

# “Consistency is all I ask!”\*: Leveling the Playing Field of Online Sports Gambling

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\* TOM STOPPARD, ROSENCRANTZ AND GULDENSTERN ARE DEAD (1966).

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## I. INTRODUCTION

Sports gambling has become an increasingly popular pastime across the United States. Millions of Americans are attracted to the possibility of hitting it big and are willing to risk their own money to do so. Previously, sports gambling was illegal under the Professional and Amateur Sports Protection Act (“PASPA”).<sup>1</sup> However, while it was illegal in most of the country, many still gambled through alternative markets.<sup>2</sup>

In 2018, the Supreme Court decision in *Murphy v. National Collegiate Athletic Association* struck down this act and allowed states to adopt their own legislation regulating sports gambling.<sup>3</sup> Although the *Murphy* decision struck down PASPA under the 10<sup>th</sup> Amendment to the U.S. Constitution, its implications are widespread. Since *Murphy*, many states have adopted legislation legalizing sports gambling in their respective states, but the available methods to gamble in each state differ greatly.<sup>4</sup> This new landscape causes confusion and creates problems because bettors are unable to decide how to legally gamble, which may lead to illegal gambling and missed opportunities for the economy. The difference between online and casino gambling is a controversial topic under the Commerce Clause of the U.S. Constitution.<sup>5</sup>

Part II of this Note will analyze the evolution of Commerce Clause interpretation and examine the precarious history of PASPA and sports gambling. This Part will also include an analysis of the 2018 Supreme Court decision in *Murphy* and the resulting state legislation that has been adopted. Next, in Part III, this Note will consider the effects of the *Murphy* decision. This Note will also consider the difficulties that accompany the inconsistent regulatory approaches taken by states that legalize sports gambling. In Part IV, this Note will propose that states adopt a Uniform Act to regulate sports gambling in order to have a more consistent and regulated sports gambling industry. A Uniform Act will solve the problems discussed above by creating a nationwide system for sports gambling that is both easy to understand and implement, allowing bettors to legally add to the economy.

## II. BACKGROUND

### A. Commerce Clause Jurisprudence

Article I, Section 8 of the U.S. Constitution gives Congress the power “to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”<sup>6</sup>

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1. 28 U.S.C. § 3702 (1992).

2. Elaine S. Povich, *Show Me the Money: Sports Betting off and Running*, PEW (Sept. 10, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/09/10/show-me-the-money-sports-betting-off-and-running#:~:text=Under%2Dthe%2Dtable%20NFL%20and,Gaming%20Association%2C%20a%20trade%20group> [https://perma.cc/4PBE-PMVA] (estimating a \$150 billion black market for sports gambling in 2018).

3. See generally *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018) (holding PASPA is unconstitutional).

4. Alexandra Licata, *42 States Have or Are Moving Towards Legalizing Sports Betting - Here Are the States Where Sports Betting is Legal*, BUS. INSIDER (Aug. 2, 2019, 12:51 PM), <https://www.businessinsider.com/states-where-sports-betting-legal-usa-2019-7> [https://perma.cc/SN3B-XE7F].

5. U.S. CONST., art. 1, § 8.

6. *Id.*

The first case in which the Supreme Court analyzed the Commerce Clause was in 1824 in *Gibbons v. Ogden*.<sup>7</sup> In *Gibbons*, the Court held that commerce is related to all phases of business, not just traffic or the buying and selling of goods.<sup>8</sup> The Court also specified that Congress may regulate commercial activity between two or more states, but not within a state.<sup>9</sup>

The next major Commerce Clause analysis came under *The Daniel Ball* case, in which the Court extended Congress' power to regulate commerce into the intrastate commerce sphere if the goods being transported within a state originated or ended up in another state.<sup>10</sup> The Court next went through a period of narrowing Congress' Commerce Clause power.<sup>11</sup> Then, beginning in the 1930s, with the Great Depression looming, the Court broadly expanded the commerce power.<sup>12</sup> With a few more decisions developing Congress' power, the current rule comes from *United States v. Lopez*.<sup>13</sup> The Court in *Lopez* held Congress may (1) "regulate the use of the channels of interstate commerce,"<sup>14</sup> (2) "regulate and protect the instrumentalities of interstate commerce,"<sup>15</sup> and (3) "regulate those activities having a substantial relation to interstate commerce."<sup>16</sup> This rule creates broad control for Congress over commerce across the nation.

The meaning of a section of the Commerce Clause, sometimes referred to as the Dormant Commerce Clause, that has long been unclear, was recently settled by the Court in *South Dakota v. Wayfair*.<sup>17</sup> The Court discussed the limits of a state's power to regulate interstate commerce, stating that "[f]irst, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce."<sup>18</sup> The issue in *Wayfair* applied these principles to state taxes.<sup>19</sup> The Court held the physical presence requirement, which required businesses to be physically present in a state in order to be subject to that state's taxes, is no longer applicable.<sup>20</sup> The new test, therefore, is whether a tax "(1) applies to an activity with a substantial nexus

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7. Thomas L. Skinner III, *The Pendulum Swings: Commerce Clause and Tenth Amendment Challenges to PASPA*, 2 UNLV GAMING L.J. 311, 314 (2011). In *Gibbons*, New York granted exclusive navigation rights of the water to a few people, who sued another party who was also using these waters. *Gibbons v. Ogden*, 22 U.S. 1, 1 (1824). The issue was whether it was constitutional for the state to issue these exclusive navigation rights. *Id.*

8. *Gibbons*, 22 U.S. at 1.

9. *Id.*

10. *The Daniel Ball*, 77 U.S. 557, 565 (1870). This case involved a steamship traveling through a river in Michigan, transporting merchandise and passengers. *Id.* There was a debate over whether the river was a navigable water, which would require the ship to be inspected and licensed by the United States. *Id.*

11. Skinner III, *supra* note 7, at 316.

12. *Id.* at 317–18.

13. *Id.* at 320.

14. *United States v. Lopez*, 514 U.S. 549, 558 (1995). This case involved the constitutionality of the Gun-Free Schools Zone Act of 1990, which "made it a federal offense 'for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.'" *Id.* at 551 (quoting 18 U.S.C. § 922(q)(1)(A) (1988)).

15. *Id.*

16. *Id.* at 558–59.

17. See generally *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018) (explaining how states can regulate interstate commerce occurring within their state).

18. *Id.* at 2091.

19. *Id.*

20. *Id.* at 2093.

with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services the State provides.”<sup>21</sup> This holding creates a clear rule for states wanting to regulate aspects of interstate commerce occurring within their borders.

