

DO NOT PASS GO, DO NOT COLLECT \$231 MILLION DOLLARS: HOW *NCAA V. GOVERNOR OF NEW JERSEY* COULD NEGATIVELY AFFECT NEVADA'S MONOPOLY ON SPORTS BETTING

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INTRODUCTION

Over the past three years, there has been a highly publicized and ongoing struggle in New Jersey: the state legislators have been fighting to legalize sports betting, yet the Third Circuit Federal Courts have continuously stopped these legislators cold in their tracks.¹ The federal court has struck down multiple New Jersey constitutional amendments because the court holds these amendments are in violation of the Professional and Amateur Sports Protection Act (hereinafter, "PASPA").² PASPA, passed in 1992, is the federal statute that all but completely outlawed sports gambling.³ However, four states—Nevada, Delaware, Montana, and Oregon—are still able to legally generate revenue from sports gambling⁴ because of grandfather provisions in PASPA.⁵ Further, out of the four states, only Nevada was entitled to operate a full state-sponsored sports wagering scheme.⁶ The other states, however, were only allowed to implement the sports betting schemes they already had in existence—this meant that Delaware, Montana, and Oregon were only allowed to implement

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¹ See Nat'l Collegiate Athletic Ass'n v. Christie, (*Christie I Dist. Ct.*) 926 F. Supp. 2d 551 (D.N.J. 2013), *aff'd* Nat'l Collegiate Athletic Ass'n v. Governor of N.J. (*Christie I*), 730 F.3d 208 (3d Cir. 2013); see also Nat'l Collegiate Athletic Ass'n v. Governor of N.J. (*Christie II*), 799 F.3d 259 (3d Cir. 2015) (decision vacated 2015).

² 28 U.S.C. § 3702 (2016).

³ *Id.*

⁴ Eric Meer, Note, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 UNLV GAMING L.J. 281, 287–88 (2011).

⁵ *Id.*; 28 U.S.C. § 3704(a) (2016).

⁶ Meer, *supra* note 4 at 288.

limited sports wagering in the form of lotteries because those states did not previously allow for a full sports wagering scheme.⁷ Additionally, PASPA did allow an exception for New Jersey if the state enacted a sports gambling scheme within one year after the effective date of PASPA.⁸ However, New Jersey failed to do so,⁹ leaving Nevada in sole possession of the only fully functional legalized sports betting system in the country.¹⁰ This monopoly is the only legal game in town concerning the United States sports betting market, where illegal sports betting is estimated to be worth somewhere between \$80 and \$380 billion annually.¹¹

While PASPA may explicitly prohibit legal sports betting in New Jersey, it is unclear whether this law will stay on the books forever. Some critics of PASPA have argued that the law is unconstitutional¹² or that the legalization of sports betting is a zone of experimentation solely for the states.¹³ Other critics have argued that PASPA is now outdated and should be repealed.¹⁴ Additionally, critics suggest that PASPA is not accomplishing what it set out to do, as a recent 2015 study showed that people wager \$95 billion on football games alone, with only \$2 billion being wagered legally.¹⁵ Critics also argue that public policy favors PASPA's demise. These arguments include how legalizing sports betting will provide a new form of taxable income to governments, how there will be more state regulation of a prominent illegal

⁷ *Id.* at 288–89. Oregon has given up its right to operate a sports lottery in order to host NCAA tournament games and Montana has similarly ceased its sports lottery—thus only Delaware and Nevada remain as states with any form of legalized sports wagering.

⁸ *Id.* at 289.

⁹ *Id.*; a debate between legislators ultimately prevented New Jersey from implementing legislation during this one-year period. Joseph F. Sullivan, *Gambling Debate Rages Anew Over Sports*, N.Y. TIMES (Nov. 20, 1991), <http://www.nytimes.com/1991/11/20/nyregion/gambling-debate-rages-anew-over-sports.html?pagewanted=all&src=pm>.

¹⁰ Meer, *supra* note 4, at 288.

¹¹ NAT'L GAMBLING IMPACT STUDY COMM'N, 2–14 (1999), <http://govinfo.library.unt.edu/ngisc/reports/2.pdf>.

¹² See Thomas L. Skinner III, Note, *The Pendulum Swings: Commerce Clause and Tenth Amendment Challenges to PASPA*, 2 UNLV GAMING L.J. 311, 342 (2011).

¹³ See Anthony G. Galasso, Jr., Note, *Betting Against the House (and Senate): The Case for Legal, State-Sponsored Sports Wagering in a Post-PASPA World*, 99 KY. L.J. 163, 170 (2010–2011).

¹⁴ See Meer, *supra* note 4, at 308–09; see also Chil Woo, Note, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)*, 31 CARDOZO ARTS & ENT. L.J. 569, 591, 594–95 (2013); Jason Goldstein, Note, *Take the Money Line: PASPA, Bureaucratic Politics, and the Integrity of the Game*, 11 VA. SPORTS & ENT. L.J. 362, 375–76 (2012).

¹⁵ Thomas Barrabi, *Legalized Sports Gambling? Americans To Bet \$95 Billion On NFL, College Football This Season, Mostly Illegally, Group Says*, INT'L BUS. TIMES (Sept. 9, 2015, 4:02 PM), <http://www.ibtimes.com/legalized-sports-gambling-americans-bet-95-billion-nfl-college-football-season-mostly-2089606>.

activity, and how legalizing sports betting will create even higher fan interest, boosting revenue for sporting leagues such as the National Basketball Association (hereinafter, “NBA”).¹⁶ Further, the United States Court of Appeals for the Third Circuit agreed to vacate its latest August 25, 2015 decision in *National Collegiate Athletic Association* (hereinafter, “NCAA”) v. *Governor of New Jersey* and re-hear oral arguments *en banc*.¹⁷ The rare occurrence of vacating an already published opinion shows that New Jersey’s (as well as other states’) hopes of legalizing sports gambling may still be alive and well.¹⁸

With the wide social outcry against PASPA, it will unlikely remain good law forever, and until the United States Supreme Court rules on the debate regarding the issues, speculation is necessary.¹⁹ Therefore, this note will discuss the potential ramifications for Nevada if Congress were to repeal PASPA or if the Supreme Court would declare PASPA unconstitutional today.

This note will divide its analysis into three parts. Part I will examine why Congress enacted PASPA, why PASPA likely no longer is accomplishing its purpose, and why Congress is likely to repeal it. Part I will also analyze some of the more persuasive arguments regarding PASPA’s constitutionality, giving reasons why the Supreme Court may declare PASPA unconstitutional when it inevitably grants certiorari.

Part II begins with a brief history of the New Jersey arguments that have yet to succeed in the Third Circuit Court of Appeals regarding the case line of *NCAA v. Governor of New Jersey*. Part II will then explain why New Jersey is so adamant about trying to legalize sports betting. Finally, Part II will delve into the aspects surrounding New Jersey’s economic decline, specifically in Atlantic City, and the major reasons underlying the decline.²⁰

Part III analyzes what the potential ramifications may be in Nevada if sports betting were to become legal nationwide. This analysis will primarily come from a comparison between Nevada’s current monopoly in the sports betting world and New Jersey’s past monopoly in gambling in the Northeast. Part III will then identify the differences between Nevada and New Jersey and explain why this author believes Nevada will see a decline in revenue

¹⁶ Ian Thomsen, *Weekly Countdown: Stern Open to Legalized Betting, Rule Changes*, SPORTS ILLUSTRATED (Dec. 11, 2009), <http://www.si.com/more-sports/2009/12/11/weekly-countdown>.

¹⁷ Joe Drape, *Appeals Court to Rehear New Jersey Sports Betting Case*, N.Y. TIMES (Oct. 14, 2015), http://www.nytimes.com/2015/10/15/sports/appeals-court-to-rehear-new-jersey-sports-betting-case.html?ref=topics&_r=0; see *Christie II* 799 F.3d 259 (3d Cir. 2015), *vacated*.

¹⁸ Drape, *supra* note 17.

¹⁹ It must be noted that the Supreme Court did have an opportunity to grant certiorari in *Christie I*, 730 F.3d 208 (3d Cir. 2013), but declined to do so. *Christie v. Governor of N.J.*, 134 S.Ct. 2866 (2014). However, with the new *Christie II*, 799 F.3d 259 (3d Cir. 2015), the Supreme Court may grant certiorari in the future.

²⁰ See *infra* Section II.B.

stemming from sports betting.

I. OVERVIEW OF PASPA AND THE ARGUMENTS AGAINST IT

A. Legislative History

In 1992, Congress passed PASPA, which states:

It shall be unlawful for . . . a governmental entity . . . or a person to sponsor, operate, advertise, or promote, pursuant to the law of 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.²¹

Ironically enough, one of the bill's primary sponsors was a Senator from New Jersey, Bill Bradley.²² The legislative history of PASPA shows that a primary reason behind enacting PASPA was to "stop the spread of state-sponsored sports gambling and to maintain the integrity of our national pastime," with national pastime referring to all amateur and professional sports.²³ The fear of sporting events losing integrity is not unfounded. For example, in 1989, three years prior to the enactment of PASPA, reports surfaced alleging that Pete Rose,²⁴ manager of the Cincinnati Reds at the time, had gambled on baseball games.²⁵ After the allegations, Major League Baseball (hereinafter, "MLB") had hired an independent investigator who discovered evidence revealing that Pete Rose did in fact bet on baseball games.²⁶ In August of 1989, MLB Commissioner Bart Giamatti suspended Pete Rose for life, making him only the fifteenth player in baseball history to receive a lifetime ban.²⁷

On February 22, 1991, only a year and a half later, the Senate introduced Bill 474,²⁸ which would eventually become PASPA. The most notable proponents of the Bill included league commissioners from all four of the

²¹ 28 U.S.C. § 3702 (2016).

²² S. REP. NO. 102-248, at 3 (1991); FSB Assoc., BILL BRADLEY, <http://www.billbradley.com> (last visited Mar. 7, 2017).

