

HOW DIGITAL SPORTS WAGERING FUELS THE IMPENDING GAMBLING EPIDEMIC IN THE UNITED STATES AND THE AUSTRALIAN CAUTIONARY TALE

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I. INTRODUCTION

“Addiction experts fear a coming national epidemic to rival the opioid crisis.”¹

In its history, the United States government has enacted numerous initiatives to combat different forms of addiction stemming from substances such as drugs, alcohol, and cigarettes.² A general consensus exists that keeping addiction rates low leads to improved overall public health, economic prosperity, and stronger domestic relationships.³ In the past, raising awareness about the dangers of these vices as they gain popularity, along with closely regulating the predatorial marketing procedures associated with them, have maintained these goals.⁴ Looking at those practices, it would logically follow that the federal government would have an interest in closely monitoring, and promoting awareness with respect to, the modern digital world of sports wagering. On the contrary, in recent years the United States government has taken a lenient approach to regulating digital sports wagering and has avoided attempting to thread together the patchwork legislation governing digital sports wagering.⁵ Concern continues to grow from those within the public health industry that this permissive approach aids in fueling the next major national public health crisis.⁶

Upon analyzing the recent sports wagering numbers in the United States,

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¹ Daniel De Visé, *Sports betting has risen tenfold in three years. Addiction experts fear the next opioid crisis*, THE HILL (Feb. 10, 2023), <https://thehill.com/business/3851713-sports-betting-has-risen-tenfold-in-three-years-addiction-experts-fear-the-next-opioid-crisis/> [<https://perma.cc/X8UY-FY27>].

² *Selected Laws Enacted by the U.S. Government Regarding the Regulation of Tobacco Sales, Marketing, and Use*, CENTER FOR DISEASE, CONTROL, AND PREVENTION (“CDC”), https://www.cdc.gov/tobacco/basic_information/policy/legislation/index.htm [<https://perma.cc/KME9-GWR6>] (accessed Oct. 28, 2023); *see* 27 U.S.C. § 201 (2023); *see also* 21 C.F.R. § 1301 (2023).

³ Ted R. Miller & Delia Hendrie, *Substance Abuse Prevention Dollars and Cents: A Cost-Benefit Analysis*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN. 1, 32 (2008), <https://www.samhsa.gov/sites/default/files/cost-benefits-prevention.pdf> [<https://perma.cc/4H7H-V8MJ>].

⁴ *See, e.g.*, Public Health Cigarette Smoking Act, Pub. L. No. 91-222, 84 Stat. 87 (1970) (establishing federal guidelines for cigarette labeling and advertising methods).

⁵ Patrick Moran, *Anyone’s Game: Sports-Betting Regulations after Murphy v. NCAA*, 4 CATO INST. 1, 5 (2019).

⁶ De Visé, *supra* note 1.

that proposition has statistical support.⁷ Since the repeal of the Professional and Amateur Sports Protection Act (PASPA) in 2018, American citizens have wagered more than \$220 billion on sports.⁸ Before the repeal, that number lingered around \$5 billion, as sports betting occurred primarily in Nevada only.⁹ The boom in this sector of the gambling market can be associated with the deregulation of sports wagering at the federal level in 2018, which led to the legalization of online sports wagering in numerous states.¹⁰ Striking down PASPA has triggered a surge in digital sports wagering, as fifty-seven percent of the United States population now has access to sports wagering in their state.¹¹ Prior to PASPA being overruled, only one percent of the United States had access to sports betting.¹² In addition, the two most populated states in the United States, California and Texas, have yet to legalize online sports betting as of 2024.¹³

With the United States only six years removed from the repeal of PASPA, this recent increase in sports wagering represents only the inception.¹⁴ As more states legalize sports betting, and more people begin to wager, online sportsbooks will become even more synonymous with America's favorite pastimes.¹⁵ The morbid increase over the last six years in sportsbook revenue and resources, parlayed with the increasing popularity and simplicity of placing sports wagers online, has created the perfect storm for increases in problem gambling and the societal and economic consequences that accompany it.¹⁶ Those consequences have become reality for Australia, a country whose population loses a total of \$25 billion on average each year on gambling.¹⁷

7. See generally, Rachel Epstein, *The Human Cost of the Sports-Betting Boom*, MEN'S HEALTH (Aug. 22, 2023), <https://www.menshealth.com/health/a44652587/sports-betting-gambling-dangers/> [https://perma.cc/KG49-9PAB].

8. *Five Years Post-PASPA: Consumer Sports Betting Trends*, AMERICAN GAMING ASSOCIATION (May 9, 2023), <https://www.americangaming.org/resources/five-years-post-paspa-consumer-sports-betting-trends/> [https://perma.cc/J7NK-GVQS].

