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"Show Me the Money": The Supreme Court's Decision to Change the Landscape of Sports Law Forever

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COMMENT

"SHOW ME THE MONEY": THE SUPREME COURT'S DECISION TO CHANGE THE LANDSCAPE OF SPORTS LAW FOREVER

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ABSTRACT

On any given day, the Supreme Court can change the landscape of any aspect of the law. On May 14, 2018, the area of sports law was changed forever. After a long history of banning sports betting at the state level by the federal government, the Supreme Court struck down the Professional and Amateur Sports Protection Act of 1992 (PASPA) based on the anti-commandeering principles from prior case precedent. PASPA mandated that state legislatures outlaw sports betting in all states not grandfathered into the legislation. The Court found that the federal government had no authority to require states to ban sports betting. State legislatures are now free to establish their own sports betting schemes. Many states have already put a plan into motion to capitalize on establishing such schemes. What does this mean for the future of sports betting in America? What does it mean for the future of sports in America?

There are many positives in allowing states the ability to regulate their own lotteries. Potential increases in state revenue could provide more money for public schools, which are currently largely underfunded. Better schools lead to a better quality of life. The interest in sports could also increase. Putting money on certain outcomes in a game would allow for increased interest and viewership. State-sponsored sports lotteries could add to the fan experience. It gives fans a sense of personal connection to the game and the players. Additionally, there is no longer the incentive for professional athletes to participate in illegal betting schemes, as they are now compensated generously for their role in the entertainment of others. Due to multi-million-dollar contracts and endorsement deals, professional athletes no longer have the incentive to cooperate with illegal activity to make money on the side.

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† Articles & Book Reviews Editor, Liberty University Law Review, Volume 14; J.D. Candidate, 2020, Liberty University School of Law. I would like to dedicate this in memory of Lloyd Strickler and Larry Harris. Thank you both for the constant support and instilling a love of sports within me. I miss you both more than you will know. Additionally, I dedicate this work in honor of my grandparents, parents, aunts, and uncles. Without the village that raised me, I would not be where I am today. "For I know the plans I have for you…" Jeremiah 29:11.

The Supreme Court reopened the door for states to enact sports betting schemes within their economy. For now, because of the newness of the decision, we cannot know the full effect, either positive or negative, that the "new" power will have on state economies or citizens. However, several hypotheses can be drawn. One possible cost of the new decision could be an increase in organized crime. While sports betting may become legal in more states, there is still the possibility that some gamblers may take the new freedom too far and venture into the illegal sports betting that brought the need for the legislation in the first place. Opening the door for sports gambling may allow them to kick down the door and go back to square one in terms of fraud, game fixing, and embezzlement. As many young people are interested in sports, there is likely to be an increase in gambling addictions in teens and young adults. Teens and young adults are at risk of developing a life-altering disease that could perpetually affect the rest of their lives. Finally, while professional athletes are unlikely to get caught up in illegal gambling schemes, amateur athletes—namely college athletes—are more vulnerable given the restrictions that the NCAA and other amateur sports leagues put on them. Without compensation, this group of athletes could succumb to the pressures of outside influences and make decisions that could taint the landscape of sports.

Sports law changed forever in 2018, but was it for the better or for the worse?

I. INTRODUCTION

"Sports teaches you character, it teaches you to play by the rules, it teaches you to know what it feels like to win and lose—it teaches you about life."[1] Americans love sports. Americans believe in the pureness of sports. Americans use sports as an escape from the routine rat race of their daily lives. In 1992, Congress, fed up with the scandals involving the intermingling of organized crime and fraud in sports, enacted the Professional and Amateur Sports Protection Act (PASPA).[2] Congress used this act to uphold the integrity of the sports in which citizens of the United States of America were losing faith.[3] This act, also known as the Bradley Act, was challenged by the State of New Jersey in *NCAA v. Governor of New Jersey* (*Christie I*) as a

1. *Billie Jean King Quotes*, BRAINY QUOTE, https://www.brainyquote.com/quotes/billie_jean_king_364072 (last visited Mar. 5, 2020).

2. Professional and Amateur Sports and Protection Act, Pub. L. No. 102-559, § 2(a), 106 Stat. 4227 (1992) (codified at 28 U.S.C. §§ 3701–04 (1992)), *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).

3. 138 CONG. REC. 12,971–72 (1992).

violation of the "anti-commandeering" doctrine set forth in *Printz v. United States* and *New York v. United States*.[4] Anti-commandeering is a constitutional principle in which statutes and legislation are struck down if they coerce, compel, or require a state or state officials to carry out federal regulatory schemes.[5] New Jersey made the anti-commandeering challenge after the state was sued by multiple sports organizations for attempting to change its gambling scheme.[6]

In 2013, the United States Court of Appeals for the Third Circuit found that PASPA did not violate the anti-commandeering doctrine and upheld the statute.[7] Although New Jersey amended its statute, it was sued again in *Murphy v. NCAA*.[8] To understand how the Supreme Court changed the landscape of sports law, it is important to understand why Congress passed the legislation, what the legislation said, how the Court came to hear the case, and what doctrine the Court used to decide the case. In *Murphy*, the Supreme Court used constitutional principles to change the landscape of sports law forever. Additionally, this article hypothesizes potential effects, both positive and negative, that the Court's decision could have on sports law and the sports industry, as we do not know the full effects this "new" power will have on state economies and citizens.

II. WHY DID CONGRESS DECIDE TO PASS THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT?

A. *Point-Shaving and Game Fixing Scandals*

Congress enacted PASPA in reaction to the long history of scandals in sports. Most of these scandals involved either "point-shaving," where compromised players helped the team win but made sure that the team "fail[ed] to cover the point spread,"[9] or "game fixing," where compromised players worked to ensure a team lost. Starting with the Chicago "Black" Sox in 1919, several scandals occurring throughout history are prime examples of what Congress was trying to prevent by enacting PASPA in 1992.

4. *See* NCAA v. Governor of New Jersey (*Christie I*), 730 F.3d 208, 214 (3d Cir. 2013).
5. *Id.* at 227.
6. *Id.* at 214.
7. *Id.* at 240.
8. Murphy v. NCAA, 138 S. Ct. 1461, 1472 (2018).
9. Ray Gustini, *How Point Shaving Works*, THE ATLANTIC (Apr. 12, 2011), https://www.theatlantic.com/entertainment/archive/2011/04/how-point-shaving-works/349575/.

1. 1919 and the Chicago "Black" Sox

One of the biggest scandals to ever strike baseball, and the world of sports in general, occurred during the 1919 World Series when the Cincinnati Reds played the Chicago White Sox.[10] Allegedly, prior to the start of the World Series, the first baseman of the White Sox met with known gambler Joseph "Sport" Sullivan.[11] This conversation involved discussing the possibility of the White Sox losing the World Series in return for payment to the players who helped make sure this happened.[12] C. Arnold "Chick" Gandil, the first baseman, confessed to agreeing to fix the World Series for a payment of $100,000.[13] Gandil drafted other players to help achieve the task: pitchers Eddie Cicotte and Claude "Lefty" Williams, shortstop Charles "Swede" Risberg, and outfielder Oscar "Happy" Felsch.[14] Later, they drew in Fred McMullin and star hitter "Shoeless" Joe Jackson.[15]

The White Sox lost game one of the World Series 9-1; a loss of which the New York Times said, "[n]ever before in the history of America's biggest baseball spectacle has a pennant-winning club received such a disastrous drubbing in an opening game."[16] The next game ended with a White Sox loss, when pitcher Lefty Williams "gifted the Reds" the game by walking three batters.[17] By game six, the Reds were up in the series by four games to one.[18] However, by this time the compromised players were "grow[ing] restless" because they were not being paid the installments that were allegedly agreed upon.[19] Unsatisfied with the individuals who were supposed to be giving them money for losing games, the players agreed to start playing and actually try to win the series.[20] The White Sox won games six and seven as a result.[21]

10. Evan Andrews, *The Black Sox Baseball Scandal*, HIST.: HIST. STORIES (Oct. 9, 2014), https://www.history.com/news/the-black-sox-baseball-scandal-95-years-ago.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. Andrews, *supra* note 10.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*

However, the White Sox lost game eight 10–5, "giving [the] Cincinnati [Red Sox] their first ever World Series win."[22]

Following the World Series, rumblings became louder about possible conspiracies to fix the Series, but nothing was truly examined until August of 1920, when evidence of gamblers working to fix a regular season game came to light.[23] In front of a grand jury investigating the World Series, Eddie Cicotte admitted, "I don't know why I did it . . . I needed the money. I had the wife and kids."[24] Two other individuals also confessed.[25] "Shoeless" Joe Jackson admitted to accepting $5,000 for his part in the scandal.[26] The grand jury indicted Gandil, Cicotte, Williams, Risberg, Felsch, McMullian, Weaver, and Jackson—known collectively as the Black Sox—on charges of conspiracy.[27] However, because the paper records of the players' confessions went missing (many believe the White Sox owner and a gambling kingpin arranged for the papers to be stolen), the jury returned a verdict of not guilty and the Black Sox went legally unscathed.[28] The courts were unable to hold these players accountable for their role in the game fixing.