²³ S. REP. NO. 102-248 at 4.

²⁴ *Pete Rose Fast Facts*, CNN LIBRARY (Oct. 5, 2016, 4:43PM), <http://www.cnn.com/2013/05/07/us/pete-rose-fast-facts/> (as of October 5, 2016, Pete Rose holds the Major League Baseball Record for the most games played and the most hits in a career).

²⁵ *Pete Rose*, THE BIOGRAPHY.COM <http://www.biography.com/people/pete-rose-39483> (last visited Mar. 7, 2017).

²⁶ *Id.*

²⁷ *Pete Rose Fast Facts*, CNN LIBRARY, *Supra* note 24. For a further glimpse into the life of Pete Rose, see PETE ROSE, MY PRISON WITHOUT BARS (2004).

²⁸ S. REP. NO. 102-248, at 3 (1991).

major sports in America.²⁹ During the subcommittee process, the National Football League (hereinafter, “NFL”) commissioner at the time, Paul Tagliabue, testified, “Sports gambling threatens the character of team sports. . . . [W]ith legalized sports gambling, our games instead will come to represent the fast buck,” and the games “would change forever—and for the worse.”³⁰ Not only did the NFL commissioner testify, but also the commissioners of the NBA, MLB, and the general counsel and vice president of the National Hockey League (hereinafter, “NHL”) all testified to the negative ramifications of sports gambling.³¹ This testimony, coupled with the recent Pete Rose scandal, led Congress to adopt PASPA, stating, “Sports gambling threatens the integrity of, and public confidence in, amateur and professional sports. Widespread legalization of sports gambling would inevitably promote suspicion about controversial plays and lead fans to think ‘the fix was in’ whenever their team failed to beat the point spread.”³²

While the integrity of professional sports was the primary concern behind PASPA, it was not the only driving force behind the legislation. When Congress held congressional hearings on PASPA, thirteen states were considering legalized sports gambling.³³ Because of the pending consideration of the states concerning sports-gambling legalization, Congress (pressured by the major sports commissioners) felt that if it did not act proactively, it would be impossible to undo the damages retroactively.³⁴ Congress stated that the states could not adequately protect the country from the moral harms underlying sports gambling and that federal intervention was necessary.³⁵

One of the major moral harms concerning states was that they could not prevent the spread of gambling among the Nation’s youth.³⁶ Congress identified that young people in America love sports, and stated that allowing nationwide sports gambling would diminish the values that sports instill in America’s youth.³⁷ Congress further noted, during the discussion of PASPA, that Minnesota proposed allowing people to play the state lottery through video game systems from home.³⁸ Moreover, this new system of gambling would force children to associate gambling with things that children love, such as videogames.³⁹ Congress also cited statistics, stating that of the approximately 8

²⁹ *Id.*

³⁰ *Id.* at 4.

³¹ *Id.* at 3.

³² *Id.* at 5.

³³ Bill Bradley, *The Professional and Amateur Sports Protection Act—Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORT L. 5, 8 (1992).

³⁴ See S. REP. NO. 102-248 at 5 (1991).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* (citing Eben Shapiro, *Nintendo ad Minnesota Set a Living-Room Lottery*

million problem gamblers in America in 1991, 1 million of them were under the age of 20.⁴⁰

However, PASPA was not without its critics during the legislative hearing process. The Department of Justice (hereinafter, “DOJ”) was one of the strongest opponents against PASPA.⁴¹ The DOJ was concerned about PASPA’s constitutionality because PASPA intruded into “determinations of how to raise revenue,” an area typically left to the states.⁴² The DOJ was also concerned with federalism issues,⁴³ as PASPA’s language states:

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.⁴⁴

This language specifically allows a sports league, such as the MLB or NFL, to sue any state trying to enact a law that legalizes sports betting. The DOJ found this provision of PASPA “particularly troubling [because it] would permit enforcement. . . by sports leagues.”⁴⁵ This section of PASPA reveals potential constitutional issues of standing.⁴⁶

Another opponent of Bill 474 was Senator Chuck Grassley.⁴⁷ Senator Grassley raised many of the same arguments that the DOJ did;⁴⁸ however, Senator Grassley also made a significant public policy argument concerning one of the major criticisms of PASPA.⁴⁹ The Senator argued that while “sports gambling is a national problem and. . . the moral erosion it produces cannot be limited geographically,” this reasoning can be applied to “any form of wagering many other state revenue raising programs”; and Congress should not tell the states how to raise revenue.⁵⁰ The Senator makes a fair point, correctly observing that since PASPA allows grandfather exemptions for states where gambling was already authorized by a state statute, PASPA does not actually

Test, N.Y. TIMES (Sept. 27, 1991), <http://www.nytimes.com/1991/09/27/business/nintendo-and-minnesota-set-a-living-room-lottery-test.html?pagewanted=all>).

⁴⁰ S. REP. NO. 102-248 at 5 (1991). The legislative history did not cite the source of these statistics. *See id.*

⁴¹ James C. W. Goodall, Note, *Bringing Down the House: An Examination of the Law and Policy Underpinning the Professional and Amateur Sports Protection Act of 1992*, 67 RUTGERS U. L. REV. 1097, 1108 (2015).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 28 U.S.C. § 3703 (2016) (emphasis added).

⁴⁵ S. REP. NO. 102-248, at 13 (1991).

⁴⁶ *See infra* Part II.A (addressing more issues raised by challengers to PASPA).

⁴⁷ Goodall, *supra* note 41, at 1108–09.

⁴⁸ *Id.* at 1109.

⁴⁹ Goodall, *supra* note 41, at 1109; S. REP. NO. 102-248, at 12.

⁵⁰ S. REP. NO. 102-248, at 12 (1991).

prohibit the evils of sports gambling, but rather restricts the evils to small geographical areas of the country.⁵¹ Senator Grassley was also concerned that these grandfather exemptions would result in discrimination between the states, giving favorable treatment to states such as Nevada while prohibiting other states from engaging in the same conduct, and that these distinctions were irrationally assigned.⁵² Furthermore, PASPA could establish precedent for the Federal Government to prohibit any state revenue program with Congress' Commerce Clause power.⁵³

Despite the DOJ's opposition coupled with Senator Grassley's and other legislators' concerns, Congress still decided PASPA was necessary.⁵⁴ Because of the recent baseball betting scandal by Pete Rose, as well as previous scandals within professional and amateur sports relating to sports betting,⁵⁵ members in Congress felt that the harm caused by legalizing nationwide sports betting—the purpose behind passing the Bill—outweighed the financial benefits that the states sought from legalization.⁵⁶ Therefore, on October 28, 1992, President George H. W. Bush signed PASPA into law.⁵⁷

B. PASPA has Failed to Accomplish the Purposes Behind its Enactment

To review, the legislative history shows that there were three primary purposes behind PASPA's enactment. Those three purposes are to stop the spread of sports gambling, to maintain the integrity of sports, and to reduce the likelihood of America's youth gambling.⁵⁸ Many critics have argued that PASPA has not actually achieved these three goals, despite being in existence for almost twenty-five years now.⁵⁹

⁵¹ 28 U.S.C. § 3704 (2016); S. REP. NO. 102-248, at 13.

⁵² S. REP. NO. 102-248, at 13 (claiming Delaware should not be included as a grandfathered state because it was not “conducting any form of sports wagering and [had] not done so for the last fifteen (15) years”).

⁵³ *Id.* at 12.

⁵⁴ *See generally id.*; 28 U.S.C. § 3702 (2016).

⁵⁵ *See Pete Rose*, THE BIOGRAPHY.COM, *supra* note 25; *See generally* Douglas Linder, *The Black Sox Trial: An Account*, FAMOUS TRIALS (2010), <http://law2.umkc.edu/faculty/projects/ftrials/blacksox/blacksoxaccount.html> (indicating that while Pete Rose's ban from baseball regarding sports betting was likely the most significant scandal underlying PASPA's enactment, it was not the first time players had affected baseball's reputation due to involvement in sports wagering; the most famous example is the Chicago “Black Sox” scandal which involved eight players on the 1919 Chicago White Sox accepting bribes from sports bettors to lose the World Series on purpose).

⁵⁶ S. REP. NO. 102-248, at 12 (1991).

⁵⁷ W. Dane Carey, Comment, *Two Lessons of Anticommandeering: The Preemptive Significance of the Professional and Amateur Sports Protection Act*, 11 WILLIAMETTE SPORTS L.J. 1, 3 (2013).

⁵⁸ S. REP. NO. 102-248, at 4–5.

⁵⁹ Meer, *supra* note 4, at 293–98; Goodall, *supra* note 41, at 1133–35; *see Is Legalizing Sports Gambling a Mad Idea?*, PBS NEWSHOUR (Mar. 21, 2015, 6:48

1. Since the Enactment of PASPA, Sports Betting Popularity Has Increased, Including Illegal Sports Betting

Regarding the spread of sports gambling, it seems that sports gambling has only grown in popularity since PASPA's enactment in 1992. Despite Nevada having a monopoly as the only state authorized to participate in wholesale legal sports betting, nationwide newspapers now present gambling advice and betting lines.⁶⁰ Americans bet billions of dollars during March Madness, the term commonly used to refer to the NCAA Men's Basketball Tournament.⁶¹ Moreover, while most people know this tournament is one of the biggest draws for sports betting,⁶² President Obama has put out his "picks" for which team he believes will win each game for the past several years.⁶³ While the President is not explicitly promoting sports betting, it has been estimated that more people fill out brackets than vote in an election; as the President and CEO of the American Gaming Association stated, "[I]t's clear that Americans embrace gaming."⁶⁴ Since 1991, there has been evidence of an increase in sports betting, rather than the decrease PASPA desired: bets on the Super Bowl in Nevada alone have increased by nearly \$80 million dollars.⁶⁵

Further, illegal sports betting is now prevalent in the United States; according to CNBC, people illegally bet between \$60–70 billion annually on college football.⁶⁶ The FBI approximates that over \$2.5 billion dollars is

PM), <http://www.pbs.org/newshour/bb/amid-madness-college-basketball-brackets-push-legalize-sports-betting/>.

