

## THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT: HOW ITS INVALIDATION WILL IMPACT INDIAN GAMING'S LEGAL AND REGULATORY FRAMEWORK

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### ABSTRACT

The Professional and Amateur Sports Protection Act (“PASPA”) was a Federal statute enacted in 1992 that effectively outlawed sports gambling in the United States, with the exception of states such as Nevada, Delaware, and Oregon.<sup>1</sup> In 2011, the State of New Jersey amended its state constitution and enacted a law that would authorize “certain regulated sports wagering at New Jersey casinos and racetracks” while also implementing “a comprehensive regulatory scheme for licensing casinos and sporting events.”<sup>2</sup> Five professional sports leagues brought suit against New Jersey under PASPA, and New Jersey challenged PASPA’s constitutionality based on the anti-commandeering doctrine.<sup>3</sup> Over the next few years, the United States District Court for the District of New Jersey, the Third Circuit Court of Appeals, and an en banc panel in the Third Circuit Court of Appeals all ruled in favor of the leagues. The Supreme Court of the United States granted certiorari in June 2017 and heard the case the following December.<sup>4</sup> On May 14, 2018, in an opinion delivered by

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<sup>1</sup> 28 U.S.C. §§ 3702, 3704 (2012), *invalidated by* *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018). *See* S. REP. NO. 102-248, at 3561 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3561 (discussing the exemption at 28 U.S.C. § 3704, and listing states that already had gambling schemes in place, and thus, would not be affected by 28 U.S.C. § 3702).

<sup>2</sup> *Murphy v. Nat’l Collegiate Athletic Ass’n*, OYEZ, <https://www.oyez.org/cases/2017/16-476> (last visited Mar. 4, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* *See also* *Murphy v. Nat’l Collegiate Athletic Ass’n*, SCOTUSBLOG, <http://www.scotusblog.com/case-files/cases/murphy-v-national-collegiate-athleticassociation-2/> (last visited Mar. 4, 2019).

Justice Alito, the Supreme Court held that PASPA was unconstitutional.<sup>5</sup> Consequently, the federal, state, and tribal legal framework for gambling has been drastically altered. State laws, state-tribal gaming compacts, and tribal gaming ordinances will now require redrafting and/or amendments if either government seeks to capitalize on this change. Regulations and inter-governmental agreements will require renegotiation, and the implications of the invalidation of a federal statute will begin to take form. This paper seeks to analyze the impact of PASPA's invalidation on tribal gaming (used interchangeably with "Indian gaming" throughout this paper) as it pertains to legal, regulatory, and intergovernmental relations.

## INTRODUCTION

### I. THE INDIAN GAMING REGULATORY ACT OF 1988: 25 U.S.C. CHAPTER 29 – INDIAN GAMING REGULATION

The Indian Gaming Regulatory Act of 1988 ("IGRA") was passed by Congress in response to findings that numerous Indian tribes were engaging in gaming activities on Indian lands as a way of generating tribal government revenue.<sup>6</sup> Federal law prior to IGRA did not provide clear standards or regulations for the conduct of those gaming activities,<sup>7</sup> and the policy behind IGRA was to provide a statutory basis for the regulation of gaming by an Indian tribe.<sup>8</sup> Prior to the Act, the U.S. Supreme Court had recognized that as sovereign nations, Indian tribes had the sole jurisdiction to regulate Indian gaming on Indian lands.<sup>9</sup> IGRA, in turn, established a complex regulatory framework for Indian gaming, giving roles to tribes, states, and the federal government. Gaming types were defined and categorized into three different classes: Class I, Class II, and Class III gaming.<sup>10</sup> The roles of tribes, states, and the federal government

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<sup>5</sup> *Murphy, supra* note 2.

<sup>6</sup> 25 U.S.C. § 2701(1) (2012).

<sup>7</sup> *Id.* § 2701(3).

<sup>8</sup> *Id.* § 2702(2).

<sup>9</sup> *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216, 220-22 (1987), *superseded by statute*, Indian Gaming Regulation Act of 1988, Pub. L. No. 100-497, 102 Stat. 2467 (codified as amended at 25 U.S.C. § 2710 (2012)).

<sup>10</sup> § 2703(6) specifically defines Class I gaming as: "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations[;]" § 2703(7) specifically defines Class II gaming as: "(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)— (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto,

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were codified and granted tribes jurisdiction and self-regulation of Class I and Class II gaming on Indian lands,<sup>11</sup> but limited Class III gaming to co-regulation with the state government through a tribal-state gaming compact.<sup>12</sup> Though tribes had been conducting gaming operations for years, at the time of IGRA's enactment, Indian gaming across the nation was in its infancy, offering little to nothing in the realm of sports gambling.

II. THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT: 28 U.S.C. § 3702 – UNLAWFUL SPORTS GAMBLING<sup>13</sup>

In 1991, the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks held public hearings on Senate Bill 474, a bill intended to outlaw sports gambling.<sup>14</sup> After the hearings, “Congress found that ‘[s]ports gambling [was] a national problem[,]’”<sup>15</sup> concluding that “[t]he harms it inflicts are felt beyond the borders of those States that sanction it.”<sup>16</sup> In its discussion, the committee stated that “[s]ports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for

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punch boards, tip jars, instant bingo, and other games similar to bingo, and (ii) card games that— (I) are explicitly authorized by the laws of the State, or (II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games[;]” and § 2703(8) specifically defines Class III gaming as “all forms of gaming that are not class I gaming or class II gaming.” 25 U.S.C. § 2703(6)–(7)(A), (8).

<sup>11</sup> *Id.* § 2710(a)(1)–(2). Also, some Class II Gaming activities are co-regulated by the NIGC through guidelines codified in the Code of Federal Regulations. *See* 25 C.F.R. § 501.2(a), (c) (2018); *id.* § 543.1.

<sup>12</sup> 25 U.S.C. § 2710(d)(3)(A).

