrast to many professional athletes, who are often isolated from the general public, beyond when they choose to be out in public, college athletes are like other students and have to attend classes and interact with non-athletes frequently.¹⁸⁷ Fourthly, as most students who play college sports will never play professionally, a match-fixer may be able to induce a college athlete to fix a game, such as offering money where money would otherwise not be

182. See generally Udovicic, *supra* note 11, at 424–27 (detailing collegiate gambling scandals).

183. See Wolfers, *supra* note 125; cf. Jesse Gregory, *Do Basketball Scoring Patterns Reflect Illegal Point Shaving or Optimal In-Game Adjustments?*, 9 QUANTITATIVE ECON. 1053 (2018); Richard Borghesi, *Widespread Corruption in Sports Gambling: Fact or Fiction?*, 74 S. ECON. J. 1063 (2008).

184. See *supra* Table 1.

185. See generally Holden, *supra* note 122 (describing circumstances that can lead to match-fixing incidents).

186. For instance, NCAA rules require that athlete dormitories have at least fifty-one percent of the students living in there from the general student population. See Anita Moran, *Building Campus Housing with Student-Athletes in Mind*, ATHLETIC BUS. (Dec. 2016), <https://www.athleticbusiness.com/fitness-training/building-campus-housing-with-student-athletes-in-mind.html#:~:text=NCAA%20rules%20require%20that%20residence,%22special%20treatment%22%20to%20athletes.>

187. See *Frequently Asked Questions About the NCAA*, NCAA, <https://www.ncaa.org/about/frequently-asked-questions-about-ncaa> (last visited Oct. 27, 2021) (“The association’s belief in student-athletes as students first is a foundational principle. As such, college-bound and continuing student-athletes must meet academic standards to participate in NCAA sports.”).

available.¹⁸⁸ Finally, another factor that has likely led to student athletes being targeted is that a number of athletes who historically engaged in point-shaving schemes were indebted to bookmakers themselves, and the harsh penalties associated with gambling amongst NCAA athletes may create perverse incentives to not come forward for fear that they may lose the ability to ever play their sport again and risk losing their scholarships.¹⁸⁹ The vulnerabilities facing college sports far exceed those facing the major American professional sports, and because of this, the NCAA must be proactive in providing a system that encourages student athletes to seek assistance before games are fixed.

The reality facing the NCAA is that they are engaged in an uphill battle against two fronts. On the one side there is a massive growth of legal sports betting taking place, and on the other side there has been a significant shift in societal and judicial attitudes toward gambling more broadly.¹⁹⁰ The NCAA has two choices: move forward to modernize their education programs to protect student athletes and the integrity of college sports, or retreat as if it is immune from the threat of legal gambling.¹⁹¹ But, as Gary Bettman, Commissioner of the NHL, succinctly described his embrace of legalized sports wagering, “In this day and age, you either evolve or become extinct.”¹⁹²

188. The NCAA estimates that just two percent of collegiate athletes will go on to play professionally. See *NCAA Recruiting Facts*, NCAA (Aug. 2014), <https://www.nfhs.org/media/886012/recruiting-fact-sheet-web.pdf>.

189. One potential solution to this would be to implement whistleblower protections for student-athletes so that they do not fear retribution from the NCAA or their school. See also Holden & Rodenberg, *supra* note 35, at 471.

190. See, e.g., Holden, *supra* note 102 (discussing the apprehension of sentencing an illegal gambling operator to jail when gambling is now ubiquitous).

191. See Andrew Maykuth, *What Are the Odds? Colleges Fear Sports Betting Will Lead to Cheating*, PHILA. INQUIRER (Sept. 14, 2018), <https://www.inquirer.com/philly/business/college-sports-betting-ncaa-laws-pennsylvania-new-jersey-20180914.html> (describing fears surrounding legal sports betting).

192. Greg Wyshynski & David Purdum, *Evander Kane Betting Allegations: What We Know and What We Don't*, ESPN (Aug. 2, 2021), <https://www.espn.com/chalk/story/id/31944608/evander-kane-betting-allegations-know>.

III. IGNORING THE REALITIES OF LEGAL REGULATED SPORTS BETTING IS COUNTER-PRODUCTIVE

The dismantling of the prohibition placed upon states wishing to legalize sports wagering began in 2011 when New Jersey voters approved a non-binding referendum allowing for legal sports wagering,¹⁹³ and culminated on May 14, 2018, when the Supreme Court ruled in *Murphy* that parts of the Professional and Amateur Sports Protection Act of 1992 were unconstitutional.¹⁹⁴

From May 13, 2018, to the present, legal regulated sports betting has grown beyond Nevada with twenty-nine states and the District of Columbia accepting legal wagers.¹⁹⁵ Three additional states have legalized sports betting¹⁹⁶ and are in the process of establishing sports wagering regulations. Meanwhile an additional two states¹⁹⁷ are considering sports betting legalization legislation and voters in both California and Florida may have the chance to determine the future of wagering via a 2022 ballot measure.¹⁹⁸

A. Regulatory Structures

While the regulatory structure varies from state to state, regulatory policy for sports wagers generally falls into five categories.

1. States with prohibitions on collegiate athletics generally

Only Oregon has a total prohibition on wagering on college sports.¹⁹⁹ However, Oregon appears to be willing to at least

193. David Porter, *Pro Leagues File to Stop New Jersey Sports Betting*, YAHOO! SPORTS (Sept. 29, 2014), <https://sports.yahoo.com/news/pro-leagues-file-stop-jersey-sports-betting-233606648-spt.html>; Adam Kilgore, *For Sports Leagues, Legalized Sports Betting Offers New Risks, and Massive Rewards*, WASH. POST (May 14, 2018), https://www.washingtonpost.com/sports/for-sports-leagues-legalized-sports-betting-offers-new-risks-and-massive-rewards/2018/05/14/5ce4caf4-5790-11e8-858f-12becb4d6067_story.html.

194. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1483–84 (2018).

195. *Interactive Map: Sports Betting in the U.S.*, AM. GAMING ASS'N, <https://www.americangaming.org/research/state-gaming-map/> (last visited Oct. 29, 2021).

196. *Id.*

197. Massachusetts and Ohio. *Id.*

198. Ryan Byrne, *Sports Betting Initiative Qualifies for 2022 Ballot in California*, BALLOTPEDIA NEWS (May 28, 2021, 1:23 PM), <https://news.ballotpedia.org/2021/05/28/sports-betting-initiative-qualifies-for-2022-ballot-in-california>.

199. See *College Football Betting 2021*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sports-betting/ncaaf/> (last visited Oct. 27, 2021).

consider the possibility of allowing wagering on collegiate athletic events in the future.²⁰⁰ According to the Oregon Lottery's *Most Asked Questions*, offering action on college sports does not make sense for Oregon at this time.²⁰¹

2. States with prohibitions on collegiate athletics for home-state schools

The Delaware Lottery allows its operators to offer bets on collegiate sporting events, with the exception of games involving Delaware colleges, universities, or teams.²⁰² Delaware racinos, however, do not accept single game wagers on any college games.²⁰³

New Hampshire defines a "prohibited sports event" upon which bets cannot be offered as any collegiate sport or athletic event that takes place in New Hampshire or games involving a New Hampshire college team.²⁰⁴ Legal sports wagers can be offered on games that are part of a college sports tournament, even if a New Hampshire college team participates.²⁰⁵

New Jersey's state constitutional referendum from 2011 provides that wagers including any collegiate sport or athletic event that takes place in New Jersey or games involving a New Jersey college team are "prohibited sports event[s]" upon which wagers cannot be offered.²⁰⁶ Bets can be offered on games taking place as a series within a college sports tournament in which a New Jersey college team participates but not on New Jersey teams.²⁰⁷

Perhaps after experiencing some buyer's remorse for the limitations placed upon collegiate sports betting, New Jersey lawmakers amended a bill on November 9, 2020 to allow for a public referendum to expand wagering on all college sports,

200. *Most Asked Questions*, OREGON LOTTERY SCORE BOARD, <https://sports.oregonlottery.org/most-asked-questions> (last visited Oct. 27, 2021).

201. *Id.*

202. 10-200-204 DEL. ADMIN. CODE § 204-2.0 (2019).

203. *Delaware Sports Betting Information – Sportsbooks, Betting Sites*, SPORTS HANDLE, <https://sportshandle.com/delaware> (last visited Oct. 27, 2021).