### B. PASPA & History of Sports Gambling

The acceptance of sports gambling in the United States has long been in flux, subject to constantly changing social, political, and economic forces. Throughout the eighteenth and nineteenth centuries, sports gambling was widely supported and participated in throughout the country.<sup>22</sup> In the early twentieth century, however, nearly all forms of gambling were made illegal due to the belief that gambling was a social ill.<sup>23</sup> Sports gambling was illegal across the country until 1949, when Nevada became the first state to make sports gambling legal.<sup>24</sup> Even with sports gambling legal in Nevada, illegal gambling remained a large problem, one that Congress seemed helpless to control through legislation.<sup>25</sup> Congress struggled to control illegal gambling because “[s]ophisticated criminal organizations openly defied authorities . . . .”<sup>26</sup> Congress passed five Acts to slow the illegal sports gambling market, including the Wire Act in 1961, without success.<sup>27</sup>

Eventually, in 1991, Congress gained the support of the major professional sports leagues and U.S. Senators from four states,<sup>28</sup> enough to make another attempt to control illegal sports gambling. This group introduced PASPA.<sup>29</sup> “[T]he primary arguments in favor of PASPA were (1) protecting the integrity, and preserving the character, of sports; (2) shielding America’s impressionable youth from vice; and (3) restricting any further spreading of state-authorized sports gambling.”<sup>30</sup> The law was enacted in 1992.<sup>31</sup> PASPA states,

It shall be unlawful for—(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or one or more performances of such athletes in such games.<sup>32</sup>

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21. *Id.* at 2091.

22. Justin Fielkow et al., *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 25–26 (2016).

23. *Id.* at 26.

24. Licata, *supra* note 4.

25. Fielkow, *supra* note 22, at 27–28.

26. *Id.* at 27.

27. *Id.*

28. *Id.* at 29–30.

29. *Id.*

30. Fielkow, *supra* note 22, at 30.

31. Juan Carlos Blanco, *What is PASPA? The Professional Amateur Sports Protection Act*, LINES (Dec. 20, 2020), <https://www.thelines.com/betting/paspa/> [<https://perma.cc/NL83-3HAK>].

32. 28 U.S.C.A. § 3702 (West 2021).

Exceptions were created for Delaware, Montana, Nevada, and Oregon, where sports gambling had previously been allowed.<sup>33</sup> Even with this statute making sports gambling illegal, sports gambling was still a \$150 billion industry in 2018.<sup>34</sup>

The first major challenge to PASPA came under *National Collegiate Athletic Association v. Governor of New Jersey (Christie I)*.<sup>35</sup> In 2013, New Jersey passed a sports gambling law, which a group of sports leagues challenged as violating PASPA.<sup>36</sup> New Jersey responded by arguing PASPA is outside of Congress' Commerce Clause powers and that it also violates the anti-commandeering and equal sovereignty principles.<sup>37</sup> The Third Circuit Court of Appeals concluded PASPA was constitutional.<sup>38</sup> The court stated, "the activity PASPA targets, state-licensed wagering on sports, may be regulated consistent with the Commerce Clause."<sup>39</sup> The court reached this conclusion because national sports and gambling are economic activities, sporting events "substantially affect" interstate commerce, and gambling on sports events also substantially affects interstate commerce.<sup>40</sup>

In response to this ruling, New Jersey enacted a law in 2014 repealing its current state law prohibitions, which had the effect of allowing sports gambling in casinos and racetracks.<sup>41</sup> The sports leagues responded to this with another challenge in *National Collegiate Athletic Association v. Governor of New Jersey (Christie II)*.<sup>42</sup> In this case, the Third Circuit held this new 2014 law violated PASPA.<sup>43</sup> The court explained this law authorized sports gambling, which is prohibited under PASPA, because it allows casinos and racetracks to operate sports gambling when this would be illegal without this law.<sup>44</sup> In addition, the court analyzed the definition of "authorize" and concluded this law does authorize sports gambling by specifically controlling where, by whom, and on what events bets may be placed.<sup>45</sup>

### C. *Murphy v. Nat'l Collegiate Athletic Ass'n.*

The most recent step in the PASPA constitutional challenge saga is *Murphy v. National Collegiate Athletic Association*.<sup>46</sup> This case came about because the Supreme

33. Fielkow, *supra* note 22, at 23.

34. Povich, *supra* note 2.

35. See generally *Nat'l Collegiate Athletic Ass'n v. Gov. of N.J.*, 730 F.3d 208 (3d Cir. 2013) (addressing the constitutionality of PASPA).

36. *Id.* at 214.

37. *Id.* New Jersey argued PASPA is outside of Congress' Commerce Clause powers because it regulates purely local activities and comparing PASPA to the "Supreme Court's holding that the 'individual mandate' of the Affordable Care Act is beyond Congress' power under the Commerce Clause" in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012). *Id.* at 225–26. The court rejected both of these arguments. *Id.*

38. *Id.* at 215.

39. *Id.* at 224.

40. *Nat'l Collegiate Athletic Ass'n*, 730 F.3d at 224–25.

41. S. 2460, 216th Leg., Reg. Sess. (N.J. 2014) (repealed 2018).

42. See generally *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 799 F.3d 259 (3d Cir. 2015) (addressing New Jersey's law under PASPA).

43. *Id.* at 265.

44. *Id.*

45. *Id.* at 266.

46. See generally *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018) (addressing the unresolved Constitutional issues from the previous two cases).

Court granted review to address the constitutional questions in the *Christie I* and *Christie II* cases. The Court’s decision focuses on the issue of dual sovereignty, specifically the anti-commandeering doctrine.<sup>47</sup> This doctrine prohibits Congress from issuing orders directly to the states.<sup>48</sup> The Court explains the importance of maintaining this doctrine because it protects individuals from the risk of tyranny or abuse, promotes political accountability, and ensures Congress does not shift the costs of regulation to the states.<sup>49</sup> The Court explained two famous anti-commandeering doctrine cases, *New York v. United States* and *Printz v. United States*.<sup>50</sup> These cases struck down federal laws based on the anti-commandeering doctrine because the laws required states and state officers, respectively, to enforce federal law.<sup>51</sup> In *Murphy*, New Jersey’s Governor argued that PASPA also violates this doctrine through regulating a state’s lawmaking powers by prohibiting it from repealing its law which made sports gambling illegal.<sup>52</sup>

The Court held that PASPA violates the anti-commandeering doctrine because “prohibiting state authorization of sports gambling” goes against this exact rule because Congress told states how to regulate sports gambling.<sup>53</sup> Believing PASPA violated the dual sovereignty system of government, the Court remarked, “[a] more direct affront to state sovereignty is not easy to imagine.”<sup>54</sup> The Court provided an example which showed if the exemption for states that allowed sports betting at the time PASPA was enacted did not exist, this law would not only require states to retain their laws against sports betting but would also force other states to now take the affirmative step to criminalize that behavior.<sup>55</sup> This is clearly a violation of the anti-commandeering doctrine, and PASPA, as it stood, was no different.

