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Regulated Sports Betting: Ohio's Chance to Take a Bet on Itself

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REGULATED SPORTS BETTING: OHIO'S CHANCE TO TAKE A BET ON ITSELF

ROBERT PORTER**

ABSTRACT

It is estimated that more than \$150 billion is wagered on sporting events each year in the United States. Of this, only an estimated \$4.5 billion is wagered legally. Why is that? Because of a federal statute ("PASPA") prohibiting state sponsored sports betting, people had to resort to offshore sports gambling websites and illegal bookies. This all changed in May 2018, when the Supreme Court declared PASPA unconstitutional, effectively lifting the ban on sports betting nationwide. With states now capable of enacting their own sports gambling schemes and regulations, Ohio is in a prime position to capitalize. I advocate for a reform of Ohio's contradictory gambling laws and argue for a more common sense and advantageous system. Through swift and comprehensive decision-making, the Ohio General Assembly can enact regulation for modern sports betting and overhaul Ohio's outdated and inconsistent gambling laws. By implementing regulations that utilize Ohio's current infrastructure and examining jurisdictions with successful sports gambling in place, Ohio can be a leading innovator in sports betting regulation throughout the United States.

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I. INTRODUCTION

Eighty billion? \$100 billion? \$400 billion? This is the range of estimates for the amount of money Americans wager on sports each year.¹ But the truth is, no one knows for sure the exact amount of money gambled on sports annually. Almost all sports betting is done illegally, with about only \$4.5 billion being wagered legally in the United States.² The majority of Americans wager on sports through offshore sports books and illegal bookies.³ In fact, the two most popular sport betting events for Americans, the Super Bowl and the NCAA men's basketball tournament, combined for nearly fourteen billion dollars in wagers placed, with nearly ninety-seven percent of it being done illegally.⁴ Until May of 2018, the State of Nevada and sports books in Las Vegas were the only American entities legally profiting off of this cash cow of an industry.⁵

With such a monumental amount of currency constantly flowing through the United States annually, it is hard to believe that the estimated range of *legal* wagers placed in the United States is only 1.1% to 3.0% of total bets placed.⁶ Taking a conservative approach, the American Gaming Association ("AGA") estimates that at least \$150 billion is being wagered on sporting events annually in the United States.⁷ So, how could the United States allow such a lucrative industry to be conducted almost

¹ See Jordan Weissman, *Big Bucks or Bogus Betting Baloney?*, SLATE.COM (Nov. 21, 2014), http://www.slate.com/articles/business/moneybox/2014/11/adam_silver_says_there_s_400_billion_per_year_of_illegal_sports_betting.html; David Purdum, *Sports Betting Legalization: Where Do We Stand Right Now?*, ESPN (Sep. 14, 2017), http://www.espn.com/chalk/story/_/id/20704273/gambling-where-does-sports-betting-legalization-us-stand-right-now; Brief for Petitioners at 15, *Christie v. NCAA*, 137 S. Ct. 2327 (2017) (No. 16-476) ("The American Gaming Association (AGA) estimates that Americans illegally gamble around \$149 billion on sports events each year").

² Purdum, *supra* note 1.

³ David Forrest & Rick Parry, *The Key to Sports Integrity in the United States: Legalized, Regulated Sports Betting*, AM. GAMING ASSOC., 13 (Sep. 27, 2016), <https://www.americangaming.org/sites/default/files/FINAL%20SPORTS%20INTEGRITY%20REPORT.pdf> ("Outside Nevada, most Americans' betting on sports is channeled into either the underground economy or the offshore industry.").

⁴ Brief for Petitioners, *supra* note 1, at 15 ("\$4.2 billion was wagered on the 2016 Super Bowl, and another \$9.2 billion was wagered on the 2016 NCAA men's basketball tournament—ninety-seven percent of it illegally").

⁵ *Id.* at 14 ("Nevada was exempted from PASPA and remained free to license and regulate sports wagering in any manner it deemed appropriate. . . . PASPA also permitted the three other States that already had enacted sports lotteries—Montana, Delaware, and Oregon—to continue to sponsor and operate those very limited schemes.").

⁶ Compare Purdum, *supra* note 1 (noting that \$4.5 billion is legally wagered on sports betting), with Weissman, *supra* note 1 (noting a range of estimates from \$100 billion to \$400 billion for total illegal sports betting).

⁷ Brief of the American Gaming Association as Amicus Curiae in Support of Petitioners at 1, *Christie v. NCAA*, 137 S. Ct. 2327 (2017) (No. 16-476) ("The AGA estimates that Americans illegally bet over \$150 billion *per year* on U.S. sporting events.").

entirely illegally through underground bookies and offshore sports books for so long? In 1992, Congress enacted the Professional and Amateur Sports Protection Act ("PASPA"), banning states from enacting their own sports gambling regulatory regimes, with Nevada being the sole exception, making Las Vegas the only city to legally place sports bets.⁸ Back in 1992, sports gambling was seen as a morally corrupt vice, and Congress, seeking to adhere to public concern about the "potential effect of legalized sports gambling on America's youth," passed PASPA in an attempt to curb the problem.⁹

But as Bob Dylan said best, "The Times They Are A-Changin',"¹⁰ and sports betting is not only now deemed socially acceptable, but nearly every American participates or knows someone who participates in some form of sports gambling.¹¹ In the wake of this social change, on May 14, 2018, the Supreme Court reversed a Third Circuit decision upholding PASPA, holding the twenty-six-year-old law unconstitutional.¹² The challenge to PASPA came after the New Jersey Legislature enacted a statute that would have allowed New Jersey racetracks and casinos to offer legal sports wagering.¹³ Subsequently, the four major professional sports leagues and the NCAA¹⁴ brought suit and argued the New Jersey law violated PASPA.¹⁵ On appeal, the Third Circuit held that (1) the New Jersey statute violated PASPA and (2) PASPA did not violate anti-commandeering principles.¹⁶ The Supreme Court reversed, holding that PASPA's provision prohibiting state authorization and licensing of sports gambling schemes violated anti-commandeering principles and was thus unconstitutional.¹⁷ In the majority's closing paragraph, the Court opined that "[t]he legalization of sports

⁸ 28 U.S.C. §§ 3701–3704 (2012); Professional and Amateur Sports Protection Act, S. 474, 102nd Cong. (1992). As mentioned above, Delaware, Montana, and Oregon were also allowed to continue their limited sports lottery schemes.

⁹ Brief for Petitioners, *supra* note 1, at 5; S. REP. NO. 102-248, at 5 (1991).

¹⁰ BOB DYLAN, *THE TIMES THEY ARE A-CHANGIN'* (Columbia Records 1964).

¹¹ Gillian Spear, *Think Sports Gambling Isn't Big Money? Wanna Bet?*, NBCNEWS.COM (July 13, 2013), <https://www.nbcnews.com/news/other/think-sports-gambling-isnt-big-money-wanna-bet-f6C10634316> ("Thirty-three million Americans participate in fantasy football The FSTA found that \$1.18 billion changes hands between players through pools each year"); Peter Keating, *How Much Sports Gambling Is Going on out There?*, ESPN (July 10, 2012), <http://www.espn.com/espn/magazine/archives/news/story?page=magazine-20030804-article23> ("Half of Americans aged 16 and older have placed a bet on sports in the past 12 months That's 118 million people a year betting on sports, whether it's participating in an office pool, gambling with friends, putting money on a horse at a racetrack or oth parlor or wagering at a casino, online or with a bookie."). These statistics do not even take into account the new daily fantasy sports websites that are now in effect.

¹² *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018).

¹³ *Id.* at 1465.

¹⁴ *Id.* at 1465–66. Collectively, the National Football League (NFL), the National Basketball Association (NBA), Major League Baseball (MLB), the National Hockey League (NHL), and the National Collegiate Athletic Association (NCAA).

¹⁵ *Id.*

¹⁶ *NCAA v. Governor of N.J.*, 730 F.3d 208, 240–41 (3d Cir. 2013).

¹⁷ *Murphy v. NCAA*, 138 S. Ct. 1461, 1481 (2018).

gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own."¹⁸

Although the Supreme Court declared PASPA unconstitutional, it did not make sports betting legal per se. Instead, the Court gave states the freedom to legislate and regulate sports gambling based on their respective policies and interests.¹⁹ As the unfamiliar landscape surrounding legal sports betting begins to take shape, it is apparent that sports betting and the public's views on gambling are not where they were over twenty-five years ago when Congress enacted PASPA.²⁰ The Court's decision in *NCAA v. Murphy* will help further the interests of legal sports gambling advocates and bring PASPA's antiquated and perverse prohibition on sports gambling to a halt.²¹

This Note argues that Ohio should take advantage of the expansive shift in the sports betting landscape and enact legislation to regulate sports betting statewide. Today, nearly every state has legalized some form of gambling, which can include anything from bingo, to state lotteries and casinos.²² Compared to nearly twenty-five years ago, one cannot deny the clear shift in Americas' attitude towards gambling. States choose to open casinos and regulate gambling because of the economic

¹⁸ *Murphy*, 138 S. Ct. at 1484–85. The Court went on to state that "PASPA 'regulate[s] state governments' regulation' of their citizens, [which is unconstitutional under *New York v. United States*, 505 U.S. 144, 166]. The Constitution gives Congress no such power." *Id.* at 1485.

¹⁹ Similar to state regulation of medical marijuana and casinos. Some states—including Ohio—now even regulate daily fantasy sports. See Ryan Rodenberg, *Daily Fantasy Sports State-by-State Tracker*, ESPN (July 26, 2017), http://www.espn.com/chalk/story/_/id/14799449/daily-fantasy-dfs-legal-your-state-state-state-look.

