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## Place Your Bets: The Legal Integration of Sports Betting With Cryptocurrency

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PLACE YOUR BETS: THE LEGAL  
INTEGRATION OF SPORTS BETTING  
WITH CRYPTOCURRENCY

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## PLACE YOUR BETS: THE LEGAL INTEGRATION OF SPORTS BETTING WITH CRYPTOCURRENCY

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**ABSTRACT.** In recent years, the sports betting and cryptocurrency sectors have witnessed exponential growth, evolving into multibillion-dollar industries with projections for continued expansion. However, the intersection of these two realms presents a murky legal landscape. Specifically, the act of placing sports wagers with cryptocurrencies is an under-regulated domain, leading to uncertainties both technologically, with the integration of blockchain, and philosophically. Sportsbooks, the entities overseeing sports betting operations, grapple with choices such as enlisting third-party services to handle cryptocurrency wagers or devising their own digital currencies, each choice presenting its unique set of challenges.

This note posits that to alleviate this uncertainty, legislative adjustments are paramount. Amendments to the Wire Act and UIGEA could establish clarity by legalizing sports betting transmissions across states where it is sanctioned. This would not only offer a definitive framework for the use of cryptocurrencies in sports betting but would also reduce administrative burdens for governmental bodies and operators. The overlap in user demographics of both sports betting and cryptocurrency underscores the potential for immense revenue, which jurisdictions could tap into if the industries were effectively integrated. The author emphasizes the urgency of revising the Wire Act and UIGEA to accommodate cross-border betting and the need for a clear classification system for cryptocurrencies. Proper legislation could then harmonize and stabilize the market for all stakeholders involved, steering funds away from black markets and bolstering the tax base for jurisdictions.

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## I. INTRODUCTION

The sports betting and cryptocurrency industries have experienced significant growth in the last few years, resulting in multibillion-dollar industries that are projected to experience more growth over the next decade. With the current lack of regulation between the two industries, placing sports bets with cryptocurrency has become a gray area that bettors and operators are navigating blindly. This lack of regulation results in technical and philosophical questions about the use of blockchain technology associated with cryptocurrency. Entities that run sports betting operations are called Sportsbooks Operators or simply, sportsbooks or operators. These operators can consider using third parties to maintain cryptocurrency bets or potentially develop their own cryptocurrency. However, these options only exacerbate these problems.

Many of these issues that have arisen due to the rapid growth of these burgeoning industries can be addressed by federal and state regulation. Such regulations would provide stability for all parties involved, including governments, operators, and bettors. The two industries have already combined on the illegal market. Another benefit of combining the two industries on the legal market is the potential to boost tax revenue for jurisdictions that enact legislation.

## II. HISTORY OF SPORTS BETTING IN THE UNITED STATES

Sports betting has a long and complicated history in the United States dating back to the colonial era. The first horse racing track was constructed in 1665 in modern-day Long Island.<sup>1</sup> Horse racing became the first form of widespread sports gambling in the United States in the 1700s.<sup>2</sup> The publishing of the American Stud Book in 1868 ushered in horse racing as a more structured affair.<sup>3</sup> As America moved into the 1900s, other sports such as baseball became popular for bettors in

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<sup>1</sup> John D., *A History of Horse Racing in America*, January 12, 2022 <https://greensheetracing.com/blog/history-of-horse-racing-america/> [<https://perma.cc/6397-WUZF>].

<sup>2</sup> *Id.*

<sup>3</sup> Richard Johnson, *The Centuries-Old History of how Sports Betting Became Illegal in the United States in the First Place*, May 18, 2018 <https://www.sbnation.com/2018/5/18/17353994/sports-betting-illegal-united-states-why> [<https://perma.cc/DQC3-JHR2>].

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addition to horse racing.<sup>4</sup> However, bookmaking became outlawed by most states during this time, which almost killed the horse racing industry.<sup>5</sup>

The number of racetracks fell from 314 in 1890 to 25 in 1908 due to the ban on bookmaking.<sup>6</sup> Pari-mutuel wagering became the saving grace for the horse racing industry by removing betting against “the house.”<sup>7</sup> Pari-mutuel wagering pools all the wagers, placing them against each other, rather than “the house.”<sup>8</sup> This form of betting allowed states to collect taxes on wagers that were placed, which led to the reopening of racetracks.<sup>9</sup>

One of the biggest blackeyes on sports betting and gambling came in the form of the Black Sox scandal, in which members of the Chicago White Sox moved to fix the 1919 World Series.<sup>10</sup> Several players on the Major League Baseball ballclub colluded with gamblers to manipulate the outcome of the World Series to permit the underdog Cincinnati Reds to win the championship.<sup>11</sup> White Sox star pitcher, Eddie Cicotte, admitted in grand jury testimony that he received \$10,000 the night before he was to pitch in game one of the series.<sup>12</sup> This scandal influenced legislators and sports executives to deny gambling based on integrity-of-the-game grounds.<sup>13</sup>

Sports betting went mostly underground after the Black Sox scandal until 1949 when Nevada legalized sports wagering.<sup>14</sup> The state legalized most other forms

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> D., *supra* note 1.

<sup>7</sup> Johnson, *supra* note 3.

<sup>8</sup> *Id.*

<sup>9</sup> D., *supra* note 1.

<sup>10</sup> John Thorn, *Forget What You Know About the Black Sox Scandal*, October 9, 2019 <https://www.nytimes.com/2019/10/09/opinion/black-sox-scandal-1919.html> [<https://perma.cc/6TQD-HWK3>].

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Johnson, *supra* note 3.

<sup>14</sup> Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, Nov. 13, 2017 <https://sportshandle.com/gambling-laws-legislation-united-states-history/> [<https://perma.cc/2YJT-9PDF>].

of gambling more than a decade earlier.<sup>15</sup> However, college basketball point-shaving scandals at City College of New York in 1951 and at the University of North Carolina and North Carolina State University in 1961 led to legislators putting a bullseye on sports betting.<sup>16</sup> The Federal Wire Act of 1961 was enacted to suppress gambling across state lines.<sup>17</sup> (See Wire Act section below.)

