

## Massachusetts at the Forefront: How to Protect the Most Vulnerable Group in a Post-Legal Sports Betting World—NCAA Student-Athletes

Dave Wilson

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# **Massachusetts at the Forefront: How to Protect the Most Vulnerable Group in a Post-Legal Sports Betting World—NCAA Student-Athletes**

Dave Wilson

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## **ABSTRACT**

Change is coming to sports gambling in the United States. No longer is it restricted to Nevada casinos or your “friendly” neighborhood sports bookie. The individual states have spoken, with state after state passing legislation authorizing legalized sports betting. It is clear that there is an appetite for legal sports gambling in this country. But how did we get here? And what will the ramifications be? This Note first analyzes the keystone sports gambling case, *Murphy v. NCAA*, and its impact on the destruction of the Professional and Amateur Sports Protection Act, which was commonly viewed as a federal ban on sports gambling. With states now able to create their own unique laws authorizing sports gambling within their borders, it is imperative that the legislation protect arguably the most vulnerable group affected by the *Murphy* decision: NCAA student-athletes. There are likely many problems, issues, and harms that current NCAA student-athletes will now face, including temptations to fix games. These new concerns create a duty for Massachusetts to enact sports gambling legislation with NCAA student-athletes in mind. This Note will conclude with solutions to these newly raised issues, including proposed changes to NCAA amateurism rules as well as proposed legislation which Massachusetts must adopt to protect this vulnerable group of individuals.

## **AUTHOR’S NOTE**

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I. INTRODUCTION.....	126
II. HOW DID WE GET HERE? .....	131
A. The Keystone Case: <i>Murphy v. NCAA</i> .....	131
B. Nevada Sports Wagering Legislation in Relation to College Sports .....	135
C. New Jersey Sports Wagering Legislation in Relation to College Sports .....	138
III. WHERE DO WE GO FROM HERE? .....	140
A. Sports Betting in Massachusetts .....	140
B. Money and Leverage: NCAA Student-Athletes Have Neither .....	144
C. The Inevitable: Sports Betting Scandals .....	149
D. Where Does the NCAA Fit In? .....	152
E. The Solution: Massachusetts .....	156
F. The Solution: Federal .....	159
G. The Solution: NCAA .....	161
IV. CONCLUSION .....	164

## I. INTRODUCTION

Imagine this hypothetical: It is Monday, April 6, 2020 in Atlanta, Georgia and the start of the National Collegiate Athletic Association (“NCAA”) Men’s Basketball Championship Game.<sup>1</sup> With March Madness just about finished, the Final Four has dwindled to the final two: Villanova University vs. University of Massachusetts (“UMass”). Twenty-three million people are tuning in to watch the game live on CBS,<sup>2</sup> while another eighty-three thousand are attending inside the Mercedes-Benz Stadium.<sup>3</sup> But the person with the most impact on the championship game is not a player, coach, or referee. He is not even at the game. In fact, he is sitting on a futon 1,053 miles away in his dorm room in Amherst, Massachusetts.<sup>4</sup> His name is Ryan and he is the roommate of the star point guard for UMass. Ryan will help decide who will be cutting down the nets as the 2020 NCAA Champion with the click of his phone using a legal sports betting<sup>5</sup> app.<sup>6</sup>

It is not as crazy as one may think. Just ask the 1978–1979 Boston College men’s basketball team. Members of that team engaged in one of the most high-profile sports betting controversies in the history of sports.<sup>7</sup> They worked directly with the New York City mafia to “fix”

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<sup>1</sup> See 2020 NCAA FINAL FOUR, <https://www.ncaa.com/final-four/> [https://perma.cc/S4WS-G36K].

<sup>2</sup> Joe Otterson, *TV Ratings: Viewership of NCAA Championship Grows 21% over 2016*, VARIETY (Apr. 4, 2017), <https://variety.com/2017/tv/news/tv-ratings-ncaa-championship-game-tar-heels-cbs-1202022251/> [https://perma.cc/822B-AXET].

<sup>3</sup> Keith Flamer, *A Bird’s-Eye View of Mercedes-Benz Stadium, Atlanta’s Epic NFL Wonderplex*, FORBES (Aug. 30, 2017, 2:09 PM), <https://www.forbes.com/sites/keithflamer/2017/08/30/a-birds-eye-view-of-mercedes-benz-stadium-atlantas-epic-nfl-wonderplex/#26c24a21659d> [https://perma.cc/U2Z9-JPRJ].

<sup>4</sup> See generally U. MASS. AMHERST, <https://www.umass.edu/> [https://perma.cc/3S9E-CE83].

<sup>5</sup> Please note that I will be using the terms “sports betting,” “sports gambling,” and “sports wagering” interchangeably throughout this Note.

<sup>6</sup> Nick Corasaniti, *‘Gold Mine’: Why New Jersey Is Suddenly Challenging Nevada as a Sports Betting Hub*, N.Y. TIMES (Oct. 19, 2018), <https://www.nytimes.com/2018/10/19/nyregion/new-jersey-sports-betting.html> [https://perma.cc/ZD8C-8VGL].

<sup>7</sup> 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](http://www.espn.com/espn/chalk/story/_/id/11633538/betting-chronicling-worst-fix-ever-1978-79-bc-point-shaving-scandal) [https://perma.cc/4CJ6-7W5U] [hereinafter Purdum, *The Worst Fix Ever*].

games in order for members of the team (but mostly the mob) to benefit financially.<sup>8</sup> One may ask, what exactly *is* “game fixing”? According to the Cambridge English Dictionary, it is defined as a “dishonest activity to make sure that one team wins a particular sports match.”<sup>9</sup> Members of the Boston College team were also involved in “point shaving.” Unlike game fixing, which means letting the other team win, point shaving means making sure a team fails to cover the point spread made by Las Vegas oddsmakers.<sup>10</sup>

When this Boston College game fixing scheme took place over forty years ago, there was a need for back channels, black markets, and working with some of the most dangerous mob members in the entire city of New York.<sup>11</sup> But fast forward to April 6, 2020, and the back channels have lost prominence. There is no need for a black market. Working with the mob is not necessary in the “Big Apple” or Atlanta. Today, there is simply Ryan, a twenty-two year-old college senior watching the game with his friends in western Massachusetts. And he will decide the game.<sup>12</sup> After all, he has already done the hard part; he has convinced his star roommate to do whatever it takes to negatively impact the game in order to “throw the game,” or deliberately lose. Now all Ryan has to do is make a legal sports bet on his phone declaring that UMass will lose the game. He will be guaranteed a seven-figure payout once they do, which was more than enough for him to convince his star roommate that the end payout would be well worth the championship game loss.

Back to current day, this is all possible because of the keystone case *Murphy v. NCAA*.<sup>13</sup> Decided in May of 2018, the United States

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

<sup>9</sup> *Game-Fixing*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/game-fixing> [<https://perma.cc/F4DU-LMGP>].

<sup>10</sup> See Purdum, *The Worst Fix Ever*, supra note 7 (discussing the Boston College point-shaving scandal); Chris Yuscavage, *Everything You Need to Know About How Betting Lines Work*, COMPLEX (Jan. 30, 2015), <https://www.complex.com/sports/2015/01/how-betting-lines-work/how-are-betting-lines-created> [<https://perma.cc/EB8E-4FYN>] (discussing the process of making point spreads).

<sup>11</sup> Purdum, *The Worst Fix Ever*, supra note 7.

<sup>12</sup> See David Porter & Regina Garcia-Cano, *Easier Gambling Has Sports Worried About Fighting the Fix*, ASSOCIATED PRESS (Sept. 17, 2018), <https://www.apnews.com/42b09c7fd1764bf196b13d5c44b2a188> [<https://perma.cc/CL78-XR4C>] (discussing the possibility of game fixing as the result of legalized gambling on college sports).

<sup>13</sup> 138 S. Ct. 1461 (2018).

Supreme Court held that the federal Professional and Amateur Sports Protection Act (“PASPA”) was unconstitutional.<sup>14</sup> This is important because a provision within PASPA made it unlawful for a state to authorize legal sports gambling.<sup>15</sup> Now that PASPA is no longer in effect, each individual state is free to enact legislation either authorizing sports betting, prohibiting sports betting, or meeting somewhere in the middle.<sup>16</sup> States such as Delaware, Mississippi, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, and West Virginia have already adopted legislation authorizing sports betting.<sup>17</sup> States like Illinois, Indiana, Montana, New Hampshire, and Tennessee could be ready to authorize it by late 2019.<sup>18</sup>

Who has the most to gain from sports betting? Who has the most to lose from sports betting? It may be true that the answer to both questions is the same: NCAA student-athletes.<sup>19</sup> Indeed, student-athletes seem to be exactly the demographic that Justice Alito referred to in *Murphy*. He stressed that “[s]ports gambling . . . is particularly addictive and especially attractive to young people with a strong interest in sports, and in the past gamblers corrupted and seriously damaged the reputation of . . . amateur sports.”<sup>20</sup>

The legalization of sports betting is a huge problem for student-athletes, the NCAA, and fans of collegiate athletics as a whole. Student-athletes, who have less free time to earn money because of their schedule demands,<sup>21</sup> are part of a larger demographic of college students who generally have few finances available to them during

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<sup>14</sup> *Id.* at 1475, 1485.

<sup>15</sup> *Id.* at 1473–74.

<sup>16</sup> *Id.* at 1477–78.

<sup>17</sup> 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](http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states) [<https://perma.cc/G8XS-EM6A>] (last updated Aug. 28, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> As a former Division I swimming and diving student-athlete at Providence College, I can confidently say this is true.

<sup>20</sup> *Murphy*, 138 S. Ct. at 1469–70.

<sup>21</sup> *See generally* NAT’L COLLEGIATE ATHLETIC ASS’N, TIME MANAGEMENT: WHAT DIVISION I STUDENT-ATHLETES SHOULD EXPECT, <https://www.ncaa.org/sites/default/files/StudentAthleteTimeManagement.pdf> [<https://perma.cc/PM7V-XJCU>].

their time as an undergraduate.<sup>22</sup> When one thinks of college dorm room meals, a pack of one dollar ramen noodles quickly comes to mind.<sup>23</sup> Not surprisingly, college students, including student-athletes, will do almost whatever it takes to make a few bucks.<sup>24</sup> This is where the issue of “game fixing” or “point shaving” comes into play.<sup>25</sup> Not only could this forever negatively impact the one fundamental truth of sports—fair and honest play—but NCAA student-athletes will almost assuredly become targeted and pressured by sports gamblers to affect the outcome of a game for the benefit of making money.<sup>26</sup>

That is why it is imperative that the state and federal governments take action. This Note will argue that Massachusetts should adopt legislation that authorizes legalized sports betting, but on professional sports *only*.<sup>27</sup> Congress must then follow and do the same.

Most professional athletes are making millions of dollars.<sup>28</sup> They generally do not have the same temptations and stresses that a college student-athlete does when his or her bank account is closely

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<sup>22</sup> See Jenna Berman, *What Does It Mean to Be a ‘Broke College Kid’ in 2018?*, GLAMOUR (May 16, 2018), <https://www.glamour.com/story/what-does-it-mean-to-be-a-broke-college-kid-in-2018> [<https://perma.cc/N3MG-HCP2>].

<sup>23</sup> Diana Wilkinson, *The Ramen Noodle Diet: Not Just for College Students*, PLANET FORWARD (Nov. 21, 2014), <https://www.planetforward.org/2014/11/21/the-ramen-noodle-diet-not-just-for-college-students> [<https://perma.cc/AG9U-BALW>].

<sup>24</sup> See generally Ransom Patterson, *Stop Being Broke: 100+ Ways to Make Money in College – Summer 2019*, C. INFO GEEK, <https://collegeinfo geek.com/how-to-make-money-in-college/> [<https://perma.cc/X63Z-7DNL>] (last updated July 25, 2019) (discussing money making opportunities for college students).

<sup>25</sup> Ethan Miller, *Sports Betting? College Athletes Are Vulnerable*, BOS. GLOBE, May 30, 2018, at A11.

