

## THE NFL'S STANCE ON GAMBLING: A CALCULATED CONTRADICTION

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If aliens landed on Earth tomorrow and it was your task to pick one day that epitomizes America, you would choose Super Bowl Sunday. While the Fourth of July has patriotism, Christmas has consumption, and Thanksgiving has overeating and football, only Super Bowl Sunday combines, overeating,<sup>1</sup> football,<sup>2</sup> consumption,<sup>3</sup> and one other American love: gambling.<sup>4</sup>

The most money gambled on any single game is undeniably gambled on the Super Bowl.<sup>5</sup> However, a significant amount of money is gambled throughout the entire National Football League (“NFL”)<sup>6</sup> season,<sup>7</sup> \$1.34 billion legally<sup>8</sup> and \$80–\$100 billion illegally.<sup>9</sup> Although the NFL does not directly profit from the money gambled,<sup>10</sup> it profits indirectly through increased television ratings and increased popularity. One might assume these astounding numbers would be joy to the ears of the NFL because they show the immense popularity of the sport, leading the NFL to support efforts to expand sports betting into more states. This, however, is not true. On August 7, 2012 the NFL joined with the NCAA, the NBA, the NHL, and MLB in a Complaint against Chris Christie, the governor of New Jersey, David Rebeck, the director of the

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<sup>1</sup> See Ryan Naquin, *USDA: Super Bowl Sunday is America's Second Largest Consumption Day*, CAROLINALIVE.COM, Jan. 30, 2012, <http://www.carolinalive.com/news/story.aspx?id=713608>.

<sup>2</sup> *Super Bowl History*, NFL, <http://www.nfl.com/superbowl/history> (last visited Mar. 19, 2013).

<sup>3</sup> See *The rising cost of Super Bowl commercials: By the numbers*, YAHOO! NEWS, Jan. 4, 2012, <http://news.yahoo.com/rising-cost-super-bowl-commercials-numbers-114900544.html>.

<sup>4</sup> See generally Sam Borden, *On a Futures Bet, Las Vegas Loses if the Giants Win*, N.Y. TIMES, Jan. 25, 2012, <http://www.nytimes.com/2012/01/26/sports/football/on-a-futures-bet-las-vegas-loses-if-the-giants-win.html?hp> (reporting on the odds of Nevada casinos on a particular Super Bowl).

<sup>5</sup> See Jimmy Boyd, *How Much Money is Bet on The Super Bowl*, BOYD'S BETS, <http://www.boydsbets.com/super-bowl-how-much-bet/>.

<sup>6</sup> “[T]he NFL is an unincorporated association controlled by its thirty-two constituent member clubs. Originally formed in 1920 as the American Professional Football Conference, the league has been operating under the NFL moniker since 1922.” Complaint for Declaratory and Injunctive Relief, *Nat'l Collegiate Athletic Ass'n v. Christie* (2012) (No. CV 124947), 2012 WL 3171566.

<sup>7</sup> See Miranda Green, *NFL's Shadow Economy of Gambling and Fantasy Football is a Multibillion Dollar Business*, THE DAILY BEAST, Oct. 6, 2012, <http://www.thedailybeast.com/articles/2012/10/06/nfl-s-shadow-economy-of-gambling-and-fantasy-football-is-a-multibillion-dollar-business.html>.

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

<sup>9</sup> *Top Sports for Illegal Wagers*, CNBC.COM, [http://www.cnbc.com/id/34312813/Top\\_Sports\\_for\\_Illegal\\_Wagers?slide=2](http://www.cnbc.com/id/34312813/Top_Sports_for_Illegal_Wagers?slide=2) (last visited Mar. 19, 2013).

<sup>10</sup> For example, there is no official NFL Casino or official NFL sports book.

New Jersey Division of Gaming Enforcement, and Frank Zanuck, the director of the New Jersey Racing Commission.<sup>11</sup> The parties were seeking a permanent injunction to prevent the state of New Jersey from allowing Atlantic City casinos to open sports books and to take sports wagers.<sup>12</sup> This is the most recent event to demonstrate the curious way the NFL deals with gambling.

### I. THE NFL'S POSITION ON GAMBLING

The first NFL game was played on October 3, 1920.<sup>13</sup> Although there is no definitive proof, there is a good chance that someone wagered on the outcome of that game.<sup>14</sup> From the humble beginnings of a league that held its first meeting in a car dealership,<sup>15</sup> the NFL has risen to become a league with an annual revenue of \$9.5 billion<sup>16</sup> and an office on Park Avenue.<sup>17</sup>

The first sports books opened in Las Vegas in 1949.<sup>18</sup> Originally, sports books took wagers primarily on horse races, and only took wagers on sporting events as a service to their wealthier clients.<sup>19</sup> However, when sporting events started being televised, the public demand for betting on sports, both legally and illegally, grew immensely.<sup>20</sup>

There are many ways for people to bet on NFL games. In the report *Gambling in America*, the authors state that a sports bookmaker "has been defined as a 'broker, bringing together money on both sides of a sports contest, hopefully in such a manner that the losers' money will be more than sufficient to cover payments to winners.'"<sup>21</sup> Sports books allow gamblers to bet on the "line," also known as the "point spread," of a football game.<sup>22</sup> The sports books set the line based on the expected difference in points scored between the two teams, favoring one team.<sup>23</sup> For example, for the game between the New York Giants and the Washington Redskins played on December 3, 2012, the Giants

<sup>11</sup> *See id.*

<sup>12</sup> Complaint for Declaratory and Injunctive Relief, Nat'l Collegiate Athletic Ass'n v. Christie (2012) (No. CV 124947), 2012 WL 3171566.

<sup>13</sup> Bob Braunwart & Bob Carroll, *The First NFL Game(s)*, 3 COFFIN CORNER 2 (1981), available at [http://www.profootballresearchers.org/Coffin\\_Corner/03-02-059.pdf](http://www.profootballresearchers.org/Coffin_Corner/03-02-059.pdf).

<sup>14</sup> "Sports betting had become very popular starting in the 1880's with baseball. By the 1900s, although illegal, sports betting was becoming increasingly more popular." *See* Jerry Martin, *History of Sports Betting*, ULTIMATECAPPER.COM, <http://www.ultimatecapper.com/history-of-sports-betting.htm>.

