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## Betting On Gambling: How Professional Sports Leagues Could Increase Revenues Following Murphy v. NCAA

Edward "Max" Bell

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# BETTING ON GAMBLING: HOW PROFESSIONAL SPORTS LEAGUES COULD INCREASE REVENUES FOLLOWING *MURPHY V. NCAA*

Edward “Max” Bell

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## INTRODUCTION

On May 14, 2018, the Supreme Court decided *Murphy v. National Collegiate Athletic Association*, ending the federal ban on sports betting

and awakening a sleeping giant of an industry in the United States.<sup>1</sup> The *Murphy* decision, which held that the Professional and Amateur Sports Protection Act was unconstitutional, created challenges and opportunities throughout the sports and gaming industries.<sup>2</sup> For decades, professional and amateur sports leagues adamantly opposed sports gambling, but a shift began to take place in recent years.<sup>3</sup> Following the Supreme Court ruling, sports organizations are now fighting to earn a piece of the gambling revenue.<sup>4</sup>

This comment explores the avenues professional sports leagues are taking to profit from legalized sports gambling following the *Murphy* decision. Part II provides the modern historical legal background of sports gambling in America, discussing the Professional and Amateur Sports Protection Act and the reasoning for and the effects following the Act's falling in *Murphy*. Part III analyzes the current sports gambling landscape, including the current federal and state legal landscape; society's ever-evolving views on sports gambling; the American sports gambling industry, the offshore industry, and the growth of the industry as a whole; and the stances of sports leagues before and after *Murphy*. Part IV discusses the several ways in which the major sports leagues are attempting to capitalize on the potential new revenue streams and identifies which strategies will be the most successful.

## I. THE LEGAL BACKGROUND OF SPORTS GAMBLING IN AMERICA

### A. *Professional and Amateur Sports Protection Act*

In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA), which banned state-sponsored sports betting in the United States:

It shall be unlawful for—

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<sup>1</sup> See *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1484–85 (2018).

<sup>2</sup> See *id.*

<sup>3</sup> See Derek Helling, *Sports Leagues Bet Big on Winning Gambling Proceeds*, OZY (Apr. 28, 2019), <https://www.ozy.com/the-huddle/sports-leagues-bet-big-on-winning-gambling-proceeds/93861/>.

<sup>4</sup> See *id.*

- (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
- (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.<sup>5</sup>

The purpose of PASPA was “to stop the spread of State-sponsored sports gambling and to maintain the integrity of our national pastime.”<sup>6</sup> At the time the bill was passed, Congress worried that sports gambling was gaining popularity and that several states were poised to establish some form of state-sponsored sports betting.<sup>7</sup> Congress was concerned that sports gambling would taint the character of team sports, threaten the integrity of professional and amateur sports, and adversely affect the nation’s youth.<sup>8</sup> During hearings prior to PASPA’s adoption, representatives from each of the four major sports leagues in the United States—the National Football League (NFL), the National Basketball

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<sup>5</sup> 28 U.S.C. § 3702.

<sup>6</sup> S. Rep. No. 102–248, p. 4 (1992).

<sup>7</sup> See *id.* at 5 (“Sports gambling is a national problem. The harms it inflicts are felt beyond the borders of those States that sanction it. The moral erosion it produces cannot be limited geographically. Once a State legalizes sports gambling, it will be extremely difficult for other States to resist the lure. The current pressures in such places as New Jersey and Florida to institute casino-style sports gambling illustrate the point. Without Federal legislation, sports gambling is likely to spread on a piecemeal basis and ultimately develop an irreversible momentum.”).

<sup>8</sup> See *id.* (“Sports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling. It undermines public confidence in the character of professional and amateur sports. Furthermore, State-sanctioned sports gambling will promote gambling among our Nation’s young people.”).

Association (NBA), Major League Baseball (MLB), and the National Hockey League (NHL)—testified in support of the bill.<sup>9</sup>

Although PASPA did not make sports gambling a federal crime, it allowed the Attorney General or a sports league to bring a civil action to enjoin the alleged betting.<sup>10</sup> Thus, it effectively banned sports betting in America but provided exceptions for the already-existing forms of sports gambling in a few states.<sup>11</sup> Oregon, Delaware, and Montana already had functioning sports lotteries that were permitted to continue after the adoption of PASPA; Nevada allowed sports betting in casinos, which was also permitted to continue.<sup>12</sup> Additionally, “[a]nother provision gave New Jersey the option of legalizing sports gambling in Atlantic City—provided that it did so within one year of the law’s effective date.”<sup>13</sup> New Jersey did not opt to legalize sports gambling in Atlantic City within that time frame, but the State later had a “change of heart,” which gave rise to Supreme Court decision in *Murphy v. National Collegiate Athletic Association*.<sup>14</sup>

#### B. *Murphy v. National Collegiate Athletic Association*

Although New Jersey did not take advantage of the special provision in PASPA that would have allowed the State to legalize sports gambling in Atlantic City within a year of the Act’s passing, New Jersey voters approved an amendment to the State Constitution in 2011 that allowed the State’s legislature to authorize sports gambling.<sup>15</sup> In 2012, the New Jersey legislature “enacted a law doing just that.”<sup>16</sup> Shortly after the 2012 Act, the major professional sports leagues and the National Collegiate Athletic Association (NCAA) brought an action in federal court against the New Jersey Governor and other state officials, “seeking to enjoin the new law on the ground that it violated PASPA.”<sup>17</sup> In response, the State argued that PASPA violated the “anticommandeering” principle and unconstitutionally “regulate[d] a State’s exercise of its lawmaking

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<sup>9</sup> See *id.* at 3.

<sup>10</sup> See 28 U.S.C. § 3703.

<sup>11</sup> See *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1471 (2018); 28 U.S.C. § 3704.

<sup>12</sup> See *Murphy*, 138 S. Ct. at 1471.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See *id.* (citing N.J. CONST. art. IV, § 7, ¶ 2(D), (F)).

<sup>16</sup> *Id.* (citing 2011 N.J. Laws p. 1723 (2012 Act)).

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

power by prohibiting it from modifying or repealing its laws prohibiting sports gambling.”<sup>18</sup> The plaintiffs argued that PASPA did not violate the anticommandeering principle because it did not impose any affirmative action on the State.<sup>19</sup>

The District Court held that PASPA did not violate the anticommandeering principle and the Third Circuit affirmed, finding it significant that the law did not require the State to take an affirmative action.<sup>20</sup> New Jersey filed a petition for a writ of certiorari to the Supreme Court, again raising the anticommandeering issue.<sup>21</sup> The United States argued that the State is free to partially or entirely repeal its prohibitions on sports gambling without violating PASPA.<sup>22</sup> The Supreme Court denied review.<sup>23</sup>

Following the suggestion that a partial repeal would be permitted, New Jersey passed a law in 2014 that repealed state law provisions that prohibited sports gambling at horseracing tracks or in casinos in Atlantic City.<sup>24</sup> Once again, the same plaintiffs brought an action in federal court to invalidate the 2014 Act on grounds that it violated PASPA.<sup>25</sup> Despite being framed as a “repealer,” the Third Circuit (sitting *en banc*) found that the 2014 Act constituted a state authorization of sports gambling, thus violating PASPA.<sup>26</sup> The Third Circuit explained again that PASPA did not conflict with the anticommandeering principle because it did not

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<sup>18</sup> *Id.*; see also Nat’l Collegiate Athletic Ass’n v. Christie, 926 F. Supp. 2d 551, 561 (D.N.J. 2013).

<sup>19</sup> See *Murphy*, 138 S. Ct. at 1471.

<sup>20</sup> See *id.* (citing Nat’l Collegiate Athletic Ass’n v. Christie, 730 F.3d 208, 231 (2013) (*Christie I*)). “The panel recognized that an affirmative command (for example, ‘Do not repeal’) can often be phrased as a prohibition (‘Repeal is prohibited’), but the panel did not interpret PASPA as prohibiting the repeal of laws outlawing sports gambling. A repeal, it thought, would not amount to ‘authoriz[ation]’ and thus would fall outside the scope of §3702(1).” *Id.* at 1471–72 (citing *Christie I*).

<sup>21</sup> See *id.* at 1472.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.* (citing 2014 N.J. Laws p. 602 (2014 Act)).

<sup>25</sup> See *id.*

<sup>26</sup> *Id.* “Looking at what the law ‘actually does,’ the court concluded that it constitutes an authorization because it ‘selectively remove[s] a prohibition on sports wagering in a manner that permissively channels wagering activity to particular locations or operators.’” *Id.* (citing Nat’l Collegiate Athletic Ass’n v. Governor of N.J., 832 F.3d 389, 397, 401 (2016)).

command the states to take any affirmative actions.<sup>27</sup> However, upon review, the Supreme Court reversed and held that the PASPA provision prohibiting state authorization of sports gambling did violate the anticommandeering rule.<sup>28</sup> Furthermore, the Court held that no provision of PASPA was severable from the provision at issue, ultimately rendering the entire Act unconstitutional.<sup>29</sup>

Thus, the *Murphy* decision ended the federal ban on sports betting and opened the door for States and private actors to reap the benefits of a controversial industry.<sup>30</sup> In concluding its opinion in *Murphy*, the Supreme Court emphasized the importance of policy decisions affecting the industry and touched on the current opportunity for the States provided by the decision.<sup>31</sup> While Congress may choose to regulate sports gambling directly with a new law within the scope of its power, each State is free to act on its own until Congress chooses to do so.<sup>32</sup>

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<sup>27</sup> See *id.* at 1473 (citing Nat'l Collegiate Athletic Ass'n v. Governor of N.J., 832 F.3d at 401).

<sup>28</sup> See *id.* at 1478 (“That provision unequivocally dictates what a state legislature may and may not do. . . . [S]tate legislatures are put under the direct control of Congress. It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine.”).