<sup>26</sup> *Id.*

<sup>27</sup> Cf. Nina Totenberg et al., *Sports Betting Ruling Could Have Consequences, Especially for College Athletes*, NPR (May 14, 2018), <https://www.npr.org/sections/thetwo-way/2018/05/14/589087523/supreme-court-rules-states-are-free-to-legalize-sports-betting> [<https://perma.cc/UA3Y-8BTN>] (discussing the potential negative impact of legalized sports gambling on college student-athletes).

<sup>28</sup> See, e.g., *Visualizing the Yearly Salary of Professional Athletes, NBA Players Average \$5+ Million a Year*, HUFFPOST (Nov. 1, 2013), [https://www.huffpost.com/entry/visualizing-the-yearly-sa\\_b\\_4184716](https://www.huffpost.com/entry/visualizing-the-yearly-sa_b_4184716) [<https://perma.cc/DD5A-C6RN>] (last updated Dec. 6, 2017).

approaching “the red.”<sup>29</sup> Professional athletes have paid advisors and agents to look out for their well-being and to make sure they are making the right decisions.<sup>30</sup> NCAA student-athletes do not.<sup>31</sup> By prohibiting sports gambling on collegiate athletics, Massachusetts will be protecting the most vulnerable group of individuals within NCAA collegiate athletics, the student-athletes, by passing the proposed legislation described below.<sup>32</sup> While the colleges themselves are making hundreds of millions of dollars on TV deals with sports networks,<sup>33</sup> advertising,<sup>34</sup> and donations from alumni and fans,<sup>35</sup> college student-athletes cannot earn a penny.<sup>36</sup> This is exactly why many student-athletes feel like they are on the short end of the stick and will do anything they can to make money.<sup>37</sup> And *that* is the root of the problem.

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<sup>29</sup> See Jerilyn Klein Bier, *Most College Students Go Broke at Least One Semester*, FIN. ADVISOR (Mar. 22, 2016), <https://www.fa-mag.com/news/most-college-students-go-broke-at-least-one-semester-25838.html> [<https://perma.cc/AHE6-8ZUX>].

<sup>30</sup> *Sports Agents – History and Law*, USLEGAL, <https://sportslaw.uslegal.com/sports-agents-and-contracts/sports-agents-history-and-law/> [<https://perma.cc/69RQ-9SJ6>].

<sup>31</sup> NAT’L COLLEGIATE ATHLETIC ASS’N, AGENT GUIDE 5, [https://s3.amazonaws.com/friars.com/documents/2012/5/10/\\_prov\\_genrel\\_2011\\_12\\_misc\\_non\\_event\\_12-compliance-sa-agent-guide.pdf](https://s3.amazonaws.com/friars.com/documents/2012/5/10/_prov_genrel_2011_12_misc_non_event_12-compliance-sa-agent-guide.pdf) [<https://perma.cc/H3PF-ZPDA>].

<sup>32</sup> See Miller, *supra* note 25.

<sup>33</sup> Chris Smith, *The Most Valuable Conferences in College Sports: Can the SEC Be Caught?*, FORBES (July 18, 2016, 10:56 AM), <https://www.forbes.com/sites/chris-smith/2016/07/18/the-most-valuable-conferences-in-college-sports-can-the-sec-be-caught/> [<https://perma.cc/CQJ7-A2C9>].

<sup>34</sup> *The Biggest Advertisers Behind College Sports*, COLLEGESTATS.ORG, <https://collegestats.org/2012/08/the-biggest-advertisers-behind-college-sports/> [<https://perma.cc/UY9Q-Z7LK>].

<sup>35</sup> *Donations in College Sports, \$1.2 Billion in 2015*, C. SPORTS SCHOLARSHIPS, <https://www.collegesportsscholarships.com/donations-college-sport-athletics.htm> [<https://perma.cc/LV4F-DBCR>].

<sup>36</sup> Ryan Swanson, *Want to Clean Up College Athletics? Pay the Players.*, WASH. POST (Oct. 2, 2017), <https://www.washingtonpost.com/news/made-by-history/wp/2017/10/02/want-to-clean-up-college-athletics-pay-the-players/> [<https://perma.cc/XVJ9-ZHZV>].

<sup>37</sup> Brian Rosenberg, Opinion, *How the N.C.A.A. Cheats Student Athletes*, N.Y. TIMES (Oct. 3, 2017), <https://www.nytimes.com/2017/10/03/opinion/how-the-ncaa-cheats-student-athletes.html> [<https://perma.cc/7V3C-CR7M>].

In addition to this introductory Part I, Part II of this Note will examine the background and historical roots of this issue, outlining the keystone United States Supreme Court case and the sports betting legislation of two state leaders in the gambling market, Nevada and New Jersey. Part III of this Note will explain the problems, issues, and harms that current NCAA student-athletes now face, and also the critical solutions that Massachusetts, Congress, and the NCAA must take in order to protect this vulnerable class of individuals. Part IV will conclude this Note.

## II. HOW DID WE GET HERE?

### A. The Keystone Case: *Murphy v. NCAA*

The United States Supreme Court's decision in *Murphy v. NCAA* forever changed the sports gambling landscape in the United States.<sup>38</sup> This historic decision allowed each of the fifty states to “act on its own” to decide whether to permit or prohibit sports gambling within the state.<sup>39</sup> In essence, it removed the federal ban on sports gambling.<sup>40</sup>

This all started in 2012 when the state of New Jersey enacted a sports gambling amendment to its state constitution.<sup>41</sup> The newly enacted Sports Wagering Act gave the New Jersey Legislature the authority to legalize sports gambling in Atlantic City and at horseracing tracks located in New Jersey.<sup>42</sup> This prompted the NCAA, the non-profit governing body of collegiate athletics in the United States,<sup>43</sup> and the four major professional sports leagues in the United States: the National Basketball Association (“NBA”), the National

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<sup>38</sup> Will Brinson, *Can I Legally Bet on Sports Now? Everything You Need to Know About Supreme Court's Ruling*, CBS SPORTS (May 14, 2018, 1:12 PM), <https://www.cbssports.com/nfl/news/can-i-legally-bet-on-sports-now-everything-you-need-to-know-about-supreme-courts-ruling/> [<https://perma.cc/D7QB-6CWC>].

<sup>39</sup> *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018).

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

<sup>41</sup> *Id.* at 1471.

<sup>42</sup> Michael McCann, *Why New Jersey Won Its Supreme Court Battle to Legalize Sports Betting*, SI (May 14, 2018), <https://www.si.com/more-sports/2018/05/14/sports-betting-legal-supreme-court-ruling-analysis> [<https://perma.cc/99BY-UL74>].

<sup>43</sup> See *Where Does the Money Go?*, NCAA, <http://www.ncaa.org/about/resources/finances> [<https://perma.cc/PD3S-VP5N>].

Football League (“NFL”), the National Hockey League (“NHL”), and the Major League Baseball (“MLB”), to sue the state of New Jersey alleging the Act violated federal law prohibiting sports gambling.<sup>44</sup>

The NCAA and the four major professional sports leagues subsequently won their case before the United States District Court for the District of New Jersey in 2014.<sup>45</sup> After New Jersey appealed, the NCAA and professional leagues won again before the United States Court of Appeals for the Third Circuit in 2016.<sup>46</sup> Following this outcome, the United States Supreme Court granted a writ of certiorari and ultimately decided the case on May 14, 2018.<sup>47</sup>

This case examined a federal statute, the Professional and Amateur Sports Protection Act<sup>48</sup> of 1992.<sup>49</sup> PASPA was generally viewed as a federal prohibition on sports gambling.<sup>50</sup> However, contrary to common belief, PASPA did not make sports betting a federal crime.<sup>51</sup> Instead, PASPA permitted “the Attorney General, as well as professional and amateur sports organizations, to bring civil actions to enjoin violations.”<sup>52</sup> PASPA’s most important provision 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].”<sup>53</sup>

The key issue the Supreme Court considered in this keystone case was whether PASPA violated the anti-commandeering rule.<sup>54</sup> The anti-commandeering doctrine derives from the Tenth Amendment, which states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”<sup>55</sup> This doctrine “precludes

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<sup>44</sup> McCann, *supra* note 42; *see also infra* notes 45–46.

<sup>45</sup> NCAA v. Christie, 61 F. Supp. 3d 488, 491 (D.N.J. 2014).

<sup>46</sup> NCAA v. Governor of New Jersey, 832 F.3d 389, 391 (3d Cir. 2016).

<sup>47</sup> Murphy v. NCAA, 138 S. Ct. 1461, 1461 (2018).

<sup>48</sup> 28 U.S.C. § 3702 (1992).

<sup>49</sup> *Murphy*, 138 S. Ct. at 1470–71.

<sup>50</sup> McCann, *supra* note 42.

<sup>51</sup> *Murphy*, 138 S. Ct. at 1470.

<sup>52</sup> *Id.* at 1470–71.

<sup>53</sup> 28 U.S.C. § 3702.

<sup>54</sup> *Murphy*, 138 S. Ct. at 1478.

<sup>55</sup> U.S. CONST. amend. X; McCann, *supra* note 42.

Congress from ordering states to adopt a specific regulatory scheme when the federal government itself has not adopted a relevant scheme.”<sup>56</sup> This doctrine originally derived from James Madison’s writing in *The Federalist Papers*.<sup>57</sup> There, Madison advised the states to push back against federal overreach, including “a refusal to cooperate with officers of the Union.”<sup>58</sup> The doctrine has been confirmed by the United States Supreme Court countless times throughout the years.<sup>59</sup> The state of New Jersey maintained that PASPA violated this doctrine, as PASPA did not create a federal standard for sports betting, but instead blocked the states from doing so under their own laws.<sup>60</sup>

However, in order for the state of New Jersey to prevail in the case, it could not just stop there. It had to prove that PASPA went further to “commandeer” New Jersey to adopt a particular scheme.<sup>61</sup> New Jersey asserted that a form of commandeering occurred when the federal government prevented the state from pursuing a policy it wished to pursue.<sup>62</sup>

On the other hand, the NCAA and the four professional sports leagues argued that PASPA did not “commandeer New Jersey to adopt any scheme” but instead “merely stop[ped] New Jersey from legalizing sports betting.”<sup>63</sup> “Much of the debate [in this case was] centered on the appropriate meaning of ‘commandeering’ in the context of constitutional law.”<sup>64</sup> The Court had to decide whether commandeering was solely applicable when the federal government

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<sup>56</sup> McCann, *supra* note 42.

<sup>57</sup> Michael Boldin, *James Madison on How to Enforce the Constitution*, TENTH AMEND. CTR. (Dec. 15, 2013) <https://tenthamendmentcenter.com/2013/12/15/james-madison-on-how-to-enforce-the-constitution/> [<https://perma.cc/CXN3-QZQK>].

<sup>58</sup> *Id.*

<sup>59</sup> *See* *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that provisions of a Federal act directing state officials to participate in a Federal gun control regulation scheme was unconstitutional); *see also* *New York v. United States*, 505 U.S. 144, 187–88 (1992) (holding that an act of Congress coercing states to take title to low-level radioactive waste violated the Tenth Amendment).

<sup>60</sup> McCann, *supra* note 42.

<sup>61</sup> *See* *Murphy v. NCAA*, 138 S. Ct. 1461, 1477 (2018).

<sup>62</sup> McCann, *supra* note 42.

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

<sup>64</sup> *Id.*

required “a state to take action or whether it also” was applicable when the federal government “prevent[ed] a state from taking action.”<sup>65</sup>

The Court ultimately concluded that “[t]he PASPA provision at issue here—prohibiting state authorization of sports gambling—violates the anti-commandeering rule.”<sup>66</sup> Thus, PASPA was deemed unconstitutional.<sup>67</sup>

The Court held that PASPA violated the anti-commandeering doctrine by “unequivocally dictat[ing] what a state legislature may and may not do”<sup>68</sup> and that “[t]he Constitution gives Congress no such power.”<sup>69</sup> The Court reasoned that “Congress may not simply ‘commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.’”<sup>70</sup> The Court rejected the NCAA’s and professional sports leagues’ argument that there is a distinction between federal legislation which compels a state to act and that which prohibits a state from acting.<sup>71</sup> The Court stated that “[t]he basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event.”<sup>72</sup>

The Court cited policy considerations as well. The Court proclaimed that the anti-commandeering doctrine “serves as ‘one of the Constitution’s structural protections of liberty,’” “promotes political accountability,” and “prevents Congress from shifting the costs of regulation to the States.”<sup>73</sup>

The end result of this historic Supreme Court decision boils down to this: Congress may “regulate sports gambling directly, but if it elects not to do so, each state” now has the authority to legalize sports gambling within their state and “is free to act on its own.”<sup>74</sup> “The court

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<sup>65</sup> *Id.*

<sup>66</sup> *Murphy*, 138 S. Ct. at 1478.

