

# REGULATED SPORTS BETTING: A NEVADA PERSPECTIVE<sup>1</sup>

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## INTRODUCTION

This article discusses the impact Nevada has had on legal regulated sports betting for the past seventy years. First, an overview and history of Nevada's sports betting regulatory framework will be presented; and, second, lessons learned and issues to consider for states wishing to embark on legalized regulated sports betting such as, integrity, why states and not the federal government should regulate sports betting, how tax rates and fees impact the legal and illegal markets, why technology is a critical component of legal sports wagering, why multiple avenues for consumer protection are essential, and finally how cooperation among all stakeholders is essential and will help create solutions to new challenges.

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<sup>1</sup> *Post-PASPA: An Examination of Sports Betting in America: Hearing Before H. Subcomm. On Crime, Terrorism, Homeland Security, and Investigations*, 115th Cong. (2018) (Background material provided by Becky Harris) (This document is constantly changing as the sports betting environment transforms in the Post-PASPA Environment. It is current as of January 3, 2019. Prior versions of this document were reviewed and edited by my former staff at the Nevada Gaming Control Board. My thanks to Chief James Barbee, Chief Karl Bennison (retired), Chief Kelly Colvin, Chief Dan Douglas, Hearing Officer Chan Lengsavath, and Technology Lab Manager Eberwien for their insights and contributions as well as Carol O'Hare of the Nevada Council on Problem Gambling.) This article was originally provided as an exhibit as part of a presentation before the U.S. Judiciary's Subcommittee on Crime, Terrorism, Homeland Security and Investigations on September 27, 2018 in Washington, D.C.

## I. OVERVIEW AND HISTORY OF NEVADA'S SPORTS BETTING REGULATION

Nevada has several decades' worth of experience with legal regulated sports betting. As early as 1949, Nevada allowed bookmakers to accept bets on professional sports.<sup>2</sup> The first Nevada race books and sports pools were independent from casinos and had informal agreements with the hotels that they would stay out of the casino business as long as the hotels stayed out of the race book and sports pool business.<sup>3</sup> These race books and sports pools were small stand-alone shops referred to as "turf clubs."<sup>4</sup> Some of the turf clubs from the early days include the Derby and Saratoga Clubs and the Hollywood Horse and Sports Book.<sup>5</sup> It is rumored that these early turf clubs were very lucrative.<sup>6</sup> Despite the agreements between the casinos and the turf clubs, sports betting remained unregulated by the State of Nevada.

In 1951, "reacting to a groundswell of opposition to all the illegal sports gambling outside of Nevada, the federal government slapped a 10% tax on Nevada's legal sports books [handle]."<sup>7</sup> More commonly known as the Revenue Act of 1951, a law still in effect today, this excise tax "drove a lot of the legitimate operators either out of business or into the untaxed underground."<sup>8</sup>

During the 1955 legislative session, the Nevada Legislature created the Gaming Control Board within the Nevada Tax Commission.<sup>9</sup> The Board's purpose at that time was to eliminate the undesirable elements in Nevada gaming, to provide regulations for the licensing and the operation of gaming,

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<sup>2</sup> See Richard N. Velotta, *Legalize Sports Wagering Elsewhere Might Not Affect Nevada Much*, L.V. SUN (Jan. 6, 2013, 2:00 AM) (For approximately 70 years bookmakers in Nevada have accepted legal bets on sporting events).

<sup>3</sup> David G. Schwartz, *Why Congress Should Repeal a Federal Tax on Sports Betting*, CDC GAMING REPORTS, INC. (Mar. 11, 2015, 10:21 AM), <https://www.cdcgamingreports.com/commentaries/why-congress-should-repeal-a-federal-tax-on-sports-betting/>; Aaron Grey, *The Vegas Era: Major Sports Betting Legislation in the USA (Part II)*, SPORTS BETTING DIME (Oct. 10, 2019), <https://www.sportsbettingdime.com/guides/legal/sports-betting-history-part-ii/>.

<sup>4</sup> STATE BAR OF NEV. PUBLICATIONS DEP'T & GAMING LAW SECTION OF THE STATE BAR OF NEV., NEVADA GAMING LAW PRACTICE AND PROCEDURE MANUAL, Sec 8.01, at 8-2-8-3 (2016) [hereinafter NEV. GAMING LAW PRACTICE AND PROCEDURE MANUAL]; Anthony Curtis, *Question of the Day – 17 November 2017*, L.V. ADVISOR (Nov. 17, 2017), <https://www.lasvegasadvisor.com/question/sports-betting-history/>.

<sup>5</sup> Curtis, *supra* note 4 (owned by Jackie Gaughan and by Jimmy "the Greek" Snyder, respectively); see also *Jackie Gaughan Bio*, WORLD CASINO INDEX (last visited Dec. 15, 2019), <https://www.worldcasinoindex.com/bios/jackie-gaughan/>.

<sup>6</sup> Curtis, *supra* note 4 (it is speculated that Jimmy "the Greek" Snyder was making \$2 million a week in the mid-1950s).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; see also Schwartz, *supra* note 3.

<sup>9</sup> *About Us*, NEV. GAMING CONTROL BOARD, <https://gaming.nv.gov/index.aspx?page=2> (last visited Dec. 3, 2019).

and to make sure gaming taxes were correctly reported to the state.<sup>10</sup> It was not until 1959, with the creation of the Nevada Gaming Commission, that the current framework for regulated gaming in Nevada was created.<sup>11</sup>

The ten percent tax at the federal level “drove legitimate Nevada casinos out of sports betting.”<sup>12</sup> In order for legalized sports betting to reestablish itself, an appropriate tax structure was necessary. This tax structure would need to both provide a basis for which legal operators could offer bets in a safe regulated market and persuade others to join this regulated system while leaving behind the competing illegal market.

In 1974, U.S. Senator Howard Cannon, D-Nev., succeeded in passing a bill that reduced the ten percent excise tax to two percent.<sup>13</sup> Casinos began to see the benefits of offering sports betting and “within a decade,” the majority of turf clubs ceased to exist while race books and sports pools became amenities inside the casinos.<sup>14</sup> While the first race book and sports pool to open inside a casino occurred in 1975, at the Union Plaza,<sup>15</sup> Nevada Gaming Control Board records show the last turf club in Nevada closed its doors in the fall of 1996.

The 1977 Nevada Legislature established a public policy for gaming by enacting the following:

1. The legislature hereby finds, and declares to be the public policy of this state, that:
  - (a) The gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants.
  - (b) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming. . .[is] conducted honestly and competitively. . .[and] that gaming is free from criminal and corruptive elements.
  - (c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments, the manufacture, sale or

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<sup>10</sup> *Id.*

<sup>11</sup> See *Gaming Commission*, NEV. GAMING CONTROL BOARD, <https://gaming.nv.gov/index.aspx?page=3> (last visited Dec. 3, 2019).

<sup>12</sup> Schwartz, *supra* note 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Curtis, *supra* note 4.

distribution of gaming devices and associated equipment. . . .

(d) All establishments where gaming is conducted and where gaming devices are operated, and manufacturers, sellers and distributors of certain gaming devices and equipment. . . must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State. . . and to preserve the competitive economy and policies of free competition of the State of Nevada.

2. No applicant for a license or other affirmative commission approval has any right to a license or the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this chapter or chapter 464 of NRS is a revocable privilege, and no holder acquires any vested right therein or thereunder.<sup>16</sup>

This general philosophy has guided Nevada's legalized gambling market for more than forty years.<sup>17</sup> Though the language has been amended over time, the statute has been augmented, but not fundamentally changed.<sup>18</sup>

Despite the decrease in federal taxation on race books and sport pools to two percent, the two percent tax was a financial hardship and as such only a few casinos offered betting on sports. Race books and sports pool operators maintain a very low house advantage and therefore operate a low-margin business.<sup>19</sup>

In 1982, Congress lowered the tax on legal Nevada sports books to 0.25 percent, but kept intact the two percent levy on illegal bookmaking operations.<sup>20</sup> The Revenue Act of 1951 allows the federal government to collect taxes not only from Nevada, but with the recent repeal of PASPA, any other jurisdiction that implements legal regulated sports wagering.<sup>21</sup>

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<sup>16</sup> NEV. REV. STAT. § 463.0129 (1999).

<sup>17</sup> *Id.* (amendments to this statement of public policy have been made only ten times in 40 years).

<sup>18</sup> *See generally id.*

<sup>19</sup> Eric Ramsey, *Nevada Congresswoman Calls For End to Federal Sports Betting Handle Tax*, LEGAL SPORTS REP. (Dec. 13, 2017), <https://www.legalsportsreport.com/16955/federal-sports-betting-handle-tax/>; *see also Sportsbook Profit Margins*, SPORTS INSIGHTS, <https://www.sportsinsights.com/betting-tools/sportsbook-profit-margins/> (last visited Dec. 3, 2019).

<sup>20</sup> Schwartz, *supra* note 3.

<sup>21</sup> *See generally* Dustin Gouker, *Legislative Tracker: Sports Betting*, LEGAL

In the early days, sports wagering was not regulated in the same form or to the degree it is today. However, with the decrease in the federal excise tax burden, enhanced state oversight, and dedicated state resources, Nevada has been and continues to regulate sports betting with integrity and success. In fact, in 2018, Nevada race books and sports pools saw almost \$5 billion “in handle,” or the total amount wagered.<sup>22</sup>

In the era of legalized sports betting in the United States, there are those who feel that the Nevada model should not be emulated.<sup>23</sup> As the most mature regulated gaming market in the United States, Nevada shares its successful model with interested jurisdictions to serve as a foundation from which those jurisdictions can assess their public policy considerations and determine the best regulatory process for them.

Every entity that conducts wagering in Nevada is subject to a rigorous licensing investigation to ensure that the entity itself, and the individuals associated with it, meet Nevada’s strict gaming standards and are persons of the highest caliber.<sup>24</sup> Key employees involved in the operation of a sports pool or race book are required to be fully licensed by the Nevada Gaming Commission.<sup>25</sup> Every time there is a new licensing event, such as a change in job responsibilities or an employee promotion, investigations begin anew and licensee is again brought before the Nevada Gaming Control Board and Commission.<sup>26</sup>

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SPORTS REP. (last updated Sept. 4, 2019), <https://www.legalsportsreport.com/sportsbetting-bill-tracker/> (as of the writing of this article, 13 U.S. jurisdictions currently offer legalized sports betting and 7 more, including Puerto Rico, have authorized sports betting but are not currently offering wagering); see also Kelsey McCarron, *Puerto Rico Sports Betting Bill Signed into Law by Governor*, TOPUSBETS (July 31, 2019), <https://www.topusbets.com/news/puerto-rico-sports-betting-bill-signed-into-law-by-governor>.

<sup>22</sup> *Legal Nevada Sports Betting*, LEGAL SPORTS BETTING (Sept. 25, 2019), <https://www.legalsportsbetting.com/nevada/>; Todd Dewey, *Nevada Sportsbooks Win Record \$301M in 2018 from \$5B in Bets*, L.V. REV. J. (Jan. 31, 2019), <https://www.reviewjournal.com/sports/betting/nevada-sportsbooks-win-record-301m-in-2018-from-5b-in-bets-1586522/>.