<sup>13</sup> “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 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.” 28 U.S.C. § 3702 (2012), *invalidated by* *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

<sup>14</sup> *See* U.S.C.C.N., 102nd Cong. 1st Sess., 3554, at 3553 (stating that the bill’s purpose was “to prohibit sports gambling conducted by, or authorized under the law of, any State or other governmental entity.”). *See also All Information (Except Text) for S.474 - Professional and Amateur Sports Protection Act*, CONGRESS.GOV, <https://www.congress.gov/bill/102nd-congress/senate-bill/474> (last visited Apr. 26, 2018).

<sup>15</sup> Jeffrey R. Rodefer, *Internet Gambling in Nevada: Overview of Federal Law Affecting Assembly Bill 466*, 6 GAMING L. REV. 393, 407 (2002) (citing S. REP. NO. 102–248 (1992), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3556).

<sup>16</sup> *Id.*

gambling.”<sup>17</sup> The committee suggested that rather than “stand[ing] for clean, healthy competition[,]”<sup>18</sup> teamwork, and “success through preparation and honest effort[,]”<sup>19</sup> legalized sports gambling would change games to “represent the fast buck, the quick fix, the desire to get something for nothing.”<sup>20</sup> Furthermore, the Committee felt that “[s]ports gambling threatens the integrity of, and public confidence in, amateur and professional sports[,]” while increasing the likelihood that “State-sanctioned sports gambling will promote gambling among our Nation’s young people.”<sup>21</sup> The Senate Judiciary Committee at the time was also persuaded by and agreed with the testimony of David Stern, Commissioner for the National Basketball Association, who testified that “[t]he interstate ramifications of sports betting are a compelling reason for federal legislation.”<sup>22</sup> Following those hearings and findings, Congress enacted PASPA in 1992, effectively prohibiting sports gambling in the United States with the exception of sports lotteries and gambling already being regulated by state governments in states such as Oregon, Delaware, and Nevada.<sup>23</sup> PASPA also explicitly prohibited sports gambling on any Indian lands described in “section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4))”<sup>24</sup> in non-exempted states where Indian Gaming was currently taking place<sup>25</sup>

### III. FEDERAL-STATE-TRIBAL LEGAL FRAMEWORK IN INDIAN GAMING PRE-PASPA STRIKE DOWN

#### A. Federal Framework

After the passage of IGRA in 1988, gaming was categorized into three “classes” or types for purposes of regulation. These were effectively defined in IGRA as Class I, Class II, and Class III gaming.<sup>26</sup> Class I gaming was to be under the complete jurisdiction of the tribes, as it pertains to regulation and authority, while Class II was to be regulated by the tribe with oversight from the Federal government through the National Indian Gaming Commission (NIGC) and its

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<sup>17</sup> See S. REP. NO. 102–248, at 3555 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3555.

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

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

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

<sup>21</sup> *Id.* at 3555-56.

<sup>22</sup> *Id.* at 3556-57.

<sup>23</sup> See 28 U.S.C. § 3704 (2012), *invalidated by* *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018). See also *Murphy*, 138 S. Ct. at 1471; S. REP. NO. 102–248, at 3555 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3561.

<sup>24</sup> See 28 U.S.C. § 3704(b).

<sup>25</sup> *Id.*

<sup>26</sup> See 25 U.S.C. § 2703(6), (7)(A), (8) (2012).

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issuance of Codified Federal Regulations.<sup>27</sup> Class III gaming on the other hand, was to be co-regulated by the tribe and the state wherein the tribe had its gaming operation, specifically under the terms agreed to in a tribal-state gaming compact that required approval from the U.S. Secretary of the Interior,<sup>28</sup> and approval of a Tribal Gaming Ordinance by the Chairman of the NIGC.<sup>29</sup> Tribes that wish to “may enter into a management contract for the operation and management of its gaming activity subject to the approval of the NIGC Chair[,]”<sup>30</sup> after the Chair finds the contract in compliance with the intent of IGRA.<sup>31</sup>

A key provision of IGRA as it relates to Indian Gaming and its role in intergovernmental relations is that “[a]n Indian tribe may engage in, or license and regulate, class II [and III] gaming on lands within such tribe’s jurisdiction, [only] if— such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law)[.]”<sup>32</sup> Thus, including those within the few states that were exempted from the PASPA statute, all tribes operating Indian gaming facilities throughout the country were unable to offer sports gambling in their operations after 1992. Interestingly, tribes up to that point were likely busy dealing with the growing pains of getting an Indian gaming operation off the ground, and none had focused on sports gambling enough to establish a paradigm of what sports betting at an Indian gaming facility would look like prior to 1992.<sup>33</sup> Ultimately, no tribes noticeably took advantage of the opportunity in the four years between the passage of IGRA in 1988 and PASPA’s 1992 enactment.<sup>34</sup>

#### B. *State Framework*

As noted above, tribes wishing to engage in Tribal/Indian gaming must first

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<sup>27</sup> See *id.* § 2710(a)(1). See also *id.* § 2710(a)(2) (“[. . .]shall be subject to the provisions of this chapter[.]”) (indicating the monitoring, inspective, and investigative powers of NIGC listed at 25 U.S.C. §§ 2706(b)(1)-(4), (7), and (10) for class II gaming). See also 25 C.F.R. § 543 (2018) for specific regulations.

<sup>28</sup> See 25 U.S.C. § 2710(d)(3)(B).

<sup>29</sup> See *id.* § 2710(d)(2)(A).

<sup>30</sup> National Indian Gaming Commission, Management Contracts, <https://www.nigc.gov/finance/management-contracts> (last visited Mar. 03, 2019).

<sup>31</sup> See 25 C.F.R. §§ 501, 531, 533.6(a), 535 (2018) (describing the intent of the IGRA, the content required for management contracts, contract approval guidelines, and post-approval procedures, including non-compliance). See also 25 U.S.C. § 2711(a)–(b) (providing for entering into a management contract and Chairman approval).

<sup>32</sup> *Id.* § 2710(b)(1)(A), (d)(1)(A)(ii).

<sup>33</sup> Nicholas Garcia, *Choctaw Believed to be First Tribe Outside Nevada to Offer Sports Betting*, LEGAL SPORTS REP. (Sep. 3, 2018), <https://www.legalsportsreport.com/23406/choctaw-tribe-sports-betting/>.