<sup>29</sup> See *id.* at 1484. In determining whether the remaining provisions of an act must fall with the invalid provisions, the Court must decide whether the remaining provisions would have been enacted independent of the invalid ones. See *id.* at 1482; see also *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987). In performing this analysis, the Court must determine whether the law remains “fully operative” without the invalid provisions. *Murphy*, 138 S.Ct. at 1482 (citing *Free Enterprise Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 509 (2010) (internal quotations omitted)). In *Murphy*, the Court determined that Congress would not have enacted the remaining provisions of PASPA without the invalid provision prohibiting state authorization of sports gambling. See *id.* at 1482–84.

<sup>30</sup> See *id.* at 1484 (“Supporters argue that legalization will produce revenue for the States and critically weaken illegal sports betting operations, which are often run by organized crime. Opponents contend that legalizing sports gambling will hook the young on gambling, encourage people of modest means to squander their savings and earnings, and corrupt professional and college sports.”).

<sup>31</sup> See *id.*

<sup>32</sup> See *id.* at 1484–85.

## II. ANALYSIS OF THE CURRENT SPORTS GAMBLING LANDSCAPE

### A. *The Current Legal Landscape*

As mentioned in the conclusion of the *Murphy* decision, Congress has the potential to regulate sports gambling directly.<sup>33</sup> In 2018, Senators Chuck Schumer and Orrin Hatch proposed the Sports Wagering Market Integrity Act.<sup>34</sup> The proposed bill would generally prohibit the acceptance of sports wagers, with exceptions for operators that conform to state laws in states that opt-in to legalized sports betting and social gambling.<sup>35</sup> The proposed bill would also prohibit sports wagers on amateur events, with exceptions for the Olympics and college athletics, and permit states to authorize online sportsbooks to provide an alternative to illegal, offshore books.<sup>36</sup> Additionally, among many other proposals,<sup>37</sup> the Sports Wagering Market Integrity Act would require sports wagering operators

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<sup>33</sup> *See id.*

<sup>34</sup> *See* Sports Wagering Market Integrity Act, S. 3793, 115th Cong. (2018).

<sup>35</sup> *See* S. 3793 §§ 101(a), 101(b).

<sup>36</sup> *See* S. 3793 §§ 103(b)(2)(B), 103(b)(2)(D); *Schumer, Hatch Introduce Bipartisan Sports Betting Integrity Legislation*, S. DEMOCRATS (Dec. 19, 2018), <https://www.democrats.senate.gov/newsroom/press-releases/schumer-hatch-introduce-bipartisan-sports-betting-integrity-legislation>.

<sup>37</sup> The many other proposals in the Sports Wagering Market Integrity Act include the following: allowing for restrictions on certain sports wagers upon request when necessary to protect contest integrity; prohibitions on sports wagering by individuals younger than twenty-one years old, athletes, coaches, officials, and others associated with sports organizations, and individuals convicted of certain federal crimes related to sports wagering; establishment of a national self-exclusion list; putting in place a variety of consumer protections, including disclosure, advertising, and reserve requirements; establishing recordkeeping and suspicious transaction reporting requirements; updating existing casino anti-money laundering laws to include sports wagering operators; providing a process whereby states may compact with each other to permit interstate sports wagering; dedicating revenue from the existing sports wagering excise tax to law enforcement and programs for the prevention and treatment of gambling disorder; updating the Wire Act to permit certain interstate wagers, while also giving additional enforcement authorities for state cause of action and a new mechanism for the Department of Justice to target unlicensed, offshore sports wagering websites; expanding the Sports Bribery Act to cover extortion and blackmail, prohibit sports wagers based on nonpublic information, and strengthen whistleblower protections; and providing additional authorities to the Department of Health and Human Services to prevent, monitor, and treat gambling addiction. *See Schumer, Hatch Introduce Bipartisan Sports Betting Integrity Legislation*, *supra* note 36.



to use data provided or licensed by the applicable sports organization to determine the outcome of wagers through December 31, 2024, and provides requirements for the data used thereafter.<sup>38</sup> The gambling industry strongly opposes any requirement to use data provided by sports organizations, as use of this data would involve paying a fee for information that the companies believe they can obtain independently. In contrast, sports organizations generally support this requirement for revenue and integrity purposes, which is discussed in detail later.<sup>39</sup>

Thanks to the *Murphy* decision, states that wish to legalize sports betting are free to do so, at least until Congress adopts a bill saying otherwise.<sup>40</sup> Including Nevada, where sports gambling was already legal thanks to a grandfather clause in PASPA, legal sports wagers have already been placed in sixteen states following the enactment of bills legalizing sports gambling in each respective state.<sup>41</sup> Additionally, four other states, and the District of Columbia, have enacted laws legalizing sports gambling, but legal sports wagers have yet to be accepted.<sup>42</sup> Only three states have yet to engage in any legalization activity, but this is likely to change for at least a few of them.<sup>43</sup> As for the twenty-seven remaining states, each has proposed a bill or bills to legalize sports gambling but have yet to sign them into law.<sup>44</sup>

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<sup>38</sup> See S. 3793 § 103(b)(5)(A).

<sup>39</sup> See Helling, *supra* note 3.

<sup>40</sup> See *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1484–85 (2018).

<sup>41</sup> See Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Mar. 11, 2020), [https://www.espn.com/chalk/story/\\_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization](https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization). As of this writing, placing and accepting wagers is legal, in some capacity, in the following states: Nevada, Delaware, New Jersey, Mississippi, West Virginia, New Mexico, Pennsylvania, Rhode Island, Arkansas, New York, Iowa, Oregon, Indiana, New Hampshire, Illinois, and Michigan. *See id.*

<sup>42</sup> *See id.* Although no legal sports wagers have been accepted in these states as of writing, the following states, as well as the nation's capital, have passed bills legalizing sports gambling: Montana, Tennessee, North Carolina, and Colorado. *See id.*

<sup>43</sup> *See id.* Idaho and Wisconsin have laws that prohibit sports gambling that would need to be repealed before any bill permitting full-scale legalization could be passed. Legalization is unlikely to occur in Utah, as an anti-gambling stance is included in the state's constitution. *See id.*

<sup>44</sup> *See id.*

*B. Society's Evolving View on Sports Gambling*

Gambling is not some new, modern development.<sup>45</sup> Evidence suggests that our ancestors made dice out of animal bones to play games in ancient times, that Babylonian soldiers bet on chariot races, and that laws were in place in the Roman Empire by 8 B.C. regarding gambling.<sup>46</sup> With that said, sports gambling has had to overcome a stigma that other forms of gambling never faced.<sup>47</sup> In addition to religious standpoints on gambling and concerns of gambling addiction, sports betting faced strong opposition from the major sports organizations, concerns about the integrity of sports, ties to the mob, and widely publicized scandals.<sup>48</sup>

As the Supreme Court expressed in the first sentence of the *Murphy* decision, “Americans have never been of one mind about gambling, and attitudes have swung back and forth.”<sup>49</sup> Today, American society is much more embracing of sports gambling than it was a few decades ago, or even a few years ago.<sup>50</sup> According to a study conducted by the American Gaming Association published in March 2019, 78% of the American public supports legal, regulated sports betting in their state,

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<sup>45</sup> See David Purdum, *Inside How Sports Betting Went Mainstream*, ABC (Nov. 5, 2018), <https://abcnews.go.com/Sports/inside-sports-betting-mainstream/story?id=58978446>.

<sup>46</sup> See *id.*

<sup>47</sup> See *id.*

<sup>48</sup> See *id.* Some of the more notable scandals include: the “Black Sox Scandal,” where eight players for the Chicago White Sox were paid significant amounts of money to throw the 1919 World Series; the Pete Rose scandal, who was permanently banned from Major League Baseball in 1989 for placing wagers on MLB games while he was a player and a manager in the league; and the 2007 NBA betting scandal, where referee Tim Donaghy was found guilty of betting on games he refereed, as well as providing gambling tips to an organized crime group. See *The Black Sox Baseball Scandal*, HISTORY (Oct. 9, 2014), <https://www.history.com/news/the-black-sox-baseball-scandal-95-years-ago>; *Pete Rose Gets Booted from Baseball*, HISTORY (Nov. 16, 2009), <https://www.history.com/this-day-in-history/pete-rose-gets-booted-from-baseball>; Scot Eden, *How Former Ref Tim Donaghy Conspired to Fix NBA Games*, ESPN (Feb. 19, 2019), [https://www.espn.com/nba/story/\\_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games](https://www.espn.com/nba/story/_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games).

<sup>49</sup> See *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1468 (2018).

<sup>50</sup> See Purdam, *supra* note 45.

a 25% increase from January 2017.<sup>51</sup> In similar studies conducted approximately 30 years ago, 56% of Americans disapproved of sports gambling.<sup>52</sup>

This shift in societal embracement is evidenced by, and likely largely due to,<sup>53</sup> the gradual change in media coverage of sports beginning in the 1970s.<sup>54</sup> In 1976, then-NFL commissioner Pete Rozelle tapped bookmaker Jimmy “The Greek” Snyder to join famous sports broadcaster Brent Musburger on Columbia Broadcasting System’s (CBS) Sunday morning pregame show, “The NFL Today.”<sup>55</sup> Although Musburger and the Greek were asked to not directly mention the point spread during the show, “they worked around it, setting the stage for decades of veiled gambling references during game broadcasts.”<sup>56</sup>

These “veiled gambling references” became more explicit in the 1990s.<sup>57</sup> During Super Bowl XXIX, the San Francisco 49ers, 18.5-point favorites, were leading the San Diego Chargers by twenty-three points in the fourth quarter.<sup>58</sup> Although six points would have no impact on the

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<sup>51</sup> See *Consumer Movement Toward Sports Betting*, AM. GAMING ASS’N (Mar. 29, 2019), <https://www.americangaming.org/wp-content/uploads/2019/03/Consumer-Research-One-Pager.pdf>. The online survey involved 6,777 interviews among 21+ year-old Americans, including current and future sports bettors, as well as those uninterested in sports betting. *Id.* Among core and casual sports bettors—those who either placed a traditional sports wager at a casino, at a sportsbook, or with a bookie, or placed a bet via friends/family, pools, or fantasy, within the past twelve months—support was at ninety-seven percent. *Id.* Additionally, potential sports bettors and those uninterested in sports betting support legal sports betting at ninety-six percent and sixty-six percent, respectively. *Id.*

<sup>52</sup> See Purdam, *supra* note 45.