<sup>67</sup> *Id.* at 1485.

<sup>68</sup> *Id.* at 1478.

<sup>69</sup> *Id.* at 1485.

<sup>70</sup> *Id.* at 1477 (quoting *New York v. United States*, 505 U.S. 144, 161 (1992) (internal quotations in original)).

<sup>71</sup> *Id.* at 1478.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 1477 (quoting *Printz v. United States*, 521 U.S. 898, 921 (1997)).

<sup>74</sup> *Murphy*, 138 S. Ct. at 1484–85; Herb Jackson, *Sports Betting: Congress May Try to Regulate, But Passage of Any Legislation Is a Long Shot*, USA TODAY

ruling does not, in itself, change the legality of sports betting” in any state.<sup>75</sup> “However, the individual states are now free to pass statutes that would legalize sports gambling within their borders.”<sup>76</sup> It is important to note that the Court’s decision “left the door open for Congress to step in and pre-empt the states if it wants to set up a federal regulatory [sports gambling] system.”<sup>77</sup> Congress has not done so at this time.<sup>78</sup>

The Court did acknowledge that “[t]he legalization of sports gambling is a controversial subject.”<sup>79</sup> The Court gave a general synopsis of the arguments on each side of the spectrum. The Court stated that supporters of sports gambling “argue that legalization will produce revenue for the States and critically weaken illegal sports betting operations, which are often run by organized crime.”<sup>80</sup> On the other hand, the Court stated that opponents of sports gambling “contend that legalizing sports gambling will hook the young on gambling, encourage people of modest means to squander their savings and earnings, and corrupt professional and college sports.”<sup>81</sup>

### **B. Nevada Sports Wagering Legislation in Relation to College Sports**

Prior to the *Murphy* ruling, there was a key provision included in PASPA—a “grandfather clause.”<sup>82</sup> This clause specified that “all

(May 15, 2018, 12:07 PM), <https://www.usatoday.com/story/news/politics/2018/05/15/sports-betting-congress-may-try-new-regulations-but-odds-high/609817002/> [<https://perma.cc/AJ9Y-3B9E>].

<sup>75</sup> Marc Edelman, *Explaining the Supreme Court’s Recent Sports Betting Decision*, FORBES (May 16, 2018, 11:08 AM), <https://www.forbes.com/sites/marcedelman/2018/05/16/explaining-the-supreme-courts-recent-sports-betting-decision/> [<https://perma.cc/4TYL-4W2L>].

<sup>76</sup> *Id.*

<sup>77</sup> Jackson, *supra* note 74.

<sup>78</sup> See Matt Rybaltowski, *House Subcommittee Hears Spirited Debate on Role of Federal Government in Regulating Sports Gambling*, FORBES (Sept. 27, 2018, 5:19 PM), <https://www.forbes.com/sites/mattrybaltowski/2018/09/27/house-subcommittee-hears-spirited-debate-on-role-of-federal-government-in-regulating-sports-gambling/> [<https://perma.cc/9YRQ-3XBF>].

<sup>79</sup> *Murphy*, 138 S. Ct. at 1484.

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

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

<sup>82</sup> 28 U.S.C. § 3704(a)(1) (1992).

states with sports betting regulatory schemes in place between 1976 and 1990 . . . would be exempt” from adhering to the anti-sports betting provision within PASPA.<sup>83</sup> This allowed four states to be exempt from PASPA: Delaware, Montana, Nevada, and Oregon.<sup>84</sup> One of these states has undoubtedly benefited the most from this exemption. That state would be Nevada, of course, having the country’s “undisputed leader in sports betting” located within its borders: Las Vegas.<sup>85</sup> This grandfather clause provision made it clear that “PASPA was not designed to halt existing sports betting practices but rather to prevent new ones.”<sup>86</sup>

Sports betting has been legal in Nevada since 1949.<sup>87</sup> Betting on professional sports has been legal since that time.<sup>88</sup> Betting on collegiate sports, however, was illegal at the outset.<sup>89</sup> Even after betting on college sports was eventually legalized, a provision made it illegal to bet on any sporting event which involved a college or university located within the state of Nevada.<sup>90</sup> In response to this provision, former United States Senator John McCain made a “push[] to remove all college games from betting action in Nevada.”<sup>91</sup> Senator McCain argued “that there [was] some level of corruption in accepting college wagers if the state’s two major universities were blacked out from the betting menu.”<sup>92</sup> The Nevada Gaming Commission

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<sup>83</sup> Cameron Jean, *U.S. Sports Betting: Is the Professional & Amateur Sports Protection Act Still Fit for Purpose?*, LAWINSPOORT (July 14, 2015), <https://www.lawinsport.com/topics/articles/item/u-s-sports-betting-is-the-professional-amateur-sports-protection-act-still-fit-for-purpose#references> [<https://perma.cc/DF46-UJ59>].

<sup>84</sup> Chris Sieroty, *PASPA’s Grandfathered States of Delaware, Oregon and Montana Consider Sports Betting*, GAMBLINGCOMPLIANCE (May 29, 2018), [https://gamblingcompliance.com/premium-content/insights\\_analysis/paspas-grandfathered-states-delaware-oregon-and-montana-consider](https://gamblingcompliance.com/premium-content/insights_analysis/paspas-grandfathered-states-delaware-oregon-and-montana-consider) [<https://perma.cc/Y3N9-KPAC>].

<sup>85</sup> McCann, *supra* note 42.

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

<sup>87</sup> *Nevada Sports Betting*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/nevada/> [<https://perma.cc/CZ7P-8T36>] (last updated Sept. 4, 2019).

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

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

<sup>90</sup> *Id.*

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

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

responded to this in 2001 by legalizing sports gambling on all colleges, including those located in Nevada.<sup>93</sup>

This new law included language that excluded wagers on “any amateur non-collegiate sport or athletic event.”<sup>94</sup> This ensured that sports wagering on high school sports was prohibited, as well as other organized amateur athletic events such as the Olympic Games.<sup>95</sup> However, the Olympic sports betting ban was relatively short lived.<sup>96</sup> In 2015, the Nevada Gaming Control Board reversed course and legalized sports betting on the Olympics, beginning with the 2016 Summer Olympics in Rio.<sup>97</sup>

The current law in Nevada states: “No wagers may be accepted or paid by any book on: (1) Any amateur sport or athletic event other than Olympic sporting or athletic events and collegiate sporting or athletic events . . . .”<sup>98</sup> For purposes of this regulation, a “collegiate sport or athletic event” is defined as “a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers educational services beyond the secondary level.”<sup>99</sup>

Essentially, this means there are no restrictions governing college sports betting in Nevada. Generally, football and basketball are the major college sports offered by Nevada sportsbooks.<sup>100</sup> Wagering on other college sports may also be available, but it is limited to major collegiate events, such as the College World Series.<sup>101</sup>

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

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

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

<sup>97</sup> *Id.*; see also Darren Heitner, *Las Vegas Will Take Your Wagers on the Rio Olympics*, FORBES (Aug. 5, 2016, 11:00 AM), <https://www.forbes.com/sites/darrenheitner/2016/08/05/las-vegas-will-take-your-wagers-on-the-rio-olympics/> [<https://perma.cc/9HJA-CX6K>].

<sup>98</sup> NEV. ADMIN. CODE § 22.1205 (2019).

<sup>99</sup> NEV. ADMIN. CODE § 22.010(8) (2019).

<sup>100</sup> *Nevada Sports Betting*, *supra* note 87.

<sup>101</sup> *Id.*

### C. New Jersey Sports Wagering Legislation in Relation to College Sports

New Jersey wasted no time in its pursuit of legalized sports betting. The New Jersey Legislature approved sports wagering and passed the subsequent bill less than three weeks after the *Murphy* decision.<sup>102</sup> New Jersey Governor Phil Murphy signed the bill into law just four days later.<sup>103</sup> The first legal sports wagers in the state of New Jersey were made three days after that.<sup>104</sup> Fittingly, the first legal sports wager was made by Governor Murphy himself.<sup>105</sup> Some now believe New Jersey can overtake Nevada's throne as the top sports betting market in the United States.<sup>106</sup>

Unlike Nevada, which permits collegiate sports betting on all colleges and universities, New Jersey's new law has prohibited sports wagering on the colleges and universities located within the state of New Jersey. As defined by the New Jersey legislation, a "prohibited sports event" is:

*[A]ny collegiate sport or athletic event that takes place in New Jersey or a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place. A "prohibited sports event" does not include the other games of a collegiate*

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<sup>102</sup> Justine McDaniel & Andrew Seidman, *New Jersey Legislature Passes Sports-Betting Law. Could Betting Start Friday?*, PHILA. INQUIRER (June 7, 2018), <http://www2.philly.com/philly/news/new-jersey-sports-betting-legislature-phil-murphy-20180607.html> [https://perma.cc/2K6R-JW4C].

<sup>103</sup> Max Jaeger, *New Jersey Governor Signs Sports Betting Bill into Law*, N.Y. POST (June 11, 2018, 3:45 PM), <https://nypost.com/2018/06/11/new-jersey-governor-signs-sports-betting-bill-into-law/> [https://perma.cc/PT5L-2PKW].

<sup>104</sup> Brent Johnson, *Game On! N.J. Sports Betting Kicks Off with Phil Murphy Wager*, NJ.COM (June 14, 2018), [https://www.nj.com/politics/index.ssf/2018/06/game\\_on\\_nj\\_sports\\_betting\\_kicks\\_off\\_with\\_phil\\_murp.html](https://www.nj.com/politics/index.ssf/2018/06/game_on_nj_sports_betting_kicks_off_with_phil_murp.html) [https://perma.cc/KG46-RY2D] (last updated Jan. 30, 2019).

<sup>105</sup> *Id.* The bet was a \$20 wager on Germany to win the World Cup and a \$20 wager on the New Jersey Devils to win the Stanley Cup. *Id.* The Massachusetts native assured the crowd that he would not bet on his home-town Boston Red Sox. *Id.* Based on the outcome of the 2018 World Series Championship for the Boston Red Sox a few months later, he may be regretting this decision.

<sup>106</sup> Roger Aitken, *U.S. Sports Betting Market: Could New Jersey Eclipse Nevada to Become No.1?*, FORBES (Aug. 12, 2018, 2:49 PM), <https://www.forbes.com/sites/rogeraitken/2018/08/12/u-s-sports-betting-market-could-new-jersey-eclipse-nevada-to-become-no-1/> [https://perma.cc/XY2W-T45Z].

*sport or athletic tournament in which a New Jersey college team participates, nor does it include any games of a collegiate tournament that occurs outside New Jersey even though some of the individual games or events are held in New Jersey. A prohibited sports event includes all high school sports events, electronic sports, and competitive video games but does not include international sports events in which persons under age 18 make up a minority of the participants.*<sup>107</sup>

In essence, New Jersey has placed restrictions which allow for sports betting only on colleges and universities located *outside* the state of New Jersey.<sup>108</sup> This means that betting on schools like Seton Hall University, Rutgers University, and Princeton University is prohibited in New Jersey, regardless of where the game is actually taking place.<sup>109</sup> This is similar to the pre-2001 Nevada law which prohibited sports betting on all the colleges and universities located in Nevada.<sup>110</sup>

In just a short amount of time after its legalization, the New Jersey Division of Gaming Enforcement has reported an “explosive growth” in legal sports betting.<sup>111</sup> Nine entities across the state are currently licensed to take sports bets in New Jersey, with those located in Atlantic City being the epicenter.<sup>112</sup> Total gaming revenue for September of 2018—including casinos, internet revenue, and sports betting—was \$281.7 million.<sup>113</sup> This represents a 19.5% increase from the previous year’s gaming revenue of \$235.8 million.<sup>114</sup> As of October of 2018, “sports betting has attracted over \$336 million in bets in the

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<sup>107</sup> N.J. STAT. ANN. § 5:12A-10 (West 2018).