<sup>15</sup> *See NFL Founded in Canton*, PRO FOOTBALL HALL OF FAME, <http://www.profootballhof.com/history/2005/1/1/nfl-founded-in-canton/>.

<sup>16</sup> *Sports Industry Overview*, PLUNKETT RESEARCH, <http://www.plunkettresearch.com/sports-recreation-leisure-market-research/industry-statistics> (last visited Mar. 19, 2013).

<sup>17</sup> *Frequently Asked Questions*, NFL.COM, <http://www.nfl.com/help/faq>.

<sup>18</sup> U.S. COMM'N ON THE REVIEW OF THE NAT'L POLICY TOWARD GAMBLING, *GAMBLING IN AMERICA* 130 (1976).

<sup>19</sup> *Id.* at 174.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* If the teams are evenly matched the line on the game is effectively zero, the line would be listed as "pick'em." *See What is Pick'em in Sports Gambling*, INTELLIGENT BETTING TIPS, <http://www.intelligentbettingtips.com/blog/sportbetting-101/pickem-sports-gambling/>.

were favored by 2.5 points.<sup>24</sup> This meant that if the Giants won the game 27-24, then anyone who bet on the Giants would have won their bet, but since the Redskins won the game 17-16, anyone who bet on the Redskins won their bet.<sup>25</sup> The other popular way for people to gamble on the NFL is to bet the over/under. The over/under is an amount set by sports books that is the predicted amount of points that will be scored in the game by both teams. For example, the over/under for the previously mentioned game was 51 points.<sup>26</sup> This meant that if the game ended Giants 28 Redskins 24, the game total would have totaled 52 points scored, and whoever bet the over would have won their bet. But since the game ended 17-16, the total points scored was 33, so whoever bet the under won their bet.<sup>27</sup> Many sports books also offer prop bets<sup>28</sup> and futures bets,<sup>29</sup> but the point spread and the over/under are the two main ways gamblers wager on NFL games.

For *Gambling in America*, the commissioners from all major sports leagues, including Pete Rozelle, the NFL commissioner at that time, testified regarding sports betting.<sup>30</sup> *Gambling in America* was released on October 15, 1976. It stated that the collective position of sports leagues was that they were “vehemently and unanimously opposed to any form of legalization of sports betting, including [parlay] cards. Their primary objection [was] that legalization of wagering would alter the character and ultimately the integrity of the sporting event.”<sup>31</sup> The commissioners argued that legalized sports betting would shift the public’s focus from the play on the field to their monetary stake in the game.<sup>32</sup> The commissioners also expressed concern over players wagering on games and game-fixing.<sup>33</sup> The commissioners worried that if a player fumbled the ball at a key time or dropped a sure pass, the public would accuse the player of ill intentions, such as fixing the game.<sup>34</sup>

In 1976, Delaware announced plans to institute a lottery game based on NFL games.<sup>35</sup> The Delaware football lottery was known as “Scoreboard.”<sup>36</sup>

<sup>24</sup> See *Week 13 NFL Lines*, DOC’S SPORTS SERVICE, <http://www.docsports.com/week-13-nfl-odds.html> (last visited Mar. 19, 2013).

<sup>25</sup> See Sam Borden, *A Tight Loss and a Tighter Race*, NY TIMES, Dec. 4, 2012, [http://www.nytimes.com/2012/12/04/sports/football/redskins-defeat-giants-to-tighten-nfc-east-race.html?\\_r=0](http://www.nytimes.com/2012/12/04/sports/football/redskins-defeat-giants-to-tighten-nfc-east-race.html?_r=0).

<sup>26</sup> See *Week 13 NFL Lines*, DOC’S SPORTS SERVICE, <http://www.docsports.com/week-13-nfl-odds.html> (last visited Mar. 19, 2013).

<sup>27</sup> See Borden, *supra* note 25.

<sup>28</sup> Prop bets are wagers on an individual player’s performance in a game or an event; such as “Eli Manning over/under 299 yards passing” for a particular game or Super Bowl coin flip heads or tails. *What are Proposition Bets – Prop Bets Explained*, THE SPREAD.COM, <http://www.thespread.com/betting-props> (last visited Mar. 19, 2013).

<sup>29</sup> A futures bet is a wager that an event will take place in the future, such as betting on which team will win the Super Bowl before the matchup is set. The odds for futures bets change throughout the NFL season as a team’s likelihood of success changes. *What is Future Bet– Future Bets Explained*, THE SPREAD.COM, <http://www.thespread.com/betting-props> (last visited Mar. 19, 2013).

<sup>30</sup> GAMBLING IN AMERICA, *supra* note 18, at 177, 179 n. 16.

<sup>31</sup> *Id.* at iii, 177.

<sup>32</sup> *Id.* at 177.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> NFL v. State, 435 F.Supp. 1372, 1375 (D. Del. 1977)

“Scoreboard” had three lottery games: Football Bonus,<sup>37</sup> Touchdown,<sup>38</sup> and Touchdown II.<sup>39</sup> Immediately after the announcement of the lottery plan, the NFL brought an action against the governor of Delaware seeking an injunction to bar the lottery scheme.<sup>40</sup> The NFL claimed Scoreboard “was a forced association with gambling” and infringed on the league’s property rights.<sup>41</sup> The NFL’s “complaint include[d] counts based on federal and state trademark laws, the common law doctrine of misappropriation, the federal anti-gambling laws, the Civil Rights Act of 1871, the Delaware Constitution, and the Delaware lottery statute.”<sup>42</sup>

The court denied almost all of the NFL’s claims for relief.<sup>43</sup> The court reasoned that the aspects of the NFL’s labor of which the defendants took advantage – the schedule of games and scores – were obtained from public sources.<sup>44</sup> As such, they were exploited after the NFL had broadcast them and it could not expect to generate further revenue from them.<sup>45</sup> The court further reasoned that the Delaware Lottery used the NFL name and trademarks not to describe its services, but rather to identify them.<sup>46</sup> Ultimately, the court entered an order compelling the defendants to include “a clear and conspicuous statement” that their product was not at all affiliated with the NFL and declared only Touchdown II to be in violation of Delaware law, because it provided a fixed payout.<sup>47</sup>

In 1992, Congress enacted the Professional and Amateur Sports Protection Act (“PASPA”).<sup>48</sup> The act 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 (through the use of geographical references or otherwise), on one or

<sup>36</sup> *Id.*

<sup>37</sup> In Football Bonus, the week’s NFL games were split into two pools and the gambler had to mark who he thought would win all of the games in one or both of the pools based on a wager between \$1 and \$10. To win, the player would have to correctly predict the winners of all seven games in a pool. The amount that players won was on a pari-mutuel basis, meaning it was dependent on how much total money was wagered. *Id.* at 1376.