<sup>53</sup> See *id.* In addition to media coverage, many also point to the rise in popularity of fantasy sports as a cause for the shift. *Id.* More particularly, daily fantasy sports platforms, such as FanDuel and DraftKings, blurred the line between season-long fantasy sports and sports gambling, which likely provided an avenue for casual fantasy sports fans to become more traditional sports bettors. See *id.* In fact, following a few potential scandals and the *Murphy* decision, these daily sports platforms are transitioning into more traditional sportsbooks. See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

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

<sup>57</sup> *Id.*

<sup>58</sup> See *id.*

outcome of the game, broadcaster Al Michaels noted that the Chargers final drive would “make a few people around this great land of ours move to the forward portion of the couch.”<sup>59</sup> In the waning seconds of the game, as Chargers quarterback Stan Humphries threw a ball to the corner of the end zone, Michaels, knowing that gambling repercussions were virtually the only way to keep viewers engaged, delivered the following call: “Hearts beating all over the land . . . Incomplete.”<sup>60</sup>

By 2000, Entertainment and Sports Programming Network (ESPN) began running NFL point spreads in its SportsCenter “Bottom Line” in a 12-hour overnight window, and in 2008, ESPN.com began running a gambling column and podcast called “Behind the Bets.”<sup>61</sup> Today, one of the more popular segments on SportsCenter “SVP”—a special edition of ESPN’s flagship program hosted by Scott Van Pelt (SVP)—is “Bad Beats,” where SVP highlights games where bets were decided by ridiculous plays in the final seconds of the game, regardless of whether the plays affected the actual outcome of the game.<sup>62</sup> While the mainstream networks continue to try to balance appealing to pure sports fans and sports gamblers alike, without disturbing their partnerships with the major American sports organizations, the *Murphy* decision, as well as the shifting stances of their partners, has certainly allowed these networks to discuss sports gambling in a more open manner.<sup>63</sup>

Additionally, newer platforms have emerged that are largely or entirely dedicated to sports gamblers, such as Barstool Sports, the Action Network, and VSiN, and are rapidly growing alongside society’s growing interest in legal sports gambling.<sup>64</sup> *Murphy* further accelerated the growth

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

<sup>60</sup> *Id.*

<sup>61</sup> *See id.*

<sup>62</sup> *See* Justin Teranova, *Scott Van Pelt: Legal Sports Betting Will Change TV, but Not My Show*, N.Y. POST (May 17, 2018), <https://nypost.com/2018/05/17/espn-anchor-talks-bad-beats-changes-in-sports-betting/>. SVP says “Bad Beats” has “become as memorable and popular and ingrained in people’s minds as anything. Now any time there’s something that impacts the spread, everyone and their mother feels the need to tell me.” *Id.*

<sup>63</sup> *See* Purdam, *supra* note 45.

<sup>64</sup> *See id.*; Ryan Glasspiegel, *Barstool Reportedly in Advanced Talks to Sell to Penn National Gaming*, BIG LEAD (Jan. 10, 2020), <https://www.thebiglead.com/posts/barstool-chernin-penn-national-gaming-01dy8qjxl6> (“Sports gambling talk has always been a big part of Barstool, since it was a print newspaper . . . In recent years, they have done the program *Barstool Sports Advisors*, first on FanDuel’s network TVG and later on their own site. They

of these platforms by opening the door for the young media companies to partner with gaming companies; Barstool Sports is the best example of this.<sup>65</sup> Dave Portnoy (known by Barstool fans as “El Presidente”) founded Barstool Sports in 2003 as a free print newspaper distributed in Boston, but by early 2016, Portnoy sold a 51% stake of the company to The Chernin Group in a deal that reportedly valued the company between \$10 and \$15 million.<sup>66</sup> Just four years later, on January 29, 2020, Penn National Gaming announced it had purchased a 36% stake in Barstool for \$136 million.<sup>67</sup> This new deal valued the company at around \$450 million, roughly a 3000% increase from the Chernin valuation.<sup>68</sup> In a video announcing the deal, Portnoy said, “We’ve taken another strategic investor in Barstool Sports: Penn National Gaming. Why? May 14th, 2018—that is the day the United States government repealed the ban on sports gambling in the United States. . . . We are going to become the biggest gambling company in the country.”<sup>69</sup> On January 28, 2020, the day before the deal was announced, Penn National stock (PENN:NASDAQ) closed at \$26.20.<sup>70</sup> Despite missing earnings in the meantime, PENN closed at \$37.26 on February 12, 2020, a 42% two-week increase that was almost entirely due to investor confidence in the Barstool brand and reflected the consumer interest in sports gambling.<sup>71</sup> Likewise, *Murphy* also opened the

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regularly do live shows centered around big games at sportsbooks in New Jersey.”).

<sup>65</sup> See Jesse Pound, *Penn National’s Investment in Barstool Sports Is ‘Going to be Worth a Ton,’ Ron Baron Says*, CONSUMER NEWS & BUS. CHANNEL (Feb. 4, 2020, 12:05 PM), <https://www.cnn.com/2020/02/04/ron-baron-touts-penn-national-investment-in-barstool-sports.html>.

<sup>66</sup> Mark J. Burns, *Past, Present, and Future: How Barstool Sports Is Swinging for the Fences in Digital Media*, FORBES (Jul. 11, 2017, 7:22 PM), <https://www.forbes.com/sites/markjburns/2017/07/11/past-present-future-how-barstool-sports-is-swinging-for-the-fences-in-digital-media/#29ab564e4edb>.

<sup>67</sup> Pound, *supra* note 65.

<sup>68</sup> See *id.*

<sup>69</sup> El Presidente, *Emergency Press Conference—Barstool Sports Is Now Accepting Passengers to the Moon*, BARSTOOL SPORTS (Jan. 29, 2020), <https://www.barstoolsports.com/video/1747076/emergency-press-conference-barstool-sports-is-now-accepting-passengers-to-the-moon>.

<sup>70</sup> See *Penn National Gaming, Inc.*, YAHOO! FIN., <https://finance.yahoo.com/quote/PENN/> (last visited Feb. 12, 2020).

<sup>71</sup> See *id.*

door for sports leagues to partner with gaming companies to capitalize on society's growing love for sports gambling.<sup>72</sup>

### C. *Sports Leagues' Stances on Legalized Sports Gambling*

"Apprehensive about the potential effects of sports gambling, professional sports leagues and the NCAA long opposed legalization."<sup>73</sup> This strong opposition was expressed in 1992 congressional hearings regarding PASPA, where the then-commissioners of the NFL, the NBA, and MLB, as well as the then-vice president and general counsel of the NHL, all testified in support of the bill that would put a federal ban on sports betting.<sup>74</sup> The NCAA also supported the bill.<sup>75</sup> The four major professional sports leagues and the NCAA doubled down on their support for PASPA and opposition to sports gambling when they brought actions in federal court against the New Jersey Governor and other state officials seeking to enjoin state acts that involved state authorization of sports gambling.<sup>76</sup> However, as discussed above, these actions would ultimately lead to *Murphy* and the downfall of PASPA.<sup>77</sup>

"Once PASPA was overturned, our view changed drastically," said NHL chief revenue officer Keith Wachtel at Betting on Sports America 2019.<sup>78</sup> While some professional sports organizations, especially the NCAA, still vocally oppose sports gambling, each league is moving at varying paces to embrace or at least exploit the potential new revenue stream.<sup>79</sup> For example, within the year following PASPA's falling, each of the four major sports leagues inked a partnership with a major gaming company.<sup>80</sup> Additionally, leagues are attempting to earn additional revenue by lobbying for integrity and data fees and capitalizing on

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<sup>72</sup> See Brant James, *Which Leagues Won in First Year of Sports Betting Expansion*, GAMBLING.COM (May 7, 2019), <https://www.gambling.com/news/which-leagues-won-in-first-year-of-sports-betting-expansion-1931100>.

<sup>73</sup> See *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1470 (2018).

<sup>74</sup> Professional and Amateur Sports Protection, S. Rep. No. 102-248, p. 6.

<sup>75</sup> See *id.* at 8.

<sup>76</sup> See *National Collegiate Athletic Ass'n v. Christie*, 926 F.Supp. 2d at 561; *National Collegiate Athletic Ass'n v. Christie*, 61 F. Supp. 3d 488, 490-91 (D.N.J. 2014).

<sup>77</sup> See *Murphy*, 138 S. Ct. at 1473, 1485.

<sup>78</sup> James, *supra* note 72.