<sup>23</sup> When comparing the Nevada and United Kingdom models for sports betting, significant differences are apparent. Specifically, in the United Kingdom there is no federal law overlay such as the Wire Act for operators to comply with and credit cards can be used for gambling purposes. See Debbie, *Sports Betting Laws in Nevada Are Outdated: Major League Baseball*, iGAMING POST (Jan. 12, 2018), <https://gaming-awards.com/NEWS/sports-betting-laws-in-nevada-are-outdated-major-league-baseball/>; Joss Wood, *Will Nevada Finally Allow Sports Bettors to Sign Up Online?*, LEGAL SPORTS REP. (Sept. 12, 2018, 2:03 PM), <https://www.legal-sportsreport.com/23602/nevada-sports-betting-online-signup/>.

<sup>24</sup> Nev. Gaming Comm’n Reg. § 3.090 (2019).

<sup>25</sup> Nev. Gaming Comm’n Reg. § 3.110 (2019).

<sup>26</sup> Nev. Rev. Stat. § 463.165 (2007); Nev. Rev. Stat. § 463.530 (1993); Nev. Rev. Stat. § 463.569 (2013); Nev. Rev. Stat. § 463.5735 (2013); NEV. GAMING LAW PRACTICE AND PROCEDURE MANUAL, *supra* note 4, at § 2.01(3).

Wagers of all types, including sports wagers, are taken under only the strictest of state government controls. Nevada sports books must comply with significant statutory, regulatory, and internal controls standards. Nevada imposes strict audit and accounting requirements on its licensees.<sup>27</sup> Nevada's sports betting systems documents important detailed information relating to all aspects of sports wagering activity including required information for each wager received, every win paid out, results of events, changes in odds and results, authorization for voids, large wagers and large payouts, exception reports, and other relevant information needed to adequately audit the operations of the book.<sup>28</sup> Sports books must also maintain both a minimum on-hand bankroll and an approved restricted reserve account with a financial institution that guarantee payment of wagers.<sup>29</sup>

The Nevada Gaming Control Board routinely audits sports book operators both in terms of financial accountability and process accountability.<sup>30</sup> When conducting an audit, among other things, Gaming Control Board agents will go to a sports book, observe how bets are taken, see if the correct processes are being followed if a bet is voided, and make sure the appropriate information is captured on the ticket.<sup>31</sup> Additionally, surveillance requirements are imposed where wagers are offered.<sup>32</sup>

As the most mature legally regulated sports betting jurisdiction in the United States, Nevada has a depth of knowledge and a breadth of understanding that can only come with experience. It has much to offer new jurisdictions wishing to legalize sports wagering in the aftermath of the repeal of PASPA.

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<sup>27</sup> See Nev. Gaming Comm'n Reg. § 5.013 (2019), Nev. Gaming Comm'n Reg. § 5.115 (2019), Nev. Gaming Comm'n Reg. § 5.190 (2019), Nev. Gaming Comm'n Reg. § 5.225-5.240 (2019); see also Nev. Gaming Comm'n Reg. § 6 (2019), Nev. Gaming Comm'n Reg. § 14.010 (2019), Nev. Gaming Comm'n Reg. § 22 (2019), Nev. Gaming Comm'n Reg. § 26B (2019), Nev. Gaming Comm'n Reg. § 26C (2019); see STATE OF NEV. GAMING CONTROL BOARD, MINIMUM INTERNAL CONTROL STANDARDS, RACE AND SPORTS (2008) [hereinafter MINIMUM INTERNAL CONTROL STANDARDS], <https://gaming.nv.gov/modules/showdocument.aspx?documentid=4549>.

<sup>28</sup> See MINIMUM INTERNAL CONTROL STANDARDS, *supra* note 27.

<sup>29</sup> Nev. Gaming Comm'n Reg. § 6.150.

<sup>30</sup> See MINIMUM INTERNAL CONTROL STANDARDS *supra* note 27; NEV. GAMING LAW PRACTICE AND PROCEDURE MANUAL, *supra* note 4, at § 15.01.

<sup>31</sup> See generally MINIMUM INTERNAL CONTROL STANDARDS, *supra* note 27 (mandating auditing requirements for casinos).

<sup>32</sup> See generally Nev. Gaming Comm'n Reg. § 5A (2019) (This regulation mandates the type of monitoring casinos should participate in when patrons are placing various types of wagers).

## II. THE NEVADA REGULATORY STRUCTURE: LESSONS LEARNED AND IMPORTANT CONSIDERATIONS FOR FUTURE STATES ADOPTING A LEGAL REGULATED SPORTS BETTING FRAMEWORK.

As the rollout of state and tribal regulation of legal sports betting continues throughout the United States, the Nevada regulatory model can provide a foundation for some of the weightier matters which must be addressed when creating a robust gaming regulatory structure.

### *A. Integrity in the Game Is One of the Most Important Aspects When Regulating Sports Betting.*

Nevada's stated public policy, as discussed above, is fundamental to all forms of gaming, regardless of the jurisdiction. It is understandable that as more states create their own sports betting models and offer wagering, concerns about integrity might proliferate. One integrity issue involves the game itself. Often there are unarticulated concerns about how the game is played; the conditions of the playing environment; interactions between the coaches, referees and player(s); how the officiating is conducted; the interactions between players; player health; how the owners of the teams conduct themselves; etc. Because there is no regulatory authority to which sports leagues are accountable, sports leagues have the responsibility to self-police and regulate these matters as well as the people involved within their organizations.

Another integrity issue involves the betting action that occurs with respect to sporting events. While the types of bets being placed receives much attention, other issues that are more difficult to resolve include which types of bets should be placed,<sup>33</sup> the types of data captured,<sup>34</sup> how much data should be captured,<sup>35</sup> what is done once the data has been captured,<sup>36</sup> when has too much

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<sup>33</sup> *When Sports Betting Is Legal, the Value of Game Data Soars*, CAPPTERTEK (July 3, 2018), <https://www.cappertek.com/blog.asp?b=when-sports-betting-is-legal-the-value-of-game-data-soars>; Steve Gallaway & Brendan Bussmann, *The Importance of Data in Sports Betting*, GLOBAL GAMING BUS. MAG. (Jan. 27, 2019), <https://ggbmagazine.com/article/the-importance-of-data-in-sports-betting/> (disclosure: the author consults for Global Market Advisors but did not contribute in any way to this article).

<sup>34</sup> Aaron Timms, *Are Super-Nerds Really Ruining US Sports?*, GUARDIAN (Aug. 16, 2018), <https://www.theguardian.com/sport/2018/aug/16/sports-nerds-analytics-data>.

<sup>35</sup> *Id.*; Ryan Ayers, *How Big Data is Revolutionizing Sports*, DATAECONOMY (Jan. 24, 2018), <https://dataeconomy.com/2018/01/big-data-revolutionizing-favorite-sports-teams/>.

<sup>36</sup> Gallaway & Bussmann, *supra* note 33; Bernard Marr, *The Big Risks of Big Data in Sports*, FORBES (Apr. 28, 2017, 1:00 AM), <https://www.forbes.com/sites/be>

data been captured,<sup>37</sup> who owns the data,<sup>38</sup> whether or not data is shared,<sup>39</sup> and if so, how it is shared and with whom,<sup>40</sup> and more importantly which data points are shared or not shared.<sup>41</sup> Still, other concerns center around whether or not a particular type of sporting or “other event” has a “league,” sanctioning body or other organized entity that represents all participants, what happens when an organized league or organized entity decides not to create an integrity structure, or doesn’t want to have to self-police the issues that arise when gaming is offered on its events.<sup>42</sup>

As other U.S. jurisdictions legalize sports betting, the major U.S. sports leagues have indicated they want to control the types of bets that sports pools can offer.<sup>43</sup> The NFL has stated they want the ability to “put the kibosh on certain types of in-game prop bets, arguing that “[t]hese types of bets are significantly more susceptible to match-fixing efforts, and are therefore a source of concern to sports leagues, individual teams, and the athletes who compete.”<sup>44</sup> In a strictly regulated sports betting market, there are no specific bet types that drive the illegal market. What allows the illegal market to flourish is accessibility, convenience, ability to issue credit, and no requirements to report winnings. As there are no regulatory costs to illegal bookmakers, they are able to offer competitive or more attractive odds compared to legal race books and sports pools and as such exact lower commission rates (i.e., vigorish).

Match fixing is more likely to occur in illegal markets where there is no regulatory responsibility, where monitoring betting patterns is of no concern, and where line movements may not matter.<sup>45</sup> From the time Nevada established

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<sup>37</sup> Timms, *supra* note 34.

<sup>38</sup> John Holden, *Can Leagues Own Data Rights When it Comes to US Sports Betting?*, LEGAL SPORTS REP. (May 28, 2018), <https://www.legalsportsreport.com/20745/leagues-and-fees-in-sports-betting/>.

<sup>39</sup> Marr, *supra* note 36.

<sup>40</sup> Ayers, *supra* note 35.

<sup>41</sup> Marr, *supra* note 36; Katie Russell, *Why Sports Teams Should Avoid Relying on Consent to Comply With GDPR*, LAWINSPORT (Aug. 15, 2018), <https://www.lawinsport.com/content/articles/item/why-sports-teams-should-avoid-relying-on-consent-to-comply-with-gdpr>; Charlie Sammonds, *Data Collection in Sports: An Ethical and Legal Minefield*, INNOVATION ENTERPRISE, <https://channels.theinnovationenterprise.com/articles/data-collection-in-sports-an-ethical-and-legal-minefield> (last visited Dec. 20, 2019).

<sup>42</sup> Nev. Gaming Comm’n Reg. § 22.1201 (2019) (“Other event” is a designation for certain types of bets sports books can offer).

<sup>43</sup> Rey Mashayeki, *Inside the Battle for the Future of Sports Betting*, FORTUNE (Apr. 10, 2019), <https://fortune.com/long-form/sports-betting-battle/>.

<sup>44</sup> Mike Florio, *NFL Wants Official Data Used for Gambling, Restrictions on Certain Types of Bets*, NBC SPORTS (Sept. 26, 2018, 4:42 PM), <https://profootballtalk.nbcsports.com/2018/09/26/nfl-wants-official-data-used-for-gambling-restrictions-on-certain-types-of-bets/>.

<sup>45</sup> See Minhyeok Tak et al., *The Problems and Causes of Match-Fixing: Are Legal*



its sports betting regulatory framework, around 1982, several sports betting scandals have been discovered by Nevada bookmakers. The Nevada Gaming Control Board has also been instrumental in helping to uncover and investigate allegations of insider information and point shaving.