The baseball world did not treat these Black Sox players so leniently. The eight players were banned from baseball for life without the possibility of ever being reinstated.[29] This action by the Commission "helped cleanse baseball's damaged image," but also "[swept] the Black Sox scandal under the rug."[30]

2. College Basketball in 1951

The year 1951 brought major scandal to college basketball.[31] After City College of New York (CCNY) pulled off an unexpected championship victory in the NCAA tournament, the public discovered that it was all a sham.[32] The New York District Attorney "arrested 32 players from seven colleges" for "fix[ing] 86 games between 1947 and 1950."[33] The schools

22. Andrews, *supra* note 10.
23. *Id.*
24. *Id.* (omission in original).
25. *Id.*
26. *Id.*
27. *Id.*
28. Andrews, *supra* note 10.
29. *Id.*
30. *Id.*
31. Joe Goldstein, *Explosion: 1951 Scandals Threaten College Hoops*, ESPN CLASSIC (Nov. 19, 2003), https://www.espn.com/classic/s/basketball_scandals_explosion.html.
32. *Id.*
33. *Id.*

affected were CCNY, Long Island University (LIU), Bradley University, New York University (NYU), University of Kentucky, Manhattan College, and Toledo University.[34] Authorities discovered systemic point-shaving throughout the entire United States in a plot involving mobsters, gamblers, bribers, and conspirators.[35]

The CCNY players at the center of the scandal were charged with "illegal point spread manipulation."[36] Three players on the varsity basketball team were arrested after returning from a game in Philadelphia.[37] The authorities in New York uncovered a conspiracy between mobster Salvatore Sollazzo and several players: freshmen Ed Roman, Eddie Warner, and Al Roth.[38] After further investigation, four other CCNY players, Irwin Dambrot, Herb Cohen, Norm Mager, and Floyd Layne, were arrested.[39]

Investigation discovered that Sollazzo started the scheme in the summer when he started offering players $1,000–$1,500 per fixed game in a summer league.[40] This agreement leaked into the regular season once the summer leagues were over, giving mobsters a new opportunity to make cash: point-shaving.[41] Now, the players were only asked to ensure they won "by a certain number of points," not to make sure their team lost.[42] This was a very attractive offer for players from low-income families.[43] However, most of the players actually returned most of the money they received as compensation for their part in the deal when cooperating with officials, as many had not spent much of it.[44]

Five players received suspended sentences, but Roth and Warner received active sentences.[45] Roth made a deal with the judge, and, in return for joining

34. *Id.*
35. *See generally id.*
36. Marvin Kalb, *The College Basketball Victory That Seemed Too Good to Be True—and Was*, ATLANTIC (Apr. 25, 2013), https://www.theatlantic.com/entertainment/archive/2013/04/the-college-basketball-victory-that-seemed-too-good-to-be-true-and-was/275263/.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. Kalb, *supra* note 36.
43. *Id.*
44. *Id.*
45. *Id.*

the U.S. Army, his sentence was dropped.[46] Warner went to jail for six months, making him the only CCNY player to see the inside of a jail cell.[47] The NBA also banned the seven players from ever joining the professional league.[48]

3. Pete Rose's Lifetime Ban from Baseball and the Baseball Hall of Fame

Pete Rose is synonymous with sports gambling. He played and managed for the Cincinnati Reds in the 1960s, 1970s, and 1980s.[49] Rose still holds the record for most hits in a career at 4,256.[50] In 1988, Rose's extracurricular activities became national news when Major League Baseball alleged that he was betting on baseball games as the manager of the Reds during the 1986 season.[51] Giamatti, the commissioner of baseball at the time, investigated Rose for violation of Rule 21 of Major League Baseball, which forbids a player, or anyone employed by a major league baseball team, to bet on any major league baseball game.[52] This rule is on display in all major league clubhouses around the league, and violation of the rule has a very harsh result: a lifetime ban from baseball.[53]

After an investigation by appointed special counsel John Dowd, it became clear that Rose was involved in betting on major league baseball games, even games that he was managing.[54] Rose filed suit against the Commissioner of Baseball and the Major League.[55] However, Rose withdrew the suit after he made a deal with Commissioner Giamatti.[56] In return for dropping the suit

46. *Id.*
47. *Id.*
48. Kalb, *supra* note 36.
49. *See Pete Rose Managerial Record*, BASEBALL REFERENCE, https://www.baseball-reference.com/managers/rosepe01.shtml (last visited Sept. 21, 2019); *Pete Rose Stats*, BASEBALL REFERENCE, https://www.baseball-reference.com/players/r/rosepe01.shtml (last visited Sept. 21, 2019).
50. *Banning of Pete Rose*, BASEBALL REFERENCE, https://www.baseball-reference.com/bullpen/Banning_of_Pete_Rose (last updated Dec. 16, 2017).
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Banning of Pete Rose*, *supra* note 50.

and no finding of guilt, the Commissioner of Baseball banned Rose for life with the ability to ask for reinstatement in the future.[57]

In 1991, Pete Rose became eligible to be included on the Hall of Fame ballot.[58] As the all-time hits leader, Rose's history-making career as a player made him a prime candidate for the Hall of Fame.[59] However, given his lifetime ban from Major League Baseball, Rose's name would always be associated with the ban. The Hall of Fame, an entity separate from Major League Baseball, decided that Rose would also be banned from "appearing on the ballot since he was on [Major League Baseball's] ineligible list."[60] It also stated that its decision could change should Rose ever be reinstated into Major League Baseball prior to December 2005.[61] After 2005, Rose would "no longer be eligible to be voted in[to]" the Hall of Fame.[62] Rose is still banned from Major League Baseball and the Hall of Fame even after applying for reinstatement into both entities: Major League Baseball in 2015 and the Hall of Fame in 2016.[63]

B. *Legislative History*

On June 2, 1992, the Senate considered Senate Bill 474—what would become PASPA—which had sixty-two cosponsors at the time.[64] Senators DeConcini, Hatch, and Bradley spoke in favor of the bill, while Senator Grassley spoke against the bill as it stood, offering an amendment expanding the states' rights on this issue.[65] The senators who spoke in favor of the bill cited two main reasons why the legislation was needed to prohibit sports gambling: protection of the integrity of sports and the need to prevent the spread of gambling addiction in young adults.[66] The senator who offered the amendment stated that the amendment was necessary to allow states an

57. *Id.*

58. David Hill, *Cincinnati Reds History: Pete Rose Banned from Hall of Fame Ballot*, FOX SPORTS (June 30, 2017, 10:28 PM), https://www.foxsports.com/mlb/story/cincinnati-reds-history-pete-rose-banned-from-hall-of-fame-ballot-020417.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*; *Why Rob Manfred Denied Pete Rose from Reinstatement*, USA TODAY (Dec. 14, 2015, 1:14 PM), https://www.usatoday.com/story/sports/mlb/2015/12/14/press-release-commissioners-decision-regarding-pete-roses-application-reinstatement/77297114/.

64. 138 CONG. REC. 12,972 (1992).

65. *See generally id.* at 12,960–78.

66. *E.g.*, *id.* at 12,972.

opportunity to decide for themselves if they wanted sports betting before Congress decided for them.[67] It is important to take each senator's argument in turn, because it shows the development of the debate on the floor of the Senate. Understanding each argument illustrates how this debate shaped the legislation that was signed into law.

The first senator to speak was Senator DeConcini from Arizona. He started by explaining the "public purpose" of the bill, saying that the bill would "stop the spread of State-sponsored sports gambling and maintain the integrity of sports in America, [the] national pastime."[68] Senator DeConcini went further to say that sports betting "threatens to change the nature of sporting events" and "threatens to undermine public confidence in the integrity of professional and amateur sports."[69] He also discussed the threat that sports betting poses to the vulnerable population of teenagers who are naturally enticed by it, noting that of the "8 million compulsive gamblers in America, 1 million of them are under the age of 20."[70] The senator from Arizona also introduced testimony by the executive director of the National Center of Pathological Gambling, who stated that "sports are uniquely attractive to young people" and "sports lotter[ies] not only teach[] youngsters how to bet on sports, but . . . also encourage them to bet on sports."[71]

Senator DeConcini went on to explain the need for legislation on the issue of sports betting. He started by explaining that, while sports lotteries may seem to be an attractive revenue source, lotteries of this kind are "not the answer, no matter how noble the cause."[72] He stated that legalizing sports betting could actually increase the spread of illegal sports betting: "legalized gambling broadens its appeal and teaches you how to bet. . . . [and t]hen you look to bookies for credit, better odds and no taxes on winnings."[73] Senator DeConcini then addressed the contention raised by the opponents of the legislation that state-sponsored sports lotteries involved the raising of state revenue and therefore were within the state's rights to choose.[74] The senator rebutted this position by saying that sports betting "is not a benign revenue source;" rather, "[i]t tarnishes sports contests" and "diminishes the function

67. *Id.* at 12,975.
68. *Id.* at 12,972.
69. *Id.*
70. 138 CONG. REC. 12,972 (1992).
71. *Id.* (internal quotation marks omitted)
72. *Id.*
73. *Id.* at 12,972–73.
74. *Id.* at 12,973.

of athletes as role models for young people."[75] He further stated that sports have an "interstate nature," and, therefore, legislation of this kind was something Congress could pass.[76]

The senator from Arizona ended by discussing the exempted states and lands that would fall under the bill. He stated that Nevada, Oregon, Delaware, and Montana all had sports betting schemes that would be allowed to continue under the bill, but would not be allowed to expand.[77] DeConcini stated that the grandfathering provision only "allows those States that have sports gambling authorized by State law to continue to do what they are doing now or could do under State law."[78] This meant that states falling under the exemptions could not expand or venture into other forms of sports betting not already in place.

