

September 2019

Hedge Your Bets: How the Legalization of Sports Betting Could Be the Downfall of Intercollegiate Sports

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Haley M. Robb, *Hedge Your Bets: How the Legalization of Sports Betting Could Be the Downfall of Intercollegiate Sports*, 122 W. Va. L. Rev. (2019).

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HEDGE YOUR BETS: HOW THE LEGALIZATION OF SPORTS BETTING COULD BE THE DOWNFALL OF INTERCOLLEGIATE SPORTS

I.	INTRODUCTION.....	352
II.	BACKGROUND.....	354
	A. <i>The History of Sports Betting</i>	354
	B. <i>Batting Up to Sports Betting Legalization</i>	356
	C. <i>Rounding Home to Legalization—Murphy v. NCAA</i>	358
III.	SPORTS BETTING.....	360
	A. <i>The Evolution of Sports Betting in West Virginia</i>	360
	B. <i>West Virginia Sports Betting Laws</i>	362
	1. Legislative Findings and Definitions.....	363
	2. The West Virginia Lottery Commission’s Duties.....	364
	i. <i>Operator License</i>	365
	ii. <i>Management Services Provider License</i>	366
	iii. <i>Supplier License</i>	366
	iv. <i>Occupational License</i>	367
	3. House Rules for the Casinos that Receive Licenses to Implement Sports Betting.....	367
	C. <i>Hedge Your Bets!</i>	368
	1. Don’t Bet on the Wrong Horse.....	370
IV.	SPORTS BETTING’S NEGATIVE IMPACT ON INTERCOLLEGIATE SPORTS.....	372
	A. <i>Scandals That Still Stain the Play Books</i>	372
	1. CCNY Point-Shaving Scandal of 1950.....	373
	2. Boston College’s Point-Shaving Scandal of 1978–79....	374
	3. Tulane Point-Shaving Scandal of 1985.....	374
	4. Northwestern Point-Shaving Scandal of 1995.....	375
	5. Northwestern Football Scandal of 1995.....	376
	B. <i>How Sports Betting Will Negatively Impact Intercollegiate Sports</i>	376
	C. <i>Penalty Box</i>	379
V.	THE ROAD AHEAD FOR WEST VIRGINIA AND OTHER STATES.....	382
	A. <i>The “Highs” of Sports Betting</i>	383
	B. <i>The “Lows” of Sports Betting</i>	385
VI.	CONCLUSION.....	386

I. INTRODUCTION

A college basketball team just won both the National Collegiate Athletic Association (“NCAA”) and the National Invitation Tournament (“NIT”) tournaments. Not only were they the first to ever achieve this, but the team was returning a majority of the starting players for next season. The star center of that team is approached by a bettin’ man. The bettin’ man had one single request for the star center: “Win the game on Thursday but keep it close. If you win by three points or less, I’ll give you \$1,000.” The star center is conflicted because he wants the money to go on a spring break trip with his friends and does not want to feel embarrassed if he does not have the money to go. The bettin’ man ensures the star center that no one else will find out about their arrangement and even encourages the star center to recruit more of his team to help him in shaving points. Thursday arrives and the star center is still conflicted. Should he throw the game for extra cash for a spring break trip with his friends or forget his conversation with the bettin’ man ever happened and win the game?

A very similar situation happened just 67 years ago. A college student was forced to make this call that not only impacted his game, but *all* future games for him, his teammates, and other college athletes. The City College of New York (“CCNY”) had just won both the NCAA and NIT tournaments in 1950.¹ The scandal not only involved CCNY, but also six other schools² and 33 different players, and even resulted in Bill Spivey³ getting stripped of the “Most Outstanding Player Award” for the 1951 NCAA tournament.⁴ There have also been more recent situations, like the Boston College point-shaving scandal during the 1978–79 basketball season, where the gamblers paid multiple players

¹ Lenn Robbins, *1950: CCNY Wins NIT and NCAA Tournaments*, N.Y. POST (Sept. 12, 1999, 4:00 AM), <https://nypost.com/1999/09/12/1950-ccny-wins-nit-and-ncaa-tournaments/>.

² The other schools include Manhattan College, New York University, Long Island University, Bradley Tech of Peoria, Illinois, the University of Kentucky, and Toledo University. *C.C.N.Y. Wasn’t Alone in ‘51 Basketball Scandal*, N.Y. TIMES (Feb. 22, 1995), <https://www.nytimes.com/1995/02/22/opinion/1-ccny-wasn-t-alone-in-51-basketball-scandal-861495.html>.

³ Bill Spivey always denied ever having fixed the outcome of a game or having shaved points or having any knowledge of such activities. Frank Litsky, *Bill Spivey, 66, Kentucky Star Implicated in Scandal of 1950’s*, N.Y. TIMES (May 10, 1995), <https://www.nytimes.com/1995/05/10/obituaries/bill-spivey-66-kentucky-star-implicated-in-scandal-of-1950-s.html>. Even though Spivey denied it, Spivey was barred from the NCAA and his lawsuit against the NBA was settled out of court for \$10,000 according to Spivey. *Id.* Spivey even told a grand jury that he was not guilty but was accused of lying under oath seven times. *Id.* Spivey said the “university told [him] to prove [his] innocence,” and he believed “it was the other way around in this country. [He thought] they made [him] a scapegoat” because they were “paying players to go to school there, and they wanted to stop the investigation from going any further.” *Id.*

⁴ *CCNY Point Shaving Scandal*, REVOLVY, <https://www.revolvy.com/page/CCNY-point-shaving-scandal> (last visited Sept. 10, 2019).

to shave points⁵ and the Northwestern point-shaving scandal during the 1994–95 basketball season where two players were charged for taking bribes.⁶ Hypothetical predicaments like the one above could turn once innocent college athletes into poker chips for people like the “bettin’ man” to use and abuse.

The United States Supreme Court may have opened a Pandora’s Box by allowing states to legalize sports betting.⁷ Giving states the option to legalize sports betting could change intercollegiate sports from a fun and sportsmanship-filled game to a shady, greed-driven activity all about game-fixing, point-shaving, and suspicion as to whether that missed foul shot was really an accident or on purpose. E. Gordon Gee, President of West Virginia University, expressed his reservations on sports betting—an issue this Note will attempt to resolve:

They talk about sports betting in the professional sports, NFL, NBA, etc., but the answer is this; if someone offers LeBron James \$10,000 to throw a game, he’s going to smack them on the side of the head, he’s going to think that’s very funny If, on the other hand, if someone offers \$10,000 to a college player, they may think about it seriously, and so I think this is a very serious issue for us.⁸

In Part I, this Note will discuss the history of sports betting and how one jurisdiction, West Virginia, came to pass legislation and implement sports betting. Part I will also give a detailed discussion of the laws West Virginia passed to legalize and regulate sports betting in the state. Part II will provide an overview of sports betting history, including how the Professional and Amateur Sports Protection Act (“PASPA”) was overturned to give states the option to legalize sports betting. Part III explains the evolution of sports betting in West Virginia specifically and lays out the West Virginia Lottery Sports Wagering Act. Part IV will discuss how legalizing sports betting could be the downfall of intercollegiate sports as we know them today. Finally, Part V will conclude by examining the road ahead for West Virginia and other states that legalize sports betting.

⁵ David Purdum, *The Worst Fix Ever*, ESPN (Oct. 3, 2014), http://www.espn.com/espn/chalk/story/_/id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal.

⁶ Pam Belluck, *Ex-Northwestern Players Charged in Point-Shaving*, N.Y. TIMES (Nov. 13, 2014), <https://www.nytimes.com/1998/03/27/sports/college-basketball-ex-northwestern-players-charged-in-point-shaving.html>.

⁷ See *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

⁸ Gee *Speaks to the DA on Greeks, Abortion, Sodexo, “WV Sports Betting”*, DAILY ATHENAEUM (Morgantown, W. Va.) (Sept. 20, 2018), https://www.thedaonline.com/news/gee-speaks-to-the-da-on-greeks-abortion-sodexo/article_8b8c87a4-bc92-11e8-83ca-27f115c1b41d.html.

II. BACKGROUND

Before tip-off of the nation-wide legalization of sports betting, Section II.A will examine the history of sports betting, how gambling financed some of the establishment of the first English colonies, and how Congress eventually put a stop to gambling altogether in states (except in four states—Nevada, Delaware, Montana, and Oregon) with PASPA. Section II.B then explores and reviews the cases leading up to the recent United States Supreme Court decision to legalize sports betting and give the power to the states to choose whether sports betting would take place within the respective states borders. Finally, Section II.C concludes by discussing the case of *Murphy v. NCAA*,⁹ where the United States Supreme Court put an end to PASPA and legalized sports betting after an almost 25-year-long ban under PASPA.

A. *The History of Sports Betting*

The United States has had a long and complicated relationship with gambling. Lotteries had a “prominent place in the early history of America” by partially financing the establishment of the first English colonies.¹⁰ Lotteries were used to finance public works such as paving streets and building churches and were even used in the 18th century to finance construction of buildings at Harvard and Yale.¹¹ However, in the 1870s, when a Louisiana lottery operating nationally created a scandal due to the bribery of state and federal officials, most forms of gambling and lotteries were outlawed by the states.¹²

Lotteries made a resurgence in 1964 when New Hampshire established a state lottery and 12 other states followed by 1975.¹³ By 1999, 37 states and the District of Columbia had been operating lotteries within their states.¹⁴ With this resurgence of lotteries, revenue skyrocketed. With lotteries operating in 37 states and D.C., \$34 billion in sales was earned, not counting profits from electronic gambling devices.¹⁵ This type of gambling eventually turned into people hedging bets on sports games at all levels. Because this began to create problems within the sports world, Congress passed the Professional and Amateur Sports Protection Act.¹⁶

⁹ 138 S. Ct. 1461 (2018).

¹⁰ See NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT, 2-1 (1999).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, 106 Stat. 4227 (1992).

In 1991, Congress created PASPA to prohibit states from implementing sports betting.¹⁷ PASPA was signed into law by President George H.W. Bush and its goal was to “prohibit[] any governmental entity from sponsoring, operating, advertising, promoting, licensing, or authorizing by law any lottery, sweepstakes, or other betting scheme based on one or more competitive games in which amateur or professional athletes participate.”¹⁸ PASPA also gave states’ Attorneys General or a professional or amateur sports organization the power to bring a civil action in federal court if the sports organization’s game violated PASPA.¹⁹ The Act nevertheless created two exemptions for states: (1) if the state conducted sports betting between 1976 and 1990 or (2) if a municipality continually had casino gaming for at least ten years prior to the Act’s effective date.²⁰ Four states—Nevada, Delaware, Montana, and Oregon—fell under the first exemption, but Atlantic City was the only location to meet the second exemption.²¹

During the debate over PASPA, the Senate Judiciary Committee issued a report discussing why PASPA should have been enacted.²² The commissioners of the National Football League (“NFL”), Major League Baseball (“MLB”), and National Basketball Association (“NBA”) all showed their support for the Act and expressed their opinion that “public confidence in the integrity of sports was undermined by gambling, and sports betting promoted gambling among young people.”²³ Further, the proponents of PASPA were worried that if states were allowed to legalize sports betting, it would “send the message to youth that sports are not about sportsmanship and personal achievement, but about money.”²⁴

The Act also had its critics. Senator Chuck Grassley said that passing the Act would be a “substantial infringement of states’ rights because the federal government had never regulated intrastate wagering activities.”²⁵ Senator Grassley also mentioned allowing several states to continue sports betting

¹⁷ Christopher L. Soriano, *The Efforts to Legalize Sports Betting in New Jersey – A History*, N.J. L., Apr. 2013, at 22, https://www.duanemorris.com/articles/static/soriano_njlawyer_0413.pdf.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* The Committee also discussed how legalizing sports betting would “promote suspicion about controversial plays and lead fans to think ‘the fix was in’ whenever their team failed to beat the point-spread.” S. Rep. No. 102-248, at 3556 (Nov. 26, 1991), as reprinted in 1992 U.S.C.A.N. 3553.