⁶⁰ Woo, *supra* note 14, 589 (indicating that many of the major newspapers in the country, such as *USA Today* and the *New York Post* offer betting lines in the sports section of the newspapers).

⁶¹ Jonathan Marino, *Americans Will Drop \$9 Billion Betting on March Madness*, BUSINESS INSIDER (Mar. 13, 2015, 11:52 AM), <http://www.businessinsider.com/ncaa-tournament-gambling-projection-2015-3>.

⁶² *Id.*

⁶³ *President Obama: Cats Wear Crown*, ESPN (Mar. 18, 2015), http://espn.go.com/mens-college-basketball/tournament/2015/story/_id/12505909/president-barack-obama-bracket-picks-kentucky-ncaa-men-basketball-title; *President Obama Picks Spartans*, ESPN (Mar. 19, 2014), http://espn.go.com/mens-college-basketball/tournament/2014/story/_id/10630406/louisville-michigan-st-arizona-florida-president-barack-obama-final-four.

⁶⁴ David Purdum, *Estimated 40 Million Fill out Brackets*, ESPN (Mar. 12, 2015), http://espn.go.com/chalk/story/_id/12465741/estimated-70-million-brackets-9-million-bets-ncaa-tournament.

⁶⁵ Jack Jones, *Amount Bet on the Super Bowl*, BETFIRM.COM (Feb. 3, 2015), <https://web.archive.org/web/20150502070522/http://www.betfirm.com/amount-bet-on-the-super-bowl/>.

⁶⁶ Gillian Spear, *Think Sports Gambling Isn't Big Money? Wanna Bet?*, NBC NEWS (July 15, 2013, 4:16 AM), <http://www.nbcnews.com/news/other/think-sports-gambling-isnt-big-money-wanna-bet-f6C10634316>.

wagered illegally during March Madness, while legal sports books in Nevada only bring in between \$80–90 million during those same three weeks.⁶⁷ In other words, legal sports betting during March Madness takes in less than 4% of the illegal take.⁶⁸ Because sports betting, especially illegal sports betting, is so popular in America today, it seems PASPA has fallen short in accomplishing the first of three purposes behind its enactment.

2. *PASPA Has Little to No Effect on Cutting Down Incidents Affecting the Integrity of Sports*

Since PASPA's enactment in 1992, there have been multiple incidents involving not only collegiate sports betting scandals, but also professional sports betting scandals, both of which reveal that PASPA is not living up to another one of its intended purposes.

Regarding collegiate sports betting scandals after PASPA's enactment, 19 athletes from the University of Maine's basketball and football teams received suspensions in 1992 for participating in a gambling operation that raked in \$3,000 to \$10,000 per week.⁶⁹ In 1995, a jury convicted a former student at the University of Central Florida of attempting to bribe basketball players at the college to ensure that the team would lose by enough points to cover the betting spread.⁷⁰ The student offered \$15,000 in bribes;⁷¹ however, the University of Central Florida players insisted that they never actually took the money and that they did not alter their play based on any bribe.⁷²

One of the most glaring stains on the integrity of collegiate sporting events occurred in 1994, two years after PASPA's enactment, in the Arizona State point-shaving scandal.⁷³ The scandal involved two basketball players at Arizona State conspiring to shave points,⁷⁴ if needed, in order to win a bet they placed on their own game against Oregon State.⁷⁵ This scandal was especially heinous because it was unlike the other collegiate sports betting scandals

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *COLLEGES; Maine Hit by Gambling Scandal*, N.Y. TIMES (Apr. 19, 1992), <http://www.nytimes.com/1992/04/19/sports/colleges-maine-hit-by-gambling-scandal-h.html>.

⁷⁰ Warren Richey, *Man Who Tried To Fix College Game Avoids Jail*, SUN SENTINEL (Nov. 4, 1995), http://articles.sun-sentinel.com/1995-11-04/news/9511040043_1_kelly-hunter-game-prosecutors.

⁷¹ Donald L. Barlett & James B. Steele, *Throwing the Game*, TIME (Sept. 17, 2000), <http://content.time.com/time/magazine/article/0,9171,55103,00.html>.

⁷² Richey, *supra* note 70.

⁷³ *Point-Shaving Scandal Hits Arizona State*, L.A. TIMES (Dec. 6, 1997), <http://articles.latimes.com/1997/dec/06/sports/sp-61336>.

⁷⁴ Shaving points is the act of a team or player deliberately missing an opportunity to score in order to make sure that the spread of a game is not covered and therefore controlling the outcome of a placed bet. *See Id.*

⁷⁵ *Id.*

already mentioned in this article; most other betting scandals involved players betting on games that were not their own or rejecting bribes from third parties. The two players involved admitted to fixing four games in 1994, and they admitted to taking bribes to fix these four games.⁷⁶

Another collegiate sports gambling scandal that negatively affected the integrity of sports was the indictment of two former Northwestern basketball players who took money to fix games and shave points in 1994–1995.⁷⁷ A jury would later convict those two Northwestern basketball players of rigging the games.⁷⁸ Northwestern was later involved in another gambling scandal when four football players plead guilty to perjury after previously denying any involvement in fixing football games when prosecutors had questioned them.⁷⁹ Countless other collegiate sports betting scandals have occurred since PASPA was passed, including the most recent scandal when a Boston University hockey player received suspension in 2015 for participating in gambling activities.⁸⁰

Moreover, PASPA has failed to uphold public confidence in the integrity of sporting events in the professional setting as well. Professional tennis has seen many scandals involving match fixing, including a 2007 match involving Nikolay Davydenko and Martin Vassallo Arguello.⁸¹ In a relatively minor tennis match between these two, bettors wagered more than \$7 million in favor of Arguello, an extreme underdog unlikely to win.⁸² That \$7 million was more than ten times the amount usually wagered on similar low-profile matches.⁸³ It was so unusual that the largest Internet wagering company, Betfair, actually removed the match from bettors and voided all bets placed on the match.⁸⁴ This was a first for Betfair, a company that had been accepting wagers for seven years.⁸⁵ And professional match fixing still occurs: another professional tennis scandal surfaced as recently as 2015 when two players, Walter Trusendi and Elie Rousset, admitted they fixed matches in 2014.⁸⁶

⁷⁶ *Id.*

⁷⁷ Pam Belluck, *COLLEGE BASKETBALL; Ex-Northwestern Players Charged in Point-Shaving*, N.Y. TIMES (Mar. 27, 1998), <http://www.nytimes.com/1998/03/27/sports/college-basketball-ex-northwestern-players-charged-in-point-shaving.html>.

⁷⁸ Barlett & Steele, *supra* note 71.

⁷⁹ *Id.*

⁸⁰ Mike McMahon & Adam Wodon, *BU's Roberto Suspended for Gambling Activity*, COLLEGE HOCKEY NEWS (Dec. 21, 2015), http://www.collegehockeynews.com/news/2015/12/21_bus_roberto_suspended_for.php.

⁸¹ Greg Garber, *Suspicious Follow Davydenko Heading to U.S. Open*, ESPN (Aug. 23, 2007, 4:52 PM), <http://espn.go.com/sports/tennis/news/story?id=2984805>.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Regina Avalos, *Tennis Player Match Fixing Scandal: Players Banned for Six Months*, INQUISITR (Mar. 25, 2015), <http://www.inquisitr.com/1954354/tennis->

Tennis is not the only professional sport that has experienced illegal betting since PASPA. The NBA's integrity came into question in 2007 when NBA referee Tim Donaghy plead guilty to betting on NBA games he officiated.⁸⁷ Not only did he bet on games himself, but he also was involved in an ongoing gambling ring involving other organized crime members.⁸⁸ Donaghy would feed inside information to his co-conspirators regarding the teams and players.⁸⁹ Those organized crime members initially paid Donaghy \$2,000 for every game in which Donaghy correctly picked the winner, and eventually paid him \$5,000 per game due to his accuracy.⁹⁰ This scandal led then-commissioner David Stern, an early proponent of PASPA, to take a step back and state in a 2009 interview that legalized gambling may not be as bad as previously suggested.⁹¹ Stern further stated that gambling might not be as immoral as previously anticipated.⁹²

Incidents of match fixing and illegal gambling at both collegiate and professional level sports show that the bottom line is this: the public will always question the integrity of sporting events. Donaghy, Davydenko, or any of the college players mentioned above would likely have participated in these incidents regardless of whether sports betting was legal. In other words, the fact that sports betting was illegal did not stop them from violating the integrity of a game, showing that PASPA has fallen short of reaching one of its main objectives. Further, the integrity of a game is not only affected by sports betting; other issues, such as athletes taking performance enhancing drugs, seem to threaten games more and more each day.⁹³ Therefore, PASPA seems ineffective in achieving its second objective to maintain the integrity of sporting events and likely will be short-lived in the future.

3. PASPA Has Failed to Control the Promotion of Sports Gambling Among the Youth of America

The final and most noble reason behind ratifying PASPA was to decrease the likelihood of youth gambling in America.⁹⁴ Since 1992, however, youth gambling has increased, showing that PASPA has failed at yet another purpose behind its enactment. First, it is impossible for PASPA to completely to stop youth sports gambling because there are many avenues for young people to use

player-match-fixing-scandal-players-banned-for-six-months/.

⁸⁷ *Ex-NBA Ref Pleads Guilty in Betting Scandal*, CNN (Aug. 16, 2007), <http://www.cnn.com/2007/US/law/08/15/nba.ref/index.html?iref=topnews>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Meer, *supra* note 4, at 296–97.

⁹² *Id.* at 297.

⁹³ *Id.*

⁹⁴ See S. REP. NO. 102-248, at 4–5.

in order to gamble on sports illegally.⁹⁵ Since 1992, Internet use has exploded within the American population, with children between the ages of 8 and 18 logging seven hours online each day.⁹⁶ While PASPA proponents could not have predicted the future in 1992, it is clear that the new avenues available to minors allow them unprecedented and typically unfettered access to multiple illegal activities, including sports betting.