204. N.H. CODE ADMIN. R. ANN. Lot 3002.06 (2020).

205. *Id.*

206. N.J. ADMIN. CODE § 13:69N-1.1 (2019); *New Jersey Sports Betting Amendment, Public Question 1 (2011)*, BALLOTPEDIA, [https://ballotpedia.org/New_Jersey_Sports_Betting_Amendment_Public_Question_1_\(2011\)](https://ballotpedia.org/New_Jersey_Sports_Betting_Amendment_Public_Question_1_(2011)) (last visited Oct. 18, 2021).

207. N.J. ADMIN. CODE § 13:69N-1.1.

including New Jersey team play both inside and outside the state.²⁰⁸ While the referendum as originally contemplated would have expanded sports wagering offerings throughout the state, it was much more modest in scope than the referendum that will be placed before voters in November 2021.²⁰⁹ After lawmakers received the approval of “the NCAA and the Attorney General’s Office and a lot of the teams . . .,” they decided to add a provision to allow for sports wagering on New Jersey’s teams regular season collegiate games.²¹⁰ Additional revenues that would flow to the state budget by expanding sports wagering offerings was also a consideration.²¹¹

In New York, wagers on any collegiate sport or athletic event that takes place within the state or sport or athletic events in which any New York college team participates (regardless of location) are prohibited.²¹² Tournament play is the only exception, and this is only allowed if no New York teams are participating. All wagers on collegiate sports events must be approved by the New York State Gaming Commission.²¹³

The Rhode Island Lottery allows wagers to be offered on collegiate sporting events, with the exception of “collegiate sports contests or collegiate athletic events that take place in Rhode Island or a sports contest or athletic event in which any Rhode Island college team participates regardless of where the event takes place.”²¹⁴

Virginia’s allowance for wagering on collegiate sports is exclusive of the inclusion of teams from “a Virginia public or private institution of higher education.”²¹⁵ The state law also states: “No person shall place or accept a bet on Virginia college sports.”²¹⁶

208. Wayne Parry, *NJ Vote Would Allow Sports Betting on All College Games*, AP NEWS (Nov. 9, 2020), <https://apnews.com/article/election-2020-college-football-sports-constitutions-new-jersey-6ebc8e81e489f21e5a21c96de34ad6ad>.

209. Ryan Byrne, *New Jersey Voters Will Decide Amendment to Allow College Sports Betting on In-State Games, New Jersey-Based Teams*, CTR. SQUARE (June 29, 2021) https://www.thecentersquare.com/new-jersey/new-jersey-voters-will-decide-amendment-to-allow-college-sports-betting-on-in-state-games/article_ab2d22c6-d8ff-11eb-97b6-5fbb3fa3cef4.html.

210. Parry, *supra* note 208.

211. *Id.*

212. N.Y. RAC. PARI-MUT. WAG. & BREED. LAW § 1367(1)(s) (McKinney 2020); N.Y. COMP. CODES R. & REGS. tit. 9, § 5329.13 (2019).

213. *Id.*

214. 42-61.2 R.I. CODE R. § 1(28) (LexisNexis 2020).

215. VA. CODE ANN. § 58.1-4030 (2020).

216. VA. CODE ANN. § 58.1-4039.

The prohibition does not prevent betting on games in a tournament or multigame event in which a Virginia college sports team participates, so long as a Virginia college team is not playing in the game for which wagers are offered.²¹⁷

The District of Columbia (D.C.) prohibits wagers from being accepted on any collegiate sports or athletic event in which any D.C.-based collegiate or university team participates regardless of where the event takes place.²¹⁸ Bets are allowed on the games of a college sports tournament in which a D.C. college team participates.²¹⁹

3. States with prohibitions on proposition bets for collegiate sporting events

Colorado does not allow for prop bets on collegiate events,²²⁰ Virginia has a similar prohibition,²²¹ and Indiana prohibits wagers on in-play collegiate player prop bets.²²² Additionally, Indiana prohibits bets on any sporting events that have not been approved for wagering by the state's gaming commission.²²³ Wagering in Indiana on collegiate events is limited to NCAA Division I sports.²²⁴

Tennessee specifically prohibits in-game proposition bets on the performance or non-performance of a team or individual participant during a collegiate sporting event.²²⁵

4. States prohibiting wagers on home-state collegiate sports proposition bets

Illinois prohibits wagers on a sports event involving an Illinois collegiate team or individual competing through an Illinois collegiate program.²²⁶ Combination wagers determined by the performance of an Illinois participant, including parlay bets and fantasy sports in which individuals are competing through an

217. H.B. 896, 2020 Leg., Reg. Sess. (Va. 2020).

218. D.C. Mun. Regs. tit. 30, § 2127.1-27.2 (2019).

219. *Id.*

220. COLO. CODE REGS. § 207-2:1.3(3) (2020).

221. VA. CODE ANN. § 58.1-4039.

222. Ind. Gaming Comm'n Dir. on Betting Catalogues, Wagers and Other Events 1 (Jan. 22, 2020) [hereinafter Ind. Gaming Comm'n].

223. 4 IND. ADMIN. CODE 38-5-4 (2020).

224. Ind. Gaming Comm'n, *supra* note 222, at 1.

225. Rules and Regulations, Chapter 15—Sports Gaming License Rules, Regulations and Standards, §§ 15.1.3(l)(2), 15.1.10(B)(1) (Apr. 15, 2020). TENN. CODE ANN. § 4-51-301 (2020).

226. ILL. ADMIN. CODE tit. 11, § 1900.1120(b)-(c) (2020).

Illinois collegiate program, are also prohibited.²²⁷ Wagers may be placed on tournaments or season outcomes if the wager does not involve an Illinois participant.²²⁸

Iowa and Virginia also prohibit proposition bets involving in-state college teams.²²⁹

As of the writing of this Article, it would seem as if the NCAA has been mildly successful in promoting its perspective on the prohibition of wagers on home-state collegiate athletics and proposition bets. Of the jurisdictions with legal regulated sports wagering, seven states, the District of Columbia, and the Santa Ana tribe in New Mexico prohibit wagers on home-state colleges, and another five states plus Virginia prohibit some form of proposition bets on college athletics.

5. States that do not impose limitations on sports wagers

The states that have refrained from imposing limits on sports wagers include Arkansas,²³⁰ Michigan,²³¹ Mississippi,²³² Montana,²³³ Nevada,²³⁴ New Mexico,²³⁵ North Carolina,²³⁶ Pennsylvania,²³⁷ and West Virginia.²³⁸

Shortly after a failed effort in 2000 by the NCAA and Senator John McCain to ban sports wagering on college and amateur sports,

227. *Id.*

228. *Id.*

229. IOWA ADMIN. CODE r. 491-13.1(99F) (2020); VA. CODE ANN. § 58.1-4039 (2020).

230. Arkansas voters approved Issue 4 on the November 2018 ballot, which approved casino gaming and included sports betting. *See* Notice for Constitutional Amendment Proposed by Petition of the People, Issue No. 4, https://www.sos.arkansas.gov/uploads/elections/Issue_4_for_Website.pdf, (last visited Oct. 27, 2021). Per the Rules of the Arkansas Racing Commission, “[l]icensed sports pools” in Arkansas may “accept wagers, including parlay card wagers, as to which of the participating contestants will win specified sports events and as to whether the total points scored in a specified game, match, or similar sports event will be higher or lower than a number specified for that event.” Ark. Racing Comm’n Rule 20.120(1)(a)(2), <https://www.dfa.arkansas.gov/images/uploads/racingCommissionOffice/ArkansasCasinoGamingRules.pdf> (last visited Oct. 27, 2021).

231. MICH. COMP. LAWS ANN. § 432.403(bb) (West 2020).

232. MISS. CODE ANN. § 75-76-5(gg) (2020).

233. S.B. 66-330, 2020 Sess., § 2(10), (13) (Mont. 2020).

234. Nev. Gaming Comm’n, Regul. 22, §§ 22.120, 22.1205 (2018).

235. New Mexico tribes, with the exception of the Santa Ana Tribe (which does not take wagers on New Mexico colleges), do not impose limitations on legal sports wagers.

236. N.C. GEN. STAT. § 14-292.2(e)(3) (2019).

237. 4 PA. STAT. AND CONS. STAT. ANN. § 13C01 (West 2017).