Having decided PASPA is unconstitutional because it violates the anti-commandeering doctrine, the Court then tried to determine “whether the law remains ‘fully operative’ without the invalid provisions.”<sup>56</sup> The Court concluded that no provision is severable from the portions of the law that were found to be unconstitutional, therefore making the entirety of PASPA unconstitutional and immediately invalid in all states.<sup>57</sup>

#### D. State Adoption of Legislation & Methods

##### 1. Legislation Adopted

As of April 2021, the District of Columbia and 26 states have adopted legislation legalizing sports betting.<sup>58</sup> Five states have legislation in place, which leaves 19 states

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47. *Id.* at 1465–66.

48. *Id.* at 1476.

49. *Id.* at 1477.

50. *Id.* at 1471, 1476–77.

51. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1471 (2018).

52. *Id.*

53. *Id.* at 1478.

54. *Id.*

55. *Id.*

56. *Murphy*, 138 S. Ct. at 1482.

57. *Id.* at 1484.

58. Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN: CHALK (Apr. 7, 2021), [https://www.espn.com/chalk/story/\\_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization](https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization) [https://perma.cc/C927-659C]. These states are Arizona,

with no legislation in place.<sup>59</sup> Residency in a state where sports betting is legalized is not required to place a bet, but one must be located in that state when the bet is placed.<sup>60</sup>

## 2. Methods

Complications begin when a person in a state where sports gambling is legal wants to actually place a bet. The rules and regulations for how, where, and on what events bets can be placed vary drastically between states.

In Iowa, for example, gamblers can place bets on-site at casinos or through mobile apps.<sup>61</sup> To use either of these methods, however, the law required that bettors physically visit a casino to show proof of identity and age and set up the account.<sup>62</sup> The law also only required this in-person registration until January 1, 2021.<sup>63</sup> Since this date, bettors can simply register online or through the app. Some states, such as Delaware and Arkansas, only allow in-person betting with the possibility of future online sports betting.<sup>64</sup>

Other, more complicated rules also exist. For example, it is only legal to bet on sports in-person at tribal casinos in states such as Washington and North Carolina.<sup>65</sup> A few states, such as Oregon and Montana, offer sports betting exclusively through the state lottery.<sup>66</sup>

In addition to the how and where, there are also different rules about what events can be bet on. In Iowa, betting on college sports is permitted but there are bans on certain kinds of in-game prop bets.<sup>67</sup> These are bets on an individual player or the occurrence of a specific event.<sup>68</sup> A popular example of this is gambling on what color of sports drink the winning team will dump on the coach during the Super Bowl.<sup>69</sup> Another example of the types of events that can be bet on is shown in Indiana, where it is legal to bet on college and pro sports, but not high school or esports.<sup>70</sup> These are among the numerous examples which show how varied state laws are in regard to sports gambling.

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Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Virginia, Washington, West Virginia, and Wyoming. *Id.*

59. *Id.* The five states with legislation in place are Florida, Louisiana, Maryland, Nebraska, and Wisconsin. *Id.*

60. *Legal Sports Betting in the United States*, DRAFTKINGS SPORTSBOOK, <https://sportsbook.draftkings.com/help/sports-betting/where-is-sports-betting-legal> [https://perma.cc/8HQQ-334T].

61. Danny Lawhon, *Iowa Sports Betting: What to do Now That it's Legal to Wager*, DES MOINES REG. (Aug. 15, 2019, 2:16 PM), <https://www.desmoinesregister.com/story/sports/2019/07/30/iowa-sport-betting-start-date-legal-sports-gambling-app-ncaa-college-football-spread-rule-how-to-bet/1857134001/> [https://perma.cc/39HX-L6WF].

62. *Id.*

63. *Id.*

64. Rodenberg, *supra* note 58.

65. *Id.*

66. *Id.*

67. *Id.*

68. *What is a Prop Bet?*, LINES, <https://www.thelines.com/betting/prop-bets/> [https://perma.cc/D5TT-6GMQ].

69. *Id.*

70. Rodenberg, *supra* note 58.



### 3. Congress Action Since 2018

A House Judiciary Subcommittee held a hearing on sports betting four months after the Supreme Court handed down its decision in *Murphy*.<sup>71</sup> “The NCAA and major professional sports leagues want federal guidelines, while gaming interests feel states are in the best position to regulate sports betting.”<sup>72</sup> Members of the Senate introduced the Sports Wagering Market Integrity Act of 2018.<sup>73</sup> This Act would require the outcomes of bets to be based on league data, rather than results from third parties such as TV networks and apps.<sup>74</sup> The latest action was in December 2019, during which the bill was “[r]ead twice and referred to the Committee on the Judiciary.”<sup>75</sup> There are strong opinions on both sides of the debate about whether federal regulation should be introduced<sup>76</sup>, but no further steps have been taken.

### 4. Commerce Clause

Online sports gambling falls within the realm of Congress’ power under the Commerce Clause.<sup>77</sup> Justice Ginsburg, in her dissent in *Murphy*, said specifically “[i]n PASPA . . . Congress permissibly exercised its authority to regulate commerce by instructing States and private parties to refrain from operating sports-gambling schemes.”<sup>78</sup> The same reasoning would hold true in an action by Congress to regulate legal sports betting, allowing sports gambling to be federally regulated under the Commerce Clause. In addition, the majority explicitly stated, “Congress can regulate sports gambling directly.”<sup>79</sup> Although the Court did not explain this is possible because of Congress’ power under the Commerce Clause, that is the power which grants the authority to regulate such activity.

## III. ANALYSIS

### A. What is Correct in the *Murphy* Decision

The Court in *Murphy* reached its conclusion to overrule PASPA because it violated the anti-commandeering doctrine.<sup>80</sup> This was an incredibly important decision because it eliminated the possibility of the federal government infringing on the states’ rights. If the

71. David Purdum, *Congress indicates it may act on sports betting*, ESPN: CHALK (Sept. 27, 2018), [https://www.espn.com/chalk/story/\\_/id/24814518/congress-indicates-act-sports-betting](https://www.espn.com/chalk/story/_/id/24814518/congress-indicates-act-sports-betting) [<https://perma.cc/TM89-PG6W>]. The specific subcommittee was the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations. *Id.*

72. *Id.*

73. Patrick Moran, *Anyone’s Game: Sports-Betting Regulations After Murphy v. NCAA*, 4 CATO INST. LEGAL POL’Y BULL. 1 (Mar. 11, 2019), <https://www.cato.org/publications/legal-policy-bulletin/anyones-game-sports-betting-regulations-after-murphy-v-ncaa>.