<sup>108</sup> *Id.*

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

<sup>110</sup> *Nevada Sports Betting*, *supra* note 87.

<sup>111</sup> Andrew Maykuth, *With Football in Play, N.J. Reports ‘Explosive Growth’ in Legal Sports Betting*, PHILA. INQUIRER (Oct. 12, 2018, 4:13 PM), [http://www2.philly.com/philly/business/tourism\\_casinos/nj-dge-reports-explosive-growth-sports-betting-september-nfl-season-start-20181012.html](http://www2.philly.com/philly/business/tourism_casinos/nj-dge-reports-explosive-growth-sports-betting-september-nfl-season-start-20181012.html) [<https://perma.cc/V8VZ-BZQE>].

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

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

state.”<sup>115</sup> Another trend that has become clear is the love for online and mobile sports betting in New Jersey. Online and mobile sports betting began in August of 2018 and now account for more than half of all sports wagering within the state.<sup>116</sup> Of the first \$336 million that had been bet in New Jersey, approximately 63%, or \$210 million, were placed online rather than at a casino or racetrack.<sup>117</sup>

### III. WHERE DO WE GO FROM HERE?

#### A. Sports Betting in Massachusetts

Legalized sports betting will soon be coming to Massachusetts.<sup>118</sup> This issue is currently on the “front burner” for the House to take action, and it was anticipated that a sports betting bill would be “ready to go” in early 2019.<sup>119</sup> However, it is now looking like legalized sports betting will not be coming to Massachusetts until 2020.<sup>120</sup>

The timeline has become a bit clearer after some revealing comments made by Massachusetts Governor Charlie Baker. In January of 2019, Governor Baker filed legislation to create legalized sports betting in Massachusetts.<sup>121</sup> The Legislature then held a hearing on this

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<sup>115</sup> ‘Stunning’ Numbers Show N.J. Has Fallen in Love with Sports Betting, NJ.COM (Oct. 12, 2018), [https://www.nj.com/news/index.ssf/2018/10/stunning\\_numbers\\_show\\_nj\\_has\\_fallen\\_in\\_love\\_with\\_sports\\_betting.html](https://www.nj.com/news/index.ssf/2018/10/stunning_numbers_show_nj_has_fallen_in_love_with_sports_betting.html) [https://perma.cc/8NKK-YYL2] (last updated Jan. 29, 2019) [hereinafter ‘Stunning’ Numbers].

<sup>116</sup> Andrew Maykuth, *Three Early Takeaways from N.J.’s Explosive Sports-Betting Launch*, PHILA. INQUIRER (Nov. 5, 2018, 5:18 AM), [http://www2.philly.com/philly/business/tourism\\_casinos/what-nj-explosive-sports-betting-launch-means-for-pennsylvania-fanduel-draftkings-sugarhouse-parx-20181105.html](http://www2.philly.com/philly/business/tourism_casinos/what-nj-explosive-sports-betting-launch-means-for-pennsylvania-fanduel-draftkings-sugarhouse-parx-20181105.html) [https://perma.cc/DCL2-RFL4].

<sup>117</sup> ‘Stunning’ Numbers, *supra* note 115.

<sup>118</sup> Colin A. Young, *Mass. Sports Betting Bill Could Be ‘Ready to Go’ in 2019, Rep. Joe Wagner Says*, MASSLIVE (June 4, 2018), [https://www.masslive.com/news/index.ssf/2018/06/mass\\_sports\\_betting\\_bill\\_could.html](https://www.masslive.com/news/index.ssf/2018/06/mass_sports_betting_bill_could.html) [https://perma.cc/W755-EMLG] (last updated Jan. 30, 2019).

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

<sup>120</sup> Matt Carey, *Massachusetts Governor Pessimistic About Sports-Betting Passage in 2019*, GAMBLINGCOMPLIANCE (July 30, 2019), [https://gamblingcompliance.com/premium-content/insights\\_analysis/massachusetts-governor-pessimistic-about-sports-betting-passage](https://gamblingcompliance.com/premium-content/insights_analysis/massachusetts-governor-pessimistic-about-sports-betting-passage) [https://perma.cc/4Z2U-2RVG].

<sup>121</sup> “I Hope We Have Legalized Sports Betting in Massachusetts by June 2020,” *Governor Says*, YOGONET GAMING NEWS, <https://www.yogonet.com/inter->

legislation during the spring of 2019 and, according to Governor Baker, “There weren’t a heck of a lot of people there testifying against it.”<sup>122</sup> Governor Baker had originally hoped to begin legalized sports betting by the end of the summer in 2019 in order to start before the football season,<sup>123</sup> knowing full well the lucrative draw of the defending Super Bowl champion: the New England Patriots. He now says the issue is likely going to slide into the 2020 calendar year, with the goal of finalizing the legislation by June of 2020.<sup>124</sup> Governor Baker was not shy on his stance of the sports betting issue: “I would like to have seen it done sooner to tell you the truth.”<sup>125</sup>

The ultimate decision to eventually pass legislation and regulate this new legal industry is now in the hands of Massachusetts Legislators and the Massachusetts Gaming Commission.<sup>126</sup> Local legislators have spoken in favor of sports gambling.<sup>127</sup> New England recently saw its first state legalize sports betting with Rhode Island officially accepting sports wagers on November 26, 2018.<sup>128</sup> New Hampshire will soon be next with its first sports bets projected to be placed in December of 2019.<sup>129</sup>

Once legislation is passed in Massachusetts, legal sports betting will almost certainly take place at the three casinos already located in

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national/noticias/2019/07/31/50516-i-hope-we-have-legalized-sports-betting-in-massachusetts-by-june-2020-governor-says [https://perma.cc/EB85-LTV2].

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

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

<sup>126</sup> Hayden Bird, *What You Need to Know About the Prospect of Sports Betting in Massachusetts*, BOSTON.COM (Sept. 6, 2018), <https://www.boston.com/sports/sports-news/2018/09/06/sports-gambling-massachusetts-legal> [https://perma.cc/AM9M-X3EM].

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

<sup>128</sup> Mark Reynolds, ‘*Let’s Get It On*’: *Sports Gambling Starts in R.I. as Leaders Bet \$20 on the Celtics*, PROVIDENCE J. (Nov. 26, 2018, 3:24 PM), <http://www.providencejournal.com/news/20181126/lets-get-it-on-sports-gambling-starts-in-ri-as-leaders-bet-20-on-celtics> [https://perma.cc/R97Y-FRH7] (last updated Nov. 26, 2018, 9:27 PM).

<sup>129</sup> Shawne K. Wickham, *NH, Place Your Bets: Sports Wagering Is Now Legal Here*, N.H. UNION LEADER (July 13, 2019), [https://www.unionleader.com/news/politics/state/nh-place-your-bets-sports-wagering-is-now-legal-here/article\\_33bda4a6-5283-55a8-8bc0-d9797d3bed1a.html](https://www.unionleader.com/news/politics/state/nh-place-your-bets-sports-wagering-is-now-legal-here/article_33bda4a6-5283-55a8-8bc0-d9797d3bed1a.html) [https://perma.cc/DML8-K5PA].

the Bay State.<sup>130</sup> These casinos include: Plainridge Park Casino, a slot parlor; MGM Springfield, a Las Vegas-style casino which opened in August of 2018; and Encore Boston Harbor, a Wynn Resorts-owned luxury complex which opened in June of 2019.<sup>131</sup>

A key question for Massachusetts will be whether to allow online and mobile sports betting.<sup>132</sup> The increase in “mobile phone use, combined with the increased availability of detailed, in-game data, has raised the possibility that people may be able to wager from their living rooms not just on games, but on specific plays.”<sup>133</sup> DraftKings, a Boston-based daily fantasy sports company, was the first to offer mobile sports betting in New Jersey, and is well-connected in Massachusetts.<sup>134</sup> There is no doubt that companies, such as DraftKings, will be urging lawmakers to open up a mobile gaming market in the Bay State. If and when that happens, casino and horse track operators, the already-established gambling industry entities in the state, will almost assuredly join in.<sup>135</sup>

Federal law, specifically the 1961 Wire Act, will impact the option of allowing online and mobile sports betting.<sup>136</sup> This Act was originally designed to “fight organized crime and illegal betting rings.”<sup>137</sup> Therefore, in Massachusetts, like in every other state, the “interstate transmission of bets” is prohibited.<sup>138</sup> This essentially means that bettors using mobile apps or betting online must be located

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<sup>130</sup> Dakota Randall & Joshua Schrock, *How Legal Sports Betting in Massachusetts Might Look, Eventually*, NESN (July 18, 2018, 9:06 AM), <https://nesn.com/2018/07/how-legal-sports-betting-in-massachusetts-might-look-eventually/> [<https://perma.cc/5TZX-D5R2>].

<sup>131</sup> *Id.*

<sup>132</sup> Andy Rosen, *No, You Can't Bet on the Patriots in New England Yet*, BOS. GLOBE (Sept. 7, 2018), <https://www.bostonglobe.com/business/2018/09/07/you-can-bet-patriots-new-england-yet/vba4JnQWH59o3u114AVbkl/story.html> [<https://perma.cc/63B5-V8UT>].

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

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

<sup>135</sup> *Id.*

<sup>136</sup> Jill R. Dorson, *Massachusetts Releases Comprehensive Review of State's Sports Betting Opportunity*, SPORTS HANDLE (Mar. 2, 2018), <https://sportshandle.com/massachusetts-sports-betting-gaming-commission-study-analysis/> [<https://perma.cc/MK2Q-2YE9>].

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

inside Massachusetts and use only state-approved methods to make their wagers.<sup>139</sup> As previously noted, states such as New Jersey have already approved mobile betting.<sup>140</sup> According to the Massachusetts Gaming Commission, legalized sports betting at racetracks, off-track betting facilities, tribal facilities, and the state lottery have also been considered for legislative approval.<sup>141</sup>

Regarding professional sports gambling, support in the United States seems to be relatively strong.<sup>142</sup> Based on a 2017 UMass Lowell-*Washington Post* poll, fifty-five percent of Americans support legalization of gambling on professional sports in all states.<sup>143</sup> It also found one in five people surveyed had placed an illegal bet in their lifetime.<sup>144</sup> This author has found no such study conducted regarding collegiate sports gambling.

As always, money will be at the center of the discussion as to the parameters of the approved legislation in Massachusetts. According to a 2017 Oxford Economics for the American Gaming Association study, it is estimated that Massachusetts would collect \$8.6 million in annual tax revenue if it permits betting only at the aforementioned brick-and-mortar casinos and attaches a “low tax rate” of 6.75% on the bets.<sup>145</sup> On the other hand, Massachusetts is projected to collect \$61.3 million if the state places a “high tax rate” of 15% on the bets and allows betting at casinos, retail locations, and through online or mobile platforms.<sup>146</sup> Supporters of legalization say legalizing online, mobile, and retail sports betting would be hugely beneficial to the Bay State, and that “legalized online/mobile sports gambling could enable states to mitigate the presence of black market sports wagering.”<sup>147</sup> Such a

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<sup>139</sup> *Id.*

<sup>140</sup> Chris Grove, *New Jersey Sports Betting Revenue Soars with Introduction of Online Bets*, FORBES (Sept. 13, 2018, 10:24 AM), <https://www.forbes.com/sites/chrisgrove/2018/09/13/nj-sportsbetting-revenue-mobile-boost/> [<https://perma.cc/7USB-LZ45>].

<sup>141</sup> Dorson, *supra* note 136.

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

<sup>143</sup> *2017 Sports Poll – Sports Betting & Fantasy Football*, UMASS LOWELL CTR. FOR PUB. OPINION, [https://www.uml.edu/docs/betting-highlights\\_tcm18-281455.pdf](https://www.uml.edu/docs/betting-highlights_tcm18-281455.pdf) [<https://perma.cc/A4LF-99UM>].