Some of the biggest scandals in U.S. sports history include the following:

#### 1919 Chicago Black Sox

“Eight Chicago White Sox Players...were banned from baseball for life for conspiring with gamblers to throw the 1919 World Series in exchange for cash.”<sup>46</sup>

#### 1951 College basketball point-shaving scandal

Thirty-two players were arrested and admitted to accepting bribes from 1947 to 1950 to fix eighty-six games. This scandal involved City College of New York, winner of the NCAA and National Invitational Tournament titles in 1950, as well as New York University, Long Island University, Manhattan College, Bradley, Toledo, and Kentucky (which suspended its basketball program from the 1952–1953 season).<sup>47</sup>

#### Late 1970s

Nevada regulated sports betting model and modern sports books begin to develop.<sup>48</sup>

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*Sports Betting Regimes to Blame?*, 4 J. CRIMINOLOGICAL RES., POL'Y & PRAC. 73, 77 (2018). Sometime in the 2008–2009 timeframe, a proposition bet was taken off the betting board in Nevada at the request of the Nevada Gaming Control Board because of indications that the outcome was known prior to the start of the event and concern that someone with inside information could potentially make a bet. In 2015, the Nevada Gaming Control Board allowed for certain wagers to be rescinded due to concerns around high value wagers that were placed on a specific rare outcome. A high dollar wager was placed for \$100,000 on the Mayweather/Pacquiao fight to end in a draw. The high dollar coupled with a wager on a rare outcome raised enough concern about suspicious betting activity that the Chair of the Nevada Gaming Control Board gave approval for rescission of the wager to William Hill. The rescission of the wagers was made *prior* to the start of the fight.

<sup>46</sup> Todd Dewey, *Las Vegas Bookmakers Know a Fix When They See One*, L.V. REV. J. (Sept. 8, 2017, 5:54 PM), <https://www.reviewjournal.com/sports/betting/las-vegas-bookmakers-know-a-fix-when-they-see-one/> (there is no record of any wagers placed in Nevada).

<sup>47</sup> *Id.* There is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada.

<sup>48</sup> Roger Aitken, *U.S. Sports Betting Market: Could New Jersey Eclipse Nevada to Become No. 1?*, FORBES (Aug. 12, 2018, 2:49 PM), <https://www.forbes.com/sites/rogeraitken/2018/08/12/u-s-sports-betting-market-could-new-jersey-eclipse-nevada-to-become-no-1/#7a25351427ca>.

1978 Boston College basketball point-shaving scandal

Mobster Henry Hill and Richard “The Fixer” Perry, a twice convicted sports fixer, conspired during the 1978–1979 season to fix nine games with the help of three Boston College players. Boston College Eagles player Rick Kuhn received a ten-year prison sentence for his role. Ultimately, he only served twenty-eight months of that sentence.<sup>49</sup>

1985 Tulane basketball point-shaving scandal

John “Hot Rod” Williams, a former NBA player, was involved in shaving points in exchange for money and cocaine along with four other Tulane players. **Las Vegas bookmakers helped uncover** this scandal, which resulted in Tulane dropping its basketball program.<sup>50</sup>

1989 Pete Rose

Pete Rose was banned from baseball for betting on the Cincinnati Reds while he managed them.<sup>51</sup> An Ohio bookmaker told prosecutors that he took as much as \$1 million in bets from Pete Rose.<sup>52</sup>

1994 Arizona State basketball point-shaving scandal

Sun Devils players Stevin “Hedake” Smith and Isaac Burton fixed four games in the 1993–1994 season by conspiring with gamblers. **Las Vegas bookmakers helped uncover the scheme** by alerting authorities to suspicious betting patterns after taking around \$900,000 in wagers on an Arizona State–Washington game, which would typically generate \$40,000 in wagers.<sup>53</sup>

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<sup>49</sup> Dewey, *supra* note 46 (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

<sup>50</sup> *Id.*

<sup>51</sup> Hilary Russ, *U.S. States Should Not Copy Nevada Sports Betting Law: MLB*, WHBL (June 8, 2018, 4:34 PM), <https://whbl.com/news/articles/2018/jun/08/us-states-should-not-copy-nevada-sports-betting-law-mlb/>.

<sup>52</sup> *Rose Bet up to \$1 Million, Bookie Says*, DESERET NEWS (Apr. 25, 1989, 12:00 AM), <https://www.deseret.com/1989/4/25/18805262/rose-bet-up-to-1-million-bookie-says> (no Nevada sports pools or race books are known to have taken any direct action from Mr. Rose).

<sup>53</sup> Dewey, *supra* note 46 (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

1995 Northwestern point-shaving scandal

Kenneth Dion Lee and Dewey Williams were indicted in a point-shaving scandal alleging they “took money to insure [sic] that the Wildcats lost by more than the point spread in three games in early 1995.”<sup>54</sup>

2001 University of Florida

**NCAA requested information from the Nevada Gaming Control Board** regarding the betting activity of a University of Florida basketball player who gave inside information on games to a bookmaker.<sup>55</sup>

2004–2006 Toledo football and basketball point-shaving scandal

In the first major gambling case involving two sports on a college campus, Rockets football and basketball players conspired with gamblers to shave points in games from 2004 to 2006. **Kenny White, who owned the Las Vegas Sports Consultants odds-making firm at the time, first alerted the NCAA to suspicions of point shaving** at Toledo after noticing irregular betting patterns on its games.<sup>56</sup>

2007 NBA Referee Tim Donaghy

Veteran NBA official Tim Donaghy was sentenced to fifteen months in prison in 2007 for betting on NBA games he officiated, for making calls that affected the point spreads and totals in those games, and providing inside information to gamblers.<sup>57</sup>

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<sup>54</sup> Pam Belluck, *College Basketball: Ex-Northwestern Players Charged in Point-Shaving*, N.Y. TIMES (Mar. 27, 1998), <https://www.nytimes.com/1998/03/27/sports/college-basketball-ex-northwestern-players-charged-in-point-shaving.html> (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

<sup>55</sup> *Dupay Allegedly Shared Gambling Winnings*, L.A. TIMES (Sept. 15, 2001, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2001-sep-15-sp-46059-story.html> (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

<sup>56</sup> Dewey, *supra* note 46 (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

<sup>57</sup> *Donaghy Sentenced to 15 Months in Prison in Gambling Scandal*, ESPN (July 29, 2008), <https://www.espn.com/nba/news/story?id=3509440> (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

### 2011 University of San Diego

The FBI learned about point shaving on USD basketball games after the 2009–2010 season. Five or six games had been compromised. The majority of the wagers were placed with off-shore bookies.<sup>58</sup>

### 2012 Auburn University point-shaving scandal

Varez Ward was indicted for “two counts related to point-shaving accusations.” Ward was alleged to “have conspired with others to bribe or solicit one or more individuals to influence an Auburn game” and for trying “to fix games” and offer money to his teammates.<sup>59</sup>

### 2014 University of Texas El Paso

**The FBI in El Paso reached out to the Nevada Gaming Control Board** about UTEP basketball in January 2014. Three players were kicked off the team for betting on games. A bookmaker unsuccessfully attempted to recruit the players to fix a game but did not get them to bet.<sup>60</sup>

In the majority of the examples above, illegal bookmakers and illegal bookmaking operating independent of regulated sports betting provided the conditions that fostered point-shaving and match-fixing. When significant sums were wagered in regulated sports books, it was readily apparent that suspicious activities were taking place. While one might think that significant sums of money are involved in match fixing schemes, quite the opposite is the functional reality.

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<sup>58</sup> See generally Rob Dauster, *FBI: San Diego Point-Shaving Scandal Netted 'More than \$120,000'*, ESPN SPORTS (May 22, 2013, 11:52 AM), <https://collegebasketball.nbcsports.com/2013/05/22/fbi-san-diegos-brandon-johnson-paid-up-to-10000-per-game-to-shave-points/> (some small wagers designed to avoid detection were made with Nevada sports pools and there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

<sup>59</sup> Scott Gleeson, *Former Auburn Player Indicted in Point-Shaving Scandal*, USA TODAY SPORTS (June 4, 2013, 6:05 PM), <https://www.usatoday.com/story/sports/ncaab/2013/06/04/former-auburn-guard-varez-ward-indicted-in-point-shaving-scandal/2388831/> (there is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

<sup>60</sup> Aaron Martinez, *Bookie in UTEP Basketball Betting Scandal Pleads Guilty*, EL PASO TIMES (Oct. 21, 2016 6:21 PM), <https://www.elpasotimes.com/story/news/crime/2016/10/21/bookie-utep-betting-scandal-pleads-guilty/92487014/> (No significant bets were taken on the games with Nevada sports pools and race books. There is no record that any inside knowledge of the fix was utilized when wagers were placed in Nevada).

In a highly regulated, legal sports betting market, like Nevada, integrity in sports betting on the gaming side is maintained through the consistent efforts of the Enforcement Division of the Nevada Gaming Control Board, along with the Nevada sports book operators who are actively involved in monitoring betting lines, watching for unusual betting activity, and successfully uncovering attempts to fix games.

*B. States Are in the Best Position to Regulate Sports Betting.*

States are best equipped to regulate sports betting within their borders. It is a responsibility that the states and tribal jurisdictions take seriously and perform with fidelity. Federal regulation would only add unnecessary costs, delay in the licensing process, increase taxation, and create additional complications. “The federal government has historically played no role in the discharge of the traditional regulatory functions of licensing, enforcement, and audit.”<sup>61</sup> “Congress has no real expertise in establishing gaming regulatory regimes.”<sup>62</sup> Whereas states and tribal jurisdictions have had decades to develop their expertise and to strictly regulate gaming.

It would take several years to establish a federal regulatory model. In the meantime, Nevada has had its sports betting regulatory system in place for over forty years and other states have begun to establish their systems. A federal system of regulation would only create additional barriers to entry into the legal sports betting industry and establish unnecessary additional layers of regulation. Federal regulation would put legal regulated sports betting at a greater disadvantage because another level of regulation would increase the overall price of betting products.

*C. Tax Rates and Fee Structures Can Dramatically Influence Both the Legal and Illegal Sports Betting Market.*

It is imperative that jurisdictions embarking on legalized sports betting understand the impact that tax rates and fee structures have on both legalized regulated sports betting markets and the illegal sports betting market.

To foster a robust and healthy legal sports betting market, state tax structures **must** be reasonable. Nevada already has a strong model for sports betting in place; one that has been refined over decades. The State of Nevada has buttressed that model with significant resources in the form of an enforcement structure, audit and accounting controls, and minimum internal control standards. Over the past forty years Nevada has developed a specialized

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<sup>61</sup> Keith C. Miller & Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 UNLV GAMING L.J. 153, 156 (2018).

<sup>62</sup> *Id.* at 174.

regulatory knowledge for sports betting that cannot be easily replicated in a short period of time.