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

ensure that the type of gaming they wish to pursue is legal in their state.<sup>35</sup> If they choose to engage in Class I or Class II gaming, the state has nothing to do with the regulation or oversight of such gaming activities,<sup>36</sup> however, if they choose to engage in Class III, “Vegas”-type gaming<sup>37</sup>, then they must “request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.”<sup>38</sup> Logically, different states and different tribes negotiate based on their individual capabilities, and as such, tribal-state compacts vary greatly by state.

### C. Tribal Framework

As noted above, tribes eligible to operate a gaming facility must decide what type of gaming to engage in, and submit their gaming ordinance to the NIGC for approval.<sup>39</sup> If they choose to engage in Class III gaming, then they must obtain a compact with their state and submit it to the Secretary of the Interior for approval.<sup>40</sup> This creates a sort of triple layer of regulation, as Class I gaming is regulated by the tribe, Class II by the tribe and NIGC, and Class III by the tribe and state.

### D. Poison Pill Provision in Arizona Tribal-State Gaming Compacts

In Arizona, tribal-state compacts contain a “poison pill” provision that provides that “[i]f, on or after May 1, 2002, State law changes or is interpreted in a final judgment of a court of competent jurisdiction or in a final order of a State administrative agency to permit either a Person or entity other than an Indian tribe to operate Gaming Devices; any form of Class III Gaming (including Video Lottery Terminals) that is not authorized under this Compact, other than gambling that is lawful on May 1, 2002”<sup>41</sup> then “[t]he Tribe shall be authorized under this Compact to operate Class III Gaming Devices without limitations on

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<sup>35</sup> See generally 25 U.S.C. § 2710(a)(1)–(2), (d)(1)(A)(i), (d)(1)(A)(iii).

<sup>36</sup> *Id.* § 2710(a)(1)–(2).

<sup>37</sup> “Vegas type” in this context refers to slot machines operating on a random number generator (as opposed to electronic bingo devices); certain table games such as blackjack wherein the player bets against the house and not against other players; and all other forms of gaming that are not class I or class II gaming as defined in § 2703(6) and (7).

<sup>38</sup> 25 U.S.C. § 2710(d)(3)(A).

<sup>39</sup> *Id.* § 2710(d)(2)(A).

<sup>40</sup> *Id.* § 2710(d)(3)(B).

<sup>41</sup> Pascua Yaqui Tribe - State of Arizona Gaming Compact, § 3(h)(1) (2003), available at <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/oig/pdf/idc1-024640.pdf>.

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the number of Gaming Devices, the number of Gaming Facilities, or the Maximum Gaming Devices Per Gaming Facility, and without the need to amend this Compact[.]”<sup>42</sup> In addition, the poison pill eliminates parts of the tribal-state gaming compact that require the tribes to share revenue with the state, and thus “[i]n addition to Sections 3(h)(1)(A) and (B), the Tribe’s obligation under Section 12 to make contributions to the State shall be immediately reduced.”<sup>43</sup> Essentially, this means that states with current tribal-state gaming compacts, such as Arizona, will need to renegotiate the compact provisions if they choose to legalize sports betting in their states now that PASPA has been struck down by the Supreme Court.

#### IV. LEGAL FRAMEWORK IN INDIAN GAMING POST-PASPA STRIKE DOWN

##### A. *Murphy v. NCAA*

In December 2017, the Supreme Court of the United States heard arguments from Petitioner New Jersey Governor Philip D. Murphy, et al. and Respondent National Collegiate Athletic Association (“NCAA”), et al. on appeal from the United States Court of Appeals for the Third Circuit.<sup>44</sup> Previously, in 2012, the NCAA and three major professional sports leagues had brought an action in federal court against New Jersey’s governor and other state officials, claiming they had violated PASPA by approving an amendment of New Jersey’s State Constitution that effectively legalized sports gambling.<sup>45</sup> New Jersey countered that PASPA violated the United States Constitution’s “anticommandeering” principle, but both the U.S. District Court for the District of New Jersey and the Third Circuit Court of Appeals disagreed and ruled in favor of the NCAA.<sup>46</sup> At that time, the Supreme Court of the United States denied review.<sup>47</sup> In 2014, New Jersey’s legislature enacted a law that repealed state-law provisions preventing sports betting schemes, and the NCAA filed a new action in federal court.<sup>48</sup> Again, both the District Court and Court of Appeals for the Third Circuit held that the state law violated PASPA.<sup>49</sup> This time, however, the Supreme Court granted certiorari, and ruled on the case on May 14, 2018.

The Supreme Court held that PASPA violated the anticommandeering principle of the Constitution because it “unequivocally dictate[d] what a state

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<sup>42</sup> *Id.* § 3(h)(1)(A).

<sup>43</sup> *Id.* § 3(h)(1)(C).

<sup>44</sup> *See* *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1461 (2018).

<sup>45</sup> *Id.* at 1471.

<sup>46</sup> *See id.*

<sup>47</sup> *Id.* at 1472.

<sup>48</sup> *Id.*

<sup>49</sup> *See* *Nat’l Collegiate Athletic Ass’n v. Governor of N.J.*, 730 F.3d 208, 209, 215 (3d Cir. 2013).

legislature may and may not do[.]”<sup>50</sup> and that it was essentially a form of Congress issuing “direct orders to state legislatures[.]”<sup>51</sup> The Court also cited Tenth Amendment principles that confirm “all legislative power not conferred on Congress by the Constitution is reserved for the States,” and specifically noted the absence of Congressional power to “issue direct orders to the governments of States” based on anti-commandeering principles previously held in *New York v. United States* and *Printz v. United States*.<sup>52</sup> The Court concluded its opinion by stating that the policy choice required to legalize sports gambling “is not [theirs] to make” and that, although “Congress can regulate sports gambling directly, [] if it elects not to do so, each State is free to act on its own.”<sup>53</sup>

### B. Federal Regulation Post-PASPA

Now that the Supreme Court of the United States has ruled that PASPA is unconstitutional, Congress may draft a statute that regulates sports gambling, or let the individual states willing to enact sports gambling draft their own state statutes.<sup>54</sup> The gaming regulator for the federal government, the NIGC, may wait on Congress to draft a statute, or act before Congress does by approving the tribal gaming ordinances that are amended to include sports gambling in tribal gaming facilities in accordance with newly negotiated tribal-state compacts (approved by the Secretary of the Interior) in states that legalized sports gambling.<sup>55</sup> Because sports gambling will likely be defined as Class III gaming, the NIGC will have a minimal role in its regulation outside of approving the tribal gaming ordinance, or ensuring compliance with IGRA and its accompanying regulations.<sup>56</sup>

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<sup>50</sup> *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1478 (2018).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 1466–67 (citing *New York v. United States*, 505 U.S. 144 (1992) and *Printz v. United States*, 521 U.S. 898 (1997)).