Next, Senator Hatch from Utah spoke in support of the bill. He started by discussing how utilizing sports betting as a source of revenue can be destructive. He stated that "sports gambling [did] not produce the long-term stable source of revenue" that proponents believed it did.[79] He further said that the "only real winners" in state-sanctioned sports betting "would be the bookies and the private companies that encourage" such schemes.[80] Senator Hatch then discussed the ramifications that state-sponsored sports betting would have on the integrity of professional and amateur sporting events. He stated that these schemes would "erode[] the good will in the service marks of the teams" and "send[] the wrong message to [the] Nation's youth."[81]

The senator from Utah discussed testimony presented in committee by the Commissioner of the National Football League. Commissioner Paul Tagliabue gave "four basic reasons to oppose the spread of legalized sports gambling."[82] His third reason was most notable:

> "[L]egalized sports gambling sends a terrible message to youth." Perceptions of athletes are diminished in young minds if they are reduced in stature by being participants, however unwilling, in gambling schemes. State-sponsored

75. *Id.*
76. 138 CONG. REC. 12,973 (1992).
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*
82. 138 CONG. REC. 12,973–74 (1992).

> sports gambling sends a message to our young people that raising revenue is more important than moral standards.[83]

Next, Senator Hatch moved to discuss the addiction concerns that state-sponsored sports betting would likely increase. He stated that these schemes would "lead to a further increase in teenage gambling because our young people are attracted to sports activities."[84] Senator Hatch concluded by mentioning that this is an important bill that "almost everybody who is anybody in sports wants . . . [this bill] to pass."[85]

Next to speak was Senator Grassley from Iowa. While Senator Grassley agreed with the ills of sports betting, he disagreed with the substance of PASPA.[86] He contended that the bill, as it stood, discriminated against states that did not already have sports betting schemes and did not allow the states without present schemes to enact their own legislation.[87] Senator Grassley proposed an amendment that stated as follows: "The provisions of [the Act] shall not apply to any [sports betting] scheme in a State which, prior to January 1, 1985, enacts legislation stating that such State desires to be exempt from such prohibition."[88] Grassley explained that this amendment would allow for a "reasonable opportunity" for states to "declare . . . they do not want to be covered by this bill's reach."[89] Senator Grassley then discussed the validity of the "grandfather clause" and how the Supreme Court historically disfavored such clauses.[90] He cited *Mayflower Farms v. Ten Eyck*, a 1936 decision, in which the Court held that the grandfather clause at issue was an "arbitrary and discriminatory violation of the Constitution" and struck down a statute "which only permitted milk producers which had been in business before a specified date to avoid the statute's pricing restrictions."[91] Grassley stated that the Court in *Mayflower Farms* found that the pricing law was "[a]n attempt to give economic advantage to those in a given business at an arbitrary date as against all those who enter the industry after that date."[92] The decision in *Mayflower Farms*, like the grandfather clause proposed in

83. *Id.* at 12,974.
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88. 138 CONG. REC. 12,974 (1992).
89. *Id.*
90. *Id.* at 12,975.
91. *Id.*; *see also* Mayflower Farms, Inc. v. Ten Eyck, 297 U.S. 266, 274 (1936).
92. 138 CONG. REC. 12,975 (1992); *see also Mayflower Farms*, 297 U.S. at 274.

PASPA, gave the same economic advantage effect: the states already in on sports betting would have an economic advantage over the states that could not pursue such schemes after the legislation was enacted.[93]

The senator from Iowa went on to discuss how this law would not "outlaw gambling on sports events."[94] He stated that the bill would not change the practices of office pools on football and NCAA basketball, which can be considered common street gambling.[95] He asserted that because professional athletes sign "multi-year, multi-million-dollar contract[s]," the risk of professional athletes tampering with state-regulated sports [was] very low.[96]

Grassley then moved on to his last point concerning the Indian Gaming Regulations Act.[97] Senator Grassley explained that if Congress passed the bill without his amendment, Congress would infringe on the right of Indian tribes to gamble on Indian lands.[98] This is because Indian lands allowed for "certain forms of gambling . . . not prohibited by Federal law" on Indian lands and PASPA would prohibit sports betting.[99]

After the three senators said their piece about the bill, it was time for rebuttal. Senator Hatch was first, and he directly responded to Senator Grassley's amendment to the bill and advocated for the bill as it stood.[100] He stated that the amendment "create[d] a window . . . in which any State or all of the 46 States may enact legislation which would exempt the particular State or those States from the prohibitions of this bill."[101] Senator Hatch went on to say that the bill was a "compromise" for the states exempted, and "[c]ompromise [was] frequently necessary" in Congress.[102] He then discussed how the amendment would be counterintuitive to the purpose of the bill, which was to protect the integrity of sports and protect young adults who are likely to succumb to the dangers of sports betting.[103] He stated that the legislation as it stood before the amendment was the best Congress could do,

93. 138 CONG. REC. 12,975 (1992).
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. 138 CONG. REC. 12,976 (1992).
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*

and it was "a heck of a good job."[104] Senator Hatch concluded by saying "apply[ing] this to 46 states and circumscrib[ing]" the other four ensured the goals of the proposed legislation.[105] This meant that the compromise of 46 out of 50 states being regulated on this issue would satisfy the purpose of the regulation: curbing sports betting.

Senator DeConcini took the floor next to rebut Senator Grassley's amendment. He began by saying that the amendment was "completely inconsistent with the goal of the legislation and would set a very bad precedent in the Congress. States should not be given the choice about whether or not they want to be covered by the law."[106] The senator from Arizona went on to explain that the bill, as it stood, might exempt certain states but did not allow for the statutes in those states to be expanded or for the state to explore sports betting ventures different from their current scheme.[107] Senator DeConcini said that this was not a states' rights issue, as sports are a "national pastime, not just confined in the geographic area of one state."[108]

The final words of Senator Grassley on the matter were very much in line with his original argument as to why the amendment was necessary. He added that the supporters of the bill had already allowed for one state, New Jersey, "to have a window of opportunity" that Grassley believed should be given to every State if it were given to one.[109] He stated that New Jersey did not have a sports betting bill but Congress gave them the opportunity to enact one. Senator Grassley posed a question in his final thoughts: "[I]f we are going to give New Jersey an opportunity through the crime bill to pass such legislation—why can't we allow 45 other States the same opportunity?"[110]

Senator DeConcini responded to Senator Grassley by saying the allowance for New Jersey to enact the sports betting scheme would require a constitutional amendment within a year and the legislation referred to by Senator Grassley was different from the legislation debated at the time.[111] He made the distinction between the House crime bill on sports betting, which extended the grandfather clause to New Jersey, and the legislation before the

104. *Id.*
105. 138 CONG. REC. 12,976 (1992).
106. *Id.*
107. *Id.* at 12,977.
108. *Id.*
109. *Id.*
110. *Id.* at 12,977–78.
111. 138 CONG. REC. 12,977-78 (1992).

Senate in the debate they were having at the moment.[112] He went on to say that while there would never be a way to stop sports betting, Congress could do everything in its power to stop it.[113] He concluded by mentioning that while it may not have been "fair" to exempt some states in the Act and not others, the states that were exempt from the legislation relied so heavily on gambling that something had to give way to help the overall cause.[114]

The final senator to speak was Senator Bradley from New Jersey. As one of the major proponents of the legislation, he stated that the amendment was not in line with the purpose of the legislation.[115] He argued that the "dangers are of national importance" and that Congress should not adopt the amendment.[116] All in all, the amendment was rejected and the bill moved on to the House.[117]

III. WHAT DID THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT SAY?

Fed up with the public's growing disdain towards the national pastime, Congress decided to act to combat sports betting because Americans had begun to lose faith in sports.[118] The Senate enacted the Professional and Amateur Sports Protection Act (PASPA) on October 28, 1992.[119]

A. *The Substance of the Act*

At its core, PASPA was an act "to prohibit sports gambling under State law, and to achieve purposes."[120] Under § 3702, the act made it unlawful for any state, except those within the grandfather clause, to "sponsor, operate, advertise, promote, license, or authorize by law or compact" any form of gambling in which "amateur or professional athletes participate, or are intended to participate."[121] PASPA also made it unlawful for any "person to sponsor, operate, advertise, or promote" such sports betting schemes under

112. 138 CONG. REC. 12,978 (1992).
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. 138 CONG. REC. 12,972 (1992).
119. Professional and Amateur Sports Protection Act (PASPA) of 1992, Pub. L. No. 102-559, 106 Stat. 4227, (codified at 28 U.S.C. §§ 3701–04 (1992)) *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).
120. *Id.*
121. *Id.* at § 3702(1).

§ 3702(2).[122] Violation of this statute allowed a professional or amateur sports organization to bring a civil action against the state government to enjoin the state's betting scheme when the organization's "competitive game [was] alleged to be the basis of such violation."[123]

The statute set out exceptions for those state entities which already had a sports betting scheme in place. The exceptions allowed any sports betting schemes that were in effect before PASPA was enacted to remain.[124] Further, the Act added an exemption for Indian lands regulated under the Indian Gaming Regulatory Act.[125]

B. *Grandfather Clause and Exempted Sports*

After passing in the House and the Senate, the bill went to the President for approval. Signed by President George H. W. Bush, the Professional and Amateur Sports Protection Act of 1992 became law on October 28, 1992.[126] The Act's final language created a grandfather clause for four states: Nevada, Oregon, Montana, and Delaware, as discussed in the debates.[127] These states were allowed to keep their present sports betting schemes but were not allowed to expand upon the current scheme or venture into other schemes.[128] "For example, Nevada could not conduct a sports lottery, and Oregon could not introduce other forms of sports betting."[129] The Act's language provided that if the scheme was "conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990," then the Act did not apply.[130]

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122. *Id.* at § 3702(2).

123. *Id.* at § 3703.

124. *Id.* at § 3704(a).

125. Professional and Amateur Sports Protection Act (PASPA) of 1992, Pub. L. No. 102-559 § 3704(b), 106 Stat. 4227, 4228, (codified at 28 U.S.C. §§ 3701–04 (1992)) *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018); *see also* Indian Gaming Regulation Act, 25 U.S.C. § 2703(4) (2019).