²⁴ Dylan Oliver Malagrino, *Off the Board: NCAA v. Christie Challenges Congress to Move the Line on the Professional and Amateur Sports Protection Act*, 118 PENN ST. L. REV. 375, 387 (2013) (citing *Professional and Amateur Sports Protection Act of 1992: Hearing on H.R. 74 Before the Subcomm. on Econ. & Commercial Law of the H. Comm. on the Judiciary*, 102d Cong. (1991)).

²⁵ Soriano, *supra* note 17, at 23.

“blatantly discriminated against the remaining states without any rational basis.”²⁶ Although each side made compelling arguments, the Act was passed with an overwhelming 88-to-5 vote²⁷ in the Senate on June 2, 1992.²⁸

B. *Batting Up to Sports Betting Legalization*

Sixteen years after PASPA was passed, cases began to emerge that challenged PASPA. Two cases out of New Jersey and Delaware in 2009 started the attack on PASPA. In *Interactive Media Entertainment & Gaming Association, Inc. v. Holder*,²⁹ a group from the gaming industries in New Jersey wanted to overturn PASPA on the grounds that it violated the First, Fifth, Tenth, Eleventh, and Fourteenth Amendments to the U.S. Constitution.³⁰ The plaintiffs consisted of: Interactive Media Entertainment & Gaming Association, Inc., “a New Jersey non-profit corporation that disseminates information regarding electronic gaming via the Internet, and has members that provide Internet gambling services”,³¹ the New Jersey Thoroughbred Horsemen’s Association, Inc.; The Thoroughbred Breeders Association of New Jersey; and the Standardbred Breeders & Owners Association of New Jersey, who represent various interests in the horse industries.³² The main point of contention made by the plaintiffs was that PASPA unconstitutionally arrogated to the United States express and implied powers that belong to the individual states to regulate matters affecting states’ citizens.³³ However, the gaming industries’ claim was unsuccessful because the Court held any violation of the Tenth Amendment requires the state at issue to challenge the violation and because New Jersey was not a part of the lawsuit, the case was dismissed for lack of standing.³⁴

Building on the litigation put in motion by New Jersey, Delaware attempted to expand its current sports betting laws to allow bets on single games of football and other sports.³⁵ The issue was over specific language in PASPA that implies states can conduct sports betting “to the extent the scheme was

²⁶ *Id.*

²⁷ *S. 474 (102nd): Professional and Amateur Sports Protection Act*, GOVTRACK, <https://www.govtrack.us/congress/votes/102-1992/s111> (last visited Sept. 1, 2019).

²⁸ Roll Call Vote 102nd Congress – 2nd Session, U.S. SENATE, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=102&session=2&vote=00111 (last visited Sept. 29, 2019).

²⁹ No. 09-1301, 2011 WL 802106 (D.N.J. Mar. 7, 2011).

³⁰ *Id.* at *2.

³¹ *Id.* at *1.

³² *Id.*

³³ *Id.* at *2.

³⁴ *Id.* at *8.

³⁵ Office of Comm’r of Baseball v. Markell, 579 F.3d 293, 295–96 (3d Cir. 2009).

conducted” between 1976 and 1990.³⁶ The Third Circuit Court of Appeals found that states were not permitted to expand their sports betting laws any further than what they had between 1976 and 1990.³⁷ Delaware was entirely foreclosed from engaging in sports betting.

Finally, in 2012, then–New Jersey Governor Chris Christie signed the “Sports Wagering Law” that permitted wagering at casinos and racetracks on certain professional and collegiate events.³⁸ On August 17, 2012, the National Collegiate Athletic Association (“NCAA”), National Basketball Association (“NBA”), National Football League (“NFL”), National Hockey League (“NHL”), and Major League Baseball (“MLB”) filed a Motion for Summary Judgment seeking to enjoin Chris Christie, the Director of the New Jersey Division of Gaming Enforcement, the Assistant Attorney General of the State of New Jersey, and Executive Director of the New Jersey Racing Commission from implementing the Sports Wagering Law.³⁹ New Jersey and other defendants who joined the case argued that PASPA violated the U.S. Constitution and could not be used to prevent states from legalizing sports betting.⁴⁰ On the one hand, the plaintiffs argued sports betting “threatens to harm the reputation” of professional and collegiate sports and could “adversely affect the way the public views amateur and professional sports.”⁴¹ On the other hand, the defendants argued that the plaintiffs lacked standing to enforce PASPA and that PASPA is unconstitutional because PASPA “violates the anti-commandeering principle,” is an “invalid exercise of Congress’s power to regulate interstate commerce,” is “irreconcilable with the principle that all States enjoy equal sovereignty,” and, finally, that PASPA “violates the Due Process and Equal Protection Clauses.”⁴²

The district court held that PASPA (1) “is a constitutional exercise of Congress’ powers pursuant to the Commerce Clause”; (2) “does not violate the Tenth Amendment, Due Process Clause or Equal Protection Principles”; and (3) does not “violate the Equal Footing Doctrine.”⁴³ First, the grandfather clause

³⁶ *Id.* at 300–01.

³⁷ *Id.* at 301–02.

³⁸ N.J. STAT. ANN. §§ 5:12A-1 to -6 (West 2019).

³⁹ *NCAA v. Christie*, 926 F. Supp. 2d 551, 553 (D.N.J. 2013).

⁴⁰ *Id.*

⁴¹ Complaint for Declaratory & Injunctive Relief at 3, *NCAA v. Christie*, 926 F. Supp. 2d 551 (D.N.J. 2013) (No. CV124947).

⁴² Answer and Affirmative Defenses of Defendants Christopher J. Christie, David L. Rebeck, and Frank Zanzuccki at 7, *NCAA v. Christie*, 926 F. Supp. 2d 551 (D.N.J. 2013) (No. 3:12-cv-04947).

⁴³ *Christie*, 926 F. Supp. 2d at 579. The Third Circuit affirmed the district court’s decision in *NCAA v. Christie*, 730 F.3d 208 (2013). Further, the Equal Footing Doctrine “provides for the admission of additional states on equal footing with the original States.” *Christie*, 926 F. Supp. 2d at 577. The district court believed that this is analogous to the case at hand because the states should enjoy equal footing under PASPA. *Id.*

contained in PASPA passes rational basis review and PASPA's regulation of sports betting is constitutional pursuant to Congress' Commerce Clause powers. Second, because PASPA is "controlling and influencing the spread of legalized sports wagering, not New Jersey,"⁴⁴ PASPA does not violate the Tenth Amendment. And third, because New Jersey is not attempting to enter the Union or is a state that has recently been admitted to the Union, PASPA does not violate the Equal Footing Doctrine. New Jersey petitioned the United States Supreme Court raising the anticommandeering issue and the Supreme Court denied certiorari.⁴⁵

New Jersey enacted a law that was framed to repeal the provision of state law prohibiting sports gambling.⁴⁶ The same group of plaintiffs filed an action in federal court and were victorious in the district court.⁴⁷ The Third Circuit Court of Appeals sitting en banc affirmed the district court finding that "the new law, no less than the old one, violated PASPA by 'author[izing]' sports gambling."⁴⁸ The United States Supreme Court granted review to decide the constitutional questions presented in the series of *Christie* cases.⁴⁹

C. *Rounding Home to Legalization*—Murphy v. NCAA

In May 2018, the United States Supreme Court struck down the 25-year-old PASPA that had prohibited most states from authorizing sports betting and opened the doors for states to decide if they wanted to legalize sports betting. In *Murphy v. NCAA*,⁵⁰ authored by Justice Samuel Alito, New Jersey wanted to legalize sports gambling at casinos and horseracing tracks but was prohibited by the federal law, PASPA.⁵¹ As stated, PASPA made it "unlawful" for a state "to sponsor, operate, advertise, promote, license, or authorize by law or compact . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on" competitive sporting events.⁵²

The Supreme Court ultimately held in a 6-3 ruling that the PASPA provision at issue in the case—prohibiting state authorization of sports gambling—violated the anticommandeering rule because PASPA "commanded

⁴⁴ *Christie*, 926 F. Supp. 2d at 572.

⁴⁵ *Murphy v. NCAA*, 138 S. Ct. 1461, 1472 (2018); see *Christie v. NCAA*, 134 S. Ct. 2866 (2014).

⁴⁶ *Murphy*, 138 S. Ct. at 1465.

⁴⁷ *NCAA v. Christie*, 61 F. Supp. 3d 488 (D.N.J. 2014).

⁴⁸ *Murphy*, 138 S. Ct. at 1472 (citing *NCAA v. Governor of N.J.*, 832 F.3d 389 (2016)).

⁴⁹ *Id.* at 1473.

⁵⁰ 138 S. Ct. 1461 (2018).

⁵¹ The Professional and Amateur Sports Protection Act, 28 U.S.C.A. § 3701 (West 2019).

⁵² *Id.*

state legislatures to enact or refrain from enacting state law.”⁵³ Justice Alito sums the decision up:

The legalization of sports gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own. Our job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not. PASPA “regulate[s] state governments’ regulation” of their citizens. The Constitution gives Congress no such power.⁵⁴

After the *Murphy* decision came down, 12 states—New Jersey,⁵⁵ Delaware,⁵⁶ Mississippi,⁵⁷ New Mexico,⁵⁸ Pennsylvania,⁵⁹ Rhode Island,⁶⁰

⁵³ *Murphy*, 138 S. Ct. at 1478.

⁵⁴ *Id.* at 1485–86 (citation omitted).

⁵⁵ On June 11, 2018, New Jersey’s governor signed the sports betting bill and the first bet took place three days after. Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Aug. 2, 2019), http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states.

⁵⁶ Delaware legalized sports betting less than a month after the Supreme Court ruled that the federal law restricting single-game betting to Nevada was unconstitutional. *Id.* On June 5, 2018, Delaware offered single-game betting on a number of different sports at three casinos. *Id.*

⁵⁷ Mississippi enacted a new law in 2017 that allowed for sports betting once the Supreme Court decision was handed down. In June 2018, the Mississippi Gaming Commission adopted regulations for sports betting to take place at casinos, with mobile applications to follow. *Id.* Two casinos booked their first sports bets on August 1, 2018. *Id.*

⁵⁸ New Mexico has not passed any legislation legalizing sports betting, but the Santa Ana Star Casino & Hotel made the move to have sports betting via a gaming compact with the state. The compact permits “any or all forms of Class III Gaming,” which includes “[a]ny sports betting and pari-mutuel wagering.” *Id.*

⁵⁹ After Pennsylvania’s governor signed a sports betting bill in 2017, Hollywood Casino booked the first legal sports bet in mid-November of 2018. *Id.*

⁶⁰ In June 2018, Rhode Island’s governor signed the state budget that included language allowing sports betting. *Id.* Just six months after this move, Twin River Casino opened its doors for legal sports betting. *Id.*

Arkansas,⁶¹ New York,⁶² Iowa,⁶³ Oregon,⁶⁴ Indiana,⁶⁵ and West Virginia—joined Nevada who already permitted a wide variety of legal sports betting for decades.⁶⁶ Twenty-five other states are “moving toward legalization” of sports betting,⁶⁷ six states are “on deck” to legalize sports betting,⁶⁸ six states have laws that prohibit sports “full-blown sports betting,”⁶⁹ and one state, Utah, has an anti-gambling stance written into the state’s constitution.⁷⁰

III. SPORTS BETTING

The halftime report, Section III.A, first summarizes how West Virginia was at the forefront of the movement to legalize sports betting; it had a bill ready as soon as the United States Supreme Court handed down *Murphy v. NCAA*. Section III.B then explores the West Virginia Lottery Sports Wagering Act and the most important sections within that statute. Finally, Section III.C lays out the protocol for a person to hedge a bet and what penalties a person will face if he or she is caught trying to affect the outcome of any game.