Further, while statistics regarding youth gambling are scarce, the few studies done surrounding American youth gambling show an increase in gambling since 1992, rather than the decrease that PASPA longingly sought.⁹⁷ In fact, “regional surveys suggest that more than 30% of all high school students gamble periodically.”⁹⁸ Current gambling among America’s youth has escalated to the point that some middle schools are now starting to have their own illegal betting rings.⁹⁹ Further, the expansion of new technology, such as the Internet and lottery ticket vending machines, only contribute to increased adolescent gambling.¹⁰⁰

While current gambling rates among America’s youth may be informative, only by observing a comparison of post- and pre-PASPA gambling rates can PASPA’s failure be truly appreciated. One study published by the National Center for Responsible Gaming shows that from 1992 to 1998, the percentage of 9th grade boys who frequently gambled increased from 21.8% to 22.9%.¹⁰¹ While this increase may not seem that drastic, frequent gambling among 12th grade boys from 1992 to 1998 went up from 23.8% to 29%.¹⁰² Moreover, the same study summarizes the answer to the question “are youths gambling more, less, or about the same?” by proving that from 1992–1995 gambling stayed at a constant level with a slight increase in gambling habits among certain youths.¹⁰³ Remember: PASPA’s goal was to *decrease* the likelihood of America’s youth gambling, not keep it at a consistent level.

A pamphlet from California is also ripe with evidence that gambling has

⁹⁵ Meer, *supra* note 4, at 297–98.

⁹⁶ *Id.* (citing Tamar Lewin, *If Your Kids Are Awake, They’re Probably Online*, N.Y. TIMES, Jan. 20, 2010, at A1).

⁹⁷ Francie Grace, *Kids Gambling – and Losing*, CBS NEWS (July 14, 2003, 5:58 AM), <http://www.cbsnews.com/news/kids-gambling-and-losing/>; Randy Stinchfield, *Gender, Age Are Most Important Clues for Teen Gambling Behavior*, 1 INCREASING THE ODDS, at 4 (2009), <http://www.ncrg.org/sites/default/files/uploads/docs/monographs/ncrgmonographyouthforwebfinal.pdf>.

⁹⁸ Grace, *supra* note 97.

⁹⁹ *Id.*

¹⁰⁰ *See id.*

¹⁰¹ Stinchfield, *supra* note 97.

¹⁰² *Id.*

¹⁰³ Randy Stinchfield & Ken C. Winters, *Gambling and Problem Gambling Among Youths*, 556 ANNALS AM. ACAD. POL. & SOC. SCI. 172, 178 (Mar. 1998), http://www.jstor.org.ezproxy.library.unlv.edu/stable/1049337?loginSuccess=true&seq=7#page_scan_tab_contents.

increased among America's youth.¹⁰⁴ A study found that a majority of adolescents across the United States reported gambling before they graduated high school.¹⁰⁵ The study cited also found that "gambling participation among middle and high school students from 1984–1988 was 45% and increased to 65% from 1989–2002."¹⁰⁶ Further, the "most popular forms of gambling among young people are private bets" regarding sports.¹⁰⁷ Lastly, sports betting is one of the most attractive forms of gambling to young people because those bets involve skills with which adolescents can relate.¹⁰⁸

While the introduction of the internet has made it much easier for adolescents to gamble on sports, this should not excuse PASPA for failing to achieve its third and most important objective. Typically, a change in circumstances or factual assumptions is one factor courts determine when analyzing whether or not to apply the principal of *stare decisis*¹⁰⁹; therefore, as new technology has rendered PASPA's purpose of lowering youth gambling rates unworkable, PASPA should be lumped in with the rest of the bad precedents and overturned.¹¹⁰

II. HISTORY OF *NCAA V. GOVERNOR OF NEW JERSEY* AND WHY IT IS SO IMPORTANT TO NEW JERSEY TO LEGALIZE SPORTS GAMBLING NATIONWIDE

Over the past three years, New Jersey has become more and more adamant about nationwide legalization of sports betting.¹¹¹ Why the sudden push? This new battle between PASPA and New Jersey is primarily due to New Jersey's hurting economy, especially in Atlantic City, the gaming capital of New Jersey.¹¹² New Jersey is quite aware of the potential market for sports gambling, considering that many Americans currently engage in the pastime illegally and that states are missing out on billions of potentially taxable

¹⁰⁴ See Gianna Le et. al., *Youth Gambling in the 21st Century: Prevalence, Impact, and Interventions*, NAPAFASA PROBLEM GAMBLING PREVENTION TECHNICAL ASSISTANCE AND TRAINING PROJECT, <http://www.napafasa.org/resources/PGP.Youth%20Gambling%20in%20the%2021st%20Century.pdf> (last visited Sept. 5, 2016).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* In addition, as youth gamblers grow older, they prefer less "skill based" games and more games of chance, such as lotteries and slot machines. *Id.*

¹⁰⁹ See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 854–55 (1992).

¹¹⁰ The statistics show that PASPA's lack of intended effect previously cited only furthers the argument behind PASPA's repeal. S. REP. NO. 102-248, at 4–5; see Gianna Le et. al *supra* note 104.

¹¹¹ See Joe Drape, *New Jersey's Effort to Legalize Sports Betting Is Denied on Appeal*, N.Y. TIMES (Aug. 25, 2015), http://www.nytimes.com/2015/08/26/sports/football/new-jerseys-effort-to-legalize-sports-betting-is-denied-on-appeal.html?_r=0.

¹¹² *Id.*

dollars.¹¹³ This note discusses the major reasons behind the economic recession within New Jersey later in this section.¹¹⁴

Ironically, the opponent that continuously lobbies to stop legalized gambling is the professional and collegiate sporting organizations, such as the NFL and the NCAA.¹¹⁵ The irony is that these same opponents of New Jersey have embraced daily fantasy sports (hereinafter, “DFS”) as legal by labeling it a game of skill, rather than a game of chance, which is one of the defining elements of gambling.¹¹⁶ Moreover, these professional sporting organizations have sponsored DFS, and logos of DFS giants such as FanDuel or DraftKings are visible at many live sporting events.¹¹⁷ It is hard to see how these professional sporting organizations can claim that legalized sports betting will “‘irreparably’ corrupt sports in the United States”¹¹⁸ while embracing DFS, especially considering the new state trend to rule that DFS is illegal gambling.¹¹⁹ Many NFL teams are also starting to install “fantasy lounges,” which typically look like sports books within a Nevada casino.¹²⁰ The irony also provides critics of PASPA with more ammunition, showing that the professional sports organizations that were the original opponents against sports gambling, and are New Jersey’s current opponent in *NCAA v. Governor of New Jersey*, now embrace an activity that many states are deeming illegal sports gambling.¹²¹

¹¹³ See *id.* (stating Americans illegally bet at least \$140 billion on sports per year).

¹¹⁴ See *Infra* Part II.B.

¹¹⁵ Drape, *supra* note 111.

¹¹⁶ David Purdum & Darren Rovell, *N.Y. AG Declares DraftKings, FanDuel Are Illegal Gambling, Not Fantasy*, ESPN (Nov. 11, 2015), http://espn.go.com/chalk/story/_/id/14100780/new-york-attorney-general-declares-daily-fantasy-sports-gambling; Drape, *supra* note 111.

¹¹⁷ Purdum & Rovell, *supra* note 116 (The NBA has invested heavily in FanDuel, while the MLB and NHL have invested heavily in DraftKings); see also Drape, *supra* note 111 (examining the logos around the ice rink while watching hockey and, typically, noticing a DraftKings logo will be within view).

¹¹⁸ Drape, *supra* note 111.

¹¹⁹ Many states declared DFS illegal gambling at the time this article was written, including New York, Illinois, Nevada, Arizona, Iowa, and others. See Purdum & Rovell, *supra* note 116; see also Jacob Pramuk, *Illinois: Daily Fantasy Sports is Illegal Gambling*, CNBC (Dec. 24, 2015), <http://www.cnbc.com/2015/12/23/illinois-daily-fantasy-sports-is-illegal-gambling.html>; *What Are The States Where You Can Play Daily Fantasy Sports?*, LEGAL SPORTS REP., <http://www.legalsportsreport.com/daily-fantasy-sports-blocked-allowed-states/> (last updated Aug. 9, 2016).

¹²⁰ Drape, *supra* note 111.

¹²¹ Dustin Gouker, *The New Daily Fantasy Sports Bill in New York Brings Up PASPA Concerns*, LEGAL SPORTS REP. (Dec. 4, 2015), <http://www.legalsportsreport.com/6650/ny-dfs-bill-and-paspa/>; see *supra* Part I(B).

A. New Jersey's Four-Year Courtroom Battle Against Professional Sports Organizations

On November 28, 2011, Assemblyman John Burzichelli¹²² introduced a bill to the New Jersey Legislature that defined and established operating procedures for any casino that wished to have a “sports pool” within their premises.¹²³ The bill is effective as law on January 17, 2012.¹²⁴ The New Jersey Legislature also amended the New Jersey Constitution on December 8, 2011 to allow for sports betting at New Jersey casinos, so long as the sporting event did not involve a New Jersey college team and did not occur at a New Jersey venue.¹²⁵ Soon afterwards, the five major professional sports organizations¹²⁶ filed a complaint against New Jersey, alleging that PASPA preempted New Jersey’s Sports Wagering Law, and therefore the New Jersey law was unconstitutional.¹²⁷ New Jersey then filed a motion for summary judgment stating that the professional sports organizations did not have standing to bring this suit.¹²⁸

The New Jersey district court held that the professional sports organizations did have standing to bring this injunction.¹²⁹ The court stated that because the New Jersey law would cause “fans’ perception of the integrity of [the] games [to] decline,” this was enough to create an imminent and personal harm to the sports organizations.¹³⁰ Further, the court stated that precedent has held that perceived harm is enough to find standing so long as the “harm is based in reality.”¹³¹ The sports organizations also had three empirical studies that did not directly show causation but implied the negative impact of legalized sports gambling effects on revenue generation for sports leagues.¹³² The court also held that the perceived sports organizations’ injury of lower match-integrity combined with the empirical studies would be traceable back to

¹²² Assemb. B. 4385, 2010 Leg., 214th sess. (N.J. 2012).