Nevada and other U.S. jurisdictions accept a certain level of risk when pricing their offerings, that other models such as the United Kingdom do not accept. Operating on thin margins, typically at five percent or less, navigating volatile revenues with the unpredictability of game outcomes, and a constant need to be competitive, race books and sports pools have almost as much on the line as the bettors do. The race books and sports pools have to hope that their line setters can anticipate the outcome of a game better than the sports enthusiast who places a wager. A good example of the thin margins and high volatility in sports betting comes from Las Vegas. As the Las Vegas Golden Knights continued its quest for the Stanley Cup during the 2018 season, Nevada race books and sports pools were looking at potential losses ranging from \$5-7 million (U.S. dollar).<sup>63</sup>

New jurisdictions engaging in legalized sports wagering will not simply be competing against other states with legalized sports betting, they will also be competing with off-shore illegal operators along with illegal operators within their own jurisdictions.<sup>64</sup> Reasonable tax rates are essential in order for legal sports betting products to be competitive with illegal providers.

Any additional fees, to the extent they are implemented, serve only to facilitate off-shore illegal gambling operations by making legal betting products that much more expensive. A well-regulated gaming market shifts betting away from the illegal market to the degree the legal market satisfies any given bettor.<sup>65</sup> After the repeal of PASPA, state gaming regulators released a statement declaring, “[a]dditional fees, including the so-called ‘integrity fee,’ increase the costs of legal sports betting, siphon much needed tax revenues away from state coffers, and increase state regulatory burdens.”<sup>66</sup> Keeping taxes low and eliminating fees helps ensure that legal betting products can be priced competitively with illegal market products.

Nevada gaming licensees pay a number of taxes and fees.<sup>67</sup> The most

<sup>63</sup> Todd Dewey, *Sports Books Excited for Golden Knights Despite Possible \$7M Loss*, L.V. REV. J. (May 24, 2018, 7:17 PM), <https://www.reviewjournal.com/sports/betting/sports-books-excited-for-golden-knights-despite-possible-7m-loss/>.

<sup>64</sup> See generally Joe Lemire, *New U.S. Sports Betting Markets Have Started Data War*, SPORTTECHIE (June 29, 2018), <https://www.sporttechie.com/sports-betting-of-ficial-data-rights-mlb-nfl-nba-pga-nhl-ncaa/>.

<sup>65</sup> Media Statement, U.S. State Gaming Regulators Forum, State Gambling Regulators Equipped and Ready to Take Charge on Legal Sports Betting Industry (May 22, 2018) [hereinafter U.S. Gaming Regulators Forum] <https://gaming.nv.gov/modules/showdocument.aspx?documentid=13251.>

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

<sup>67</sup> See generally *License Fees Tax Rate Schedule*, NEV. GAMING CONTROL BOARD, <https://gaming.nv.gov/index.aspx?page=94> (last visited Dec. 20, 2019) (explaining that fuller explanation of the types of taxes and fees paid by non-restricted licensees in Nevada).

common gaming tax across jurisdictions is the gross gaming tax.<sup>68</sup> In Nevada, nonrestricted gaming licensees (a sports book license is a nonrestricted license) pay gross gaming taxes on monthly basis.<sup>69</sup> Gross Gaming Tax Revenues are calculated on a graduated scale:

- 3.5% of the first \$50,000 during the month, plus
- 4.5% of the next \$84,000, plus
- 6.75% of revenue exceeding \$134,000.<sup>70</sup>

The various fees that have been proposed by major sports leagues and others have devolved from an “integrity fee” to a “royalty fee” to a “commission” to a “processing fee”; and the latest iteration of the fee is called a “share in wagering.”<sup>71</sup> The NBA admitted at Connecticut’s Public Safety Committee Informational Forum that the “fee is not *solely* to preserve the integrity of the game.”<sup>72</sup> A recent survey by the American Gaming Association estimated that together the four major U.S. sports leagues could pull in \$4.2 billion a year in *indirect* revenues with the NFL earning the largest portion of approximately \$2.33 billion.<sup>73</sup> The survey demonstrates how the major U.S. sports leagues stand to benefit, even without a “dedicated” revenue stream, from additional fees or “official data” requirements that would presumably be purchased by legalized, regulated sports books throughout the United States.<sup>74</sup> Interestingly, legalized sports betting actually benefits professional sports and sports leagues. Sports wagering can be a tool to increase fan engagement,

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<sup>68</sup> See NEV. GAMING CONTROL BOARD, *supra* note 67.

<sup>69</sup> NEV. REV. STAT. § 463.370 (2013).

<sup>70</sup> *Id.* § 463.370; see also *License Fees Tax Rate Schedule*, *supra* note 67.

<sup>71</sup> See Hilary Russ, *U.S. Sports Leagues Could Reap \$4.2 Billion a Year from Legal Betting: Survey*, REUTERS (Oct. 18, 2018, 2:52 AM), <https://www.reuters.com/article/us-usa-gambling-sports/exclusive-u-s-sports-leagues-could-see-4-2-billion-annually-from-legal-betting-idUSKCN1MS1CT>; see generally NEV. REV. STAT. § 463.172 (1997); see NEV. REV. STAT. § 463.160 (2013) (the term “share in wagering” is particularly problematic as NRS 463.160(1) states “Except as otherwise provided in subsection 4 and NRS 463.172, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others: . . . (d) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or sports pool. . . .” By continuing to ask for a share of the amount wagered, the leagues may trigger state regulatory licensing requirements and find themselves subject to the jurisdiction of gaming regulators).

<sup>72</sup> Jill R. Dorson, *Connecticut Not Interested in Paying Leagues a Sports Betting ‘Royalty’*, SPORTS HANDLE (Mar. 1, 2018), <https://sportshandle.com/connecticut-sports-betting-hearing-nba-mlb-fee> (emphasis in original).

<sup>73</sup> Russ, *supra* note 71.

<sup>74</sup> See Rey Mashayekhi, *Inside the Battle for the Future of Sports Betting*, FORTUNE (Apr. 10, 2019), <https://fortune.com/longform/sports-betting-battle/>.

particularly with regard to sports that are seeing a decline in television ratings.<sup>75</sup>

The following charts<sup>76</sup> provide context for how increased fee structures would not only impact Nevada specifically, but also all race books and sports pools generally. These charts show how additional fees of just 1% and 0.25% would have impacted the Super Bowl “write and win” in Nevada for the past twenty-eight years.

Nevada Super Bowl Historic Write and Win					
Year	Super Bowl Write	Super Bowl Win Amounts	1% Fee (Super Bowl Write X 1% Fee)	Win less 1% Fee (Super Bowl Win Amount less 1% Fee)	Estimated Percentage Fee Collections from Super Bowl Win (Super Bowl Win Amount X 6.75%)
1991	\$ 40,080,409	\$ 3,512,241	\$ 400,804	\$ 3,111,437	\$ 237,076
1992	\$ 50,334,277	\$ 301,280	\$ 503,343	\$ (202,063)	\$ 20,336
1993	\$ 56,811,405	\$ 7,174,869	\$ 568,114	\$ 6,606,755	\$ 484,304
1994	\$ 54,483,221	\$ 7,481,541	\$ 544,832	\$ 6,936,709	\$ 505,004
1995	\$ 69,591,818	\$ (396,674)	\$ 695,918	\$ (1,092,592)	\$ -
1996	\$ 70,907,801	\$ 7,126,145	\$ 709,078	\$ 6,417,067	\$ 481,015
1997	\$ 70,853,211	\$ 2,265,701	\$ 708,532	\$ 1,557,169	\$ 152,935
1998	\$ 77,253,246	\$ 472,033	\$ 772,532	\$ (300,499)	\$ 31,862
1999	\$ 75,986,520	\$ 2,906,601	\$ 759,865	\$ 2,146,736	\$ 196,196
2000	\$ 71,046,751	\$ 4,237,978	\$ 710,468	\$ 3,527,510	\$ 286,064
2001	\$ 67,661,425	\$ 11,002,636	\$ 676,614	\$ 10,326,022	\$ 742,678
2002	\$ 71,513,304	\$ 2,331,607	\$ 715,133	\$ 1,616,474	\$ 157,383
2003	\$ 71,693,032	\$ 5,264,963	\$ 716,930	\$ 4,548,033	\$ 355,385
2004	\$ 81,242,191	\$ 12,440,698	\$ 812,422	\$ 11,628,276	\$ 839,747
2005	\$ 90,759,236	\$ 15,430,138	\$ 907,592	\$ 14,522,546	\$ 1,041,534
2006	\$ 94,534,372	\$ 8,828,431	\$ 945,344	\$ 7,883,087	\$ 595,919
2007	\$ 93,067,358	\$ 12,930,175	\$ 930,674	\$ 11,999,501	\$ 872,787
2008	\$ 92,055,833	\$ (2,573,103)	\$ 920,558	\$ (3,493,661)	\$ -
2009	\$ 81,514,748	\$ 6,678,044	\$ 815,147	\$ 5,862,897	\$ 450,768
2010	\$ 82,726,367	\$ 6,857,101	\$ 827,264	\$ 6,029,837	\$ 462,854
2011	\$ 87,491,098	\$ 724,176	\$ 874,911	\$ (150,735)	\$ 48,882
2012	\$ 93,899,840	\$ 5,064,470	\$ 938,998	\$ 4,125,472	\$ 341,852
2013	\$ 98,936,798	\$ 7,206,460	\$ 989,368	\$ 6,217,092	\$ 486,436
2014	\$ 119,400,822	\$ 19,673,960	\$ 1,194,008	\$ 18,479,952	\$ 1,327,992
2015	\$ 115,986,086	\$ 3,261,066	\$ 1,159,861	\$ 2,101,205	\$ 220,122
2016	\$ 132,545,587	\$ 13,314,539	\$ 1,325,456	\$ 11,989,083	\$ 898,731
2017	\$ 138,480,136	\$ 10,937,826	\$ 1,384,801	\$ 9,553,024	\$ 738,303
2018	\$ 158,586,934	\$ 1,170,432	\$ 1,585,869	\$ (415,437)	\$ 79,004
<b>Totals</b>	<b>\$ 2,409,443,826</b>	<b>\$ 175,625,334</b>	<b>\$ 24,094,438</b>	<b>\$ 151,530,895</b>	<b>\$ 11,854,710</b>

<sup>75</sup> Miller & Cabot, *supra* note 61.

<sup>76</sup> Press Release, Nevada Gaming Control Board, (Feb. 4, 2019), [https://gaming.nv.gov/modules/showdocument.aspx?doc\\_umentid=14343](https://gaming.nv.gov/modules/showdocument.aspx?doc_umentid=14343); Press Release, Nevada Gaming Control Board (Feb. 9, 2010) (on file with author); Press Release, Nevada Gaming Control Board (Feb. 2, 2000) (on file with author). Using the following figures from the State of Nevada, even a one-percent fee would provide more revenue to a sports league than to the state budget (tax rate of 6.75 percent) because the proposed sports league fees would be assessed against write (the total amount wagered) and tax dollars are collected on the win (the amount paid to winning bettors). In years where the margins are especially low, sports books would have to pay fees to sports leagues despite negative revenues and the tax collection would be zero.