A. *The Evolution of Sports Betting in West Virginia*

The introduction and legalization of sports betting laws in West Virginia began on January 10, 2018, when Senators Stephen Baldwin and Michael

⁶¹ Arkansas had its first legal sports bet on July 1, 2019 at the Oaklawn Racing Casino Resort. *Id.* Mobile online wagering is not permitted in Arkansas. *Id.*

⁶² A New York lawmaker and chair of the state’s racing and wagering committee was one of the first to place a legal sports wager in New York on July 1, 2019. *Id.* The opening of a legal sportsbook came six years after a law to allow sports betting at four on-site locations passed in New York. *Id.* This law sat dormant for years until the Supreme Court ruling in 2018. *Id.*

⁶³ The governor of Iowa signed into law a comprehensive bill to legalize sports betting. *Id.* Legal sports betting began in Iowa on August 15, 2019. *Id.* The new law allows mobile wagering. *Id.*

⁶⁴ Oregon is one of the states that had a law on the books permitting some forms of sports betting. *Id.* Legal sports betting began on August 27, 2019, with internet-based betting following soon. *Id.*

⁶⁵ Indiana began legal sports betting on September 1, 2019. *Id.* Indiana’s new law allows for both in-person and mobile wagering. *Id.*

⁶⁶ *Id.*

⁶⁷ The states include Maine, Connecticut, Kentucky, Michigan, Massachusetts, Maryland, Minnesota, Missouri, Kansas, Louisiana, Oklahoma, South Carolina, California, Ohio, Virginia, North Dakota, Arizona, Hawaii, South Dakota, Texas, Washington State, Georgia, Vermont, Colorado, and Alabama. *Id.*

⁶⁸ The states include Montana, Washington, D.C., Tennessee, Illinois, New Hampshire, and North Carolina. *Id.*

⁶⁹ The states include Alaska, Florida, Idaho, Nebraska, Wisconsin, and Wyoming. *Id.*

⁷⁰ *Id.*

Maroney introduced Senate Bill 106.⁷¹ Senate Bill 106 was a bill to amend the West Virginia Code by adding a new article designed to legalize sports pool betting. The Bill suggested that three sections be designated to the authorization of sports betting.⁷² Senate Bill 106's history was short-lived. It was introduced to the Senate but died in the Senate Judiciary Committee.⁷³

However, on January 29, 2018, eight Senators introduced Senate Bill 415.⁷⁴ Senate Bill 415 laid out 25 sections to be codified in the West Virginia Code.⁷⁵ After going through the Senate and House for four months, Senate Bill 415 became law on March 10, 2018, without Governor Jim Justice's signature.⁷⁶ Even though Senate Bill 415 passed by a 29-5 margin in the Senate, two Senators raised questions about whether Senate Bill 415 was legal under the West Virginia Constitution.⁷⁷ Judiciary Committee Chairman Senator Charles Trump responded, saying that "he believed the bill was in line with the state Constitution" because the "drafters of the bill were referring to sports betting as a lottery, for which there is an express constitutional exemption."⁷⁸ Senator Trump said lawmakers are "on this hamster wheel of calling things a lottery whether they are or not" because similar language was used "to allow for the passage of table games."⁷⁹ The "West Virginia Lottery Sports Wagering Act" is codified in W. Va. Code sections 29-22D-1 through 29-22D-24.⁸⁰

Two months after Governor Jim Justice steered clear of the sports betting issue in West Virginia, he let his position be known. He told a high-level

⁷¹ S. 106, 83d Leg., Reg. Sess. (W. Va. 2018), http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=SB106%20INTR.htm&yr=2018&sesstype=RS&i=106.

⁷² The proposed code sections are W. VA. CODE §§ 29-25A-1 to -3. *See* S. 106, 83d Leg., Reg. Sess. (W. Va. 2018), http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=SB106%20INTR.htm&yr=2018&sesstype=RS&i=106.

⁷³ S. 106, 83d Leg., Reg. Sess. (W. Va. 2018), http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=SB106%20INTR.htm&yr=2018&sesstype=RS&i=106.

⁷⁴ These senators include Senators Ryan Ferns, Craig Blair, Michael Maroney, Charles Trump IV, Ryan Weld, Michael Woelfel, Ron Stollings, and Tom Takubo. S. 415, 83d Leg., Reg. Sess. (W. Va. 2018), http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=SB415%20INTR.htm&yr=2018&sesstype=RS&i=415.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Rusty Marks, *Senate Passes Sports Betting Bill*, WVNEWS (Feb. 20, 2018), https://www.wvnews.com/news/wvnews/senate-passes-sports-betting-bill/article_990d4403-08cc-5a6a-a388-5abb6eafa768.html.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ W. VA. CODE ANN. §§ 29-22D-1 to -24 (West 2019).

gathering of people that he “want[s] it done.”⁸¹ Governor Justice “expressed support for professional sports leagues seeking a slice of the overall wagers.”⁸² This “integrity fee,” according to the leagues, “is necessary in fairness to their product.”⁸³ Governor Justice agrees that it is necessary because there is “no reason to make an enemy of the leagues, that there may be upside for West Virginia pursuing a friendly relationship with major league sports and that the casinos can afford the fee.”⁸⁴ When representatives for the casinos and professional sports leagues gathered in the “War Room” at state Lottery headquarters, Justice’s opinion was loud and clear for everyone in the room—“Get it done.”⁸⁵

B. West Virginia Sports Betting Laws

To date, West Virginia is home to five casinos—Hollywood Casino in Charles Town; FanDuel Sportsbook at the Greenbrier Resort; Wheeling Island Hotel, Casino, and Racetrack in Wheeling; Mountaineer Casino-Racetrack-Resort in New Cumberland; and Mardi Gras near Charleston—and all have started sports betting operations.⁸⁶ Sports betting in West Virginia opened up Labor Day Weekend of 2018 at the Hollywood Casino.⁸⁷ In the first four days of sports betting, Hollywood Casino took in approximately \$640,000 in total bets.⁸⁸ “Of the \$640,000 wagered, [50%] went back in payouts” and the state took 10[%] of what was left.⁸⁹ Eric Zimny, Racing Operations Vice President said that “more cash [was] taken in than paid out.”⁹⁰ However, Vice President Zimny mentioned that the numbers will fluctuate because payouts do not happen immediately in some cases.⁹¹

⁸¹ Brad McElhinny, *Governor Walks Fine Line on W.Va. Sports Betting Talks*, METRONews (May 15, 2018, 12:58 PM), <http://wvmetronews.com/2018/05/15/justice-walks-a-fine-line-on-wv-sports-betting-talks/>.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* Governor Justice also expressed that he wants it done “because it makes no sense that we don’t have a good partnership with the leagues.” *Id.*

⁸⁶ Steven Allen Adams, *W.Va. Lawmakers Briefed on Sports Betting Issues*, INTELLIGENCER, Sept. 18, 2018, at 1, 3.

⁸⁷ Jeff Jenkins, *First Weekend of Sports Betting Brings in \$640,000 in Total Bets*, METRONews (Sept. 4, 2018, 3:02 PM), <http://wvmetronews.com/2018/09/04/first-weekend-of-sports-betting-brings-in-640000-in-total-bets/>.

⁸⁸ Adams, *supra* note 86.

⁸⁹ Jenkins, *supra* note 87.

⁹⁰ *Id.*

⁹¹ *Id.*

1. Legislative Findings and Definitions

The Legislature found that “the operation of the four racetracks and the historic resort hotel in this state play a critical role in the economy” of West Virginia.⁹² The Legislature also showed how the state had authorization to legalize sports betting through the Tenth Amendment of the United States Constitution and Article VI, Section 36 of the West Virginia Constitution.⁹³ Further, the Act expresses that by creating a “secure and highly regulated environment” for sports betting, the illegal sports wagering channels that “pose a critical threat to the safety and welfare” for the citizens of West Virginia will begin to “positively benefit state revenues and the state’s economy.”⁹⁴ In order to operate and regulate sports betting in the most effective and efficient manner, the Legislature found that the Act will limit the number of operators who are allowed to be licensed.⁹⁵ Finally, the Legislature found that the operation of sports betting in the state will “serve[] to protect, preserve, promote, and enhance the tourism industry . . . as well as the general fiscal wellbeing of the state and its subdivisions.”⁹⁶

The Act also specifically defines 23 words used in the Act, ten of which are important to the discussion in this Note: “Collegiate sport or athletic event”;⁹⁷ “Commission or State Lottery Commission”;⁹⁸ “gaming equipment or sports wagering equipment”⁹⁹; “gaming facility”;¹⁰⁰ “license”;¹⁰¹ “Licensed gaming

⁹² W. VA. CODE ANN. § 29-22D-2(b)(1) (West 2019).

⁹³ *Id.* § 29-22D-2(b)(1)–(2) (The Tenth Amendment of the United States Constitution grants “powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved for the states and its respective citizens.”). Further, the West Virginia Constitution grants the state the “exclusive right to lawfully own and operate a lottery” through Article VI, Section 36. *Id.*

⁹⁴ *Id.* § 29-22D-2(b)(4).

⁹⁵ *Id.* § 29-22D-2(b)(6).

⁹⁶ *Id.* § 29-22D-2(b)(8).

⁹⁷ *Id.* § 29-22D-3(2) (A “collegiate sport or athletic event” is “a sport or athletic event offered or sponsored by, or played in connection with, a public or private institution that offers education services beyond the secondary level.”).

⁹⁸ *Id.* § 29-22D-3(3) (The “Commission or State Lottery Commission” is “the West Virginia Lottery Commission that was created by § 29-22-1” of the West Virginia Code.).

⁹⁹ *Id.* § 29-22D-3(5) (“Gaming equipment or sports wagering equipment” is “any mechanical, electronic or other device, mechanism, or equipment, and related supplies used or consumed in the operation” of sports betting.).

¹⁰⁰ *Id.* § 29-22D-3(6) (“Gaming facility” is “a designated area on the premises of an existing historic resort hotel” used “to operate video lottery machines.”).

¹⁰¹ *Id.* § 29-22D-3(9) (A “license” is “any license, applied for or issued by the commission . . . including, but not limited to”: (A) “license to act as agent of the commission,” (B) “license to supply a gaming facility,” (C) “license to be employed at a racetrack or gaming facility,” or (D) “license to provide management services under a contract to a gaming facility.”).

facility”;¹⁰² “Sports wagering account”;¹⁰³ “Sports wagering agreement”;¹⁰⁴ “West Virginia Lottery sports wagering or sports wagering”;¹⁰⁵ and “West Virginia Lottery sports wagering license.”¹⁰⁶ These ten terms are important to the discussion of this Note because the definitions of these terms provide a foundation for what is needed for casinos to have sports betting lounges.