¹²³ N.J. REV. STAT. §5:12A-1 (2011) (repealed 2014).

¹²⁴ *Id.*

¹²⁵ N.J. CONST. art. IV, § 7 (stating “It shall also be lawful for the Legislature to authorize by law wagering at casinos or gambling houses in Atlantic City on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place”).

¹²⁶ NCAA, NFL, NBA, NHL, and MLB are the five major sports organizations referred to as “Plaintiffs” or “the Leagues” throughout the 2012 case, *NCAA v. Christie*, No. 12-4947, 2012 U.S. Dist. LEXIS 183395 (D.N.J. Dec. 21, 2012).

¹²⁷ *Id.* at *5.

¹²⁸ *Id.* at *4–5.

¹²⁹ *Id.* at *8.

¹³⁰ *Id.* at *4, *9–20.

¹³¹ *Id.* at *14.

¹³² *Id.* at *15–18.

the implementation New Jersey's Sports Wagering Law.¹³³ Lastly, the court held that stopping the implementation of New Jersey's Sports Wagering Law would redress the alleged harms because even a small reduction in harm is enough to establish redressability.¹³⁴

Two months after deciding the question of standing, the court heard arguments regarding the constitutionality of PASPA raised by New Jersey.¹³⁵ New Jersey argued that PASPA violated the commerce clause, the Tenth Amendment, the due process and equal protection principals of the Fifth Amendment, and the equal footing doctrine.¹³⁶ The professional sports organizations argued that PASPA is constitutional, and thus the Supremacy Clause of the Constitution preempts New Jersey's Sports Wagering Law.¹³⁷ The court started its analysis by asserting that "congressional statutes are presumptively constitutional," and that PASPA must be given "every reasonable construction" to save it from unconstitutionality; this turned out to be too high a burden for New Jersey to overcome.¹³⁸

In regards to New Jersey's commerce clause argument, the district court held that Congress did not violate the commerce clause when it passed PASPA in 1992.¹³⁹ The court cited *Hodel v. Indiana*¹⁴⁰ to show the deferential rational basis standard was applied to analyze whether the law was under the commerce power of Congress.¹⁴¹ The court found Congress' cessation of legalized sports gambling rationally related to the purpose of protecting the integrity of sports, as other states would be impacted by interstate-legalized sports betting.¹⁴² New Jersey also argued that the grandfather clause of PASPA violated the commerce clause by citing *Delaware River Basin Commission v. Bucks County Water & Sewer Authority*, a case that held a grandfather clause requires higher scrutiny than rational basis.¹⁴³ However, the court dismissed this argument because, unlike the enactment of the statute in *Delaware River Basin Commission*, there were legislative findings behind PASPA's enactment.¹⁴⁴ Given the legislative history of PASPA, and given that New Jersey conceded Congress had the authority to regulate gambling, the district court's holding was inevitable.¹⁴⁵

The court further held that New Jersey's argument regarding the Tenth

¹³³ *Id.* at *25–26.

¹³⁴ *Id.* at *26.

¹³⁵ *Christie I Dist. Ct.*, 926 F. Supp. 2d 551.

¹³⁶ *Id.* at 554.

¹³⁷ *Id.* at 556.

¹³⁸ *Id.* at 554, 557.

¹³⁹ *See id.* at 558–60.

¹⁴⁰ 452 U.S. 314, 323–24 (1981).

¹⁴¹ *Christie I Dist. Ct.*, 926 F. Supp. 2d at 558.

¹⁴² *Id.* at 559–60.

¹⁴³ *Id.* at 561 (citing 641 F.2d 1087, 1098 (3d Cir. 1981)).

¹⁴⁴ *Id.* at 560–61.

¹⁴⁵ *Id.* at 558–59.

Amendment held no water, as PASPA did not command or require New Jersey to take any affirmative action at the request of the federal government.¹⁴⁶ New Jersey argued that the Tenth Amendment's language reserves to the states those powers not explicitly granted to the federal government in the Constitution.¹⁴⁷ New Jersey also argued that PASPA's effect on the state was analogous to the take-title provision in *New York v. United States*.¹⁴⁸ The court explained that historically the states gave up powers in order to establish a unitary federal government, and that New Jersey's rigid idea of the Tenth Amendment was the type of government under the old Articles of Confederation, not the new Constitution.¹⁴⁹ After discussing the history leading up to *New York*, the court announced the holding that while federal statutes could not compel the states to act, federal statutes could direct or motivate the states to act in a certain fashion.¹⁵⁰ The court relied heavily on the fact that "compel" is defined as forcing states to take affirmative action, and here PASPA is not forcing any affirmative action but rather preventing states from taking certain action.¹⁵¹ Furthermore, the court bolstered its argument by restating that the effects of just one state legalizing sports gambling extend outside that state and are not purely affecting intrastate activities; therefore, Congress has regulatory power to ensure that one state's actions do not affect other states negatively.¹⁵²

Looking to the Fifth Amendment, and its Due Process Clause and implied Equal Protection principles,¹⁵³ the court held that New Jersey is not a "person" and therefore the Due Process Clause does not protect it.¹⁵⁴ However, the court still performed a Due Process/Equal Protection analysis, and found that PASPA did not involve any fundamental rights nor did it make classifications against protected classes of people; therefore, it was presumably valid, subject to the deferential rational basis review.¹⁵⁵ Again, applying the rational basis review standard, the court held that PASPA was rationally related to Congress' legitimate purpose of protecting the integrity of sporting events and preventing

¹⁴⁶ *Id.* at 561–63.

¹⁴⁷ *Id.* at 561–62.

¹⁴⁸ *Id.*; 505 U.S. 144, 173–77 (1992).

¹⁴⁹ *Christie I Dist. Ct.*, 926 F. Supp. 2d at 563 (noting ironically that one of the two plans considered at the Constitutional Convention was called the "New Jersey Plan" and is the plan that would have supported New Jersey's idea about the tenth amendment).

¹⁵⁰ *Id.* at 566–67.

¹⁵¹ *Id.* at 570.

¹⁵² *Id.* at 572.

¹⁵³ The Fifth Amendment has no Equal Protection Clause per se; however, through reverse incorporation the Equal Protection Clause of the Fourteenth Amendment has been read into the Fifth Amendment. *See Bolling v. Sharpe*, 347 U.S. 497, 498–99 (1954).

¹⁵⁴ *Christie I Dist. Ct.*, 926 F. Supp. 2d at 574.

¹⁵⁵ *Id.* at 574–75.

the spread of sports gambling.¹⁵⁶

New Jersey's "Equal Footing" argument also failed as the court stated that New Jersey was not "either attempting to enter the Union or one that [was] recently admitted to the Union."¹⁵⁷ After determining that PASPA is constitutional, the Court granted a permanent injunction for the professional sports organizations against New Jersey's Sports Wagering Law.¹⁵⁸ New Jersey appealed, and the Third Circuit affirmed the district court's ruling regarding standing, constitutional issues, and the granting of an injunction, stating that Congress, not the courts, must be the one to alter PASPA's effect on the states.¹⁵⁹ New Jersey attempted to appeal to the United States Supreme Court in 2014 but the Court did not grant writ of certiorari to hear the case.¹⁶⁰

However, New Jersey would not stop there, doubtless determined to bring a new source of revenue to their downtrodden economy. New Jersey partially repealed its Sports Wagering Law on October 17, 2014, which was the subject of the 2012 litigation, by removing state prohibitions, permits, and licensing requirements with the help of the severability clause contained within the 2012 law.¹⁶¹ By repealing these state requirements, the 2014 law essentially allowed only casinos and racetracks to offer sports wagering.¹⁶²

New Jersey argued that they were simply complying with PASPA's language, that a state may not "authorize, sponsor, operate, advertise, promote, or license sports betting."¹⁶³ Because the 2014 law repealed the licensing requirements and removed sports betting from state supervision, New Jersey argued that they are not attempting to circumvent PASPA.¹⁶⁴ Further, New Jersey argued that they are complying with the Third Circuit's decision in the prior case by citing court language that PASPA does not "prohibit New Jersey from repealing its ban on sports wagering," and that the states can decide "the exact contours of the prohibition[s]" regarding sports wagering.¹⁶⁵ However,

¹⁵⁶ *Id.* at 575–76.

¹⁵⁷ *Id.* at 577.

¹⁵⁸ *Id.* at 577, 579.

¹⁵⁹ *Christie I*, 730 F.3d 208, 240–41 (3d Cir. 2013).

¹⁶⁰ *Christie v. Nat'l Collegiate Athletic Ass'n*, 134 S.Ct. 2866 (2014).

¹⁶¹ Bob Jordan & Steve Edelson, *Gov. Christie Signs New Jersey Sports Betting Bill into Law*, USA TODAY (Oct. 17, 2014, 6:40 PM), <http://www.usatoday.com/story/sports/2014/10/17/chris-christie-signs-bill-allowing-sports-betting-new-jersey/17457177/>; see also N.J. REV. STAT. §5:12A-1 (2011) (repealed 2014).

¹⁶² Will Hobson, *Everything You Need to Know About New Jersey's Pending High-Stakes Sports Gambling Ruling*, THE WASHINGTON POST (July 1, 2015), <https://www.washingtonpost.com/news/sports/wp/2015/07/01/everything-you-need-to-know-about-new-jerseys-pending-high-stakes-sports-gambling-ruling/>.

¹⁶³ *Id.* (internal quotation marks omitted).

¹⁶⁴ *Id.* (pointing out the similarity between the court's ruling about the legalization of sports betting and other courts' rulings, such as Colorado and Washington, about the legalization of marijuana).