238. W. VA. CODE § 29-22D-3(2), (14), (15), (22) (2018).

the Nevada Gaming Commission “lifted a long-standing ban on gambling on Nevada college sports teams”²³⁹ At the time, the NCAA vowed to “continue its drive to pass nationwide legislation prohibiting all betting on all college sports”²⁴⁰ Though invited to participate in the regulatory hearing, the NCAA failed to make an appearance.²⁴¹ After two decades and the legalization of sports wagering in twenty-nine states not much has changed at the NCAA. It is interesting to note that since Nevada has allowed wagers to be placed on its collegiate sporting events, there have been no integrity scandals involving sports betting at Nevada colleges or universities. Other jurisdictions, where sports betting has been illegal, have not been so lucky.

B. Federal Lobbying

The NCAA has a proclivity for running to Congress to solve its problems, pushing for federal legislation.²⁴² Indeed, the NCAA and its affiliates spent close to one million dollars in Washington D.C. lobbying federal lawmakers to maintain the status quo regarding student athletes and NIL, despite the expansion of these rights for college athletes in state legislatures.²⁴³ The NCAA spent another \$690,000 in 2019 hiring lobbyists, more than has been spent since 2014.²⁴⁴ It is perhaps not surprising that the NCAA would seek solutions at the federal level where it appears to have an outsized ability to influence the process as opposed to lobbying fifty

239. Kenn Ritter, *Gaming Control Board Allows Betting on Nevada College Sports*, LAS VEGAS SUN (Jan. 25, 2001, 6:52 AM), <https://lasvegassun.com/news/2001/jan/25/gaming-control-board-allows-betting-on-nevada-coll>; Ryan Rodenberg, *NCAA Pivots to Address Betting Integrity*, ESPN (Mar. 11, 2019), https://www.espn.com/chalk/story/_/id/26229344/how-ncaa-pivoting-address-sports-betting-integrity.

240. Ritter, *supra* note 239.

241. *Id.*

242. See, e.g., Dean Straka, *Report: NCAA, Allies Spent Nearly \$1M Lobbying Lawmakers in 2019*, 24/7 SPORTS (Feb. 10, 2020), <https://247sports.com/Article/ncaa-acc-big-12-spent-one-million-dollars-lobbying-congress-against-likeness-laws-143636422/>.

243. *Id.*; see also Staff, *NCAA Stepping Up Lobbying Efforts as Congress Considers Allowing Endorsement Money for Athletes*, ALA. NEWS NETWORK (Feb. 10, 2020, 4:16 PM), <https://www.alabamaneews.net/2020/02/10/ncaa-stepping-lobbying-efforts-as-congress-considers-allowing-endorsement-money-for-athletes>; Associated Press, *NCAA, 2 Conferences Spend \$750,000 Lobbying Washington Lawmakers*, CHI. SUN TIMES (Feb. 11, 2020, 10:25 AM), <https://chicago.suntimes.com/2020/2/11/21133166/ncaa-lobbying-washington-player-compensation> (putting the figure at \$750,000).

244. Straka, *supra* note 242; Staff, *supra* note 243.

different state legislatures where legislator turnover is more frequent, and relationships are more difficult to maintain. The efforts at the federal level may make sense from an efficiency standpoint but seem a bit peculiar given that the bulk of NCAA member schools are state institutions, and gambling is regulated at the state level.

C. NCAA Position on Sports Betting Remains Unchanged

Despite the changes in the regulated sports wagering landscape, the NCAA has been active in state legislatures across the country as seen by the number of states with prohibitions on wagers involving both home-state collegiate events and individual collegiate athlete performances.²⁴⁵ The NCAA's ongoing failure to address the legal, regulated sports betting market, near total opposition to sports wagering, and refusal to work with sports wagering stakeholders only serves to drive the appetite for sports wagering underground (particularly wagering on college athletics), thereby feeding the illegal market.²⁴⁶

With almost half of the states legally regulating sports betting, the NCAA's continued opposition to engage with other sports betting stakeholders continues to baffle. The owner of the Washington Capitals and Washington Wizards, Ted Leonsis said,

Many ask if this decision [*Murphy v. NCAA*] will impact the integrity of sports themselves . . . I think it's just the opposite.²⁴⁷ I think that the increased transparency that will accompany more legalized betting around the country will only further protect

245. See, e.g., Ryan Rodenberg, *From 'Irreparable Harm' to MoneyMaker: A Brief History of NCAA Sports Betting Policy*, LEGAL SPORTS REP. (Sept. 21, 2020), <https://www.legalsportsreport.com/44380/ncaa-sports-betting-colorado-pointsbet> (describing the NCAA's evolving approach to sports wagering).

246. See John Holden, *How NJ Sports Betting Set Up a Potential Constitutional Problem for Everyone*, LEGAL SPORTS REP. (June 7, 2019), <https://www.legalsportsreport.com/32820/in-state-nj-sports-betting/#:~:text=The%20exemption%20of%20in%2Dstate,is%20also%20likely%20unconstitutional%20favoritism> (noting that exempting in-state teams may not only support the illegal market but may also raise Dormant Commerce Clause problems); see also Steven Flynn & Rick Parry, *How to Build a US Gambling System That Protects the Integrity of Sports (Key Takeaways from Great Britain)*, LAWINSPORT (Aug. 21, 2018), <https://www.lawinsport.com/topics/item/how-to-build-a-us-gambling-system-that-protects-the-integrity-of-sports-key-takeaways-from-great-britain> (noting that cutting off the liquidity of the illegal market is a key component to preventing match-fixing).

247. Kilgore, *supra* note 193.

against potential corruption.²⁴⁸ They say sunlight is the best disinfectant, and in this case I believe that is certainly true.²⁴⁹

D. Despite the NCAA's Animosity Toward Sports Betting, the NCAA Attempts to Profit Financially

As part of its lobbying efforts during the 2019 legislative session in Indiana, the NCAA, looking for an income stream, argued "sports wagering operators should be required to use 'records maintained and authorized by amateur and professional sports organizations' to determine the outcomes of bets."²⁵⁰ Or, in other words, an "official data" mandate.²⁵¹

More recently, the NCAA reversed its policy of prohibiting championship competitions from being held in states that allow single-game sports betting,²⁵² namely Nevada.²⁵³ As a result of NCAA host location expansion endeavors, Las Vegas will host its first NCAA championship event in 2023.²⁵⁴

E. Integrity Efforts by Professional Sports Leagues, the NCAA, and College Conferences Underwhelm

On the sports betting side of the equation, shortly after the repeal of PASPA,²⁵⁵ the gaming industry created the Sport Wagering Integrity Monitoring Association (SWIMA) to "detect

248. *Id.*

249. *Id.*

250. Rodenberg, *supra* note 239.

251. For an overview of the concept of official data, see John Holden & Mike Schuster, *The Sham of Integrity Fees in Sports Betting*, 16 N.Y.U. J.L. & BUS. 31, 35-42 (2019).

252. Associated Press, *Las Vegas to Host NCAA Tournament Men's Regional for First Time*, ESPN (Oct. 14, 2020), https://www.espn.com/mens-college-basketball/story/_/id/30115461/las-vegas-host-ncaa-tournament-men-regional-first.

253. As more U.S. states continue to legalize sports betting, the NCAA's reluctance to host tournaments in jurisdictions allowing sports wagering is dissipating. Also, the location of sites like Nevada as hot beds of sports bettors will likely translate into better attendance at NCAA events. See Mark Anderson, *NCAA Ends Ban, Paves Way for Las Vegas to Host Title Events*, L.V. REV.-J. (May 3, 2019, 9:22 AM), <https://www.reviewjournal.com/sports/betting/ncaa-ends-ban-paves-way-for-las-vegas-to-host-title-events-1655310> (noting that high profile events are attractive to bettors).

254. *Id.*

255. SWIMA was established in November 2018. Hilary Russ, *First Sports Betting Integrity Group Launched in United States*, REUTERS (Nov. 27, 2018, 4:04 PM), <https://uk.reuters.com/article/usa-gambling-sports/first-sports-betting-integrity-group-launched-in-united-states-idUKL2N1Y21I6>.

and discourage fraud and other illegal or unethical activity related to betting on sporting events in the United States.”²⁵⁶ SWIMA’s stakeholders include regulators (tribal, state, and federal), sportsbook operators, law enforcement, and others involved in sports wagering throughout the United States.²⁵⁷ U.S. Integrity provides transparency into wagering around sporting events, monitors social media accounts for sports organization staff and players, and investigates betting-related corruption.²⁵⁸ Combining the best of both worlds, U.S. Integrity acquired SWIMA in July 2021.²⁵⁹

It is surprising that there is no corresponding organization(s) for professional sporting leagues, the NCAA, and college conferences. Adding further confusion to an already complicated situation, there is no clear process for a coach, trainer, athlete, or any other stakeholder associated with a sporting event to follow for reporting allegations of integrity violations, suspicious activity, or inappropriate contact. Indeed, there does not appear to be an established process for reporting integrity concerns or suspicious behavior to gaming regulators by sports betting stakeholders such as athletic associations, colleges and universities, data providers, or individuals within the sporting community. Nor is there a recognized entity to serve as a single point of contact within the sports community with the requisite authority and credibility to manage integrity concerns and reports of suspicious behavior.