2. The West Virginia Lottery Commission’s Duties

From “Mega Millions” to mega regulations, the West Virginia Lottery Commission (“Commission”) has gained numerous powers in regulating sports gambling in West Virginia. The Commission has numerous powers to best regulate sports pools. The Commission will look at other states’ regulated implementations and “adopt a similar regulatory framework”¹⁰⁷ as well as “enact any legislative, interpretive, and procedural rules” that are needed to successfully run, administer, and enforce the sports betting laws.¹⁰⁸ Further, “[t]he [C]ommission shall determine the eligibility of a person . . . to hold a license” and will collect any “fees, surcharges, civil penalties, and weekly tax on the adjusted gross sports wagering receipts . . . and deposit all moneys into the sports wagering fund.”¹⁰⁹ The Commission not only can sue to enforce any provision of the Act but also can conduct hearings and issue subpoenas.¹¹⁰

Moreover, the Commission has the power to grant licenses to authorize sports betting in certain locations. No person or entity can engage in any activity that involves sports betting unless the necessary license has been obtained.¹¹¹

¹⁰² *Id.* § 29-22D-3(10) (A “licensed gaming facility” is “a designated area on the premises of an existing historic resort hotel . . . or the facility of an entity authorized to operate racetrack video lottery machines.”).

¹⁰³ *Id.* § 29-22D-3(17) (A “sports wagering account” is “a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds” from.).

¹⁰⁴ *Id.* § 29-22D-3(18) (A “sports wagering agreement” is “a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in sports wagering.”).

¹⁰⁵ *Id.* § 29-22D-3(22) (“West Virginia Lottery sports wagering or Sports wagering” is “the business of accepting wagers on sporting events . . . , the individual performance statistics of athletes in a sporting event . . . , or a combination of any of the same by any system or method of wagering.”).

¹⁰⁶ *Id.* § 29-22D-3(23) (A “West Virginia Lottery sports wagering license” is the “authorization granted . . . which permits the gaming facility as an agent of the commission to operate West Virginia Lottery sports wagering in one or more designated areas.”).

¹⁰⁷ *Id.* § 29-22D-4(b).

¹⁰⁸ *Id.* § 29-22D-4(c).

¹⁰⁹ *Id.* § 29-22D-4(d)–(e).

¹¹⁰ *Id.* § 29-22D-4(f)–(g).

¹¹¹ *Id.* § 29-22D-5(b).

There are four types of licenses that can be issued and that will be discussed in subsections i, ii, iii, and iv, respectively: (i) operator, (ii) management services provider, (iii) supplier, and (iv) occupational.¹¹² Before a person or entity files for any of the four licenses, one must “submit an application to the [C]ommission in the form the [C]ommission requires and submit fingerprints for a national criminal records check.”¹¹³ All persons who are going to be named in the application must provide fingerprints and the application must “be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation.”¹¹⁴

“The [C]ommission may not grant any license” if evidence exists to show that the applicant has: (1) “knowingly made a false statement of a material fact to the commission”; (2) “been suspended from operating a gambling game”; (3) “been convicted of a crime of moral turpitude, a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated . . . a lack of respect for law and order”; or (4) “[i]s a company or individual who has been directly employed by any illegal or offshore book that serviced the United States.”¹¹⁵ The commission can also deny, reprimand, suspend, or revoke a license from any applicant for three reasons: (1) the applicant “has not demonstrated to the satisfaction of the commission financial responsibility,”¹¹⁶ (2) the applicant “is not the true owner of the business or is not the sole owner,”¹¹⁷ or (3) the applicant “is a corporation which sells more than [5%] of a licensee’s voting stock.”¹¹⁸

i. Operator License

An operator license grants the licensee “lawful authority to conduct” sports betting “within the terms and conditions of the license.”¹¹⁹ In order to apply and receive an operator license, the gaming facility must hold a valid racetrack video lottery license or a valid license to operate a gaming facility.¹²⁰ After the gaming facility submits an application and payment of the \$100,000 application fee, the Commission “shall immediately grant a West Virginia Lottery sports wagering license” to the facility.¹²¹ The license is issued

¹¹² *Id.*

¹¹³ *Id.* § 29-22D-5(d).

¹¹⁴ *Id.*

¹¹⁵ *Id.* § 29-22D-10(a)(1)–(4).

¹¹⁶ *Id.* § 29-22D-10(b)(1).

¹¹⁷ *Id.* § 29-22D-10(b)(2).

¹¹⁸ *Id.* § 29-22D-10(b)(3).

¹¹⁹ *Id.* § 29-22D-6(b). The Commission is not permitted to issue more than five licenses to operate sports betting in West Virginia. *Id.* § 29-22D-6(c).

¹²⁰ *Id.* § 29-22D-6(d).

¹²¹ *Id.*

for five years and can be renewed for five-year periods as long as the gaming facility continues to meet all qualification requirements and submits the \$100,000 renewal fee.¹²² The operator license authorizes the gaming facility to operate at sports betting locations and through any mobile application or other digital platforms.¹²³ The licensee must also “submit to the commission an annual audit of the financial transactions and condition of the licensee’s total operations prepared by a certified public accountant.”¹²⁴

ii. Management Services Provider License

A gaming facility with an operator license can “contract with an entity to conduct that operation in accordance with the regulations of the commission.”¹²⁵ The entity that wants to contract with an operator licensee must “obtain a license as a management services provider prior to the execution of any such contract.”¹²⁶ An applicant for a management services provider license must also meet all requirements for licensure and pay a \$1,000 nonrefundable license and application fee.¹²⁷ Lastly, a management services provider license can be renewed annually by any licensee who is still in compliance with all requirements and who pays the \$1,000 annual renewal fee.¹²⁸

iii. Supplier License

A supplier license is given to a person or entity that will “sell or lease sports wagering equipment, systems, or other gaming items necessary to conduct sports wagering.”¹²⁹ An applicant for a supplier license must “demonstrate that the equipment, system, or services” will conform to the standards established by the Commission,¹³⁰ as well as pay a \$1,000 nonrefundable license and application fee.¹³¹ The Commission can renew supplier licenses after a one-year term as long as the supplier licensee has complied with all requirements and has paid the \$1,000 renewal fee.¹³² A supplier licensee must “submit to the commission a list of all sports wagering equipment and services sold, delivered

¹²² *Id.*

¹²³ *Id.* § 29-22D-6(e).

¹²⁴ *Id.* § 29-22D-6(i).

¹²⁵ *Id.* § 29-22D-7(a).

¹²⁶ *Id.*

¹²⁷ *Id.* § 29-22D-7(b).

¹²⁸ *Id.* § 29-22D-7(c).

¹²⁹ *Id.* § 29-22D-8(a)(1).

¹³⁰ *Id.* § 29-22D-8(b).

¹³¹ *Id.* § 29-22D-8(c).

¹³² *Id.*

to, or offered to” a licensee.¹³³ Finally, if the supplier’s license expires, an operator licensee can still use supplies received by the supplier licensee as long as there are no defects found with the equipment, systems, or other gaming items.¹³⁴

iv. Occupational License

After the gaming facilities obtain the appropriate licenses to authorize sports betting, occupational licenses are granted to the employees at these facilities. Any person who is employed and will be engaged in sports betting activities must be licensed and “maintain a valid occupational license at all times.”¹³⁵ An occupational license can be obtained by submitting an application and a \$100 nonrefundable application fee.¹³⁶ The license can be renewed by June 30 every year for \$100 along with the submission of a renewal application on the form required.¹³⁷

3. House Rules for the Casinos that Receive Licenses to Implement Sports Betting

After a casino receives a license from the Commission, the road to legally operating a sports betting location does not end there. The operators have several duties as a licensee.¹³⁸ Not only does the operator have to adopt comprehensive house rules but also must “conspicuously display[]” the rules.¹³⁹ All operators that are licensed to conduct sports betting have the duties to “employ a monitoring system . . . to identify non-normal irregularities . . . which could signal suspicious activities”¹⁴⁰ and “report to the commission any facts or circumstances” that would violate state or federal law.¹⁴¹ The operators must also not “pose a threat to the public health, safety, or welfare of the citizens”¹⁴² and “[h]old the commission and this state harmless from and . . . pay for the defense” of any claims against the licensee.¹⁴³ And finally, the operators who are licensed

¹³³ *Id.* § 29-22D-8(d).

¹³⁴ *Id.*

¹³⁵ *Id.* § 29-22D-9(a).

¹³⁶ *Id.* § 29-22D-9(c) (The employer may pay the fee for the applicant.).

¹³⁷ *Id.* § 29-22D-9(d).

¹³⁸ *See id.* § 29-22D-12.

¹³⁹ *Id.* § 29-22D-11(a)–(b).

¹⁴⁰ *Id.* § 29-22D-12(a)(1).

¹⁴¹ *Id.* § 29-22D-12(a)(2).

¹⁴² *Id.* § 29-22D-12(a)(3).

¹⁴³ *Id.* § 29-22D-12(a)(4).

must maximize sports betting revenues and not fall behind on payments or obligations to the Commission.¹⁴⁴

All sports betting licensees will have to acquire sports betting equipment and provide a secure location for the equipment.¹⁴⁵ The licensees also will prevent any patron from tampering with or interfering with the operation of sports betting and ensure that sports betting is “conducted at a gaming facility . . . within the sight and control” of licensed employees.¹⁴⁶ Further, licensees must also ensure that sports betting occurs in specific locations designated for sports betting or while using a Commission-approved mobile application.¹⁴⁷ Finally, the licensees must have sufficient cash to conduct sports betting at all times and maintain “records showing the gross sports wagering receipts and adjusted gross sports wagering receipts.”¹⁴⁸

C. Hedge Your Bets!

As long as you are 21 years old,¹⁴⁹ not banned from entering a gaming area conducting sports betting,¹⁵⁰ not a licensed gaming facility employee,¹⁵¹ and not a Commission employee,¹⁵² you can bet on any game offered for that specific day. Operators can accept wagers from an individual physically located in West Virginia using a mobile platform or a sports betting device as well as an individual physically located in a state or jurisdiction that has entered into an agreement with the Commission about using a mobile platform to hedge bets.¹⁵³

¹⁴⁴ *Id.* § 29-22D-12(a)(5)–(6).

¹⁴⁵ *Id.* § 29-22D-12(b)(1).

¹⁴⁶ *Id.* § 29-22D-12(b)(2)–(3).

¹⁴⁷ *Id.* § 29-22D-12(b)(4).

¹⁴⁸ *Id.* § 29-22D-12(5)–(6).

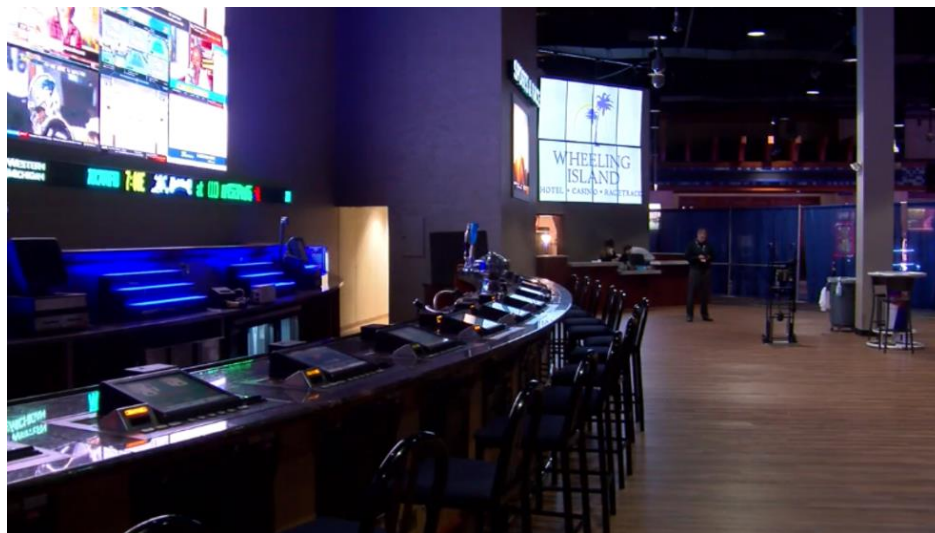
¹⁴⁹ *Id.* § 29-22D-15(a).