²⁰ See Thomas Barrabi, *Most Americans Support Legalized Sports Betting: Poll*, FOX BUSINESS (Sep. 27, 2017), <http://www.foxbusiness.com/features/2017/09/27/most-americans-support-legalized-sports-betting-poll.html> ("Fifty-five percent of Americans said they approve of efforts to make sports betting legal in all states [compared to a] 1993 Gallup poll . . . [which] found 56% of respondents were opposed to legal sports betting."). Additionally, in 2017 the House Energy and Commerce Committee unveiled a bill titled, "The Gaming Accountability and Modernization Enhancement Act" or "GAME Act," which purports to repeal PASPA and allow the FTC to offer oversight on regulated sports betting. See Matthew Guarnaccia, *Dems Push Sports Betting Bill Amid High Court Challenge*, LAW360 (May 25, 2017), <https://www.law360.com/articles/928303/dems-push-sports-betting-bill-amid-high-court-challenge> (quoting Rep. Frank Pallone, "It's time to recognize that the laws are outdated, and the GAME Act will modernize them by increasing transparency, integrity, and consumer protections").

²¹ Brief for Petitioners, *supra* note 1, at 15 ("If PASPA was intended to halt the growth of sports wagering, it failed in that objective. . . . [U]nlawful sports wagering has exploded. The [AGA] estimates that Americans illegally gamble around \$149 billion on sports events each year.").

²² Matt Villano, *All in: Gambling Options Proliferate Across USA*, USA TODAY (Jan. 26, 2013), <https://www.usatoday.com/story/travel/destinations/2013/01/24/gambling-options-casinos-proliferate-across-usa/1861835/>. ("Roughly 20 years ago, only six states offered commercial casinos. Today, 18 states have commercial casinos, and a total of 30 states offer legalized gambling of any kind (commercial or tribal) . . . Currently, Hawaii and Utah are the only states with no gambling whatsoever.").

revenues they receive from such operations.²³ Ohio alone, which not long ago decided to authorize and regulate casino gambling, has received nearly one billion dollars in tax revenue since the opening of four casinos in the State.²⁴ Additionally, Ohio recently passed a law to regulate online fantasy sports contests within the Ohio,²⁵ which lawmakers consider not to be a form of gambling.²⁶ With the current momentum surrounding legal sports gambling, there is little doubt that sports betting will be legalized and regulated in a majority of states in the foreseeable future.²⁷ With the proper foundation and infrastructure already in place, Ohio could benefit considerably through the legalization of sports betting.²⁸ For Ohio to take advantage of the steadfast change in legalized sports betting, its complicated and contradictory gambling laws must be reformed.

This Note will demonstrate the the problems with Ohio's current gambling laws, why these laws are confusing and contradictory, and why reformation is needed for Ohio to take advantage of the societal change in sports betting culture. Part II of this Note will give a brief background on the history of gambling in the United States, including the evolution of Ohio gaming legislation and regulation. Part III will delve into the effects that the *Murphy* case, public opinion, and national lawmakers have on sports betting nationally. In addition, this section will compare Ohio's sports betting laws and landscape with other jurisdictions where sports betting is legal and regulated. Part III will conclude with proposed rules and regulations for Ohio sports gambling laws while showing the projected impact that sports betting can have on Ohio's economy.

²³ See 2016 *State of the States: The AGA Survey of the Casino Industry*, AM. GAMING ASSOC. 5 (2016), https://www.americangaming.org/sites/default/files/2016%20State%20of%20the%20States_FINAL.pdf ("Beyond their tax contributions . . . the cities and states where [casinos] are located benefit[] from the spending casino visitors and tourists inevitably do at other local area businesses.").

²⁴ Karen Farkas, *Ohio Casino's Generate \$1 Billion in Tax Revenue Since Opening*, CLEVELAND.COM (July 11, 2016), http://www.cleveland.com/casino/index.ssf/2016/07/ohios_casinos_generated_1_bill.html ("Ohio's four casinos have paid a total of more than \$1 billion in taxes to cities, counties, schools and state agencies since opening in 2012 and 2013").

²⁵ OHIO REV. CODE ANN. § 3774.01–3774.09.

²⁶ None of the eighteen states that have regulated online fantasy sports consider it to be a form of gambling. See Steve Ruddock, *The Legal Side: DFS and Sports Betting Made Big Strides in October*, PLAYPICKS.COM (Nov. 4, 2017), <https://www.playpicks.com/11506/dfs-legislation-update-november/>.

²⁷ Phil Helsel, *Sports Betting Is Now Legal in Several States. Many Others Are Aatching from the Sidelines.*, NBC NEWS (Aug. 21, 2018), <https://www.nbcnews.com/news/us-news/sports-betting-now-legal-several-states-many-others-are-watching-n894211>.

²⁸ OXFORD ECONOMICS, *Econmic Impact of Legalized Sports Betting* (May 2017), <https://www.americangaming.org/sites/default/files/AGA-Oxford%20-%20Sports%20Betting%20Economic%20Impact%20Report1.pdf>.

II. BACKGROUND

The idea of widespread legalized sports betting seems to create an uneasiness for many Americans. Although there are valid reasons to fear the growth of gambling, having an illegal, unregulated, and underground gambling industry should be the true cause of such fear. Through the legalization and regulation of sports betting, Ohio can do its part to create a legal, safe, and reputable sports betting industry. The history of the United States proves that regulation of such industries works much better than prohibition.

A. America's Gambling History

Gambling has been prevalent in the United States since its inception.²⁹ "All 13 original colonies established lotteries" to raise revenue and help finance their venture in America.³⁰ Lotteries were seen as America's first form of gambling and were used in much the same way as modern lotteries are used today.³¹ Gambling is so engrained in American culture that it is almost impossible to not see its influence and footprint in prominent cases and statutes throughout history.³² From lotteries and bingo, to casinos and sports betting, gambling is an ever increasing industry that many states use to boost their respective economies.³³

²⁹ Roger Dunstan, *Gambling in California*, CAL. RES. BUREAU (Jan. 1997), <http://web.uncg.edu/dcl/courses/viccrime/m2/gambling%20in%20california.html> (British colonials viewed gambling as a "popular and accepted activity" or a "harmless diversion." "One prominent researcher speculates that the appeal of gambling was probably heightened by the frontier spirit. The desire to explore new worlds is similar to gambling. Both rely heavily on high expectations, risk taking, opportunism, and movement").

³⁰ *Id.* ("Although the financial backers of the colonies viewed gambling as a source of the colonies' problems, they began to see it as the solution as well. The Virginia Company of London, the financier of Jamestown in Virginia, was permitted by the Crown to hold lotteries to raise money for the company's colonial venture.").

³¹ *Id.* ("Playing the lottery became a civic responsibility. Proceeds helped establish some of the nation's earliest and most prestigious universities—Harvard, Yale, Columbia, Dartmouth, Princeton, and William and Mary. Lottery funds were also used to build churches and libraries. Ben Franklin, John Hancock, and George Washington were all prominent sponsors of specific lotteries for public works projects. Lotteries became an issue in the drive for independence of the colonies. . . . In 1769, the crown tried to prevent lotteries from occurring without its permission"). Lotteries are legal now in twenty-seven states and the District of Columbia. Lotteries have spread rapidly across the country, in a way that is consistent with the domino theory of gaming regulation. "The domino effect of gambling occurs when one state legalizes gaming, other states legalize gambling so they do not lose money to their neighbors." *Id.* Notable among the later lotteries was a private lottery passed by Congress in 1823 for the beautification of Washington D.C.

³² See 28 U.S.C. § 3701 (2012); *Murphy v. NCAA*, 138 S. Ct. 1461 (2018); *Champion v. Ames* (The Lottery Case), 188 U.S. 321 (1903); *Cohens v. Virginia*, 19 U.S. 264 (1821); Mark Jacob & Stephan Benzkofer, *10 Things You Might Not Know About the Lottery*, CHICAGO TRIBUNE (Aug. 22, 2014), <http://www.chicagotribune.com/business/ct-lottery-10-things-perspec-0824-20140822-story.html>.

³³ See 2016 State of the States, *supra* note 23.

Although gambling has been constant in American culture from the onset, it has consistently faced opposition.³⁴ By the mid-1850s, most states banned lotteries because of dishonest operations and because "riverboat gambling" began to dwindle as a result of the Civil War and the emergence of railroads.³⁵ Although legal gambling experienced a revival after the Civil War as America began to expand westward, "[b]y 1910, virtually all forms of gambling were prohibited in the U.S."³⁶ However, following the stock market crash of 1929 and the Great Depression, many states saw the legalization of gambling as a way to stimulate their economies.³⁷ Despite legal gambling's resurgence after World War II, Nevada was the only state to have widespread gambling regulations.³⁸ Not until 1978, when New Jersey legalized casino gambling in Atlantic City in an attempt to boost tourism revenue, did America see another state regulate casino gambling.³⁹ As of 2017, there were "18 states [that had] commercial casinos, and a total of 30 states [that had] offer[ed] legalized gambling of any kind (commercial or tribal)."⁴⁰ Since the Supreme Court's ruling overturning PASPA, sports betting has been legalized in seven states with some experts believing "that in five to 10 years around 20 to 30 states could have legalized sports betting."⁴¹

³⁴ The belief that gambling targeted the poor, was corrupt, filled with scandal and most importantly seen as morally wrong, were the strongest oppositions to early gambling practices—and those beliefs continue to be presented today. See Dunstan, *supra* note 29.

³⁵ *Id.* One researcher considers this time period to be the end of gambling's first wave in the United States. *Id.*

³⁶ *Id.* ("The feelings against gambling ran so strong that Arizona and New Mexico were forced to outlaw casinos to gain statehood. . . . However, the prohibition did not stop gambling[;] there were many types of illegal gambling houses [still]."). This was seen as the end of legal gambling's second wave in America.

³⁷ *Id.* ("Massachusetts decriminalized bingo in 1931 in an attempt to help churches and charitable organizations raise money. . . . During the 1930's, 21 states brought back racetracks. New laws and automated systems made horse racing much more honest than during the 1800s.").

³⁸ See *Las Vegas*, HISTORY.COM, <http://www.history.com/topics/las-vegas> (last visited Nov. 12, 2018). Nevada legalized casino gambling and divorce in 1931. Nevada's tourism boom was due in part to the building of the Hoover Dam, prosperity of post-war America, nuclear testing in Nevada's deserts, and organized crime syndicates. Nevada saw the legalization of gambling and casinos as a huge catalyst for its economy and tourism. See Tim O'Reiley, *Legalizing Casino Gambling Helped Revive Nevada 80 Years Ago*, LAS VEGAS R. J. (Mar. 27, 2011), <https://www.reviewjournal.com/business/casinos-gaming/legalizing-casino-gambling-helped-revive-nevada-80-years-ago/>. Sports Betting was not legalized in Nevada until a regulation was passed by Congress in 1949.