126. Professional and Amateur Sports Protection Act (PASPA) of 1992, Pub. L. No. 102-559, 106 Stat. 4227, (codified at 28 U.S.C. §§ 3701–04 (1992)) *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).

127. 138 CONG. REC. 12,972, 78 (1992).

128. *Id.*

129. *Id.*

130. Professional and Amateur Sports Protection Act (PASPA) of 1992, Pub. L. No. 102-559, 106 Stat. 4227, (codified at 28 U.S.C. §§ 3701–04 (1992)) *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).

This legislation affected New Jersey as well. The provision created for New Jersey allowed the state to create a sports betting scheme in Atlantic City, a municipality that already allowed for casinos.[131] The provision creating this opportunity stated as follows:

> (3) a betting, gambling or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—
>
> > (A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and
> >
> > (B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality.[132]

IV. HOW DID *MURPHY V. NCAA* GET TO THE SUPREME COURT?

The Third Circuit Court of Appeals and the Supreme Court applied the anti-commandeering principles to a challenge by the state of New Jersey.[133] While ultimately striking down PASPA in 2018, there were many challenges New Jersey's actions asserting its right to enact sports betting legislation outside of the scope of PASPA.[134]

131. 138 CONG. REC. 12,977 (1992).

132. Professional and Amateur Sports Protection Act (PASPA) of 1992, Pub. L. No. 102-559, 106 Stat. 4227, 4228 (codified at 28 U.S.C. §§ 3701–04 (1992)) *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).

133. NCAA v. Governor of N.J., 730 F.3d 208, 227–28 (3rd Cir. 2013) (*Christie I*).

134. NCAA v. Governor of N.J., 832 F.3d 389, 394 (3rd Cir. 2015) (*Christie II*).

A. National Collegiate Athletic Association (NCAA) v. Christie (*Christie I*)

In *Christie I*, PASPA had a provision that allowed New Jersey one year to amend its constitution to allow for sports betting within the state.[135] New Jersey did not take advantage of this time period, and it did not try to legalize sports betting until 2010.[136] Through an amendment to its state constitution, New Jersey tried to "authorize by law wagering . . . on the results of any professional, college, or amateur sport or athletic event."[137] After enacting legislation pursuant to the amendment, New Jersey was sued by all of the major sports associations, including the NCAA, MLB, NFL, and NHL, who sought to enjoin the New Jersey law as a violation of PASPA.[138]

The Court of Appeals for the Third Circuit first held that PASPA was constitutional as "accepting New Jersey's arguments . . . would require . . . several extraordinary steps . . . making it harder for Congress to enact laws pursuant to the Commerce Clause."[139] The court also invalidated the law that New Jersey was trying to pass in violation of PASPA.[140] After finding that the sports associations had proper standing to sue,[141] the court moved on to analyze PASPA and New Jersey law on the merits.[142] It started by asking whether or not Congress had the proper authority to enact the legislation under its Commerce Clause powers.[143] Finding that "wagering and national sports are economic activities," that "professional and amateur sporting events . . . 'substantially affect' interstate commerce," and that "placing wagers on sporting events also substantially affects interstate commerce," the court of appeals established that PASPA was a valid exercise of Congress's Commerce Clause powers.[144] The court also found that

135. Professional and Amateur Sports Protection Act (PASPA) of 1992, Pub. L. No. 102-559, 106 Stat. 4227, 4228 (codified at 28 U.S.C. §§ 3701–04 (1992)) *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).

136. *Christie I*, 730 F.3d at 217.

137. *Id.* (quoting N.J. CONST. art. IV, § VII, para. 2 (D)(F)).

138. *Id.*

139. *Id.* at 215.

140. *Id.*

141. *Id.* at 223–24.

142. *Christie I*, 730 F.3d at 224.

143. *Id.*

144. *Id.* at 224–25.

wagering at the intrastate level could affect commerce at an interstate level; therefore, Congress had "a rational basis" to enact this legislation.[145]

The Third Circuit next discussed "[w]hether PASPA [i]mpermissibly [c]ommandeers the [s]tates."[146] First, the appellate court found that the act contains "classic preemption language that operates . . . to invalidate state laws that are contrary to the federal statute."[147] This means that the law that was properly enacted is supreme to all state laws that conflict with PASPA. Because the New Jersey law does "precisely what PASPA says the states may not do," the New Jersey law was invalid.[148]

The court of appeals also examined prior precedent looking at the Supremacy Clause, the anti-commandeering principle, and the regulation of state conduct.[149] The court held that while the cases dealing with the Supremacy Clause "involve[] Congress attempting to directly impose a federal scheme on state officials," PASPA did not.[150] The court reasoned that PASPA was not commandeering, or barring, states "from doing something they want to do."[151] Turning to *New York* and *Printz*, the court of appeals quickly distinguished the legislation at issue in *New York* and *Printz* from PASPA, because the laws in *New York* and *Printz* were affirmative commands for the states to act, and PASPA was not.[152] The court decided that PASPA did not commandeer the states because the states did not have to lift a finger to help the federal government; as such it was a very different situation from *New York* and *Printz.* PASPA is a "blanket ban," not a coercive or compelling requirement to fulfill the federal government's wishes.[153] The court also found that PASPA was "remarkably similar" to other statutes that were upheld against commandeering challenges.[154]

Finally, the court looked at "[w]hether PASPA violate[d] the [e]qual [s]overeignty of the [s]tates."[155] First, the court stated that the legislation, in this case, was "fundamentally different" than the legislation examined by

145. *Id.* at 226.
146. *Id.*
147. *Id.*
148. *Christie I*, 730 F.3d at 227.
149. *Id.* at 229–34; *see infra* Section V.
150. *Christie I*, 730 F.3d at 229–30.
151. *Id.* at 230.
152. *Id.* at 231.
153. *Id.* at 233.
154. *Id.* at 234.
155. *Id.* at 237.

other cases because the legislation was not of the "same nature" as the other cases.[156] Second, while New Jersey "would have [them] hold that laws treating states differently can 'only' survive if they are meant to 'remedy local evils,'" this is an "overly broad" and a "one-size-fits-all test" that the court declined to establish.[157] Third, the court yet again distinguished this case from former precedent dealing with the application of the equal sovereignty principle.[158] Fourth, the court stated the true purpose of PASPA was to stop expansion of sports wagering, making it "irrational" to find that the states that already had a system in place had to get rid of their scheme.[159] Finally, the court held that a "complete invalidation" would do "far more violence to the statute."[160] According to the Third Circuit Court of Appeals, given the former precedents, PASPA did not violate any of the established constitutional principles.[161]

B. *Court of Appeals Decision in* Murphy v. NCAA

After *Christie I* in 2013, New Jersey tried again to establish a sports betting scheme in an attempt to circumvent the decision of the Third Circuit.[162] The New Jersey legislature passed a bill which stated that "[a]ny rules . . . that may require or authorize any [s]tate agency to license, authorize, [or] permit . . . any person to engage in the placement or acceptance of any wager on [sporting events] . . . are repealed . . . ."[163] The legislation restricted the age of those who could participate in sports betting, and it forbade betting on sporting events that involved New Jersey college teams or any event taking place in New Jersey.[164] Once again, almost all sporting agencies sued New Jersey under PASPA.[165] The district court held that "PASPA offer[ed] two choices to states: maintaining prohibitions on sports gambling or completely repealing them."[166] New Jersey appealed to the court of appeals, arguing that the new law was not "in violation of PASPA and . . . [was] consistent with

156. *Christie I*, 730 F.3d at 238.
157. *Id.*
158. *Id.* at 239.
159. *Id.*
160. *Id.*
161. *Id.* at 240.
162. NCAA v. Governor of N.J., 832 F.3d 389, 394 (3d Cir. 2016) (*Christie II*). *See* N.J. Stat. § 5:12A-7 (New Jersey's enacted legislation at the center of this case has been repealed).
163. *Id.*
164. *Id.*
165. *Id.* at 394.
166. *Id.* at 394–95.

Christie I," while "the Leagues" argued that the "[l]aw violate[d] PASPA because it 'authorizes by law' sports wagering and . . . impermissibly 'licenses' the activity."[167]

The Third Circuit conducted two separate analyses to conclude that the district court was correct in their decision: (1) the 2014 law violated PASPA,[168] and (2) "PASPA [d]oes [n]ot [i]mpermissibly [c]ommandeer the [s]tates."[169] At the outset, the court concluded that the 2014 law violated PASPA for several reasons. First, contrary to PASPA, the legislation "authorize[d] casinos and racetracks to operate sports gambling."[170] The court noted that the repeal of certain former prohibitions allowed for the authorization.[171] It found that New Jersey's legislation was an authorization disguised as a repeal.[172] Second, the legislation was not a complete repeal of the prior prohibition because it specifically carved out certain allowances for sports betting.[173] The law worked to establish who, what, when, and where sports betting could happen, specifically authorizing certain actions through a repeal.[174] Finally, the state of New Jersey had the option to establish its own scheme through PASPA, but it did not take the opportunity when given.[175] The court found that the law New Jersey tried to pass in 2014 was exactly the same as what New Jersey could have done in 1992 had its citizens decided that sports betting should be allowed.[176] Consequently, the court reasoned that "[i]f Congress had not perceived that sports gambling in New Jersey's casinos would violate PASPA, then it would not have needed to insert the New Jersey exception."[177]

After holding that the law violated PASPA, the court moved on to PASPA itself to determine whether the law was unconstitutional. Using the basic structure of *Christie I*, the Third Circuit held true to the idea that PASPA was constitutionally sound for several reasons. First, there was no command for

167. *Id.* at 395.
168. *Christie II*, 832 F.3d at 396.
169. *Id.* at 398.
170. *Id.* at 396.
171. *Id.*
172. *Id.* at 397.
173. *Id.* at 396.
174. *Christie II*, 832 F.3d at 396.
175. *Id.* at 397.
176. *Id.*
177. *Id.*

the states to do anything.[178] There were no affirmative actions for the states to take as a result of PASPA.[179] There was no "coercive" choice for the states to make.[180] There was no requirement that the state take any sort of action under PASPA.[181] There were no directives under PASPA towards states or state officials.[182] The only thing that a state had to do under PASPA was sit on the legislation and do nothing to tip the scales toward authorizing sports betting.[183] The court stated, "a state's decision to selectively remove a prohibition . . . in a manner that permissively channels wagering activity to locations or operators is . . . 'authorization' under PASPA."[184] Because of this, the court found for the Leagues, which set the stage for *Murphy v. NCAA*.[185]

V. WHAT DOCTRINE DID THE COURT USE TO STRIKE DOWN PASPA?

The following two cases were instrumental in the Supreme Court's analysis in *Murphy v. NCAA*. Before these cases, the principle of "anti-commandeering" was an implied concept and not written in stone. The following cases were used by the Court to analyze the problem presented by PASPA.