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

<sup>80</sup> *Id.*

increased engagement.<sup>81</sup> Although the shift seemingly took place after the *Murphy* ruling, as Wachtel had suggested was the case for the NHL, some leagues began to change their views before the *Murphy* decision.<sup>82</sup>

This was especially true for the NBA, which became the first major professional sports league to express support for the legalization of sports gambling years before *Murphy*.<sup>83</sup> In 2014, then-NBA commissioner Adam Silver published an op-ed in the New York Times expressing his view.<sup>84</sup> While noting that the NBA and the other major sports leagues have strongly opposed sports gambling for over two decades and stressing the importance of maintaining integrity in sport, Silver pointed to the thriving underground sports gambling market, society's shifting viewpoints, and the media's embracement of gambling as reasons for a need for change.<sup>85</sup> "There is an obvious appetite among sports fans for a safe and legal way to wager on professional sporting events. . . . I believe that sports betting should be brought out of the underground and into the sunlight where it can be appropriately monitored and regulated."<sup>86</sup> Silver's groundbreaking op-ed piece opened the door for other leagues to soften their approaches to sports gambling.<sup>87</sup> Within months of its publishing, new MLB commissioner Rob Manfred said legalization of sports betting deserved "fresh consideration," and within two years, the NHL and NFL allowed franchises to take up residency in Las Vegas.<sup>88</sup>

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<sup>81</sup> See Helling, *supra* note 3.

<sup>82</sup> See Purdam, *supra* note 45.

<sup>83</sup> See *id.*

<sup>84</sup> See 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>.

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

<sup>86</sup> *Id.*

<sup>87</sup> See Purdam, *supra* note 45.

<sup>88</sup> *Id.* The Vegas Golden Knights were an expansion team and began play in the 2017–18 NHL season. See Adam Augustyn, *Vegas Golden Knights: American Ice Hockey Team*, ENCYC. BRITANNICA (Oct. 5, 2017), <https://www.britannica.com/topic/Vegas-Golden-Knights>. Additionally, NFL owners voted almost unanimously to approve the Raiders' application to relocate from Oakland to Las Vegas, which will take place during the 2020 season. See Tadd Haislop, *Raiders' Move to Las Vegas: Why (and When) Oakland's NFL Team Is Leaving for New Stadium*, SPORTING NEWS (Dec. 15, 2019),

*D. The Size of the American Sports Gambling Industry*

It is nearly impossible to determine just how much money Americans bet on sports every year.<sup>89</sup> After all, the vast majority of American sports wagers are placed with illegal bookies or off-shore sportsbooks, neither of which is required to report any financial data or pay taxes.<sup>90</sup> Before the Supreme Court's ruling in *Murphy*, the American Gaming Association estimated that Americans wager roughly \$150 billion per year on sports.<sup>91</sup> However, in 2016, Nevada, the single state where single-game sports gambling was legal, only took in \$4.5 billion in wagers.<sup>92</sup> In other words, legal wagers only accounted for an estimated three percent of American sports bets in 2016, and the taxable revenue created by sports gambling was only \$219.1 million.<sup>93</sup> In 2017, the year before *Murphy*, Gambling Compliance estimated that between twenty-one to thirty-seven states would legalize sports gambling within five to seven years following PASPA's collapse, and estimated that these states would in total produce \$2.0 to \$5.8 billion in annual gross revenue.<sup>94</sup>

Since PASPA's falling, the states that legally accepted public sports wagers between June 2018 (the month following *Murphy*) and November 2019 generated a total handle of \$15.8 billion in those months, leading to \$1.1 billion in gross revenue.<sup>95</sup> Nevada, New Jersey, and Pennsylvania reported the largest handles and revenues in the 18 months

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<https://www.sportingnews.com/us/nfl/news/raiders-move-las-vegas-new-stadium/421klqekch1t1cu0h56zcqew2>.

<sup>89</sup> See Robert Porter, *Regulated Sports Betting: Ohio's Chance to Take a Bet on Itself*, 67 CLEV. ST. L. REV. 267, 268 (2019) (discussing the difficulty in determining and the wide range of estimates regarding the amount of money Americans wager on sports each year).

<sup>90</sup> See *id.*

<sup>91</sup> See David Purdum, *Sports Betting Legalization: Where Do We Stand Right Now?*, ESPN (Sep. 14, 2017),

[https://www.espn.com/chalk/story/\\_/id/20704273/gambling-where-does-sports-betting-legalization-us-stand-right-now](https://www.espn.com/chalk/story/_/id/20704273/gambling-where-does-sports-betting-legalization-us-stand-right-now). For the most part, professional gamblers believed this estimate to be too high, while professional bookmakers argued it was too low. See *id.*

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See *id.*

<sup>95</sup> See *US Sports Betting Revenue and Handle*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sports-betting/revenue/> (updated on Dec. 31, 2019).



following PASPA, and it is worth analyzing each state's growing numbers throughout that period.<sup>96</sup>

For decades Nevada had a monopoly on the legal sports gambling industry in the U.S., as it was the only state to allow such betting thanks to the grandfather clause in PASPA.<sup>97</sup> Some worried that should PASPA fall, so would Nevada's sports betting revenue, as sports gamblers would no longer need to travel to the state to place their wagers.<sup>98</sup> However, this has not been the case so far.<sup>99</sup> Comparing the months in 2018 after *Murphy* with those same months for which data is available in 2019 (June through November), Nevada's handle actually increased in four of the six months.<sup>100</sup> In June 2018, the first month following *Murphy* and before most of the states even legalized gambling, Nevada reported a \$287 million handle (with \$20.1 million revenue), while in June 2019, the state reported \$322 million in wagers (with \$16.6 million revenue), a 12.1% increase in handle.<sup>101</sup> Similarly, Nevada's November handle increased from \$581 million (with \$27.1 million revenue) in 2018 to \$614 million (with \$31 million revenue) in 2019.<sup>102</sup> This 5.7% growth is significant because, by November 2019, twelve other states offered legal sports betting.<sup>103</sup> While Nevada's gambling growth may slow or even turn into a decline as more states continue to legalize sports gambling, especially

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<sup>96</sup> *See id.*

<sup>97</sup> *See id.*

<sup>98</sup> *See* Kyle Wyant, *Do Not Pass Go, Do Not Collect \$231 Million: How NCAA v. Governor of New Jersey Could Negatively Affect Nevada's Monopoly on Sports Betting*, 7 U. NEV. LAS VEGAS GAMING L. J. 223, 248 (2017) ("If sports betting were legalized nationwide, [the] taxable casino sports book revenue likely would decrease, putting more of a tax burden on society and forcing the state to look elsewhere for these funds.").

<sup>99</sup> *See US Sports Betting Revenue and Handle*, *supra* note 95.

<sup>100</sup> *See id.*

<sup>101</sup> *See id.* Handle is the best data point to analyze changes in the industry because it represents the amount of money wagered by gamblers. *See id.* Revenue, on the other hand, depends on the results of the sporting events—games of chance—and the precision of gamblers and oddsmakers. *See id.* The hold percentage (revenue divided by handle) varies every month. *See id.* For example, despite the larger handle in June 2019, Nevada won \$20.1 million in gross revenue (7.04% hold) in June 2018 but only \$16.6 million (5.15% hold) in June 2019. *See id.*

<sup>102</sup> *See id.*

<sup>103</sup> *See* Rodenberg, *supra* note 41.

those it shares a border with, Nevada need not panic quite yet based on this data.<sup>104</sup>

A William Hill sportsbook accepted the first legal wager in New Jersey on June 14, 2018.<sup>105</sup> In the first full month of legal wagering, July 2018, New Jersey reported a \$41 million handle (with \$3.8 million in revenue) which increased to a \$331 million handle (with \$21 million in revenue) by November of the same year.<sup>106</sup> In contrast, New Jersey's 2019 handles for July and November were \$251 million (with \$17.9 million in revenue) and \$563 million (with \$32.9 million in revenue), respectively; a dramatic increase.<sup>107</sup> In Pennsylvania, the first legal bet was placed in mid-November 2018, so as of this writing, there is no data available for any parallel months in which sports gambling was legal in its entirety for both years.<sup>108</sup> With that said, Pennsylvania handled \$16.2 million in wagers (with \$2 million in revenue) in its first full month of legal sports gambling and grew to handle \$59.3 million (with \$5 million in revenue) in July 2019,<sup>109</sup> the last month before the NFL and NCAA football seasons started—America's favorite sport to bet on.<sup>110</sup> In the first three months of the 2019 NFL regular season, Pennsylvania's monthly handle steadily increased from \$195 million (September 2019), to \$241 million (October 2019), and eventually to \$316 million (November 2019).<sup>111</sup>

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<sup>104</sup> See *id.* (noting Nevada has the longest history of offering fully legalized sports gambling and has the most mature market).

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

<sup>106</sup> *US Sports Betting Revenue and Handle*, *supra* note 95. While some of this change can be considered growth, a significant portion of the increase should be credited to the NFL regular season, which begins in September and concludes in December. See Sean Wagner-McGough, *2018 NFL Schedule Release: Here's the Time and Date for All 256 Games*, CBS SPORTS (Apr. 19, 2018 8:22 PM), <https://www.cbssports.com/nfl/news/2018-nfl-schedule-release-heres-the-time-and-date-for-all-256-games/>.

<sup>107</sup> *US Sports Betting Revenue and Handle*, *supra* note 95.

<sup>108</sup> See Rodenberg, *supra* note 41.

<sup>109</sup> *US Sports Betting Revenue and Handle*, *supra* note 95.

<sup>110</sup> *How Much Money Do Americans Bet On Sports?*, LEGAL SPORTS BETTING, <https://www.legalsportsbetting.com/how-much-money-do-americans-bet-on-sports/> (updated on Dec. 18, 2019) ("Football is no doubt the most popular betting sport in the United States. American football comprises nearly \$100 billion in total money wagered at offshore sportsbooks. While the country is still legalizing across many states, we are already seeing football become well over two-thirds of some state's entire industry.").