<sup>38</sup> In Touchdown, the card listed three possible point spreads for each of that week’s games and the gambler had to correctly select the winning team and correct margin of victory in three, four, or five games. The bet amounts and payouts were the same as in Football Bonus. *Id.* at 1376.

<sup>39</sup> In Touchdown II, the point spread for each game was published on the Wednesday prior to the games and the gambler had to correctly pick which teams would do better than the point spread. To win, the player would have to pick between four and twelve games correctly. The payout was a set amount between \$10 and \$1,200. Touchdown II was introduced in the middle of the season to replace Touchdown. *Id.* at 1376.

<sup>40</sup> *Id.* at 1375.

<sup>41</sup> *Id.* at 1376.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 1391.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 1377.

<sup>46</sup> *Id.* at 1380.

<sup>47</sup> *Id.* at 1387-88, 1391.

<sup>48</sup> See 28 U.S.C. §§ 3701-04 (1992).

more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.<sup>49</sup>

Furthermore, PASPA gives standing to any sports league to bring suit against a state that attempts to enact a law permitting sports betting.<sup>50</sup> PASPA allowed states to pass a law within one year of its enactment that would effectively exempt the state from the Act.<sup>51</sup>

New Jersey did not enact a statute during the one-year period, but rather waited almost ten years. On January 17, 2012, New Jersey Governor Chris Christie signed into law an act that would allow casinos and racetracks in the state to accept wagers on sporting events.<sup>52</sup> The NFL along with the NBA, the NHL, the NCAA, and MLB brought suit seeking an injunction. In their complaint, the sports leagues state:

Gambling on amateur and professional sports threatens the integrity of those sports and is fundamentally at odds with the principle essential to the success of Plaintiffs that the outcomes of collegiate and professional athletic contests must be determined, and must be perceived by the public as being determined, solely on the basis of honest athletic competition. Plaintiffs have consistently opposed legalizing sports gambling in other states and at the federal level because it undermines the public's faith and confidence in the character of amateur and professional team sports.<sup>53</sup>

In a 2009 interview, NFL spokesmen Joe Browne repeated the NFL's long held opinion succinctly, stating, "[i]f sports betting becomes more prevalent through state-promoted schemes, it will inevitably lead those gambling fans to question whether an erroneous officiating call or a dropped pass late in the game resulted from an honest mistake or an intentional act by a corrupt player or referee."<sup>54</sup>

The NFL's stance that gambling would lead fans to question the integrity of the game implies that it thinks people would lose interest in watching games if people knew or suspected the games to be fixed. However, if fixing an NFL game were not a viable possibility, this concern would be moot. So could an NFL player or referee be induced to fix a game and what would be the best way to accomplish this?

## II. HOW TO BEST FIX AN NFL GAME

As pointed out in the ESPN Films documentary *Broke*, many professional athletes are not good at managing money.<sup>55</sup> While NFL players are paid large

<sup>49</sup> *Id.* at § 3702 (1992).

<sup>50</sup> *Id.* at § 3703 (1992).

<sup>51</sup> *Id.* at § 3704 (1992).

<sup>52</sup> Complaint for Declaratory and Injunctive Relief at 2, *National Collegiate Athletic Association v. Christie*, D.N.J. (2012) (No. 2:12CV04947), 2012 WL 3191255.

<sup>53</sup> *Id.* at 5.

<sup>54</sup> Hannah Karp, *The NFL Doesn't Want Your Bets*, WALL STREET J., June 16, 2009, <http://online.wsj.com/article/SB124511421029417367.html>; see also, e.g. Darren Rovellet, *Harbaugh's call shakes betting world*, ESPN, Oct. 19, 2012, [http://espn.go.com/nfl/story/\\_/id/8523891/jim-harbaugh-decision-decline-safety-had-huge-impact-betting-world](http://espn.go.com/nfl/story/_/id/8523891/jim-harbaugh-decision-decline-safety-had-huge-impact-betting-world).

<sup>55</sup> See generally BROKE (ESPN Films 2012).

sums of money, they are paid per game, rather than weekly or bi-weekly.<sup>56</sup> This means most players will only receive sixteen paychecks per year which they must budget to provide living expenses for that entire year, while planning for the rest of their lives. To say that NFL players lack financial acumen would be a significant understatement.<sup>57</sup> In 2009, it was reported that 78% of NFL players had gone bankrupt within two years of retirement.<sup>58</sup> As such, it is conceivable that an NFL player could find himself in a dire financial situation and succumb to being bribed to fix a game. What would be the best strategy for a gambler seeking to induce a player to fix a game?

A. *Which Player Could Best Fix a Game?*

First, the gambler would have to determine the best kind of player that could potentially fix a game. A defensive player might make the most sense because he could fix the game by allowing the opposing team to score, directly affecting the score and point spread. However, many defensive players are subbed out in different situations. Also, even if one defender agreed to let the other team score, if he was not subbed out at the crucial time, there is no guarantee the other ten players would allow the offense to score or that the offense would cooperate and take advantage of the defensive patsy. Therefore, a single defensive player would not make sense. The gambler could induce multiple defensive players, but the fixing may become more obvious and the scheme is more prone to discovery with more people involved.