A. New York v. United States

In *New York v. United States,* one of the leading cases on the anti-commandeering doctrine, Justice O'Connor wrote that "while Congress has substantial power under the Constitution to encourage the States . . . , the Constitution does not confer upon Congress the ability simply to compel the States. . . ."[186] The Court in *New York v. United States* invalidated one of the Low-Level Radioactive Waste Policy Amendments Act's three provisions as inconsistent "with the Constitution's allocation of power to the Federal Government."[187]

At the time of *New York v. United States,* there was a lot of low-level radioactive waste in the United States.[188] At the time of the decision, only

178. *Id.* at 401.
179. *Id.*
180. *Christie II,* 832 F.3d at 401.
181. *Id.* at 402.
182. *Id.*
183. *Id.*
184. *Id.* at 401.
185. *Id.*
186. New York v. United States, 505 U.S. 144, 149 (1992).
187. *Id.*
188. *Id.*

three sites in the continental United States had provided for the disposal of such waste since 1979: one site in Nevada, Washington, and South Carolina respectively.[189] The rest of the country shipped its waste to those states to be properly disposed of.[190] After Nevada and Washington shut down their disposal sites, South Carolina's governor "ordered a 50% reduction in the quantity of waste accepted" at South Carolina's disposal site.[191] Congress responded to this reduction by enacting the Low-Level Radioactive Waste Policy Act in 1980.[192] This act made each state responsible for the "disposal of the low-level radioactive waste generated within its borders" and allowed states to enter into "regional compacts" in order to "restrict the use of their disposal facilities to waste generated within member States" by 1986.[193] By 1985, there were only three congressionally-approved regional compacts, which were around the states with pre-Act disposal sites.[194] Because the other thirty-one states not in a compact would not have the ability to dispose of their low-level radioactive waste properly, Congress enacted the Low-Level Radioactive Waste Policy Amendments Act of 1985, which was later challenged by the state of New York.[195]

The amendments extended the amount of time the sites would accept waste from non-compact states for an additional seven years and allowed for those states to charge for such receipt of waste.[196] "Encourag[ing] the States to comply with their statutory obligation to provide for the disposal of waste generated within their borders," the Act established three incentives: (1) monetary incentives, (2) access incentives, and (3) the take title provision.[197] These incentives were the main focus of litigation in the case.[198]

The monetary incentive provided that twenty-five percent of "surcharges collected by the sited States must be transferred to . . . the Secretary of Energy" and each state, by complying with several deadlines, could receive portions of the money received by the Secretary of Energy.[199] States that did

189. *Id.* at 150.
190. *Id.*
191. *Id.*
192. *New York*, 505 U.S. at 150–51.
193. *Id.*
194. *Id.* at 151.
195. *Id.*
196. *Id.* at 151–52.
197. *Id.* at 152–53.
198. *New York*, 505 U.S. at 154.
199. *Id.* at 152–53.

not meet the deadlines by 1993 would either have to take title to the waste generated in their state or forfeit the surcharge money.[200] Access incentives provided that the states that did not meet deadlines set forth in the monetary incentive could be subject to higher surcharges by states with disposal sites and denied access to the sites after a certain period of time.[201] Each of the deadlines, provided in the monetary incentives, held different levels of increased surcharges and different periods of time after which the state could restrict access to the disposal sites.[202] Finally, the "take title provision" stated that if a state could not provide for the disposal of the low-level radioactive waste, then the state would take responsibility for the waste and be liable for any damages "directly or indirectly incurred by such generator or owner" as a result of "the failure of the State to take possession of the waste soon after January 1996."[203]

New York failed to join a regional compact but enacted "legislation providing for the siting and financing of a disposal facility."[204] The residents of the counties where the site could have gone opposed the legislation.[205] The state filed suit against the United States, seeking a declaratory judgment that the Low-Level Radioactive Waste Policy Amendments Act violated the Tenth and Eleventh Amendments, the Due Process Clause of the Fifth Amendment, and the Guarantee Clause of the Constitution.[206]

Answering the ultimate question of "whether any of the three challenged provisions of the . . . Act . . . oversteps the boundary between federal and state authority,"[207] the Court held that the "take title provision" was the only incentive of the Act that was unconstitutional and upheld the rest of the statutory scheme.[208] Because "[s]tates are not mere political subdivisions of the United States," and the governments of states are not agents of the federal government, Congress may not "compel the [s]tates to enact or administer a federal regulatory program."[209] In other words, the federal government could

200. *Id.* at 153.
201. *Id.*
202. *Id.*
203. *Id.* at 153–54.
204. *New York*, 505 U.S. at 154.
205. *Id.*
206. *Id.*; U.S. CONST. art. IV, § 4.; U.S. CONST. amend. V.; U.S. CONST. amend. X.; U.S. CONST. amend. XI.
207. *New York*, 505 U.S. at 159.
208. *Id.* at 183–84.
209. *Id.* at 188.

not require the state to take title to the radioactive waste in question. Constitutionally, Congress may preempt state regulations and provide incentives for the state legislatures to enact certain statutory regulations, but Congress may not direct states to enact such regulations.[210] The Court also found that neither the monetary incentives nor the access incentives violated the Guarantee Clause of the Constitution, as these incentives had nothing to do with the change of the republican form of government within the state.[211] Finally, the Court found that the third incentive was severable from the others; therefore, the structure and purpose of the Act could be fulfilled even with the removal of the invalid measure.[212]

The Court presented a historical record which established two very important principles: (1) Congress may attach conditions to federal money under its spending power that are reasonably related to "the purpose of the federal spending,"[213] and (2) Congress may provide states with a choice between regulating an activity that Congress may regulate under the Commerce Clause or allowing for the federal law to be preempt state law.[214] Congress cannot "require the states to regulate."[215] The Act did not clearly commandeer the states, as it did not upset the constitutional balance of state and federal governments and rules of statutory construction; thus, each of the incentives had to be reasoned separately to determine the constitutionality.

The Court upheld the first incentive as a valid exercise of Congress's authority to encourage the "[s]tates to regulate according to the federal plan."[216] The incentive involved three steps, and the Constitution permitted each step. The first step, the allowance of states to surcharge those states not within their compact, was constitutional because states have the ability to burden interstate commerce with Congress's approval.[217] The second step, the collection of surcharges by the Secretary of Energy, was "no more than a federal tax on interstate commerce," allowable under Congress's power to tax.[218] Finally, the third step of the first incentive, the Secretary's distribution

210. *Id.*
211. *Id.* at 185.
212. *Id.* at 187.
213. *New York,* 505 U.S. at 167.
214. *Id.*
215. *Id.* at 177; *see also id.* at 188.
216. *Id.* at 173.
217. *Id.* at 171.
218. *Id.*

of money to those states that complied with the Act, was a valid "conditional exercise of Congress' authority under the Spending Clause [to place conditions] on the receipt of federal funds."[219]

The Court also upheld the second incentive as a valid "conditional exercise of Congress'[s] commerce power."[220] Because states must "regulate the disposal . . . according to federal standards" or "their residents . . . will be subject to federal regulation,"[221] the incentive does not require states to enact legislation, thereby violating the Constitution. A state does not have to expend monies on programs that their citizens deem unworthy, "[n]or must the State abandon the field if it does not accede to federal direction."[222] A state may regulate "in any manner its citizens see fit."[223]

In contrast, the Court deemed the third "incentive" to be a compulsion, not a choice.[224] Since the third incentive provided that the state either "accept[] ownership . . . or regulate[] according to the instructions of Congress," the instruction passed the line of "encouragement" to "coercion."[225] According to the Court, "the Act commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program."[226] Because states did not have a choice in the matter under the third incentive, the Court held the act to be unconstitutional.[227] The Court further stated—in response to the argument by the United States that the state consented to the expansion of federal powers—that states cannot consent to the expansion of the federal government's power.[228] The Constitution's federal structure was not established to protect the state governments from the federal government, but to protect the individual citizens of the states from their state and federal governments.[229] Even if the state officials consented to the mandate of the

219. *New York*, 505 U.S. at 171.
220. *Id.* at 174.
221. *Id.*
222. *Id.*
223. *Id.*
224. *Id.* at 174–75.
225. *New York*, 505 U.S. at 175.
226. *Id.* at 176 (citing Hodel v. Va. Surface Mining & Reclamation Ass'n., 452 U.S. 264, 288 (1981)).
227. *New York*, 505 U.S. at 177.
228. *Id.* at 181–82.
229. *Id.*

federal government, unconstitutional mandates would still be impermissible under the structure of the Constitution.[230]

In deciding that the third incentive was unconstitutional, the Court set out several guiding principles to apply to future cases dealing with the anti-commandeering doctrine. First, Congress must regulate permissible objects directly and avoid using state governments and officials as its agents.[231] Further, while federal law is enforceable in state courts and federal courts have the power to order states to comply, Congress has no authority to mandate state regulations and legislation.[232] Finally, as mentioned above, state officials and governments can never consent to the unconstitutional expansion of Congress's power.[233]

B. Printz v. United States

In 1997, the Court took another look at, and expanded, the anti-commandeering doctrine. Congress enacted the Gun Control Act of 1968.[234] This act "establish[ed] a detailed federal scheme governing the distribution of firearms."[235] Congress enacted this law in order to "prohibit[] firearms dealers from transferring handguns to any person under 21, not resident in the dealer's State, or prohibited by state or local law from purchasing or possessing firearms."[236] Basically, Congress tried to use this legislation to restrict people from having access to guns.