Nevada Super Bowl Historic Write and Win						
Year	Super Bowl Write	Super Bowl Win Amounts	0.25% Fee (Super Bowl Write X 0.25% Fee)	Win less 0.25% Fee (Super Bowl Win Amount less 0.25% Fee)	(Super)	Estimated Percentage Fee Collections from Super Bowl Win (Super Bowl Win Amount X 6.75%)
1991	\$ 40,080,409	\$ 3,512,241	\$ 100,201	\$ 3,412,040	\$	237,076
1992	\$ 50,334,277	\$ 301,280	\$ 125,836	\$ 175,444	\$	20,336
1993	\$ 56,811,405	\$ 7,174,869	\$ 142,029	\$ 7,032,840	\$	484,304
1994	\$ 54,483,221	\$ 7,481,541	\$ 136,208	\$ 7,345,333	\$	505,004
1995	\$ 69,591,818	\$ (396,674)	\$ 173,980	\$ (570,654)	\$	-
1996	\$ 70,907,801	\$ 7,126,145	\$ 177,270	\$ 6,948,875	\$	481,015
1997	\$ 70,853,211	\$ 2,265,701	\$ 177,133	\$ 2,088,568	\$	152,935
1998	\$ 77,253,246	\$ 472,033	\$ 193,133	\$ 278,900	\$	31,862
1999	\$ 75,986,520	\$ 2,906,601	\$ 189,966	\$ 2,716,635	\$	196,196
2000	\$ 71,046,751	\$ 4,237,978	\$ 177,617	\$ 4,060,361	\$	286,064
2001	\$ 67,661,425	\$ 11,002,636	\$ 169,154	\$ 10,833,482	\$	742,678
2002	\$ 71,513,304	\$ 2,331,607	\$ 178,783	\$ 2,152,824	\$	157,383
2003	\$ 71,693,032	\$ 5,264,963	\$ 179,233	\$ 5,085,730	\$	355,385
2004	\$ 81,242,191	\$ 12,440,698	\$ 203,105	\$ 12,237,593	\$	839,747
2005	\$ 90,759,236	\$ 15,430,138	\$ 226,898	\$ 15,203,240	\$	1,041,534
2006	\$ 94,534,372	\$ 8,828,431	\$ 236,336	\$ 8,592,095	\$	595,919
2007	\$ 93,067,358	\$ 12,930,175	\$ 232,668	\$ 12,697,507	\$	872,787
2008	\$ 92,055,833	\$ (2,573,103)	\$ 230,140	\$ (2,803,243)	\$	-
2009	\$ 81,514,748	\$ 6,678,044	\$ 203,787	\$ 6,474,257	\$	450,768
2010	\$ 82,726,367	\$ 6,857,101	\$ 206,816	\$ 6,650,285	\$	462,854
2011	\$ 87,491,098	\$ 724,176	\$ 218,728	\$ 505,448	\$	48,882
2012	\$ 93,899,840	\$ 5,064,470	\$ 234,750	\$ 4,829,720	\$	341,852
2013	\$ 98,936,798	\$ 7,206,460	\$ 247,342	\$ 6,959,118	\$	486,436
2014	\$ 119,400,822	\$ 19,673,960	\$ 298,502	\$ 19,375,458	\$	1,327,992
2015	\$ 115,986,086	\$ 3,261,066	\$ 289,965	\$ 2,971,101	\$	220,122
2016	\$ 132,545,587	\$ 13,314,539	\$ 331,364	\$ 12,983,175	\$	898,731
2017	\$ 138,480,136	\$ 10,937,826	\$ 346,200	\$ 10,591,625	\$	738,303
2018	\$ 158,586,934	\$ 1,170,432	\$ 396,467	\$ 773,965	\$	79,004
Totals	\$ 2,409,443,826	\$ 175,625,334	\$ 6,023,610	\$ 169,601,724	\$	11,854,710

#### D. Government Mandates Are Not Necessary.

If sports leagues are looking to monetize sports betting, there is nothing that prevents them from contracting with sports book operators. To date, the MGM Resorts International and the National Basketball Association (NBA),<sup>77</sup> New York Jets,<sup>78</sup> the National Hockey League (NHL),<sup>79</sup> Major

<sup>77</sup> David Purdum & Darren Rovell, *NBA Signs Deal with MGM to be Gaming Partner*, ESPN (July 31, 2018), [http://www.espn.com/chalk/story/\\_id/24245142/nba-first-league-betting-sponsor-deal-mgm](http://www.espn.com/chalk/story/_id/24245142/nba-first-league-betting-sponsor-deal-mgm).

<sup>78</sup> News Release, MGM Resorts, New York Jets Announce Partnership with MGM Resorts (Oct. 31, 2018), <https://investors.mgmresorts.com/investors/news-releases/press-release-details/2018/New-York-Jets-Announce-Partnership-With-MGM-Resorts/default.aspx>.

<sup>79</sup> Todd Prince, *MGM Resorts, NHL Sign Sports Betting Partnership Deal*, L.V. REV. J. (Oct. 29, 2018, 8:58 PM), <https://www.reviewjournal.com/business/casinos-gaming/mgm-resorts-nhl-sign-sports-betting-partnership-deal/>.

League Baseball (MLB),<sup>80</sup> and Major League Soccer (MLS)<sup>81</sup> have entered into these types of agreements. William Hill, a major U.S. sports book operator, announced a sponsorship agreement with the Las Vegas Golden Knights and the New Jersey Devils.<sup>82</sup> Caesars Palace Las Vegas Hotel & Casino signed a deal with the Philadelphia 76ers, the New Jersey Devils, the NBA, and the NHL.<sup>83</sup> The National Football League (NFL) chose Caesars to be its first casino sponsor.<sup>84</sup> Under the terms of the multi-year sponsorship, Caesars will have exclusivity with respect to NFL trademarks in promoting Caesars casino properties.<sup>85</sup> The gaming company 888 scooped up the first online gaming deal with NFL via the New York Jets.<sup>86</sup>

In a written statement submitted to the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations, Jocelyn Moore, Executive Vice President for Communications and Public Affairs for the NFL, requested that any legislation Congress might consider include the requirement that states with legalized sports betting use “official league data.”<sup>87</sup> The NBA, MLB, and the Professional Golfers’ Association (PGA) have been united in

<sup>80</sup> Bill Shaikin, *MLB Becomes Third Major Sports League to Form Partnership with MGM*, L.A. TIMES (Nov. 27, 2018, 7:15 PM), <http://www.latimes.com/sports/mlb/la-sp-mlb-mgm-partnership-20181127-story.html>.

<sup>81</sup> *MLS Becomes MGM’s Fourth US Major League Betting Partner*, GAMES MAG. BRASIL (Mar. 20, 2019), <https://www.gamesbras.com/english-version/2019/3/20/mls-becomes-mgms-fourth-us-major-league-betting-partner-12049.html>.

<sup>82</sup> Matt Rybaltowski, *Devils Ink Deal with William Hill, Becoming First Team in New Jersey to Land Sports Book Partnership*, FORBES (Oct. 25, 2018, 7:10 AM), <https://www.forbes.com/sites/mattrybaltowski/2018/10/25/devils-ink-deal-with-william-hill-becoming-first-team-in-new-jersey-to-land-sports-book-partnership/#79af1a091e22>.

<sup>83</sup> Matt Rybaltowski, *Caesars Lands Sports Betting Partnership with Sixers, Devils in Unique Cross-Sport Deal*, FORBES (Oct. 30, 2018, 1:44 PM), <https://www.forbes.com/sites/mattrybaltowski/2018/10/30/caesars-lands-sports-betting-partnership-with-sixers-devils-in-unique-cross-sport-deal/#3aae67e51eb8>.

<sup>84</sup> Press Release, National Football League, NFL Selects Caesars Entertainment as First Casino Sponsor (Jan. 3, 2019, 9:00 AM), <http://www.nfl.com/news/story/0ap3000001007289/article/nfl-selects-caesars-entertainment-as-first-casino-sponsor>.

<sup>85</sup> *Id.*

<sup>86</sup> Phillip Conneller, *New York Jet and 888 Ink First Ever NFL-Online Gaming Tie up, Deal Already Ruffling Feathers*, CASINO.ORG (Oct. 30, 2018), <https://www.casino.org/news/new-york-jets-and-888-ink-first-ever-nfl-online-gaming-tie-up>.

<sup>87</sup> Brett Smiley, *Here’s What Happened at the House Judiciary Hearing on Sports Betting*, SPORTSHANDLE (Sept. 27, 2018), <https://sportshandle.com/heres-what-happened-at-the-house-judiciary-hearing-on-sports-betting/> (The Hearing took place on September 27, 2018. Video of the Hearing and written statements from each of the witnesses is linked within the article); *see also* Mike Florio, *NFL Wants Official Data Used for Gambling, Restrictions on Certain Types of Bets*, NBC SPORTS (Sept. 26, 2018, 4:42 PM), <https://profootballtalk.nbcsports.com/2018/09/26/nfl-wants-official-data-used-for-gambling-restrictions-on-certain-types-of-bets/> (the NFL wants “official data” used for gambling restrictions on certain types of bets).

their desire to require legal betting markets to use their “official data.”<sup>88</sup> The MGM has signed deals with both the NBA<sup>89</sup> and NHL<sup>90</sup> for access to their data. In the case of the NHL, MGM will “receive access to ‘previously unseen enhanced NHL proprietary game data.’”<sup>91</sup> More recently, MGM announced that its agreement with Sportradar would provide for a “wide range of pre-match and live betting services along with bet stimulation content such as live match trackers.”<sup>92</sup> The American Gaming Association has advocated that data contracts should be between sporting bodies and gaming companies.<sup>93</sup>

While there is a universal vested interest in ensuring that the data used in sports betting is accurate, there is no general agreement among states or sports leagues as to what that process or framework should be. A few states have discussed requiring the use of “official data.”<sup>94</sup> During the 2019 state legislative sessions, both Illinois and Tennessee accommodated the league promoted policy of requiring use of official league data for in-play wagering.<sup>95</sup> Confusion persists as to what constitutes “official data,” how data could or should be obtained for legal wagering purposes, and how that data could or should be used.

In terms of data delivery, “live streaming” is the industry standard.<sup>96</sup> While consumers generally think the data feed is instantaneous, there is typically a ten to thirty second delay in streaming.<sup>97</sup> “Real-time, on the other hand, has a lag of less than a half-second.”<sup>98</sup> Until technology delivery improves, many of the in-play wagering examples used to support the need for ensuring that only “official league data” be utilized are not realistic. Moreover,

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<sup>88</sup> Dustin Gouker, *New ‘US Sports Integrity’ Website Pushes Leagues’ Vision on Sports Betting Data*, LEGAL SPORTS REP. (Apr. 10, 2018), <https://www.legalsportsreport.com/19730/sports-betting-integrity-and-data-rights/>; Joe Lemire, *New U.S. Sports Betting Markets Have Started a Data War*, SPORTTECHIE (June 29, 2018), <https://www.sportstechie.com/sports-betting-official-data-rights-mlb-nfl-nba-pga-nhl-ncaa/>.