Despite the proliferation of laws to combat gambling in the 1960s, illegal bookmaking continued to thrive until the 1980s, when the Department of Justice decided to de-prioritize the enforcement of anti-gambling laws.<sup>18</sup> The Commission on the Review of National Policy Toward Gambling issued its final report in 1976 stating in its introduction that “Gambling is inevitable. No matter what is said or done by advocates or opponents of gambling in all its various forms, it is an activity that is practiced, or tacitly endorsed, by a substantial majority of Americans.”<sup>19</sup> Regardless of its introduction, the Commission also recommended that gambling laws already on the books should remain.<sup>20</sup>

#### A. PASPA ENACTMENT

The Professional and Amateur Sports Protection Act (PASPA) was passed by Congress and signed into law in 1992 and went into effect in 1993.<sup>21</sup> PASPA became an overarching ban on sports gambling at the federal level and required that states tell the government within a year if they wanted to have sports betting within their borders.<sup>22</sup> The law prohibited any governmental entity from, “sponsoring, operating, advertising, promoting, licensing, or authorizing by law any lottery, sweepstakes, or

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<sup>15</sup> *Id.*

<sup>16</sup> Johnson, *supra* note 3.

<sup>17</sup> *Id.*

<sup>18</sup> Justin Fielkow, Daniel Werly & Andrew Sensi, *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 28 (2017) (persistence of sports gambling despite federal efforts).

<sup>19</sup> COMM’N ON THE REV. OF THE NAT’L POL’Y TOWARD GAMBLING, GAMBLING IN AMERICA 1 (1976), <https://ia802205.us.archive.org/4/items/gamblinginamericounit/gamblinginamericounit.pdf> [<https://perma.cc/9KS6-3ENH>].

<sup>20</sup> *Id.* at 49-53.

<sup>21</sup> 28 U.S.C. § 3701- 3704.

<sup>22</sup> *Id.* at § 3704(a)(3)(A).



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other betting scheme based...on one or more competitive games in which amateur or professional athletes participate.”<sup>23</sup>

The law contained two exemptions.<sup>24</sup> The first exemption was for states in which sports wagering had previously existed.<sup>25</sup> Only four states, Nevada, Delaware, Oregon, and Montana, met this exemption for having some form of sports betting within their borders.<sup>26</sup> The other exemption was where a municipality operated a casino for at least ten years before the law’s effective date.<sup>27</sup> Only Atlantic City, New Jersey met this exemption criteria,<sup>28</sup> but the state of New Jersey failed to enact legislation within the timeframe to permit legalized sports betting.<sup>29</sup>

**B. PASPA Repeal**

New Jersey missed its opportunity to take advantage of PASPA’s grandfather clause to legalize sports betting.<sup>30</sup> Despite this, several groups across New Jersey filed a suit in 2009 against the U.S. Attorney General, seeking a declaratory ruling that PAPSA was unconstitutional.<sup>31</sup> The case was dismissed in federal court without the Department of Justice taking a position on the constitutionality of the law.<sup>32</sup>

New Jersey tried a different approach in 2012 when the legislature enacted the Sports Wagering Law,<sup>33</sup> which enabled New Jersey regulators to license sports

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<sup>23</sup> *Id.* at §3702.

<sup>24</sup> *Id.* at §3704.

<sup>25</sup> See Fielkow et al, *supra* note 18 at 32 (describing PASPA).

<sup>26</sup> Smiley, *supra* note 14.

<sup>27</sup> 28 U.S.C. § 3704(a)(3)(B).

<sup>28</sup> See Fielkow et al, *supra* note 18 at 32 (describing PASPA).

<sup>29</sup> *Id.*

<sup>30</sup> Christopher L. Soriano, *The Efforts to Legalize Sports Betting in New Jersey—A History*, 281 N.J. LAW. 34, 35 (Apr. 2013) [https://www.westlaw.com/Document/Iodd3coeea0e611e38578f7ccc38dcbee/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/Iodd3coeea0e611e38578f7ccc38dcbee/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0) [<https://perma.cc/3CVK-DR3L>].

<sup>31</sup> See Fielkow et al, *supra* note 18 at 34.

<sup>32</sup> *Id.*

<sup>33</sup> N.J. STAT. ANN. §§ 5:12A-1 to -6 (repealed 2014).

gambling in casinos and racetracks.<sup>34</sup> The four major professional sports leagues (Major League Baseball, the National Basketball Association, the National Football League, and the National Hockey League) along with the National Collegiate Athletic Association sued New Jersey officials in U.S. District Court, claiming the Sports Wagering Law violated PASPA.<sup>35</sup> The District Court found PASPA constitutional, preventing the Sports Wagering Law from becoming valid law.<sup>36</sup> New Jersey then appealed the District Court's decision to the Third Circuit Court of Appeals.<sup>37</sup> The Third Circuit upheld the District Court's ruling in a 2-1 decision.<sup>38</sup>

New Jersey took another bite at the sports betting apple in 2014 with the passage of Senate Bill 2460, which partially repealed prohibitions against sports gambling.<sup>39</sup> The bill allowed casinos and racetracks licensed by the state to offer sports wagering legally within the state.<sup>40</sup> The four major professional sports leagues and the National Collegiate Athletic Association challenged this law by filing for injunctive relief against New Jersey Governor Chris Christie.<sup>41</sup> The District Court ruled that the bill violated PASPA<sup>42</sup> and the Third Circuit upheld the lower court's decision.<sup>43</sup>

New Jersey appealed the Third Circuit's decision to the U.S. Supreme Court in October 2016.<sup>44</sup> The Supreme Court ruled PASPA unconstitutional on Tenth Amendment grounds in May 2018.<sup>45</sup> The Court's ruling enabled states to enact their

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<sup>34</sup> *Id.* at § 5:12A-2.