While the NCAA appears to have established a process for reporting suspicious behavior and rules violations, information for how to report concerns is scarce. The NCAA customer service number appears to be the sole mechanism for reporting potential sport integrity violations. The NCAA’s reliance on this siloed process—which effectively sidelines regulators and other stakeholders—is not helpful.

Perhaps unintentionally, the NCAA appears to have erected obstacles that may be too difficult to overcome for any meaningful reporting to occur. Though the NCAA has provided the public with

256. SPORTS WAGERING INTEGRITY MONITORING ASS’N, <https://www.swima.net/> (last visited Oct. 27, 2021).

257. *Id.*

258. U.S. INTEGRITY, <https://www.usintegrity.com/services>, (last visited Oct. 27, 2021).

259. Telephone interview with Matt Holt, President and Founder, U.S. Integrity (Aug. 6, 2021) (concerning U.S. Integrity’s acquisition of SWIMA).

a toll-based number for reporting suspicious activity,²⁶⁰ the reporting mechanism amounts to little more than navigating a customer service line at the NCAA office.²⁶¹ For those subject to NCAA rules and regulations, especially student athletes, the fact that the phone number is housed at the NCAA's offices alone may prove to be too high a barrier to overcome for reporting alleged misconduct.²⁶²

Best practices for compliance reporting include the use of a third-party administrator, the ability to ensure confidentiality and anonymity, provisions for multiple reporting channels with 24/7 access, the creation of detailed reporting systems, implementation of appropriate security measures, and the ability to allow for multilingual reporting.²⁶³

If the NCAA were serious about providing an effective mechanism for integrity reporting, it could begin by aligning its reporting process with best practices. Much more effective would be the establishment of a third-party administered toll-free hotline where potential integrity matters could be reported anonymously 24/7 with additional assurances of confidentiality. This would increase the likelihood that top-of-mind concerns are reported before those alleging integrity concerns or suspicious activity have a chance to second guess themselves or lose their nerve. It would also seem to be of enormous benefit, more in line with current communication standards, and inexpensive to create an online reporting portal, thus establishing an additional communication channel for reporting concerns.

260. On its website, the NCAA provides a phone number, 317-917-6008, for reporting suspicious behavior and allegations of rules violations.

261. Reporting suspected NCAA rules violations is only one of the many functions the phone number serves. Callers are placed in a customer service queue from which they can select several options. The phone number is staffed Monday through Friday from 10:00 a.m.-5:00 p.m. (EST) with no ability to leave a voicemail.

262. There is significant research documenting why incidents go unreported in a variety of fields. *See, e.g.,* S.M. Evans, J.G. Berry, B.J. Smith, A. Esterman, P. Selim, J. O'Shaughnessy & M. DeWit, *Attitudes and Barriers to Incident Reporting: A Collaborative Hospital Study*, 15 *QUALITY & SAFETY HEALTH CARE* 39 (2006).

263. Strategic Management Services, *Best Practices for Maintaining an Effective Ethics and Compliance Hotline* (Feb. 2018), <https://www.compliance.com/resources/best-practices-maintaining-effective-ethics-compliance-hotline>.

F. The Value of Sports

Participating in organized sports and sporting events has many benefits. Sports matter because valuable life skills are taught including discipline, hard work, sacrifice, the value of practice and preparation, how to set and reach for goals, how to manage obstacles and prevail by overcoming adversity, how to deal with failure and success, time management, teamwork, and what it means to be part of something bigger than yourself.²⁶⁴ Sports matter because they can change lives, provide children with positive, influential role models, reveal and develop character, encourage others to be their best self, help keep kids on productive pathways, and give a voice to those without one.²⁶⁵ Finally, sports matter “for every community that needs something to rally around.”²⁶⁶

G. An Independent Integrity Body Should Be Created for Sports Organizations

An impartial, independent entity, free from the influence of sports organizations, with the power to act outside of the traditional sports environment, should be created. This entity should be set up as a governing body and single point of contact for all sports integrity matters. As a neutral independent third-party, it should be vested with the authority to vet integrity concerns and determine whether or not there is legitimacy to concerns that are placed before it. Sufficient resources and the ability to conduct investigations on its own initiative are critical in order for the organization to maintain its autonomy and objectivity. Confidential processes and whistleblower protections should be established. Full cooperation from the various sports organizations is essential for this body to have the power to legitimately resolve the matters that come before it. The ability to resolve matters swiftly is also a necessity due to the digital environment—where information can be shared with millions of people

264. Samantha Wagner, *The Value of Sports: Through the Eyes of Athletes*, REPORTER (Feb. 3, 2017), <https://reporter.rit.edu/sports/value-sports-through-eyes-athletes>; Pat Cavanaugh, *Come Ready or Never Start*, COME READY OR NEVER START (Oct. 8, 2008), <https://comereadyorneverstart.wordpress.com/>.

265. John O’Sullivan, *Why Sports Matter*, CHANGING THE GAME PROJECT (Mar. 2, 2016), <https://changingthegameproject.com/why-sports-matter/>.

266. *Id.*

worldwide with the click of a button, without context, and with the potential to affect reputations and cause irreparable damage.

Integrity in athletics is fundamental to spectator enjoyment.²⁶⁷ Nothing is better than watching talented athletes compete against each other on a level playing field. The displays of talent and moment by moment strategy are nothing short of spectacular, particularly during high stakes events such as tournaments and championships. Everyone, from the athletes to the coaches to the fans, wants the assurance that there is an equal opportunity to be victorious. "Integrity in athletics goes beyond playing by the rules of the game or respecting a referee's ruling. True athletic integrity requires athletes to remain competitive *without* seeking methods of advancement that lack morals and ethics."²⁶⁸ Athletic organizations should work to strengthen their programs by assessing where potential weaknesses lie and shoring up resources to provide needed support.

H. Inherent Threats to Sports Integrity

Much has been made of the external threats to sport such as match-fixing, point-shaving, and trading insider information. What has received little to no attention are the internal threats to sports activities from athletes, coaching staff, officials, misuse of inside information, and inadequate gambling education and awareness programs.²⁶⁹

1. Athletes

Very few athletes go on to compete at the professional level. While "[m]ore than 480,000 compete as NCAA athletes . . . just a select few within each sport move on to compete at the professional

267. The idea that sports results are unknown, a concept referred to as "uncertainty of outcome" is fundamental not only to spectator enjoyment but commercial success. See David Forrest & Robert Simmons, *Outcome Uncertainty and Attendance Demand in Sport: The Case of English Soccer*, 51 J. ROYAL STAT. SOC'Y 229, 229-31 (2002) (describing the concept of uncertainty of outcome).

268. Admin, *Sports and Character Series: Integrity*, COMPETITIVE EDGE ATHLETIC PERFORMANCE CTR. (June 22, 2017), <https://www.competitiveedgeva.com/blog/sports-and-character-series-integrity/#:~:text=Integrity%20in%20athletics%20goes%20beyond%20playing%20by%20the,methods%20of%20advancement%20that%20lack%20morals%20and%20ethics>.

269. See generally Preston & Szymanski, *supra* note 119 (describing various types of cheating in contests).

or Olympic level.”²⁷⁰ Based on research conducted by the NCAA, the number of college athletes that go on to play professional sports is very low.²⁷¹ Baseball players have the highest likelihood, with 9.9% of collegiate baseball players playing professionally. Ice hockey players have the next highest prospect with 7.4%. College football players have just a 1.6% chance of playing professionally. There is a 1.2% possibility that a male athlete playing basketball will turn pro, while female basketball players, at 0.8%, have the lowest probability.²⁷²

Of the major sports betting scandals that took place in the last forty years, the majority of them involved collegiate athletes. In exchange for cocaine and money,²⁷³ five Tulane University basketball players agreed to shave points.²⁷⁴ Basketball players at Arizona State conspired to shave points in four games.²⁷⁵ In another point-shaving incident, basketball players from Northwestern were indicted amid allegations that they “took money to insure [sic] that the Wildcats lost by more than the point spread in three games”²⁷⁶ Toledo Rockets football and basketball players were involved in a point-shaving scheme.²⁷⁷ An Auburn University player was alleged to “have conspired with others to bribe or solicit one or more individuals to influence an Auburn game,” trying “to fix games,” and for offering money to his teammates.²⁷⁸ Three

270. *Estimated Probability of Competing in Professional Athletics*, NCAA, <http://www.ncaa.org/about/resources/research/estimated-probability-competing-professional-athletics> (last updated Apr. 8, 2020).