¹⁶⁵ *Nat'l Collegiate Athletic Ass'n v. Christie (Christie II Dist. Ct.)*, 61 F. Supp. 3d

the five major professional sports organizations disagreed and argued that permitting sports betting in state-licensed casinos and racetracks is state licensing and state authorization,¹⁶⁶ and therefore the sports organizations again sought an injunction against New Jersey and the new 2014 law.¹⁶⁷

This time, District Judge Shipp¹⁶⁸ analyzed only New Jersey's partial repeal in the context of the Third Circuit's previous ruling, rather than the constitutionality of PASPA, which had already been decided.¹⁶⁹ The court examined the Third Circuit's language, which ultimately described "two choices" that PASPA provides to the states: either repeal the sports wagering ban or keep a complete ban on sports wagering and enforce it as they see fit.¹⁷⁰ After another preemption analysis, federal legislative history review, and state legislative history review, the district court held that PASPA preempted the 2014 partial repeal law.¹⁷¹ The court sided with the sports organizations, stating that anything beyond either a full repeal or a complete ban on sports wagering would give states too much power to circumvent the federal government.¹⁷² The court further stated that the 2014 partial repeal had the same effect as the 2012 law previously struck down.¹⁷³ The court again permanently enjoined New Jersey from violating PASPA with its 2014 partial repeal.¹⁷⁴

New Jersey again appealed the district court's ruling to the Third Circuit and the Third Circuit again upheld the lower court's ruling because the 2014 partial repeal essentially authorized sports wagering.¹⁷⁵ The Third Circuit acknowledged that PASPA was not without its critics and that New Jersey faced economic hardships, but the court echoed that states cannot undo federal laws whenever they see fit.¹⁷⁶

However, good news exists for New Jersey, as the Third Circuit has recently vacated its decision regarding the 2014 partial repeal and granted a rehearing en banc.¹⁷⁷ This is a rare occurrence because a majority of the active judges who signed the order must have voted to rehear the case; this shows the need to readdress some of the major issues behind the litigation.¹⁷⁸ The Third

488, 495 (2014).

¹⁶⁶ Hobson, *supra* note 162.

¹⁶⁷ *Christie II Dist. Ct.*, 61 F. Supp. 3d 488.

¹⁶⁸ Judge Shipp was the Judge on the original Nat'l Collegiate Athletic Ass'n v. Christie suit as well. *See Christie I Dist. Ct.*, 926 F. Supp. 2d 551.

¹⁶⁹ *Christie II Dist. Ct.*, 61 F. Supp. 3d at 498.

¹⁷⁰ *Id.* at 500.

¹⁷¹ *Id.* at 503–06.

¹⁷² *Id.* at 504.

¹⁷³ *Id.* at 505.

¹⁷⁴ *Id.* at 507–08.

¹⁷⁵ *Christie II*, 799 F.3d 259, 264–65 (3d Cir. 2015) (decision vacated 2015).

¹⁷⁶ *Id.* at 265 (citing to *Christie I*, 730 F.3d 208, 215 (3d Cir. 2013)).

¹⁷⁷ Nat'l Collegiate Athletic Ass'n v. Rebeck, 2015 U.S. App. LEXIS 17839, *7–8 (3d Cir. Oct. 14, 2015).

¹⁷⁸ Drape, *supra* note 17.

Circuit Court of Appeals reheard the case on February 17, 2016.¹⁷⁹

B. Why is New Jersey So Adamant on Legalizing Sports Wagering Nationally?

Since the nationwide economic recession in the late 2000s, New Jersey is one of the few states that has increasing poverty rates, unlike many other states.¹⁸⁰ While the United States as a whole has recovered 132% of jobs lost during the recession, New Jersey's economy has only recovered 62% of jobs lost.¹⁸¹ New Jersey's job growth rate was also the lowest in the contiguous United States from 2013–2014.¹⁸² Further, New Jersey's economic growth in 2014 ranked 46 out of all 50 states, with an unemployment rate well above the national average.¹⁸³ The downtrodden economy is also uncommon to the regional Northeast, as neighboring states, such as New York and Pennsylvania, have bounced back since the recession.¹⁸⁴

New Jersey's Atlantic City gaming industry was hit exceptionally hard since the recession and continues to flounder economically.¹⁸⁵ This is bad news for Atlantic City, whose economy brings in two-thirds of its revenue through gambling and only one-third from non-gambling revenue sources.¹⁸⁶ Further, since 2006, gaming revenue has dropped from \$5.2 billion to \$2.7 billion.¹⁸⁷ In fact, in 2014, six years after the recession, four casinos had closed and over 8,000 workers lost their jobs in the gaming industry.¹⁸⁸ The four casinos to close were the Atlantic Club, the Showboat, the Revel (which was supposed to bring back Atlantic City's gaming industry), and the Trump Plaza.¹⁸⁹ Those four closures caused Atlantic City's tax base to drop more than \$13 billion in property taxes; in 2013, before the closures, all the casinos in Atlantic City

¹⁷⁹ Darren Heitner, *Is Sports Betting About to Become Legal Outside of Nevada?*, FORBES (Feb. 15, 2016, 11:09 AM), <http://www.forbes.com/sites/darrenheitner/2016/02/15/is-sports-betting-about-to-become-legal-outside-of-nevada/#44bb49ad5c02>.

¹⁸⁰ Heather Long, *Chris Christie's Problem: New Jersey's Economy isn't Doing Well*, CNN (June 30, 2015, 12:36 PM), <http://money.cnn.com/2015/06/30/news/economy/chris-christie-2016-new-jersey-economy/>.

¹⁸¹ *Id.*

¹⁸² Michael L. Diamond, *Part I: What Comeback? Why N.J.'s Economy Has Tanked*, COURIER-POST (Oct. 21, 2014, 3:27 PM), <http://www.courierpostonline.com/story/news/local/new-jersey/2014/10/20/comeback-njs-economy-tanked/17602283/>.

¹⁸³ Long, *supra* note 180.

¹⁸⁴ *Id.*

¹⁸⁵ See Diamond, *supra* note 182 (stating that New Jersey's gaming industry has collapsed since 2008).

¹⁸⁶ Nick Paumgarten, *The Death and Life of Atlantic City*, THE NEW YORKER (Sept. 7, 2015), <http://www.newyorker.com/magazine/2015/09/07/the-death-and-life-of-atlantic-city>.

¹⁸⁷ *Id.*

¹⁸⁸ Diamond, *supra* note 182.

¹⁸⁹ Paumgarten, *supra* note 186.

provided 70% of annual property taxes within the city.¹⁹⁰ One of the major reasons behind Atlantic City's decline has been the loss of the city's monopoly on legalized gambling in the East Coast region.¹⁹¹

With gambling available in other neighboring states such as New York, Pennsylvania, and Delaware, the gaming industry in Atlantic City has been "cannibalized" by these new casinos.¹⁹² The first casino in Atlantic City opened in 1978; however, in 1996 Delaware provided some competition by opening three slot venues.¹⁹³ Pennsylvania then opened its first casino in 2006 and added more casinos yearly.¹⁹⁴ In fact, by 2011, thirteen casinos had opened up in Pennsylvania and Delaware, with three more proposed to open; moreover, these numbers do not include the casinos that opened in either Maryland or New York.¹⁹⁵ By adding table games in 2010, both Delaware and Pennsylvania had destroyed New Jersey's monopoly.¹⁹⁶

Studies also show that the introduction of these table games and casinos in New Jersey's neighboring states has had a positive economic impact within those states while eroding Atlantic City's casino industry.¹⁹⁷ Further, "[a]pproximately \$1,262 less is gambled every month in Delaware, New Jersey, and Pennsylvania with the addition of each Pennsylvania slot machine," showing a negative effect of adjacent state casinos.¹⁹⁸ This is likely because Atlantic City no longer has a gambling monopoly in the Northeast, causing many people from neighboring states to now play locally rather than travel out of state to gamble.¹⁹⁹ A 2005 study supports this point, finding that nearly 64% of people visiting New Jersey casinos were residents of a different state.²⁰⁰

Further, even more casinos are expected to open within the next few years in Maryland, Massachusetts, New York, and Pennsylvania, further saturating the gambling market and taking more money away from New Jersey.²⁰¹ Some

¹⁹⁰ Martin Bricketto, *Atlantic City Bankruptcy Would Hurt Other Towns*, *Mayor Says*, LAW360 (May 15, 2015, 5:14 PM), <http://www.law360.com/articles/656664/atlantic-city-bankruptcy-would-hurt-other-towns-mayor-says>.

¹⁹¹ See Paumgarten, *supra* note 186.

¹⁹² Simon Condliffe, *Pennsylvania Casinos' Cannibalization of Regional Gambling Revenues*, 16 UNLV GAMING RES. & REV. J. 45, 45–50 (2012).

¹⁹³ *Id.* at 45.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 48 (see figure 1).

¹⁹⁶ *Id.* at 47.

¹⁹⁷ *Id.* at 48–49. This erosion likely caused the close of the four Atlantic City casinos mentioned earlier, which contributed to the loss of almost ten-thousand jobs. Paumgarten, *supra* note 186.

¹⁹⁸ Condliffe, *supra* note 192, at 54.

¹⁹⁹ See *id.* at 53–54.

²⁰⁰ *Id.* at 49.

²⁰¹ Peter Amsel, *Regional Casino Saturation to Put Added Pressure on Atlantic City in Coming Years*, CALVINAYRE.COM (Dec. 1, 2015), <http://calvinayre.com/2015/12/01/casino/regional-casino-saturation-threatens-atlantic-city/>.

predict these new casinos may cause the closure of more Atlantic City casinos, which would likely increase New Jersey's unemployment rate even more.²⁰² However, if New Jersey were able to legalize sports betting, it is possible that this change would result in an increase of new jobs as well as potentially help the already downtrodden economy with another revenue source.²⁰³ Legalizing sports betting would help take some of the \$3.8 billion dollars bet illegally on the Super Bowl, for example, and turn it into taxable revenue for states such as New Jersey,²⁰⁴ but how would this affect Las Vegas' monopoly on sports betting?