<sup>144</sup> Young, *supra* note 118.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Randall & Schrock, *supra* note 130.

black market “significantly” exceeds \$100 billion annually in the United States, according to the study.<sup>148</sup>

### **B. Money and Leverage: NCAA Student-Athletes Have Neither**

For once, however, money should not be the primary focus of this historic legislation soon expected to be passed in Massachusetts. Instead, the focus should be on protecting the most vulnerable bystander of the creation of this new and legal industry: NCAA collegiate varsity student-athletes.<sup>149</sup>

The reason student-athletes are now the most vulnerable group as a result of legalized sports betting, as always, comes back to money. And it is pretty easy to see why. As of 2016, the average salary for players in the four major American sports leagues was a very comfortable sum: \$6.2 million for the NBA; \$4.4 million for the MLB; \$2.9 million for the NHL; and \$2.1 million for the NFL.<sup>150</sup>

On the other end of the spectrum, NCAA student-athletes are prohibited from receiving a salary from their respective schools.<sup>151</sup> They are only allowed athletic scholarships from their schools.<sup>152</sup> In Division I of the NCAA, the average athletic scholarship is \$16,937 for men and \$17,654 for women.<sup>153</sup> In NCAA Division II, the average athletic scholarship is \$6,211 for men and \$7,558 for women.<sup>154</sup> NCAA Division III prohibits schools from issuing athletic scholarships to their student-athletes and are only allowed to give academic scholarships.<sup>155</sup> Fifty-nine percent of all NCAA Division I student-

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<sup>148</sup> *Id.*

<sup>149</sup> Miller, *supra* note 25.

<sup>150</sup> Kurt Badenhausen, *The Average Player Salary and Highest-Paid in NBA, MLB, NHL, NFL and MLS*, FORBES (Dec. 15, 2016, 9:34 AM), <https://www.forbes.com/sites/kurtbadenhausen/2016/12/15/average-player-salaries-in-major-american-sports-leagues/> [<https://perma.cc/EP4X-T2BA>].

<sup>151</sup> NAT'L COLLEGIATE ATHLETIC ASS'N, 2018–19 NCAA DIVISION I MANUAL 63–64 (2018), <http://www.ncaapublications.com/productdownloads/D119.pdf> [<https://perma.cc/Q546-K2K5>] [hereinafter NCAA MANUAL].

<sup>152</sup> *Id.* at 199.

<sup>153</sup> *Average Athletic Scholarship per College Athlete*, SCHOLARSHIP STATS, <http://www.scholarshipstats.com/average-per-athlete.html> [<https://perma.cc/2E66-QPMN>].

<sup>154</sup> *Id.*

<sup>155</sup> Jason Smith, *Do Division III Schools Give Scholarships to Athletes?*, USA TODAY (Dec. 20, 2017), <https://usatodayhss.com/2017/do-division-iii-schools-give-scholarships-to-athletes> [<https://perma.cc/P5BV-8AJK>].

athletes and sixty-two percent of all NCAA Division II student-athletes receive some level of athletics scholarship, which can range anywhere from \$100 to the full cost of attendance.<sup>156</sup> A school's cost of attendance is determined by each school's financial aid office and accounts for various miscellaneous expenses beyond the value of an athletic scholarship, which covers a student-athlete's cost of tuition and fees, room and board, books, supplies, transportation, and loan fees. This is typically between \$2,000 and \$5,000 per year greater than the value of an athletic scholarship. Generally, this means that the maximum a student-athlete can "earn" per year is about \$5,000 above the cost of tuition and fees, room and board, books, supplies, transportation, and loan fees.<sup>157</sup> As of 2015–2016, the average cost-of-attendance of four-year colleges and universities was \$26,132.<sup>158</sup> More specifically, the average was \$19,204 for public institutions and \$39,534 for private institutions.<sup>159</sup>

However, it seems as though NCAA student-athletes are the only group of individuals *not* making money off of their own participation in collegiate athletics. As of 2017, a total of eighty-two NCAA Division I head football coaches<sup>160</sup> and seventy-two NCAA Division I head men's basketball coaches received a salary of over \$1 million.<sup>161</sup> Nick Saban, the head football coach at the University of Alabama, received the highest football salary at just over \$8 million, while John Calipari, the head men's basketball coach at University of Kentucky,

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<sup>156</sup> NAT'L COLLEGIATE ATHLETIC ASS'N, NCAA RECRUITING FACTS 1 (2018), <https://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf> [<https://perma.cc/GB4A-NAFH>]; Eric Prisbell, *What Is Full Cost of Attendance for NCAA Athletes*, USA TODAY (Aug. 17, 2014, 4:57 PM) <https://www.usatoday.com/story/sports/college/2014/08/17/ncaa-full-cost-of-attendance/14200387/> [<https://perma.cc/VU5N-WA9S>] (last updated Aug. 17, 2014, 5:06 PM).

<sup>157</sup> *Cost of Attendance*, FREE APPLICATION FOR FED. STUDENT AID, <https://fafsa.ed.gov/help/costatt.htm> [<https://perma.cc/3Z9L-GVQQ>].

<sup>158</sup> U.S. DEP'T OF EDUC., DIGEST OF EDUCATION STATISTICS 579 (2017), <https://nces.ed.gov/pubs2018/2018070.pdf> [<https://perma.cc/9W4L-V4XQ>].

<sup>159</sup> *Id.* at 580–81.

<sup>160</sup> Steve Berkowitz et al., *2018 NCAAF Coaches Salaries*, USA TODAY, <http://sports.usatoday.com/ncaa/salaries> [<https://perma.cc/C3JQ-5UW5>] [hereinafter Berkowitz et al., *NCAAF Coaches Salaries*].

<sup>161</sup> Steve Berkowitz et al., *2018 NCAAB Coaches' Pay*, USA TODAY, <http://sports.usatoday.com/ncaa/salaries/mens-basketball/coach/> [<https://perma.cc/9CZD-VCV3>] [hereinafter Berkowitz et al., *NCAAB Coaches' Pay*].

received the highest men's basketball salary at just over \$9 million.<sup>162</sup> These figures do not include the generous perks that many NCAA Division I coaches receive as well, such as private jets, cars, housing allowances, and severance packages.<sup>163</sup> There are millions of dollars more to earn in bonuses for coaches who take their teams to conferences or NCAA championships.<sup>164</sup> Coaches' incomes are often not limited to what they are paid by the university; they can also "supplement that income with private endorsement deals, speaking fees, and summer camps."<sup>165</sup> For comparison, the average salary for college adjunct faculty and tenured professors ranges between \$20,000 to \$126,000, while the average college president earns \$475,403.<sup>166</sup>

According to an economist at Smith College who specializes in the college sports business, NCAA Division I coaching salaries are so high because—unlike professional sports leagues which give up to half of its revenues back to the players—colleges do not pay their student-athletes. This enables the coaches to absorb a huge amount of the \$11 billion college basketball industry.<sup>167</sup>

The high earning power of college coaches has been under scrutiny for years. According to a 2016 survey, sixty-three percent of Americans think that college coaches are overpaid.<sup>168</sup> During a March 2015 episode of the popular HBO news show *Last Week Tonight*, host John Oliver devoted an entire twenty-minute segment to lambasting colleges and universities for failing to pay its student-athletes while paying their coaches millions.<sup>169</sup> But, public opinion and commentary

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<sup>162</sup> *Id.*; Berkowitz et al., *NCAAF Coaches Salaries*, *supra* note 160.

<sup>163</sup> Laura McKenna, *The Madness of College Basketball Coaches' Salaries*, ATLANTIC (Mar. 24, 2016), <https://www.theatlantic.com/education/archive/2016/03/the-madness-of-college-basketball-coaches-salaries/475146/> [<https://perma.cc/2JFB-HFX5>].

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Lauren Camera, *Survey: Coach's Salary Shouldn't Best President's*, U.S. NEWS & WORLD REP. (Mar. 15, 2016, 3:31 PM), <https://www.usnews.com/news/articles/2016-03-15/new-survey-college-coaches-shouldnt-make-more-than-college-presidents> [<https://perma.cc/TBW7-ULVH>].

<sup>169</sup> *The NCAA: Last Week Tonight with John Oliver (HBO)*, YOUTUBE (Mar. 15, 2015), <https://www.youtube.com/watch?v=pX8BXH3Sj0> [<https://perma.cc/GR9T-PS5J>].

by late-night talk-show hosts have done little to reduce the big salary numbers, which continue to rise over the years. According to one study, the median compensation for NCAA Division I men's basketball head coaches increased by 102% between 2005 and 2011.<sup>170</sup>

The NCAA coaching salary figures are even more staggering when compared to other public employees in each state. NCAA football and men's basketball head coaches are the highest-paid public employees in thirty-nine out of the fifty states in the country.<sup>171</sup> Massachusetts is one of the just eleven states in which the highest-paid public employee is not an NCAA head coach; that distinction goes to the Chancellor of UMass Medical School.<sup>172</sup>

College sports television contracts have also been increasing over the years. ESPN signed a twelve-year contract in 2014, paying the group that administers college football championships approximately \$5.64 billion for the rights to air the NCAA college football playoffs.<sup>173</sup> This means the group is receiving about \$470 million annually from 2014–2026.<sup>174</sup> For men's basketball, the contract with CBS and TNT for television rights to cover NCAA March Madness from 2010–2032 is a whopping \$19.6 billion.<sup>175</sup> Therefore, the NCAA is receiving around \$890 million per year for the March Madness men's basketball tournament television and streaming rights.<sup>176</sup>

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<sup>170</sup> JOHN W. CURTIS & SARANNA THORNTON, *LOSING FOCUS: THE ANNUAL REPORT ON THE ECONOMIC STATUS OF THE PROFESSION, 2013–14*, 14 (2014), [https://www.aaup.org/sites/default/files/files/2014%20salary%20report/zreport\\_0.pdf](https://www.aaup.org/sites/default/files/files/2014%20salary%20report/zreport_0.pdf) [<https://perma.cc/5B79-B9PA>].

<sup>171</sup> *Who's the Highest-Paid Person in Your State?*, ESPN (Mar. 20, 2018), [http://www.espn.com/espn/feature/story/\\_/id/22454170/highest-paid-state-employees-include-ncaa-coaches-nick-saban-john-calipari-dabo-swinney-bill-self-bob-huggins](http://www.espn.com/espn/feature/story/_/id/22454170/highest-paid-state-employees-include-ncaa-coaches-nick-saban-john-calipari-dabo-swinney-bill-self-bob-huggins) [<https://perma.cc/Q3J4-CQZB>].

<sup>172</sup> *Id.*

<sup>173</sup> Rachel Bachman, *ESPN Strikes Deal for College Football Playoff*, WALL ST. J. (Nov. 21, 2012), <https://www.wsj.com/articles/SB10001424127887324851704578133223970790516> [<https://perma.cc/5YBT-NPJY>].

<sup>174</sup> *Id.*

<sup>175</sup> Stephen Battaglio, *March Madness Through 2032: CBS and Turner Extend Contract for NCAA Men's Basketball Tournament*, L.A. TIMES (Apr. 12, 2016, 11:29 AM), <https://www.latimes.com/entertainment/envelope/cotown/la-et-ct-cbs-turner-men-s-basketball-tournament-20160412-story.html> [<https://perma.cc/L8NJ-TZD4>].

<sup>176</sup> *Id.*

What to do with all of this money? Since colleges cannot pay their student-athletes, they are now building expensive and lavish athletic facilities to try and recruit the top high school athletes to attend their institution.<sup>177</sup> According to a 2014 *Washington Post* study of the top forty-eight schools in the five wealthiest conferences in college sports, \$772 million was spent altogether on athletic facilities, an eighty-nine percent increase from the \$408 million spent in 2004, adjusted for inflation.<sup>178</sup> A decade of rampant athletic facility construction across the country has redefined what it takes to field a competitive top-tier college sports program. Football stadiums and basketball arenas now include practice facilities, professional-quality locker rooms, players lounges with high-definition televisions and video game systems, day spas, and any other amenity an eighteen to twenty-two year-old could ever dream of.<sup>179</sup> Clemson University, for example, recently built a \$55 million football facility, to be utilized exclusively by the team, that includes a miniature golf course, sand volleyball courts, laser tag, a movie theater, bowling lanes, a barber shop, and other amenities.<sup>180</sup> These types of facilities are becoming the norm in college athletics, rather than the exception.<sup>181</sup>

The deduction from these statistics is easy to see: it seems as though everyone associated with collegiate athletics is making money except for the student-athletes themselves. While professional athletes are paid so much that they are unlikely to risk their careers by fixing games or shaving points, the same cannot be said for NCAA student-athletes. With everyone around them making money except them, their leverage is shrinking by the day and therefore they are becoming

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<sup>177</sup> Will Hobson & Steven Rich, *Colleges Spend Fortunes on Lavish Athletic Facilities*, CHI.TRIB. (Dec. 23, 2015, 6:40 AM), <https://www.chicagotribune.com/sports/college/ct-athletic-facilities-expenses-20151222-story.html> [<https://perma.cc/5ZX3-GN49>].