271. *Id.*

272. *Id.*

273. *See supra* Table 1.

274. Todd Dewey, *Las Vegas Bookmakers Know a Fix When They See One*, L.V. REV.-J. (Sept. 8, 2017, 2:19 PM), <https://www.reviewjournal.com/sports/betting/las-vegas-bookmakers-know-a-fix-when-they-see-one/#:~:text=The%201994%20Arizona%20State%20point,the%20integrity%20of%20the%20games> (noting that there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

275. *Id.*

276. Belluck, *supra* note 160 (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

277. Dewey, *supra* note 274.

278. Scott Gleeson, *Former Auburn Player Indicted in Point-Shaving Scandal*, USA TODAY SPORTS (June 4, 2013, 6:05 PM), <https://www.usatoday.com/story/sports/ncaab/2013/06/04/former-auburn-guard-varez-ward-indicted-in-point-shaving-scandal/2388831> (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

players were kicked off the University of Texas El Paso team after a bookmaker unsuccessfully attempted to recruit the players to fix a game but could not get them to bet.²⁷⁹

When discussing the vulnerabilities of college athletes, Jake Williams, former general counsel for the U.S. branch of Sportradar,²⁸⁰ advised²⁸¹

the NCAA and its member schools [to] beef up corruption and integrity units and invest in education and monitoring. “To ignore and not educate those types of athletes is going to be problematic in the long run . . . I hope the conferences, the schools and the NCAA understand the scope and breadth of what’s required and actively participate in making sure they’re doing everything they can to protect their athletes.”²⁸²

According to Kenny White, vice-president of data integrity at Don Best Sports,²⁸³ “Amateur athletes are at the highest risk because there are no paychecks. They don’t make any money . . .”²⁸⁴ The collegiate match-fixing and point-shaving incidents underscore how critical gambling education and awareness programs are. While it is no small thing to compete in collegiate athletics, more than 90% of collegiate athletes do not have the opportunity to continue to compete professionally or at the Olympics and effectively “retire” from high performance competitive sports upon graduation.²⁸⁵ Collegiate gambling education and

279. Martinez, *supra* note 167. No significant bets were taken on the games with Nevada sports pools and race books. There is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada. *Id.*

280. See Jake Williams, LINKEDIN, <https://www.linkedin.com/in/jakewilliams/> (last visited, Oct. 27, 2021).

281. Sportradar gathers and analyzes sports and sports-related data. Its services are purchased by various sports stakeholders including sports book operators, sports organizations, and media companies. Sportradar has operations in several countries. Its main office is located in Switzerland. SPORTRADAR, <https://sportradar.us/> (last visited Oct. 27, 2021).

282. Sean Isabella, *Sports Betting: Gambling Could Put Athletes at Risk*, GET SET BEFORE YOU BET, <https://www.beforeyoubet.org/sports-betting-gambling-could-put-athletes-at-risk> (last visited Oct. 27, 2021).

283. Don Best Sports is a subscription-based service that provides real time sports betting data and updates to sports book operators for line setting purposes. Don Best Sports focuses on sporting events in North America. See DON BEST, www.donbest.com (last visited Oct. 27, 2021).

284. Isabella, *supra* note 282.

285. It’s estimated less than two percent of athletes will turn professional. NCAA, *supra* note 188.

awareness programs should bundle resources around student athletes and consider requiring every athlete to complete a vulnerability assessment.

2. Coaches and coaching staff

Coaches are integral to sports programs and are responsible for the development of athletes and the success of their teams. Coaches can have significant influence in the lives of their athletes. If coaches and coaching staff are not modeling good behaviors that include ethics and values, those principles will not be important for athletes. In its most recent research study, the NCAA learned that “[f]ifty-four percent of NCAA men and 31% of women [currently report that they] think sports wagering is a harmless pastime. These figures are substantially higher (76% and 61%) among those student-athletes who wager on sports.”²⁸⁶ At least twenty-five percent of student-athletes believe coaches do not take the sports wagering prohibition rules seriously.²⁸⁷ The perception that coaches have little regard for NCAA rules on wagering is significant in light of another research finding – “student-athletes report that coach and teammate awareness/reaction is a significant factor in getting student-athletes not to wager.”²⁸⁸

The University of San Diego (USD) point-shaving scandal is particularly troubling because of the influence coaches and coaching staff can have with collegiate athletes.²⁸⁹ A former assistant coach “recruited” a star player “to influence the outcome of basketball games in exchange for money.”²⁹⁰ Though the report did not provide the details of the athlete’s compensation, he was recorded “talking about how he wouldn’t shoot at the end of a particular game because it would have cost him \$1,000.”²⁹¹ Once the

286. *Trends in NCAA Student-Athlete Gambling Behaviors and Attitudes*, NCAA 5 (Nov. 2017), https://ncaaorg.s3.amazonaws.com/research/wagering/2017RES_wageringexecutivesummary.pdf [hereinafter *NCAA Trends*].

287. *Id.*

288. *Id.*

289. See *The Fix Was In: Crime in College Hoops*, FBI: NEWS (May 20, 2013), <https://www.fbi.gov/news/stories/crime-in-college-hoops/crime-in-college-hoops>.

290. *Id.*

291. *Id.*

scheme was exposed, the athlete was convicted and ended up with a federal prison sentence.²⁹²

Perhaps dedicated resources around these issues and a robust gambling education and awareness program for athletes, coaches and coaching staff, trainers, the athletic department, and other collegiate sport stakeholders could have resulted in a different outcome.

3. Officials

Veteran NBA official Tim Donaghy rocked the sports world when he was indicted and sentenced to fifteen months in prison for making calls that affected the point spreads and scores on games in which he officiated.²⁹³ Donaghy also provided inside information to gamblers and placed wagers on games he officiated.²⁹⁴

Bad officiating and league decisions were the unequivocal answers to the query, "What is affecting game integrity and outcomes regularly?"²⁹⁵ Analyzing the game behavior of officials, referees, umpires, and others should be part of the scrutiny that is regularly applied to sporting events. Timing matters. Officiating before breaks in game play (between quarters, periods, or at half-time) and in the final minutes of games should be also reviewed for inconsistencies.

Leagues and sports organizations should create compliance programs that go beyond simply creating a code of conduct. Components of compliance programs must include enacting mechanisms for reporting (suspicious activities and integrity concerns), dispute resolution (to provide mechanism for investigating claims, to initiate a complaint, and resolving concerns), discipline (to provide a venue for the consistent application of penalties for violations), process (to enhance compliance by providing a venue in which to raise questions and

292. *Id.*

293. *United States v. Donaghy*, 570 F. Supp. 2d 411, 415 (E.D.N.Y. 2008) (noting that Donaghy pled guilty to conspiracy to commit wire fraud and conspiracy to transmit wagering information).

294. *Donaghy Sentenced to 15 Months in Prison in Gambling Scandal*, ESPN (July 29, 2008), <https://www.espn.com/nba/news/story?id=3509440>. There is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada.

295. Dustin Gouker, *The Biggest Threat to Sports Integrity Is Not Betting, but Bad Officiating*, LEGAL SPORTS REP. (Oct. 15, 2019), <https://www.legalsportsreport.com/35721/officiating-threat-to-sports-more-than-betting>.

provide guidance), and rolling reviews (to ensure the code is consistent with current practices and concerns).²⁹⁶

In the multi-faceted construct that is described as sports integrity, the call for increased transparency is getting louder, as sports gambling analyst Dustin Gouker asserts, “[i]f the ‘integrity of the game’ were really paramount to the leagues, I think we’d have far more transparency and acknowledgment of problems with officiating . . . but it’s more presented as a footnote to games as opposed to some major threat to underlying game integrity.”²⁹⁷

As the NCAA considers updating its sports wagering initiatives, they

will likely be tested by a myriad of integrity challenges that college sports are now beginning to address in the shadow of the Supreme Court’s decision [in *Murphy*] less than a year ago. Key injuries, incidents involving fan interference and impactful late-game referee calls are the most recent examples. More will inevitably follow.²⁹⁸

4. Insider information

Individuals that have the ability to influence the outcome of an event or wager should be prohibited from placing sports bets. For example, Nevada prohibits sports books from accepting or paying wagers on “[a]ny sporting event or other event which the licensee knows or reasonably should know is being placed by, or on behalf of, an official, owner, coach, or staff of a participant or team or participant in that event.”²⁹⁹ In addition to state laws, gambling regulations, and NCAA prohibitions, colleges and universities should adopt a code of conduct that articulates the proscribed activities. Penalties for violations should also be clear.