¹⁵⁰ *Id.* § 29-22D-15(d).

¹⁵¹ *Id.* § 29-22D-15(g).

¹⁵² *Id.* § 29-22D-15(h).

¹⁵³ *Id.* § 29-22D-15(b)–(c).



Sports Betting Lounge at Wheeling Island Racetrack and Casino in Wheeling, WV¹⁵⁴

“[10%] of the licensee’s adjusted gross sports wagering receipts from the operation” of sports betting facilities is collected by the state “[f]or the privilege of holding the license to operate sports wagering.”¹⁵⁵ The tax is “due and payable to the commission in weekly installments on or before the Wednesday following the calendar week in which the adjusted gross sports wagering receipts were received and the tax obligation was accrued.”¹⁵⁶ The taxes collected by the commission goes into a special fund in the State Treasury known as the “West Virginia Lottery Sports Wagering Fund.”¹⁵⁷

Furthermore, the “West Virginia Lottery Sports Wagering Fund” (“The Fund”) “is an interest-bearing account with all interest or other return earned on the money” that must be credited and deposited in The Fund.¹⁵⁸ The Commission can deduct from the gross deposits in The Fund for “its actual costs and expenses incurred in administering sports wagering.”¹⁵⁹ After all costs are deducted, the amount left is the net profit.¹⁶⁰ Net profit will be deposited into the State Lottery

¹⁵⁴ Jaime Baker, *Wheeling Island Waiting on App Development for Sports Betting*, WTOV9 (Nov. 19, 2018), <https://wtov9.com/news/local/wheeling-island-waiting-on-app-development-for-sports-betting> (This is a picture of the sports betting lounge at Wheeling Island Casino in Wheeling, West Virginia.).

¹⁵⁵ W. VA. CODE ANN. § 29-22D-16(a) (West 2019) (The 10% collected is called a “privilege tax” or “tax.”).

¹⁵⁶ *Id.* § 29-22D-16(b)(1).

¹⁵⁷ *Id.* § 29-22D-17(a).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* § 29-22D-17(b).

¹⁶⁰ *Id.*

Fund¹⁶¹ until a total of \$15 million is deposited.¹⁶² After \$15 million is deposited in The Fund, “the remainder shall be deposited into the Public Employees Insurance Agency Financial Stability Fund to stabilize and preserve the future solvency of PEIA.”¹⁶³

1. Don’t Bet on the Wrong Horse

For those tempted to cheat in their quest to beat the house, the Commission is authorized to impose a civil penalty of up to \$50,000 for each violation on any person who violates a provision of the law.¹⁶⁴ If a person decides to “engage[] in accepting, facilitating, or operating a sports wagering operation,” they are guilty of a misdemeanor for the first two convictions.¹⁶⁵ If a third conviction is committed, the person is guilty of a felony and will be fined between \$25,000 and \$100,000 “or imprisoned in a state correctional facility for not less than one year nor more than five years.”¹⁶⁶

Under W. Va. Code section 29-22D-21(a), “[a] sports wagering licensee is guilty of unlawful operation and is guilty of misdemeanor when” the licensee (1) operates without authority of the commission; (2) operates in any location or any manner not approved by the commission; (3) knowingly allows sports betting to occur on a premise or device that has been tampered with; (4) employs an individual that does not hold the appropriate license; (5) employs an individual to encourage participation at a specific sports betting location; (6) knowingly allows an individual under 21 years of age to enter or remain in a gaming facility; or (7) exchanges tokens, chips, electronic media, or other forms of credit used for sports betting for anything of value except money or credits.¹⁶⁷ Any person who violates section 29-22D-21(a) should “be fined not more than

¹⁶¹ See *id.* The State Lottery fund is created by W. Va. Code section 29-22-18.

¹⁶² *Id.* § 29-22D-17(b)(2).

¹⁶³ *Id.* Washington, D.C. will have a similar game plan when it comes to depositing some money made off of sports betting into different funds. In Washington, D.C., “half of the tax revenue is earmarked to subsidize early-childhood care and similar programs, with the rest dedicated to fund the D.C. Commission on the Arts and Humanities.” Fenit Nirappil, *Sports Betting Would Be Legal in D.C. Under Newly Introduced Legislation*, WASH. POST (Sept. 18, 2018), https://www.washingtonpost.com/local/dc-politics/sports-betting-would-be-legal-in-dc-under-newly-introduced-legislation/2018/09/18/442b3bdc-bb55-11e8-9812-a389be6690af_story.html?utm_term=.b5b7c8f60c67. Washington, D.C. has stated that if those programs end up being fully funded, the leftover money would go to the city’s discretionary general fund. *Id.*

¹⁶⁴ W. VA. CODE ANN. § 29-22D-19(a) (West 2019).

¹⁶⁵ *Id.* § 29-22D-20(a)–(b) (For the first offense, the person is “fined not more than \$10,000 or confined in jail for not more than ninety days, or both.” For the second offense, the person is “fined not more than \$50,000 or confined in jail for not more than six months, or both.”).

¹⁶⁶ *Id.* § 29-22D-20(c).

¹⁶⁷ *Id.* § 29-22D-21(a)(1)–(7).

\$1,000 or confined in jail for not more than six months, or both fined and confined.”¹⁶⁸ If a violation under section 29-22D-21(a) is not committed by a natural person, the fine is not more than \$25,000.¹⁶⁹

The Act lays out seven different scenarios when a person will be found guilty of a felony.¹⁷⁰ A person is guilty of a felony if he or she “changes or alters the normal outcome of any game played on a mobile or other digital platform.”¹⁷¹ It is also a felony for a person to “manufacture[], sell[], or distribute[] any device that is intended by that person to be used to violate any provision of this article.”¹⁷² Further, a person is also guilty of a felony if he or she, after unlawfully acquiring knowledge of the outcome of a game, “places a bet or aids any other individual in placing a bet.”¹⁷³ It is also a felony to “claim[], collect[], or take[] anything of value from a gaming facility with . . . intent to defraud” or “knowingly place[] a wager using counterfeit currency.”¹⁷⁴ The most important felony pertaining to the topic of this Note is in section 29-22D-21(b)(1). This section lays out that a person is guilty of a felony when

[a] person offers, promises, or gives anything of value to anyone for the purpose of influencing the outcome of a race, sporting event, contest, or game upon which a wage may be made, or a person, places, increases, or decreases a wager after acquiring knowledge, not available to the general public, that anyone has been offered, promised, or given anything of value for the purpose of influencing the outcome of the race, sporting event, contest, or game upon which the wager is placed, increased or decreased, or attempts to do any of the same.¹⁷⁵

Any person who is in violation of section 29-22D-21(b) could be fined between \$5,000 and \$10,000 or be confined “for not less than one year nor more than five years, or both fined and confined.”¹⁷⁶

Not only does it take several steps to get licensed to operate sports betting, sports betting requires far-reaching regulation to keep each race track and casino up to date and keep the employees licensed. Because of the extensive regulation that goes into sports betting, the road ahead, for not only West Virginia but other states, will not be an easy one. Section IV of this Note will discuss the

¹⁶⁸ *Id.* § 29-22D-21(c).

¹⁶⁹ *Id.*

¹⁷⁰ *See id.* § 29-22D-21(b)(1)–(7).

¹⁷¹ *Id.* § 29-22D-21(b)(2).

¹⁷² *Id.* § 29-22D-21(b)(3).

¹⁷³ *Id.* § 29-22D-21(b)(4).

¹⁷⁴ *Id.* § 29-22D-21(b)(5)–(6).

¹⁷⁵ *Id.* § 29-22D-21(b)(1).

¹⁷⁶ *Id.* § 29-22D-21(d).

road bumps that West Virginia and other states face in regard to making sure the race tracks and casinos stay licensed as well as make sure people like the bettin' man do not exploit intercollegiate athletes.

IV. SPORTS BETTING'S NEGATIVE IMPACT ON INTERCOLLEGIATE SPORTS

Just like the hypothetical situation that this Note started off with, there have been plenty of situations where college athletes have been paid to shave points or throw games entirely. Mixing sports betting with intercollegiate sports and young college athletes is a recipe for moral corruption. With this new era of legalized sports betting, we will see leagues such as the NCAA or the NBA, law enforcement, and sports betting commissions in states that have legalized sports betting place extra focus on trying to ensure that sports betting is incorruptible. Ever since the dawn of sports, people like the bettin' man in the opening hypothetical situation have been trying to find ways to infiltrate the games and encourage players to help shift the odds in his or her favor. Why would legalizing sports betting discourage people like the bettin' man from corrupting the players and paying them to point-shave or throw games?

With the bettin' man in mind, Part IV will discuss how legalizing sports betting could be the downfall of intercollegiate sports without proper regulation and penalties for people involved in trying to corrupt intercollegiate sports as we know them today. Section IV.A will start off by giving five examples of how people just like the bettin' man have infiltrated the NCAA and have resulted in multiple games being thrown, points being shaven, and players and gamblers being indicted. Next, Section IV.B will discuss possible negative side effects of legalizing sports betting. And finally, Section IV.C will offer suggestions on how to discourage people from corrupting intercollegiate sports and possible penalties that could be imposed on people and players who do throw games or point-shave.

A. *Scandals That Still Stain the Play Books*

This Section will lay out five different scandals that have taken place within the NCAA. These scandals may seem like they happened a long time ago, but some have occurred within the last quarter century. Most of the scandals that happen within the NCAA occur with college basketball teams because it is a lot easier to throw games and shave points when there are only five players on the basketball court compared to eleven players on a football field. But that is not to say it cannot happen on the football field, as one of the scandals below involved a football team. Even though some of the most famous scandals have happened in professional leagues, the focus of these scandals is on the NCAA because the focus of this Note is how sports betting could potentially be the downfall of intercollegiate sports as we know them today.

Because most of the scandals that happen involve point-shaving, a definition of point-shaving will be helpful. Point-shaving does not mean letting the other team win; rather, it occurs if a team intentionally fails to cover the point

spread for that given game.¹⁷⁷ Merriam-Webster dictionary defines point-shaving as “an attempt (as by a member of the team favored to win) to influence the final score of a game so that the predicted winner wins by less than the point spread.”¹⁷⁸ Northwestern’s former athletic director, Rick Taylor, said that point shaving “purely and simply is betrayal. Betrayal of self, teammate, family, coaches, university and the very game itself.”¹⁷⁹

1. CCNY Point-Shaving Scandal of 1950

Thirty-two basketball players from seven different schools—including City College of New York, New York University, Long Island University, Manhattan College, Bradley University, Toledo, and Kentucky¹⁸⁰—were caught up in a mafia-run point shaving scandal.¹⁸¹ This specific and complex scandal affected 86 games during the 1950–51 basketball season.¹⁸² The NCAA took a major hit from this scandal because the majority of the accused players were on CCNY’s team, which became the first and only team to ever win both the NCAA and NIT tournament.¹⁸³ The scandal destroyed the team, and CCNY’s program crippled and dropped to Division III.¹⁸⁴ Further, Long Island University shut down its basketball program for seven years after this scandal.¹⁸⁵ Coach Adolph Rupp¹⁸⁶ insisted that none of his players were involved, but the University of Kentucky was banned for a full season as well.¹⁸⁷ And, to everyone’s surprise,

¹⁷⁷ Ray Gustini, *How Point Shaving Works: An Explainer, After Two Players and an Ex-coach Are Charged with Fixing Games*, ATLANTIC (Apr. 12, 2011), <https://www.theatlantic.com/entertainment/archive/2011/04/how-point-shaving-works/349575/>.