By 1993, Congress amended the Gun Control Act (GCA) by "enacting the Brady Act."[237] The Brady Act changed how the GCA was enforced. Congress required the "Attorney General to establish a national instant background check system by . . . 1998."[238] The federal system provided that before a transfer of a handgun, a seller must (1) "receive from transferee a statement" pursuant to the Brady Act; (2) "verify the identity of the [buyer] by examining an identification document;" and (3) "provide the 'chief law enforcement officer' (CLEO) of the [buyer's] residence with notice of the contents."[239] The

230. *Id.*
231. *Id.* at 178.
232. *Id.* at 179.
233. *New York,* 505 U.S. at 182.
234. Printz v. United States, 521 U.S. 898, 902 (1997).
235. *Id.*
236. *Id.*
237. *Id.*
238. *Id.*
239. *Id.* at 902–03.

Act gave states two different alternatives to the federal scheme set out by the Brady Act: "[a] dealer may sell a handgun immediately if the purchaser possesses a state handgun permit . . . or if state law provides for an instant background check."[240]

If states had not enacted one of the alternatives, the CLEOs had to take certain steps.[241] After receiving the notice, the CLEO had five days to use "reasonable effort" to ensure that the sale of the gun did not go to someone who would violate the law if they possessed a handgun.[242] After checking into the sale, the CLEO did not have any obligation to notify the seller if the sale would be unlawful, but the CLEO could notify the seller of the illegal sale and provide a written statement to the purchaser.[243] If the CLEO did not find any information that the seller should be notified of, then the CLEO "must destroy any records in his possession relating to the transfer."[244] The Act required that the state "enlist[] . . . state executive officers for the administration of federal programs."[245] Petitioners, designated CLEOs, took issue with this and sued to test the constitutionality of the Act.[246]

The case made it to the United States Supreme Court after the district court found that "the provision requiring CLEOs to perform background checks was unconstitutional, but concluded that the provision was severable."[247] The Court of Appeals for the Ninth Circuit reversed.[248] Writing for the majority, the late Justice Scalia charged that it was "apparent that the Brady Act purports to direct state law enforcement officers to participate . . . in the administration of a federally enacted regulatory scheme."[249] Justice Scalia used a historical analysis,[250] a constitutional analysis,[251] and prior jurisprudence analysis[252] to conclude that the law

240. *Printz,* 521 U.S. at 903.
241. *Id.*
242. *Id.*
243. *Id.*
244. *Id.* at 903–04.
245. *Id.* at 905.
246. *Printz*, 521 U.S. at 904.
247. *Id.*
248. *Id.*
249. *Id.*
250. *See id.* at 905–918.
251. *See id.* at 918–925.
252. *See Printz,* 521 U.S. at 925–933.

violated the anti-commandeering principle established in *New York v. United States*.[253]

Starting with the historical analysis, Justice Scalia looked at several laws established by the first Congresses.[254] These laws dealt with citizenship and naturalization.[255] States were a part of making sure that every person in the new United States was recorded and had citizenship.[256] Other statutes during that time required state courts to oversee certain cases designated to them.[257] Justice Scalia said that there was a difference between those statutes and the one at issue in *Printz*: the "early statutes" did not give Congress the power to "impress the state executive into its service."[258] The government also brought the Extradition Act of 1793 to the attention of the court.[259] This federal act "required the 'executive authority' of a State to . . . arrest and deliver[] . . . fugitive[s] . . . upon the request of the executive authority of the State from which the fugitive had fled."[260] Justice Scalia found that this was an exercise of the Extradition Clause of the U.S. Constitution and had nothing to do with commandeering the states.[261]

Justice Scalia also examined the Federalist Papers and found that "none of [the Federalist Papers examined] necessarily impl[y] . . . that Congress could impose [duties on states] without the consent of the States."[262] Justice Scalia mentioned that the Federalist Papers show that the states had the ability to help the federal government with their programs but did not mention that "they had a responsibility to execute federal laws."[263] Finally, Justice Scalia noted that the prior immigration policies and selective service regulations, unlike the legislation under review in *Printz*, did not compel the states to do anything.[264]

Next, Justice Scalia looked at the structure of the Constitution and the principles of dual sovereignty and separation of powers. The Constitution

253. *Id.* at 905–933.
254. *Id.* at 905.
255. *Id.*
256. *Id.* at 905–06.
257. *Id.* at 906–07.
258. *Printz*, 521 U.S. at 907–08.
259. *Id.* at 908.
260. *Id.* at 908–09.
261. *Id.*
262. *Id.* at 910–11 (emphasis removed).
263. *Id.* at 915.
264. *Printz*, 521 U.S. at 916–17.

established two separate sovereigns in the United States: the federal government and the individual state governments.[265] The federal government received certain powers and responsibilities for itself, and then the rest were kept by the states.[266] Justice Scalia said that the "separation of the two spheres is one of the Constitution's structural protections of liberty," while another is the separation of powers between the three branches of government.[267] Looking at the separation of powers, "[t]he Brady Act effectively transfers . . . responsibility to thousands of CLEOs in the 50 states," which was an impermissible transfer of power.[268] Congress has no ability to "regulate state governments' regulation of interstate commerce," which is exactly what the Brady Act did.[269]

Finally, the prior precedents of *EPA v. Brown*, *Hodel v. Virginia Surface Mining*, and *FERC v. Mississippi* that were used in *New York v. United States*, showed that the "Federal Government . . . may not compel the States to enact or administer a federal regulatory program."[270] Justice Scalia reasoned that this is exactly what the Brady Act did.[271] Because the Brady Act required state executives to carry out the federal program at their cost, the Brady Act "runs afoul of [the] rule" that the federal government may not compel the states to carry out its programs.[272]

VI. HOW DID THE SUPREME COURT DECIDE *MURPHY V. NCAA?*

A. *Background and Facts*

Justice Alito opened the opinion of the Court by discussing America's inconsistent beliefs about gambling.[273] Then, he focused on New Jersey's gambling history.[274] Starting in 1897, New Jersey enacted a "constitutional amendment that barred all gambling in the [s]tate."[275] During the Great Depression, New Jersey loosened the ban allowing for "parimutuel betting on

265. *Id.* at 918.
266. *Id.* at 918–19.
267. *Id.* at 921.
268. *Id.* at 922–23.
269. *Id.* at 924.
270. *Printz*, 521 U.S. at 926 (quoting New York v. United States., 505 U.S. 144, 188 (1992)).
271. *Id.* at 935.
272. *Id.* at 933.
273. Murphy v. NCAA, 138 S. Ct. 1461, 1468–69 (2018).
274. *Id.* at 1469.
275. *Id.*

horse races."[276] One reason for this was to "increas[e] state revenue."[277] The state further loosened the ban in 1953, when "churches and other nonprofit organizations" began "host[ing] bingo games."[278] Finally, "[i]n 1970, New Jersey became the third state to run a state lottery."[279]

Next, the Court discussed gambling in Atlantic City.[280] Atlantic City used gambling to "revitalize" its failing economy in the 1960s.[281] In 1976, after failing to pass "a referendum on statewide" gambling, "voters approved a narrower measure allowing casino gambling in Atlantic City alone."[282] This allowed for Atlantic City to have "an east coast monopoly," as Nevada was the only other state to allow casino gambling.[283] When the Indian Gaming Regulatory Act of 1988 was enacted, the monopoly shrunk.[284] As more casinos opened on reservations, fewer people went to Atlantic City and opted for closer casinos.[285]

Moving to sports betting, the opinion discussed the Professional and Amateur Sports Protection Act (PASPA) and the legislative history behind the decision to enact PASPA.[286] The Court discussed the "most important provision" of PASPA: the provision dealing with the unlawfulness of state-sponsored sports betting.[287] The Court also noted that PASPA did not make sports betting a federal crime, but allowed for the "Attorney General, as well as professional and amateur sports organizations, to bring civil actions to enjoin violations."[288] The Court moved on to the New Jersey-specific provision, as discussed above, and mentioned that New Jersey never took advantage of the time given to implement its own sports betting scheme.[289]

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276. *Id.*
277. *Id.*
278. *Id.*
279. *Murphy*, 138 S. Ct. at 1469.
280. *Id.*
281. *Id.*
282. *Id.*
283. *Id.*
284. *Id.*
285. *Murphy*, 138 S. Ct. at 1469.
286. *Id.* at 1469–70.
287. *Id.* at 1470; *see also* Professional and Amateur Sports Protection (PASPA) Act, Pub. L. No. 102-559, 106 Stat. 4227, 4228 (codified as 28 U.S.C. § 3702 (1992)), *invalidated by* Murphy v. NCAA, 138 S. Ct. 1461 (2018).
288. *Murphy*, 138 S. Ct. at 1470–71.
289. *Id.* at 1471; *see also supra* Section III.B.