Nobody, not the athletes, coaches, fans, bettors, or the sportsbooks, gets a level playing field when insider information is used to tilt the scales. Tim Donaghy allegedly personally benefited for years through his use of insider information and his ability to control outcomes. Pete Rose was said to have wagered as much as

296. Dave Dodge, *Improving Code of Conduct Is a Good Start for Sports Officiating*, NASO|INTEGRITY RES. CTR. (Aug. 27, 2018), <https://www.nasointegrity.com/improving-code-of-conduct-is-a-good-start-for-sports-officiating>.

297. Gouker, *supra* note 295.

298. Rodenberg, *supra* note 239.

299. Nev. Gaming Comm’n Regul. 22, § 22.1205(2) (2018).

\$1 million (with illegal bookies) on sports.³⁰⁰ Though the admissions about whether Mr. Rose bet on baseball generally, and on the Cincinnati Reds specifically, while he managed them have changed over time, Mr. Rose is subject to a lifetime ban from baseball.³⁰¹ These incidents illustrate why wagering restrictions and prohibitions for insiders is critical.

5. Failure to provide an adequate gambling education and awareness program

The NCAA currently offers some gambling education to collegiate athletes through its “Don’t Bet On It” campaign.³⁰² In its most recent survey, NCAA Compliance Directors were asked how familiar they were with “Don’t Bet On It.”³⁰³ While 75% of Division I schools indicated that they are very familiar with it, only 44% of Division II schools and 25% of Division III schools were very familiar.³⁰⁴ In the nearly two decades since the NCAA was praised for identifying potential risks of gambling and avoidance strategies for athletes,³⁰⁵ it has failed to provide meaningful student-athlete resources. The “Don’t Bet On It” student-athlete resources on the NCAA website are minimal.³⁰⁶ Indeed, the entirety of the “Don’t Bet On It” training appears to be meager, as the content can be consumed in a mere fifteen minutes.³⁰⁷

Although the frequency of “Don’t Bet On It” training is unclear, the adequacy of the program should be called into question and addressed. It is an understatement to suggest that fifteen minutes

300. *Rose Bet up to \$1 Million, Bookie Says*, DESERET NEWS (Apr. 25, 1989, 12:00 AM), <https://www.deseret.com/1989/4/25/18805262/rose-bet-up-to-1-million-bookie-says>. No Nevada sports pools or race books are known to have taken any direct action from Mr. Rose.

301. *Pete Rose’s Ban from Baseball Remains in Place*, ESPN (Dec. 14, 2015), https://www.espn.com/mlb/story/_/id/14365554/pete-rose-remains-banned-major-league-baseball-per-commissioner-rob-manfred-decision.

302. See NCAA SPORT WAGERING EDUCATION INITIATIVES: SURVEY OF COMPLIANCE DIRECTORS, NCAA 6 (Jan. 23, 2020), https://ncaaorg.s3.amazonaws.com/research/wagering/2020RES_NCAASurveySportsWageringEducation.pdf [hereinafter NCAA SPORT WAGERING].

303. *Id.*

304. *Id.*

305. *The Wager Vol. 7(18) – Don’t Bet on It: Curtailing Gambling Among Student-Athletes*, BASIS (May 1, 2002), <https://www.basionline.org/2002/05/the-wager-vol-7.html>.

306. See NCAA, <http://www.ncaa.org> (last visited Oct. 13, 2021).

307. See Mowrer et al., *supra* note 21, at 388 (describing the length of the main “Don’t Bet On It” program as being “about 15 minutes”).

of gambling education for a collegiate sports career that could span four to five years is somehow sufficient.

Recent studies have indicated that “6% of college students in the United States have a serious gambling problem that can lead to psychological difficulties, unmanageable debt and failing grades.”³⁰⁸

Particularly problematic is that, according to experts and former gamblers, “[s]ex, drugs and alcohol are commonly covered in school and in the coming-of-age conversations that parents have with their children, but discussions about the consequences of gambling are rare This can lead young people to underestimate the addictive nature of sports betting and other forms of gambling.”³⁰⁹

IV. EXTERNAL THREATS TO SPORTS INTEGRITY

Integrity in sports is something that needs to be safeguarded.³¹⁰ All stakeholders, particularly those responsible for the outcome of an event such as coaches, officials, and athletes, should be aware of how challenges to sports integrity may be presented. Effective education and awareness programs help sports stakeholders develop the necessary tools to bolster integrity.

The National Council for Problem Gambling (NCPG) released some staggering statistics³¹¹ revealing that “[u]pwards of 80% of high school students report having gambled for money.”³¹² Among youth ages fourteen to twenty-two, sports betting is the most popular form of gambling.³¹³ Corroborating this data is the even more compelling data from the NCAA which professes that 90% of male and 82% of female student-athletes who wager on sports placed their first bet before entering college.³¹⁴ An NCAA study from 2016 found:

308. *Id.*

309. *Id.*

310. Alfred Archer, *On Sporting Integrity*, 10 *SPORT, ETHICS & PHIL.* 117, 117 (2016) (calling integrity fundamental to sport).

311. Though research dates are not referenced, the Executive Director for the National Council on Problem Gambling confirms that the data is updated and refreshed on an ongoing basis.

312. SPORTS GAMBLING FACTS AND STATISTICS, NAT’L COUNCIL PROB. GAMBLING, <https://158bvz3v7mohkq9oid5904e0-wpengine.netdna-ssl.com/wp-content/uploads/2015/01/Sports-Gambling-Facts-and-Statistics.pdf> (last visited Oct. 27, 2021).

313. *Id.*

314. *Sports Wagering*, *supra* note 20.

Thirty-one percent of NCAA men and 14% of NCAA women gamblers had their first such experience prior to entering high school. Only 12% of men and 31% of women in the 2016 survey who had ever gambled indicated that they first gambled in college. . . . Although playing cards for money was the most common gambling entry point for current NCAA men, we are increasingly seeing sports wagering being cited as their first gambling activity.³¹⁵

A. Athlete Education Programs

1. NCPG – Safer sports betting initiative

Recognizing that more could be done to educate athletes of all ages, the National Council on Problem Gambling created the Risk Education for Athletes Program (REAP).³¹⁶ REAP was “an advocacy project designed to reach millions of youth and athletes.”³¹⁷ Its mission was to “educate athletes of all ages about the personal and professional risks involved with gambling and other risky behavior and to encourage good decision making.”³¹⁸ After the *Murphy* decision, REAP was rebooted and assimilated into the Safer Sports Betting Initiative.³¹⁹

2. Collegiate education programs – NCAA – Don’t Bet On It (2005–present)

NCAA’s own research shows student-athletes are gambling despite the NCAA’s stated policy of abstinence.³²⁰ The NCAA reported on a “Wagering Impacts Well-Being” graphic that almost a quarter of male student-athletes engaged in sports betting within the last year.³²¹

315. NCAA Trends, *supra* note 286, at 2.

316. See Risk Education for Athletes Program, FACEBOOK, <http://www.facebook.com/riskeducation4athletes> (last visited Oct. 27, 2021); Risk Education for Athletes Program, NAT’L COUNCIL PROB. GAMBLING, <https://www.ncpgambling.org/programs-resources/programs/risk-education-for-athletes> (last visited Oct. 13, 2021).

317. Risk Education for Athletes Program, *supra* note 316.

318. REAP was designed explicitly for athletes by experts in gambling, sports, sports wagering, and problem gambling. See *id.*

319. See *id.*

320. Sports Wagering, *supra* note 20.

321. *Id.*

In a survey of collegiate compliance directors conducted by the NCAA about its Sport Wagering Education Initiatives, ninety-seven percent of coaches, ninety-eight percent of athletic administrators, and ninety-nine percent of student-athletes at Division I schools confirmed some form of gambling related education was provided.³²² The same schools completed a better-than-eighty-percent rollout of gambling-related education to athletics healthcare providers.³²³ Unfortunately, “some form” appears to be a catchall phrase, and it is unknown whether or not an assessment of the various gambling-related educational programs was conducted.