III. NEVADA WILL LIKELY FEEL NEGATIVE ECONOMIC EFFECTS FROM LEGALIZED SPORTS GAMBLING IN NEIGHBORING STATES

It is common sense that anytime a business loses a monopoly in an industry, the increase in competition hurts that business's bottom line.²⁰⁵ A monopoly realizes a super-normal profit during its monopoly status; however, the monopoly owner feels more competition as more players enter the market because the monopoly owner can no longer set the prices as she sees fit due to the new players offering the same product at lower prices.²⁰⁶ Therefore, the once-monopoly owner must lower prices in order to compete with the new competition prices or else lose large amounts of business to the rival companies.²⁰⁷

Let us look at the only other real player in the sports betting market besides Nevada—Delaware; unlike Nevada, which allows betting on any sporting event in any fashion, Delaware runs a “sports lottery,” which allows players to place parlay wagers on professional football games only.²⁰⁸ The parlay bets in Delaware require gamblers to bet on the outcome of at least three games and require them to guess all three outcomes correctly in order to win.²⁰⁹ As of

²⁰² *See id.*

²⁰³ Stephen F. Ross et al., *Reform of Sports Gambling in the United States: Lessons from Down Under*, 5 ARIZ. ST. U. SPORTS & ENT. L. J. 7, 15 (2015).

²⁰⁴ *See* Jonathan Crowl, *Politicians, Experts Emphasize Multiple Benefits of Legalized Sports Gambling*, THEPOSTGAME (Mar. 4, 2015), <http://www.thepostgame.com/blog/spread-sheet/201502/politicians-experts-focus-multiple-benefits-legalized-sports-gambling>.

²⁰⁵ *Monopolies*, ECON. ONLINE, http://www.economicsonline.co.uk/Business_economics/Monopoly.html (last visited Sept. 9, 2016).

²⁰⁶ *See id.*

²⁰⁷ *See id.*

²⁰⁸ *Delaware Sports Lottery*, DEL. LOTTERY GAMES, <http://www.delottery.com/games/sports/> (last visited Sept. 9, 2016).

²⁰⁹ Jeff Barker, *Delaware's NFL Betting Business is Booming—and Marylanders Are Noticing*, THE BALT. SUN (Nov. 14, 2014, 11:56 PM), <http://www.baltimoresun.com/business/bs-bz-sports-betting-nfl-20141114-story.html>.

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2016, 102 sports retailers accepted wagers on Delaware's NFL parlay bets.²¹⁰ The total of NFL parlay sales reached \$37.9 million dollars in 2014–15, up more than 300% since its inception in 2009–2010.²¹¹

Delaware's increase every year in NFL parlay sales is likely due to the fact it too has a unique monopoly on sports betting: it is the only place where limited legal sports wagering exists east of the Mississippi river.²¹² This helps Delaware compete in an already over-saturated market in the Northeast concerning the large amounts of casinos in New Jersey, Pennsylvania, and Maryland.²¹³ In fact, although there is no exact count of how many people travel to Delaware from neighboring states because of Delaware's sports betting, the influx of citizens from neighboring states has been "significant," especially to the Delaware sports lottery participants on the border of Maryland and Pennsylvania.²¹⁴ Given that Delaware has one of the smaller populations in the United States at 935,614 people in 2014,²¹⁵ it is even more likely that a population base of that size, which includes all ages of persons, cannot produce the entire \$37.9 million in sales recorded in 2014.²¹⁶

Delaware's main limitation is that it only allows legal sports betting in the form of NFL parlay bets, and an examination of Nevada, the only state to allow all sports betting in any form, exhibits that limitation.²¹⁷ Nevada's 196 total sports books received total bets in 2015 on all sports amounting to about \$4.24 billion.²¹⁸ This led to Nevada's sports books profiting approximately \$231.8 million for the 2015 year.²¹⁹ This pure profit associated with sports wagering only has nearly doubled since the year 2000.²²⁰ For an even closer analogy, compare Nevada's sports book profit from the NFL alone to Delaware's profit for 2015. Nevada sports books profited \$82.5 million in 2015 from NFL bets,²²¹ while Delaware profited \$13.9 million in 2015 from their NFL parlay

²¹⁰ Craig Anderson, *Delaware Sports Lottery Still Cashing in*, DEL. ST. NEWS (Feb. 6, 2016), <http://delawarestatenews.net/news/delaware-sports-lottery-still-cashing-in/>.

²¹¹ *Id.*

²¹² Barker, *supra* note 209.

²¹³ *See id.*

²¹⁴ *Id.*

²¹⁵ *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045216/10,00> (last visited Sept. 9, 2016). In fact, Delaware only had the 45th highest population out of all 50 states. *States Ranked By Size & Population*, IPL2, <http://www.ipl.org/div/stateknow/popchart.html> (last visited Sept. 9, 2016).

²¹⁶ *See* Anderson, *supra* note 210.

²¹⁷ *See Delaware Sports Lottery*, DEL. LOTTERY GAMES, *supra* note 208.

²¹⁸ David G. Schwartz, *Nevada Sports Betting Totals: 1984-2015*, UNLV CTR. FOR GAMING RES., 2 (Jan. 2016), http://gaming.unlv.edu/reports/NV_sportsbetting.pdf.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* at 3.

system.²²² In 2015, while Delaware received approximately \$7 million in taxable revenue from sports wagering,²²³ Nevada sports wagering alone generated approximately \$18 million in taxes.²²⁴

While a comparison between the two states does not exactly produce evidence that the two states are exactly alike, it can help identify some of the similarities, which will lead to why Nevada likely will lose revenue if sports betting becomes legalized across the country. First, while the population of Nevada was 2,839,099 people in 2014,²²⁵ only slightly above 3 times the population of Delaware, its sports books received more than 111 times the bets than Delaware's sports books.²²⁶ The next logical step is to think, "Well, so what? Delaware is not the tourist destination that Nevada is." This is quite true, as Delaware pulled in 8 million visitors in 2014²²⁷ while Nevada attracted approximately 7 times as many, receiving over 52 million visitors in 2014.²²⁸ It also is important to note that both Delaware's and Nevada's per capita income for 2014 are similar at \$30,191 and \$26,515, respectively.²²⁹

While, logically, not every one of those visitors came to Delaware or Nevada to gamble, let alone bet on sports, some of these visitors likely did. While scarce, some statistics exist as to who visits Nevada and the purposes behind their visit. In 2009, estimates show that 35% of the visitors who came to Las Vegas were from California.²³⁰ In fact, approximately 25.3 million people

²²² Jonathan Starkey, *Sports Betting Lucrative For Delaware*, DELEWAREONLINE: THE NEWS J. (Dec. 4, 2015, 9:30 PM), <http://www.delawareonline.com/story/news/politics/2015/12/04/sports-gambling/76628358/>.

²²³ *Id.*

²²⁴ *Nevada Gaming Summary*, UNLV CTR. FOR GAMING RES., http://gaming.unlv.edu/abstract/nv_main.html (last visited Aug. 23, 2016) (calculating the \$18 million figure by taking Nevada's 7.75% effective tax rate, approximately 6.75% on gross gaming revenue and 1% in fees, and multiplying it by the \$231.8 million in profit from Nevada sports wagering); Schwartz, *supra* note 218.

²²⁵ *American Fact Finder*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/_productview.xhtml?src=bkmk (last visited Apr. 1, 2017).

²²⁶ *Nevada Gaming Summary*, UNLV CTR. FOR GAMING RES., *supra* note 224; Schwartz, *supra* note 218 (calculating this number by taking the \$4.24 billion in total bets placed in Nevada and dividing it by \$37.9 million in bets placed in Delaware and providing sports book bets in Nevada); Anderson, *supra* note 210 (providing sports book bets in Delaware); *QuickFacts*, *supra* note 215 (providing Delaware population in 2014).

²²⁷ *The Value of Tourism in Delaware*, VISITDELAWARE.COM, <http://www.visitdelaware.com/industry/tourism-statistics/> (last visited Aug. 26, 2016).

²²⁸ Doresa Banning, *Nevada's Tourism Industry: Going Strong*, NEV. BUS. (June 1, 2015), <http://www.nevadabusiness.com/2015/06/nevadas-tourism-industry-going-strong/>.

²²⁹ *QuickFacts*, *supra* note 215.

²³⁰ MICHAEL POLLOCK, CASINO TAX POLICY: IDENTIFYING THE ISSUES THAT WILL

entered Nevada by vehicle in 2012, almost half of the near 51.6 million total visitor volume for that year.²³¹ This makes sense because when one looks at a map of Nevada, Las Vegas and Reno are less than 100 miles from Arizona and California, with Lake Tahoe touching the California border.²³²

Further, the American Gaming Association (AGA) states that legalized sports wagering “helps bring in more than 30 million visitors to Nevada each year.”²³³ While this estimate seems a little high, as it is more than 50% of the tourists for the year of 2014, when examined in light of the fact that 35% of tourists to Las Vegas come from California—which would approximate to about 18.2 million in 2014—it seems a safe bet to estimate that at least 10 million visitors to Nevada annually are likely extremely interested in placing a sports wager.²³⁴ Further, the AGA states that many tourists visit Nevada in February and March to place bets legally on the Super Bowl and the NCAA Men’s Basketball Tournament, respectively.²³⁵

Out of the total Nevada statewide non-restricted licensee gaming revenue, 4.11 billion was from table games and the sports book, while 7 billion came from slot machines.²³⁶ Out of this 4.11 billion, sports betting pulled in the fifth

DETERMINE THE OPTIMAL RATE, 14 (2010), <http://www.spectrumgaming.com/dl/spectrumnationaltaxassociation.pdf>.

²³¹ NEVADA RESORT ASS’N, 2013 NEV. GAMING FACT BOOK, 1 (2013), <http://www.nevadaresorts.org/about/factbook/NRA-2013-Factbook.pdf>.