A gambler might think that a player in one of the special teams<sup>59</sup> would make a good game-fixer. However, like a defensive player, a lone member of one of the special teams probably would not make enough of a difference except for the kicker or long snapper. A long snapper could be paid to intentionally snap the ball over the holder's head during a crucial kick. A kicker could be asked to miss a game-winning kick. While players in these positions seem to be good choices when recruiting a game-fixer, these players do not have enough control over the outcome. They are great players to bribe in situations where the bribed player is involved in a closing seconds kick to win the game because he could affect the point spread. Similarly, the bribed player would be an asset in a game where multiple field goals are attempted by continuing to miss. Still, there is a possibility that the kicker or long snapper may not be needed for any field goals when the team scores touchdowns, so these players lack effective control as to the points being scored.

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<sup>56</sup> *Id.*

<sup>57</sup> See Russ Wiles, *Pro athletes often fumble the financial ball*, USA TODAY, Apr. 22, 2012, <http://usatoday30.usatoday.com/sports/story/2012-04-22/Pro-athletes-and-financial-trouble/54465664/1>; see also Bill Briggs, *NFL owners won't run hurry-up offense vs. players*, NBC NEWS, Mar. 2, 2011, [http://www.nbcnews.com/id/41855264/ns/business-personal\\_finance/nfl-owners-wont-run-hurry-up-offense-vs-players/](http://www.nbcnews.com/id/41855264/ns/business-personal_finance/nfl-owners-wont-run-hurry-up-offense-vs-players/) (stating that over 20 percent of NFL players live paycheck to paycheck).

<sup>58</sup> Pablo S. Torre, *How (and Why) Athletes Go Broke*, SPORTS ILLUSTRATED, Mar. 23, 2009, available at <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1153364>.

<sup>59</sup> *Special Teams Definition*, DICTIONARY.COM, [http://dictionary.reference.com/browse/special™eam](http://dictionary.reference.com/browse/special%e2%84%99eam) (last visited Mar. 19, 2013) (defining special teams as “a group of players fielded for kicking plays, as punts, kickoffs, and field-goal attempts”).

This leaves the gambler with offensive players. The gambler could attempt to use linemen, who he would ask to miss a few blocks. But if the other players notice a player is having trouble blocking, they are likely to help him through double teams. The gambler could alternatively use wide receivers or running backs, but these positions have the same flaw: there is no guarantee that they alone could keep points off the scoreboard because the team could choose not to give the player the ball.

This leaves the gambler with one player, and the best player to fix a game, the quarterback. The quarterback handles the ball on nearly every offensive snap<sup>60</sup> and therefore wields the most control over the outcome of any game. The quarterback is the safest choice because he handles the ball on every snap and he is unlikely to be benched for poor performance throughout the game. For example, in a game against the Arizona Cardinals, Matt Ryan threw five interceptions, but he still took every offensive snap for the Atlanta Falcons.<sup>61</sup> This applies for post-season games as well. In Super Bowl XXXV, Kerry Collins threw four interceptions for the New York Giants in a loss to the Baltimore Ravens and still took every offensive snap.<sup>62</sup> Not only could a quarterback control the amount of points his team scores through interceptions, fumbles, or bad play, he can also control how many points the other team scores with a timely turnover that positions the other team to score. Therefore, if a gambler wanted to induce a player to fix a game his best bet would be to induce a quarterback.

#### B. *What Game Would be the Best to Fix?*

Next, the gambler must determine which game is most susceptible to being fixed. The first game that comes to mind is the Super Bowl, because the most money is wagered on this one game.<sup>63</sup> However, this probably would not work because the intangible benefits<sup>64</sup> to the quarterback on the winning team would be much greater than the financial gain a gambler could offer. Additionally, because the Super Bowl garners the most attention the player may feel uneasy about a potential fix due to the higher likelihood of suspicion. A better alternative would be a late season game of a team already eliminated from

<sup>60</sup> Except for trick plays of course.

<sup>61</sup> *Box Score for Arizona Cardinals v. Atlanta Falcons*, ESPN, Nov. 18, 2012, <http://scores.espn.go.com/nfl/boxscore?gameId=32111801>. It should be noted that Atlanta still won the game. Also, in no way am I implying that Matt Ryan was attempting to fix the game. Rather, I am merely pointing out that a quarterback can suffer multiple miscues and still have the opportunity to affect the game, unlike most other players.

<sup>62</sup> *Box Score for Super Bowl XXXI*, NAT'L FOOTBALL LEAGUE (Jan. 29, 2001), available at <http://www.nfl.com/superbowl/history/boxscore/sbxxxv>. As a Giants fan, yes, I am clearly implying that Kerry Collins meant to throw the game.

<sup>63</sup> See Borden, *supra* note 4.

<sup>64</sup> Intangible benefits include endorsements and post NFL career job opportunities that could provide for a player for life. See, e.g., Chris Smith, *Super Bowl MVP Is Worth Millions (To Quarterbacks)*, FORBES, Feb. 1, 2012, <http://www.forbes.com/sites/chrissmith/2012/02/01/super-bowl-mvp-is-worth-millions-to-quarterbacks/>; for a non-quarterback but former Super Bowl MVP example, see e.g., Monte Burke, *Ray Lewis May Be Retiring But He Will Have A Very Fruitful Post-NFL Career*, FORBES, Jan. 3, 2013, <http://www.forbes.com/sites/monteburke/2013/01/03/ray-lewis-may-be-retiring-but-he-will-have-a-very-fruitful-post-nfl-career/>.

playoff contention. First, the player would not have any moral hard feelings about letting his teammates down, because the team has already been eliminated from playoff contention.<sup>65</sup> Second, the player would be close to receiving one of his last paychecks of the season. Third, there would be less suspicion on an end-of-the-season game and on a player whose team is not going to the playoffs. Thus, a gambler who wants to fix a game should attempt to induce the quarterback of a non-playoff bound team at the end of the season to fix a game. The question remains though, is this best-case scenario likely?