<sup>89</sup> Purdum & Rovell, *supra* note 77.

<sup>90</sup> Dan Rosen, *NHL, MGM Resorts Form Sports Betting Partnership*, NHL NEWS (Oct. 29, 2018), <https://www.nhl.com/news/nhl-mgm-resorts-sports-betting-partnership/c-301392322>.

<sup>91</sup> Prince, *supra* note 79.

<sup>92</sup> *MGM GVC Interactive Announces Sportradar as an Exclusive Supplier of U.S. Sports Data*, BUS. WIRE (Nov. 8, 2018, 8:15 AM), <https://www.businesswire.com/news/home/20181108005434/en/MGM-GVC-Interactive-Announces-Sportradar-Exclusive-Supplier/>.

<sup>93</sup> Lemire, *supra* note 88.

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

<sup>95</sup> Brett Smiley, *How ‘Unofficial’ Sports Betting Data May Be Better than ‘Official League Data’*, SPORTSHANDLE (June 5, 2019), <https://sportshandle.com/unofficial-official-league-data>.

<sup>96</sup> Joe Lemire, *Media Tech in Sports Betting, Part Two: Streaming and Data Rights*, SPORTTECHIE (June 6, 2018), [www.sportstechie.com/sports-gambling-ott-streaming-technology-data-rights/](http://www.sportstechie.com/sports-gambling-ott-streaming-technology-data-rights/).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

while advancing every day, the technological capability to offer these types of betting products does not currently exist.

In terms of historical statistics and players names, the Eighth Circuit held that because the information used by a fantasy baseball game company was in the public domain, the First Amendment trumped any state law rights, and that the data could be utilized without a license.<sup>99</sup>

So far, sports leagues have been relatively successful in monetizing the legalization of sports betting though not necessarily as anticipated. It will be interesting to see what state legislatures decide to do during their 2020 Legislative sessions in terms of data requirements and delivery.

*E. Combating Illegal Operators Is Going to Be and Will Be an Ongoing Reality, Regardless of Any Federal Legislation.*

Illegal bookmakers do not worry about complying with regulations, paying taxes, or establishing reserve accounts. While some illegal operators may pay fees, perhaps pay taxes, and may even follow some regulations, what we know for sure is that many illegal operators serve their customers with sophisticated and attractive websites, provide a seamless transaction experience, and make betting easy for their customers. Illegal bookmakers do not have the same regulatory infrastructure costs, can offer more betting options, are more convenient, provide payment plans, and extend credit. This is all done without regulatory oversight, patron dispute processes, protection of patron funds, or responsible gambling messaging.

In order to effectively combat illegal operators, regulators will continue to enforce the law with regard to gaming, while developing and exploring new enforcement strategies. An effective way to eradicate illegal activities is through coordinated and productive law enforcement efforts by fostering interstate agreements that will allow for “[c]oordinated action among jurisdictions offering sports betting against illegal bookmaking, illegal gambling activities,” unlawful sports bribery, “and any unsuitable and unlawful associations.”<sup>100</sup> Strong support from federal-level enforcement agencies, with their unique police powers, would also facilitate the dismantling of illegal gambling operators.

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<sup>99</sup> C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media, L.P., 505 F.3d 818, 823–24 (8th Cir. 2007).

<sup>100</sup> U.S. State Gaming Regulators Forum, *supra* note 65.

*F. Sports Wagering and Its Technology Needs to Maintain the Highest Standards of Integrity, Accountability, and Regulatory Compliance.*

Nevada regulates all gambling, including sports betting, with comprehensive regulations.<sup>101</sup> Each sports book operator is required to undergo Nevada's strictest licensing process.<sup>102</sup> The Nevada Gaming Control Board investigates the owners, officers, directors, and members of entities seeking a Nevada gaming license.<sup>103</sup> Two types of investigations are conducted: financial and criminal background.<sup>104</sup> The Board uses staff who are experienced and specialized to conduct these investigations. Financial and criminal background investigations are also conducted for executives and key employees who work at sports books.<sup>105</sup> Similar investigations for findings of suitability and licensure are also conducted for shareholders who own more than ten percent of the stock in a gaming company.<sup>106</sup> Even the front-line employees who work in a sports book must pass a background check and be registered with the Board.<sup>107</sup>

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<sup>101</sup> See NEV. REV. STAT. §§ 462–466 and NEV. GAMING COMM'N & NEV. GAMING CONTROL BOARD REG. §§ 1–30 (2019).

<sup>102</sup> See NEV. REV. STAT. § 463.1605 (2005) (stating that a race book or sports pool is required to secure a non-restricted license); Nevada Gaming Comm'n, *Board Information Packet 25*, [https://gaming.nv.gov/modules/show\\_document.aspx?documentid=14995](https://gaming.nv.gov/modules/show_document.aspx?documentid=14995); see also NEV. GAMING LAW PRACTICE AND PROCEDURE MANUAL, *supra* note 4, at § 8.01 p. 8-2.

<sup>103</sup> NEV. REV. STAT. § 463.210 (1981); NEV. REV. STAT. § 463.242 (1981); NEV. REV. STAT. § 463.334 (2015); Nev. Gaming Comm'n Regs, Corporate Licensees § 15.1594-2, § 15.530-1, § 15.585.7-4, and § 15.585.7-5; Limited Partnership Licensees § 15A.030, § 15A.065, § 15A.160, and § 15A.190; Limited Liability Company Licensees § 15B.190; Private Investment Companies § 15C.060 and § 15C.070; and Publicly Traded Corporations and Public Offerings of Securities § 16.400, § 16.405, § 16.410, and § 16.415. (Oct. 24, 2019); NEV. GAMING LAW PRACTICE AND PROCEDURE MANUAL, *supra* note 4, at § 2.01 pp. 2-6–2-9; see Nev. Gaming Control Board, Investigations Division, *Multi-Jurisdictional Personal History Disclosures Form* [hereinafter *Multi-Jurisdictional Personal History Disclosures*], <https://gaming.nv.gov/modules/showdocument.aspx?documentid=14810> (last visited Jan. 10, 2019).

<sup>104</sup> *Multi-Jurisdictional Personal History Disclosures*, *supra* note 103, at 37–47 (for financial background investigation questions), at 28–36 (for criminal background investigation questions).

<sup>105</sup> NEV. REV. STAT. § 463.165 (2007); NEV. REV. STAT. § 463.530 (1993); NEV. REV. STAT. § 463.569 (2013); NEV. REV. STAT. § 463.5735 (2013); see *Multi-Jurisdictional Personal History Disclosures*, *supra* note 103.

<sup>106</sup> NEV. REV. STAT. § 463.530 (1993) (beneficial owners of any interest in holding companies must apply for a finding of suitability and Nevada Gaming Commission has discretion to require licensure); NEV. REV. STAT. § 463.595 (1993) (must file for determination of suitability); NEV. REV. STAT. § 463.643 (2011) (beneficial owners of a publicly traded company which own more than ten percent of any class of voting securities must apply for a finding of suitability with the Nevada Gaming Commission); NEV. GAMING LAW PRACTICE AND PROCEDURE MANUAL, *supra* note 4, at § 4.04(2) pp. 4-11–4-12.

<sup>107</sup> See NEV. REV. STAT. § 463.335 (2009).

Once the investigation process has been completed, the three Board members review all of the reports which include the following: personal financial information, education, work and residence histories, involvement in litigation, law enforcement interactions if any, association with other gaming companies and individuals, previous licensing history, character references, tax returns, investment history, and other relevant factors.<sup>108</sup>

At a public meeting, the Board discusses the findings with the applicant and the applicant is asked additional questions.<sup>109</sup> After a public, deliberative process, the Board then makes a recommendation to the Commission.<sup>110</sup> If approval is recommended, the matter is forwarded to the Commission.<sup>111</sup>

The Nevada Gaming Commission is a five-member body that is the policy making piece of Nevada's regulatory structure.<sup>112</sup> The Commission reviews the same materials the Board receives.<sup>113</sup> After another public hearing with the applicant, the Commission engages in its public deliberative process and decides whether or not the license will be issued.<sup>114</sup>

In terms of modern technological developments, many new sports wagering jurisdictions take for granted what Nevada has developed over two decades.<sup>115</sup> In 2001, utilizing an intranet system, Nevada race books and sports pools provided the option to wager from home.<sup>116</sup> Automated telephone account wagering began in 2002.<sup>117</sup> By 2003, remote kiosks and remote race wagering account terminals were placed in both non-restricted and restricted locations.<sup>118</sup> Wagering kiosks were introduced in 2004.<sup>119</sup> A few years later, in

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<sup>108</sup> See generally *Multi-Jurisdictional Personal History Disclosures*, *supra* note 103.

<sup>109</sup> See generally NEV. REV. STAT. § 463.110 (1983) (because of Nevada's open meeting laws, Nevada Gaming Control Board members are prohibited from discussing pending matters and as such, it is general practice for board members to ask questions during the meetings).

<sup>110</sup> In 2018, the practice of the Board was to engage in a deliberative process during its monthly public meeting and then make a recommendation to the Commission. If two or more Board members approved the matter, it was then forwarded to the Commission.

<sup>111</sup> NEV. REV. STAT. § 463.210 (1981); NEV. REV. STAT. § 463.220 (2017).

<sup>112</sup> NEV. REV. STAT. § 463.022 (1959); NEV. REV. STAT. § 463.150 (1981).

<sup>113</sup> NEV. REV. STAT. § 463.140 (1995); Nev. Gaming Comm'n Reg. § 2.030(6) (2018).

<sup>114</sup> NEV. REV. STAT. § 463.029 (1983); NEV. REV. STAT. § 463.120 (2017); NEV. REV. STAT. § 463.170 (2009).

<sup>115</sup> E-mail from Jim Barbee, Chief Technology Division of the Nevada Gaming Control Board, to Becky Harris, Distinguished Fellow, Gaming and Leadership (Oct. 17, 2019, 08:53 AM PST) (on file with author).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Evan Simonsen, *Against the Spread: The Legality of Full-Service Sports*

2006, intra-casino wireless sports wagering was emerged, and in 2010, intra-state mobile smart phone wagers could be placed in Nevada.<sup>120</sup>

With the implications of the 1966 Federal Wire Act on sports betting, many jurisdictions are concerned with the effectiveness of geofencing. Geolocation is the process by which a user's location can be identified through use of their mobile device.<sup>121</sup> Geolocation typically calls upon multiple resources such as GPS, WiFi, or mobile cell tower triangulation through the use of radio-frequency (hereinafter "RF") technology.<sup>122</sup> In addition to RF triangulation, geofencing algorithms may be augmented by the use of IP geolocation data.<sup>123</sup> However, IP geolocation information is spoofable and cannot always be relied upon alone to determine the location of a mobile device.<sup>124</sup> Each mobile operating system provider, such as Android, iOS, and Windows, has implemented a location services function that applications can call on to determine the real-time location of a mobile device.<sup>125</sup>

Geolocation companies, also known as geolocation service providers, use proprietary algorithms to implement a geofence.<sup>126</sup> Geolocation service providers may consider variables such as mobile location service information,

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*Wagering Kiosks*, 4 UNLV GAMING L. J. 241, 248 (2014); *see also Regulators Concerned about Betting Kiosks*, L.V. SUN (Apr. 26, 2004, 10:44 AM), <https://lasvegassun.com/news/2004/apr/26/regulators-concerned-about-betting-kiosks/>.