74. *Id.*

75. Sports Wagering Market Integrity Act of 2018, S. 3793, 115th Cong. (this quote comes directly from the latest action category on the congressional webpage).

76. Purdum, *supra* note 72.

77. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S.Ct. 1461, 1490 (2018) (Ginsburg, J., dissenting).

78. *Id.*

79. *Id.* at 1484.

80. *Id.* at 1465.

Court had allowed PASPA to remain law, this would have provided an opportunity for other federal legislation similar to PASPA to be held as constitutional when it relates to the anti-commandeering doctrine. This is dangerous for multiple reasons, as the Court laid out.<sup>81</sup> These reasons include protecting individuals from the risk of tyranny or abuse, promoting political accountability, and ensuring Congress does not shift the costs of regulation to the states.<sup>82</sup>

One of the most important reasons, as it relates to PASPA, is promoting political accountability. The beliefs and mindset around sports gambling changed dramatically in the last 30 years and many people wanted to participate.<sup>83</sup> Then, PASPA was introduced to force regulation onto states so they could not allow sports gambling in their jurisdictions. This was an issue because it created confusion among the citizens of the states about who to hold accountable for this decision outlawing sports gambling. This was important because it was a market in which many citizens now wished to participate and needed somewhere to direct their opinions. Legally, it was the federal government telling states they could not make sports gambling legal, but to ordinary citizens it is unclear if that was a state or federal decision.<sup>84</sup> Therefore, if voters did not support the law, they did not know who to hold accountable at the polls. Even for the many people who supported PASPA due to wanting to protect the integrity of sports and impressionable youth, this commandeering also created a problem.

#### B. What is Incorrect in the *Murphy* Decision

There was controversy among the majority and dissenting opinions in the *Murphy* Court about the severability of PASPA.<sup>85</sup> The severability doctrine addresses what happens to the whole statute when a part of it is held to be unconstitutional.<sup>86</sup>

If the court concludes that the provision was relatively unimportant to the legislators, that the legislators would have enacted the remainder of the statute in its absence, the court will sever the provision and enforce the remainder of the statute. If, by contrast, the court concludes that the provision was essential to the legislators, that the legislators would not have enacted the remainder of the statute in its absence, the court will refuse to sever the provision.<sup>87</sup>

The Court only held that the specific PASPA provision making it unlawful for states to authorize sports gambling was unconstitutional. Therefore, the Court had to determine if the other parts of the Act were severable from this section.<sup>88</sup> The Court ultimately held no provisions of the Act were severable, making the entire Act unconstitutional.<sup>89</sup>

Justice Ginsburg's dissent argues the part of the Act which makes it illegal for

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81. *Id.* at 1477.

82. *Murphy*, 138 S. Ct. at 1477.

83. Fielkow, *supra* note 22, at 27–28.

84. *Murphy*, 138 S. Ct. at 1477.

85. *See id.* at 1482–84, 1489–90 (Ginsburg, J., dissenting) (discussing reasons for and against the severability of PASPA).

86. Mark L. Movsesian, *Severability in Statutes and Contracts*, 30 GA. L. REV. 41, 41 (1995).

87. *Id.* at 44.

88. *Murphy*, 138 S. Ct. at 1482.

89. *Id.* at 1484.

private parties to sponsor, operate, advertise, or promote sports gambling schemes is severable from the rest of the Act and does not itself violate the anti-commandeering doctrine.<sup>90</sup> This second part of the Act is in place to ensure even if states somehow allow sports gambling, it is still not authorized under federal law. Justice Ginsburg makes a strong argument by pointing out it is not rational to assume the legislators would not have wanted any part of the Act to be in place if the first part was found to be unconstitutional.<sup>91</sup> The legislators would very likely still want to make sports gambling unlawful under federal law for private actors.<sup>92</sup> This seems like the most likely outcome the legislators would have wished for at the time of the enactment, based on the reasons for introducing the Act.<sup>93</sup>

Although the reasoning about this issue is stronger in the dissent than in the majority, the legislature can still change its mind about the legalization of sports gambling through repeal or enactment of a new federal law relating to sports gambling, following the shift in public opinion.

### C. What the Future Looks Like

#### 1. Commerce Clause

Although PASPA falling under the Commerce Clause was not a factor in the *Murphy* decision, as the Court was focusing on the anti-commandeering doctrine, it was briefly mentioned in Justice Ginsburg's dissent.<sup>94</sup> Justice Ginsburg pointed out PASPA was an appropriate action by Congress under the Commerce Clause.<sup>95</sup> Under the factors explained by the Court in *Lopez*, online sports gambling fits into the category of "those activities having a substantial relation to interstate commerce."<sup>96</sup> Online sports gambling has a substantial relation to interstate commerce because it is money used to bet on the outcome of sporting events across the nation. Although some bets may be placed on sporting events taking place entirely within one state with the bettor also in that state, these are not the usual circumstances. For example, it was predicted 26 million Americans would bet on the 2020 Super Bowl.<sup>97</sup> Events such as the Super Bowl, which attract bettors from many different states, are just some of many examples illustrating how online sports gambling substantially relates to interstate commerce.

This interstate commerce classification opens up the world of online sports gambling to federal regulation under the Commerce Clause. Although PASPA was struck down on constitutional grounds for violating the anti-commandeering doctrine, a different federal law could be enacted to regulate sports gambling under the Commerce Clause in order to make sports gambling laws consistent across the nation.

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90. *Id.* at 1489 (Ginsburg, J., dissenting).

91. *Id.* at 1490.

92. *Id.*

93. Fielkow, *supra* note 22, at 30.

94. *Murphy*, 138 S. Ct. at 1490 (Ginsburg, J., dissenting).

95. *Id.*

96. *United States v. Lopez*, 514 U.S. 549, 558–59 (1995).

97. Jessica Golden, *Record Number of Bets Expected for Super Bowl*, CNBC (Jan. 28, 2020, 10:36 AM), <https://www.cnbc.com/2020/01/28/record-number-of-bets-expected-for-super-bowl.html> [<https://perma.cc/KQW4-QXGY>].