³⁹ Dunstan, *supra* note 29.

⁴⁰ Villano, *supra* note 22. Only six states do not have state lotteries, with Hawaii and Utah being the only states to offer no gambling whatsoever. See *The 6 States Where You Can't Play Powerball*, ABC NEWS (Jan. 13, 2016), <http://abcnews.go.com/US/states-play-powerball/story?id=36267614>.

⁴¹ Helsel, *supra* note 27.

B. Sports Gambling Laws in the United States

Although sports gambling has been around for centuries, the advent of modern day sports betting took place in America around the early 1900s, coinciding with the rise of professional baseball.⁴² Because there were no legalized sports books, or any regulations on sports betting, all wagers placed during this period were either through underground bookies or illegal gambling houses.⁴³ Despite the fact that the public saw sports gambling as unethical and possibly corrupt, underground sports betting thrived nonetheless.⁴⁴ The public's concern for corruption sharpened as a result of the 1919 "Black Sox Scandal," where eight players of the Chicago White Sox were accused of intentionally losing the World Series.⁴⁵ Throughout the years, a series of sports betting scandals,⁴⁶ including the infamous Pete Rose betting scandal in 1989, made sports betting a national concern.⁴⁷

1. Professional and Amateur Sports Protection Act

In 1992, with sports gambling now at the forefront of national concern, Congress enacted PASPA.⁴⁸ This federal statute made it unlawful for state governments to:

[S]ponsor, operate, advertise, promote, license, or authorize . . . a lottery, sweepstakes, or wagering scheme based, directly or indirectly, on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performance of such athletes in such games.⁴⁹

⁴² See Jeremy Martin, *History of Sports Betting and the Point Spread*, DOC'S SPORTS SERVICE (May 30, 2017), <https://www.docsports.com/sports-betting-history.html>.

⁴³ *Id.*

⁴⁴ *Id.* ("Even more people became interested in sports betting during the 'Golden Era' of sports in the 1920s. College football and basketball were gaining huge popularity with bettors . . .").

⁴⁵ See Evan Andrews, *The Black Sox Baseball Scandal, 95 Years Ago*, HISTORY.COM (Oct. 9, 2014), <http://www.history.com/news/the-black-sox-baseball-scandal-95-years-ago>; see also Martin, *supra* note 42 ("If baseball lost anything because of the moral consequences of the Black Sox Scandal and other cases involving fixed baseball games, it wasn't reflected in the nationwide betting handle, which continued to grow progressively.").

⁴⁶ See Jeff Merron, *Biggest Sports Gambling Scandals*, ESPN, <http://www.espn.com/espn/page2/story?page=merron/060207> (last visited Nov. 12, 2017).

⁴⁷ See *id.*; Christian Red & Michael O'Keeffe, *Pete Rose's Lifetime Ban Upheld by MLB*, NY DAILY NEWS (Dec. 15, 2015), <http://www.nydailynews.com/sports/baseball/pete-rose-lifetime-ban-upheld-mlb-article-1.2465390>.

⁴⁸ 28 U.S.C. §§ 3701–3704 (2012).

⁴⁹ *Id.* § 3702. Nevada, Oregon, Montana, Delaware were grandfathered in and thus could legislate sports gambling. Prior to *Murphy v. NCAA*, only Nevada allowed legal sports wagering at licensed sports books. Ryan S. Davis, *Understanding the Implications of Murphy v. NCAA*, LEXOLOGY (May 15, 2018), <https://www.lexology.com/library/detail.aspx?g=17de9abc-31a8-4e8b-b694-df9a41e5c35e>.

Congress intended the law to stop the spread of sports gambling, while "protect[ing] America's youth and preserv[ing] the character and integrity of sports."⁵⁰ Although a noble cause at the time, PASPA's intended effects have backfired and led to a sizeable illegal gambling market.⁵¹

Despite its perverse results, PASPA remained in effect for over twenty-five years until the Supreme Court struck down the law on May 14, 2018 in *Murphy v. NCAA*.⁵² PASPA's road to unconstitutionality was a long and winding one that involved a great degree of gamesmanship and fortitude. The original appellate case, commonly referred to as *Christie I*, involved "New Jersey[s] attempt . . . to adopt a carefully crafted regulatory regime to control sports wagering that was already taking place within its borders[.]"⁵³ Believing the newly enacted law could potentially harm their business, the National Collegiate Athletic Association ("NCAA"), the National Basketball Association ("NBA"), the National Football League ("NFL"), the National Hockey League ("NHL"), and Major League Baseball ("MLB") challenged the New Jersey law, arguing it violated PASPA.⁵⁴ The Third Circuit agreed and upheld PASPA's constitutionality, stating that to construe PASPA to require New Jersey to "keep a ban on sports gambling in their books . . . rests on a false equivalence between repeal and authorization"⁵⁵

As such—in an attempt to bypass the Third Circuit's holding—the New Jersey Legislature enacted a law which only partially repealed its state ban on sports gambling.⁵⁶ Yet again, the NCAA, NBA, NFL, NHL, and MLB challenged the New Jersey law, arguing that it was still in violation of PASPA.⁵⁷ The Third Circuit agreed, holding the New Jersey law did indeed violate PASPA and that PASPA did not commandeer state legislatures in violation of the Tenth Amendment.⁵⁸

In *Murphy v. NCAA*, the Supreme Court granted *certiorari* from the Third Circuit's decision in *Christie II*.⁵⁹ As stated above, the Supreme Court reversed and held that

⁵⁰ Justin Fielknow et al., *Symposium: Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 24 (2017).

⁵¹ Forrest & Parry, *supra* note 3 ("The United States and China represent the largest illegal sports betting markets in the world. By way of example, an illegal sports bookmaker who was prosecuted in New Jersey in the late 1990s had an annual volume of \$200 million, higher than the largest legal bookmaker in Las Vegas.").

⁵² *Murphy v. NCAA*, 138 S. Ct. 1461, 1485 (2018).

⁵³ Brief for Petitioners, *supra* note 1, at 3; *NCAA v. Governor of N.J. (Christie I)*, 730 F.3d 208 (3d Cir. 2013).

⁵⁴ *Christie I*, 730 F.3d at 217.

⁵⁵ *Id.* at 233.

⁵⁶ *NCAA v. Governor of N.J. (Christie II)*, 832 F.3d 389, 404 (3d Cir. 2016) (en banc).

⁵⁷ *Id.* at 394.

⁵⁸ *Id.* at 402.

⁵⁹ The Third Circuit appellate case is commonly referred to as *Christie II*—referring to the governor of New Jersey at the time, Chris Christie. *NCAA v. Governor of N.J.*, 832 F.3d 389 (3d Cir. 2016). The 2018 Supreme Court case was renamed to *Murphy v. NCAA* when Phil Murphy was elected governor of New Jersey while the case was still awaiting a decision. See *Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

PASPA's provision prohibiting state authorization and licensing of sports gambling schemes violated anti-commandeering principles and was thus unconstitutional.⁶⁰ In the majority's closing paragraph, the Court opined that "[t]he legalization of sports gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own."⁶¹

2. Daily Fantasy Sports, the Unlawful Internet Gambling Enforcement Act of 2006, and the Federal Wire Act of 1961

With the emergence of new technology and the vast reach of the World Wide Web, the internet has proven to be a new gateway for sports betting and gambling in general.⁶² Illegal offshore sports gambling websites have emerged as a new portal, giving anyone with a computer and a credit card access to sports betting.⁶³ As such—in an effort to widen PASPA's effect and further reduce unregulated and illegal wagering through the internet—Congress enacted the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA").⁶⁴ The UIGEA simply enforce[s] the prohibition of PASPA . . . but as applied to the Internet."⁶⁵ Although generally productive, it is not difficult to circumvent the statute.⁶⁶ Because of this, it is still uncertain how judges and lawmakers will interpret the UIGEA without PASPA to complement it.

The increasing popularity of online fantasy sports is another complicated and unsettled area in the realm of online sports betting.⁶⁷ With sports betting now open for states to legalize, once strictly fantasy sport websites—like DraftKings and Fanduel—

⁶⁰ *Murphy*, 138 S. Ct. at 1481.

⁶¹ *Id.* at 1484–85. The Court further opined that "PASPA 'regulate[s] state governments' regulation' of their citizens . . . The Constitution gives Congress no such power." *Id.* at 1485.

⁶² See David Altaner, *Economist Predicts Online Gambling Boom, If Industry Shapes up*, GAMBLINGCOMPLIANCE.COM (Nov. 2, 2017), https://gamblingcompliance.com/premium-content/insights_analysis/economist-predicts-online-gambling-boom-if-industry-shapes.

⁶³ Will Hobson, *Sports Gambling in U.S.: Too Prevalent to Remain Illegal?*, WASH. POST (Feb. 27, 2015), https://www.washingtonpost.com/sports/sports-gambling-in-us-too-prevalent-to-remain-illegal/2015/02/27/f1088e4c-b7d3-11e4-9423-f3d0a1ec335c_story.html?utm_term=.8800c00050d8 ("While nearly \$4 billion is bet on sports legally in Las Vegas yearly, an estimated \$80 billion to \$380 billion is wagered illegally through a shadow industry of offshore online betting houses . . .").

⁶⁴ 31 U.S.C. §§ 5361–5367 (2012).

⁶⁵ Dylan Oliver Malagrino, *Off the Board: NCAA v. Christie Challenges Congress to "Move the Line" on the Professional and Amateur Sports Protection Act*, 118 PENN ST. L. REV. 375, 394 (2013).

⁶⁶ *Id.* at 394–95. ("Ultimately, UIGEA does not achieve its stated intentions of prohibiting parties in the United States from placing sports bets on the Internet. All a potential sports bettor in the United States must do is fund his or her accounts through third-party payment processors that are not covered by UIGEA. On the other end, sports-betting websites can bypass UIGEA's restrictions by simply operating under a foreign license.")