B. *Procedural History*

New Jersey tried again to allow sports betting in 2014, after failing in *Christie I*.[290] The court of appeals decided the act "selectively remove[s] a prohibition on sports wagering in a manner that permissively channels wagering activity to particular locations or operators."[291] The court of appeals then looked to whether PASPA violated the constitutional principle of anti-commandeering.[292] The Third Circuit held that it did not as PASPA did "not command states to take affirmative actions."[293]

C. *Issues on Appeal*

The Court found that the question presented was "whether this provision is compatible with the system of 'dual sovereignty' embodied in the Constitution."[294] In order to determine this, the Court bifurcated the question by examining first the meaning of the provision, which "prohibit[s] [s]tates from 'author[izing]' sports gambling," and second, the constitutionality of the provision.[295]

D. *What is the Meaning of the Provision?*

1. Plaintiff's Arguments

The plaintiffs in this case, the sports organizations, argued the legislation "empower[ed] a defined group of entities, and . . . endow[ed] them with the authority to conduct sports gambling operations."[296] Since this was the partial repeal of the ban on sports betting, the plaintiffs argued that the legislation ran afoul of PASPA which meant that PASPA would preempt the legislation.[297] The United States submitted an amicus brief in support of the plaintiffs.[298] It made an argument similar to the plaintiffs' argument, stating that the meaning of the New Jersey legislation was that "selective and conditional permission to engage in conduct that is generally prohibited

290. *Murphy*, 138 S. Ct. at 1472; *see also supra* Section IV.A.

291. *Id.* (quoting NCAA v. Governor of N.J. (*Christie I*), 832 F.3d 389, 397, 401 (3rd Cir. 2016)).

292. *Id.* at 1472–73.

293. *Id*. at 1473 (quoting *Christie I*, 832 F.3d at 401).

294. *Id.* at 1468.

295. *Id.* at 1473.

296. *Murphy*, 138 S. Ct. at 1473.

297. *Id.*

298. *Id.*

certainly qualifies as an authorization."[299] The United States also argued that it was "implausible" that "Congress commanded every county, district, and municipality in the Nation to prohibit sports betting."[300] The defendant, the state of New Jersey, argued that the "anti-authorization provision requires States to maintain their existing laws against sports gambling without alteration."[301] Since one definition of "authorize" is to "permit," the defendants stated that "any state law that has the effect of permitting sports gambling . . . amounts to an authorization."[302]

2. Holding and Rationale

The Court agreed with the plaintiffs' definition of the provision.[303] "When a State completely or partially repeals old laws banning sports gambling, it 'authorize[s]' that activity."[304] Because of the "state-law landscape at the time of PASPA's enactment . . . . the competing definitions offered by the parties lead to the same conclusion" that any change in the sports betting legislation of a state "permits" and "empowers" individuals to gamble on sporting events.[305] The Court further stated that the United States' argument, regarding the command of Congress, "again ignor[ed] the legal landscape at the time of PASPA's enactment."[306] Sports betting was "generally prohibited by state law," but the state could allow for the subdivisions of the state to make their own decisions about sports betting; therefore, a ban on the local level was necessary to complete the intent of the legislation.[307]

E. *Is PASPA Constitutional?*

Moving on, the Court addressed the legislation's constitutionality. Outlining the principles of the anti-commandeering doctrine,[308] the Court held that "even if the law could be interpreted" in favor of the sports organizations and the United States, "it would still violate the [anti-commandeering] principle."[309] The Court outlined three reasons why the

299. *Id.* at 1474 (internal quotation marks omitted).
300. *Id.* at 1474–75 (internal quotation marks omitted).
301. *Id.* at 1473.
302. *Murphy*, 138 S. Ct. at 1473.
303. *Id.* at 1474.
304. *Id.*
305. *Id.*
306. *Id.* at 1475.
307. *Id.*
308. *Murphy,* 138 S. Ct. at 1475–77.
309. *Id.* at 1475.

anti-commandeering principle is important.[310] First, the principle "serves as one of the Constitution's structural protections of liberty."[311] Second, the principle "promotes political accountability."[312] Finally, the principle "prevents Congress from shifting the costs of regulation to the [s]tates."[313] These policies helped the Court decide to strike down PASPA and return power to the states.

1. Plaintiff's Arguments

Plaintiffs argued that PASPA did not tell the states what to do, like *Printz* and *New York*.[314] Plaintiffs also argued that "commandeering occurs 'only when Congress goes beyond precluding state action and affirmatively commands it.'"[315] Another argument brought forth was that, given other case law decisions, PASPA's "anti-authorization provision [was] constitutional."[316] Finally, plaintiffs attempted to argue that PASPA was a valid preemption provision.[317]

2. Holding and Rationale

PASPA violated the anti-commandeering principle because it "unequivocally" told the states what they could and could not do.[318] Congress, through PASPA, "issue[d] direct orders" to the states, which told them that they could not have legislation that allowed for sports betting on the books.[319] "A more direct affront to state sovereignty is not easy to imagine."[320] The Court stated that "[i]t [was] as if federal officers were installed in state legislative chambers" to stop proposals on sports betting.[321] The Court held that this was something that Congress could not do without offending the traditional notions of federalism.[322] Moving on to the plaintiffs' next

310. *Id.* at 1477.
311. *Id.* (quoting Printz v. United States, 521 U.S. 898, 921 (1997)) (internal quotation marks omitted).
312. *Id.*
313. *Id.*
314. *Murphy*, 138 S. Ct. at 1478.
315. *Id.*
316. *Id.*
317. *Id.* at 1479.
318. *Id.* at 1478.
319. *Id.*
320. *Murphy*, 138 S. Ct. at 1478.
321. *Id.*
322. *Id.*

argument, the Court examined four prior Court decisions dealing with anti-commandeering, upon which the plaintiffs relied, and distinguished them all from the current case.[323] Concluding that "none of the prior decisions . . . involved federal laws that commandeered the state legislative process" or "directed . . . [s]tates either to enact or to refrain from enacting a regulation," the Court held that its precedent did not "support[] the constitutionality of . . . PASPA."[324] Finally, the Court addressed the plaintiffs' preemption argument. After explaining the three types of preemption, the Court held that none of the preemption principles applied.[325] Because the law neither gave individuals any "federal rights" nor "impose[d] any federal restrictions," the "provision . . . [was] not a preemption provision."[326] Rejecting all of the plaintiffs' arguments, the Court held that the provision preventing states from authorizing sports betting was unconstitutional.[327]

F. *Is the Anti-Authorization Provision "Severable" from PASPA?*

After striking down the provision, the Court then moved to decide if there were any way for the rest of the legislation to be upheld without it.[328] This is called severability: when the law "remains 'fully operative' without the invalid provisions," then the law can stand.[329] If not, then the Court must invalidate the entire scheme.[330] Because the only provision left would be the prohibition on state-operated sports betting, the question became "[i]f Congress had known that [s]tates would be free to authorize sports gambling in privately owned casinos, would it have nevertheless wanted to prevent [s]tates from running sports lotteries?"[331] The Court found that the answer was no because "[t]o the Congress that adopted PASPA, legalizing sports gambling in privately owned casinos while prohibiting state-run sports lotteries would have seemed exactly backwards."[332] Had Congress put the scheme into place without the anti-authorization provision, the act would have been "sharply

323. *Id.* at 1478–1479.
324. *Id.* at 1479.
325. *Id.* at 1480–81.
326. *Murphy*, 138 S. Ct. at 1481.
327. *Id.* at 1482.
328. *Id.*
329. *Id.* at 1482 (citing Free Enter. Fund v. Pub. Co. Accounting Oversight Bd., 561 U.S. 477, 509 (2010)).
330. *See id.* at 1482.
331. *Id.*
332. *Murphy*, 138 S. Ct. at 1483.

different" than the scheme "contemplated" by Congress in 1992.[333] Each of the provisions in PASPA would not be the same without the anti-authorization provision; therefore, the unconstitutional provision could not be severed from the rest of the provisions and still hold the integrity of the statute.[334]

G. *Concurring and Dissenting Opinions*

There were two opinions given by separate justices apart from the majority. First, Justice Thomas wrote a concurring opinion, and Justice Ginsburg, joined by Justice Sotomayor and Justice Breyer in part, dissented from the majority's opinion.

1. Justice Thomas' Concurrence

Justice Thomas wrote to explain his "growing discomfort with [the] modern severability precedents."[335] Agreeing that PASPA went beyond Congress' authority, Justice Thomas focused mainly on the severability analysis.[336] Severability, according to Justice Thomas, exceeds "traditional limits on judicial authority," and there is no history within the Court to suggest that severability is a judicial decision that needs to be made.[337] He argued that the court is not in the business of rewriting statutes for Congress, and a decision that one provision is unconstitutional should be the end of the discussion.[338]

2. Justice Ginsburg's Dissent

In her dissent, Justice Ginsburg wrote about the "wrecking ball" that came through "destroying [PASPA]" and ripping it from the books.[339] She stated the first two provisions—those banning the states from operating sports betting and preventing private parties from establishing their own sports betting schemes—were "salvage[able]," given Congress' authority to regulate sports betting, and the other regulation to stop the spread of sports betting could still be accomplished.[340]

333. *Id.* at 1482.
334. *Id.* at 1484.
335. *Id.* at 1485 (Thomas, J., concurring).
336. *Id.* at 1485–87.
337. *Id.* at 1485.
338. *Murphy*, 138 S. Ct. at 1486.
339. *Id.* at 1489 (Ginsburg J., dissenting).
340. *Id.* at 1489–90.

VII. WHAT EFFECTS COULD *MURPHY V. NCAA* HAVE ON SPORTS LAW?

In the aftermath of *Murphy*, the fifty state legislatures across the nation are free to enact sports betting schemes in whatever ways they deem proper. What does this mean? How will this affect the landscape of sports, commerce, crime, and even people? While the U.S. has yet to feel the full effects of this landmark sports law decision, a few positive and negative hypotheses may be opined.