The current debate about the Dormant Commerce Clause is incredibly important for online sports gambling because it helps answer the questions such as where to report online gambling winnings, who can tax them, and how online sports gambling websites can be taxed. *South Dakota v. Wayfair* helps set out the standards for how far states can go when trying to tax online businesses being used within their jurisdiction.<sup>98</sup>

## 2. Sports Gambling

If *Murphy* remains the final judicial ruling on sports gambling and Congress declines to take up major sports gambling reform, the future of sports gambling is very unpredictable. At this point, states are allowed to pass any legislation they desire about the legality of sports gambling.<sup>99</sup> As laid out above, 21 states and the District of Columbia have legalized sports gambling, 26 states are potentially legalizing sports gambling, and three have not yet made attempts.<sup>100</sup> The results of the 26 states are uncertain, and any future moves of the three states which have not attempted any legislative change so far are even more uncertain. Regardless of what each of these states decide, there is still uncertainty about what sports gambling will look like across the country. As discussed above, there is great variance in the how, where, and on what events sports gambling is legal throughout the nation.<sup>101</sup> It is difficult to predict what the field of sports gambling will look like across the country in the near future, and whether a new judicial ruling or legislative act will make any changes to this landscape.

### D. Confusion About Existing Laws

This unpredictability leads to immense confusion among citizens across the country who want to participate in sports betting. According to a study conducted across the United States in 2019, “[a]bout four in ten respondents (36.1%) live in a state that offers a state-regulated legal sports betting market, despite the fact more than six in ten (62.4%) stated that they lived in such a state.”<sup>102</sup>

Even if a citizen of a certain state knows sports gambling is legal in their state, they may not know in what manner and on what events specifically. The Iowa law discussed above, which changed in early 2021, provides a great example of how confusing a sports gambling law may be, especially when it changes over time.<sup>103</sup> Although a person is unlikely to accidentally gamble in an illegal way, there is an issue that people are missing out on a right they have because they do not understand the laws regulating their right. This is harmful to the people who wish to participate in legal sports betting but do not know how. It also harms the industry which is missing out on potential bettors due to confusing laws. Sports gambling can be an incredible boost to the economy, as experts

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98. See generally *South Dakota v. Wayfair, Inc.*, 138 U.S. 2080 (2018) (describing the rules for states under the Dormant Commerce Clause).

99. *Murphy*, 138 S. Ct. at 1484–85.

100. See *supra* Part II.D.1 (describing the current landscape of state legislation).

101. See *supra* Part II.D.2 (describing the variation in laws that currently exist).

102. *Is Sports Betting Legal? Most American Bettors Don't Know*, SPORTS BETTING DIME (May 20, 2021), <https://www.sportsbettingdime.com/guides/research/survey-legality-perceptions/> [https://perma.cc/XRF5-4CLD].

103. See *supra* Part II.D.2 (explaining the details of the Iowa law).

project the industry to have annual revenue of \$3.1-5.2 billion by the end of 2024.<sup>104</sup> In turn, money is given back to the states through taxes. These tax rates vary from 6.75% in Nevada to 51% in Rhode Island.<sup>105</sup> These numbers show the positive impact on the economy when there are more participants in the sports gambling world.

In addition, if online sports gambling is not legal in certain areas, people who wish to participate will turn to illegal avenues. The illegal sports gambling market was worth \$150 billion in 2018.<sup>106</sup> This money is not taxed and not used to boost the local economy, which is another reason why sports gambling should be made legal nationwide. Also, any reduction in criminal activity is beneficial to society.<sup>107</sup>

The confusion applies within states and also across the nation. A person may be confused about how to legally gamble on sports within their own state and then have even more confusion about how this works in other states while traveling. This is especially important for sporting events in which many people travel to attend. According to the U.S. Travel Association, 190 million domestic trips were made to attend or participate in a sporting event in 2018.<sup>108</sup>

Additionally, the Wire Act of 1961 makes it illegal to wire information between states for bets or wagers on sporting events or contests.<sup>109</sup> There is an exception, however, “for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.”<sup>110</sup> Therefore, it is important for bettors to know where sports betting is legal in order to avoid cross-state gambling issues. Overall, this confusion among citizens about how to bet on sports legally hinders both their rights and the economy.

#### E. Advantages of Federal Sports Gambling Regulation

Congress has made an attempt to implement federal regulation of sports gambling since the *Murphy* decision.<sup>111</sup> Members of the Senate introduced the Sports Wagering Market Integrity Act of 2018.<sup>112</sup> This bill is likely to face strong opposition, however, because it includes strict guidelines such as requiring the outcomes of bets to be based on league data.<sup>113</sup> Although this bill may not be the most successful way to go about

104. *How U.S. States Benefit from Legal Sports Betting*, S. FLA. REP. (Nov. 12, 2019), <https://southfloridareporter.com/how-u-s-states-benefit-from-legal-sportsbetting/#:~:text=The%20amount%20of%20revenue%20seen,taxes%20on%20sports%20betting%20revenue.&text=Even%20the%20tax%20rates%20vary,51%20percent%20in%20Rhode%20Island> [<https://perma.cc/JK3D-MGPX>].

105. *Id.*

106. Povich, *supra* note 2.

107. *Crime Prevention*, UNITED NATIONS (2004), <https://www.unodc.org/unodc/en/justice-and-prison-reform/CrimePrevention.html> [<https://perma.cc/2NPG-M6UV>].

108. U.S. TRAVEL ASSOCIATION, *THE IMPACT OF SPORTS ON THE TRAVEL INDUSTRY* (2019), [https://www.ustravel.org/system/files/media\\_root/document/2019\\_Sports-Travel\\_07.11.19.pdf](https://www.ustravel.org/system/files/media_root/document/2019_Sports-Travel_07.11.19.pdf) [<https://perma.cc/5PJ6-WF9G>].

109. 18 U.S.C. § 1084 (1961).

110. *Id.*

111. Moran, *supra* note 74.

112. *Sports Wagering Market Integrity Act of 2018*, *supra* note 76.

113. Moran, *supra* note 74.

implementing federal regulation, there is a strong desire from both college sports and major professional sports leagues for some type of federal regulation.<sup>114</sup> College sports' major reasons for supporting federal regulation are "maintaining the integrity of competition and student-athlete well-being."<sup>115</sup> They believe sports gambling negatively impacts student-athletes because it can undermine their games.<sup>116</sup> This worry likely comes from the access to student-athletes on campus. This dynamic, which is unlike professional athletes and the public, creates the possibility of being incentivized to throw games or provide insider knowledge, such as injury reports.<sup>117</sup> Federal regulation can help ameliorate the worries of both college and professional sports leagues. In addition, if online sports gambling is made legal across the country, a large amount of money will be involved with every game/event that occurs. This increased pressure could encourage leagues to be stricter in enforcing rules against cheating, as more is on the line for everyone.