⁶⁷ See Eugene Kim, *Why Draft Kings, a \$900 Million Site that Allows Gambling on Fantasy Sports, Is Legal*, BUS. INSIDER (Apr. 6, 2015), <http://www.businessinsider.com/draft-kings-not-illegal-2015-4>.

are now adapting to the growing legal sports betting landscape.⁶⁸ In a matter of months, DraftKings launched a new mobile sports betting app in New Jersey, with FanDuel and others not far behind.⁶⁹ Although Ohio has yet to legalize sports betting, it has recently legalized daily fantasy sports, which it deems as being a game of "skill," instead of a game of "chance."⁷⁰

Although the invalidation of PASPA now allows states to authorize or license legal sports betting within their own borders, "some legal commentators now believe that the Court's decision may have gone even further by allowing states to authorize sports betting *across state lines*."⁷¹ Traditionally, the Federal Wire Act prohibits any person from placing sports wagers by way of "wire communication facilities" (e.g., telephone, internet) through interstate commerce.⁷² However, when the Court struck down PASPA it opined that the Wire Act, along with other similar federal gambling statutes, can "apply only if the underlying gambling is illegal under state law."⁷³ Under this interpretation, the Wire Act would allow "the transmission of wagers between states if the bet [placed] is legal in both states."⁷⁴ Thus, all states with legalized sports betting would possibly be able to coordinate with each other in the wagering of bets throughout the country. Because of this uncertainty and complexity surrounding federal sports betting, focusing on Ohio's gambling laws should be much more straightforward . . . perhaps?

C. Ohio Gambling Laws

"We're all over the map right now. How can we with a straight face say we're being philosophically consistent on gambling laws?" - Rep. Mike Duffey, (R) - Worthington, Ohio.⁷⁵

Ohio's gambling laws are complex, confusing, outdated, and run afoul with hypocrisy. Until 2009, Ohio had limited options for gambling and "residents were

⁶⁸ See David Purdum, *New Jersey Adding Mobile Sports Betting to Offerings*, ESPN (Aug. 9, 2018), http://www.espn.com/chalk/story/_/id/24256421/new-jersey-join-nevada-mobile-sports-betting.

⁶⁹ See *id.*

⁷⁰ Laura Bischoff, *Fantasy Sports Betting Now Legal in Ohio, Subject to Regulation*, DAYTON DAILY NEWS (Dec. 22, 2017), <https://www.daytondailynews.com/news/fantasy-sports-betting-now-legal-ohio-subject-regulation/EOAJyYkP9pvdWUq2VNW1iI/>.

⁷¹ Daniel Wallach, *Did the Supreme Court Reinterpret the Wire Act to Allow Cross-Border Internet Sports Betting?*, FORBES (July 8, 2018), <https://www.forbes.com/sites/danielwallach/2018/07/08/did-the-supreme-court-reinterpret-the-wire-act-to-allow-cross-border-internet-sports-betting/#7975827a46c5>.

⁷² See 18 U.S.C. § 1084 (2012).

⁷³ Wallach, *supra* note 71.

⁷⁴ *Id.*

⁷⁵ Jim Siegel, *Ohio House Passes Bill Ensuring Legality of Fantasy Sports*, THE COLUMBUS DISPATCH (May 25, 2017), <https://www.dispatch.com/news/20170524/ohio-house-passes-bill-ensuring-legality-of-fantasy-sports>.

restricted to horse-racing bets, charity bingo, lottery or social poker games."⁷⁶ This landscape changed when the State adopted legislation to allow the licensing of four land-based casinos.⁷⁷ Now, Ohio deems all casino-based games conducted inside one of these four casinos to be legal gambling⁷⁸—a huge leap from merely ten years earlier.⁷⁹ Moreover, as mentioned above, Ohio has also recently legalized and regulated daily fantasy sports—allowing residents to place wagers on sporting events by selecting professional sports players who they think will perform best.⁸⁰

Despite Ohio's gambling progress, the Ohio Revised Code is riddled with inconsistent laws on gambling that carve out exceptions based on outdated reasoning.⁸¹ In general, Ohio laws prohibit bookmaking or betting on any "game of chance" or any "scheme of chance."⁸² The relevant definitions in the Ohio Revised Code are "bet," "scheme of chance," and "game of chance."⁸³ The foregoing definitions are as follows:

(B) "Bet" means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.

(C) "Scheme of chance" means a slot machine unless authorized under Chapter 3772. of the Revised Code, lottery unless authorized under Chapter 3770. of the Revised Code, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. . . .

(D) "Game of chance" means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.⁸⁴

⁷⁶ See *Legal Gambling in the State of Ohio*, GAMBLINGONLINE.COM, <https://www.gamblingonline.com/laws/ohio/> (last visited Nov. 17, 2018).

⁷⁷ One for each of Ohio's four major cities: Cleveland, Columbus, Cincinnati, and Toledo. OHIO CONST. art. XV, § 6(C). Ohio's casino legislation was passed through a constitutional amendment.

⁷⁸ Examples of casino-based games are poker, craps, slot machines, roulette, and blackjack. *Legal Gambling in Ohio*, *supra* note 76.

⁷⁹ See *id.*

⁸⁰ See OHIO REV. CODE ANN. §§ 3774.01–3774.09 (2017).

⁸¹ See OHIO REV. CODE ANN. § 2915.01 (2013)..

⁸² *Id.* § 2915.02(A).

⁸³ *Id.* § 2915.01.

⁸⁴ *Id.*

A source of significant confusion among these definitions lies in the game of bingo, which is an exception to a "game of chance."⁸⁵ Yet, poker, which many people view to be somewhat of a skill-based game,⁸⁶ is still considered a "game of chance."⁸⁷ Additionally, as indicated herein, daily online fantasy sports leagues are deemed to be a game of skill—exempting them from all gambling statutes.⁸⁸ What makes all these statutes and definitions more confusing is the fact that almost every single "game of chance" in Ohio is legal, as long as it is conducted in one of the four state commercial casinos.⁸⁹

Although sports betting in Ohio is currently illegal under Ohio law,⁹⁰ the Ohio General Assembly is now considering the legalization of sports betting in the wake of PASPA's demise.⁹¹ Both the Ohio House and Senate have introduced "placeholder" bills expressing the intent of the General Assembly "to investigate sports wagering in Ohio and . . . how [it is] going to be done."⁹² Although lawmakers are moving in the right direction, they are moving—and have moved—much too slowly.

III. SPORTS BETTING'S PATH TO LEGALIZATION: OHIO'S PROBLEMS & SOLUTIONS

As Ohio shifts to a more progressive and pro-gambling state, it has passed laws to reflect those attitudes. The Ohio General Assembly should update and revamp current gambling laws to align with views of Ohio voters. Ohio lawmakers need to take

⁸⁵ See *id.* § 2915.02(D) ("This section does not apply to . . . [b]ingo conducted by a charitable organization that holds a license . . .").

⁸⁶ Mosi Secret, *Poker Is More a Game of Skill Than of Chance, a Judge Rules*, N.Y. TIMES (Aug. 21, 2012), <http://www.nytimes.com/2012/08/22/nyregion/poker-is-more-a-game-of-skill-than-of-chance-a-judge-rules.html>.

⁸⁷ OHIO REV. CODE ANN. § 2915.01 (2014).

⁸⁸ See Siegel, *supra* note 75.

⁸⁹ See OHIO REV. CODE ANN. § 2915.02(A) (2014) ("No person shall do any of the following: . . . [e]stablish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance . . ."). But see OHIO CONST. art. XV, § 6 ("Casino gaming shall be authorized at four casino facilities (a single casino at a designated location within each of the cities of Cincinnati, Cleveland, and Toledo, and within Franklin County) " Casino gaming" means any type of slot machine or table game wagering, using money, casino credit, or any representative of value, authorized in any of the states of Indiana, Michigan, Pennsylvania and West Virginia as of January 1, 2009 . . . "Table game" means any game played with cards, dice, or any mechanical, electromechanical, or electronic device or machine for money, casino credit, or any representative of value."). Thus, despite the fact they are expressly prohibited by the Ohio Revised Code, slot machines, poker, roulette, blackjack, and all other "games of chance" are legal so long as they are conducted in one of the four authorized casinos.

⁹⁰ OHIO REV. CODE ANN. §§ 2915.02, 2915.04 (2014) ("No person shall do any of the following: (1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking; (2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance")

⁹¹ John Kosich, *Ohio Takes First Steps in Lengthy Journey to Bring Legalized Sports Betting to the State*, NEWS 5 CLEV. (July 30, 2018), <https://www.news5cleveland.com/news/e-team/ohio-takes-first-steps-in-lengthy-journey-to-bring-legalized-sports-betting-to-the-state>.

⁹² *Id.*

advantage of America's rapidly evolving stance on sports betting through the legalization and regulation of sports betting statewide.

A. America's Shifting Moral and Social Views

Over time, American's political and social views on once taboo topics have changed drastically.⁹³ Americans are now becoming more accepting and progressive toward a number of moral issues, including: sexuality and gender identification, gay or lesbian relations, divorce, and marijuana use, to name a few.⁹⁴ Americans have voiced their opinions on these issues, and the national government, local governments, and the Supreme Court have all responded in kind.⁹⁵ While the public sentiment on important social issues has become more liberal, so too has the public's stance on gambling.⁹⁶ Once considered a morally corrupt vice, gambling is now generally accepted throughout America.⁹⁷ And although gambling still faces strong opposition,⁹⁸ it has seen constant growth throughout the United States in the last fifty years.⁹⁹ Currently, only two states—Hawaii and Utah—still have an absolute prohibition on gambling.¹⁰⁰

As interest in gambling grows nationwide, state governments have started to legalize gambling at an accelerated pace.¹⁰¹ Gambling legislation and regulation is often coincided with the addition of commercial casinos. The main prerogative of

⁹³ See Frank Newport, *Americans Continue to Shift Left on Key Moral Issues*, GALLUP (May 26, 2015), <http://news.gallup.com/poll/183413/americans-continue-shift-left-key-moral-issues.aspx>.