¹⁷⁸ *Point-shaving*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/point-shaving> (last visited Sept. 1, 2019).

¹⁷⁹ Associated Press, *Point-Shaving Scandal Rocks Northwestern*, NWI TIMES (Mar. 27, 1998), https://www.nwitimes.com/uncategorized/point-shaving-scandal-rocks-northwestern/article_816749ed-fda0-52fa-a5a8-c6393876be0b.html.

¹⁸⁰ Sean Isabella, *Sports Betting: Notable Point-Shaving Scandals in NCAA History*, REG.-HERALD (July 2, 2018), https://www.register-herald.com/news/local_news/sports-betting-notable-point-shaving-scandals-in-ncaa-history/article_a5bebdb2-7d6e-11e8-b705-cfb60df44db3.html.

¹⁸¹ Chris Chase, *11 Biggest Scandals in Sports Gambling History*, USA TODAY (May 16, 2018, 7:31 AM), <https://ftw.usatoday.com/2018/05/11-biggest-scandals-in-sports-gambling-history>.

¹⁸² Isabella, *supra* note 180.

¹⁸³ Robbins, *supra* note 1.

¹⁸⁴ Isabella, *supra* note 180.

¹⁸⁵ *Id.*

¹⁸⁶ University of Kentucky’s head basketball coach at the time. See Joe Goldstein, *Explosion: 1951 Scandals Threaten College Hoops*, ESPN CLASSIC (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_explosion.html. The basketball arena is currently named after him. *About Us*, RUPP ARENA, <https://www.rupparena.com/arena-information/about-us> (last visited Sept. 1, 2019).

¹⁸⁷ Goldstein, *supra* note 186.

Kentucky's Ralph Beard and Alex Groza were banned from the NBA for their involvement in the scandal.¹⁸⁸

2. Boston College's Point-Shaving Scandal of 1978–79

Three basketball players—Jim Sweeney, Rick Kuhn, and Ernie Cobb—became mixed up with Henry Hill, a New York mobster who had a plan to manipulate the outcome of some of Boston College's games in the 1978–79 season.¹⁸⁹ Nine games were fixed in total.¹⁹⁰ Kuhn, who served four years in prison for conspiracy and racketeering, hatched the plan with Hill's associates to shave points in several Boston College games between December 1978 and March 1979.¹⁹¹ Kuhn convinced Sweeney and Cobb to join the plan because Sweeney was the point guard who controlled the ball for much of the game and Cobb was the team's leading scorer.¹⁹² Sweeney said he was recruited by Kuhn without his knowledge and never intentionally missed a shot nor did anything to alter the game, but he did admit to accepting money.¹⁹³ Sweeney said he kept with the plan because Hill once mentioned Sweeney's now wife in one of his threats, asking Sweeney, "how would your honey feel if she saw your — hanging in a bracelet?"¹⁹⁴ Sweeney also mentioned how the mob clichés about "cement shoes"¹⁹⁵ are not just things Hollywood puts in movies.¹⁹⁶

3. Tulane Point-Shaving Scandal of 1985

Three basketball players and five others¹⁹⁷ were indicted in a point-shaving scandal that caused Tulane to shut down its men's basketball

¹⁸⁸ Isabella, *supra* note 180.

¹⁸⁹ Tom Van Riper, *ESPN Looks Back on Boston College Point Shaving Scandal – And a Player Speaks Out*, FORBES (Oct. 1, 2014, 6:42 AM), <https://www.forbes.com/sites/tomvanriper/2014/10/01/espn-looks-back-on-boston-college-point-shaving-scandal-and-a-player-speaks-out/#1003ec6a26b8>.

¹⁹⁰ Isabella, *supra* note 180.

¹⁹¹ Riper, *supra* note 189.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Cement shoes can be defined as "[a] murder method in which a victim's feet are encased in cement until it hardens, at which time he is dumped into a body of water." *Mafia Slang*, <http://mafiastrickster.tripod.com/kikai/mafiaslang.html> (last visited Sept. 1, 2019).

¹⁹⁶ Riper, *supra* note 189.

¹⁹⁷ The five others consisted of three students, a bookmaker, and one other man. Frances Frank Marcus, *8 Indicted in Tulane Scandal; School to Give Up Basketball*, N.Y. TIMES (Apr. 5, 1985), <https://www.nytimes.com/1985/04/05/sports/8-indicted-in-tulane-scandal-school-to-give-up-basketball.html>.

program until 1990.¹⁹⁸ Five players in total were caught for trying to throw games at Tulane. Three players, John “Hot Rod” Williams, David Dominique, and Bobby Thompson, were indicted on charges because they violated Louisiana’s sports bribery law, while two other players, Clyde Eads and Jon Johnson, had been given immunity and testified before a grand jury.¹⁹⁹ Williams, Dominique, and Thompson were indicted on charges for violating Louisiana’s sports bribery law.²⁰⁰ The five basketball players were accused of shaving points in three of Tulane’s basketball games.²⁰¹ The indictment did not include the amount of money involved, but it is said that \$13,500 was at stake in one game and \$3,500 in one of the other games.²⁰² It is also said that the point-shaving scandal was devised by three Tulane students.²⁰³ One of the students was also indicted on charges of distributing cocaine to players to try and gain the friendship of the players.²⁰⁴

4. Northwestern Point-Shaving Scandal of 1995

Two teammates on the men’s basketball team and two gamblers were given a brief prison sentence for their role in fixing three games during the Northwestern men’s basketball 1994–95 season.²⁰⁵ Guard Kenneth Lee was allegedly given \$4,000 to recruit two more players to help lose games by large margins in order to beat the point spread for the given game.²⁰⁶ Lee and Dewey Williams were each charged with point-shaving, while the two gamblers were charged with conspiring to fix the outcome of three games during the season.²⁰⁷ Furthermore, Lee was suspended by the school for six games during the 1994–95 season for betting on *football* games.²⁰⁸ Only weeks after Lee’s return to the team was he involved in conspiring to shave points.²⁰⁹ Even though the

¹⁹⁸ Isabella, *supra* note 180. Dr. Eamon M. Kelly, the president at Tulane, said that “[t]he only way I know to demonstrate unambiguously this academic community’s intolerance of the violations and actions we have uncovered is to discontinue the program in which they originated.” Marcus, *supra* note 197.

¹⁹⁹ Marcus, *supra* note 197.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Matt O’Connor, *4 Sentenced in Gambling Plot at NU*, CHI. TRIB. (Nov. 25, 1998), <https://www.chicagotribune.com/news/ct-xpm-1998-11-25-9811250093-story.html>.

²⁰⁶ Isabella, *supra* note 180.

²⁰⁷ Associated Press, *supra* note 179.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

prison terms were short,²¹⁰ the federal judge believed incarceration was necessary to try and deter others “from tainting the integrity of collegiate sports.”²¹¹ The scandal was planned in just a week during a series of telephone calls. The Assistant United States Attorney expressed that “[t]hat’s part of the danger, that [planning to throw games] could be done so easily and quickly.”²¹²

5. Northwestern Football Scandal of 1995

Just eight months after the Northwestern University basketball players were caught for point-shaving, four Northwestern University football players were indicted on perjury charges related to betting on their own games.²¹³ “The indictments . . . charge[d] the players with lying to a Federal grand jury when they denied betting on Northwestern games in 1994”²¹⁴ Only one of the players, Dennis Lundy, was accused of taking action to throw a game because he testified falsely when he denied fumbling the ball on purpose in a game against Iowa.²¹⁵ Lundy was Northwestern’s career-leading rusher and testified that he “got hit on the arm real good, and the ball just came out.”²¹⁶ However, the prosecutors “alleged that the game film did not support Lundy’s claim” and he was charged with perjury.²¹⁷

B. How Sports Betting Will Negatively Impact Intercollegiate Sports

A lesson to be learned from the five examples above is that history has a way of repeating itself. As seen in the examples above, a major negative that could come with the legalization of sports betting is gamblers infiltrating the NCAA by offering college athletes money to shave points during a game or throw a game all together. Not only is this illegal, it will also corrupt intercollegiate sports and the athletes as we know them today. Gamblers giving college athletes money to shave points or throw games will cause spectators and fans to second guess if the missed free throw was a natural occurrence; if the dropped pass was on purpose; if the star center’s poor performance was for a

²¹⁰ Kenneth Lee and teammate Dewey Williams were just given one month in prison. Isabella, *supra* note 180.

²¹¹ O’Connor, *supra* note 205.

²¹² *Id.*

²¹³ Bill Dedman, *College Football; 4 Are Indicted in Northwestern Football Scandal*, N.Y. TIMES (Dec. 4, 1998), <https://www.nytimes.com/1998/12/04/sports/college-football-4-are-indicted-in-northwestern-football-scandal.html>.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

reason. Ultimately, spectators and fans will start to lose faith in the integrity of intercollegiate sports, and confidence in the outcomes of games will erode.

Subsequently, the gamblers that do well on choosing the point spread²¹⁸ or over/under²¹⁹ for the game may start to petition for sports betting lounges to be placed in coliseums and arenas around the country. This may sound appealing at first to the universities because they could get a cut of the profits or bets that are hedged. But imagine this: Jevon Carter²²⁰ just stole the ball and slammed it home for two to beat the Kansas Jayhawks. Carter and the rest of his team start to celebrate as *Country Roads* begins to play. Unfortunately for the team, half of the fans are out in the sports betting lounges hedging bets, and there is only half a crowd to belt out *Country Roads*,²²¹ sway back and forth in the stands, and celebrate the big win. Not only could sports betting infiltrate the locker rooms and players on the court, but it could cause the atmosphere of intercollegiate sports to go from supporting your team to getting mad that your team didn't win by the spread you hedged your bet on. Further, as seen in the examples above, it could cause athletic programs to shut down for some time due to the corruption of sports betting.

Furthermore, to cover the costs of investigating teams, players, universities, or coaches, the NCAA may need more revenue to pay for the additional employees or safeguards that would need to be put in place to make sure corruption stays out of the locker rooms. Where would this extra revenue come from? Fans and spectators could see a rise in not only ticket prices, but concession stand food and drink prices could become even more high-priced. Jerseys, t-shirts, and other team memorabilia could also increase in price to try and cover the costs of extra employees that will be needed to regulate and potentially investigate potential problems within the NCAA.

²¹⁸ A point spread is “a figure set by oddsmakers to provide an advantage or disadvantage based on the margin of victory or defeat for a given team.” *Point Spread Betting*, ODDS SHARK, <https://www.oddsshark.com/sports-betting/point-spread-betting> (last visited Sept. 1, 2019). The “favorite” team is labeled with a “-” sign and would be at a disadvantage because they would need to win the game by a set number of points. *Id.* The “underdog” team is labeled with a “+” sign and would be given an advantage to not lose the game by a set number of points. *Id.*

²¹⁹ Over/under is also called a “totals bet.” The total of any given sporting event is a combined score of *both* teams. As a bettor, you would need to select if the total number of points scored by *both* teams will be *over* or *under* the set total made by oddsmakers. *Total Number of Points: What Is Over/Under Betting?*, ODDS SHARK, <https://www.oddsshark.com/sports-betting/over-under-betting> (last visited Oct. 24, 2019).