²³² *Map of Las Vegas Hotels and Casinos the Strip and Downtown Hotels and Casinos Las Vegas Nevada Map*, WORLDTLAS.COM, <http://www.worldatlas.com/webimage/countrys/america/usstates/lgcolor/lvhotels.htm> (last visited Aug. 26, 2016).

²³³ *Sports Wagering*, AM. GAMING ASS’N., <http://web.archive.org/web/20140201023553/http://www.americangaming.org/industry-resources/research/fact-sheets/sports-wagering>. (last visited Apr. 1, 2017).

²³⁴ See Doresa Banning, *supra* note 228 (stating 50% of the tourists for the year 2014 would be 26 million people, reaching that figure by 52 million tourists multiplied by .5(50%) which is 26 million)). Additionally, the 18.2 million California tourists to Nevada number was arrived at using the 2009 statistic of 35% from MICHAEL POLLOCK, *supra* note 330, and multiplying 52 million by .35 (35%). The 10 million number was chosen as a conservative estimate because it is one-third the estimated number of persons that the AGA suggests come to Nevada to place sports wagers and it is approximately one half of the number of tourists from California who come to Nevada. It is generally accepted that people from California come to Nevada to place sports wagers due to its geographical closeness. See *supra* note 232. See also, e.g., Patrick McGreevy, *California May Benefit from Legalizing Sports Betting, State Senator Says*, LA TIMES (Aug. 1, 2010), <http://articles.latimes.com/2010/aug/01/local/la-me-sports-gambling-20100802>.

Thus, due to the scarcity of exact statistical information on sports wagering’s draw of individuals to Nevada, this extremely conservative estimate seems more reasonable to continue.

²³⁵ RICHARD MCGOWAN, THE GAMBLING DEBATE 53 (Greenwood Publishing Group, 2008).

²³⁶ NEV. GAMING CONTROL BD., GAMING REVENUE REPORT 1 (Dec. 2015), <http://gaming.nv.gov/modules/showdocument.aspx?documentid=10810>.

highest revenue from any non-slot casino game statewide, making up 5.64% of the total non-slot gaming revenue for casinos in Nevada.²³⁷ It consistently was the fifth highest grossing non-slot game in Clark County comprising 5.3% of all non-slot revenue.²³⁸ However, when considering both table games and slot revenue, sports wagering only makes up 2.1% of total casino gaming revenue.²³⁹

While 2.1% of total casino gaming revenue may seem insignificant, remember that 2.1% still equals about \$232 million, which will never be an insignificant amount to a state obtaining about 25% of its taxes through gaming revenue tax.²⁴⁰ The state's ability to draw such a large percentage of taxes from the gaming industry helps put less of a burden on its citizens, offering the third best business tax climate in the country and ranking 49th out of 51 states (D.C. included) in tax burdens on its residents.²⁴¹ If sports betting were legalized nationwide, this \$232 million in taxable casino sports book revenue likely would decrease, putting more of a tax burden on society and forcing the state to look elsewhere for these funds.

Although the argument exists that Las Vegas itself is enough of a tourist-draw to endure the potential losses in sports wagering, there are other towns that rely on gaming revenue, such as Reno and Lake Tahoe.²⁴² Lake Tahoe and Reno both experienced gross gaming revenue declines from 1990–2010.²⁴³ These two cities experienced further gaming revenue decline of about 32% in Lake Tahoe and 20% in Reno from 2008–2013.²⁴⁴ Lake Tahoe recently added a new casino, the Hard Rock Hotel & Casino, to attempt to bolster its gaming economy.²⁴⁵ However, the opening of a single tribal casino in California is a

²³⁷ See *id.* (The 5.64% figure was obtained by dividing the approximate 232 million that Sports Books pulled in during 2015 by the 4.11 billion in total non-slot gaming revenue).

²³⁸ See *id.* at 6. Clark County's total non-slot gaming win was \$3.83 billion, with \$203 million coming from the sports book. *Id.* (The 5.3% figure was obtained by dividing the 203 million from the Clark County sports books by the County's total non-slot gaming revenue number of 3.83 billion).

²³⁹ See *id.* at 1. (The 2.1% figure was obtained by dividing the 232 million from the Sports Book by the total gaming revenue in Nevada at 11.1 billion).

²⁴⁰ *How Gaming Benefits Nevada*, NEV. RESORT ASS'N., <http://nevadaresorts.org/benefits/taxes.php> (last visited Sept. 9, 2016) (The 25% figure was obtained by dividing \$718,816,067 from gaming taxes by the total tax revenue for 2014 at \$2,851,648,150).

²⁴¹ *Id.*

²⁴² See William R. Eadington, *Analyzing the Trends in Gaming-Based Tourism for the State of Nevada: Implications for Public Policy and Economic Development*, 15 UNLV GAMING RES. & REV. J. 37, 44–46 (2011).

²⁴³ *Id.*

²⁴⁴ Matthew Renda, *A New Hand: With Gaming's Decline, Tahoe's Casino Resorts Head in a New Direction*, TAHOE Q. (Dec. 2014), <http://tahoequarterly.com/Features/Story/a-new-hand>.

²⁴⁵ See Bill O'Driscoll, *Tahoe Gaming '15: Good, Maybe Bad, Ahead*, RENO

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primary reason for the major declines in these two Nevada gaming regions.²⁴⁶ The fact that opening a single tribal casino in California, not far from Lake Tahoe and Reno, affected these regions this harshly shows how quickly the gaming market can change in Nevada. One can also analogize this casino-cannibalization phenomenon to sports wagering—Reno and Lake Tahoe lost their monopoly when a tribal casino popped up nearby; if sports betting becomes legal nationwide and California or Arizona implement sports wagering, it is likely that Nevada will see a large decrease in sports wagering, especially during big events like the SuperBowl or March Madness. This is because people from neighboring states would no longer have to drive to either Las Vegas or Reno, but rather could legally place these bets in their own backyard.

Further, while Las Vegas consistently reinvents itself, it is seeing less and less revenue generated from its slots than ever before because the millennial generation does not prefer slot machine wagering.²⁴⁷ The average age of visitors to Las Vegas has gotten younger since 2008.²⁴⁸ This is because the Millennial Generation, also sometimes referred to as Gen Y, is 21–34 years old, and is now one of the largest demographic groups in America.²⁴⁹ Millennials are typically better educated than other generations, use their cell phones for their main source of entertainment, and prefer to spend money on experiences rather than gambling.²⁵⁰ Millennials enjoy games of skill, such as blackjack, daily fantasy sports, and e-sports, more than slots.²⁵¹ This has led casino executives to try new skill-based slot machines resembling video games in an attempt to attract this young group to become the biggest revenue producer in the casino.²⁵²

Because sports wagering is a game of skill, and because the new generation spends less on slot machines, sports wagering may become even more important to casino revenue than it is today. If this is the case, Nevada may

GAZETTE-J. (Jan. 3, 2015, 11:51 PM), <http://www.rgj.com/story/money/gaming/2015/01/03/tahoe-gaming-good-maybe-bad-ahead/21249991/>.

²⁴⁶ Eadington, *supra* note 242, at 46.

²⁴⁷ Jane Wells, *Gambling Industry Tries to Figure Out Millennials*, CNBC (Sep. 30, 2015 10:50 AM), <http://www.cnn.com/2015/09/30/gambling-industry-tries-to-figure-out-millennials-.html>.

²⁴⁸ Mei Iok Un, Student Thesis, *What Do They Do in Las Vegas Strip Casinos? An Analysis of the Attitudes and Behaviors of Gen Y Casino Customers*, UNLV LIBR., 9 (Dec. 2013) (unpublished M.S. professional paper, University of Nevada, Las Vegas) (on file with Digital Scholarship@UNLV), <http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=3048&context=thesisdissertations>.

²⁴⁹ *Id.* at 10.

²⁵⁰ *See id.* at 11.

²⁵¹ Mark Gruetze, *Casinos Prepare for Changes to Draw Next Generation*, TRIBLIVE (Dec. 20, 2015, 9:00 PM), <http://triblive.com/aande/gambling/9650812-74/million-millennials-percent>.

²⁵² *Id.*

want to find a way to keep its monopoly in the sports wagering market because if it loses this unique draw, it may lose one more option that Millennials come to Nevada to enjoy. Further, the younger generation is even more into sports, which is visible through their high interest in daily fantasy sports and e-sports, making the sports wagering market an even more precious asset to Nevada. While Las Vegas has always had the customer base and appeal to bring in tourism, other resorts such as Lake Tahoe and Reno may need the sports wagering monopoly to keep their business afloat. If sports wagering does become legal nationwide, it could cause thousands of people to lose their jobs within Nevada because less-prominent border casinos near Arizona and California will likely lose significant revenue from their sports books. While losing 2% of a business does not sound like a lot, it is enough to take notice of New Jersey's attempt to legalize sports wagering, and Nevada should prepare itself for any potential changes to its major industry.

IV. CONCLUSION

PASPA has not accomplished the purposes behind its enactment. Sports wagering is more prevalent than ever, the integrity of sports is still questioned today, and America's youth still engages in illegal gambling. While New Jersey fights its five-year-long court battle, win or lose, Americans are calling for the legalization of sports betting in the U.S. Further, because people nationwide question PASPA's constitutionality, and it failed to prevent the spread of sports betting, it is unlikely to remain good law for long.

This should cause Nevada some alarm. While Nevada's sports book revenue only makes up approximately 2–3% of its total gaming intake, this is still hundreds of millions of dollars in taxable revenue. Nevada losing its monopoly on sports betting could cause towns that already have trouble competing with neighboring state casinos, such as Lake Tahoe and Reno, to feel an even worse economic impact. While Las Vegas will always have its draw and charm to an international customer base, the loss of sports books in other parts of Nevada could lead to a loss of jobs and an increase in tax burden on people. For these reasons, Nevada should start to prepare itself for the inevitable—the legalization of nationwide sports betting.