⁹⁴ See *id.*

⁹⁵ See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (recognizing same-sex marriage as a fundamental right under the U.S. constitution); *Timeline of Major Events in Stem Cell Research Policy*, RES. AM., <http://www.researchamerica.org/advocacy-action/issues-researchamerica-advocates/stem-cell-research/timeline-major-events-stem-cell> (last visited Nov. 18, 2018); Samuel Stebbins & Grant Suneson, *Pot Initiatives: Predicting the Next 15 States to Legalize Marijuana*, USA TODAY (Nov. 17, 2017), <https://www.usatoday.com/story/money/2017/11/14/pot-initiatives-predicting-next-15-states-legalize-marijuana/860502001/>; Newport, *supra* note 93.

⁹⁶ See Hobson, *supra* note 63; David Purdum, *Poll: Americans Support Legalized Betting in Pro Sports*, ESPN (Sep. 27, 2017), http://www.espn.com/chalk/story/_/id/20838521/poll-indicated-majority-americans-support-legalizing-betting-professional-sports.

⁹⁷ See Barrabi, *supra* note 20; Zac Auter, *About Half of Americans Play State Lotteries*, GALLUP (July 22, 2016), <http://news.gallup.com/poll/193874/half-americans-play-state-lotteries.aspx>; Ruth Graham, *Gambling: an American Love-Hate Story*, BOS. GLOBE (July 13, 2014), <https://www.bostonglobe.com/ideas/2014/07/12/gambling-american-love-hate-story/4Ew8inwsSIzQBLyhRF119H/story.html>.

⁹⁸ See Graham, *supra* note 97.

⁹⁹ See *id.*; Hobson, *supra* note 63.

¹⁰⁰ See Villano, *supra* note 22.

¹⁰¹ See *id.*; *State of the States*, *supra* note 23; Graham, *supra* note 97 ("As recently as the 1970s, state lotteries were rare and casinos were illegal nearly everywhere in the United States. Today, some form of gambling is allowed in every state but Utah and Hawaii, with casinos in thirty-nine of them. In 2005, gambling industry revenues were about \$85 billion, more than Americans spent on concerts, books, or movie tickets.").

these state-sponsored commercial casinos is to provide more tax revenue for their respective state.¹⁰² The tax revenue local casinos generate can help states bring in potentially billions of dollars to benefit and fund state and local governments.¹⁰³ In addition to tax revenue, casinos lead to a variety of other public and economic benefits, including: increased state education funds, infrastructure improvement, employment opportunities, increased spending at local businesses, leisure attractions, and community outreach initiatives.¹⁰⁴

With all the benefits and money attached to casino gaming and entertainment, it would make sense that certain states would want to partake in such a successful and lucrative industry. Although each state is free to compete with each other in the casino industry nationwide, in reality, every state is only competing for second-place.¹⁰⁵ It is no secret that Nevada, one of the first states to allow commercial casinos, now has a stranglehold on the casino and tourism industry.¹⁰⁶ Nevada also used to be the sole regulator of legal sports betting in the United States. However, in the short time since the *Murphy* decision and PASPA's collapse, seven additional states have legalized sports betting.¹⁰⁷

The average American considers sports betting is considered a leisurely activity, no different than horse betting, playing poker, watching television, listening to music, smoking marijuana, drinking alcohol, etc.¹⁰⁸ In 1992, Congress's stance on sports betting was premised on two ideologies: (1) protecting the integrity of sports and (2)

¹⁰² See Travis, *supra* note 28 ("Each state would stand to make millions of dollars in taxes off your sports bets. Instead of all sports bets being part of the underground, illegal economy, the legalization of sports gambling would bring to light billions of dollars in transactions that have been hidden.").

¹⁰³ See *State of States*, *supra* note 23 ("In [2015], commercial casinos contributed \$8.85 billion in gaming taxes for the benefit of state and local governments, education, improved care for the elderly, and a host of other worthy recipients. The 2015 tax figure represented an increase of 2.9 percent from [2014].").

¹⁰⁴ See *id.* ("In 2015, . . . there were a wide-ranging number of programs and initiatives around the country that directly benefited from the billions of dollars in taxes the industry generated. From state education funds[,] infrastructure improvements[, and funds] promoting affordable prescription drugs for needy seniors, states and communities across the country put casinos' tax dollars to good use . . . In 2015, commercial casinos accounted for a total of more than 350,000 good-paying jobs. Industry employees earned more than \$14.4 billion in wages, benefits and tips, with average annual compensation totaling more than \$41,000.").

¹⁰⁵ See Robert Ferris, *These 13 states Raked in \$34B in Gaming Revenue*, USA TODAY (Apr. 27, 2014), <https://www.usatoday.com/story/money/business/2014/04/27/top-gambling-states/8168681/>.

¹⁰⁶ See *History of Las Vegas*, L.V.CONVENTION & VISITORS AUTH., <http://www.lvcva.com/stats-and-facts/history-of-las-vegas/> (last visited on Nov. 17, 2018).

¹⁰⁷ Delaware, New Jersey, Mississippi, West Virginia, New York, Pennsylvania, and Rhode Island. See Ryan Prete, *NFL Kickoff Means Scores of Legal Bets, Tax Revenue in Five States*, BNA.com (Sept. 6, 2018), <https://www.bna.com/nfl-kickoff-means-n73014482305/>.

¹⁰⁸ See Peter Keating, *How Much Sports Gambling Is Going on Out There?*, ESPN (July 10, 2012), <http://www.espn.com/espn/magazine/archives/news/story?page=magazine-20030804-article23>.

protecting America and its youths from the spread of a morally corrupt vice.¹⁰⁹ At the time, a majority of the nation backed PASPA, including U.S. Senators, the NCAA, and all major sports leagues.¹¹⁰ Fast forward nearly twenty years and the sports betting landscape looks quite different.¹¹¹

At the time of this Note's publication eight states have already legalized sports betting in the wake of the *Murphy* decision.¹¹² Today, PASPA is viewed as a failure which only helped foster the activity of illegal underground sports betting, just as prohibition on alcohol did nearly 100 years earlier.¹¹³ Although sports betting will help bring in millions of dollars in tax revenue to each state that regulates it, the truth is, revenue from sports betting is only minor compared to the other games casinos offer.¹¹⁴ Thus, although "[s]ports betting provides revenue on its own, [a huge ancillary benefit is] attracting bettors to land-based operations[.]"¹¹⁵ The additional foot traffic for big-time sporting events, and an increase in jobs, is another huge factor as to why states want to legalize and regulate sports betting.¹¹⁶

Although a national regulatory scheme on sports betting is possible, it is not practical or likely to happen.¹¹⁷ As such, states must prepare for their chance to regulate

¹⁰⁹ See Ryan Rodenberg, *Might the Federal Sports Betting Ban Be Lifted?*, ESPN (Apr. 7, 2017), http://www.espn.com/chalk/story/_/id/19095906/might-federal-sports-betting-ban-lifted.

¹¹⁰ See *id.* It should be noted the Department of Justice opposed the enactment of PASPA at the time, with Assistant Attorney General W. Lee Rawls stating, "Generally speaking, it is left to the states to decide whether to permit gambling activities based upon sporting events." *Id.*

¹¹¹ See Helsel, *supra* note 27.

¹¹² See Prete, *supra* note 107; Darren Rovell, *Senate Minority Leader Chuck Schumer Suggests Federal Framework for Sports Betting*, ESPN (Aug. 29, 2018), http://www.espn.com/chalk/story/_/id/24511871/chuck-schumer-suggests-federal-framework-sports-betting.

¹¹³ See Sean Gregory, *The Case for Sports Gambling in America*, TIME (Mar. 12, 2015), <http://time.com/3741836/the-case-for-sports-gambling-in-america/>.

¹¹⁴ See *Trends for Big Las Vegas Strip Casinos, 2011-2017*, UNLV CTR. FOR GAMING RES. (2017), <http://gaming.unlv.edu/reports/bigstrip casinotrends.pdf>. In Nevada, gambling makes up about only 38% of each casino's revenue, with sports betting only counting for about 5% of total revenue. *Id.*

¹¹⁵ Dustin Gouker, *Handle Does Not Equal Revenue in Sports Betting or Daily Fantasy Sports, and Why It Matters to Get It Right*, LEGAL SPORTS REP. (Aug. 21, 2017), <https://www.legalsportsreport.com/15160/revenue-sports-betting-and-dfs/>.

¹¹⁶ See Julian Morris & Guy Bentley, *A Bet Gone Bad: How the Professional and Amateur Sports Protection Act Harms Consumers, States and Sports*, REASON FOUND. (2017), http://reason.org/files/sports_gambling_legalization_paspa.pdf.

¹¹⁷ See Reply Brief for Petitioners at 3, *Christie v. NCAA*, 137 S. Ct. 2327 (2017) (No. 16-476) ("[T]he text of PASPA's exceptions makes clear that Congress wanted sports wagering, wherever it might be permitted, to be *regulated by States*.").

one of the most popular leisure activities in America.¹¹⁸ Ohio is one of the few states in a perfect position to capitalize on such regulation.¹¹⁹

B. Problems with Ohio Gambling Laws

Ohio has four land-based commercial casinos in each of its four biggest cities.¹²⁰ In addition, Ohio already regulates online daily fantasy sports and state legislators have introduced preliminary bills for regulated sports gambling.¹²¹ Even with its relatively new stance on casinos and gambling, Ohio has already seen substantial tax revenue from its current position.¹²² Ohio's current tax on casino revenue is divided among several different state and local agencies and programs.¹²³ In 2017, Ohio's gaming tax revenue was \$564.67 million, with funds being split between local governments, education funds, casino control and racing commissions, law enforcement training, and problem gambling and addictions funds.¹²⁴

Ohio's route to casino gaming legalization and regulation started with a constitutional amendment in 2009.¹²⁵ This amendment, in addition to legalizing casino

¹¹⁸ See Darren Heitner, *How Legalized Sports Betting Could Bring in \$6.03 Billion Annually By 2023*, FORBES (Sep. 27, 2017), <https://www.forbes.com/sites/darrenheitner/2017/09/27/how-legalized-sports-betting-could-bring-in-6-03-billion-annually-by-2023/#7e37db8279ec>.

¹¹⁹ See Prete, *supra* note 107 (stating that Indiana and Ohio have certain unique characteristics that should be considered in legalizing sports betting).