In order to provide an efficacious educational program, the NCAA must address a variety of concerns identified by its member-school compliance directors.³²⁴ Some of the impediments include the NCAA’s stale policies relative to sports wagering; the “Don’t Bet On It” campaign (which is largely viewed as “outdated”);³²⁵ the perception that NCAA rules are too broad relative to societal norms³²⁶ and are viewed as “negatively impacting the credibility of any [gambling] education provided[;]”³²⁷ that student-athletes, coaches, and staff see no harm in betting on professional sports, especially fantasy offerings or “March Madness bracket contests[;]”³²⁸ the perspective that the NCAA should focus on itself and prioritize rules around college sports wagering and inside information instead of other issues; the NCAA’s position on “fantasy and low-stakes pro sports wagering[;]”³²⁹ that compliance staff feel they “lack the time, resources and expertise” to address mental health;³³⁰ and finally, that the NCAA gambling educational efforts may not be as

322. NCAA SPORT WAGERING, *supra* note 302, at 2.

323. *Id.*

324. *Id.*

325. *Id.* at 8.

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. It would seem that compliance staff could cross-collaborate with experts across their campus or bring in experts. Perhaps college athletics have the wrong funding priorities such as multimillion-dollar salaries for coaches and athletic directors as opposed to investing in resources for student-athletes. *Id.*

effective as hoped and “might be more impactful” if provided by an outside source.³³¹

V. A BETTER SYSTEM OF EDUCATION³³²

As regulated sports betting continues to expand, there is much the NCAA can do “to reduce the chances of players finding it worth the risk to shave points or throw games, should they feel their integrity concerns are substantial enough.”³³³ If the NCAA, college conferences, and colleges and universities want to bolster integrity in college athletics, dedicated resources and impactful investment in intuitive robust gambling education and awareness programs which prioritize mental health are necessary.

When asked how the NCAA would be harmed by an expansion of sports betting, NCAA President, Mark Emmert replied:

Our argument all along has always been within the NCAA, long before I took this position, that we are opposed to all forms of sports wagering . . . We have a significant amount of experience, over decades, to demonstrate that that’s the case. And to create more of it simply enhances the threat that it poses to the integrity of games, the impact that it has on our student-athletes, and to university reputations.³³⁴

Despite the widespread legalization of sports wagering over the past few years, the NCAA’s website continues to declare that

[s]ports wagering has the potential to undermine the integrity of sports contests and jeopardizes the well-being of student-athletes and the intercollegiate athletics community. It also demeans the competition and competitors alike by spreading a message that is contrary to the purpose and meaning of “sport[.]”³³⁵

331. *Id.*

332. Our observations are based on publicly available information. We do not suggest that nothing is being done to protect college athletes. Indeed, individual schools have undertaken their own education programs to educate college athletes. However, there is no indication that any of the existing programs have been evaluated. The extent to which individual efforts have been impactful and successful is unknown.

333. *Does the NCAA Argument Against Legalized Sports Gambling Hold Water?*, COLLEGEAD (May 8, 2018), <https://collegead.com/legalized-sports-gambling/>.

334. Rodenberg, *supra* note 239.

335. *Sports Wagering*, *supra* note 20.

As legalized regulated sports betting continues to grow and as it becomes more easily accessible, the NCAA's failure to adequately address the legal sports betting landscape – by updating its policies and investing resources in gambling education and awareness programs – has the “potential to undermine the integrity of sports contests and jeopardize[] the well-being of student-athletes”³³⁶ A recognition of the reality that sports betting is here to stay and will continue to grow over the next decade is fundamental to effective gambling education and awareness programs. The NCAA's approach to sports betting education now and for the past several decades can be summarized as too little, too late.³³⁷

According to Dr. Brian Hainline, the chief medical officer for the NCAA, “gambling is a medical concern that should be included in any school's educational efforts on student-athlete health and well-being.”³³⁸ Yet in actual practice, what little gambling education is provided to student-athletes focuses primarily on sports wagering terminology and NCAA rules.³³⁹ Beyond these two topics, there is a sharp drop-off in the number of schools that choose to educate their athletes about state and federal laws (D1, 46%; D2, 16%; and D3, 21%), insider information policies (D1, 62%; D2, 20%; and D3, 17%), and (with the fewest number of schools) gambling addiction (D1, 21%; D2, 14%; and D3, 18%).³⁴⁰

One NCAA school in particular, the University of Missouri, seems to educate its athletes beyond the NCAA “Don't Bet On It” campaign by explaining that “[p]athological gambling has been reclassified from an impulse control disorder to an addictive disorder; a behavioral addiction with both short-term and long-term negative consequences” and that “[a]ddiction is a primary, chronic disorder.”³⁴¹ By identifying the problem, schools like the University of Missouri are already ahead of other schools. An easy area for significant improvement would be the recognition

336. *Id.*

337. *Id.*; see generally NCAA SPORT WAGERING, *supra* note 302 (describing the “Don't Bet On It” program).

338. *Is Gambling Just as Bad as Doping? You Bet It Is*, NCAA, <http://www.ncaa.org/about/resources/research/gambling-just-bad-doping-you-bet-it>, (last visited Oct. 29, 2021).

339. NCAA SPORT WAGERING, *supra* note 302, at 7.

340. *Id.* at 3.

341. *Is Gambling Just as Bad as Doping? You Bet It Is*, *supra* note 338.

and provision of resources for mental health, problem gambling awareness, and addiction by schools.

*A. Best Practices for Sports Integrity, and Gambling Education and Awareness Programs*³⁴²

Collegiate and professional sports organizations should adopt gambling education and awareness programs that establish a consistent set of required topics, are delivered at regular and frequent intervals, are comprehensive in nature, build upon and reinforce previous content, and address gambling-related mental health concerns.

One of the findings from the NCAA's most recent study involving trends in student-athlete gambling behaviors and attitudes advised:

Continued enhancements and innovations in educational programming are necessary to protect student-athlete well-being and contest fairness. As gambling opportunities and technologies continue to evolve and laws regulating the industry potentially change, it will be important that educational programming for student-athletes, coaches and athletics administrators be continuously evaluated. To be maximally effective, this programming needs to go beyond simply telling these groups not to gamble/wager, given the deepening normative nature of gambling and sports wagering in our society. These programs should [assist] all involved in college athletics to recognize [vulnerabilities] associated with sports betting, risk factors related to problem gambling, provide up-to-date information on the science and technology of gambling (e.g., betting lines are set using a great deal of data along with extensive data/research; gamblers can easily reach student-athletes through social media), and . . . promote strategies for discussing perceptions and normative expectations associated with gambling/wagering (e.g., being an athlete does not necessarily mean one has the insight required to make money wagering on sports, as many student-athletes believe).³⁴³

342. The Sports Betting Integrity Forum's White Paper, INTEGRITY CONSIDERATIONS FOR SPORTS GOVERNING BODIES, <https://www.sbif.uk/images/Documents/Integrity-Considerations-for-Sport-Governing-Bodies.pdf> (last visited Oct. 27, 2021), served as one of many inspirations for this section.

343. NCAA Trends, *supra* note 286, at 6.

The NCAA's Sports Science Institute's Guide to Understanding and Supporting Student-Athlete Mental Wellness also acknowledged, "[w]e do need more prevention, education, awareness and treatment programs for our youth and their parents."³⁴⁴

Data from the NCAA also demonstrates that college and university efforts to cultivate educational initiatives are "more effective than just receiving materials from outside entities like the NCAA staff."³⁴⁵ Yet, despite the fact that NCAA-driven education is one of the least effective ways to deliver gambling education to student-athletes, when compliance directors were asked how likely they would be to use educational resources on sports wagering/gambling developed by the NCAA, 86% indicated they would be likely or very likely to with more than 50% of D1 schools indicating they would be very likely and an additional 37% in the likely category.³⁴⁶ If effective gambling education and awareness programs are to be developed, colleges and universities need to create their own unique programs or have programs developed specifically for them. Many schools have begun to embark on that path and have created their own educational initiatives.³⁴⁷ However, there is no indication that critical components necessary for a quality gambling education and awareness program have been included in these individual efforts.

B. Minimum Requirements Should Be Established

Gambling education and awareness programs should deliver consistent education around sports betting and mental health issues. Content should be specific and based on the jurisdiction in which the athlete competes; teach athletes how to manage confidential sports-related information, such as undisclosed injuries and game strategy; and provide resources for reporting integrity-related concerns.

344. Jeffrey L. Derevensky & Tom Paskus, *Mind, Body and Sport: Gambling Among Student-Athletes*, NCAA, <http://www.ncaa.org/sport-science-institute/mind-body-and-sport-gambling-among-student-athletes> (last visited Oct. 27, 2021).