<sup>53</sup> *Id.* at 1484–1485.

<sup>54</sup> *See id.*

<sup>55</sup> The NIGC has stated that, within the context of sports betting, “[s]hould new opportunities be made available through legislative changes, [they] are prepared to continue to fulfill [their] statutory responsibilities to regulate gaming on Indian lands.” *See* National Indian Gaming Commission, NIGC Statement on the Supreme Court Ruling on – *Murphy v. National Collegiate Athletic Association* (May 15, 2018), <https://www.nigc.gov/news/detail/nigc-statement-on-the-supreme-court-ruling-on-murphy-v.-national-collegiate>. This statement could be reasonably interpreted to mean NIGC is prepared to continue with its responsibility to facilitate Indian gaming regulation in accordance with 25 U.S.C. § 2710(d)(1)(A)–(C) and (2)(A)–(C).

<sup>56</sup> Sports betting does not meet the definitions of class I or class II gaming found at 25 U.S.C. § 2703(6) and (7), but does fall within the terminology of “all forms of gaming that are not class I gaming or class II gaming” that defines class III gaming in 25 U.S.C. § 2703(8). For NIGC’s role in sports betting regulation, *see* 25 U.S.C. § 2710(d)(2)(A), (d)(3)(B); 25 C.F.R. §§ 501, 531, 533 (2018); *Management*



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Many tribes choose to have management companies operate their facilities instead of doing so themselves; these agreements between private management companies and the tribes are referred to as “management contracts” by the NIGC, and will also continue to require NIGC Chair approval in accordance with 25 C.F.R. §§ 531, 533, and 535.<sup>57</sup> Tribes that have little to no experience in running sportsbooks or related sports gambling operations within their facilities may seek to hire additional experienced personnel, perhaps under a management contract, to get their operation to a functional level. Regardless of the different approaches taken by the tribes, if Congress chooses to regulate sports gambling, or the Secretary of the Interior receives the first tribal-state gaming compacts amended/revised to include sports gambling, the NIGC will likely also draft or update regulations to provide tribes with guidance in the pursuit of their new venture, even if just succinct enough to allow for such pursuit.

### C. *State Regulation Post-PASPA*

Many states will enact laws legalizing sports gambling, free from any federal interference; as is, some twenty states have already introduced laws or bills to legalize sports gambling in anticipation of the *Murphy* ruling.<sup>58</sup> Because many of the states have tribal-state gaming compacts, they must be cognizant of the renegotiations with tribal governments the invalidation of PASPA may impose on them. As noted in the Arizona example above, some tribal-state gaming compacts contain provisions that prevent states from enacting such legislation because it would affect their gaming compacts with tribes.<sup>59</sup> Depending on the state, the states and tribes may choose to amend parts of their current compact to include sports gambling in their Indian gaming facilities, or negotiate a way to allow the state to legalize sports gambling without the negative implications it dawns on its tribal-state gaming compact. However, things may not be resolved so simply.

Provisions beyond the legalization of sports gambling in the state will most certainly be a topic of contention in the new tribal-state compact negotiations.

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*Contracts, supra* note 30.

<sup>57</sup> See 25 C.F.R. §§ 501, 531, 533.6(a), 535 (describing the intent of the IGRA, the required content for management contracts, contract approval guidelines, and post-approval procedures, including non-compliance) (2018). See also 25 U.S.C. § 2711(a)–(b) (providing for entering into a management contract and chairman approval).

<sup>58</sup> Daniel Wallach, *Why A Narrow Ruling For New Jersey Could Still Allow Sports Betting By Private Operators*, FORBES (Apr. 23, 2018, 1:08 PM), <https://www.forbes.com/sites/danielwallach/2018/04/23/statutory-victory-for-new-jersey-in-sports-betting-case-would-not-trigger-private-partyprohibition/#8d2b62b1d81d>.

<sup>59</sup> See Pascua Yaqui Tribe - State of Arizona Gaming Compact, §§ 3(h)(1), (1)(A)–(C) (2003), available at <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/oig/pdf/idc1-024640.pdf>.

Because some tribes may have little or no interest in adding sports gambling to their gaming facilities, the states may have to incentivize amending the compact to include sports gambling in the Indian gaming facilities. As tribal-state gaming compacts are all individual state-tribal negotiations, other provisions, most notably tribal revenue sharing, will be ardently negotiated and contested. Tribes with no interest in sports gambling in their facilities will have a negotiation advantage if there is any sort of “poison pill” provision in their current tribal-state gaming compact, and those tribes wishing to include sports gambling as an enhancement to their Indian gaming facility offerings should have little to no trouble in the states where there is no “poison pill” provision in their gaming compacts *and* the state legalizes sports gambling.

In addition, there is always the potential that tribes will band together to form a coalition against states’ legalizing sports gambling, particularly in states where most tribes are against its legalization, either because the profit margin is not worth giving up real estate in the facility, or the investment is too great for the tribe to bear the addition of such sports gambling areas in their casinos. State legislatures will have to fight against these coalitions, and ultimately decide on an appropriate state statute to address the concerns and interests of both parties for the welfare of the state and its tribal citizens; especially those tribal entities with which they have gaming compacts.