<sup>35</sup> Fielkow et al, *supra* note 18 at 35 (New Jersey's Sports Wagering Law).

<sup>36</sup> *Id.* at 35-36.

<sup>37</sup> NCAA v. Governor of New Jersey, 832 F.3d 389, 391-392 (3d Cir. 2016).

<sup>38</sup> *Id.*

<sup>39</sup> See Fielkow et al, *supra* note 18 at 39 (discussing New Jersey Senate Bill 2460 and its downfall).

<sup>40</sup> *Id.*

<sup>41</sup> Complaint for Declaratory & Injunctive Relief, NCAA v. Christie, (D.N.J. 2014), 2014 WL 5395199.

<sup>42</sup> NCAA v. Christie, 61 F. Supp. 3d 488, 507-08 (D.N.J. 2014).

<sup>43</sup> NCAA v. Governor of N.J., 832 F.3d 389, 402 (3d Cir. 2016).

<sup>44</sup> Smiley, *supra* note 14.

<sup>45</sup> Murphy v. NCAA, 138 S. Ct. 1461, 1478 (2018).

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own sports betting laws, however, these laws are still subject to federal prohibitions.<sup>46</sup>

### III. SPORTS BETTING AND WAGERING CURRENT LANDSCAPE

Legal gambling, including sports betting, is one of the most heavily regulated industries in the world.<sup>47</sup> Laws are promulgated by various state, federal, and tribal regulators regarding which entities can operate in each jurisdiction. While sports betting is legal in more than thirty states,<sup>48</sup> laws vary from state to state and sports betting across state lines remains illegal under federal law.<sup>49</sup>

Two of the most widely implemented provisions are rules on Anti-Money Laundering (AML) and Know Your Customer (KYC). The Bank Secrecy Act (BSA), enacted in 1970, supplemented by the USA Patriot Act of 2001, requires financial institutions to enact certain recordkeeping and reporting obligations, like KYC and AML programs.<sup>50</sup> Casinos and sportsbooks are federally required to implement these programs.<sup>51</sup> Failure to properly implement these programs can lead to fines of varying amounts and possible prison sentences of up to twenty years.<sup>52</sup>

In an ever more global economy, illegitimate activities, like money laundering, can diminish the integrity of both financial institutions and sportsbooks.<sup>53</sup> Money laundering involves concealing financial assets so they can be

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<sup>46</sup> See Smiley, *supra* note 14.

<sup>47</sup> Alcohol and Gambling Enforcement, *Licensing*, Minnesota Department of Public Safety (last visited Apr. 6, 2023), <https://dps.mn.gov/divisions/age/gambling/Pages/licensing.aspx> [<https://perma.cc/WF9E-V5QU>].

<sup>48</sup> Matthew Waters, *Legislative Tracker: Sports Betting*, Legal Sports Report (Mar. 10, 2023), <https://www.legalsportsreport.com/sportsbetting-bill-tracker> [<https://perma.cc/PS6B-XE5A>].

<sup>49</sup> 18 U.S.C. § 1084.

<sup>50</sup> Stan Sater, *Do We Need KYC/AML: The Bank Secrecy Act and Virtual Currency Exchanges*, 73 Ark. L. Rev. 397, 397-98 (2020).

<sup>51</sup> U.S. DEP'T OF TREAS., FIN-2010-G003, GUIDANCE: CASINO OR CARD CLUB COMPLIANCE PROGRAM ASSESSMENT (2010).

<sup>52</sup> 18 U.S.C § 1956 (2018); *see also* 31 C.F.R. §§ 1010.840 (2019).

<sup>53</sup> Financial Crimes Enforcement Network, *What is Money Laundering*, (last visited Apr. 6, 2023), <https://www.fincen.gov/what-money-laundering> [<https://perma.cc/K34N-X3DC>]. (money laundering is the concealment of financial assets so they can be used without revealing the illegal activity that produced them).

used without revealing the illegal activity that produced them.<sup>54</sup> KYC is one of the standards that is designed to protect against such illicit activities.<sup>55</sup> KYC details measures to establish customer identity, understand the nature of customers' activities, and qualify that the source of funds is legitimate.<sup>56</sup>

Sportsbooks are required to follow all federal and state laws to operate legally. Even in states where sports betting is legal, two other federal laws have sizable impact on the industry. 18 U.S.C §1084, better known as the Wire Act, and 31 U.S.C §5361-5367, known as the Unlawful Internet Gambling Enforcement Act or UIGEA, serve as hurdles that keep sportsbooks from being permitted to enable bets placed with cryptocurrency.

#### A. WIRE ACT

The Wire Act was passed by Congress and signed into law by President John F. Kennedy in 1961. The most relevant portion for Sportsbooks reads:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.<sup>57</sup>

In 2018, the U.S. Department of Justice ("DOJ") Office of Legal Counsel ("OLC") issued a legal opinion that all prohibitions in the Wire Act of 1961, save one, apply to all forms of bets or wagers.<sup>58</sup> A subsequent memo by the DOJ in 2019 stated that the Wire Act applies to private entities but did not address whether the Wire Act applies to state lotteries.<sup>59</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> Swift, *What does KYC mean?*, (last visited Apr. 7, 2023), <https://www.swift.com/your-needs/financial-crime-cyber-security/know-your-customer-kyc/meaning-kyc> [<https://perma.cc/49VH-XGPN>].

<sup>56</sup> *Id.*

<sup>57</sup> 18 U.S.C § 1084(a).

<sup>58</sup> Reconsidering Whether the Wire Act Applies to Non-Sports Gambling, 42 Op. O.L.C 1, 2018 WL 7080165 (Nov. 2, 2018).