345. *NCAA Trends*, *supra* note 286, at 6.

346. *NCAA SPORT WAGERING*, *supra* note 302, at 7.

347. *NCAA Trends*, *supra* note 286, at 5.

1. Education delivery

Gambling education and awareness programs should be delivered on a consistent, ongoing basis. At a minimum, introductory student-athlete gambling education and awareness training programs should be completed each year by student-athletes that are incoming freshman, transfer students, or new to the college/university. Each returning student-athlete, whether or not the athlete is competing or eligible, should participate in an annual refresher course. Other refreshers should be provided as appropriate, such as before significant games, upon entering tournament play, if an athlete has been approached about match-fixing or point-shaving, if integrity concerns come to light or at other significant times such as surrounding championship events that see increased wagering activity. Education delivery in this format would perpetually remind student-athletes about crucial issues related to gambling and sports betting.

Colleges and universities should also engage in vulnerability and risk assessments to determine how susceptible the athletes in their programs are to gambling-related challenges.

Gambling education and awareness programs should not be limited solely to student-athletes. Coaches and coaching staff, trainers, athletic department staff, university administrators, and doctors and medical staff that work with student-athletes should all receive gambling education and awareness training. Consistent delivery of gambling education and awareness programs can help form the foundation for a strong and mindful athletic community.

Quality gambling education and awareness educational programs should also include an overview of the gambling laws and regulations for the jurisdiction in which student-athletes compete, including both permitted and prohibited wagers. For example, in Nevada:

Wagers may be accepted or paid by any book on . . . [p]rofessional sport or athletic events sanctioned by a governing body; [e]vents held at a track which uses the pari-mutuel system of wagering; Olympic sporting or athletic events sanctioned by the International Olympic Committee; [c]ollegiate sporting or athletic events; [o]ther events; and [v]irtual events.³⁴⁸

348. Nev. Gaming Comm'n Regul. 22, § 22.120 (2018).

[Wagers may not be placed on] [a]ny amateur sport[] . . . [a]ny sporting event or other event [if] the licensee knows or reasonably should know [the wager] is being placed by, or on behalf of, an official, owner, coach, or staff of a participant or team or participant in that event. . . . [and] [a]ny athletic sports event sanctioned by a governing body where . . . a finding [has been made that] the governing body is not effectively supervising such event or is not ensuring the integrity of such event.³⁴⁹

College, university, and athletic department policies regarding gambling; use of insider information; personally identifiable information; and medical information should also be discussed.

Colleges, universities, and athletic departments should establish dedicated resources for student-athletes and others, such as coaches and support staff, to provide information about how student-athletes and others can access them. Information about where to seek help for mental health concerns, problem gambling, and other challenges should also be provided.

Finally, colleges, universities, and athletic departments should discuss disciplinary processes, the penalties associated with violating them, and any criminal laws that may apply as part of the training.

2. Information management

Privacy protection, data security, and information management are becoming more important in our society. Educating student-athletes about the types of information not to be disseminated or discussed with anyone outside of the college or university team ecosystem adds another layer of integrity protection.

Student-athletes may find themselves in precarious situations as they simply go about their day-to-day activities. Unlike their professional counterparts, gaining access to collegiate athletes is relatively easy because of the nature of their environment. Colleges and universities are open to the public and common areas are easy to access. Professors, classmates, friends, family, members of the community, and others all regularly interact with student-athletes and could come into the possession of sensitive information.

The United States Department of Homeland Security defines personally identifiable information (PII) as “information that permits the identity of an individual to be directly or indirectly

349. § 22.1205.

inferred, including any other information that is linked or linkable to that individual” regardless of citizenship status.³⁵⁰ PII is a form of sensitive personally identifiable information (SPII) and includes PII “which if lost, compromised, or disclosed could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.”³⁵¹ Teaching student-athletes, coaches and coaching staff, trainers, athletic department staff, and university administrators about PII and SPII, what each encompasses, and why disclosures should not be made is another effective way to prevent sports integrity issues. Attention should also be given to the types of information that could be utilized for wagering purposes.

With the permissive environment that social media provides, student-athletes should be counseled not to post any PII or SPII about teammates such as medical or lifestyle information, as it could inadvertently impact wagering odds and it can be difficult to establish whether the social media engagement was inadvertent or deliberate.

Learning to protect their own and others’ personal and health information can help student-athletes avoid unintentionally disseminating the type of information that sports bettors could use to gain an advantage.

3. Integrity reporting

Dedicated time to discussing integrity challenges with student-athletes is an essential component of any gambling education and awareness program. Finding ways to openly discuss sports integrity dilemmas in a safe environment can teach athletes how to better navigate murky situations in a nonthreatening environment. Role-playing can be a useful tool to illustrate how student-athletes might be approached about participating in point-shaving, match-fixing, or other illicit activities. Role-playing activities can also provide student-athletes with the skills to rebuff an approach and teach them how to properly report any such attempts. Practicing real world examples will assist in keeping

350. HANDBOOK FOR SAFEGUARDING SENSITIVE PII, U.S. DEP’T HOMELAND SEC. 5 (Dec. 4, 2017), <https://www.dhs.gov/sites/default/files/publications/dhs%20policy%20directive%200047-01-007%20handbook%20for%20safeguarding%20sensitive%20PII%2012-4-2017.pdf>.

351. *Id.* SPII includes social security numbers; driver’s license/state identification numbers; citizenship or immigration status; medical information; and ethnic, religious, sexual orientation, or lifestyle information in conjunction with the identity of an individual.

student-athletes from becoming vulnerable to participation in illegal activities or compromising the integrity of the events in which they participate.

Crafting realistic hypotheticals that mirror previous match-fixing, point-shaving, or integrity scandals can reveal how student-athletes might react in a real-world situation, give insight into their thought processes, and provide a forum for practicing how to avoid harmful interactions.

Facilitating discussions about realistic ethical challenges and analyzing the thinking processes behind how the student-athletes approached the scenarios can provide context in the event the athlete is ever confronted with a similar situation in real life.

Should a student-athlete become aware of suspicious activity or an integrity violation, an effective gambling education and awareness program should provide student-athletes with a single point of contact and a uniform process for how and where to report it. Such a process should adhere to best practices,³⁵² including a third-party administered whistleblower hotline.

The college, university, and athletic department disciplinary processes should be made clear. However, student-athletes that are approached about match-fixing or point-shaving and choose to come forward, report the contact, and not participate in such schemes should be free from any disciplinary or punitive processes. Policies should be flexible enough to provide leniency for any student-athletes that are or have been involved in illegal or inappropriate activities for coming forward before they are found out.

Gambling education and awareness programs should include frank discussion about the consequences of participating in illegal activity such as match-fixing and point-shaving schemes or the less obvious violations such as sharing insider information or personal information about the team or individual athletes. Student-athletes should understand the risks of engaging in match-fixing, point-shaving, divulging insider information, and other inappropriate behaviors. Clear policies about the consequences of participating in such schemes, including the potential loss of eligibility, scholarships, and stipends and the probability of filed criminal charges, potential conviction, and possible jail or prison time should serve as a deterrent.

352. *See supra* Section V.A.

CONCLUSION

Legal regulated sports wagering is here to stay. More than half of U.S. states offer legal sports betting. Match-fixing scandals have been a part of the U.S. sports landscape for over a century, though little appears to have been done to provide athletes, particularly student-athletes, with the tools and resources necessary to protect themselves.

As more states enter the legal regulated market, sports integrity violations and suspicious activity will become clearer as odds makers watch betting action, make adjustments to their lines, and report concerns to U.S. Integrity for further evaluation. It is no longer prudent for sports organizations to ignore the realities of the environment in which their athletes participate. Instead of fearmongering and ruminating about the illicit nature of sports betting, the NCAA as well as colleges and universities should be proactively engaged and fully participating partners.

To prepare student-athletes to more effectively navigate the challenges that are posed by wagering on sports, the NCAA, colleges, and universities should create or provide robust gambling education and awareness programs. Adhering to best practices is a smart, effective, and inexpensive first step. Additional resources need to be dedicated to helping and supporting students, including establishing gambling education and awareness programs, creating information management techniques, and standardizing the process for reporting concerns and potential violations. Support structures and disciplinary processes need to be adaptive. An environment where student-athletes are comfortable reporting suspicious activities and potential integrity violations must be cultivated if there is any hope in reducing or eliminating match-fixing, point-shaving, and other illicit schemes that plague collegiate athletics.