This scenario is neither likely nor reasonable. The scenario is unlikely because of how unreasonable a player would be to partake in throwing a game. It can be presumed that any player who is caught engaging in fixing a game or gambling on football would receive a lifetime ban.<sup>66</sup> Also, in the best-case scenario, the gambler would use a quarterback to fix the game, but quarterbacks are the highest-paid players in the NFL, so they are more expensive to coerce and have more to lose.<sup>67</sup> Similarly, quarterbacks are typically the most recognized athletes on a team, giving them less incentive to throw a game because they have the greatest opportunity to make extra money in the off-season through autograph signings, personal appearances, and endorsements.<sup>68</sup> All of these factors make it unlikely that a quarterback would fix a game.

### C. *Could a Referee Fix a Game?*

The final option for a potential game-fixer would be a referee. The benefit of using a referee to fix the game is that officials are not paid as well as players, making it cheaper to bribe them.<sup>69</sup> Also, using a referee to shave points already

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<sup>65</sup> This assumes that a player who would fix a game still has some morals related to team play.

<sup>66</sup> Although there is no precedent in football, it can be presumed that the NFL would act in the same way Major League Baseball did with Pete Rose. See Rick Weinberg, *Pete Rose banned from baseball*, ESPN, <http://sports.espn.go.com/espn/espn25/story?page=moments/5>; see also *NFL hammers Saints for bounties*, ESPN, (Mar. 22, 2012), [http://espn.go.com/nfl/story/\\_/id/7718136/sean-payton-new-orleans-saints-banned-one-year-bounties](http://espn.go.com/nfl/story/_/id/7718136/sean-payton-new-orleans-saints-banned-one-year-bounties) (showing that the NFL utilized an indefinite suspension in relation to a bounty program); see also Tom Friend, *PRO FOOTBALL; For Manley, Life Without Football Is Impossible to Tackle* (Feb. 26, 1995), <http://www.nytimes.com/1995/02/26/sports/pro-football-for-manley-life-without-football-is-impossible-to-tackle.html?src=pm> (speaking about Dexter Manley who received a lifetime ban from the NFL in 1991 for failing three drug tests during his playing career).

<sup>67</sup> *NFL's Average Salaries By Position*, SI.COM, [http://sportsillustrated.cnn.com/multi-media/photo\\_gallery/0807/nfl.average.salaries.by.position/content.1.html](http://sportsillustrated.cnn.com/multi-media/photo_gallery/0807/nfl.average.salaries.by.position/content.1.html); see also Cork Gaines, *Sports Chart of the Day: NFL's Highest Paid Positions*, BUSINESS INSIDER Sept. 26, 2012, <http://www.businessinsider.com/nfls-highest-paid-positions-sports-chart-of-the-day-2012-9> (stating that defensive end had the highest average salary for the top five highest paid players, followed by quarterback at number two).

<sup>68</sup> Kurt Badenhausen, *Drew Brees Tops List of the Highest Paid Football Players*, FORBES, Sept. 5, 2012, <http://www.forbes.com/sites/kurtbadenhausen/2012/09/05/drew-brees-tops-list-of-the-highest-paid-football-players> (showing that the two NFL players earning the most in off-field endorsements are quarterbacks who earn far more in those endorsements than the top two players from all other positions).

<sup>69</sup> See *Tony Corrente Loses Game Check*, ESPN, Nov. 16, 2012, [http://espn.go.com/nfl/story/\\_/id/8640298/tony-corrente-nfl-ref-fined-obscenities](http://espn.go.com/nfl/story/_/id/8640298/tony-corrente-nfl-ref-fined-obscenities).

has been successfully executed in basketball.<sup>70</sup> The potential downside is that every referee's penalty call can be overruled by the head referee for that game,<sup>71</sup> leaving the gambler with only one option to fix the game: the head referee.<sup>72</sup> The problem with a referee fixing a game is the same as a player; there are simply too many variables in an NFL game. Even if a referee is able to make some penalty calls to keep points off the scoreboard, there is no guarantee that he would be able to make enough calls to sufficiently fix the game without being too obvious. Moreover, because the NFL closely scrutinizes the performances and the on-the-field actions of its referees, a referee is unlikely to agree to this unless he is in dire straits or is close to retirement.<sup>73</sup>

The lockout of NFL referees in the beginning of the 2012 NFL season suggests that the NFL does not see referees as potential sources to fixed games.<sup>74</sup> If the NFL was concerned about referees being bribed by gamblers, why would it allow replacement officials, with much less to lose than regular game officials, to work for five weeks of games? In fact, the referee lockout is effectively a case study that flies directly in the face of the NFL's position on sports betting ruining the integrity of the game. The referees are ultimately the NFL's method of preserving the integrity of the game by fairly officiating, which is done by calling penalties that put teams on equal footing and by protecting players with penalties for actions that could hurt other players. By using inexperienced replacement officials, the NFL arguably sacrificed the integrity of the game to stand firm during negotiations. In many articles, the replacement officials were criticized, highlighting their mistakes or lamenting their continued use.<sup>75</sup> Yet, the NFL's television ratings did not suffer.<sup>76</sup> This suggests that the demand for NFL football is inelastic, such that people will watch the games even when it is suggested that the contests are unfair and sullied by the use of inexperienced officials. This flies directly in the face of the NFL's argument that the integrity of the game is tied to people's interest in the game.

It seemed that the NFL was not at all motivated to settle negotiations with the referee's union until the week five *Monday Night Football* game between

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<sup>70</sup> See Henry Hill & Douglas S. Looney, *How I Put the Fix In*, SI VAULT, <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1124224/index.htm> (last visited on Mar. 24, 2013).

<sup>71</sup> The head referee also decides all replay challenges. See NATIONAL FOOTBALL LEAGUE, RULE BOOK (2012), available at <http://www.nfl.com/rulebook/jurisdiction>.

<sup>72</sup> See *id.*

<sup>73</sup> See *Box Score for Super Bowl XXXI*, *supra* note 62.

<sup>74</sup> See Darren Heitner, *NFL Replacement Referees Have Compromised the Game's Integrity and League's Position on Sports Betting*, FORBES, Sept. 23, 2012, <http://www.forbes.com/sites/darrenheitner/2012/09/23/nfls-replacement-referees-have-compromised-the-games-integrity-and-leagues-position-on-sports-betting/>.