¹²⁰ These four cities are Cleveland, Columbus, Cincinnati, and Toledo. See OHIO CONST. art. XV, § 6(C).

¹²¹ The "placeholder bills" lack any substantive details and planned to be drafted after research and public comments. See Laura Hancock, *Northeast Ohio Senators Introduce Bill to Legalize Sports Betting*, CLEVELAND.COM (July 12, 2018), https://www.cleveland.com/open/index.ssf/2018/07/northeast_ohio_senators_introd.html; Eric Ramsey, *Kasich Signs Fantasy Sports Bill; Ohio Becomes 18th State with Law*, LEGAL SPORTS REP. (Dec. 22, 2017), <https://www.legalsportsreport.com/16922/kasich-signs-fantasy-sports-bill-ohio/>.

¹²² See Karen Farkas, *Ohio's Casinos Generate \$1 Billion in Tax Revenue Since Opening*, CLEVELAND.COM (July 11, 2016), http://www.cleveland.com/casino/index.ssf/2016/07/ohios_casinos_generated_1_bill.html; Rich Exner, *Ohio Casino, Racino Gambling Revenue up 8 Percent in August; All 3 in Cleveland Area Post Gains*, CLEVELAND.COM (Sept. 11, 2018), https://www.cleveland.com/casino/index.ssf/2018/09/ohio_casino_racino_gambling_re_1.htm.

¹²³ OHIO CONST. art. XV, § 6(C) ("A thirty-three percent tax shall be levied and collected by the state on all gross casino revenue received by each casino operator . . .; 51% distributed among all eighty-eight counties in proportion to those counties populations; 34% distributed to all 88 counties public schools based on population; 5% to host city; 3% Ohio casino control commission; 3% Ohio state racing commission; 2% to state law enforcement training fund; 2% to state problem gambling and addictions fund.).

¹²⁴ Ohio's casino tax revenue increased by nearly \$20 million from 2015—when it was \$545.38 million. *State of the States*, *supra* note 23; OHIO CONST. art. XV, § 6(C).

¹²⁵ OHIO CONST. art. XV, § 6(C); see *Constitutional Amendment*, OHIO CASINO CONTROL COMM'N, <http://casinocontrol.ohio.gov/Legal/ConstitutionalAmendment.aspx> (last visited Nov. 17, 2018) ("Ohio's entrance into the world of casino gaming was somewhat unique with the approval of a constitutional amendment proposed by initiative petition backed by the parties

gambling, created the Ohio Casino Control Commission to "license and regulate casino operators . . . and all gaming authorized by section 6(C), to ensure the integrity of casino gaming."¹²⁶ The constitutional amendment essentially added another exemption to Ohio's confusing and antiquated gambling laws.¹²⁷ The three "exceptions" present within the Ohio Constitution are: (1) state lotteries, (2) bingo for charitable purposes, and (3) casino gaming at the four licensed casino facilities.¹²⁸ Read together with Ohio Revised Code Section 2915.02, Ohio seems to have a somewhat complex and contradictory view on gambling.¹²⁹ The relevant portion of the Ohio Revised Code states:

(A) No person shall do any of the following:

- (1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking;
- (2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;
- (3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance; . . .

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.¹³⁰

By prohibiting any "game of chance" or "scheme of chance," the Ohio General Assembly makes a particularly puzzling determination. As defined in the Ohio Revised Code, a "scheme of chance" means "a slot machine unless authorized under Chapter 3772 . . . , lottery unless authorized under Chapter 3770 . . . or other scheme

that would become the owners/operators of four Ohio casinos. The amendment was approved by fifty-two percent of voters in November 2009.").

¹²⁶ OHIO CONST. art. XV, § 6(C); *see* Ohio Casino Control Comm'n, *supra* note 125 ("The Commission is comprised of seven members who are appointed by the Governor with the advice and consent of the Senate. The Commission has enforcement powers and may inspect the accounts and records of, or examine under oath, any person subject to the Commission's regulation").

¹²⁷ *See* OHIO REV. CODE ANN. §§ 2915.01–2915.061 (2014).

¹²⁸ *See* OHIO CONST. art. XV, § 6.

¹²⁹ *See id.*; OHIO REV. CODE ANN. § 2915.02 (2014).

¹³⁰ OHIO REV. CODE ANN. § 2915.02 (2014). Some relevant definitions are as follows: "'Bookmaking' means the business of receiving or paying off bets. 'Bet' means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk." *Id.* § 2915.01.

in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, [or] a skill-based amusement machine"¹³¹ While a "game of chance" means "poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely or wholly by chance, but does not include bingo."¹³² Applying these definitions to Ohio Revised Code Section 2915.02, no one shall establish, promote, or facilitate any establishment to be used for poker, craps, roulette, slot machines, or anything on which the outcome is "determined largely or wholly by chance."¹³³ Yet, as demonstrated herein, the Ohio Constitution sets forth "exceptions" for these rules whenever the state is in need for money and tax revenue. When read together, these statutes and constitutional amendments are unorganized, confusing, contradictory and out of touch.

The current Ohio statute on gambling prohibition seems only to apply to individuals or organizations of which the Ohio Casino Control Commission does not approve.¹³⁴ Thus, under Ohio law, the Ohio Casino Control Commission can regulate policies and rules at its own discretion,¹³⁵ potentially making any statute on gambling prohibition superfluous. One example of this can be seen in Ohio's daily fantasy sports law, which defines "fantasy contest" as:

[A] simulated game or context with an entry fee that satisfies all of the following conditions: . . . [a]ll winning outcomes reflect the relative knowledge and skill of the fantasy contest players and are determined predominantly by accumulated statistical results of the performance of managing rosters of athletes whose performance directly corresponds with the actual performance of athletes in professional sports competitions.¹³⁶

¹³¹ *Id.* § 2915.01. In the 1996 Ohio Revised Code, slot machine was under "game of chance" instead of "scheme of chance."

¹³² *Id.*

¹³³ *See id.* §§ 2915.01–2915.02.

¹³⁴ *See id.* § 2915.02(C) ("This section does not prohibit conduct in connection with gambling expressly permitted by law."); *id.* § 2915.04 ("Divisions (A) and (B) of this section do not prohibit conduct in connection with gambling expressly permitted by law.").

¹³⁵ *See id.* § 3772.03(C) ("The commission shall adopt rules as are necessary for completing the functions stated in division (A) of this section and for addressing the subjects enumerated in division (D) of this section."); *see also id.* § 3772.03(A) ("To ensure the integrity of casino gaming, the commission shall have authority to complete the functions of licensing, regulating, investigating, and penalizing casino operators, management companies, holding companies, key employees, casino gaming employees, and gaming-related vendors. The commission also shall have jurisdiction over all persons participating in casino gaming authorized by Section 6(C) of Article XV, Ohio Constitution, and this chapter."); *id.* § 3772.03(D)(28) ("The commission shall adopt, and as advisable and necessary shall amend or repeal, rules that include all of the following: . . . Providing for any other thing necessary and proper for successful and efficient regulation of casino gaming under this chapter.").

¹³⁶ OHIO REV. CODE ANN. § 3774.01(C) (2017).

This definition makes the determination that fantasy sports is a skill-based form of entertainment.¹³⁷ In the context of practical gambling laws, this does not make any sense. Although fantasy sports players may do some "research" to determine the best players to put in their lineups on any given day, the outcome of such a contest has too many variables that it is unquestionably "determined largely by chance."¹³⁸ This does not seem to be consistent with current Ohio law based on the definition of a "game of chance," which includes poker, a game that is proven to require at least some skill to be a consistent winner,¹³⁹ and yet does not include bingo—a game that is determined solely on chance.

Thus, with so many confusing and conflicting definitions, statutes, and ideologies, it is time for Ohio to modernize its gambling laws and come into accordance with the twenty-first century.¹⁴⁰ As technology continues to grow at an ever-increasing speed, old and antiquated laws should be revamped to accommodate the evolving changes in technology and society.¹⁴¹ Ohio is a state fighting to restore its economy and is in

¹³⁷ Siegel, *supra* note 75. ("This is not gambling. This is a skill-based game that requires an awful lot of research and prep work . . . I can speak from experience. There have been years when I haven't done anything until the last second, and I got slaughtered" (quoting Rep. Rob McColley, R-Napoleon, the bill's sponsor)). Despite McColley's personal experiences, many people do consider fantasy sports to be a form of gambling. As the nonpartisan Legislative Service Commission wrote in its analysis, "If fantasy contests are not gambling, it is not clear why they need to be exempt from the gambling law." *Id.*

¹³⁸ See OHIO REV. CODE ANN. § 3772.01(D) (2014). Any game determined largely by chance fits the definition of "game of chance." See Gabriel Fletcher, *Daily Fantasy Sports: Game of Skill or Game of Chance?*, U. CIN. L. REV. BLOG (Apr. 6, 2016), <https://uclawreview.org/2016/04/06/daily-fantasy-sports-game-of-skill-or-game-of-chance/>; Joshua Brustein & Ira Boudway, *You Aren't Good Enough to Win Money Playing Daily Fantasy Football*, BLOOMBERG (Sep. 10, 2015), <https://www.bloomberg.com/news/articles/2015-09-10/you-aren-t-good-enough-to-win-money-playing-daily-fantasy-football>. But see Cody Wilcoxson, *Skill or Luck? Daily Fantasy Sports' Legality Under Question*, VILL. SPORTS & ENT. L. SOC'Y BLOG, https://www1.villanova.edu/villanova/law/academics/sportslaw/commentary/sls_blog/2015/1106.html (last visited Sept. 16, 2018).

¹³⁹ See OHIO REV. CODE ANN. § 3772.01(D) (2014); Secret, *supra* note 86. Playing poker professionally probably requires more "skill" than plugging in different fantasy contest lineups.