<sup>59</sup> *Id.*

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There is another provision of the Wire Act, known as the “Safe Harbor” provision, which reads:

Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.<sup>60</sup>

It has long been held that any transmission containing a wager on a sporting event that crosses state lines could violate the Wire Act under subsection §1084(a).<sup>61</sup> This potential violation applies even where sports bets are legal in both the origin and destination of the transmission but where the transmission may have crossed state lines.<sup>62</sup> This applies even if the transaction’s origin and destination are the same.<sup>63</sup> The safe harbor provision potentially provides a respite if the transmission only included certain information, such as information for reporting, rather than an entire bet.<sup>64</sup>

**B. UIGEA**

As the name implies, the Unlawful Internet Gambling Enforcement Act<sup>65</sup> (UIGEA) addresses unlawful internet gambling. This law on “unlawful internet gambling” overtly excludes “placing, receiving, or otherwise transmitting a bet or wager where ... the bet or wager is initiated and received or otherwise made exclusively within a single State”<sup>66</sup> from its prohibition. There is, however, a tension between this exclusion with another provision in the same Act that reads, “[t]he intermediate routing of electronic data shall not determine the location or locations

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<sup>60</sup> 18 U.S.C § 1084(b).

<sup>61</sup> U.S. v. Yaquinta, 204 F. Supp. 276, 277-78 (N.D.W. Va. R. 1962).

<sup>62</sup> U.S. v. Kammersell, 196 F.3d 1137, 1138-39 (10th Cir. 1999).

<sup>63</sup> *Id.* at 1139.

<sup>64</sup> 18 U.S.C § 1084(b).

<sup>65</sup> 31 U.S.C. §§ 5361-5667.

<sup>66</sup> 31 U.S.C. § 5362(10)(B).

in which a bet or wager is initiated, received, or otherwise made.”<sup>67</sup> The Department of Justice’s Criminal Division has mentioned the “potential oddity” in how the Wire Act’s reference to “the use of interstate commerce” would criminalize otherwise lawful state-run, in-state lottery transactions.”<sup>68</sup>

Most notably, while the Act references unlawful internet gambling, it does not define what that entails other than referring to other federal and state laws, such as the Wire Act.<sup>69</sup> Also, there was a specific exception within UIGEA that might be read to allow intrastate internet wagering on one hand, but on the other, specifically states that this law does not modify or amend any other federal or state law on the other.<sup>70</sup> As a legal matter, UIGEA did not amend the Wire Act. Therefore, transmitting a sporting event wager that traverses state lines is unlawful under federal law.

#### IV. BLOCKCHAIN BACKGROUND

Blockchain technology is a disseminated database which holds a constantly increasing list of ordered records called “blocks.”<sup>71</sup> These blocks hold information units used to keep value-based data of the organization.<sup>72</sup> Each computer in the group agrees upon the block exchanges, making one record spread across the entire network.<sup>73</sup> Unlike a centralized network, no one entity has power over the entirety of the network.<sup>74</sup>

A digital currency experiment called Bitcoin was the first major innovation to use blockchain technology.<sup>75</sup> Bitcoin was first introduced in a 2008 white paper by

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<sup>67</sup> 31 U.S.C § 5362(10)(E).

<sup>68</sup> N.H. Lottery Comm’n v. Rosen, 986 F.3d 38, 46 (1st Cir. 2021).

<sup>69</sup> 31 U.S.C § 5362(10)(A).

<sup>70</sup> 31 U.S.C § 5361(b).

<sup>71</sup> Vinay Gupta, *A Brief History of Blockchain*, Harvard Business Review (February 28, 2017), <https://hbr.org/2017/02/a-brief-history-of-blockchain> [<https://perma.cc/LG7Z-U4XC>].

<sup>72</sup> Anshika Bhalla, *A Detailed History of Blockchain: From the Establishment to Broad Adoption*, Blockchain Council (June 3, 2021), <https://www.blockchain-council.org/blockchain/a-detailed-history-of-blockchain-from-the-establishment-to-broad-adoption/> [<https://perma.cc/68JF-D8AF>].

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>74</sup> Gupta, *supra* note 70.

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a pseudonymous individual or entity named Satoshi Nakamoto.<sup>76</sup> The first bitcoin block was created in 2009, turning the white paper from idea to reality.<sup>77</sup> The first bitcoin transaction took place a couple days after the first coins were mined.<sup>78</sup> Litecoin was issued in 2011, becoming one of the earliest bitcoin competitors.<sup>79</sup> It is currently estimated that there are almost 23,000 different types of cryptocurrencies with a market capitalization of more than \$1 trillion dollars.<sup>80</sup>

### A. CRYPTOCURRENCY

Cryptocurrency is a digital, encrypted, and decentralized medium of exchange.<sup>81</sup> The medium of exchange is validated and recorded on a blockchain, which is an open distributed ledger that records transactions in a digital code.<sup>82</sup> This digital currency is maintained by a decentralized network of participants' computers, rather than a centralized government or organization.<sup>83</sup>

As such, true blockchain applications, like cryptocurrency, do not have a single entity in charge.<sup>84</sup> Identifying cryptocurrency users who are conducting the transactions is not always accessible since blockchain technology allows for anonymous transfers.<sup>85</sup> Although the actual identities of users are traceable through

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<sup>76</sup> Robert Sheldon, *A Timeline and History of Blockchain Technology*, TechTarget (last updated Aug. 9, 2021), <https://www.techtarget.com/whatis/feature/A-timeline-and-history-of-blockchain-technology> [<https://perma.cc/2KQR-9855>] (noting that while Nakamoto is given credit as the first person to introduce cryptocurrency, not a lot is known about this individual. It is speculated that they could be one person, a person using a pseudonym or a group of people that developed the concept).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Coryanne Hicks & Michael Adams, *Different Types of Cryptocurrencies*, Forbes Advisor (last updated Mar. 15, 2023), <https://www.forbes.com/advisor/investing/cryptocurrency/different-types-of-cryptocurrencies/> [<https://perma.cc/X5UX-KP3R>].

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Archer v. Coinbase, Inc.*, 53 Cal. App. 5th 266, 269 (2020).