<sup>75</sup> See *id.*

<sup>76</sup> See Austin Karp, *NFL Week 1 TV Ratings Set Records for NBC, FOX*, SPORTING NEWS, Sept. 10, 2012, <http://aol.sportingnews.com/nfl/story/2012-09-10/nfl-week-1-tv-ratings-records-nbc-fox-viewers-watched-games-sunday>; Steve LePore, *NFL TV Ratings, Week 3: Solid Numbers for Wacky Patriots-Ravens Game*, SB NATION, Sept. 24, 2012, <http://www.sbnation.com/nfl/2012/9/24/3383780/nfl-tv-ratings-week-3-patriots-ravens>; Steve LePore, *NFL TV Ratings, Week 4: Fox and NBC Win, While CBS Suffers Big Declines*, SB NATION, Oct. 2, 2012, <http://www.sbnation.com/nfl/2012/10/2/3440092/nfl-tv-ratings-week-4-fox-nbc-cbs>.

Green Bay and Seattle was decided on the last play of the game. It appeared Green Bay intercepted Seattle's Hail Mary pass in the end zone, but one official ruled the play a touchdown for Seattle.<sup>77</sup> This one play changed the final result for gamblers by changing the final result from Green Bay covering the 3.5 point spread to not covering it. It has been estimated that \$150 million changed hands worldwide from that one, perhaps erroneous, call; one analyst estimated it at \$1 billion.<sup>78</sup> The NFL reached an agreement with the referee's union on Thursday that week and the regular referees returned for *Thursday Night Football*.<sup>79</sup>

D. *Could an NFL Game be Fixed?*

Is it possible that an NFL game could be fixed? Absolutely. But it is also possible that the NFL could completely lose all favor and popularity among its fans overnight and disband as a league. Since the beginning of the NFL there has not been a known case of a game being fixed or a player shaving points. There are a couple of possible explanations for this. One is that there is not a great enough opportunity for a gambler to make money fixing a game. This explanation may make more sense with the current high rate of player salaries, but back in 1922 when a top player made only \$500 a game,<sup>80</sup> this explanation makes much less sense. Even adjusting for inflation, player salaries seem to be low enough throughout history that a gambler could have profited from bribing a player to fix a game.

The second, and more likely, reason is that fixing an NFL game is rather unfeasible. On every play there are 22 players on the field, all of whom can impact the play. This is in contrast with basketball, which has seen two separate gambling scandals,<sup>81</sup> where there are only ten men on the court at a time. In basketball, one player can shave points and directly impact the score, whereas in football, as stated earlier, it would be very difficult for one player, perhaps even the quarterback, to shave points and exert as much impact on the game's score as a single basketball player.

Would legalized gambling in every state increase the likelihood of a person fixing a game? Probably not. Currently, people can legally wager on individual games in Las Vegas and illegally wager on games on the Internet and through private bookmakers.<sup>82</sup> The NFL's stance on gambling would imply that it thinks that legalizing gambling in additional states, such as New Jersey, would increase the likelihood of a game being fixed. However, the three most

<sup>77</sup> *Replacement Refs Decide Game As Seahawks Top Packers on Hail Mary*, ESPN, <http://scores.espn.go.com/nfl/recap?gameId=320924026> (last visited Mar. 19, 2013).

<sup>78</sup> See Darren Rovelle, *\$150M–\$250M in MNF Bets Shifted*, ESPN, Sept. 25, 2012, [http://espn.go.com/nfl/story/\\_/id/8422934/seattle-seahawks-vs-green-bay-packers-disputed-mnf-call-shifted-150-250m-bets](http://espn.go.com/nfl/story/_/id/8422934/seattle-seahawks-vs-green-bay-packers-disputed-mnf-call-shifted-150-250m-bets).

<sup>79</sup> Mike Garafolo, *NFL, Referees End Lockout After Reaching New Labor Deal*, USA TODAY, Sept. 27, 2012, <http://usatoday30.usatoday.com/sports/nfl/story/2012/09/27/nfl-referees-end-lockout-after-reaching-new-labor-deal/57846906/1>.

<sup>80</sup> See Braunwart & Carroll, *supra* note 13.

<sup>81</sup> See Hill & Looney, *supra* note 70.

<sup>82</sup> See Chad Millman, *Authorities Expose \$50M Betting Ring*, ESPN, Oct. 25, 2012, [http://espn.go.com/espn/story/\\_/id/8550476/new-york-issues-25-indictments-50-million-betting-ring](http://espn.go.com/espn/story/_/id/8550476/new-york-issues-25-indictments-50-million-betting-ring).

famous cases of fixed games in professional sports, the 1919 White Sox,<sup>83</sup> the Tim Donaghy scandal in the NBA,<sup>84</sup> and the Boston College Point Shaving scandal,<sup>85</sup> all share one key aspect: ties to organized crime.<sup>86</sup> None of these incidents needed legalized gambling within the state to occur. It is illogical to think that legalized gambling within a state would add to the likelihood of an NFL game being fixed because game-fixing does not stem from people who operate within the laws of society. Also, legalized sports betting does not necessarily perpetrate point shaving or game-fixing schemes. In fact, in reply to sports league commissioners' concern about games being fixed, *Gambling in America* stated:

While the Commission recognizes the desire of professional and amateur sports leagues to keep their games free from even the appearance of scandal, it is clear that given the intensity of illegal wagering that exists today, primarily on professional football all of the concerns noted above already exist today. The likelihood that a legal betting system would give rise to an attempted "fix" more readily than an illegal betting system does not appear to the Commission to be a reasonable assumption. The position of the sports industry seems to be that these problems are controllable with illegal wagering but would skyrocket with legalization of wagering; the Commission sees no basis for that prognosis.<sup>87</sup>

Before ascertaining why the NFL opposes gambling, we must examine the ways in which the NFL's current policies aid sports betting.

### III. HOW THE NFL AIDS SPORTS BETTING

The NFL, though publicly opposed, has many rules that aid sports betting by providing stability and uniformity. One such rule is the NFL's policy on injury reports.<sup>88</sup> The NFL takes this rule very seriously, routinely fining teams for failure to report injuries.<sup>89</sup> In a statement regarding the Ravens' fine for failure to report one of their player's injuries, the NFL stated,

<sup>83</sup> See ELIOT ASINOF, *EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES* (1963) (explaining how eight White Sox players intentionally lost games in order to allow the Cincinnati Reds to win the World Series and payoffs were supplied by New York City underworld figures).