²²⁰ Jevon Carter played for the West Virginia University men's basketball team from 2014 until 2018. Carter was then drafted into the NBA by the Memphis Grizzlies. *Jevon Carter*, BASKETBALL REFERENCE, <https://www.basketball-reference.com/players/c/carteje01.html> (last visited Sept. 1, 2019).

²²¹ The infamous song by John Denver that is sung after every West Virginia University athletic team wins a sporting event. See University Relations, *Traditions*, W. VA. U., <https://mountaineersgofirst.wvu.edu/traditions> (last visited Sept. 1, 2019).

Additionally, the spectators and fans might start watching the games for the wrong reasons. For professional gamblers, “winning *is* the point”²²² of why the gambler will go to or tune in to the game. Appreciating the raw talent that is collegiate sports does not matter when one’s money is on the line. “Nothing is as bewitching as money. When it’s at risk, your mind can think of nothing else—and sometimes even when it’s not at risk.”²²³ This possible negative is shown by Marc Tracy, a blogger and Washington Redskins fan, who tests this potential consequence of whether “betting distorts one’s appreciation of the game; if the psychic benefits outweighed the costs, literal or otherwise; and if [he] could balance one type of entertainment (elite competition) with another (risking money).”²²⁴

One Saturday night Tracy was still watching a Minnesota Vikings and Green Bay Packers game where the Packers were certain to win.²²⁵ The sole reason Tracy was still watching the contest is because he had wagered \$50 on the game, specifically on the point spread.²²⁶ Tracy admitted to not watching the “same game” that the coaches and players were watching because it was the Packers’ best bet to play conservatively and run the ball.²²⁷ But for Tracy and the thousands of others who had hedged bets on the point spread, the bettors wanted the Packers to play aggressively for the first few downs and prolong the possession so the Vikings did not get another opportunity to have the ball.²²⁸ However, the Vikings ended up with the ball with 19 seconds left, frustrating the thousands of gamblers who had hedged bets. Tracy admitted that if he was a disinterested fan, he “would have rooted for something exciting to happen [like] a completed Hail Mary . . . or a mesmerizing run by Adrian Peterson.”²²⁹ Unfortunately, with money on the line, Tracy “practically begged [the Minnesota Vikings] to take a knee.”²³⁰ The Vikings refused to take a knee and had one more attempt to score. Even though the touchdown would be meaningless to the Vikings, that one touchdown would affect Tracy’s chances of winning or losing his \$50 bet. Luckily for Tracy and the thousands of others who bet, the final pass was incomplete, and Tracy won his first bet and was \$48 richer.²³¹

²²² Marc Tracy, *Gambling with NFL Fandom*, NEW REPUBLIC (Feb. 2, 2013), <https://newrepublic.com/article/112299/football-bets-gambling-nfl-mostly-ruins-sport>.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

Tracy also discussed how he had trouble celebrating Colin Kaepernick's emergence because he had bet on the Packers.²³² And also how he could not enjoy "the Atlanta Falcons's nearly perfect ball control" because he did not bet on them.²³³ Money was all Tracy could think about after he hedged several long-term bets on who was going to win the Super Bowl. Tracy was no longer a "carefree spectator" but was now a hardened investor with money on the line for each point scored.²³⁴

C. Penalty Box

While the focus of this Note is on the effects of betting in collegiate sports, no discussion of the potential penalties for illegal sports betting would be complete without discussing the story of Pete Rose. Pete Rose is a former American professional baseball player and manager; he played from 1963 to 1986 and managed from 1984 to 1989.²³⁵ Rose has an impressive resume. He is the only player in Major League history to play more than 500 games at five different positions, holds the MLB record for the number of games played and hits, was on the National League All-Star team 17 times, and is the first player since 1943 to be *banned for life* from baseball.²³⁶ Rose was a shoo-in for the Hall of Fame in Cooperstown, New York, but the ban made him ineligible to be in Cooperstown. The events leading to his ban occurred during the 1986 season when Rose was player-manager of the Cincinnati Reds.²³⁷ Allegations arose that Rose was involved in betting heavily on sports results, "including Major League baseball games, and possibly even his own team."²³⁸ MLB has a rule that explicitly prohibits players or anyone employed by a Major League team to hedge a bet on any Major League game and especially on a game in which he is playing.²³⁹ An investigation was conducted, and the evidence revealed that Rose did bet on Major League games and on games in which his own team was playing.²⁴⁰

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ CNN Library, *Pete Rose Fast Facts*, CNN, <https://www.cnn.com/2013/05/07/us/pete-rose-fast-facts/index.html> (last updated May 7, 2018, 10:11 AM).

²³⁶ *Id.*

²³⁷ *Banning of Pete Rose*, BASEBALL REFERENCE, https://www.baseball-reference.com/bullpen/Banning_of_Pete_Rose (last updated Dec. 16, 2017, 2:03 PM).

²³⁸ *Id.*

²³⁹ *Id.* This rule is known as Rule 21 and is displayed in every Major League clubhouse. *Id.* Its violation results in a lifetime ban from baseball. *Id.* Rule 21 was put in place to "clean up baseball" after the Black Sox Scandal. *Id.*

²⁴⁰ *Id.*

At first, Rose denied all allegations that he bet and even filed suit against the MLB. Because this scandal was beginning to cause significant damage to baseball's image, the then league Commissioner, A. Bartlett Giamatti, decided to make a deal with Rose.²⁴¹ The deal required that Rose would agree to withdraw his suit against MLB and accept a lifetime ban, while the MLB would not find Rose guilty of betting.²⁴² The deal even allowed Rose to ask for reinstatement to the Hall of Fame in Cooperstown after a later date.²⁴³ Shortly after Giamatti and Rose made this deal, "the Hall of Fame passed a [new] rule that a banned player would be ineligible for election."²⁴⁴ Because of this new rule, Rose's name has never appeared on a Hall of Fame ballot even though he has been eligible for election since 1991.²⁴⁵ Rose was hopeful that he would be able to obtain reinstatement, but Giamatti's successors have all refused to re-open the decision.²⁴⁶

Today, Rose getting banned from baseball for life probably seems like too severe of a punishment to a majority of people. But does it seem too severe when you think about a player, manager, or coach betting on a game that he or she has the power to control? It would be like someone who is able to see the future of the stock market and know when and where to invest his or her money. It would be (and is) extremely unfair. If sports betting is not heavily regulated and policed, we may see collegiate sports become corrupt and more and more universities and colleges shutting their programs down. To make sure intercollegiate sports stay full of pure and raw talented athletes, there needs to be severe punishments for the players, managers, coaches, universities, colleges, and gamblers to dissuade people from trying to infiltrate collegiate sports.

The NCAA has bylaws against sports wagering.²⁴⁷ The bylaws enumerates four groups of people who "shall not knowingly participate in sports wagering activities or provide information to individuals involved in or associated with any type of sports wagering activities concerning intercollegiate, amateur or professional athletics competition": (1) staff members of an athletic department; (2) nonathletics department staff members who have responsibilities in the athletics department; (3) staff members of a conference office; and (4) the

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ The NCAA defines "sports wagering" as including "placing, accepting or soliciting a wager (on a staff member's or student-athlete's own behalf or on the behalf of others) of any type with any individual or organization on any intercollegiate, amateur or professional team or contest." NCAA ACAD. & MEMBERSHIP STAFF, 2019-20 NCAA DIVISION 1 MANUAL § 10.02.1, at 44 (2019), <http://www.ncaapublications.com/productdownloads/D120.pdf>.

student-athletes.²⁴⁸ Any student-athlete, whether enrolled or a prospective student, found in violation is ineligible for further intercollegiate competition.²⁴⁹ These student-athletes can appeal to the Committee on Student-Athlete Reinstatement for restoration of his or her eligibility.²⁵⁰ Institutional staff members are subject to disciplinary action as set forth in Bylaw 19.9.²⁵¹ However, there should be more penalties not only for the student-athletes and coaches and managers, but for the universities and colleges as a whole. The rest of this Section will offer suggestions on harsher penalties that student-athletes, coaches, managers, universities and colleges should have to be faced with. The penalties discussed below are just examples of what *could be* implemented to deal with the corruption that is bound to happen in intercollegiate sports.

Starting with the center of attention, the players. The players who are involved in any scandal dealing with sports betting should have to pay double the amount that he or she received to shave points or throw a game as well as forfeit any scholarship the player has been awarded by the college or university. Further, high-profile players, among the likes of Zion Williamson,²⁵² Will Grier,²⁵³ and Nassir Little²⁵⁴ who have a high probability of making it to the professional level, should also be subjected to penalties from his or her respective professional organization, such as a two-year probationary period. During this probation, a probation officer will have to make sure the player is not hedging bets on *any* athletic competitions.

Next in the spotlight is the face of the team—the coaches or managers. The NCAA Bylaws have an entire section on penalties for team administration and leadership.²⁵⁵ First, a hearing panel has to determine whether a party is subject to standard penalties or should be subject to higher penalties under aggravated factors.²⁵⁶ However, it would benefit everyone involved if coaches and managers had a bylaw put in place that explained the penalties he or she would be subjected to if he or she was involved in sports betting. Coaches and managers who are caught hedging bets should be under a similar system to the student-athletes. If a coach or manager is caught hedging bets on his or her own team, that decision should result in the coach or manager receiving a lifetime ban from coaching any NCAA-sponsored team because a coach has a lot of power to

²⁴⁸ *Id.* § 10.3, at 44–45.

²⁴⁹ *Id.* § 10.4, at 45.

²⁵⁰ *Id.*

²⁵¹ Bylaw 19.9 sets out different levels of violations and penalties based on the levels. *Id.* § 19.9.

²⁵² Powerhouse center for the Duke University Blue Devils from 2018-2019.

²⁵³ Quarterback for the West Virginia University Mountaineers from 2016-2018.

²⁵⁴ Small forward for the University of North Carolina Tarheels from 2018-2019.

²⁵⁵ See DIVISION 1 MANUAL § 19.9.

²⁵⁶ *Id.* § 19.9.2.

throw a game if he or she bets money on the game. Further, the coach or manager should pay back the salary that he or she has been awarded until he or she is found guilty of hedging bets. If a coach or manager hedges a bet on someone other than his or her own team, those situations should be reviewed on a case-by-case basis. Depending on what measures the coach or manager took to hedge the bet, the fine would vary based on severity. For a minimal offense,²⁵⁷ the fine should be \$50,000 to be paid by the coach or manager and a two-year suspension. For a more severe offense,²⁵⁸ the fine should range from \$100,000 to \$500,000 maximum and up to a ten-year suspension.

The university or college that is linked to the scandal does not necessarily have to shut down the respective program like Tulane did right off the bat. The first offense of sports betting with student-athletes or coaches should result in a fine to university or college²⁵⁹ and the scholarships for that specific sport should be taken away over a period of time.²⁶⁰ The second offense should result in the university or college being barred from participating in the postseason and NCAA-sponsored events for the upcoming season. And for the third offense, the university or college should shut down the respective program for one full athletic season.

Currently in West Virginia, the gamblers that try to influence the outcome of the games are guilty of a felony and will be either fined, imprisoned, or both fined and imprisoned.²⁶¹ If it is the gamblers first offense, he or she should also be banned from hedging any sports bets for six months. If it is a second offense, he or she should be banned from hedging sports bets for a full calendar year. And for a third offense, he or she should be prohibited from hedging sports bets on any sport, in any state, indefinitely. Therefore, the fine for each offense should go up by \$10,000 each time.