<sup>120</sup> E-mail from Jim Barbee to Becky Harris, *supra* note 115.

<sup>121</sup> *Geolocating Carmen Sandiego*, GRAVITATE (Dec. 14, 2018), <https://www.gravitatedesign.com/blog/what-is-geolocation/>.

<sup>122</sup> Ana-Maria Roxin et al., *Survey of Wireless Geolocation Techniques*, HAL (Apr. 3, 2010), <https://hal.archives-ouvertes.fr/file/index/docid/470120/filename/IEEE-Globecom-Workshops-2007-NaitSidiMoh.pdf>; *see also* Michael Essany, *The Future of Geofencing and Online Gambling is Here*, MOBILE MARKETING WATCH (Aug. 15, 2013), <https://mobilemarketingwatch.com/the-future-of-geofencing-and-online-gambling-is-here-35290> ("the geotracking technology is spoof proof because it relies on multiple methods for verifying a user's location. One of those methods is triangulation where it gets a fix on a cell phone by figuring out where it is relative to other cell phone towers in the area. Locaid checks the IP (Internet Protocol) address of the user and also checks with a Wi-Fi service provider about the location of a user on its network."); *What is Geofencing? 10 Basics A Marketer Needs to Know*, PLOT PROJECTS (June 27, 2017), <https://www.plotprojects.com/blog/what-is-geofencing/>.

<sup>123</sup> *Why Use Geofencing?*, PLOT PROJECTS, <https://www.plotprojects.com/geofencing/> (last visited Jan. 11, 2020).

<sup>124</sup> Jill R. Dorson, *The Total Dummy's Guide to Sports Betting Geolocation Technology*, SPORTSHANDLE (Apr. 1, 2019), <https://sportshandle.com/geolocation-mobile-sports-betting/>; Tim Fisher, *How to Fake a GPS Location on Your Phone*, LIFEWIRE (May 24, 2019), <https://www.lifewire.com/fake-gps-location-4165524>; *see also* Gravitate, *supra* note 121.

<sup>125</sup> John Murray, *Geofencing Part 1*, MURRAY BLOG, <http://www.johnmurray.io/log/2012/07/11/Geofencing-Part-1.html> (last visited Dec. 28, 2019); *What is Geofencing*, BLUEDOT (2019), <https://bluedot.io/library/what-is-geofencing/>; *see also, Why Use Geofencing?*, *supra* note 123.

<sup>126</sup> Bluedot, *supra* note 125.

GPS information, IP geolocation information, as well as the physical location provided by the mobile device user at the time of registration to determine a confidence level that the mobile device is actually located within the geofenced region.<sup>127</sup> This region could be either at the jurisdictional level, or a more defined area such as the gaming floor of a licensee.<sup>128</sup> Because location data provided by the mobile device is critical to determining the location of the device, a mobile sports wagering application implements several checks to ensure the device is not “spoofing” the location data.<sup>129</sup>

When an application wishes to know the location of the mobile device, it will provide the mobile operating system provider with the unique identifier and signal strength for each cell tower and WiFi access point visible to the device.<sup>130</sup> Using RF triangulation techniques, the mobile operating system provider will use this information to determine with a high degree of accuracy the precise location of the mobile device.<sup>131</sup> Both software and hardware may also be used to create a geofence and to prevent unauthorized users from accessing mobile sports betting software.<sup>132</sup>

To ensure that wagers are only placed in an authorized region, an operator may implement a buffer zone between the border and where the operator can accurately determine a device’s location. Additionally, the closer the proximity to a defined boundary a mobile device is located, the more often a geolocation check may be required to be performed.<sup>133</sup> A geofence can also vary in scale. For example, a statewide geofence consists of a set of coordinates that define the “shape” of the state.<sup>134</sup> The geolocation of a device user wishing to place a sports wager is then compared to the state’s geofence to determine if the user is inside the border or not.

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<sup>127</sup> *Id.*; *The Power of Geofencing and How to Add It to Your Marketing*, SALESFORCE (2019), <https://www.salesforce.com/products/marketing-cloud/best-practices/geofencing-marketing/>.

<sup>128</sup> *See generally* John Murray, *Geofencing Part 2*, MURRAY BLOG (2017), <http://www.johnmurray.io/log/2012/09/10/Geofencing-Part-2.html>.

<sup>129</sup> *See* Jill R. Dorson, *supra* note 124; *Geofencing: Harness the Power of Geofencing*, LOCATIONSMART, <https://www.locationsmart.com/platform/geofencing> (last visited Dec. 28, 2019); *Verifying Transactions with Secure Location Intelligence*, LOCATION SMART, <https://www.locationsmart.com/platform/location> (last visited Jan. 9, 2020).

<sup>130</sup> Bindu Swetha, *What Is Location Tracking and How Does it Work?*, TECHSPIRITED (Dec. 9, 2017), <https://techspirited.com/how-location-tracking-works>; *This Is No Virtual Reality*, LOCATIONSMART (Apr. 4, 2019), <https://www.locationsmart.com/company/news/this-is-no-virtual-reality>.

<sup>131</sup> *See* Bindu Swetha, *supra* note 130; *see also* *How Accurate Can RFID Tracking Be?*, RFID J. (June 8, 2015), <https://www.rfidjournal.com/blogs/experts/entry?11454>.

<sup>132</sup> *See* Jill R. Dorson, *supra* note 124.

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

<sup>134</sup> *See generally* Michael Essany, *supra* note 122.



Additionally, a geofence may be defined at the property level.<sup>135</sup> Property level geofencing may use networked hardware to define borders in addition to a set of coordinates. Device users can be restricted to using mobile applications only in authorized areas.<sup>136</sup> Geofencing and geolocation are key for products such as mobile sports betting which depending on the jurisdiction are limited to intrastate transactions or are only allowed within the bounds of a licensed gaming establishment.

As more and more jurisdictions legalize and regulate sports betting, the use of geofencing and geolocation technologies is critical to ensuring that online and mobile betting is confined to individual state or tribal boundaries as the federal wire act prohibits interstate sports betting.<sup>137</sup>

*G. Consumer Protection Mechanisms Are Essential to Combat the Challenges That Arise for Those Who Are Unable to Gamble Responsibly.*

In Nevada, a person must be twenty-one years old to gamble.<sup>138</sup> This includes placing sports wagers.<sup>139</sup> Nevada has tough wagering account creation requirements. In order to create an account, users must complete the sign-up process in person at a casino where the patron's identity can be verified and ensure that the user is legally allowed to gamble.<sup>140</sup> After a wagering account has been created, Nevada offers mobile gaming for patrons who wish to place sports bets while they are within the geographic boundaries of Nevada.<sup>141</sup> For states embarking on legal regulated sports betting, providing resources for

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

<sup>136</sup> Ana-Maria Roxin et al., *supra* note 122; Bindu Swetha, *supra* note 130; *see e.g.*, GEOCOMPLY, <https://www.geocomply.com> (last visited Dec. 28, 2019) (“Combining the power of iBeacons with GeoComply’s robust geolocation compliance solutions, our indoor solution, PinPoint, allows for gaming to be restricted within specific zones of a gaming property to within a few meters of accuracy. PinPoint was designed specifically for the gaming industry’s unique requirements and offers the same real-time anti-spoofing and fraud benefits as the mobile and desktop solutions. PinPoint’s advanced detection and monitoring system can even anticipate movements to alert players before leaving permitted areas, making for a seamless and uninterrupted play experience.”)

<sup>137</sup> Mark Hichar, *U.S. States May Now Legalize Sports Betting – But the Federal Wire Act Affects State Implementation*, INTERNATIONAL COMPARATIVE LEGAL GUIDE TO: GAMBLING 2019 at 3 (5th ed. 2018); Juan Carlos Blanco, *What Is the Net Effect of the New Wire Act Opinion on Sports Betting?*, LINES (Jan. 20, 2019), <https://www.thelines.com/wire-act-sports-betting/>; *The Federal Wire Act Law of 1961*, GAMBLING LAWS, <https://www.gamblinglaws.org/us/federal-wire-act/> (last visited Dec. 28, 2019).

<sup>138</sup> NEV. REV. STAT. § 463.350 (1991).

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

<sup>140</sup> *See e.g.*, *STN Sports – Official Rules*, STN SPORTS, <https://www.stationcasino.sports.com/rules/> (last visited Jan. 9, 2020).

<sup>141</sup> *Id.*

those who do not know how to or cannot quit gambling is “important to help protect and maintain the credibility” of sports betting activities.<sup>142</sup>

1. *Nevada Gaming Commission Regulations.*

a. *Wagering Accounts*

In terms of wagering account creation, higher standards are required of Nevada gaming licensees than for other types of e-commerce account creators.<sup>143</sup> Nevada licensees are obligated to “know their customers” when creating an account and are required to take additional steps to verify the identity of the account creator.<sup>144</sup> Once a wagering account is created and verified, Nevada licensees are required to create a secure personal identifier for each patron “that is reasonably designed to prevent the unauthorized access to, or use of, the wagering account by any person other than the patron or patrons for whom the wagering account is established.”<sup>145</sup>

While concerns exist regarding inappropriate use by minors, this is an issue that exists in *any* ecommerce online activity, such as online banking or e-commerce retail sites, not just online gambling. The volume of transactions in online banking and e-commerce retail sites is exponentially greater than online gambling.<sup>146</sup> Ultimately, with regard to any type of account that is created, whether traditional or online, it is up to the account creator to ensure their account credentials are protected. Despite the fact that Nevada has protections in place to safeguard against unauthorized account creation or unauthorized access to another person’s account, if account creators refuse to exercise reasonable precautions against unauthorized use, regulations forbidding access to and resources dedicated to responsible gambling choices will not be as effective as they might otherwise be.

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<sup>142</sup> U.S. State Gaming Regulators Forum, *supra* note 65.

<sup>143</sup> *See* Nev. Gaming Comm’n Reg. § 5.225.

<sup>144</sup> Nev. Gaming Comm’n Reg. §§ 5.225(5)–(8).

<sup>145</sup> Nev. Gaming Comm’n Reg. § 5.225(6).

<sup>146</sup> J. Clement, *E-Commerce Worldwide – Statistics & Facts*, STATISTA (Mar. 12, 2019), <https://www.statista.com/topics/871/online-shopping/> (stating that approximately 1.8 billion people purchased products online in 2018); *but see* 2019 iovation Gambling Industry Report, IOVATION at 3, <https://content.iovation.com/resources/iovation-report-2019-gambling-industry.pdf?mtime=20190201115903> (showing that in comparison only 518 million gambling transactions took place during that same 2018 period).