<sup>84</sup> Larissa Lee, *New Kids on the Blockchain: How Bitcoin's Technology Could Reinvent the Stock Market*, 12 *Hastings Bus. L.J.* 81, 90 (2016).

<sup>85</sup> *Id.* at 91.

several methods, including, most notably, tracking IP addresses,<sup>86</sup> identifying cryptocurrency users is still difficult. This level of anonymity puts cryptocurrencies in direct conflict with one of the most regulated industries in the country, sports betting.

## B. FTX AND CRYPTOCURRENCY COLLAPSE

As they grew in use and popularity, exchanges developed to buy, sell, and trade different cryptocurrencies, and one of the largest exchanges became FTX.<sup>87</sup> FTX was led by Sam Bankman-Fried and located in the Bahamas.<sup>88</sup> This was due in large part to the platform using trading options that are illegal in the United States.<sup>89</sup> The company was founded in 2019 and used a combination of low trading fees and aggressive marketing strategies that included promises of yields higher than traditional banks to grow quickly.<sup>90</sup>

FTX then created its own digital token, which was its own digital currency, on the blockchain called FTT to encourage use of its own services on the platform.<sup>91</sup> FTT would operate as FTX's own cryptocurrency, solely controlled by FTX.<sup>92</sup> However, FTX's lack of transparency over FTT tokens made it difficult to ascertain the number of tokens available.<sup>93</sup> The difficulties with determining the number of FTT tokens led to questions about the true solvency of the company.<sup>94</sup>

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<sup>86</sup> *Id.*; See also Alex Biryukov, Dmitry Khovratovich, & Ivan Pustogarov, *Deanonymisation of Clients in Bitcoin P2P Network*, arXiv (July 5, 2014), <https://arxiv.org/abs/1405.7418> [<https://perma.cc/GXH4-THBP>].

<sup>87</sup> Kalley Huang, *Why Did FTX Collapse? Here's What to Know.*, N.Y. TIMES (Nov. 18, 2022), <https://www.nytimes.com/2022/11/10/technology/ftx-binance-crypto-explained.html> [<https://perma.cc/EN3D-2R67>].

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Elizabeth Napolitano & Brian Cheung, *The FTX Collapse, Explained*, NBC NEWS (Nov. 18, 2022, 11:39 AM), <https://www.nbcnews.com/tech/crypto/sam-bankman-fried-crypto-ftx-collapse-explained-rcna57582> [<https://perma.cc/TC2Q-Z6WQ>].

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Nathan Reiff, *The Collapse of FTX: What Went Wrong with the Crypto Exchange?*, INVESTOPEDIA (Feb. 27, 2023), <https://www.investopedia.com/what-went-wrong-with-ftx-6828447> [<https://perma.cc/U7HC-4PMA>].



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FTX was thought to be in good shape as a company, having raised \$400 million from an investment fund and was valued at \$32 billion in January of 2022.<sup>95</sup> However, this was not the case. A balance sheet from Alameda Research, a sister company of FTX also run by Bankman-Fried, revealed over-exposure to FTT.<sup>96</sup> This was problematic since FTT could not be readily converted to cash.<sup>97</sup> In November 2022 a rival exchange called Binance, declared that it would sell its FTT tokens due to those disclosures on the balance sheet.<sup>98</sup> Binance's announcement caused FTT's price to fall and a run on withdrawals from FTX ensued.<sup>99</sup> The lack of FTT's liquidity left FTX unable to satisfy the withdrawal requests.<sup>100</sup> As a result, FTX paused customer withdrawals on the platform.<sup>101</sup>

Bankman-Fried stepped down from FTX in November 2022 and it is estimated that there is an \$8 billion shortfall needed to cover the gap between what it owed and what it paid out to customers.<sup>102</sup> FTX filed for Chapter 11 bankruptcy later in the month.<sup>103</sup>

Currently, Bankman-Fried has been charged on multiple criminal counts including wire fraud and conspiracy for misusing customer funds.<sup>104</sup> Bankman-Fried faces more than one hundred years in prison if he is convicted of all counts.<sup>105</sup>

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<sup>95</sup> Joel Khalili, *What the Hell Happened to FTX?*, WIRED (Nov. 9, 2022, 1:31 PM), <https://www.wired.com/story/ftx-collapse-binance-crypto-deal> [<https://perma.cc/V9XW-SAY7>].

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Huang, *supra* note 86.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Napolitano and Cheung, *supra* note 89.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Allison Morrow & Matt Egan, *FTX Founder Sam Bankman-Fried Charged with Fraud*, CNN (Dec. 14, 2022), <https://www.cnn.com/business/live-news/ftx-sam-bankman-fried/index.html> [<https://perma.cc/Y3MV-KBJ2>].

<sup>105</sup> *Id.*

### C. NON-FUNGIBLE TOKENS (NFTs)

A Non-Fungible Token (NFT) is a digital piece of work on the blockchain such as art, that becomes a verifiable asset once the transaction is verified.<sup>106</sup> NFTs allow developers to utilize “smart contracts” which are packets of code that are linked to a digital asset that validates the asset is traceable, verifiable, and unique.<sup>107</sup> An NFT is a depiction of a unique item rather than a fungible token, which can be mutually interchangeable.<sup>108</sup> NFTs were first introduced in 2012 and became a hit in the iGaming community in 2015 when the creators of Spells of Genesis first issued in-game assets on a blockchain.<sup>109</sup> An NFT of a JPG file that only exists digitally set a record when it sold for more than \$69 million in 2021.<sup>110</sup> The size of the NFT market was estimated at \$41 billion in 2021.<sup>111</sup> In contrast, the conventional art market had sales of \$50 billion in 2020.<sup>112</sup>

### V. CRYPTOCURRENCY AND SPORTS BETTING COMMONALITIES

Cryptocurrency and sports betting exhibit a considerable degree of overlap. Both industries are expanding beyond their initial audience. Prior to 2019, sports betting was only legal in four states until the Supreme Court lifted the prohibition by striking down the Professional and Amateur Sports Protection Act (PASPA).<sup>113</sup> Both

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<sup>106</sup> Jazmin Goodwin, *What Is an NFT*, CNN (Nov. 10, 2021, 3:03 PM), <https://www.cnn.com/2021/03/17/business/what-is-nft-meaning-fe-series/index.html> [<https://perma.cc/KW87-ZJUG>].