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> My alma mater, Providence College, a Catholic university with just over 4,000 undergraduates, recently completed a \$40 million men's basketball athletic facility, which includes a practice facility, locker rooms, expansive athletic training facilities, barber shop, athletic hall of fame, dining hall, and other extravagant amenities. During a December 2018 Providence College men's basketball game on FS1, I heard Fox Sports college basketball broadcaster Dave O'Brien state he had recently toured the facility and that "it would be the envy of many NBA teams."

increasing vulnerable to the temptation to make money in other ways, such as accepting offers to fix games or shave points from sports gamblers.<sup>182</sup> The legalization of sports betting makes this reality even worse because it makes the temptations even easier to act on.

Another reason for a college student-athlete's lack of leverage? Their age.<sup>183</sup> An eighteen-year-old college student is generally considered to be easier to convince to influence games than a professional athlete.<sup>184</sup> There are two reasons for this: they are, for the most part, younger, and they are not paid directly to play.<sup>185</sup> A \$20,000 offer from a sports gambler to throw a game is much more likely to catch the attention of an unemployed teenage student-athlete than a millionaire professional athlete. The Athletic Director at the University of Minnesota summed this up well by stating, “Do you remember back when you were 18 to 20 years of age? . . . ‘When people told you something, how much did it sink in? That’s what causes some sleepless nights.’”<sup>186</sup>

### C. The Inevitable: Sports Betting Scandals

There has been no shortage of sports betting controversies throughout the years. College basketball is especially susceptible to point shaving or game fixing issues due to the fact the teams are relatively small, so it only takes a few players for the scheme to succeed. There have been famous instances of college basketball point shaving scandals throughout the years, such as the City College of New York in the 1950s, Boston College in the 1970s, Tulane University in the 1980s,<sup>187</sup> and Northwestern University and Arizona

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<sup>182</sup> Adam Edelman, *College Sports Warn Against Moves to Legalize Betting*, NBC News (Feb. 19, 2018, 4:34 AM), <https://www.nbcnews.com/politics/politics-news/college-sports-warn-against-moves-legalize-betting-n848856> [<https://perma.cc/3XRL-XFY6>].

<sup>183</sup> Porter & Garcio-Cano, *supra* note 12.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Steve Berkowitz & Erik Brady, *Legalized Sports Betting Will Wreak Havoc on College Athletics. Or Not.*, USA TODAY (May 31, 2018, 4:28 PM), <https://www.usatoday.com/story/sports/college/2018/05/31/sports-betting-college-athletics-world-concerned-supreme-court-ruling/645367002/> [<https://perma.cc/R6X6-FD4S>].

State University in the 1990s.<sup>188</sup> The most famous scandal of them all concerned the 1978–1979 Boston College men’s basketball team. Members of the team were involved with members of the New York City mafia and ended up entangled in one of the biggest gambling circles in the country.<sup>189</sup> The controversy was the subject of one of ESPN’s critically acclaimed documentary series, *30 for 30*.<sup>190</sup>

College football teams have been involved in countless sports betting game fixing and point shaving scandals as well, including Boston College,<sup>191</sup> University of Colorado,<sup>192</sup> and Northwestern University in the 1990s,<sup>193</sup> and the University of Toledo in the 2000s.<sup>194</sup> One member of the 1996 Boston College football team, whose players were found to have bet against their own team, predicts a bleak future for college student-athletes after the Supreme Court ruling, stating, “‘They’re going to create a bigger pool for more kids and for more money to get involved.’ . . . ‘It’s really going to create a big mess.’”<sup>195</sup>

Although not a college scandal, perhaps the most famous sports betting scandal of all is the 1919 “Black Sox” scandal. Eight members of the Chicago White Sox were found to have accepted money from sports gamblers in reciprocation for intentionally losing the 1919 World Series, even though they were highly favored to win.<sup>196</sup> Why

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<sup>188</sup> Sean Isabella, *Notable NCAA Point-Shaving Scandals*, EAGLE-TRIBUNE (July 1, 2018), [https://www.eagletribune.com/news/merrimack\\_valley/notable-ncaa-point-shaving-scandals/article\\_20a603dc-f5e4-542e-a36f-09d9a0d8d89f.html](https://www.eagletribune.com/news/merrimack_valley/notable-ncaa-point-shaving-scandals/article_20a603dc-f5e4-542e-a36f-09d9a0d8d89f.html) [<https://perma.cc/U2AD-JB5V>].

<sup>189</sup> ESPN FILMS: 30 FOR 30, [http://www.espn.com/30for30/film/\\_/page/playingforthemob](http://www.espn.com/30for30/film/_/page/playingforthemob) [<https://perma.cc/3HL3-68U7>].

<sup>190</sup> 30 FOR 30: PLAYING FOR THE MOB (ESPN Films 2014).

<sup>191</sup> Porter & Garcia-Cano, *supra* note 12.

<sup>192</sup> *A Look at Some Notable US Game-Fixing Scandals*, ASSOCIATED PRESS (Sept. 17, 2018), <https://www.apnews.com/203c6e115d464363b4d39c6a4451bf1d> [<https://perma.cc/X7FB-UVNE>] [hereinafter *A Look*].

<sup>193</sup> Isabella, *supra* note 188.

<sup>194</sup> *A Look*, *supra* note 192.

<sup>195</sup> Porter & Garcia-Cano, *supra* note 12.

<sup>196</sup> Kat Eschner, *The 1919 Black Sox Baseball Scandal Was Just One of Many*, SMITHSONIAN.COM (Sept. 1, 2017), <https://www.smithsonianmag.com/smart-news/1919-black-sox-baseball-scandal-wasnt-first-180964673/> [<https://perma.cc/3LMW-7GKZ>].

did this scandal occur? For the same reason they all do: money.<sup>197</sup> This was a time well before professional athletes were paid multiple millions of dollars per season.<sup>198</sup> One player had a simple answer for why he participated, “I needed the money.”<sup>199</sup> That player ended up receiving \$10,000 for taking part—more than his entire annual pay.<sup>200</sup> The parallel to current-day college student-athletes is easy to see. Now *they* are the ones that need the money. “The vast majority of college [student-]athletes have no chance of playing professionally, and know it, making them vulnerable to the kind of financial lures” that entrapped the 1919 White Sox.<sup>201</sup> “While many student-athletes would no doubt refuse approaches from gamblers, the higher level of risk in a post-legalization world should be clear.”<sup>202</sup>

The worry now is the ease of which point shaving or game fixing plots can potentially be executed. With legal sports betting now a touch-of-a-button away via apps on a phone or online, there is no longer a need to get involved with a dangerous and intimidating group such as the New York City mob. Now it seems almost anyone can easily orchestrate an illegal cheating plot seemingly anonymously in the world of the internet.<sup>203</sup> In addition, “[w]ith inside information being so key to betting markets, any tidbit—say, a student[-athlete] telling friends that his roommate, the star quarterback, just had a fight with his girlfriend—can take on greater significance.”<sup>204</sup>

The president and CEO of the NCAA Division I Athletic Directors Association, Tom McMillen, a former Congressman and NBA player, agrees.<sup>205</sup> He recently made comments during a panel discussion at a May 2018 conference of the Sports Lawyers Association which are

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<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

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

<sup>200</sup> Miller, *supra* note 25.

<sup>201</sup> *Id.*

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

<sup>203</sup> David Purdum & Ryan Rodenberg, *Cyborgs, Yachts and VR: How Technology Will Impact Sports Betting*, ESPN (Aug. 14, 2018), [http://www.espn.com/chalk/story/\\_/id/24257306/gambling-why-future-sports-betting-technology-us-involve-sportsbooks-yachts-cyborgs-enba-league](http://www.espn.com/chalk/story/_/id/24257306/gambling-why-future-sports-betting-technology-us-involve-sportsbooks-yachts-cyborgs-enba-league) [<https://perma.cc/7BRL-9ZA2>].

<sup>204</sup> Porter & Garcia-Cano, *supra* note 12.

<sup>205</sup> Adam Edelman, *supra* note 182.

very startling.<sup>206</sup> He noted that “unpaid college [student-]athletes are especially vulnerable to large amounts of money flowing through their game and that ‘there is a serious concern as to where all this new money would go.’”<sup>207</sup> He also made a profound declaration: “‘I’ll give you something that I’ll put 100% odds on. . . . ‘If gambling on colleges is in 20 or 30 states, there is probably a 100% chance of a point shaving scandal at some school.’”<sup>208</sup> Another panelist, Las Vegas attorney Kate Lowenhar-Fisher, proclaimed that the problem at hand is that NCAA student-athletes “are susceptible to corruption because they’re not getting paid” and that “we could fix it by paying them.”<sup>209</sup> This last comment was met with laughter and applause.<sup>210</sup>

#### D. Where Does the NCAA Fit In?

The NCAA governs all of their member institutions by an over 400-page NCAA Manual, which they publish each year as new provisions are added or removed as determined by the NCAA membership. Two of the foundational principles, as outlined in the Manual, are entitled Ethical Conduct, which includes the prohibition of any and all types of sports wagering, and Amateurism.<sup>211</sup>

The NCAA’s first fundamental principle, Ethical Conduct, focuses heavily on the prohibition of sports wagering. According to the NCAA Manual, “[s]ports wagering includes placing, accepting or soliciting a wager . . . of any type with any individual or organization on any intercollegiate, amateur or professional team or contest.”<sup>212</sup> This includes any type of betting on any type of sporting event, whether professional or amateur.<sup>213</sup> The penalty for an NCAA student-athlete who violates this rule is steep. Any student-athlete who is caught violating the rule is “ineligible for further intercollegiate competition, subject to appeal to the Committee on Student-Athlete Reinstatement . . . .”<sup>214</sup> At a minimum, this penalty usually means a

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<sup>206</sup> Berkowitz & Brady, *supra* note 187.

<sup>207</sup> Adam Edelman, *supra* note 182.

<sup>208</sup> Berkowitz & Brady, *supra* note 187.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> NCAA MANUAL, *supra* note 151, at 45, 61.

<sup>212</sup> *Id.* at 45.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 46.

suspension for the rest of the current season as well as the loss of one year of eligibility to play an NCAA sport.<sup>215</sup> Since a student-athlete only gets four years of eligibility,<sup>216</sup> the loss of over a year of eligibility is severe. Some colleges try to “make sure athletes know the rules against gambling, sometimes bringing in law enforcement officials or former players to get the message across.”<sup>217</sup> In addition to student-athletes, NCAA rules also prohibit “coaches and other athletic department employees from gambling on sports.”<sup>218</sup> “NCAA officials have said they may consider adjusting rules to account for legal gambling but haven’t specified how.”<sup>219</sup>

The NCAA takes the sports betting issue so seriously that one of their most prominent taglines is “Don’t Bet On It.”<sup>220</sup> The “Don’t Bet On It” logo, along with the accompanying phrase of “The NCAA opposes all forms of sports wagering,” is included on all officially licensed NCAA March Madness men’s basketball tournament brackets.<sup>221</sup> It is well known that many people, almost 24 million in 2018,<sup>222</sup> participate in “bracket pools” to make bets on who will win each game of the tournament and who will ultimately win the championship. In fact, Americans were estimated to have wagered over \$10 billion on the 2018 NCAA men’s basketball tournament. The American Gaming Association estimated that ninety-seven percent of the wagers were made illegally.<sup>223</sup> With sports gambling now

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<sup>215</sup> *Id.* The penalty process is fairly discretionary and made on a case-by-case basis but typically results in a student-athlete’s ineligibility.

<sup>216</sup> *Id.* at 80.

<sup>217</sup> Porter & Garcia-Cano, *supra* note 12.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Sports Wagering*, NCAA, <http://www.ncaa.org/enforcement/sports-wagering> [<https://perma.cc/6SM6-GUFE>].