### 1. Effects on the Economy

Gamblers' confusion about how to legally participate has a large, negative impact on the economy. Sports gambling is a billion-dollar industry that could be even larger with regulation which expands legalized sports betting nationwide. According to the American Gaming Association (AGA), "[l]egalizing sports betting . . . will also deliver powerful economic benefits, possibly generating \$8 billion in local taxes, creating hundreds of thousands of jobs, and adding \$22.4 billion to the gross domestic product."<sup>118</sup> Increasing the amount of money spent on sports gambling will help casinos and online locations where the actual betting takes place as well as state and federal economies. The federal and state governments can collect large amounts of revenue through taxes on sports betting. This will help improve all levels of the economy—local, state, and national.

### 2. Public Opinion

Public opinion about sports betting has changed since PASPA was enacted when 56% of Americans disapproved of the legalization of sports betting.<sup>119</sup> A poll in 2017 found about this same majority of people (55%) support legalizing sports betting.<sup>120</sup> This shift in attitude is attributed to the rise of the internet and the increasing popularity of

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114. Purdum, *supra* note 72.

115. Emily James, *NCAA Supports Federal Sports Wagering Regulation*, NCAA (May 17, 2018, 10:00 AM), <https://www.ncaa.com/news/ncaa/article/2018-05-17/ncaa-supports-federal-sports-wagering-regulation> [https://perma.cc/FEK9-TB6K].

116. *Id.*

117. Hunter M. Haines, *Passing the Ball: The U.S. Supreme Court Strikes Down PASPA and Throws Sports Gambling Back to State Legislatures*, 78 MD. L. REV. 604, 625 (2019).

118. OXFORD ECONOMICS, ECONOMIC IMPACT OF LEGALIZED SPORTS BETTING (June 1, 2017), <https://www.americangaming.org/resources/economic-impact-of-legalized-sports-betting/> [https://perma.cc/7R85-M3CK].

119. Rick Maese & Emily Guskin, *Poll: For First Time, Majority of Americans Approve of Legalizing Sports Betting*, WASH. POST (Sept. 26, 2017), [https://www.washingtonpost.com/sports/poll-for-first-time-majority-of-americans-approve-of-legalizing-sports-betting/2017/09/26/a18b97ca-a226-11e7-b14f-f41773cd5a14\\_story.html](https://www.washingtonpost.com/sports/poll-for-first-time-majority-of-americans-approve-of-legalizing-sports-betting/2017/09/26/a18b97ca-a226-11e7-b14f-f41773cd5a14_story.html) [https://perma.cc/L385-LGFU].

120. *Id.*

fantasy sports.<sup>121</sup> The demographics of the largest supporters for legalized sports betting are avid sports fans, pro-football fans, men, and people with household incomes of \$100,000 or more.<sup>122</sup> Even with this subset of the population being the strongest supporters, there is bipartisan support “with 52% of Republicans and 57% of Democrats in support.”<sup>123</sup> This public support for legalizing sports gambling likely translates to support for regulation that legalizes sports gambling across the country. A survey conducted by the AGA in 2019 on sports betting consumer behavior found a “12% increase in online and mobile betting” with legal operators and a 25% decrease with illegal operators.<sup>124</sup> This data shows a desire and a need for more legal online sports gambling options. In addition, history shows people are going to bet regardless, so if it is legalized then it can be taxed.<sup>125</sup> If sports gambling remains illegal, people will keep using illegal methods and the government (1) will see no money in the form of taxes, and (2) will spend money trying to shut down illegal gambling operations.

#### F. Issues With Federal Sports Gambling Regulation

On the other side of this debate is the AGA, “which represents the casino industry” and other gaming interests.<sup>126</sup> Sara Slane, senior vice president of the AGA, said, “[t]he bottom line is, with such robust and rigorous regulatory oversight at both the state and federal levels, there is no need to overcomplicate or interfere with a system that is already working.”<sup>127</sup> This exemplifies the gaming industry’s main concern with federal regulation of sports betting.

##### 1. State Regulation of Casinos

Another issue which could arise with federal regulation of sports betting is how this regulation interacts with existing regulations of casinos. Gambling in casinos is legal under federal law, but casinos are mainly regulated under state law.<sup>128</sup> Each states’ laws regulating casinos and the types of gambling which are allowed in them could potentially conflict with federal regulation of sports gambling. This could present itself as a problem because casino regulation will continue to be in the hands of the states while online sports gambling could be in the hands of the federal government with different motivations and resulting regulations. This would likely lead to even more confusion for people who wish

121. *Id.*

122. *Id.*

123. *Id.*

124. *2020 Survey of American Sports Bettors*, AM. GAMING ASS’N (July 21, 2020), <https://www.americangaming.org/resources/2020-survey-of-american-sports-bettors/> [https://perma.cc/3QWK-BDKA].

125. Andrew J. Silver, *Legal Sports Betting Still Faces Competition From Illegal Market; Low State Taxes Could Turn the Tide*, FORBES (Apr. 7, 2020, 9:22 AM), <https://www.forbes.com/sites/andrewjsilver/2020/04/07/legal-sports-betting-still-faces-competition-from-illegal-market-low-state-taxes-could-turn-the-tide/?sh=237b70f523e3> [https://perma.cc/X3ST-TT6H].

126. Purdum, *supra* note 72.

127. *Id.* (addressing the committee who held the hearing on sports betting); see *supra* Part II.D.3 for an accounting of relevant congressional action since 2018.

128. *Gaming Regulatory Overview*, SEC. & EXCH. COMM’N, <https://www.sec.gov/Archives/edgar/data/858339/000119312512115625/d268435dex993.htm> [https://perma.cc/RF3L-8UNT].

to bet on sports.

Tribal casinos raise a similar issue, as they are controlled by the National Indian Gaming Commission, an independent federal regulatory agency.<sup>129</sup> Much of this gambling occurs in person, although there has been recent movement towards online sports gambling through tribal casinos.<sup>130</sup> This desire to move into the online sports gambling arena has increased dramatically with the COVID-19 pandemic, as tribal casinos are searching for new ways to make money.<sup>131</sup> Tribal casinos are an interesting source of added confusion, as they are not strictly under the control of either federal or state law.<sup>132</sup>

#### IV. RECOMMENDATION

The options to address the issues discussed above include stricter federal regulation or a federal law legalizing sports gambling, but the best course of action is a Uniform Act legalizing online sports gambling. This Uniform Act must be adopted by all states. It will create a systematic set of rules clarifying online sports gambling across the country.