A. *What Positive Effects Could the Decision Have?*

1. Likely Increase of State Revenue

Many states, like Virginia, already have a lottery in place. The Virginia Lottery prides itself on being self-operated and giving back to schools.[341] According to the Virginia Lottery website, "approximately $1.6 million" is raised every day for public K–12 schools.[342] Since 1999, the Virginia Lottery has raised over $9 billion in profits for public schools.[343] This was done with the current scheme alone. Imagine the amount of revenue to be raised by adding sports betting to the already expansive list of lottery possibilities in every state.

Delaware has already begun to see how sports betting can increase the state's revenue. In June of 2018, the Delaware legislature enacted the first legislation, "offer[ing] single-game sports wagering outside Nevada."[344] Between June and October 2018, the three casinos in the state generated $39.77 million in wagers, with $27.9 million raised at Delaware Park.[345] Of that, the state "netted almost $5.2 million" in approximately four months.[346] This means that almost one million dollars a month goes back into the state to help fund social programs, public schools, highway construction, and more. Delaware's preliminary model helps to show how many states could raise revenue through instituting new sports betting schemes.

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341. *About Us*, VA. LOTTERY, https://www.valottery.com/en/aboutus (last visited Jan. 30, 2020).

342. *Id.*

343. *Id.*

344. Jerry Smith, *Betting on NASCAR Comes to Dover International Speedway for the First Time*, DEL. ONLINE (Oct. 3, 2018, 4:43 PM), https://www.delawareonline.com/story/news/2018/10/03/dover-international-speedway-offers-sports-wagering-first-time/1499665002/).

345. *Id.*

346. *Id.*

2. Likely Increased Fan Experience and Increased Revenue for Sports Organizations

According to a 2018 Seton Hall University Sports Poll, Americans are 70% "more likely to watch a sports event they have placed a bet on."[347] Betting gives sports fans a stake in the outcome, making the fans more interested in the players on the field. This is good for sports organizations, like the NFL and MLB, that are, ironically, heavily opposed to legalizing sports betting in the states. As the number of viewers increases, organizations can charge more for advertising, and organizations can earn more money from a single event. Betting also creates loyalty to players, teams, and certain sports. Many fantasy football participants choose players based on the team the players are on. Someone with that player on their "fantasy team" will watch the player and follow the team's success during that season. Should the fantasy participant develop loyalties to that player or team, it creates a recurrent viewership for the sport. It is all connected and intertwined. Revenue for sports teams and organizations is dependent upon fan experience. Since sports betting is likely to increase fan experience and loyalties, sports teams and organizations are sure to benefit.

3. Unlikely to Affect Professional Athletes

Donald Cressey, a student of Edwin Sutherland, developed a theory on fraud in 1951 called the "Fraud Triangle."[348] In his article *Why Do Trusted Persons Commit Fraud? A Social-Psychological Study of Defalcators*, Cressey identified three conditions that must be present to commit embezzlement: (1) "a non-sharable problem," (2) "an opportunity for trust violation," and (3) "a set of rationalizations that define the behavior as appropriate in a given situation."[349] Even though Cressey specifically applied them to embezzlement, the theory is applicable to all types of fraud. The non-sharable problem is one the individual does not want to share, such as money trouble or addictions that need funding. The opportunity must be given to the individual to betray the trust of the person or entity who put them in the position. Finally, rationalization occurs when the fraudsters come to terms

347. Daniel Roberts, *Poll: 70% of Americans Say They Are More Likely to Watch a Sports Event They Bet On,* YAHOO! FIN. (Nov. 30, 2018), https://finance.yahoo.com/news/poll-70-americans-say-likely-watch-sports-event-bet-131737783.html.

348. W. Steve Albrecht, *Iconic Fraud Triangle Endures*, FRAUD MAG. (July/Aug. 2014), https://www.fraud-magazine.com/article.aspx?id=4294983342.

349. *Id.*

with betraying trust and potentially starting over again or perpetuating the fraud further.[350]

How does this work in the context of sports and gambling? Quite simply, players in professional sports are governed by rules that are put in place to protect the integrity of a sport. Like the laws that govern white-collar crime, players are not to break the rules. If they do, there are consequences. This puts them in a position of trust with the sports organizations—players are trusted to play the game in a way that is fair.

Unlike the Chicago "Black" Sox and Pete Rose, professional players of today—not just in baseball, but all professional sports—are at a lower risk of betraying the trust of their league for a simple reason: money.[351] It is well known that professional athletes, formerly vulnerable to gambling, receive proper compensation for their playing, not just on the field but also off. Between multi-million-dollar contracts with large signing bonuses and endorsement deals with national corporations, the landscape of money in sports today is very different than it used to be. The access to contracts and endorsements removes one of the prongs in the fraud triangle, "the non-sharable problem." Not every problem deals with money, however. After all, sometimes, a person can have all the money in the world and still be addicted to gambling. But, because of the millions of dollars available to professional players for their participation in sports, this group of athletes is less vulnerable to the temptation to "defraud" the fans by choosing to participate in the newly legalized sports betting. The ability to make money elsewhere prevents the need to "get in on the action" as the Black Sox did in 1919. Those Chicago baseball players did not have access to the resources that professional athletes do today.

B. *What Negative Effects Could the Decision Have?*

1. Increase in Gambling Addiction

Congress feared that the nation's young people would succumb to the dangers that gambling brought with it, most notably, addiction.[352] With the states able to permit sports betting within their borders, there are new opportunities for gamblers of all ages who have not previously been exposed to gambling in this capacity. Buying lottery tickets at a convenience store is very different from being able to bet and become a part of something bigger

350. *See id.*

351. *See supra* Sections II.A.1–3.

352. *See supra* Section II.B.1.

than a scratch-off ticket. Young adults are the most vulnerable demographic to succumb to the dangers of sports betting and gambling in general.[353] In 2000, "evidence indicat[ed] that between 4 and 8% of adolescents have a very serious gambling problem, while another 10–15% are at-risk."[354] Congress worried about the adolescents being affected by sports betting when it enacted PASPA; its worries may be realized with PASPA being removed from the law.

2. Increase in Organized Crime

One of the many types of illegal activity that organized crime cells engage in is gambling.[355] While the states may now implement their own schemes of sports betting, that does not reduce the risk of organized crime and illegal gambling. All over the world, sports betting "developed enclaves combining . . . open gambling with lavish entertainment."[356] These locations were "very beneficial to modern organized crime" as money began to pour into the organized crime cells.[357] Not only was their money funneling in through their operation, but open gambling provided a way to cycle the illegal money through and "clean it."[358] While there is the potential for new state schemes to compete with the underground cells, adaptation is not hard. Creating a way to overcome the new schemes may prove to be less difficult than the states would hope. People using money laundering techniques create the risk of fraud: having a legitimate, legal business funded by illegal activity which "cleans" the money.[359] Online gambling and the ability to shuffle money via the internet can also play a factor in the adaptation of organized crime to newly legalized gambling in the states.[360]

3. Likely to Affect Collegiate Athletes

As mentioned above, the fraud triangle theory does not apply to professional athletes, given the means by which the athletes are adequately

353. Carmen Messerlian et al., *Youth Gambling Problems: A Public Health Perspective*, 20 HEALTH PROMOTION INT'L 69, 69–70 (2005).

354. *Id.* at 70.

355. Paul Nunis, *Gambling and Lotteries*, *in* 1 ENCYCLOPEDIA OF WHITE COLLAR & CORP. CRIME 368, 370 (Lawrence M. Salinger ed., 2d ed. 2013).

356. *Id.*

357. *Id.* at 370–71.

358. *See id.*

359. *See* FAUSTO MARTIN DE SANCTIS, FOOTBALL, GAMBLING, AND MONEY LAUNDERING: A GLOBAL CRIMINAL JUSTICE PERSPECTIVE 115 (2014).

360. *Id.* at 100.

compensated. This is very different for college athletes because colleges do not pay their athletes for their participation at the collegiate level. Athletes can lose their eligibility to play if they do not follow the proper rules and procedures of the NCAA.[361] If an athlete gets paid, it moves him or her from amateur status to professional status. Athletes cannot play under the NCAA as professionals; they must maintain their amateur status.[362] Given the massive amount of revenue being brought in by collegiate athletics in the United States, many college athletes feel as if their colleges owe something other than their educational benefits and other distributed "stipends."

In comes the fraud triangle. Where professional athletes do not have the "non-sharable problems," college athletes do. They are aware of the money brought to the schools because of their arduous work. They see it all around them in locker rooms, equipment, and facilities. It brings a sense of resentment towards the institution because they are not reaping the instant benefits of their labors. Getting a quality education and possibly working towards professional end goals do not show up as quickly as a new car, pair of shoes, or headphones. College athletes would be given the opportunity to make money through gambling and take bribes from outside sources. Eighteen to twenty-one-year-old athletes have the motive to do so, and they can rationalize their decisions by choosing to believe that taking bribes or participating in state gambling is the proper compensation that they deserve for their efforts on the court, field, or pitch.

VII. CONCLUSION

In conclusion, the Supreme Court changed the landscape of sports, gambling, and state sovereignty through its decision in *Murphy v. NCAA*. By striking down the decades-long ban on sports betting, the Court has opened the doors for states to take their own stab at regulating sports betting for the good of the state. But at what cost? At what cost does raising revenue come when discussing the integrity of the sports we know and love? Only time will tell where or how far the states will take this "new" power.

361. NAT'L COLLEGIATE ATHLETIC ASS'N, 2019–20 NCAA DIVISION I MANUAL, NCAA 64 (2019).

362. *Id.* at 61.