<sup>107</sup> Nicole Serena Silver, *The History and Future of NFTs*, FORBES (Nov. 2, 2021, 11:35 AM), <https://www.forbes.com/sites/nicolesilver/2021/11/02/the-history-and-future-of-nfts/?sh=5dce31856a16> [<https://perma.cc/8XP9-UHVG>].

<sup>108</sup> Bulent Brad Yasar, *A Brief History of NFTs and a Look into the Future*, LINKEDIN (May 12, 2021), <https://www.linkedin.com/pulse/brief-history-nfts-look-future-brad-bulent-yasar> [<https://perma.cc/4EQA-YKBD>].

<sup>109</sup> *Id.*

<sup>110</sup> Scott Reyburn, *JPG File Sells for \$69 Million, as ‘NFT Mania’ Gathers Pace*, N.Y. TIMES (March 25, 2021), <https://www.nytimes.com/2021/03/11/arts/design/nft-auction-christies-beeple.html> [<https://perma.cc/B8PK-5NR4>].

<sup>111</sup> Natasha Dailey, *NFTs Ballooned to a \$41 Billion Market in 2021 and Are Catching Up to the Total Size of the Global Fine Art Market*, BUSINESS INSIDER (Jan. 6, 2022, 1:31 PM), <https://markets.businessinsider.com/news/currencies/nft-market-41-billion-nearing-fine-art-market-size-2022-1> [<https://perma.cc/3W6T-6X78>].

<sup>112</sup> *Id.*

<sup>113</sup> *Murphy v. NCAA*, 138 S. Ct. 1461, 1484 (2018).

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industries are large and growing steadily. The cryptocurrency market was valued at approximately \$1.5 billion in 2020 and is projected to reach nearly \$5 billion by 2030.<sup>114</sup> The legal sports betting market cap doubled from 2020 to 2021 and was valued over \$52 billion.<sup>115</sup>

The two industries also share demographic overlap. Adults who are forty-four years old or younger have a higher likelihood of partaking in sports betting than those who are older.<sup>116</sup> According to a survey, roughly 3 in 10 American adults under the age of forty-four engage in sports betting at least once per month (regular bettors).<sup>117</sup> In that same survey, fifty-six percent of regular bettors said they make their wagers online with a fantasy sports site or mobile sportsbook.<sup>118</sup> Both industries have gained popularity and trend towards younger males. Eighty percent of regular sports bettors are male.<sup>119</sup> Comparatively, at least seventy-four percent of cryptocurrency owners are under the age of forty-four<sup>120</sup> and males likewise account for seventy-four percent of cryptocurrency owners.<sup>121</sup>

By its nature, cryptocurrency must be used in a mobile or online fashion. Given the sports betting trend towards mobile and online wagering, this is yet another commonality between the two industries.

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<sup>114</sup> Jamie Crawley, *Cryptocurrency Market Will More Than Triple by 2030: Study*, YAHOO! (Aug. 25, 2021), <https://www.yahoo.com/now/cryptocurrency-market-more-treble-2030-094803219.html> [<https://perma.cc/4TYB-F7XG>].

<sup>115</sup> Andrew Marquardt, *Legalized Sports Betting in the U.S. Doubled in 2021. Here's Why That Will Continue After 'the Greatest Weekend in NFL Playoff History.'*, FORTUNE (Jan. 24, 2022, 5:44 PM), <https://fortune.com/2022/01/24/legalized-sports-betting-in-the-u-s-doubled-in-2021-heres-why-that-will-continue-after-the-greatest-weekend-in-nfl-playoff-history/> [<https://perma.cc/MQE2-HX9K>].

<sup>116</sup> Alex Silverman, *2021 Was a Banner Year for Sports Betting Participation*, MORNING CONSULT (Jan. 18, 2022, 12:01 AM), <https://morningconsult.com/2022/01/18/sports-betting-trends/> [<https://perma.cc/RN8N-HLHX>].

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> David Wyld, *What the Surprisingly Youthful Demographics of Sports Betting Portends for the Future*, MEDIUM (Dec. 27, 2021), <https://medium.com/modern-business/the-young-demo-of-online-sports-betting-c595f7dcefaa> [<https://perma.cc/2BTA-YDUZ>].

<sup>120</sup> Dawn Allcot, *14% Of Americans Own Crypto Right Now – Here's Who's Actually Doing It Right*, YAHOO! (Apr. 21, 2021), <https://www.yahoo.com/now/study-reveals-crypto-biggest-investors-132102315.html> [<https://perma.cc/UWK3-TBBV>].

<sup>121</sup> *Id.*

**VI. TENSION BETWEEN SPORTS BETTING AND CRYPTOCURRENCY**

Despite the two industries' similarities, the desired anonymity and decentralization of cryptocurrency are in direct tension with the tightly regulated industry of sports betting that requires the industry to know its customers.

This tension has resulted in the emergence of a black market and offshore sportsbooks that have offered a place for U.S. bettors to make wagers.<sup>122</sup> Even with the legalization of sports betting in most states, the American Gaming Association believes the offshore sports betting market is at least \$50 billion.<sup>123</sup> Several of these black market and offshore sportsbooks are taking bets in cryptocurrency.<sup>124</sup>

While accepting bets with cryptocurrency is not legalized, these offshore sportsbooks are already operating outside the bounds of the law by accepting bets across state lines.<sup>125</sup> As such, one additional violation is unlikely to deter illegal operations.