¹⁴⁰ Ohio's Constitution, statutes, and definitions of "gambling" and "chance," "skill," should be updated to follow the current social and public attitude towards gambling. In fact, the Ohio Constitutional Modernization Commission was put in place to help alleviate such problems. See Steven Steinglass, *Why Ohio's Recent Effort to Update Its Constitution Fell Short*, CLEVELAND.COM (Oct. 8, 2017), http://www.cleveland.com/opinion/index.ssf/2017/10/why_ohios_recent_effort_to_upd.html ("Aesthetically, the Ohio Constitution is a mess. With nearly 57,000 words, it is too long. It also lacks clarity and transparency and is full of obsolete, federally unconstitutional, and statutory-like provisions."). Although this is not to say that Ohio's gambling laws are fully responsible for this "mess," but it just goes to show how obscure Ohio laws can be, especially regarding its Constitution.

¹⁴¹ In regards to gambling, the internet makes it possible so almost anyone can bet anywhere, so long as they have a valid credit card. See Technavio Research, *Online Gambling Market in the US to Exceed USD 4 Billion by 2020, Reports Technavio*, BUSINESS WIRE (Sep. 21, 2016), <http://www.businesswire.com/news/home/20160921005854/en/Online-Gambling-Market-Exceed-USD-4-Billion>.

desperate need of job growth.¹⁴² It is struggling to transition from its industrious past to a more technologically driven future.¹⁴³ With the possibility of legalized sports betting on the horizon, Ohio has a chance to revisit, remodel, and reorganize its outdated gambling laws to take advantage of sports betting related revenue and strengthen its economy.¹⁴⁴

C. Current Jurisdictions with Legalized & Regulated Sports Betting

One country that legalized and regulated sports betting nationwide recently is the United Kingdom.¹⁴⁵ Having recognized the various problems associated with a prohibition on sports gambling, in 1961, the U.K. decided to legalize sports betting.¹⁴⁶ However, it was not until the Gambling Act of 2005 that the U.K. finally decided to regulate and monitor sports betting nationally.¹⁴⁷ The Act provides "for the licensing of 'gambling,'" which includes "betting."¹⁴⁸ "Betting" is defined in part as "making or accepting a bet on . . . the outcome of a race, competition or other event or process."¹⁴⁹

Under this law, any respective business, casino, or sports book that wants to provide sports betting to its customers must seek authorization and licensing from the U.K. Gambling Commission.¹⁵⁰ One particularly interesting development occurred in 2009, when the U.K. Government established the Sports Betting Integrity Panel, with the objective "to design and implement an integrated strategy to uphold integrity in sports and associated betting."¹⁵¹ The U.K. Government also "expressed [its] view that

¹⁴² See Sabrina Eaton, *Ohio's Economic Recovery Lags Nation, Experts Testify*, CLEVELAND.COM (Apr. 5, 2017), http://www.cleveland.com/metro/index.ssf/2017/04/lawmakers_probe_ohios_economic.html.

¹⁴³ See *id.*

¹⁴⁴ Yet, at a recent Sports Betting USA event in New York City, Ohio State Senator William Coley stated that his colleagues would rather have "a root canal" than address Ohio's current gambling bills. John Brennan, *Highlights of the Sports Betting USA event in NYC*, LINKEDIN (Nov. 17, 2017), <https://www.linkedin.com/pulse/highlights-sports-betting-usa-event-nyc-john-brennan/?published=true>.

¹⁴⁵ See John L. Smith, *The British May Be Coming, but the Vegas Guys Are Already Here*, CDC REPORTS INC. (Oct. 2, 2016), <https://www.cdcgamingreports.com/commentaries/the-british-may-be-coming-but-the-vegas-guys-are-already-here/>.

¹⁴⁶ See ADRIAN BARR-SMITH, SPORTS BETTING: UNITED KINGDOM, SPORTS BETTING: LAW AND POLICY 843–53 (Paul Anderson et al. eds., 2012).

¹⁴⁷ Gambling Act 2005 (UK), <https://www.legislation.gov.uk/ukpga/2005/19/contents>.

¹⁴⁸ BARR-SMITH, *supra* note 146, at 846.

¹⁴⁹ *Id.* Although, like under current U.S. law, there is no infraction for betting amongst friends socially.

¹⁵⁰ See *id.* at 847–50.

¹⁵¹ *Id.* at 852 ("In framing its recommendations, the Panel focused on 3 areas: [1] adoption of rules and disciplinary procedures; [2] education programs for participants; [and 3] creation of an integrity unit, capable of gathering and analyzing intelligence."). Some additional recommendations included, "(i) a review of the definition of 'cheating' . . . (ii) a review of the adequacy of the powers available to the Gambling Commission; (ii) introduction of a new Code of conduct on integrity in sports in relation to sports betting which includes minimum standards for individual sports to cover in their rulebooks; [and] . . . (ix) establishment of a specialist Sports Betting Intelligence Unit within the Gambling Commission, with the specific capability

any funding necessary to implement the proposals 'should be provided by [the] sport and the betting industry as those [are] who stand to benefit most from the new arrangements.'"¹⁵²

One major distinction between the U.K.'s gambling laws and Ohio's gambling laws is the U.K.'s definition of "game of chance," which includes:

- (i) a game that involves both an element of chance and an element of skill,
- (ii) a game that involves an element of chance that can be eliminated by superlative skill, and
- (iii) a game that is presented as involving an element of chance, but
 - (b) does not include a sport.¹⁵³

The U.K.'s definition is much more coherent, logical, and efficient when compared to Ohio's.¹⁵⁴ The ingenious way that British lawmakers intermixed "game of chance" and "game of skill" is something other jurisdictions, including Ohio, should consider. By not including "sport" within the definition, lawmakers eliminate the confusion between sports betting and regular casino gambling, thereby making a distinction between the two.¹⁵⁵ Overall, the U.K. Gambling Act of 2005, which integrated legal and regulated sports betting throughout the country, has brought clarity and coherence to U.K. gambling laws while distributing a plethora of benefits to the country and reducing illegal underground betting and organized crime.¹⁵⁶

An American jurisdiction with legalized and regulated sports betting is the State of Nevada. Nevada is the birthplace of modern day gambling within the United States,

to monitor the betting activity of particular individuals." *Id.* In 2014, the UK also established the Remote Gambling Association (RCA), which assists gambling and sports betting associations in complying with laws and encourages high standards of integrity within the betting and gaming industry. *See* THE REMOTE GAMBLING ASSOCIATION, <https://www.rga.eu.com> (last visited Nov. 18, 2017).

¹⁵² BARR-SMITH, *supra* note 146, at 852. Making a comparison to the U.S., all major professional sports leagues would be providing the funding to help develop and regulate a sports betting industry that protects the integrity of sports.

¹⁵³ Gambling Act 2005, § 6(2) (UK), <https://www.legislation.gov.uk/ukpga/2005/19/contents>.

¹⁵⁴ Ohio's definition of "game of chance" includes, "poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo." OHIO REV. CODE ANN. § 2915.01(D) (2014).

¹⁵⁵ The Gambling Act of 2005 also sets forth the definition for "betting" which "means making or accepting a bet on (a) the outcome of a race, competition or other event or process, [or] (b) the likelihood of anything occurring or not occurring . . ." Gambling Act 2005, § 9(1) (UK), <https://www.legislation.gov.uk/ukpga/2005/19/contents>.

¹⁵⁶ *See* Forrest & Parry, *supra* note 3.

having over 250 casinos and sports books.¹⁵⁷ Although Nevada was the first American jurisdiction to offer sports betting legally, its laws and regulations on gambling are not straightforward. Nevada does not have "game of chance" or "game of skill" defined in any statute; instead the definitions are set forth in the Regulations of the Nevada Gaming Commission and State Gaming Control Board.¹⁵⁸ Nevada laws essentially allow the Nevada Gaming Commission and the Nevada Gaming Control Board to decide most of the State's gambling rules and regulations.¹⁵⁹ Although there are several significant definitions within Nevada statutes—including "wager"¹⁶⁰—the most applicable definitions and regulations remain in the purview of the Commission and the Board.¹⁶¹ Thus, much like Ohio, most of Nevada's gambling laws and regulations are administered through a state Commission and not the legislature itself.¹⁶² Additionally, similar to the U.K., one section of Nevada's gambling statute specifically sets forth the policy reasons, concerning gaming, within the State.¹⁶³

¹⁵⁷ See Ken Ritter, *Nevada Casinos Turn Profit in Fiscal 2016; First Since 2008*, USNEWS.COM (Jan. 12, 2017), <https://www.usnews.com/news/business/articles/2017-01-12/nevada-casinos-turn-profit-in-fiscal-2016-first-since-2008>.

¹⁵⁸ NEV. GAMING REG. § 14.010 (2015) ("Game of chance' means a game in which randomness determines all outcomes of the game as determined over a period of continuous play"; "'Game of skill' means a game in which the skill of the player, rather than chance, is the dominant factor in affecting the outcome of the game as determined over a period of continuous play").

¹⁵⁹ *Id.* § 1.010 ("The commission will, from to time, promulgate, amend and repeal such regulations, consistent with the policy, objects and purposes of the Nevada Gaming Control Act, as it may deem necessary or desirable in carrying out the policy and provisions of that Act.").

¹⁶⁰ NEV. REV. STAT. ANN. § 463.01962 (2017) ("Wager' means a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.>").

¹⁶¹ See *id.* §§ 463.140, 463.150. Nevada statutes basically set forth the power and duties of the Board and Commission, including Regulations, Issuing Gaming Licenses, Disciplinary Actions, Gambling Operations, and Tax Procedures. See *id.*

¹⁶² See *id.*; OHIO REV. CODE ANN. § 3772.03(C) (2014). Yet, Ohio's Casino and Gaming Commission is legalized through an amendment to the Ohio Constitution. See OHIO CONST. art. XV, § 6.