##### A. Stricter Federal Regulation

A possible course of action is some form of stricter federal regulation. Currently, states are allowed to pass laws legalizing sports gambling within their borders.<sup>133</sup> These laws are different across the country and create issues with understanding and attempting to follow the rules.<sup>134</sup> Federal regulation will coordinate these laws across the country and ensure some level of minimum rules are followed in all jurisdictions. This will also help on the path towards alleviating the confusion associated with all of these differing sports gambling laws. The *Murphy* court explicitly stated, “Congress can regulate sports gambling directly,” meaning future challenges of these regulations stating Congress does not have the power to do this will not be successful.<sup>135</sup>

One issue with federal regulation, however, is this type of solution only creates minimum or maximum standards that must be followed by all states. For example, the federal government may create a regulation which requires all states who choose to allow sports gambling to comply with X, Y, and Z. Rather than setting a consistent law across the country, this just ensures to some extent the laws will be consistent on the most basic level in states which allow sports gambling. Although this may seem like a balance between full federal regulation and state control, regulating at this basic level is insufficient to resolve the issues which currently exist in the sports gambling system. As

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129. See Kevin K. Washburn, *Recurring Problems in Indian Gaming*, 1 WYO. L. REV. 427, 431 (2001) (providing a thorough account of regulatory role played by the National Indian Gaming Commission).

130. See Rob Capriccioso, *Tribes Eye Online Gaming Amid Pandemic Struggles*, INDIAN COUNTRY TODAY (July 12, 2020), <https://indiancountrytoday.com/news/more-tribes-eye-online-gaming-as-pandemic-drags-on> [<https://perma.cc/DS7Q-J6RS>] (reporting on the debate over whether tribes should support Indigenous internet gaming).

131. *Id.*

132. Washburn, *supra* note 130.

133. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1484–85 (2018).

134. See generally *supra* Part II.D.1–2 (describing the current American sports betting landscape).

135. *Murphy*, 138 S. Ct. at 1484.



explained above, potential bettors are missing out on their right to gamble and the economy is losing income due to confusion about who can gamble, where, and how.<sup>136</sup> Federal minimum rules would not alleviate this confusion because they would only establish a baseline of how states must act if they choose to legalize sports gambling. This leaves room for states to make any decisions they want as long as they achieve these minimum levels, which still leaves in place the confusion about what is legal and where.

*1. Does Any Type of Federal Regulation Have to be as Inclusive as Nevada Laws if the Goal is Standardization?*

Another possible concern relating to any sort of federal regulation with a goal of creating standardization across the country is that all laws will have to be as expansive and inclusive as current Nevada law, which is one of the states that has been given an exception to gambling laws in the past.<sup>137</sup> Nevada has liberal gambling laws for all types of gambling, though, and this federal regulation will only relate to online sports gambling across the country. Therefore, legalizing online sports gambling will not affect other laws within the states for regulating casinos and other types of gambling within their jurisdictions. A better solution, however, is a Uniform Act, described below, which would allow room for states to make adjustments as needed. Meaning, Nevada can adopt the Uniform Act while also maintaining its other gambling laws, and other states do not have to adopt these same measures.

*B. Federal Law*

A federal law legalizing sports gambling across the country addresses both the confusion issues and provides the benefits of helping the economy and following public opinion. Congress has the power to enact this law because online sports gambling falls within the Commerce Clause. Justice Ginsburg made a point of this in her dissent of *Murphy* by stating, “[n]or is there any doubt that Congress has power to regulate gambling on a nationwide basis, authority Congress exercised in PASPA.”<sup>138</sup> Furthermore, Congress can regulate even localized sports gambling in casinos because “[o]ur case law firmly establishes Congress’ power to regulate purely local activities that are part of an economic ‘class of activities’ that have a substantial effect on interstate commerce.”<sup>139</sup> This leaves no doubt that Congress has the power under the Commerce Clause to enact a federal law legalizing sports gambling across the country.

Again, there are issues with trying to pass a federal law to solve all of the concerns. First, there will likely be strong opposition from the gaming industry, which has already been vocal about not supporting further federal regulation.<sup>140</sup> The AGA is an association set up specifically to advocate and lobby on behalf of casinos and the rest of the gaming industry.<sup>141</sup> Some of its most prominent members include Wynn Resorts, The

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136. See *supra* Part III.D (analyzing the issues arising from the current legalization of sports gambling across the country).

137. Fielkow, *supra* note 22, at 23.

138. *Murphy*, 138 S. Ct. at 1490 (Ginsburg, J., dissenting).

139. *Gonzales v. Raich*, 545 U.S. 1, 17 (2005).

140. See *supra* Part III.F (describing the power and control of the gaming industry).

141. *About, AMERICAN GAMING ASSOCIATION*, <https://www.americangaming.org/about/>

Cosmopolitan of Las Vegas, DraftKings, and Morgan Stanley.<sup>142</sup> The association spent \$1.92 million on lobbying in 2019.<sup>143</sup> Their influence is likely to be powerful enough to prevent the bill's passage or to create a version that is unlikely to achieve the desired results.

Second, as discussed above, there will likely be pushback against this due to the existence of state casino regulations, which could come into conflict with this law.<sup>144</sup> Third, Congress may not be fully prepared to support this bill yet, as the change in opinion about sports gambling has shifted substantially but possibly not enough. A federal law is not likely in the near future, leaving this as a weak option as change is needed now to improve the sports betting industry.

### 1. Will a Federal Law be Found to be Unconstitutional Like PASPA?

A possible concern over any type of federal law is whether it will be overruled just like PASPA was. PASPA was overruled in *Murphy* for violating the anti-commandeering doctrine.<sup>145</sup> This doctrine prohibits Congress from issuing orders to the states, but the Constitution “confers upon Congress the power to regulate individuals.”<sup>146</sup> Therefore, Congress is allowed to act on individuals and legalize/regulate sports betting across the country for all individuals. This is different from PASPA because it is not telling the states how to act in order to make sports gambling legal. Although a challenge like this is unlikely to be successful, a better solution to avoid this challenge altogether is a Uniform Act, as described below. An Act like this will not face the threat of being overruled like PASPA on anti-commandeering grounds because it will be adopted by states, rather than Congress.

### C. Uniform Act

The best solution is for the Uniform Law Commission (ULC) to create an Act legalizing online sports gambling. The ULC is an organization of over 300 lawyers whose purpose is to create uniform state laws.<sup>147</sup> Some goals of the ULC include “strengthen[ing] the federal system by providing rules and procedures that are consistent from state to state” and “reduc[ing] the need for individuals and businesses to deal with different laws as they move and do business in different states.”<sup>148</sup> These goals align exactly with concerns created by the current system regulating sports gambling. The ULC creates a Uniform Act and anticipates many jurisdictions (states) will enact this law.<sup>149</sup>

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[<https://perma.cc/4EW7-GUSA>].