Cryptocurrency is also notorious for its volatility. Bitcoin, the cryptocurrency with the biggest market cap, fell nearly seventy percent in the summer of 2022, from its all-time high in November 2021.<sup>126</sup> Whether cryptocurrency's cratering is here to stay<sup>127</sup> or just a blip on the radar,<sup>128</sup> will depend on who is asked. Changes of this nature impact the price and payouts of wagers by making them more unpredictable and harder to balance an account.<sup>129</sup> From a

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<sup>122</sup> Pat Evans, *Cryptocurrency in Legal Sports Betting: What's Next?*, LEGAL SPORTS REPORT (June 9, 2022), <https://www.legalsportsreport.com/58446/us-cryptocurrency-in-sports-betting-whats-next/> [<https://perma.cc/5DRW-ZSBH>].

<sup>123</sup> Brad Allen, *Analysis: Why Offshore Sportsbooks Are Thriving Despite Regulated Competition*, LEGAL SPORTS REPORT (Sept. 20, 2021), <https://www.legalsportsreport.com/56009/are-offshore-sportsbooks-stronger-than-ever/> [<https://perma.cc/CQV6-GNGU>].

<sup>124</sup> Evans, *supra* note 121.

<sup>125</sup> *Id.*

<sup>126</sup> Abigail Ng, *Bitcoin Drops Below \$21,000 Briefly as Crypto Sell-off Continues*, CNBC (June 14, 2022, 8:16 AM), <https://www.cnbc.com/2022/06/14/cryptocurrencies-sell-off-continues-bitcoin-and-ethereum-fall.html> [<https://perma.cc/V8PF-TEW6>].

<sup>127</sup> Billy Bambrough, *'Headed for Oblivion'—\$800 Billion Crypto Price Shock Sparks Fears of Catastrophic End for Bitcoin and Ethereum*, FORBES (Nov. 22, 2022, 8:15 AM), <https://www.forbes.com/sites/billybambrough/2022/11/22/headed-for-oblivion-800-billion-crypto-price-shock-sparks-fears-of-catastrophic-end-for-bitcoin-and-ethereum/?sh=2c7b865a1caa> [<https://perma.cc/MT78-F29Z>].

<sup>128</sup> *Id.*

<sup>129</sup> Evans, *supra* note 121.

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business perspective, depending on the cryptocurrency volume, this volatility makes accounting for actual revenue difficult, and paying out taxes even more difficult.<sup>130</sup>

Taxes and payouts are not of primary concern for the black market and offshore sportsbooks. They do not have the robust AML/KYC protocols that U.S. books must abide by. Cryptocurrency is decentralized and anonymous by design, but those features are in direct conflict with how legal sportsbooks must operate. These strict regulations are the main obstacle that legal sportsbooks must clear before fully accepting cryptocurrency payments. Whether a legal sportsbook will accept cryptocurrency as currency for betting will depend on the entity's appetite for risk.

So, this begs the question: Can accepting cryptocurrency for sports bets be done in a legal and lawful manner? The answer is yes, to a certain extent. To fully embrace cryptocurrency as a legal currency for betting, more work must be done.

### **VII. ACCEPTING CRYPTOCURRENCY FOR SPORTS BETTING CURRENTLY**

Currently, a third-party solution seems to be the only way to accept cryptocurrency and follow U.S. laws. This third-party solution could come in the form of using an exchange, where bettors will deposit their cryptocurrency to fund an account with a sportsbook. Legal cryptocurrency exchanges in the U.S. must also adhere to AML/KYC guidelines and retain other points of identifying information for potential bettors on their platform.<sup>131</sup>

Sportsbooks using a third-party exchange would offload several risks from the operator onto the exchange. It would be up to the exchange to comply with AML/KYC guidelines, set monetary standards to peg valuations, and control fluctuations with cryptocurrency pricing. The sportsbook, meanwhile, would be able to keep overhead down by not having to hire additional employees to another area of their business operations.

However, offloading these duties would not immunize a sportsbook from all risks. Should any exchange run afoul of standards that have been set, a sportsbook may be liable for partnering with the violative entity. Sportsbooks may also be

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<sup>130</sup> *Id.*

<sup>131</sup> Katherine A. Lemire, *Cryptocurrency and Anti-money Laundering Enforcement*, REUTERS (Sept. 26, 2022), <https://www.reuters.com/legal/transactional/cryptocurrency-anti-money-laundering-enforcement-2022-09-26/> [https://perma.cc/R83V-EK4R].

deterred by potentially high transaction fees imposed by an exchange that could make it cost-prohibitive to place a wager.

An FTX-type collapse gives sportsbooks more reason to put a pause on accepting cryptocurrency wagers. Had a sportsbook partnered with FTX, the sportsbook would have opened itself up to a significant amount of liability from bettors. The lack of transparency with its FTT coin would have led to a significant amount of scrutiny from regulators on AML/KYC grounds. However, another set of eyes on the books may have set off early warning signs that FTX was in trouble. This gives sportsbooks room to sever ties before a potential collapse.

There are a few legal U.S. sportsbooks that accept cryptocurrency for sports betting. Barstool Sportsbook has begun to accept cryptocurrency payments. Under their program, a bettor funds a gaming wallet by depositing cryptocurrency via a third-party payment provider.<sup>132</sup> To mitigate the volatility issue, the exchange rate is held for fifteen minutes. But the gaming wallet will only be funded with U.S. currency, meaning it is converted from cryptocurrency to U.S. dollars. Since this transaction is being converted into U.S. currency, why not just use dollars in the first place?

Cryptocurrency purists would argue that using the exchange, while mitigating risks for sportsbooks, is not truly betting with cryptocurrency since bettors are simply using dollars *disguised* as cryptocurrency to place wagers. This line of argumentation may be unpersuasive to a sportsbook that is trying to capture market share, maximize value, and keep from running afoul of the law.