<sup>111</sup> *US Sports Betting Revenue and Handle*, *supra* note 95. The corresponding Pennsylvania revenue figures for these months were, respectively, \$19.3 million, \$19.1 million, and \$20.6 million. *Id.*

While the data is young and a large number of factors need to be considered when analyzing it, two things are clear: Americans enjoy betting on sports and the handles are growing.<sup>112</sup> And as more states legalize sports gambling, the market size and value will continue to increase.<sup>113</sup> Investors and sports betting companies now estimate that the U.S. sports gambling market will be worth between \$7 billion and \$8 billion by 2025, a significant increase from the \$2 billion to \$5.8 billion estimates in the year preceding *Murphy*.<sup>114</sup> Thus, it comes as no surprise that professional sports leagues have changed their tune about sports gambling and are fighting for a sliver of the multibillion-dollar pie.<sup>115</sup>

### III. THE BEST STRATEGIES FOR LEAGUES TO PROFIT FROM LEGALIZED SPORTS GAMBLING

Because the expansion of legal sports betting is still young and the major sports leagues' strategies throughout the expansion are still maturing, it is difficult to determine just how much the leagues have profited from the expansion thus far. However, according to the study by the American Gaming Association published in October 2018, the four major U.S. professional sports leagues (NFL, NBA, MLB, and NHL)

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<sup>112</sup> *See id.*

<sup>113</sup> *See* Associated Press, *Sports Betting Market Expected to Reach \$8 Billion by 2025*, MARKETWATCH (Nov. 4, 2019), <https://www.marketwatch.com/story/firms-say-sports-betting-market-to-reach-8-billion-by-2025-2019-11-04>.

<sup>114</sup> *Id.* ("Investment firm Morgan Stanley predicts the U.S. market will generate almost \$7 billion in revenue by 2025, up from \$833 million this year. That's up from an estimate of \$5 billion the company had issued less than a year ago."). Further, executives from MGM Resorts, Hard Rock, and Mohegan Sun reported similar estimates, ranging from approximately \$6 billion to \$8 billion. Research firm Eilers & Krejcik Gaming concurred, saying that those estimates were "very close" to its own prediction of future market size. *Id.*

<sup>115</sup> *See* Hilary Russ, *U.S. Sports Leagues Could Reap \$4.2 Billion a Year from Legal Betting: Survey*, REUTERS (Oct. 18, 2018), <https://www.reuters.com/article/us-usa-gambling-sports/u-s-sports-leagues-could-reap-4-2-billion-a-year-from-legal-betting-survey-idUSKCN1MS1CT> (noting sports leagues opposed legalized gambling for a long time but now see it as an opportunity to glean more revenues).

could earn a combined additional \$4.2 billion annually thanks to *Murphy*, most of which would come from increased fan engagement.<sup>116</sup> The study found that \$596 million of the leagues' additional revenue would come from gaming industry television advertisements, while sports betting industry sponsorships and data/video revenues would respectively account for \$267 million and \$89 million of the increase.<sup>117</sup> The remaining \$3.3 billion of projected additional revenue is tied to engagement, specifically, media rights and increased merchandise and ticket sales.<sup>118</sup> According to the study, the NFL stands to be the largest beneficiary with \$2.33 billion in projected additional revenue.<sup>119</sup>

Although there is quite a bit of overlap, each league is using its own comprehensive strategy for profiting off sports gambling, and each is moving at its own pace.<sup>120</sup> Thus, a league-by-league analysis of each strategy is necessary in discussing which efforts have been or will be the most successful.

#### A. *The NFL's Slow and Cautious Acceptance*

Despite having the most to gain, the NFL has been the most cautious to embrace sports betting, and the league's plan for maximizing the potential new revenue stream is blurry.<sup>121</sup> In August 2018, the NFL team owners agreed to relax rules that prohibited franchises from signing sponsorship deals with companies associated with book-makers.<sup>122</sup> While teams were permitted to sign sponsorship deals with casinos, the rules still prohibited the casinos from directly advertising their sportsbooks in association with their NFL partners, and vice versa.<sup>123</sup> However, in February 2020, the NFL relaxed this policy even further and will now allow teams to open gambling lounges and put up signage that directly

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<sup>116</sup> *Id.* ("The study has a margin of error of 3 percentage points and surveyed more than 1,000 adult sports fans and self-identified bettors nationwide, asking how a national legal market would affect sports consumption habits.").

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

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

<sup>119</sup> *Id.*

<sup>120</sup> See James, *supra* note 72.

<sup>121</sup> See *id.*

<sup>122</sup> Nick Friend, *NFL Approves Franchise Casino Partnerships*, SPORTSPRO MEDIA (Aug. 30, 2018), <https://www.sportspromedia.com/news/us-sports-betting-nfl-casino-sponsor>.

<sup>123</sup> See *id.* The Dallas Cowboys were the first franchise to take advantage of the relaxation, naming WinStar Casino and Resort as its official casino partner, and several other teams followed with similar deals. See James, *supra* note 72.

promotes their partners' sportsbooks.<sup>124</sup> The lounges are not allowed to include any betting windows and the signage is still prohibited in the lower bowls of the stadiums.<sup>125</sup>

In January 2019, the NFL announced it had partnered with Caesars Entertainment as the first official casino sponsor of the NFL, but the \$30 million-per-year deal does not allow Caesars to use any NFL branding in association with its sports betting products.<sup>126</sup> Instead, Caesars said the deal will allow the company to provide "unique experiences for NFL fans by using its casino properties, celebrity chefs, premier music artists and a wide range of entertainment elements."<sup>127</sup> At the time of the deal, NFL senior vice president Renie Anderson expressed caution about any future deals directly involving sports betting: "We're not rushing into anything. We'll continue to look at the industry as it evolves but it's still [sic] has a lot of evolving to do."<sup>128</sup>

In September 2019, the NFL named DraftKings as its official daily fantasy sports partner, citing additional ways for fans to interact with the NFL as its motivation for the deal.<sup>129</sup> Again, however, the agreement does not directly involve sports betting.<sup>130</sup> Aside from deals involving the use of official league data through its sports betting data partner Sportradar,<sup>131</sup>

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<sup>124</sup> David Purdum, *NFL to Allow Betting Lounges in Stadiums, but No Gambling*, ESPN (Feb. 21, 2020), [https://www.espn.com/nfl/story/\\_/id/28751624/nfl-allow-betting-lounges-stadiums-no-gambling](https://www.espn.com/nfl/story/_/id/28751624/nfl-allow-betting-lounges-stadiums-no-gambling).

<sup>125</sup> *See id.*

<sup>126</sup> *See* James Dator, *What the NFL's Deal with Caesar's Entertainment Actually Means*, SB NATION (Jan. 3, 2019), <https://www.sbnation.com/nfl/2019/1/3/18167075/nfl-caesars-entertainment-sponsorship-deal>.

<sup>127</sup> *Id.*

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

<sup>129</sup> *See* Eric Ramsey, *NFL Partners with DraftKings, but Not for Sports Betting*, LEGAL SPORTS REP. (Sep. 26, 2019), <https://www.legalsportsreport.com/35577/draftkings-nfl-dfs-partnership/>.

<sup>130</sup> *See id.*

<sup>131</sup> *See* Eben Novy-Williams, *NFL Takes First Major Gambling Step with Sportradar Data Deal*, BLOOMBERG (Aug. 12, 2019), <https://www.bloomberg.com/news/articles/2019-08-12/nfl-takes-first-major-gambling-step-with-sportradar-data-deal>. The NFL signed a multiyear partnership with Sportradar that grants the data firm exclusive rights to distribute official league data to sportsbooks in the United States and abroad. *See id.* The

the NFL is the only big four league without a direct partnership with a sportsbook, but this may change.<sup>132</sup> Perhaps the most telling evidence of the NFL's movement towards embracing sportsbook partners is news that the league is looking to hire a vice president for sports betting.<sup>133</sup> The new role will reportedly "oversee the league's betting initiatives, focused on four pillars": (1) "[c]ontinuing to protect the integrity of the game," (2) "[a]dvancing the NFL's brand and reputation," (3) "[d]riving fan engagement globally," and (4) "[g]rowing the value of the NFL's data and IP."<sup>134</sup> However, until the league partners directly with sportsbooks and further relaxes the rules regarding sports betting advertisements, the NFL is leaving profits on the table.

### B. *The NBA's Aggressive Approach*

According to a 2018 American Gaming Association (AGA) study, legal sports betting could increase the annual revenues of the National Basketball Association (NBA) by \$585 million.<sup>135</sup> Thanks to commissioner Adam Silver, the NBA has strategically been the most aggressive of the big four leagues to fight for profits from legal sports gambling.<sup>136</sup> In his groundbreaking 2014 op-ed in the *New York Times*, Silver hinted that the NBA's approach to legal gambling would focus on receiving compensation for league data and intellectual property.<sup>137</sup> Alongside MLB, the NBA lobbied state and federal legislatures for data and integrity fees to be included in any legislation regarding the legalization of sports betting.<sup>138</sup> Despite the lobbying efforts failing to gain

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financial details of the deal are not public, but Sportradar's managing director of sports partnerships, David Lampitt, said the NFL deal was one of the biggest in company history. *Id.* For reference, Sportradar signed a similar deal with the NBA in 2016 that gave the firm the right to distribute official NBA data to sportsbooks overseas for six years at \$250 million. *See id.*

<sup>132</sup> *See Ramsey, supra* note 129.

<sup>133</sup> *See Brad Allen, The NFL Is Hiring Its First Vice President of Sports Betting*, LEGAL SPORTS REP. (Feb. 6, 2020), <https://www.legalsportsreport.com/37725/nfl-hiring-first-vp-of-sports-betting/>.

<sup>134</sup> *Id.*

<sup>135</sup> *See How Much Do Leagues Stand to Gain from Legal Sports Betting*, AM. GAMING ASS'N (Oct. 18, 2018), <https://www.americangaming.org/resources/how-much-do-leagues-stand-to-gain-from-legal-sports-betting/>.

<sup>136</sup> *See James, supra* note 72.

<sup>137</sup> *See Silver, supra* note 84.