¹⁶³ NEV. REV. STAT. ANN. § 463.0129 (2017) ("The Legislature hereby finds, and declares to be the public policy of this state, that: (a) the gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants. (b) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming and the manufacture, sale and distribution of gaming devices and associated equipment are conducted honestly and competitively, that establishments which hold restricted and nonrestricted licenses where gaming is conducted and where gambling devices are operated do not unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.(c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments, the manufacture, sale or distribution of gaming devices and associated equipment and the operation of inter-casino linked systems.(d) All establishments where gaming is conducted and where gaming devices are operated, and manufacturers, sellers and distributors of certain gaming devices and equipment, and operators of inter-casino linked systems must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State, to foster the stability and

Despite these legal regulations, sports betting in licensed casinos and sports books is prospering in Nevada and does not seem to hurt the public's confidence or integrity in sports, as naysayers seem to believe.¹⁶⁴ Using Nevada's paradigm, data, and history of how sports betting can be successfully integrated into a jurisdiction's gambling laws, Ohio needs to emulate its framework and say "yes" to sports betting.¹⁶⁵

D. Ohio's Path to Legalized Sports Betting: Proposed Rules & Regulations

Now that states have the option to legalize and regulate sports betting, Ohio is one of the few states primed with the right infrastructure and public support to take advantage.¹⁶⁶ The only roadblock curbing Ohio's path to regulation of sports betting is its current gambling laws.¹⁶⁷ To not be left behind by modern-day sports betting, Ohio needs to update and revamp its current gambling laws to adhere to America's changing culture and twenty-first century technology. Because the Ohio Constitution grants the Ohio Casino Control Commission power and authority over the four state regulated casinos, revising Ohio law would be best done through a statutory change.¹⁶⁸ Ohio should change its gambling laws to incorporate schemes and definitions from other jurisdictions to best accommodate legalized sports betting.

The first change to Ohio's statutory scheme should be to replace its current gambling statutes with new modern rules and regulations on gambling, including the addition of regulated sports betting. The first section of the new code should express Ohio's objectives and purpose behind enacting the new statute.¹⁶⁹ This section should be aligned with Ohio's prerogatives and public policy; it will most likely include

success of gaming and to preserve the competitive economy and policies of free competition of the State of Nevada.(e) To ensure that gaming is conducted honestly, competitively and free of criminal and corruptive elements, all gaming establishments in this state must remain open to the general public and the access of the general public to gaming activities must not be restricted in any manner except as provided by the Legislature.").

¹⁶⁴ In fact, Nevada sports betting regulation has only helped to monitor sports integrity and illegal betting. *See* Hobson, *supra* note 63.

¹⁶⁵ *See* Forrest & Parry, *supra* note 3.

¹⁶⁶ Ohio already has four state-sponsored casinos throughout the State that are governed by the Ohio Casino Commission Control. Additionally, a gaming research firm, Eilers & Krejcik Gaming, LLC, predicts that Ohio will offer sports betting within two years of PASPA's removal. *See* Wayne Parry, *Report: 32 US States Could Offer Sports Betting in 5 Years*, FOXSPORTS.COM (Oct. 1, 2017), <https://www.foxsports.com/other/story/report-32-us-states-could-offer-sports-betting-in-5-years-100117>.

¹⁶⁷ *See* OHIO CONST. art. XV, § 6; OHIO REV. CODE ANN. §§ 2915.01–2915.061 (2014).

¹⁶⁸ As noted above, Ohio's constitution is already confusing enough. *See* Steinglass, *supra* note 140.

¹⁶⁹ Similar to both the United Kingdom and Nevada's structures. *See* Gambling Act 2005, § 1 (UK), <https://www.legislation.gov.uk/ukpga/2005/19/contents> ("In this Act a reference to the licensing objectives is a reference to the objectives of (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, (b) ensuring that gambling is conducted in a fair and open way, and (c) protecting children and other vulnerable persons from being harmed or exploited by gambling"); *see also* NEV. REV. STAT. ANN. 463.0129 (2017).

general sub-sections on: (1) preventing crime; (2) public confidence in fair and honest gambling/gaming; and (3) protecting vulnerable people from harms of gambling.

The second change should be to either amend or repeal Ohio Revised Code Section 2915.02, which prohibits sports betting and bookmaking.¹⁷⁰ In addition, minor changes to definitions within the statute could make Ohio law more organized and clear, adding structure and confidence into Ohio's gambling laws. Specifically, "game of chance" and "game of skill" should be meshed into one concise and sweeping definition, giving "game of chance" a broader scope.¹⁷¹ The new all-encompassing "game of chance" definition should include games that are a game of chance, game of skill, and games that are a mix of chance and skill.¹⁷² With the prohibition on sports betting now repealed, and by making changes to some key definitions, the new statute should set forth how to regulate gambling and sports betting. The substantive regulations should be rely on extensive research from sports gambling experts and utilizing other jurisdictions' pre-existing gambling laws.

Because the Ohio Casino Control Commission already has broad authority and discretion under the Ohio Constitution, the Commission should be named the sole regulator of sports betting within the State.¹⁷³ The Commission should establish rules and regulations similar to the U.K. and Nevada, while also ensuring the integrity of sports and fairness in betting. The Commission should issue sports betting licenses to reputable organizations that help to ensure the objective of the new state laws. The best way to ensure integrity, honesty, and fairness initially would be to strictly issue licenses to the four commercial casinos already established throughout the state. This would prevent prospective businesses from oversaturating the sports betting market and further ensure that sports betting would not begin to disrupt economically vulnerable areas in the State.¹⁷⁴ With proper safeguards already in place, Ohio's four casinos will make for an easy transition, both legally and practically. Additionally, the Commission should pass mobile gaming regulations allowing gamblers to bet online

¹⁷⁰ See OHIO REV. CODE ANN. § 2915.02 (2014).

¹⁷¹ Similar to U.K.'s definition. See Gambling Act of 2005, § 6(2) (UK), <https://www.legislation.gov.uk/ukpga/2005/19/contents>.

¹⁷² Again, similar to how the U.K. incorporates the definition. See *id.*

¹⁷³ Similar to Ohio's regulation of daily fantasy sports. See OHIO REV. CODE ANN. § 3774 (2017).

¹⁷⁴ Ohio must avoid sports books and casinos that rely on outlets in poor neighborhoods. See CHAPTER 7. GAMBLING'S IMPACTS ON PEOPLE AND PLACES, NATIONAL GAMBLING IMPACT STUDY COMMISSION REPORT 7-10 (1999), <https://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>; *Murphy v. NCAA*, 138 S. Ct. 1461, 1484 (2018) ("Opponents [of legalized sports gambling] contend that [it] will . . . encourage people of modest means to squander their savings and earnings . . .").

through computer or phones anywhere in the State.¹⁷⁵ This would make sports betting more easily accessible and potentially increase its popularity statewide.¹⁷⁶

Having these new laws and regulations ready for the legislature's approval will ensure Ohio is at the forefront of the sports betting revolution taking place in America.¹⁷⁷ Ohio's Casino Control Commission is the ideal entity to help regulate this new activity, while Ohio's four constitutionally approved casinos are perfect for its implementation. Failure to prepare and take advantage of the inevitable repeal of sports betting prohibition will hurt Ohio's economy, cities, counties, schools, infrastructure, and most importantly, its people.¹⁷⁸ By adopting new laws and regulations for legalized sports betting that conform to current ideals and technology, Ohio will secure its position as a twenty-first century leader in intuitive and forward thinking.

IV. CONCLUSION

Legalizing and regulating sports betting is an inexpensive and practical way to increase tax revenue in Ohio while also giving the State a chance to address its confusing and complex gambling laws.¹⁷⁹ As Americans become more accepting of once taboo issues, current laws and regulations on such subjects are changing. Once seen as a morally corrupt practice, gambling is now seen as an exciting and fun form of leisure entertainment while sports betting is becoming more and more mainstream throughout the United States. As Congress and federal laws begin to adapt to the

¹⁷⁵ Gamblers in Nevada, New Jersey, and Pennsylvania can bet through casino and sports book apps that allow them to bet anywhere if they are within state lines. *See* Dustin Gouker, *The Best Case for Legal Online Sports Betting: The Success of Nevada Mobile Apps*, LEGAL SPORTS REP. (Sep. 15, 2017), <https://www.legalsportsreport.com/15586/online-sports-betting-nevada-mobile-apps/>; Ben Fawkes, *Legal Mobile Wagering Arrives in NFL at Browns-Giants Game*, ESPN (Aug. 10, 2018), http://www.espn.com/chalk/story/_/id/24335390/cleveland-browns-new-york-giants-game-first-nfl-legal-mobile-wagering; John Kosich, *Sports betting is coming to Ohio says the state's governor-elect, it's just not clear when*, NEWS5CLEVELAND.COM (Nov. 16, 2018), <https://www.news5cleveland.com/news/local-news/cleveland-metro/sports-betting-is-coming-to-ohio-says-the-states-governor-elect-its-just-not-clear-when>.

¹⁷⁶ In theory, gamblers would still need to register with the casino at its physical location and could only withdraw proceeds there as well.

¹⁷⁷ *See* Parry, *supra* note 3.

¹⁷⁸ With neighboring states like Pennsylvania and West Virginia having already passed legislation for sports betting, Ohio needs to quickly legalize and implement sports betting regulations to not miss out on the much needed tax revenue. *See* Phil Kabler, *Final Preparations Underway for State Launch of Sports Betting Saturday*, CHARLESTON GAZETTE-MAIL (Aug. 27, 2018), https://www.wvgazette.com/business/final-preparations-underway-for-state-launch-of-sports-betting-saturday/article_84b90121-00af-5f6d-baef-3004e8128ab1.html; Andrew Maykuth, *First Pa. Casino Applies for Sports-Betting License. But Not in Time for Start of NFL season*, PHILLY.COM (Aug. 17, 2018), http://www2.philly.com/philly/business/tourism_casinos/hollywood-casino-penn-national-first-pennsylvania-sports-betting-20180817.html.

¹⁷⁹ *See* Marla Matzer Rose, *Quick OK of Sports Betting Would Help Ohio Reap More Tax Revenue*, THE COLUMBUS DISPATCH (July 27, 2018), <http://www.dispatch.com/news/20180726/quick-ok-of-sports-betting-would-help-ohio-reap-more-tax-revenue>.

changing sports betting environment, states need to be ready to revamp their gambling laws to accommodate for the boom in sports betting.

With its current gambling infrastructure, Ohio is in a prime position to take advantage of the recent repeal of prohibition on sports gambling. By blending current jurisdictions' sports betting statutes with Ohio's distinctive gambling infrastructure and laws, Ohio can implement a modern and successful sports betting regulatory structure. Additionally, technological advancements in mobile and online applications will allow Ohio to be the frontrunner in future sports betting regulation in the United States.