## VIII. POTENTIAL LEGAL SOLUTIONS TO ACCEPTING CRYPTOCURRENCY FOR SPORTS BETTING

### A. CREATING HOST COINS

The third-party solution is currently the primary legal way to accept cryptocurrency for sports bets. Another arguably legal route that a sportsbook could take to accept bets includes the sportsbook creating its own token, which is a unit of cryptocurrency. Host sites would convert an account's cryptocurrency into their own currency at values it sets. This method would be a way to comply with AML/KYC regulations and stabilize the price of cryptocurrency since the house sets the price. This use of Tokenomics, which refers to how tokens make money, benefits end-users

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<sup>132</sup> BARSTOOL SPORTSBOOK, <https://support.barstoolsportsbook.com/hc/en-us/articles/4409805116429-Cryptocurrency-FAQs> (last visited Jan. 18, 2023) [<https://perma.cc/K8XK-SWZ8>].

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by letting them know to what degree their assets will be created and how much the asset will be worth in the future.<sup>133</sup>

A sportsbook that creates a token would have control over its platform as well. To engage their platform, users must purchase tokens. These tokens could also be used to purchase Non-Fungible Tokens (NFTs), which come with their own grant of rights. For instance, a sportsbook that has partnered with a league could hold auctions for NFTs, using its token, that would take users through practice via camera goggles a player would wear.

While the closed-loop solution of using tokens gives a sportsbook more control, philosophical and technical questions arise. On the technical side, a sportsbook would have to be able to host and monitor its blockchain. This leads to the philosophical question: Are sportsbooks and bettors really using blockchain and cryptocurrency?

Purists would say this is simply digitization and that digitization does not equal blockchain or cryptocurrency. The sportsbook in this scenario would become the central authority. In other words, since the sportsbook would be the central authority or administrator, they would no longer be using blockchain and instead would be administering a database.

The legal issue of what happens when a user wishes to cash out will have bigger implications than the philosophical one. Here, one has to consider whether the account will be paid out in dollars or cryptocurrency. If paid out in cryptocurrency, how will that payment be treated for tax purposes?

The classification of cryptocurrency, whether it is a security or something else, remains undecided. This question also remains one of the biggest obstacles to widespread cryptocurrency adoption in the sports betting industry. Yet there is only one way to answer it: increased regulation.

### **B. REGULATION**

There are only two jurisdictions where betting with pure cryptocurrency is legal, Colorado<sup>134</sup> and Wyoming.<sup>135</sup> Even though these jurisdictions permit cryptocurrency bets, there has not yet been widespread adoption. It appears

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<sup>133</sup> *Id.*

<sup>134</sup> COLO. REV. STAT. ANN. § 11-51-308.7 (West 2019).

<sup>135</sup> WYO. STAT. ANN. § 34-29-104 (West 2021).

sportsbooks are holding back due to the potential liability on the operator. Mitigating this liability is a ripe opportunity for regulation in the cryptocurrency space.

Cryptocurrency regulation would have to come from both federal and state legislatures. The policies put in place would have to permit change and not be static with such fast-moving industries. Given the size of both markets, state regulators should be especially motivated to act since creating proper laws would encourage bettors to stay in their home jurisdictions, which has the potential to increase tax revenues to a jurisdiction's coffers.

At the federal level, there would have to be significant changes to the Wire Act to allow for routing transmissions through those state lines. Allowing for interstate compacts, where multiple states agree to pool their bets or be allowed to take wagers from other states would be paramount to growing cryptocurrency adoption in sports betting. If all the jurisdictions in the compact allow for sports betting, then the Wire Act should be amended to contain exemptions for routing transmissions through those state lines.

Currently, there is no federal regulation or oversight of cryptocurrencies. Therefore, federal legislation needs to clarify cryptocurrency's classification. President Biden signed an executive order on cryptocurrency in March of 2022 which ordered agencies to develop policies and regulations on digital currencies.<sup>136</sup> Agency regulation development is a good first step. To speed up the adoption of cryptocurrency, Congress needs to codify legislation to promote stability in the market. Cryptocurrency is volatile enough without being subject to the whims of new administrations.

At the state level, the legislation would have to adopt compacts with other states to accept bets. State legislatures would also have to codify their acceptance of cryptocurrency and create procedures for payments and payouts for that type of asset.

## IX. CONCLUSION

If the Wire Act gets amended, it should allow for sports betting transmissions across state lines to be legal if sports betting is legal in the destination and original jurisdictions. Similarly, if UIGEA gets amended it should carve out a legal exemption for sports betting transmission in jurisdictions where sports betting is lawfully permitted. Both the Wire Act and UIGEA should also be amended to permit unintentional routing across jurisdictions where sports betting is not

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<sup>136</sup> Exec. Order No. 14067, 87 Fed. Reg. 14143 (Mar. 9, 2022).



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permitted from sportsbooks and bettors. Furthermore, the federal government needs to speed up its policy developments to clearly classify cryptocurrency and its uses. These adjustments would go a long way toward clarifying the landscape for all entities involved. That clarification could lead to reduced compliance and enforcement costs for governments and sportsbooks.

Until both the Wire Act and UIGEA are amended to permit interstate sports betting transmissions, sportsbooks that want to accept cryptocurrency should consider working with an intermediary, to mitigate its risks. Sportsbooks that want to accept crypto should also consider developing their own tokens to manage potential legal hazards until both state and federal governments provide more transparency on sports betting transmissions.

When an activity is illegal, but a significant number of the population engages in the activity anyway, a case for regulation through legislation can be made. In the case of sports betting and cryptocurrency, both industries are legal separately, but not truly legal as a combined entity. Enabling integration between the two industries would be a significant revenue boost for many jurisdictions if done correctly.

Both industries are in their early stages in the U.S. and already have significant overlap in their user base. Federal and state legislation must be enacted to allow for this integration, otherwise, dollars will continue to flow to the illicit markets. This would have jurisdictions missing out on precious dollars to their tax base.

To have proper integration with these two industries, the Wire Act and UIGEA should be amended to allow for the transmission of sports bets across state lines, in jurisdictions where it is legal. Also, significant clarification for the classification of cryptocurrency needs to be enacted. Such laws would go a long way in stabilizing the market for jurisdictions, operators, and end users.