<sup>84</sup> See *Ex-NBA Ref Tim Donaghy's Personal Foul*, CBS NEWS, Dec. 6, 2009, [http://www.cbsnews.com/8301-18560\\_162-5880547.html](http://www.cbsnews.com/8301-18560_162-5880547.html) (explaining how NBA referee Tim Donaghy was caught by the FBI, involved in a gambling scheme, tied to organized crime, where he bet on games he was officiating and attempted to use his position as a referee in those games to affect the point spread).

<sup>85</sup> See Hill & Looney, *supra* note 70 (explaining how Henry Hill, of *Goodfellas* fame, and other underworld figures recruited members of the 1978-1979 Boston College basketball team to shave points, or make sure that the team did not cover the point spread).

<sup>86</sup> See ASINOF, *supra* note 83; see *Ex-NBA Ref Tim Donaghy's Personal Foul*, *supra* note 70; see Hill & Looney, *supra* note 70.

<sup>87</sup> See *GAMBLING IN AMERICA*, *supra* note 18, at 177.

<sup>88</sup> See David Boclair, *How the NFL injury report is supposed to work*, THECITYPAPER, July 16, 2012, available at <http://nashvillecitypaper.com/content/sports/how-nfl-injury-report-supposed-to-work>.

<sup>89</sup> See *id.*; see Dan Hanzus, *St. Louis Rams fined \$20K over Steven Jackson injury*, NFL, Nov. 2, 2012, <http://www.nfl.com/news/story/0ap1000000089269/article/st-louis-rams-fined-20k-over-steven-jackson-injury>; see *Redskins, Bills each fined \$20K*, ESPN.COM, Oct.

“[t]he Injury Report Policy states that, ‘All players with significant or noteworthy injuries must be listed on the report, even if the player takes all the reps in practice, and even if the team is certain that he will play in the upcoming game. This is especially true of key players and those players whose injuries have been covered extensively by the media.’”<sup>90</sup>

If a major player for a team is hurt, the point spread on that game could be affected significantly. Some may argue that the injury policy is to protect players, but the injury policy does not add to player safety; just because players are listed does not mean they cannot play in the next game. In fact, an argument could be made that the policy decreases player safety by announcing player injuries and allowing opposing players to target those injuries, which would add to their severity. The most logical reason that the NFL has this rule is for gamblers to know that they can bet with full knowledge about who is likely to play and not to play. Recently, the NFL updated its injury policy, mandating that teams report how much practice injured players participated in.<sup>91</sup> This update to the policy adds to the argument that it is intended for gambling purposes and not player safety purposes, because the new policy makes it more difficult for teams to lie about who is injured and the severity of injuries. These facts are most useful to gamblers and seem to have no other useful purpose. By making all injury reports public, the NFL is leveling the playing field among all gamblers by not allowing people with inside information to profit from it.

Another rule adding stability and uniformity stems from the extra point attempt or “try.” After a team scores a touchdown they are awarded a try.<sup>92</sup> Even if a team is losing by five points and scores a touchdown on the final play of the game (putting them one point ahead) with no time remaining, they must still attempt a try.<sup>93</sup> The only exception is for a game-ending touchdown in overtime. In the overtime situation, the team is not allowed to attempt a try.<sup>94</sup> The official NFL explanation for this rule is that “Best Net Points” is a playoff-seeding tiebreaker.<sup>95</sup> This explanation is nonsensical though. Most NFL rules are not paternalistic, and are not meant to help a team unaware of the playoff tiebreaker rules maximize their chances. Also “Best Net Points” is the ninth tiebreaker, meaning it is unlikely to be needed.<sup>96</sup> The more sensible explanation is uniformity for gamblers. If the rule did not exist and teams attempted or chose not to attempt the try based on their own decision, then gamblers and the general public would have a potential claim of impropriety when the try affects

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19, 2012, [http://espn.go.com/nfl/story/\\_/id/8525294/washington-redskins-buffalo-bills-fined-20000-injury-reports](http://espn.go.com/nfl/story/_/id/8525294/washington-redskins-buffalo-bills-fined-20000-injury-reports).

<sup>90</sup> Michael David Smith, *Ravens fined \$20,000 for not reporting Ed Reed injury*, NBC SPORTS, Oct. 26, 2012, <http://profootballtalk.nbcsports.com/2012/10/26/ravens-fined-20000-for-not-reporting-ed-reed-injury/>.

<sup>91</sup> *See id.*

<sup>92</sup> *See* NAT'L FOOTBALL LEAGUE, *2012 Official Playing Rules and Casebook of The National Football League*, Rule 11 Section 3 Article 1, available at <http://static.nfl.com/static/content/public/image/rulebook/pdfs/2012%20-%20Rule%20Book.pdf>.

<sup>93</sup> *See id.*

<sup>94</sup> *Id.* at Rule 16 Section 1.

<sup>95</sup> *NFL Tie-Breaking Procedures*, NFL, available at <http://www.nfl.com/standings/tiebreakingprocedures>.

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

the point spread. By regulating the try, the NFL is creating a stable and fair system for gamblers, allowing them to bet with confidence.

The report *Gambling in America* closed its section about sports leagues' positions on sports betting by pointing out:

[D]espite its vocal opposition to legalized sports wagering, the sports industry has not assumed its proper role of leadership in controlling peripheral activities that enhance illegal wagering. For example, much of the pregame discussion by sports personalities and broadcasters deals with forecasting the outcome, the point spread, weather conditions, injury reports, and other factors that might influence the outcome. Surely this does not discourage or turn away the attention of a bettor with an illegal wager at stake.<sup>97</sup>

Although the NFL has some rules in place to aid gamblers, the question still remains; why does it publicly opposes sports betting, possibly acting against its interests?