<sup>138</sup> *See Helling, supra* note 3.

momentum, the NBA has been able to receive compensation through business partnerships.<sup>139</sup>

In July 2018, only two months after the *Murphy* decision, the NBA reached a deal with MGM Resorts, becoming the first league to name an official sports betting partner.<sup>140</sup> The deal allows MGM to use official NBA branding and data in its sports betting products on a “non-exclusive basis.”<sup>141</sup> In turn, the league agreed to promote MGM across its digital media outlets.<sup>142</sup> Additionally, “both the NBA and MGM will share real-time data to protect the integrity of the games, helping flag suspicious betting activity or other signs that teams or athletes are fixing outcomes.”<sup>143</sup> Silver noted that the deal was valuable in the NBA’s pursuit to “establish that through a commercial relationship . . . [it] should be compensated for [its] intellectual property and for [its] official data.”<sup>144</sup> The NBA went on to establish similar sports betting deals with other sportsbooks, such as FanDuel and PointsBet.<sup>145</sup> As to the collection of official NBA data that is provided to the league’s sportsbook partners, the NBA has deals with both Sportradar and Genius Sports.<sup>146</sup> Although the financial terms of the Genius Sports agreement are not available, Sportradar paid \$250 million for the right to distribute official NBA data to sportsbooks for six years.<sup>147</sup>

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<sup>139</sup> See James, *supra* note 72.

<sup>140</sup> See Zachary Zaggar, *NBA Signs Sports Betting Sponsorship Deal with MGM*, LAW360 (Jul. 31, 2018), <https://www.law360.com/articles/1068793>.

<sup>141</sup> *Id.*

<sup>142</sup> See *id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> See Ryan Boysen, *NBA Inks Sports Betting Partnership with PointsBet*, LAW360 (Feb. 12, 2020), <https://www.law360.com/technology/articles/1243540/nba-inks-sports-betting-partnership-with-pointsbet>. Part of the PointsBet deal includes the company creating “a ‘win probability metric’ for NBA games that will be displayed on the league’s site and social media accounts,” intended to enhance the fan experience and ultimately increase engagement. *Id.* The financial terms of the agreements between the NBA and their sportsbook partners are not public. See *id.*; Zaggar, *supra* note 140.

<sup>146</sup> See *Official League Data*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/official-league-data/> (last visited Feb. 14, 2020).

<sup>147</sup> See Novy-Williams, *supra* note 131.

### C. *MLB's Balancing Act*

According to the AGA, MLB stands to gain \$1.1 billion in increased annual revenue thanks to legal sports betting.<sup>148</sup> However, perhaps no other sport has faced more notorious gambling scandals than baseball—with the “Black Sox” and Pete Rose scandals being the most famous examples.<sup>149</sup> Thus, on the surface, MLB’s main focus in its strategy for sports betting is maintaining integrity,<sup>150</sup> and the league is begging for money to do so.<sup>151</sup> MLB has petitioned each state considering legalization to pass provisions that it claims are necessary to protect the integrity of the league.<sup>152</sup> The league’s hope was that any state legislation on sports gambling would include “six pillars,” which would require bookmakers to: (1) “use official league data to settle bets”; (2) “cooperate with league investigations”; (3) “share real-time betting information with the league”; (4) “immediately report suspicious betting activity to the league”; (5) “pay the league a royalty of 0.25 percent of the total amount wagered on MLB games”; and (6) “provide an opt-out clause through which the league can prohibit certain types of bets on certain events.”<sup>153</sup> So far, no state that has passed legislation authorizing sports betting has included the six pillars in its bill.<sup>154</sup>

While MLB claims that sports betting threatens its integrity, part of the league’s plan to increase engagement suggests otherwise.<sup>155</sup> Baseball’s slow pace, with naturally long breaks between innings and

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<sup>148</sup> See *How Much Do Leagues Stand to Gain from Legal Sports Betting?*, *supra* note 135.

<sup>149</sup> See James, *supra* note 72; see also *supra* text accompanying note 48.

<sup>150</sup> See Lindsay Berra, *A Major Gamble: MLB Embraces Sports Betting*, *BASEBALL AM.* (Jun. 11, 2019), <https://www.baseballamerica.com/stories/a-major-gamble-mlb-hopes-legalized-sports-betting-will-engage-new-fans/>. Following the *Murphy* decision, MLB Commissioner Rob Manfred said, “Our most important priority is protecting the integrity of our games.” *Id.*

<sup>151</sup> See Helling, *supra* note 3. John Holden, an assistant law professor at Oklahoma State University that researches sports betting law, believes the NBA and MLB lobbying efforts are a “cash grab,” as opposed to a genuine effort to cover costs for increased integrity measures. *Id.* “They do not want to leave the sports betting discussion empty-handed.” *Id.*

<sup>152</sup> See *id.*

<sup>153</sup> Berra, *supra* note 150.

<sup>154</sup> See Helling, *supra* note 3. Although most U.S. sportsbooks are not required to use official league data to settle bets, laws in Illinois and Tennessee do require use of official data to settle certain types of bets. See *Official League Data*, *supra* note 146.

<sup>155</sup> See Berra, *supra* note 150.



batters, puts the MLB in a unique position to increase engagement through live proposition (prop) betting.<sup>156</sup> However, the nature of prop bets makes them more susceptible to fixing than traditional sports bets, as many prop bets involve just an individual player and are not directly tied to the outcome of a full game.<sup>157</sup> Regardless, MLB has expressed its plan to enhance the viewer experience with in-game prop bet offerings through the league's official sportsbook partners.<sup>158</sup>

While the MLB's lobbying efforts have struggled to gain traction, the league's "Authorized Gaming Operator" (AGO) program is picking up momentum.<sup>159</sup> Sportsbooks that join the program gain the right to integrate the MLB's official data feed into their sports betting products and display the league's marks in association with their sportsbooks.<sup>160</sup> In return, the book operators pay MLB an undisclosed amount, possibly "a flat fee, or a percentage of revenue connected to in-game wagering markets."<sup>161</sup> MLB's data partner, Sportradar, collects and distributes MLB's official data.<sup>162</sup> In

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<sup>156</sup> See *id.*

<sup>157</sup> See *id.* To highlight the risk, consider a live prop bet that allows viewers to bet on whether a player will strike out in his next at-bat. See *id.* New York Yankees outfielder Aaron Judge strikes out on over thirty-eight percent of his at-bats. See *Aaron Judge Stats*, ESPN, [http://www.espn.com/mlb/player/stats/\\_id/33192/aaron-judge](http://www.espn.com/mlb/player/stats/_id/33192/aaron-judge) (last visited Feb. 13, 2020). Based on an eye test, it would be nearly impossible to tell if a player like Judge, who averages over one strike out per game, struck out intentionally. Hypothetically, players could secretly place prop bets on themselves and fix the result.

<sup>158</sup> See Berra, *supra* note 150 ("MLB and MGM see eye-to-eye on the potential for the prop bet to enhance that entertainment experience and engage fans, and MGM's content will reflect that.").

<sup>159</sup> See Matt Rybaltowski, *FOX Bet Becomes an MLB Authorized Gaming Operator Days Before World Series*, SPORTS HANDLE (Oct. 15, 2019), <https://sportshandle.com/fox-bet-mlb-authorized-gaming-operator/>.

<sup>160</sup> See *id.*

<sup>161</sup> Matt Rybaltowski, *Document Shows MLB Pitch for Sportsbooks to Become "Official League Data Licensee,"* SPORTS HANDLE (Jun. 13, 2019), <https://sportshandle.com/mlb-authorized-gaming-operator-program/>. Kenny Gersh, MLB's executive vice president of gaming and new business ventures, told the Associated Press in June 2019 that the league would charge each licensee a fee relative to the operator's size. See Regina Garcia Cano, *NBA, MLB Using Data to Chase Better Deals with Sportsbooks*, ASSOCIATED PRESS (Jun. 8, 2019), <https://apnews.com/fe1cb6a75efe4f77be41ec6ff8664069>.

<sup>162</sup> See *Official League Data*, *supra* note 146.

October 2019, FOX Bet became the fourth MLB official data licensee, joining MGM, FanDuel, and DraftKings.<sup>163</sup>

*D. The NHL Strategy—Embrace to Engage*

According to the AGA, the NHL could see its revenue increase by \$216 million per year due to legal sports betting.<sup>164</sup> Because the NHL has significantly lower ratings than the other big four leagues,<sup>165</sup> the NHL's embracement of legal sports betting focuses on increasing engagement and marketing deals.<sup>166</sup> Executive vice president and chief revenue officer Keith Wachtel hopes that increasing the NHL handle will increase NHL ratings.<sup>167</sup> Wachtel envisions that casual sports fans will watch hockey games that they bet on and ultimately get sucked into the sport: "Once they watch, or once they attend a game, we think now we have them."<sup>168</sup>

In October 2018, the NHL signed a deal with MGM to provide the gaming company with the league's proprietary data, but the NHL will not receive any cut of the gambling profits under the agreement.<sup>169</sup> Rather, the deal focuses on utilizing technology and data to increase fan engagement through gambling.<sup>170</sup> While announcing the deal, commissioner Gary Bettman said, "The new sports betting landscape presents a unique opportunity for fan engagement utilizing technology and data that are exclusive to our league."<sup>171</sup> As part of this plan, "[t]he NHL is developing

<sup>163</sup> See Rybaltowski, *supra* note 161.

<sup>164</sup> See *How Much Do Leagues Stand to Gain from Legal Sports Betting*, *supra* note 135.