#### *D. Tribal Regulation Post-PASPA*

As noted *supra* Section III(c) of this note, State Regulation Post-PASPA, tribal regulation of Indian gaming after PASPA’s invalidation will vary depending on each state’s tribal-state gaming compact. Tribes operating gaming facilities in states that choose to legalize sports gambling will have to first decide whether sports gambling would be beneficial to include in their Indian gaming facilities. Secondly, they will need to look to their tribal-state gaming compacts to determine whether there is a “poison pill” provision that gives them a negotiation advantage. Thirdly, after successful negotiation with the state to amend their current compact to include sports gambling, they will need to redraft and amend their tribal gaming ordinance, resubmit it to the NIGC, and amend and resubmit the tribal-state gaming compact to the Secretary of the Interior for approval.<sup>60</sup> If all goes well and both the NIGC and the Secretary approve the amended ordinance and tribal-state compact, tribes would be at liberty to regulate sports gambling as a class III activity concurrently with the state.<sup>61</sup>

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<sup>60</sup> See 25 U.S.C. § 2710(d)(2)(A), (d)(3)(B).

<sup>61</sup> *Id.* § 2710(d)(5).

## V. TRIBES' DISINTEREST IN SPORTS GAMBLING

A. *Sports Gambling Too Small a Market for Some Tribes*

Many tribes may not be interested in adding sports gambling to their current gaming facility operations because of the complex regulatory issues and ultimately low profit margins. Veteran Nevada sportsbook operator Art Manteris estimates sports gambling profits generate “only a four-to six-percent margin,” are “labor-intensive,” and require “major capital investment.”<sup>62</sup> For example, Pechanga Band of Luiseño Indians Chairman Mark Macarro in California stated that “Indian country is being ‘oversold’” potential sports gambling profits and cites the need for “new studies. . . analytics. . . [and] something quantifiable” to make an accurate projection of such profits.<sup>63</sup> Current estimates gauge a sportsbook generating about “[five] percent on the dollar” in comparison to a bank of slot machines in the same space making eight to ten percent profit with lower overhead costs to operate.<sup>64</sup> The uncertainty surrounding huge profit margins linked to sports gambling is echoed by former member of the NIGC and consultant Norm DesRosiers, who states that “[i]f you’re going to rely on people coming into the casino wagering in a sportsbook, you’re not going to generate much[.]”<sup>65</sup> Similarly, Vice Chair of the Poarch Creek Indians Robbie McGhee said some tribal casinos are “not meccas for gambling” and thus would have little incentive to provide investment capital and seek out the necessary skilled workforce to operate sports gambling.<sup>66</sup>

B. *Some Tribes Would Rather Not Renegotiate Tribal-State Gaming Compacts to Include Sports Gambling*

Though a few tribes in Arizona and Connecticut have expressed interest in sports gambling and supported legislative efforts to legalize it, many tribes in other states are impartial on the matter.<sup>67</sup> Tribes in Minnesota, Michigan, and Washington have shown little interest in embracing sports gambling, in

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<sup>62</sup> Dave Palermo, *Why Sports Betting May Not Make Business Sense For Many Tribal Casinos*, LEGAL SPORTS REP. (Oct. 9, 2017, 11:58 AM), <https://www.legalsportsreport.com/15937/business-sense-for-tribes-and-sports-betting/>.

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

<sup>64</sup> Nick Sortal, *Some Indian Casinos Cautious About Sports Wagering*, CDC GAMING REPS. (Jan. 30, 2018, 9:01 PM), <https://www.cdcgamingreports.com/commentaries/some-indian-casinos-cautious-about-sports-wagering/>.

<sup>65</sup> Palermo, *supra* note 62.

<sup>66</sup> *Id.*

<sup>67</sup> Dave Palermo, *Tribes Scramble To Figure Out How Sports Betting Can Fit Into Indian Gambling Under Federal Law*, LEGAL SPORTS REP. (Aug. 3, 2017, 4:51 PM), <https://www.legalsportsreport.com/14890/tribes-sports-betting-and-federal-law/>.

particular because of the favorable nature of their current tribal-state gaming compact.<sup>68</sup> As many as twelve tribes in Michigan, twenty-five tribes in Washington, and eleven tribes in Minnesota began the negotiation process of their tribal-state gaming compacts, despite the previous uncertainty of sports gambling's legality without "an appetite for expanded gambling" or "any effort by the tribes to engage in sports wagering at the state level[.]"<sup>69</sup> As mentioned previously, tribes in this scenario would likely not want to renegotiate the current tribal-state gaming compacts, and would seek to create new gaming compacts with different revenue-sharing percentages, should the state push to legalize sports gambling. This turns on a position of leverage and negotiation advantage for either party, depending on the tribe's circumstances. For the fifty-eight tribes mentioned here, a new compact with more favorable terms seems likely in light of PASPA's invalidation, if the state chooses to move in that direction.

## VI. TRIBAL-STATE COMPACTING ISSUES

With the prospect of new state legislation for sports gambling and the potential for new tribal-state compact negotiations, old compacting issues previously before the Tenth and Fifth Circuit Court of Appeals and the Supreme Court of the United States will unavoidably be raised again. The seminal case of disagreement between state government and tribes in compact negotiations is *Seminole Tribe of Florida v. Florida*.<sup>70</sup> This 1996 Supreme Court case began with the state of Florida "refus[ing] to enter into any negotiation for inclusion of [certain gaming activities] in a tribal-state compact," thereby violating the "requirement of good faith negotiation" contained in § 2710(d)(3) [of IGRA]."<sup>71</sup> Although IGRA implies authority to initiate a cause of action against a state government for failing to negotiate a tribal-state compact in good faith,<sup>72</sup> the Supreme Court ruled in favor of Florida and affirmed the dismissal of the Seminole tribe's lawsuit, holding that the "Eleventh Amendment prevent[s] Congress from authorizing suits by Indian tribes against States for prospective injunctive relief to enforce legislation enacted pursuant to the Indian Commerce Clause[.]"<sup>73</sup> ultimately granting the states sovereign immunity from lawsuits brought by Indian tribes.<sup>74</sup> *Seminole* can be viewed as a monumental case that effectively undercut tribes' abilities to force state governments to negotiate gaming compacts in good faith, and placed the states in a position of power; absent a waiver of the state's sovereign immunity, there is no longer a remedy against states that refuse to negotiate or renegotiate their respective gaming

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

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

<sup>70</sup> *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

<sup>71</sup> *Id.* at 52 (quoting petitioner's complaint).