*b. Patron Dispute Resolution Process*

Nevada also has a time-tested patron dispute process that is effective.<sup>147</sup> Nevada Gaming Commission Regulation 7A specifically directs, “[t]his regulation should be liberally construed to achieve fair, just, equitable, and expedient resolutions of all disputes governed by NRS 463.363 and 463.364.”<sup>148</sup> If the dispute is less than \$500, the licensee is required to provide the Board’s information to the patron.<sup>149</sup> In disputes of \$500 or more, the licensee is required to contact the Board.<sup>150</sup> The patron dispute process is intended to be patron “friendly” and the hearing is not conducted pursuant to normal rules of evidence as any relevant evidence is allowed.<sup>151</sup> Nevada Gaming Commission Regulation 10.010 also allows immediate family to represent petitioners, as long as they are not paid.<sup>152</sup> The process is very timely, as the Board only has forty-five days to mail out a decision.<sup>153</sup> A party that disagrees with the initial determination may file a petition with the Board requesting a hearing to reconsider the decision.<sup>154</sup> Nevada’s process allows for twenty days, plus an additional five days for mailing, to request an appeal with the Hearing Examiner, otherwise the dispute is barred from going to the Board or judicial review.<sup>155</sup>

*2. State Funding for Problem Gambling*

For those who suffer from addiction, the State of Nevada provides problem gambling treatment, prevention, workforce development, and program evaluation services through dedicated funding from the state budget and grant funding under the Department of Health and Human Services (DHHS).<sup>156</sup> State

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<sup>147</sup> As jurisdictions around the United States “roll out” their sports betting regulations, refinements will be necessary as patrons challenge sports betting operator procedures. *See generally* NEV. REV. STAT. §§ 463.362–463.366 (1991); *see also* Nev. Gaming Comm’n Reg. § 7A (2019); *see e.g.*, Steve Ruddock, *The Handling of Technical Errors at NJ Sportsbooks is a Work in Progress*, PLAYNJ (Nov. 2, 2018), <https://www.playnj.com/news/technical-errors-nj-sports-betting/26073/> (illustrating regulation and other technical issues that remain in states other than Nevada).

<sup>148</sup> Nev. Gaming Comm’n Reg. § 7A.010 (2019).

<sup>149</sup> NEV. REV. STAT. § 463.362(2)(b) (2009).

<sup>150</sup> NEV. REV. STAT. § 463.362(2)(a) (2009).

<sup>151</sup> Nev. Gaming Comm’n Reg. § 7A.070 (2019).

<sup>152</sup> Nev. Gaming Comm’n Reg. § 10.010 (2019).

<sup>153</sup> NEV. REV. STAT. § 463.362(3) (2009).

<sup>154</sup> NEV. REV. STAT. § 463.363 (1991); *see also* Nev. Gaming Comm’n Reg. § 4 (2019).

<sup>155</sup> *See* NEV. REV. STAT. § 463.363 (1991).

<sup>156</sup> Nev. Dept. of Health & Human Servs., *Problem Gambling Services 2017–2019 Strategic Plan*, Office of Cmty. P’ships & Grants (May 19, 2016), [http://dhhs.nv.gov/uploadedFiles/dhhs.nv.gov/content/Programs/Grants/Programs/Problem\\_Gambling/PGStrategicPlan2017-2019v62316.pdf](http://dhhs.nv.gov/uploadedFiles/dhhs.nv.gov/content/Programs/Grants/Programs/Problem_Gambling/PGStrategicPlan2017-2019v62316.pdf).

funding is generated through a portion of gaming tax revenue which is set aside per statute specifically for this purpose and has been in effect since 2005. DHHS administers this account with input and oversight by the Governor's Advisory Committee on Problem Gambling (ACPG), whose members include representatives of Nevada's gaming industry, mental health and addiction professionals, and other experts in the problem gambling field.<sup>157</sup> The State's vision is to improve the public health of Nevadans through a sustainable and comprehensive system of programs and services that reduce the impact of problem gambling.<sup>158</sup> Certified Problem Gambling Counselors in qualified agencies offer a diverse range of services to both problem gamblers and their family members. In 2019, the Nevada Legislature changed the funding formula for problem gambling by eliminating the requirement that \$2.00 per slot machine per quarter be dedicated to treatment for problem gambling.<sup>159</sup> Problem gambling in Nevada is currently provided for through a state budget general fund allotment each biennium.<sup>160</sup> An increase of approximately \$600,000 was approved for fiscal year 2020–21.<sup>161</sup>

### 3. *Non-Profit Resources for Problem Gambling*

The Nevada Council on Problem Gambling, a private non-profit agency and affiliate of the National Council on Problem Gambling, is the primary advocate and provider of prevention, community outreach, and professional education programs in Nevada.<sup>162</sup> The Council addresses problem gambling as a community health issue, and does not take a position for or against legal gambling.<sup>163</sup> The Council provides the 24-hour Problem Gamblers HelpLine service, whose toll-free number is required by gaming regulation to be posted in every Nevada gaming location.<sup>164</sup> Through this HelpLine, callers are referred to treatment and recovery support services throughout the state, including over 100 weekly Gamblers Anonymous support group meetings.<sup>165</sup> The Council works collaboratively with the gaming industry, regulators, and legislators to ensure effective public policy and programs that promote

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<sup>157</sup> *Id.* at 3.

<sup>158</sup> *Id.* at 1.

<sup>159</sup> *Id.* at 1, 3; *see also* S.B. 535, 2019 Leg., 80th Sess. (Nev. 2019) (illustrating amendment 936 to S.B. 535 which deleted NRS 463.320 subsection (2)(e) requiring the two dollar per slot license fee).

<sup>160</sup> *See generally* Nev. S.B. 535, *supra* note 159.

<sup>161</sup> *See generally* Nev. Dept. of Health & Human Servs., *supra* note 156, at 23.

<sup>162</sup> *Mission and Vision*, NEV. COUNCIL ON PROBLEM GAMBLING, <https://www.nevadacouncil.org/who-we-are/mission-vision/> (last visited Dec. 28, 2019).

<sup>163</sup> NEV. COUNCIL ON PROBLEM GAMBLING, <https://www.nevadacouncil.org/> (last visited Dec. 28, 2019).

<sup>164</sup> *Get Help Now*, NEV. COUNCIL ON PROBLEM GAMBLING, <https://www.nevadacouncil.org/get-help-now/> (last visited Dec. 28, 2019).

<sup>165</sup> *See generally id.*

Responsible Gaming, and also works in partnership with community agencies to integrate problem gambling awareness and prevention programs into schools, mental health and addiction services, and other health promotion activities.<sup>166</sup>

#### 4. Clark County's Problem Gambling Diversion Program

Clark County Nevada has instituted a diversion program for problem gamblers through its court system.<sup>167</sup> Instead of prison or probation, judges now have the discretion to order counseling for those addicted to gambling and retain oversight of their recovery.<sup>168</sup> “Advocates say it’s more cost-effective than incarceration and a proactive way to reduce the number of repeat offenses.”<sup>169</sup>

Each new jurisdiction will have to determine its responsible gambling policy priorities. Establishing partnerships with important community stakeholders to provide a variety of resources is critical in meeting the needs of those who are unable to gamble responsibly. As is the case with the Problem Gambling Diversion Program, Nevada continues to look for productive ways to address problem gambling and mental health concerns.

#### H. Cooperation and Discussion With All Sports Betting Stakeholders Is Essential As Many Issues Are of Mutual Concern.

With the International Center for Gaming Regulation (ICGR) at University Nevada Las Vegas (UNLV) established as the facilitator, U.S. gaming regulators established the U.S. Sports Betting Forum (Forum) in 2018.<sup>170</sup> The Forum provides a neutral setting where stakeholders, regulators, law enforcement, sports organizations, tribal leaders, and others can have an opportunity to communicate across jurisdictions to discuss problems of mutual

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<sup>166</sup> NEV. COUNCIL ON PROBLEM GAMBLING, *supra* note 163; *see also Mission and Vision*, *supra* note 162.

<sup>167</sup> *Help, Not Prison, Offered at New Clark County Gambling Court*, U.S. NEWS & WORLD REP. (Oct. 28, 2018), <https://www.usnews.com/news/best-states/nevada/articles/2018-10-28/help-not-prison-offered-at-new-clark-county-gambling-court>.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *New ‘US Sports Betting Forum’ Established by State Regulators to Discuss Sports Gambling Policy*, CDC GAMING REPORTS INC. (Oct. 17, 2018, 9:24 PM), <https://www.cdcgamingreports.com/new-us-sports-betting-forum-established-by-state-regulators-to-discuss-sports-gambling-policy/>. As of the writing of this article, the US Sports Betting Forum has conducted two meetings: May 15, 2019 in Boston, Massachusetts and October 15, 2019 in Las Vegas, Nevada.

concern and put into place thoughtful solutions crafted from their diverse experience.<sup>171</sup>

Providing a venue and opportunity for the various stakeholders to begin to better understand each other's challenges is a productive place to begin to navigate these complex issues. Hopefully, over time, understanding can be developed, and participants can begin to build consensus around how to best approach their differences.

## CONCLUSION

Sports betting will continue to evolve for the foreseeable future. New technologies, sports book operators, and betting products are entering the market and disrupting the status quo. For jurisdictions considering legalizing sports betting, the Nevada regulatory structure along with its decades of experience in sports betting matters is a good example of how to effectively regulate. It is imperative that consideration be given to assuring the integrity on both on the gaming side of the counter and on the field. As has always been the case for all types of legalized gambling, states and tribal jurisdictions are in the best position to establish and regulate sports betting in the United States. States and tribal jurisdictions should fashion reasonable tax rates and fee structure and reject government mandates for fees and other guaranteed funding mechanisms for sports leagues and organizations. Recognition that combatting illegal activity will be an on-going reality and cooperation in enforcement efforts will be critical to the success of any regulatory scheme. Establishing rigorous technology standards help ensure that states are offering betting products within the appropriate jurisdictional boundaries. Consideration should also be given to developing robust patron dispute resolution processes, establishing consumer protections for all patrons, creating solid responsible gambling programs for those who are susceptible to problem gambling and addiction, and engaging with responsible gambling stakeholders to create a variety of resources within communities to help address the social challenges that are often associated with gaming. Finally, participating in forums where all stakeholders are welcome and can continue to communicate with and educate each other is essential and will help create solutions and assure that important resources are available for the journey ahead.

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<sup>171</sup> Dave Dye, *US Sports Betting Forum Organized by UNLV's International Center for Gaming Regulation*, GAMING TODAY (Oct. 18, 2019, 9:49 AM), [https://www.gamingtoday.com/industry/article/78392-US\\_Sports\\_Betting\\_Forum\\_organized\\_by\\_UNLV\\_s\\_International\\_Center\\_for\\_Gaming\\_Regulation](https://www.gamingtoday.com/industry/article/78392-US_Sports_Betting_Forum_organized_by_UNLV_s_International_Center_for_Gaming_Regulation).