<sup>165</sup> See Maury Brown, *How Does NBA's Conference Finals Viewership Stack Up Against The NFL, MLB And NHL?*, FORBES (May 30, 2018), <https://www.forbes.com/sites/maurybrown/2018/05/30/how-does-nbas-conference-finals-viewership-stack-up-against-the-nfl-mlb-and-nhl/#5a6327ba4819>. In 2018, the NHL conference championship games averaged just over 2.03 million viewers. *See id.* In contrast, the NFL averaged 43.2 million viewers per game on conference championship weekend in 2017 while the NBA and MLB averaged 9.02 million and 6.36 million per game for their respective conference championship series. *See id.*

<sup>166</sup> See James, *supra* note 72.

<sup>167</sup> *See id.*

<sup>168</sup> *Id.*

<sup>169</sup> See *NHL Unveils Multi-Year Partnership with MGM to Share Sports Betting Data*, CAN. BROAD. CORP. SPORTS (Oct. 29, 2018), <https://www.cbc.ca/sports/hockey/nhl/nhl-sports-gambling-partnerships-1.4882268>.

<sup>170</sup> *See id.*

<sup>171</sup> *Id.*

a system to track player and puck movement through microchips worn by the players and embedded in the pucks.”<sup>172</sup> Bettman believes the new data will allow partners like MGM to create unique prop bets that drive engagement.<sup>173</sup> Shortly after the MGM deal, the NHL also announced a marketing partnership with FanDuel, making the company the exclusive official DFS partner and a non-exclusive official sports betting partner.<sup>174</sup> In March 2019, the NHL named William Hill as its third official sports betting partner in a deal that allows William Hill to advertise in arenas and on the league’s online platforms.<sup>175</sup>

Unlike the other big four leagues, the NHL is not concerned about the integrity of the sport. Wachtel notes that the NHL has “never had an issue” concerning integrity and that “the integrity of the sports betting landscape is just as important to the bookmakers.”<sup>176</sup> Additionally, Sportsradar, the league’s exclusive third-party provider for real-time data, uses its “Fraud Detection System” to track global gaming trends and detect unusual patterns.<sup>177</sup> Thus, the NHL is not making any effort to receive some sort of integrity fee.<sup>178</sup>

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<sup>172</sup> Associated Press, *NHL Embraces More Betting, Joins with Bookmaker William Hill*, SPORTS ILLUSTRATED (Mar. 28, 2019), <https://www.si.com/nhl/2019/03/28/nhl-sportsbook-william-hill-gambling-partner>.

<sup>173</sup> *See id.*

<sup>174</sup> *See* Eric Ramsey, *Fanduel Becomes Official DFS, Sports Betting Partner for NHL*, LEGAL SPORTS REP. (Nov. 5, 2018), <https://www.legalsportsreport.com/25544/fanduel-nhl-sports-betting/>. The deal focuses on cross promotion and allows FanDuel to offer special prizes and VIP experiences in association with NHL events. *See id.* Unlike the MGM deal, the FanDuel partnership does not involve the NHL’s proprietary data. *See id.*

<sup>175</sup> *See* Associated Press, *supra* note 172. Like the FanDuel partnership, the William Hill deal does not involve NHL proprietary data. *See id.*

<sup>176</sup> *NHL Unveils Multi-Year Partnership with MGM to Share Sports Betting Data*, *supra* note 169.

<sup>177</sup> *See We Are the Exclusive Third-Party Provider of Real-Time NHL Game Data*, SPORTSRADAR, <https://www.sportradar.com/about-us/exclusive-data-partnerships/nhl/#article> (last visited on Feb. 17, 2020).

<sup>178</sup> *See NHL Unveils Multi-Year Partnership with MGM to Share Sports Betting Data*, *supra* note 169.

*E. Why the Lobbying Efforts Fail*

The NBA and MLB lead the big four in lobbying efforts regarding sports gambling at both the state and federal level.<sup>179</sup> The central focus of these efforts involves receiving integrity and data fees and restricting certain types of bets.<sup>180</sup> The NBA and MLB argue that without the leagues' games there would be nothing to bet on, so they deserve a percentage of the handle or profit.<sup>181</sup> Book operators argue that sports betting is already a low-margin business and requiring these fees would make the margins even lower.<sup>182</sup> Additionally, the state governments have an interest in tax revenue, and requiring the requested fees will result in lower profits and less tax money to the states.<sup>183</sup> Thus, if the leagues want these lobbying efforts to succeed, they need to improve their pitches.<sup>184</sup>

While the NHL expressed no interest in integrity fees and the NFL has remained mostly silent on the issue, NBA and MLB lobbyists asked lawmakers to require sportsbooks to pay up to one percent of their handles as an integrity fee but have since lowered the asking price to 0.25%.<sup>185</sup> The leagues argue that legal sports betting requires them to take additional measures, thus incurring additional costs, to maintain the integrity of their sports.<sup>186</sup> The issue, however, is that the leagues are failing to convince lawmakers that their interest in integrity is any greater than the bookmakers' interest.<sup>187</sup> Additionally, the NBA and MLB lobbyists have

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<sup>179</sup> See Helling, *supra* note 3.

<sup>180</sup> See *id.*

<sup>181</sup> See Rey Mashayekhi, *Inside the Battle for the Future of Sports Betting*, FORTUNE (Apr. 10, 2019), <https://fortune.com/longform/sports-betting-battle/>. MLB senior vice president and deputy general counsel Bryan Seeley said, "There is no betting on Major League Baseball unless we put on the games and invest a lot of time and effort, as our players do, on putting on compelling contests. . . . They should have to pay us something for that." *Id.*

<sup>182</sup> See *id.*

<sup>183</sup> See *id.*

<sup>184</sup> See Helling, *supra* note 3.

<sup>185</sup> See Mashayekhi, *supra* note 181. To illustrate how this fee would affect taxable sports betting revenues, New Jersey sportsbooks handled almost \$4.6 billion in sports bets in 2019 which resulted in a total revenue of over \$299 million. See *US Sports Betting Revenue and Handle*, *supra* note 95. An integrity fee of 0.25% of the handle would have caused New Jersey sportsbooks to give up nearly \$11.5 million, or over 3.8%, of their taxable revenue. *Id.*

<sup>186</sup> See *id.*

<sup>187</sup> See Mashayekhi, *supra* note 181. "When we're paying out to winners who have insider info, that hurts us just as much," said Sara Slane, AGA senior

failed to show exactly how much the increased measures to maintain integrity would cost or how the leagues would actually use the money they receive from the integrity fees.<sup>188</sup> Furthermore, the leagues' data-collecting partners, such as Sportradar and Genius Sports, already have systems in place to monitor betting patterns and detect irregularities to protect integrity.<sup>189</sup> Thus far, the lobbying efforts have completely failed at the state and federal level as they pertain to integrity fees.<sup>190</sup> These efforts will continue to fail until the leagues can paint a clear picture, as legislatures are unwilling to give up any percentage of the taxes the states receive from sports betting revenues.<sup>191</sup>

The NBA and MLB have a better chance at succeeding in their lobbying efforts pertaining to data fees and restrictions on certain types of bets, especially at a federal level.<sup>192</sup> The only proposed federal bill on sports betting regulation, introduced by Senators Hatch and Schumer, includes provisions requiring the use of official league data to settle bets and allows leagues to restrict certain prop bets.<sup>193</sup> Additionally, sports betting laws in Illinois and Tennessee require sportsbook operators to use official data to settle bets, but the provisions do not apply to a wager "determined solely by the final score or final outcome of the sports event [that] is placed before the sports event has begun."<sup>194</sup> Aside from these two state provisions and the proposed federal bill, however, these lobbying efforts have mostly failed, as the vast majority of state legislation on sports gambling has not included any provisions related to data fees or restrictions on certain wager types.<sup>195</sup>

Much like the integrity fee issue, gaming lobbyists staunchly oppose provisions requiring the use of official data and restricting certain bets.<sup>196</sup> The leagues argue that the ability to restrict certain bets is

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vice president of public affairs. *Id.* "If there's something suspicious happening, it's bad for the leagues but it's also bad for us." *Id.*

<sup>188</sup> See Helling, *supra* note 3.

<sup>189</sup> See Mashayekhi, *supra* note 181.

<sup>190</sup> See Helling, *supra* note 3.

<sup>191</sup> See *id.*

<sup>192</sup> See *id.*

<sup>193</sup> See Sports Wagering Market Integrity Act of 2018, S. 3793, 115th Cong. §§ 103(b)(3), 103(b)(5)(A).

<sup>194</sup> See *Official League Data*, *supra* note 146.

<sup>195</sup> See Helling, *supra* note 3.

<sup>196</sup> See Mashayekhi, *supra* note 181.

necessary to protect integrity, as certain prop bets are easier to fix than traditional wagers.<sup>197</sup> The gaming industry, on the other hand, argues that restricting prop bets will only encourage gamblers to bet with illegal offshore sportsbooks that are not subject to the same restrictions.<sup>198</sup>

As to the data issue, the gaming industry argues that requiring official data use to settle bets would effectively give the leagues a monopoly.<sup>199</sup> Moreover, the leagues have failed to prove that unofficial data is at all inferior to official data.<sup>200</sup> Even the data companies, such as Sportradar and Genius Sports, which collect the official data for the leagues and distribute it to the sportsbooks, oppose provisions requiring the use of official data.<sup>201</sup> Carsten Koerl, Sportradar's founder and CEO, argues that official data use requirements will not "work in a free market," and the opposing arguments on official data use by league and gaming lobbyists only slow down the legislative process for legalizing sports gambling.<sup>202</sup>

According to the American Bar Association (ABA), \$89 million of the projected increase in annual revenues across all the leagues would be tied to official data usage, which only makes up about a two percent sliver of the potential \$4.2 billion dollar pie.<sup>203</sup> Thus, sports leagues would likely benefit from giving up their lobbying fight over official data use and focus on cooperative efforts that expedite the legislative process. Furthermore, the lack of a legal requirement for official data use does not mean sportsbooks are unwilling to pay for official data at a fair price, as evidenced by some of the partnership agreements between leagues and sportsbook operators.<sup>204</sup> In other words, giving up on lobbying efforts does not equate to giving up a potential \$89 million increase in revenue. Rather, the leagues would only be giving up a portion of this \$89 million, if any at all, depending on the terms of the agreements between leagues, operators, and data collectors.<sup>205</sup> In turn, the other larger sources of potential

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<sup>197</sup> *See id.*

<sup>198</sup> *See id.*

<sup>199</sup> *Id.*

<sup>200</sup> *See id.*

<sup>201</sup> *See id.*

<sup>202</sup> *Id.*

<sup>203</sup> *See* Russ, *supra* note 115.