<sup>72</sup> 25 U.S.C. § 2710(d)(7)(A)(i)–(B) (2012).

<sup>73</sup> *See Seminole Tribe*, 517 U.S. at 53.

<sup>74</sup> 25 U.S.C. § 2710(d)(7)(A)(i).

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compacts.<sup>75</sup>

In 1999, as a response to *Seminole* and its protection of states' ability to assert sovereign immunity, regulations governing Class III gaming procedures were codified by the Bureau of Indian Affairs as a final agency action.<sup>76</sup> These regulations granting the Secretary of the Interior the ability to issue Class III gaming procedures ("Secretarial procedures") in the absence of a tribal-state compact would eventually be challenged by states as well.<sup>77</sup> The Secretarial procedures require a tribe to submit a Class III gaming proposal to the Secretary, who then submits the tribe's proposal to the Governor and the Attorney General of the State where the gaming is proposed.<sup>78</sup> The Governor and Attorney General then have sixty days to comment, agree, or submit an alternative proposal.<sup>79</sup> If the state refuses to negotiate or submit its proposal to a mediator for the tribe and state after sixty days, then the Secretary must review the Indian tribe's proposal to determine if several factors are met;<sup>80</sup> then, within sixty days, notify the Indian tribe, the Governor, and the Attorney General of the State in writing<sup>81</sup> that they, the Secretary, have determined there are no objections to the Indian tribe's proposal,<sup>82</sup> or have identified unresolved issues and areas of disagreements in the proposal.<sup>83</sup> The Secretary must then invite the Indian tribe, the Governor, and the Attorney General to an informal conference to resolve the identified issues and disagreements within thirty days of notification.<sup>84</sup> Within thirty days of the informal conference, the Secretary must prepare and mail to the tribe, Governor, and Attorney General<sup>85</sup> a report that summarizes the informal conference results,<sup>86</sup> or a final decision either setting forth the Secretary's proposed Class III gaming procedures for the tribe, or disapproving the proposal for any of the reasons listed in 25 C.F.R. 291.8(a).<sup>87</sup>

"In 1995[,] representatives of the Kickapoo Traditional Tribe of Texas met with the Governor of the State of Texas's staff to discuss the possibility of

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<sup>75</sup> If tribes cannot (1) sue the state to force compact negotiations or (2) use secretarial procedures issued by the Secretary, there is no other legal recourse for them to operate class III gaming activities in their gaming facilities. *See Seminole Tribe*, 517 U.S. at 53; *Texas v. United States*, 362 F. Supp. 2d 765, 767 (W.D. Tex. 2004). *See also infra* note 99 and accompanying text.

<sup>76</sup> Class III Gaming Procedures, 64 Fed. Reg. 17535, 17536 (Apr. 12, 1999) (to be codified at 25 C.F.R. pt. 291).

<sup>77</sup> *See Texas*, 362 F. Supp. 2d at 767; *Pueblo of Pojoaque v. New Mexico*, 863 F.3d 1226, 1236 (10th Cir. 2017).

<sup>78</sup> 25 C.F.R. § 291.7(a) (2018).

<sup>79</sup> *Id.* § 291.7(b)(1)–(3), (c).

<sup>80</sup> *Id.* § 291.8(a)(1)–(7).

<sup>81</sup> *See id.* § 291.8(b).

<sup>82</sup> *See id.* § 291.8(b)(1).

<sup>83</sup> *See id.* § 291.8(b)(2).

<sup>84</sup> *Id.*

<sup>85</sup> *See id.* § 291.8(c).

<sup>86</sup> *See id.* § 291.8(c)(1).

<sup>87</sup> *See id.* § 291.8(c)(2).

negotiating a compact to conduct Class III gaming in Texas.”<sup>88</sup> When the State of Texas refused to negotiate, the Kickapoo tribe filed a lawsuit against the state for failing to negotiate in good faith.<sup>89</sup> Ultimately, Texas’s motion to dismiss the Kickapoo tribe’s suit was granted on April 2, 1996.<sup>90</sup> In response to the dismissal, in 2003, the Kickapoo Tribe submitted a Class III gaming application to the Department of the Interior in accordance with the Secretarial Procedures regulation.<sup>91</sup>

Four months later, in March 2004, the State of Texas filed a lawsuit against the Kickapoo Tribe and the U.S. Department of Interior in the U.S. District Court for the Western District of Texas.<sup>92</sup> Though the lawsuit was dismissed, the State of Texas filed an appeal with the United States Court of Appeals for the Fifth Circuit, asserting the State’s stance that the Secretary of the Interior had no authority under IGRA to promulgate Class III procedures absent a gaming compact.<sup>93</sup> The Fifth Circuit held that “[t]he secretarial procedures violate[d] the unambiguous language of IGRA and congressional intent by bypassing the neutral judicial process that centrally protects the state’s role in authorizing tribal Class III gaming[,]” and subsequently reversed the District Court’s decision.<sup>94</sup> The petition for certiorari to argue this case in the Supreme Court was denied, and Kickapoo is forced to operate its gaming facilities without Class III machines because the state government refused to negotiate a compact.<sup>95</sup> Florida and Texas are not the only states that have had significant disputes in terms of Indian gaming regulation between the state and its tribes.<sup>96</sup>

In July 2017, the Pueblo of Pojoaque in New Mexico lost a similar compacting dispute with the State of New Mexico in the Tenth Circuit Court of Appeals,<sup>97</sup> thus inherently reaffirming the states’ ability to refuse to negotiate a tribal-state compact with tribes for the operation of class III gaming facilities, with little to no relief available for tribes.<sup>98</sup> These legal precedents set an

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<sup>88</sup> *Texas v. United States*, 362 F. Supp. 2d 765, 767 (W.D. Tex. 2004).

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

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

<sup>91</sup> *Id.* at 768.

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

<sup>93</sup> *Texas v. United States*, 497 F.3d 491, 495 (5th Cir. 2007).

<sup>94</sup> *Id.* at 511.