<sup>221</sup> *2018 NCAA Division I Men’s Basketball Championship Bracket*, NCAA.COM, <https://www.ncaa.com/brackets/print/basketball-men/d1/2018> [<https://perma.cc/YWM2-RE9F>].

<sup>222</sup> Chris Crouse, *Betting on NCAA March Madness Basketball Games Will Hit \$10 Billion, Most of It Illegal*, CNBC (Mar. 15, 2018, 8:49 AM), <https://www.cnbc.com/2018/03/15/ncaa-march-madness-betting-will-hit-10-billion-most-of-it-illegal.html> [<https://perma.cc/3WKZ-SH7Y>].

<sup>223</sup> *Id.*

becoming legal in more and more states, it almost certainly will create a much more lucrative environment.<sup>224</sup>

However, the NCAA's "Don't Bet On It" campaign seems to be missing the mark. "A 2016 NCAA survey of more than 22,000 college athletes found nearly one-fourth of male athletes had violated NCAA rules by gambling on sports within the previous year. When the survey was done, sports betting was available only in Nevada or illegally through offshore operators."<sup>225</sup> In addition, of the male student-athletes who had gambled on sports, thirteen percent wagered on in-game bets.<sup>226</sup> In-game bets include wagers like whether the next football play will be a run or a pass or whether a basketball player will hit the next free throw. The study concluded that now, with legalized sports gambling, the main concern will be the ease of use of wagering enhancements such as live in-game betting.<sup>227</sup> These enhancements "could present increased opportunities to profit from 'spot fixing' a contest . . . ."<sup>228</sup> Spot fixing has become more common, having been recently uncovered in multiple international sports leagues.<sup>229</sup> Rather than determining the overall result, "spot fixing" only influences a small portion of the game.<sup>230</sup> For instance, a college quarterback could inform a sports gambler that he will be throwing a pass on the third play of the game, rather than a run, as so the gambler would be able to "spot fix" a bet that the quarterback will do so. This would seem to be a new, easy way for a student-athlete to make some money without having to throw a game or do anything too drastic.

The NCAA's second fundamental principle, Amateurism, is strictly enforced.<sup>231</sup> Generally speaking, amateurism within the realm of athletics is defined as not being compensated for one's athletic

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<sup>224</sup> *Id.*

<sup>225</sup> Porter & Garcia-Cano, *supra* note 12.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> David Harrison, *Exclusive: Top International Cricketers Involved in Spot-Fixing*, AL JAZEERA (Oct. 21, 2018), <https://www.aljazeera.com/news/2018/10/exclusive-top-international-cricketers-involved-spot-fixing-181020115410646.html> [<https://perma.cc/M47R-6SD8>].

<sup>231</sup> As a former Athletic Compliance Director at three different Division I institutions, including Providence College, Georgetown University, and Harvard University, I know this to be true.

performance.<sup>232</sup> As stated above, the NCAA prohibits student-athletes from receiving any salary from participating in NCAA athletics and also cannot receive any extra benefits. Another key provision relating to amateurism is the prohibition of student-athletes profiting from using their own name, image, or likeness.<sup>233</sup> This ban includes advertising or promoting products, working as a model, making money off of one's social media channel, selling advertisements on one's YouTube page, acting in most commercial films, or even selling an autographed photo of themselves.<sup>234</sup> But, there is a catch. The NCAA, member schools, conferences, and "a third party acting on behalf of the NCAA" all have permission to use an athlete's name or image for promotions, but the student-athletes themselves cannot profit from it.<sup>235</sup> Essentially, a student-athlete cannot make any money for anything that is directly tied to their athletic achievements or any other scenario that involves using their face, image, or reputation in exchange for receiving something of value.<sup>236</sup>

NCAA rules violation scandals have been countless throughout the years. The University of Southern California had to vacate their 2004 football National Championship due to a player's parents receiving improper housing, air travel, an automobile, and other benefits from a USC football fan.<sup>237</sup> The University of Louisville had to vacate their 2013 men's basketball National Championship due to an assistant coach arranging "striptease dances and sex acts for prospects [and] student-athletes . . . ." <sup>238</sup> UMass had to vacate their 1996 men's

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<sup>232</sup> *Amateur vs. Professional Athletes*, USLEGAL, <https://education.uslegal.com/amateur-athletics/amateur-vs-professional-athletes/> [https://perma.cc/TQN9-BX3X].

<sup>233</sup> NCAA MANUAL, *supra* note 151, at 76.

<sup>234</sup> Jeremy Bernfeld, *Who Can Profit off a College Athlete's Image? Not the Athlete*, WBUR (May 24, 2014), <http://www.wbur.org/onlyagame/2014/05/24/image-ncaa-athlete-profit> [https://perma.cc/87DX-CW8X].

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> Lynn Zinser, *U.S.C. Loses Its 2004 B.C.S. National Championship*, N.Y. TIMES (June 6, 2011), <https://www.nytimes.com/2011/06/07/sports/ncaafotball/usc-stripped-of-2004-bcs-national-championship.html> [https://perma.cc/BW79-3BQ7].

<sup>238</sup> Colin Dwyer, *Louisville Must Vacate Its 2013 National Title After NCAA Upholds Ruling*, NPR (Feb. 20, 2018, 2:09 PM), <https://www.npr.org/sections/thetwo-way/2018/02/20/587219151/louisville-must-vacate-its-2013-national-title-after-ncaa-upholds-ruling> [https://perma.cc/8ERN-UXRG].

basketball Final Four appearance due to a player receiving improper gifts.<sup>239</sup> The head football coach at Ohio State University had to resign in 2011 because their program committed too many NCAA violations.<sup>240</sup> These are just to name a few. The majority of these scandals involved “extra benefits” given to student-athletes. As defined in the NCAA Manual, an “extra benefit” is any impermissible item or service of value from the school or a third party.<sup>241</sup>

Needless to say, the NCAA is opposed to the *Murphy* decision. After all, they were one of the opposing parties to New Jersey in the case.<sup>242</sup> For all of the reasons stated above, it is clear that NCAA student-athletes have a lot to lose with the May 2018 Supreme Court decision. They are already among the most vulnerable people in the current market of big-time sports, and it will only get worse with the adoption of legalized sports betting on collegiate athletics. They will be in a prime position to be taken advantage of by just about anyone.<sup>243</sup>

### **E. The Solution: Massachusetts**

Massachusetts has a duty to lead the country in protecting the well-being of NCAA student-athletes by prohibiting all sports betting on collegiate sports. Massachusetts’ history of being at the forefront of socially progressive legislation creates a duty in this case to safeguard and support this historically oppressed group of individuals, just as the Commonwealth has done countless times in the past. This solution will once again put Massachusetts at the forefront of providing solutions to key issues plaguing the country. The rest of the nation will be watching closely to see what Massachusetts does and will be ready to follow suit. Passing landmark legislation that the rest of the country then adopts is nothing new for the state of Massachusetts. Massachusetts has consistently set the tone for the rest of the country on some of the nation’s most important issues. To name a few, this includes passing the first law requiring that children be taught to read

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<sup>239</sup> Jack Cavanaugh, *UMass and UConn Lose '96 Honors*, N.Y. TIMES, May 9, 1997, at B21.

<sup>240</sup> *Ohio State Football Coach Quits Amid NCAA Scandal*, NPR (May 30, 2011, 9:49 AM), <https://www.npr.org/2011/05/30/136791459/ohio-state-football-coach-quits-amid-ncaa-violations> [<https://perma.cc/5J9K-ZBMM>].

<sup>241</sup> NCAA MANUAL, *supra* note 151, at 227.

<sup>242</sup> *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

<sup>243</sup> Berkowitz & Brady, *supra* note 187.

and write in 1642,<sup>244</sup> the first minimum wage law in 1912,<sup>245</sup> the first equal pay law in 1945,<sup>246</sup> becoming the first state to legalize same-sex marriage in 2003,<sup>247</sup> and passing the first law in the nation establishing limits on opioid prescriptions in 2016.<sup>248</sup> Regulations on sports betting should be no different.

Lawmakers in Massachusetts are currently considering a host of policy questions relating to sports gambling, such as “how to prevent problem gambling and whether the hasty implementation of betting could lead to corruption in sports.”<sup>249</sup> Policymakers are worried that minors could easily bet illegally and that the “exponential increases in betting opportunities could feed a gambling addiction.”<sup>250</sup> Industry experts have little doubt that once this political jockeying has been completed, legalized sports betting in Massachusetts will shortly follow.<sup>251</sup>

The rest of the country will surely be looking to see the type of legislation Massachusetts will almost inevitably pass in the near future. The co-chairman of the committee that oversees gambling bills in Massachusetts knows the country will be watching to see how the Commonwealth deals with the countless problems legalized sports betting can cause. As he stated, “Any time you combine sports and politics, especially in a sports-obsessed town like Boston, you’re going

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<sup>244</sup> *Massachusetts Passes First Education Law*, MASSMOMENTS, <https://www.massmoments.org/moment-details/massachusetts-passes-first-education-law.html> [<https://perma.cc/GW8W-43MS>].

<sup>245</sup> Pat Garofalo, *100 Years Ago Today, Massachusetts Passed the Nation’s First Minimum Wage Law*, THINKPROGRESS (June 4, 2012, 2:53 PM), <https://thinkprogress.org/100-years-ago-today-massachusetts-passed-the-nations-first-minimum-wage-law-4183345ff08d/> [<https://perma.cc/44VE-STJX>].

<sup>246</sup> *Learn More Details About the Massachusetts Equal Pay Act*, MASS.GOV, <https://www.mass.gov/service-details/learn-more-about-the-massachusetts-equal-pay-act> [<https://perma.cc/L8H5-G57J>].

<sup>247</sup> *Same-Sex Marriage, State by State*, PEW RES. CTR. (June 26, 2015), <http://www.pewforum.org/2015/06/26/same-sex-marriage-state-by-state/> [<https://perma.cc/WQ5A-QPAZ>].

<sup>248</sup> Press Release, Office of the Governor et al., Governor Baker Signs Landmark Opioid Legislation into Law (Mar. 14, 2016), <https://www.mass.gov/news/governor-baker-signs-landmark-opioid-legislation-into-law> [<https://perma.cc/9W4B-K5SM>].

<sup>249</sup> Rosen, *supra* note 132.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

to get quite a lot of interest.”<sup>252</sup> Massachusetts officials have been studying sports betting for some time. A February 2018 sports gaming commission report estimated that if made widely available in Massachusetts, legalized sports gambling could generate \$61.3 million annually.<sup>253</sup>

As a proposed solution to the issue of protecting NCAA student-athletes from the many dangers of legalized sports gambling, Massachusetts must adopt much of the New Jersey sports betting legislation, but with one major modification. There are three key definitions in the proposed legislation which Massachusetts must focus on in order to maximally protect and promote the well-being of NCAA student-athletes in the Bay State. These definitions are: “sports event,” “collegiate sport or athletic event,” and “prohibited sports event.”

Massachusetts must adopt the duplication of the definition of “sports event” from the New Jersey legislation. Within the New Jersey legislation, “sports event” is defined as:

*Any professional sport or athletic event, any Olympic or international sports competition event and any collegiate sport or athletic event, or any portion thereof, including, but not limited to, the individual performance statistics of athletes in a sports event or combination of sports events, except ‘sports event’ shall not include a prohibited sports event or a fantasy sports activity . . . .*<sup>254</sup>

Massachusetts must also adopt the duplicate definition of “collegiate sport or athletic event” from the New Jersey legislation. Within the New Jersey legislation, “collegiate sport or athletic event” is defined as “a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers educational services beyond the secondary level.”<sup>255</sup>

Massachusetts must make one important change regarding the third key definition from the New Jersey legislation. The definition which must be revised from the New Jersey legislation is “prohibited sports

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<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> N.J. STAT. ANN. § 5:12A-10 (West 2018).

<sup>255</sup> *Id.*

event.”<sup>256</sup> The revised definition of “prohibited sports event” must be “any collegiate sport or athletic event. A prohibited sports event includes all high school and youth level sports events, electronic sports, and competitive video games but does not include international sports events in which persons under age 18 make up a minority of the participants.”