<sup>204</sup> *See* Zagger, *supra* note 140.

<sup>205</sup> *Id.* The NBA and MLB have both formed several partnerships with sportsbooks that include some compensation for official data, but the amount of compensation is not disclosed. *See id.*; Rybaltowski, *supra* note 159. Additionally, all four leagues have partnerships with either Sportradar or Genius Sports for the

increased revenue could be maximized by speeding up the legislative process and the spread of state authorized sports betting. Thus, rather than focusing on lobbying efforts that are likely to continue failing, the leagues should support legislation that promotes widespread sports betting and focus on increasing profits through partnerships and engagement.

*F. The Various Revenue Streams Through Partnerships*

Partnerships between the big four leagues and sportsbook operators offer a diverse opportunity for increased revenues given the partnership terms the leagues have already formed.<sup>206</sup> These partnerships could increase profits for the leagues through three main revenue streams: official data agreements, marketing arrangements, and higher engagement. Each league should have a strategy to maximize these revenue streams through partnerships, but only the NBA and MLB currently have such strategies in place.<sup>207</sup>

As for the NBA, most of its sportsbook partnerships involve flexible marketing agreements and fees for official data usage.<sup>208</sup> The NBA plans to utilize its partnership with PointsBet to increase fan engagement through the development of a win probability metric that will be displayed on their online and social media platforms during games.<sup>209</sup> Additionally, MLB plans to develop new prop bets, with the help of its partners, to increase engagement.<sup>210</sup>

In contrast, the NFL has refused to partner directly with any sportsbook.<sup>211</sup> Thus, as to the potential compensation for official data, the league is limited to the undisclosed amount that Sportradar paid for the right to distribute the data.<sup>212</sup> Additionally, the NFL is forfeiting the

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collection and distribution of official data. These companies pay the leagues to gain the right to distribute the data to sportsbooks. Although the price of most of these agreements is not public, Sportradar paid the NBA \$250 million for the distribution rights for six years. *See Official League Data*, *supra* note 146; Novy-Williams, *supra* note 131.

<sup>206</sup> *See supra* Part IV(a)–(d).

<sup>207</sup> *See supra* Part IV(a)–(d).

<sup>208</sup> *See Zagger*, *supra* note 140; *see also* Boysen, *supra* note 145.

<sup>209</sup> *See* Boysen, *supra* note 145, and accompanying text.

<sup>210</sup> *See* Berra, *supra* note 150.

<sup>211</sup> *See* Ramsey, *supra* note 129.

<sup>212</sup> *See* Novy-Williams, *supra* note 131.

opportunity to work with sportsbooks to develop any prop bets or metrics that could increase engagement; however, the league has made an effort to earn additional revenue through marketing agreements with its official casino partner (Caesar's) and DFS partner (FanDuel), but these agreements are limited, as they do not involve each company's sportsbook.<sup>213</sup> As an example, the \$30 million Caesar's agreement would likely be substantially more valuable if the league allowed the company to advertise its sports betting products during commercial breaks or in stadiums.<sup>214</sup> The NFL should follow the lead of the other leagues, form direct partnerships with sportsbooks, allow these partners to advertise during commercial breaks and all over stadiums, and allow the sportsbooks to display NFL logos with their sports betting products. Furthermore, the league should attempt to collect an official data fee from its future partners, and work with them to develop new ways to increase the fan experience. Until the NFL adopts these measures, it will lose out on hundreds of millions of dollars left on the table.<sup>215</sup> According to a Nielsen Sports study published in November 2018, "NFL revenues directly related to the rise of regulated sports wagering could add up to around \$573 million per year," with \$451 million from gaming industry television advertisements, \$92 million from "[g]ambling-adjacent sponsorships," and \$30 million from data.<sup>216</sup>

On the other hand, the NHL has formed partnerships with sportsbooks but has made no efforts to receive any fee for its official data.<sup>217</sup> Rather, the agreements focus on mutual marketing or official data use to create unique prop bets that increase engagement.<sup>218</sup> While it seems like the league may be giving up potential profits by giving its partners official data for no compensation, this compensation is likely insignificant when compared to the potential revenue from marketing agreements and engagement.<sup>219</sup> If the NHL is worried that fighting for data fees could

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<sup>213</sup> See Dator, *supra* note 126; see also Ramsey, *supra* note 129.

<sup>214</sup> See Dator, *supra* note 126.

<sup>215</sup> See Anthony Crupi, *Here's How Legalized Gambling Will Make Sports Leagues Even Richer*, ADAGE (Nov. 5, 2018), <https://adage.com/article/media/survey/315516>.

<sup>216</sup> See *id.*

<sup>217</sup> See *NHL Unveils Multi-Year Partnership with MGM to Share Sports Betting Data*, *supra* note 169.

<sup>218</sup> See *id.*; see also Associated Press, *supra* note 172; Ramsey, *supra* note 174.

<sup>219</sup> See Russ, *supra* note 115 (noting that the ABA study suggests that just \$89 million of the increased revenue across all four leagues is tied to official



prevent some agreements, then the league may actually be smart to give away the data for free and focus on the larger potential revenue streams that partnerships offer.

*G. Increased Engagement—The Biggest Piece of the Pie*

Media rights have become the “most lucrative segment” for the American professional sports industry.<sup>220</sup> Thus, the largest opportunity for leagues to earn additional revenue from legalized gambling is through increased engagement, which represents \$3.3 billion of the potential \$4.2 billion revenue increase, according to the ABA.<sup>221</sup> Ironically, exploiting this potential revenue stream could require the least amount of effort, as a survey by the Seton Hall Sports Poll found that seventy percent of Americans would be more likely to watch a game if they bet on it.<sup>222</sup> Thus, increases in handle will likely lead to higher engagement and better ratings.<sup>223</sup> This will ultimately lead to an increase in the value of the league’s media rights.<sup>224</sup>

This hypothesis is supported by the NFL’s rising television ratings following *Murphy*.<sup>225</sup> From 2015 to 2017, the average viewership for an NFL regular season game fell from 17.9 million viewers to 14.9 million viewers.<sup>226</sup> However, in the two seasons after PASPA’s falling, NFL ratings rose to 15.8 million viewers per regular season game in 2018 and 16.5 million in 2019.<sup>227</sup> Currently, the NFL’s television and alternative

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data, while \$863 million is tied to the marketing aspects of gaming industry partnerships).

<sup>220</sup> See Crupi, *supra* note 215.

<sup>221</sup> See Russ, *supra* note 115.

<sup>222</sup> See Seth Everett, *Gambling Will Help Viewership, Poll Finds, but There Remains Fear Games Can Be Fixed*, FORBES (Dec. 4, 2018), <https://www.forbes.com/sites/setheverett/2018/12/04/gambling-will-help-viewership-but-fear-games-can-be-fixed-says-poll/#3f81e58a70bc>.

<sup>223</sup> See Crupi, *supra* note 215.

<sup>224</sup> See *id.*

<sup>225</sup> See Christina Gough, *Average Television Viewership of the NFL Regular Season from 2010 to 2019*, STATISTA, <https://www.statista.com/statistics/289979/nfl-number-of-tv-viewers-usa/> (last updated Feb. 11, 2021).

<sup>226</sup> See *id.*

<sup>227</sup> See *id.*

media partners pay \$7.92 billion per year for media rights.<sup>228</sup> The Nielsen study projects that this number will inflate by eighteen percent to \$9.34 billion per year in 2022—the same year that NFL media rights are back up for negotiation—and credits legal sports betting as a contributor to this likely rise.<sup>229</sup> Thus, although leagues should attempt to increase engagement and ratings by partnering with sportsbooks and creating new prop bets and metrics for display, some leagues, especially the NFL, will likely see the bulk of the potential increased annual revenues without making any of these efforts.<sup>230</sup> Instead, much of the increased engagement, as well as the revenues tied to it, will come naturally as sports gambling grows.

#### IV. CONCLUSION

In striking down PASPA and lifting the federal ban on sports gambling, the *Murphy* decision completely changed the American sports betting landscape. Although the big four sports leagues had opposed legal sports betting for decades, *Murphy* opened the floodgates to potential new revenue streams that were unavailable to the leagues before the decision. To exploit these revenue streams, the leagues should make deals with sportsbooks and gaming companies that focus on compensation for marketing and data, as well as new ways to increase engagement. More importantly, however, the leagues should support efforts and legislation that will lead to widespread sports gambling, as the biggest opportunity to increase revenues is tied to engagement, which will increase naturally as nationwide handle increases. Thus, to realize most of the potential increased revenues, the leagues need to stay out of the way and allow the once-sleeping giant to grow. Ultimately, to maximize these revenues, the leagues will need to feed the giant by forming partnerships and lobbying in favor of legalization bills.

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<sup>228</sup> See Crupi, *supra* note 215.

<sup>229</sup> See *id.* MLB and NHL media rights are up for negotiation in 2021, while the next NBA media rights negotiations will take place in 2025. *Id.*; see also Trevir Nath, *The NBA's Business Model*, INVESTOPEDIA, <https://www.investopedia.com/articles/investing/070715/nbas-business-model.asp> (updated on June 22, 2018).

<sup>230</sup> See *id.*