<sup>95</sup> See *Texas Tribes Aim for Level Playing Field with Casino Amendment*, INDIANZ.COM (Apr. 6, 2015), <https://www.indianz.com/IndianGaming/2015/04/06/texas-tribes-aim-for-level-pla.asp>. “The Kickapoo Lucky Eagle Casino offers only Class II games because the state refuses to negotiate a Class III compact.” *Id.*

<sup>96</sup> See generally *Pueblo of Pojoaque v. New Mexico*, 863 F.3d 1226, 1228-31 (10th Cir. 2017).

<sup>97</sup> See *id.* at 1236.

<sup>98</sup> Though the preemption issue discussed in *Pueblo of Pojoaque* is about state regulation of non-Indian vendors that also work with Indian casinos, the dispute is born out of two well-known and previously litigated tribal-state compact negotiation issues: (1) states refusing to negotiate a class III gaming compact and (2) no relief or remedy for tribes to operate class III gaming facilities absent a tribal-state compact.

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awkward tone for potential ongoing tribal-state compact negotiation disputes, as both tribal and state governments with current Indian gaming operations will need to come to the table to discuss the inclusion of sports gambling in a post-PASPA world if either entity elects to make it a part of their gambling operations.

## VII. PRIVATE CARDROOMS IN STATES AND PASPA INVALIDATION

Another issue that perhaps has not received as much attention as it deserves is the potential for disputes to arise between tribes and cardrooms in states that currently have tribal-state gaming compacts with various tribes. California is a prime example, demonstrating that an attempt to legalize sports gambling can result in contention and political pushback from tribal governments due to its \$1 billion dollar cardroom industry.<sup>99</sup> In an ongoing six-year dispute, several California tribes have threatened to sue, alleging the “card room industry is operating banked table games in violation of state law and a constitutional guarantee that tribes alone can offer casino-style gambling.”<sup>100</sup> This is of particular importance in the context of sports betting because the coalition of tribes has been growing and has now indicated that “they will use their political clout to fight any potential statewide legislation or ballot referendum that would enable California’s approximately [seventy-five] card rooms to offer sports betting.”<sup>101</sup>

California Assemblyman and Government Organization Committee Chairman Adam Gray have already sponsored legislation calling for a voter referendum to legalize sports betting in California in anticipation of PASPA’s invalidation by the Supreme Court.<sup>102</sup> This means that, even though California

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If tribes cannot operate class III gaming facilities without a tribal-state compact, and states are refusing to negotiate a tribal-state gaming compact, and arguing that Secretarial procedures are invalid, then it makes it nearly impossible for tribes to operate class III gaming facilities. *See generally* Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996); Texas v. United States, 497 F.3d 491 (5<sup>th</sup> Cir. 2007). Rulings by the Supreme Court of the United States in *Seminole Tribe*, the Court of Appeals for the Fifth Circuit in *Texas v. United States*, and the Court of Appeals for the Tenth Circuit in *Pueblo of Pojoaque*, have left tribes with little to no recourse for the operation of class III gaming facilities in states that raise and refuse to address tribal-state compact negotiation issues. Ultimately, if states refuse to negotiate a compact, tribes are forced to shut down gaming operations or operate illegally. *See Pueblo of Pojoaque*, 863 F.3d at 1236 (“Because the Pueblo’s gaming activities are not conducted pursuant to a compact or an alternative mechanism permitted under IGRA, the Pueblo’s present gaming is unlawful under federal law[.]”).

<sup>99</sup> Dave Palermo, *Sports Betting Progress in California Faces Possible Roadblock over Card Room Games*, LEGAL SPORTS REP. (Dec. 11, 2017, 9:19 AM), <https://www.legalsportsreport.com/16900/california-sports-betting-and-card-rooms/>.

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

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

<sup>102</sup> *Id.*

was already preparing for PASPA to be held unconstitutional, California will now need to decide how it will treat the legalization of sports gambling, with very special attention given to facts such as “[t]he state’s politically bifurcated regulatory system. . . working without success to bring card room regulations in conformity with state law[;]” including “[card room] [g]ame rules adopted by the [California Bureau of Gambling Control] [that] appear to violate the intent of California Penal Code 330.11.”<sup>103</sup> Revenue sharing with the State of California from Indian gaming operations has continued to rise, and a recent report by the California State Auditor placed tribal gaming revenues from California and Northern Nevada at almost \$8 billion through 2015.<sup>104</sup> These contributions are used to help fund state services such as law enforcement, fire services, emergency medical services, waste disposal, behavioral health, planning and adjacent land uses, public health, roads, recreation and youth programs, and child care programs, among other things.<sup>105</sup> These are issues that the state of California and its legislature should and will likely consider in both its drafting of a law legalizing sports gambling, and the addressing and settling of the cardrooms and tribal governments dispute. As with many other states, the issue of legalizing sports gambling in California will turn largely on negotiation leverage relative to the interests of the State and its tribes.

#### VIII. SOME TRIBAL CASINOS NOT PROFITABLE ENOUGH TO INVEST IN SPORTS GAMBLING

Currently, there are approximately 480 tribal gaming operations in twenty-eight states, and of those, it is likely that fewer than 100 will create a dedicated sports book now that PASPA has been invalidated.<sup>106</sup> That is largely because adding an additional gambling enterprise with a low profit margin does not make much sense. According to NIGC Chairman Jonodev Chaudhuri, most of the tribal gaming facilities in the country are relatively small and barely make payroll, amounting to what he describes as “basically job programs, located in rural communities[,]” that still manage to provide essential revenue for the well-being of tribes.<sup>107</sup>

Recently, “[a]n Associated Press computer analysis of federal

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<sup>103</sup> *Id.*

<sup>104</sup> CAL. STATE AUDITOR, REP. 2016-036, INDIAN GAMING SPECIAL DISTRIBUTION FUND: THE METHOD USED TO MITIGATE CASINO IMPACTS HAS CHANGED, AND TWO COUNTIES’ BENEFIT COMMITTEES DID NOT ENSURE COMPLIANCE WITH STATE LAW WHEN AWARDING GRANTS (Mar. 7, 2017), <https://www.auditor.ca.gov/pdfs/reports/2016-036.pdf>.