#### IV. WHY THE NFL WOULD ACT AGAINST ITS INTERESTS

It initially seems that it would be in the NFL's interest to fully support legalized gambling because of the potential for increased popularity of the sport, however the NFL steadfastly opposes it. There are two possible reasons for the NFL to publicly oppose gambling. One reason is that it clearly is not in the best interest of the farm system used by the NFL, the NCAA,<sup>98</sup> and the second reason is because publicly opposing gambling adds an air of legitimacy to the sport.

By publicly opposing gambling, but aiding it by doing things such as releasing injury reports, the NFL is benefitting from the effect of gambling while using its stance to add legitimacy to the game and to make people more comfortable to gamble. The NFL's public renouncement of gambling gives the illusion that it does not condone gambling. This dissuades a gambler from thinking that the NFL would fix a game or lie about an injury report. By constantly preaching about the integrity of the game, the NFL makes gamblers feel that the game is a completely fair contest in which they can safely wager their money.

The NFL works like a casino control commission. In states with legalized gambling, the state imposes an additional tax on the casinos so that the state can staff a department to review the integrity and fairness of the casinos. In New Jersey, this department is known as the New Jersey Casino Control Commission.<sup>99</sup> The New Jersey Casino Control Commission's mission statement reads in part, "The Casino Control Commission ensures integrity and public confidence in the gaming industry. . . ."<sup>100</sup> This goal exists because the public would not patronize casinos if they did not have confidence in the integrity of

<sup>97</sup> GAMBLING IN AMERICA, *supra* note 18, at 177.

<sup>98</sup> The reasons why the NCAA opposes gambling are beyond the scope of this paper. But, in short, the NCAA is against gambling because the players do not get paid, making them more susceptible to fixing games.

<sup>99</sup> See STATE OF N.J. CASINO CONTROL COMM'N, <http://www.nj.gov/casinos> (last visited Mar. 19, 2013).

<sup>100</sup> *Id.*

the gaming industry. If people did not visit casinos and give them money, the state would not be able to collect the tax revenue generated by the casinos.<sup>101</sup>

Like the casino control commission, the NFL works to maintain the integrity of the game so that people know, or at least think, that they are not being taken advantage of while gambling on NFL games. Unlike the casino control commission, which is working with the ultimate goal of adding revenue to state coffers, the NFL does not directly receive additional revenue from casinos, gaming websites, or the neighborhood bookie. The NFL does, however, receive additional revenue through the value of its television contracts.<sup>102</sup> If a game is a blowout or pairs two unpopular teams, it may be hard for networks to maintain viewers' attention through the entire game. Advertisers, knowing this, probably would be unwilling to spend as much money on commercials that air later in the game. It is in the NFL's best interest for its television partners to benefit from advertising during games so that when the television contract is up for renewal, the NFL is in a position to extract more money from the networks or to attract interest from other networks based upon the high ratings the NFL can produce.<sup>103</sup>

The two main ways people bet on NFL games, the point spread and the over/under, can keep people interested in a lopsided game. Whereas the outcome of the game can seem decided early, both the over/under and point spread can potentially be in question until the final play. Therefore, the NFL actually benefits from sports betting and, in turn, acts with sports betting in mind when making decisions regarding NFL rules and policy. When it publicly opposes gambling, the NFL is doing its part as the "casino control commission," by reducing people's fears about the game being fixed and adding an air of legitimacy to the contests, thus increasing public confidence in sports betting.

## V. CONCLUSION

Regarding the NFL's stance on gambling, to paraphrase William Shakespeare, the league doth protest too much, methinks.<sup>104</sup> Sports betting neatly solved two issues for the NFL that invariably every sports league faces: keeping people interested until the end of the game and encouraging viewership of out-of-market games and games between two unpopular or struggling teams. Gambling encourages people to follow the NFL as a totality and not just on a team-by-team basis. Without gambling, it is arguable whether the NFL would have ever reached its current level of success and whether the NFL could maintain that level of interest if sports betting disappeared.

<sup>101</sup> See *New Legislation 2011*, STATE OF NEW JERSEY DEP'T OF THE TREASURY, <http://www.state.nj.us/treasury/taxation/newlegislation2011.shtml> (last updated Aug. 9, 2012) (indicating how New Jersey taxes casinos at 8% of gross revenue).

<sup>102</sup> Dex McLuskey & Aaron Kuriloff, *NFL Signs Nine-Year Extensions of Television Contracts With CBS, FOX, NBC*, BLOOMBERG, Dec. 15, 2011, <http://www.bloomberg.com/news/2011-12-14/nfl-renews-television-contracts-with-cbs-fox-nbc-networks-through-2022.html>.

<sup>103</sup> See *NFL's ratings, revenue, popularity grow and grow*, FOXNEWS.COM, Feb. 3, 2012, <http://www.foxnews.com/sports/2012/02/03/nfls-ratings-revenue-popularity-grow-and-grow>.

<sup>104</sup> "The lady doth protest too much, methinks." WILLIAM SHAKESPEARE, *HAMLET* act 3, sc. 2.

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Nevertheless, whether the NFL originally embraced gambling is irrelevant. The NFL has undeniably benefitted from gambling and, because of this, has positioned itself as a quasi-partner with the sports betting industry.<sup>105</sup> Although the NFL's stance on gambling seems contradictory on the surface, it is evident that the NFL and the sports betting industry share a mutually beneficial relationship. The NFL receives increased popularity and television ratings for its games and the sport betting industry benefits from the NFL operating its league free of charge to them.<sup>106</sup> For this reason, any action taken by the NFL that, on the surface, seems to oppose gambling beneath the surface likely contains an ulterior motive to further gambling.

Though starting a business that ninety years later generates an annual \$9.5 billion appears to be a wildly successful gamble, the best bet for the NFL is actually made every fall and winter with bookmakers around the world.

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<sup>105</sup> I am, by no means, suggesting that there is any kind of actual partnership agreement between the NFL and casinos that have sports betting, states that allow sports betting, websites that offer sports betting, or any segment of the sport betting industry.

<sup>106</sup> See *GAMBLING IN AMERICA*, *supra* note 18, at 178 (in fact in *Gambling in America*, it is suggested that if sports betting was legalized by states, one issue to consider would be remuneration to the owners of the sports teams by the state).