This new definition of “prohibited sports event” will be the best-case scenario for NCAA student-athletes looking to solely focus on winning championships and not being subjected to a sports betting scandal. It will ensure that there will be no betting on amateur collegiate sports, or high school sports for that matter. Also, with the addition of the term “youth level sports events” it is made explicitly clear that Massachusetts means business when it comes to prohibiting betting on any and all types of amateur sports. There is simply no need for betting on these types of sports events in a legalized sports betting world.

It should be noted that the proposed legislation does not include the prohibition of betting on Olympic sports or athletic events. Similar to the reasoning as to why professional athletes are not as vulnerable to the dangers of sports betting as NCAA student-athletes are, there is comparable deterrence for Olympic athletes as well. With the combination of the opportunity to make money off of their name, image, or likeness along with the allure of representing your country and winning a medal, there would seem to be more deterrence for Olympic athletes than the more restricted amateur student-athletes of the NCAA.

#### **F. The Solution: Federal**

Congress has recently indicated that it may act on sports betting. In September of 2018, a House Judiciary subcommittee held a hearing which examined whether federal sports betting protocols are necessary as more and more states legalize sports gambling.<sup>257</sup> A closing remark made at this congressional hearing indicated federal regulation may be

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<sup>256</sup> *Id.*; see also text accompanying note 107.

<sup>257</sup> David Purdum, *Congressional Sports Betting Hearing FAQ: What to Know*, ESPN (Sept. 25, 2018), [http://kwese.espn.com/chalk/story/\\_/id/24798381/an-faq-thursday-congressional-sports-betting-hearing](http://kwese.espn.com/chalk/story/_/id/24798381/an-faq-thursday-congressional-sports-betting-hearing) [https://perma.cc/EMG6-W4XL] [hereinafter Purdum, *Congressional Sports Betting Hearing*].

coming.<sup>258</sup> This would be welcome news for the NCAA and the major professional sports leagues, whom all support a uniform federal framework to guide states interested in offering sports betting.<sup>259</sup>

Held by the Subcommittee on Crime, Terrorism, Homeland Security and Investigations, the hearing was essentially step one in determining whether federal oversight is necessary in this new sports betting landscape.<sup>260</sup> According to members of Congress that took part in the hearing, the issue is “ripe for consideration” and “the one thing [we] all can agree on is for Congress to do nothing is the worst possible alternative.”<sup>261</sup>

There are many alternatives on the table for Congress. One option would be for Congress to re-enact a federal ban on sports gambling.<sup>262</sup> Another option could be for Congress to defer to the states and allow them to legalize and regulate the sports gaming business.<sup>263</sup> The final option would be for Congress to adopt uniform minimum federal standards for all states which choose to legalize sports wagering.<sup>264</sup>

The last option is the ideal action for Congress to take. Congress must adopt uniform, minimum federal standards to assist states in regulating legal sports wagering as a solution to the sports wagering crisis about to hit NCAA student-athletes. To do so, Congress must adopt the proposed Massachusetts legislation stated above into federal legislation. This will ensure that all states will be protecting NCAA student-athletes by prohibiting bad actors from driving over state lines in order to bet on collegiate sports. For example, if a New Jersey resident would like to make a wager on Seton Hall University men’s basketball, a bet they legally cannot make inside the state of New Jersey, they could theoretically just drive to Delaware, which allows betting on all collegiate sports,<sup>265</sup> to make the bet. With the

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<sup>258</sup> David Purdum, *Congress Indicates It May Act on Sports Betting*, ESPN (Sept. 27, 2018), [http://www.espn.com/chalk/story/\\_/id/24814518/congress-indicates-act-sports-betting](http://www.espn.com/chalk/story/_/id/24814518/congress-indicates-act-sports-betting) [<https://perma.cc/Y9GC-5LSR>] [hereinafter Purdum, *Congress Indicates*].

<sup>259</sup> Purdum, *Congressional Sports Betting Hearing*, *supra* note 257.

<sup>260</sup> Purdum, *Congress Indicates*, *supra* note 258.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> Rodenberg, *supra* note 17.

Congressional approval and subsequent federal adoption of the proposed Massachusetts legislation prohibiting sports betting on *all* collegiate sports and athletic events, this scenario would no longer be possible. Once Congress has passed this federal regulation, NCAA student-athletes will no longer be subjected to the plethora of predatory bad actors looking to legally make money off of a college student's athletic ability by enticing them to get involved in a sports betting scheme.

The NCAA has recently indicated that they support federal sports betting regulation.<sup>266</sup> The president of the NCAA, Mark Emmert, stated:

*Our highest priorities in any conversation about sports wagering are maintaining the integrity of competition and student-athlete well-being . . . . Sports wagering can adversely impact student-athletes and undermine the games they play. We are committed to ensuring that laws and regulations promote a safe and fair environment for the nearly half a million students who play college athletics . . . . While we recognize the critical role of state governments, strong federal standards are necessary to safeguard the integrity of college sports and the athletes who play these games at all levels.*<sup>267</sup>

The only way to accomplish this goal is to completely abolish legalized sports betting on all college sports in the United States. And the only way to do this is by Congress adopting the proposed Massachusetts legislation discussed above. Congress must send a strong message that they care about the well-being of NCAA student-athletes and once again follow Massachusetts' lead.

### **G. The Solution: NCAA**

The NCAA also has a role to play in this solution. It is well known that the NCAA is one of the most maligned organizations in the entire

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<sup>266</sup> Dustin Gouker, *NCAA Does a 180 on Sports Betting, Says It Now Supports Federal Regulation*, LEGAL SPORTS REP. (May 17, 2018, 7:26 AM), <https://www.legalsportsreport.com/20532/ncaa-now-supports-federal-regulation-sports-betting/> [<https://perma.cc/9KLH-7L98>].

<sup>267</sup> *Id.*

country.<sup>268</sup> Most of the criticism surrounds the alleged hypocrisy of NCAA rules.<sup>269</sup> Specifically, the NCAA's Amateurism rules have been labeled as "absurd" and "inconsistent."<sup>270</sup> It has been noted that the NCAA's "unique" Amateurism model would be illegal in many other parts of the economy.<sup>271</sup> The organization has been compared to slavery by the mother of a prominent Duke men's basketball student-athlete, noting that "the labor is black and the profit is white."<sup>272</sup> A 2018 NCAA men's basketball scandal investigated by the FBI found that many of the top basketball programs have consistently been breaking NCAA rules.<sup>273</sup> Even NBA superstar LeBron James called the NCAA "corrupt,"<sup>274</sup> and he is not alone. Criticisms of the organization have been countless<sup>275</sup> and will likely continue until major change is made by the organization.

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<sup>268</sup> See generally Taylor Branch, *The Shame of College Sports*, ATLANTIC (Oct. 2011), <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/> [<https://perma.cc/AG84-J8U6>] (discussing the corruptions and scandals that plague the NCAA).

<sup>269</sup> Jay Bilas, *Why the College Basketball Scandal Won't Get Fixed Until the NCAA Pays Athletes*, ESPN (Sept. 28, 2017), [http://www.espn.com/mens-college-basketball/story/\\_/id/20841877/until-ncaa-solves-money-problem-pays-athletes-problems-continue](http://www.espn.com/mens-college-basketball/story/_/id/20841877/until-ncaa-solves-money-problem-pays-athletes-problems-continue) [<https://perma.cc/6CEP-NZRL>].

<sup>270</sup> Wendell Barnhouse, *NCAA Rulings on Amateurism Called 'Absurd,' 'Inconsistent'*, GLOBALSPORT MATTERS (May 22, 2018), <https://globalsportmatters.com/business/2018/05/22/ncaa-rulings-amateurism-absurd-inconsistent> [<https://perma.cc/RLT7-7U3L>].

<sup>271</sup> Nicholas Piotrowicz, *Can the Olympic Model Fix the NCAA?*, TOLEDO BLADE (Mar. 31, 2018, 11:20 AM), <https://www.toledoblade.com/College/2018/03/31/Can-the-Olympic-model-fix-the-NCAA.html> [<https://perma.cc/77YW-U65S>].

<sup>272</sup> Cindy Boren, *'The Labor Is Black and the Profit Is White': Mother of Former Duke Player Compares NCAA to Slavery*, WASH. POST, May 8, 2018.

<sup>273</sup> Dan Wolken, *College Basketball Under Assault in Federal Trial, but How Much Does NCAA Care?*, USA TODAY (Oct. 16, 2018, 4:33 PM), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2018/10/16/college-basketball-under-assault-federal-trial-but-does-ncaa-care/1662138002/> [<https://perma.cc/MHW2-QLLC>] (last updated Oct. 16, 2018, 6:27 PM).

<sup>274</sup> Kyle Boone, *The NCAA Has a New Critic as LeBron James Says It Is a 'Corrupt' Organization*, CBS SPORTS (Feb. 27, 2018, 3:23 PM), <https://www.cbssports.com/college-basketball/news/the-ncaa-has-a-new-critic-as-lebron-james-says-it-is-a-corrupt-organization/> [<https://perma.cc/BT36-PVDG>].

<sup>275</sup> Dan Wolken, *New Documentary from HBO and LeBron James' Production Company Depicts Hypocrisy of NCAA*, USA TODAY (Sept. 30, 2018, 1:48 PM), <https://www.usatoday.com/story/sports/2018/09/30/documentary-college-sports-shows-how-athletes-exploited/1479645002/> [<https://perma.cc/S2AY-ZEK7>].

The proposed solution for the NCAA is to adopt the Amateurism model used by the Olympics. Olympic athletes, in most sports,<sup>276</sup> are amateur athletes, just as NCAA student-athletes are. However, while college student-athletes cannot make money off of their name, image or likeness, as stated above,<sup>277</sup> Olympic athletes are able to do so without negatively affecting their status as an amateur athlete.<sup>278</sup>

The Olympic model could become a long-term answer for both the NCAA and for advocates of change. With this change, colleges still would not be responsible for paying players directly, yet college student-athletes would now be able to utilize the free market in order to profit off of their athletic skills and their name, image, and likeness while in college.<sup>279</sup> This change would also deter NCAA student-athletes from getting involved in legal and/or illegal sports betting schemes, since they would have a new alternative to profit from their athletic talents, just as their Olympic and professional counterparts are able to do.

This idea has gained some support among lawmakers. The California State Assembly introduced legislation in March of 2018 seeking to implement the Olympic Amateurism model within the NCAA.<sup>280</sup> The Commission on College Basketball was formed in 2018 in response to the men's basketball FBI investigation scandal and was led by former United States Secretary of State Condoleezza Rice. She suggested it was a "good idea" to adopt the Olympic Amateurism model and allow NCAA student-athletes to be able to cash in on their names, images, and likenesses.<sup>281</sup>

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<sup>276</sup> Hannah Golden, *Can Professional Athletes Compete in the Olympics? Here's the Deal*, ELITE DAILY (Feb. 5, 2018), <https://www.elitedaily.com/p/can-professional-athletes-compete-in-the-olympics-heres-the-deal-8120567> [<https://perma.cc/P2ZR-2S65>].

<sup>277</sup> NCAA MANUAL, *supra* note 151, at 76.

<sup>278</sup> Piotrowicz, *supra* note 271.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Commission Dances Around Name, Image and Likeness Debate*, USA TODAY (Apr. 25, 2018, 12:14 PM), <https://www.usatoday.com/story/sports/ncaab/2018/04/25/commission-dances-around-name-image-and-likeness-debate/34234709/> [<https://perma.cc/PM2K-B73V>].

#### IV. CONCLUSION

While NCAA student-athletes may in fact have the most to gain from legalized sports gambling, with a new (illegal) opportunity to make money, they also clearly have the most to lose by potentially getting caught and destroying their athletic career. They have the least amount of rights, leverage, and money in the business of college athletics. Yet they are the only ones the business could not do without—there are no college sports without the student-athletes themselves. These disadvantages make NCAA student-athletes prime targets to be exploited as a result of legalized sports betting. The only way to combat this mounting problem is by Massachusetts, followed by Congress, adopting the proposed legislation listed above. The NCAA must adopt the Olympic Amateurism model to go hand-in-hand with the new federal sports betting legislation. Student-athletes are enrolled in their respective colleges and universities to play the sport they love and to graduate with a degree. Without Massachusetts, Congress, and the NCAA making these changes, legalized sports betting will likely squander those goals.