<sup>105</sup> *Id.*

<sup>106</sup> Nick Sortal, *Some Indian Casinos Cautious About Sports Wagering*, CDC GAMING REPS. (Jan. 30, 2018, 9:01 PM), <https://www.cdcgamingreports.com/commentaries/some-indian-casinos-cautious-about-sports-wagering/>.

<sup>107</sup> *Id.*



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unemployment, poverty and public assistance records indicate[d] the majority of American Indians have benefited little” from Indian gaming revenues.<sup>108</sup> This is mostly because, of the 130 tribes that operate gaming facilities, only those closest to “major population centers have thrived while most others make just enough to cover the bills.”<sup>109</sup> Consequently, “[o]f the more than \$30 billion in revenue produced by Indian gaming, just a couple dozen casinos are responsible for about three-fourths of the haul.”<sup>110</sup> As San Carlos Apache Tribal Chairman Raymond Stanley from Arizona put it, even though about eighty percent of the San Carlos Apache Tribe’s casino employees are tribal members, the tribe overall “really [doesn’t] have a lot to show for it at the moment[,]” and thus the “real benefit right now [for the tribe] is employment.”<sup>111</sup>

As indicated by several tribal leaders and Indian gaming experts throughout the country, the profitability for sports betting in Indian gaming is questionable at best, and as such, it makes sense for many tribes to observe and evaluate what the return on investment rates are for other tribes that immediately jump into the novel arena of sports gambling. This rings particularly true for tribes that are struggling financially.

#### CONCLUSION

The research firm Eilers & Krejcik Gaming recently published a report estimating that a regulated sports betting market could generate upwards of \$6 billion a year.<sup>112</sup> However, that is a profit margin projection that will have to be divided among both commercial and tribal casinos, and, as the laws of economics would predict, market saturation will surely impact those numbers negatively.<sup>113</sup> While state and tribal governments currently operating gambling establishments may be easily enticed by the thrill associated with the legalization of sports gambling, the complex regulatory structure and sheer logistics of getting such a gaming operation off of the ground may prove too daunting for many tribes. As demonstrated in this paper, there are plenty of reasons for tribes that are not fiscally prepared to invest in such a venture to hold off until there is more dependable data regarding the profitability of sports gambling in a tribal casino

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<sup>108</sup> *Casinos Not Paying Off for Indians*, ABC NEWS, <http://abcnews.go.com/US/story?id=95944&page=1> (last visited Aug 27, 2018).

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

<sup>110</sup> Sortal, *supra* note 106.

<sup>111</sup> ABC NEWS, *supra* note 108.

<sup>112</sup> Darren Heitner, *How Legalized Sports Betting Could Bring in \$6.03 Billion Annually By 2023*, FORBES (Sept. 27, 2017, 7:30 AM), <https://www.forbes.com/sites/darrenheitner/2017/09/27/how-legalized-sports-betting-could-bring-in-6-03-billion-annually-by-2023/#2981f88179ec>.

<sup>113</sup> See *Saturated Market*, THE LAW DICTIONARY, <https://thelawdictionary.org/saturated-market/> (defining “saturated market” as “[a] market with little or no chance of further sales as all prospective customers have the product or a substitute that will do the same job”) (last visited Mar. 3, 2019).

setting.

Just as well, tribes that have current tribal-state gaming compacts with favorable terms to them are less likely to consider renegotiating said compacts; as with any renegotiation, there is always the potential for getting less favorable terms in the new agreement. Tribes currently positioned in a gainful posture will likely be unwilling to compromise or risk their advantageous position for the sake of a new sports gambling venture that has not proved to be more beneficial than, for example, a bank of slot machines. In a similar vein, real estate (read: space) in tribal casinos is a hot commodity, as many tribal-state gaming compacts dictate the number of devices that a tribe can have within the facility.<sup>114</sup> Taking just those few factors into consideration, it would not make sense for some tribes to sacrifice facility space that could be filled with other devices on an area of gambling that has yet to play out in Indian gaming.

For tribes that are financially poised to make such an investment and are willing to negotiate a new or amended tribal-state compact with their respective state governments, sports gambling may work in a post-PASPA world. However, its benefits may be limited to attracting more patrons to the Indian gaming facility, and not necessarily in the profit margin context. In other words, tribal governments willing to take the risk on sports gambling will likely initially be more interested in getting additional people *into* their facility to potentially spend money on other offerings, than they will be in making a large profit from the sports gambling itself – at least until real data and reliable metrics come out for Indian gaming relative to sports gambling.

The legal and regulatory framework and interplay between the federal, state, and tribal governments that has been in place for almost thirty years for Indian gaming will continue to operate in a post-PASPA world, and may give some peace of mind to all three governments, despite the complexities and inter-governmental relations it requires. The biggest shift in law and regulation regarding sports gambling will most certainly come from statutes written by the states as they begin the legalization process after PASPA's invalidation in the Supreme Court. A federal sports gambling regulation scheme would likely be the fastest, most uniform way to provide tribes with guidance nationally, but it is more likely that the federal government will allow the states to make their own legislation for this purpose. This is more practical, as states are ultimately the ones dealing with the complex issues related to compacting with tribes and navigating the sometimes-turbulent waters of matters particular to the state, such as cardrooms, and how those will affect tribal-state relations and state legislation moving forward.

While many states have already begun drafting sports gambling statutes, tribes are anxiously preparing for the renegotiation of tribal-state compacting agreements and the accompanying challenges. It may be easy to focus on the

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<sup>114</sup> Pazcua Yaqui Tribe-State of Arizona Gaming Compact, § 3(c) (2003), *available* at <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/oig/pdf/idc1-024640.pdf>.

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positives of the potential expansion of commercial and Indian gaming, including the novelty of sports gambling and the opportunity to capitalize on a new trend in gaming. However, as the data currently shows, there are plenty of unanswered questions that tribes will need to consider before engaging in a new gaming venture. Ultimately, the complexity of the intergovernmental legal and regulatory framework lends itself to inconsistent and unpredictable projections regarding the legalization of sports gambling in Indian gaming.