V. THE ROAD AHEAD FOR WEST VIRGINIA AND OTHER STATES

The unpredictability of sporting events creates a mindset of who will win or who will lose. This “who will win or who will lose” mindset goes hand in hand with sports betting. Just like hedging a bet for your favorite team, there are

²⁵⁷ A minimal offense is if a coach or manager hedges a bet and is caught. After the first offense, the charge then goes to a more severe offense.

²⁵⁸ A more severe offense would be if a coach or manager started to involve other people in with the bet—i.e., players, doctors, faculty, etc. Further, if the coach or manager continually are caught hedging bets, then the violation would fall under a severe offense.

²⁵⁹ The fine would be different for each sport because football makes more money for a university or college than, say, women’s basketball does.

²⁶⁰ The amount of scholarships taken away should be based on the severity of the situation. If the situation is minor and only involves a few people, three scholarships should be taken away from the sport per year for two years. If the situation is more severe, three scholarships should be taken away from the sport per year for five years.

²⁶¹ See *supra* Section I.B.iv.1.

positives and negatives to every situation—you may win, or you may lose. Section IV.A will first discuss the positives that West Virginia and other states will experience with legalized sports betting. And finally, Section IV.B will also discuss the negatives that sports betting will bring to states like West Virginia.

A. *The “Highs” of Sports Betting*

It is to nobody’s surprise that legalizing sports betting will create an enormous source of revenue for West Virginia and other states. The Oxford Economics Group prepared a report for the American Gaming Association that laid out an estimate of what the economic impact would be if sports betting was legalized throughout the United States.²⁶² The report contained five key findings. First, total economic output is expected to total \$41.2 billion.²⁶³ Second, sports betting operations are expected to support \$4 billion of direct labor income (e.g., wages and tips) and \$7 billion of indirect labor income.²⁶⁴ Third, sports betting operations would create 86,819 direct jobs and 129,852 indirect and induced jobs.²⁶⁵ Fourth, sports betting is expected to contribute \$22.4 billion to U.S. Gross Domestic Product.²⁶⁶ And fifth, fiscal impacts, consisting of state, local and federal taxes, is expected to total \$8.4 billion.²⁶⁷

Specifically in West Virginia, just two months after sports betting was launched, West Virginia sportsbooks reported around \$10 million in wagers, and the weekly totals are steadily climbing.²⁶⁸ West Virginia has already collected more than \$200,000 in taxes and will more than likely reach its year-long projection of \$5.5 million.²⁶⁹ To date, West Virginia sports betting has a handle²⁷⁰

²⁶² OXFORD ECONS., ECONOMIC IMPACTS OF LEGALIZED SPORTS BETTING 3 (2017), <https://www.americangaming.org/sites/default/files/AGA-Oxford%20-%20Sports%20Betting%20Economic%20Impact%20Report1.pdf>. The analysis is based on “available data, interviews with industry participants, customized economic impact models, and our professional judgment.” *Id.*

²⁶³ *Id.* at 4.

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 4–5.

²⁶⁶ *Id.* at 5.

²⁶⁷ *Id.*

²⁶⁸ Eric Ramsey, *West Virginia Sports Betting Handle \$10 Million Strong and Growing*, LEGAL SPORTS REP. (Oct. 18, 2018, 8:31 PM), <https://www.legalsportsreport.com/25039/wv-sports-betting-early-revenue/>.

²⁶⁹ *Id.*

²⁷⁰ “Handle” means the amount of money in wagers accepted. BETTING GLOSSARY, <https://www.vegas.com/gaming/gaming-tips/betting-glossary/> (last visited Sept. 10, 2019).

of \$22,406,637 with a revenue of \$2,732,541.²⁷¹ Hollywood Casino in Charles Town, West Virginia was the first property to open for sports betting and is the “king of WV sports betting” because of its prime location within driving distance to Washington, D.C.²⁷² Hollywood Casino has made a total revenue of \$2,298,733 off of a handle of \$9,091,103. Greenbrier Resort has made \$75,697 off of a handle of \$75,697 during the October 2018 reporting period.²⁷³ Greenbrier Resort’s numbers are significantly lower than Hollywood Casino because the Greenbrier Resort is in a more rural area than Hollywood Casino.

John Cavacini, President of the West Virginia Gaming and Racing Association, mentioned that West Virginia has an advantage in the business of sports betting because neighboring states are not taking the issue up to legalize sports betting and Pennsylvania has a higher tax so people are crossing into West Virginia to hedge bets.²⁷⁴ West Virginia’s advantage that out of state citizens are choosing to hedge bets in West Virginia is proven by the fact that 70% of the bets hedged during the first weekend that sports betting was legal and open were from out of state people.²⁷⁵

President Cavacini also anticipates that revenue will increase once the mobile application for betting is up and running.²⁷⁶ This means that people can bet anywhere within the state from a smartphone and not go to a race track or casino to hedge a bet.²⁷⁷ The last two casinos to join the party in West Virginia—Mardi Gras and Wheeling Island—were the first to launch retail and the mobile application simultaneously.²⁷⁸ The other three casinos in West Virginia—Hollywood Casino, the Greenbrier, and Mountaineer Casino—may not see the added revenue just yet because these establishments have not completed the required mobile testing.²⁷⁹ Once all five casinos have the mobile application

²⁷¹ Eric Ramsey, *Slow Your Rollout: West Virginia Sports Betting Stagnates with Limited Options*, LEGAL SPORTS REP. (Nov. 20, 2018, 12:03 PM), <https://www.legalsportsreport.com/26075/wv-sports-betting-stagnates/>.

²⁷² Ramsey, *supra* note 268.

²⁷³ *Id.* Hollywood Casino’s growth since launch has done nothing but increase from Week 1: Week 1 - \$457,788; Week 2 - \$1,104,008; Week 3 - \$1,713,845; Week 4 - \$1,829,347; Week 5 - \$1,875,615; Week 6 - \$2,110,500. *Id.* Further, Greenbrier Resort’s growth has also done nothing but increase. *Id.*

²⁷⁴ Rebecca Carballo, *First Weekend of Legal Sports Betting in WV Brings \$320K of Taxable Revenue*, CHARLESTON GAZETTE-MAIL (Sept. 5, 2018), https://www.wvgazette.com/business/first-weekend-of-legal-sports-betting-in-wv-brings-k/article_7a1bd4a9-9d69-5508-9019-621e43f4ddde.html.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Adam Candee, *Lottery Director: Countdown Ticking to Mobile in West Virginia Sports Betting*, LEGAL SPORTS REP. (Nov. 29, 2018), <https://www.legalsportsreport.com/26386/west-virginia-mobile-sports-betting-nears/>.

²⁷⁹ *Id.*

option for people, the “revenue forecast should brighten considerably.”²⁸⁰ New Jersey’s revenue from the mobile application option is a great example of just how much more revenue West Virginia can expect.²⁸¹ Just in October, \$175 million of New Jersey sports betting happened through the mobile application.²⁸² There is no doubt that once people have the option to bet within the comfort of their homes or when they are attending games, the revenue for the state of West Virginia will increase.

Not only will legalizing sports betting in states result in extra revenue, it will allow Americans “the ability to do something legally that they were doing already.”²⁸³ John Holden put it best:

The opportunity to make a risky behavior safer is what lawmakers should embrace, and in many ways, legalization with proper implementation designed around consumer protection may be able to achieve what the federal government never could—a means of curbing the illegal market.²⁸⁴

B. *The “Lows” of Sports Betting*

With great privilege comes great responsibility. As exciting as sports betting seems to be in West Virginia and other states, the race track and casino establishments within the state must successfully complete and maintain the procedures laid out in the West Virginia Lottery Sports Wagering Act. The casinos in West Virginia will unquestionably benefit from the legalization of sports betting, but, as discussed in Section III.B, there are plenty of procedures and regulations to keep the casinos and sports betting lounges on its toes.

West Virginia and other states could see a rise in those suffering from gambling addiction. As more options become available for people to hedge bets, it gives people more of an opportunity to constantly bet and become addicted to sports betting. Even though the casinos, resorts, and mobile applications keep the gamblers hotline posted everywhere, that does not entirely prevent sports betting addiction. Now don’t get me wrong, there are “casual gamblers” who can “indulge from time to time without suffering any negative emotional or financial consequences” because they gamble with relatively small sums and do not bet more than they can afford to lose.²⁸⁵ However, there are “problem gamblers” that

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.* This number accounts for roughly two-thirds of all wagers taken in New Jersey in the month of October. *Id.*

²⁸³ John T. Holden, *Prohibitive Failure: The Demise of the Ban on Sports Betting*, 35 GA. ST. U. L. REV. 329, 386 (2019).

²⁸⁴ *Id.*

²⁸⁵ *Gambling and Debt*, DEBT.ORG (Apr. 2, 2019), <https://www.debt.org/advice/gambling/>.

cannot control the urge to gamble.²⁸⁶ As many as four million to six million people are classified as “problem gamblers” with another 15 million people at risk of becoming a “problem gambler.”²⁸⁷ Problem gambling is a mental health disorder that can cause problems in an individual’s “personal, professional, and family life.”²⁸⁸ Being a “problem gambler” can cause serious financial difficulties not only for the better, but his or her family as well.²⁸⁹ These financial difficulties can consist of “maxed-out credit cards, overdue bills, overdrawn checking accounts, and/or unpaid or neglected loans.”²⁹⁰ For example, the average debt of a male gambler is between \$55,000 and \$90,000.²⁹¹ Female gamblers average \$15,000 of debt.²⁹² Because of the debt that bettors incur, 20% of them will file bankruptcy because of gambling losses.²⁹³

Not only are there serious financial difficulties, there are also very serious personal difficulties. “Problem gamblers” are twice the rate of non-gamblers to get a divorce.²⁹⁴ This could result in families being torn apart and children having to go from house to house every week because of the divorce. Furthermore, “problem gamblers” are 20% more likely to attempt suicide, which is 20 times the rate of non-gamblers.²⁹⁵

Even though there are many outlets and avenues bettors and their loved ones can use to get the help they need, the protocols are not flawless and will only be effective if the bettor is completely ready to give up the thrill and adrenaline of hedging bets.

VI. CONCLUSION

A Pandora’s box has been opened when the United States Supreme Court gave states the option to legalize sports betting. As more and more states begin to pass laws to legalize sports betting within their respective borders, more and more gamblers are given the drive to infiltrate and corrupt intercollegiate sports. Without proper regulation and penalties in the realm of sports betting,

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* Even though Stop Predatory Gambling does not have data on West Virginia, there is data for our neighboring state of Ohio. In the past four years, Ohio citizens betting at the casinos, horse-race tracks, and the Ohio Lottery have lost \$9.7 billion. *Gamblers in Ohio Have Lost \$9.7 Billion Over Four Years, STOP PREDATORY GAMBLING*, <https://www.stoppredatorygambling.org/gamblers-in-ohio-have-lost-9-7-billion-over-four-years/>.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

intercollegiate sports could start to become less genuine and not the pure and raw talent sports fans feed off of. Regardless of how much money and jobs sports betting will create in West Virginia, there needs to be proper policing, so student-athletes, coaches, and managers are not abused or tempted to throw games or shave points to help the next bettin' man that comes along. The road ahead with the legalization of sports betting now on the horizon may allow history to repeat itself and lead to corruption within intercollegiate sports.

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