142. *Our Membership*, AMERICAN GAMING ASSOCIATION, <https://www.americangaming.org/members/> [<https://perma.cc/Q64B-EFWM>].

143. *Client Profile: American Gaming Assn.*, OPENSECRETS.ORG, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2019&id=D000023966> [<https://perma.cc/2PDA-2RSN>].

144. *See supra* Part III.F.1 (describing the current regulation of casinos).

145. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1478 (2018).

146. *New York v. United States*, 505 U.S. 144, 166 (1992).

147. *About Us*, UNIF. L. COMM'N, <https://www.uniformlaws.org/aboutulc/overview> [<https://perma.cc/PCU4-C7JB>].

148. *Id.*

149. *What is a Uniform Act?*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/overview/uniformacts> [<https://perma.cc/M5LK-QCAA>].

The Acts created by the ULC vary in subject area from commerce to family and domestic relations to trusts and estates.<sup>150</sup> Examples of the organization's most widely adopted acts include the Uniform Commercial Code and the Uniform Anatomical Gift Act.<sup>151</sup>

### 1. *Why a Uniform Act is the Best Solution*

An act created by the ULC is a great avenue for achieving uniformity across the nation when it comes to legalizing and regulating sports gambling. The Supreme Court has said states may adopt their own laws and this is a great approach to have consistency and also make it easier for states to adopt laws about sports gambling because the Act will be provided to the states. The Uniform Act is also an excellent way to answer all of the questions regarding which gambling companies can be taxed and where, and who can gamble where and on what events, by implementing a law in each state which addresses all of these questions in a similar way. In addition, a widely adopted Uniform Act will reduce resources being wasted on judicial attempts to resolve all of these confusing issues. A Uniform Act could also be helpful when trying to predict what will happen with future Dormant Commerce Clause issues.

A Uniform Act regarding sports gambling is likely to be widely adopted because, "the greatest successes of the 'Uniform Law' approach have been in the field of commercial and business law."<sup>152</sup> In addition, all but three states have either attempted to or successfully legalized sports gambling.<sup>153</sup> This exemplifies strong state support for legalizing sports gambling, and makes it likely that almost every state will be willing to adopt the Uniform Act.

A concern related to federal regulation or a federal law is that states with laws already in place will be unwilling to change their law in order to comply with the new federal regulations. For example, states have their own way of actually implementing sports gambling. Some states use local casinos or apps, such as Iowa,<sup>154</sup> while others use the lottery system already in place in the state.<sup>155</sup> The Uniform Act will allow states to adjust their laws to fit their preferred method of administering sports gambling. With so many states already having laws in place<sup>156</sup>, the Uniform Act allows each state to adapt the Uniform Act to their law, rather than a federal law forced upon them which would take precedent over the law already in place.

The Uniform Act should consist of a statement legalizing online sports gambling across the country. It should also include methods of gambling and when they will take

150. *Acts Overview*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/overview> [<https://perma.cc/5XUG-KA9Z>].

151. *Id.*

152. *Uniform Laws*, LEGAL INFO. INST., <https://www.law.cornell.edu/uniform> [<https://perma.cc/4KWG-DPL2>].

153. *See supra* Part II.D.I (describing the current state legislation landscape).

154. Danny Lawhon, *New Iowa Sports Betting Rules Will Give Customers More Choices in 2021*, DES MOINES REG. (Dec. 30, 2020, 2:03 PM), <https://www.desmoinesregister.com/story/sports/2020/12/30/iowa-sports-betting-new-rules-2021-register-open-up-apps-more-customers/4080544001/> [<https://perma.cc/3VQ5-3EVL>].

155. *Sports Lottery*, DEL. LOTTERY GAMES, <https://www.delottery.com/Sports-Lottery> [<https://perma.cc/38VN-JSA7>]. Delaware allows residents to bet on sports through their existing lottery system. *Id.*

156. *Supra* Part II.D.1 (stating the number of states who have adopted legislation, are in the process of adopting such legislation, or have not adopted any legislation).

effect. For example apps and websites that meet certain requirements could be utilized anywhere in the country. The Act should allow time for the setting up of these processes in all of the states. The Act should also clarify how individuals become eligible to participate in online sports gambling, such as no longer requiring individuals to set up the apps at a casino. Instead, the companies themselves should have a registration process which includes verification of identity and bank account information. The Act should also provide specifics about where these corporations will be taxed, based on the federal tax code, and how individuals will be taxed on their earnings.

The Uniform Acts that exist currently tend to be quite lengthy, with many details provided, which will allow the ULC to include any other information they deem important when legalizing online sports betting across the nation. A drawback to a lengthy Uniform Act could be understanding the act, both for individuals hoping to gamble and courts, but any confusion or litigation potentially arising from this will be easier dealt with than the current confusion that exists with the laws in place now. For example, interpretation of the Uniform Act will be decided by state courts and the Uniform Act will provide a consistent approach in the event of litigation.

The most important aspect of the ULC creating a Uniform Act to address the current issues with legalizing sports gambling is all states adopting the Act. In reality, this solution is only a resource for the states if they choose to adopt it and still leaves all of the power with the states. Additionally, the Uniform Act will be most successful at achieving its goals if it is widely adopted across the country. Therefore, the ultimate solution is for all states to adopt a Uniform Act legalizing and regulating sports gambling. Even with obstacles facing nationwide adoption of a Uniform Act, this will be the most successful solution as it only requires support from the states, leaves room for the states to make adjustments as needed, and achieves the desired goal of uniformity.

## V. CONCLUSION

Sports gambling has seen increased popularity across the country, with many willing to risk their own money to play. The history of sports gambling has shown a shift in both the laws regulating it and the public opinion about its morality. The *Murphy* decision to overrule the law which made sports gambling illegal was a very important recent step in the history of sports gambling. This opened up the possibility for states to legalize sports gambling within their jurisdictions if they so wished. States adopting their own laws has led to confusion for those who wish to bet money on sports. This confusion has created a missed opportunity to please the shifting public opinion and also benefit the economy on all levels.

Some type of federal action could help ease this confusion and create a standardized system which is both easy to apply and practical for the nation. This could include anything from simple regulation to a new federal law. The enactment of a federal law faces challenges, however, especially due to the relatively new support for sports gambling. The best solution, therefore, is to create a Uniform Act which is adopted by all states, and establishes rules and regulations that will be applied across the nation in order to allow bettors to try their luck.