9. David Purdum, *Five years into sports betting legalization: Breaking down the numbers*, ESPN (May 12, 2023), https://www.espn.com/sports-betting/story/_/id/37605381/five-years-sports-betting-legalization-breaking-numbers-supreme-court-us-stats/ [https://perma.cc/5SLD-PBMH].

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Online Sports Betting*, STATISTA (Aug. 2023), <https://www.statista.com/outlook/dmo/eservices/online-gambling/online-sports-betting/united-states#revenue/> [https://perma.cc/2ZG3-3GBT].

15. Clark Merrefield, *Sports betting in the US: A research roundup and explainer*, THE JOURNALIST'S RESOURCE (Oct. 25, 2022), <https://journalistsresource.org/economics/sports-betting-research-roundup-explainer/?form=MG0AV3> [https://perma.cc/ZM97-MAS7].

16. Stephen Marche, *America's Gambling Addiction is Metastasizing*, THE ATLANTIC (Nov. 6, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/world-our-casino/620791/> [https://perma.cc/N3UY-9T67].

17. Austl. Gambling Rsch. Ctr., Austl. Inst. of Fam. Stud., *Gambling in Australia*, AIHW, (Sept. 7, 2023), <https://www.aihw.gov.au/reports/australias-welfare/gambling> [https://perma.cc/U8TF-GN9W].

Australia, who primarily allows its states to regulate gambling, has allowed its country to spiral into a state of underregulated wagering, which has contributed to concerning levels of gambling disorders.¹⁸

This Note analyzes the novel realm of digital sports wagering, and how the relationship between widespread online sports wagering and increased rates of gambling disorders underscores the need to review the regulation governing digital sports wagering. It also aims to highlight the issues concerning patchwork legislation in this area, and the need for a uniform federal regulatory system. Part I provides an overview of the scientific principles underlying addiction, as well as how marketing and digital wagering aggravate addiction. Part II details the United States' regulatory history with gambling and suggests that increases in problem gambling threaten the economy and public health of the country. Part III analyzes Australia's regulatory relationship with gambling and the effects that its approach has on public health. Part IV will offer mitigation procedures and analyze the different methods of regulatory action available, ultimately proposing a federal gaming commission. And finally, a brief closing will follow in Part V.

II. AMERICA'S NEWEST VICE—ONLINE SPORTS WAGERING

A. Gambling and Its Effect on the Brain

Human beings are highly vulnerable to dopamine-inducing substances.¹⁹ Our brains contain within them a “reward system” that validates certain behaviors that aid in our survival (eating, sleeping, etc.).²⁰ The reward system activates dopamine, which in turn gives people a modest feeling of elation.²¹ This feeling encourages people to repeat the survival behavior in the future.²² Unfortunately, addictive substances that lend no assistance to human survival can manipulate this intricate function of the brain.²³

In simple terms, addictive substances release dopamine into the reward system of the brain at ten times the normal amount.²⁴ These substances have the effect of “hijacking” the reward system in the brain by encouraging the user to continue using the substance.²⁵ This result requires a person to consume more

18. Austl. Gambling Rsch. Ctr., Austl. Inst. of Fam. Stud., *Gambling Participation and Experience of Harm in Australia*, AGRC (Mar. 2023), https://aifs.gov.au/sites/default/files/2023-03/2302_1_gambling-in-Australia.pdf [<https://perma.cc/4F8X-R59V>].

19. *How an Addicted Brain Works*, YALEMEDICINE (May 25, 2022), <https://www.yalemedicine.org/news/how-an-addicted-brain-works> [<https://perma.cc/S8H2-F93X>].

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. Robert G. Lewis et al., *The Brain's Reward System in Health and Disease*, 1334 ADVANCES IN EXPERIENTIAL MEDICINE AND BIOLOGY 1, 2 (2021).

of a substance at higher rates to obtain the same sensation.²⁶ The chemistry involved here makes sense concerning substances that need to be introduced into the body such as nicotine and alcohol. Conversely, gambling addiction involves further analysis because gambling does not require ingestion. Though a similar chemical alteration occurs in the brain while an individual gambles, the difference between gambling and substances relates to how each vice attacks the reward system.²⁷ Substances contain external chemicals that trigger a reaction in the brain's reward system which creates a vicious cycle of dependency and consumption.²⁸ Gambling disorders often involve cognitive distortions related to the chance of winning, as well as the need for excitement.²⁹

Roughly eight million adults in the United States have a gambling disorder.³⁰ That being said, problem gambling has historically been difficult to calculate.³¹ Most people who have an addiction refuse to accept it, and unlike substance abusers, someone who has a gambling disorder likely will not show any physical signs.³² In a general sense, people addicted to substances eventually begin to show physical signs as a result of the abuse.³³ This can come in the form of severe weight fluctuation, skin tone discoloration, changes in facial attributes, and many other outwardly symptoms.³⁴ Likewise, a medical professional can often identify substance disorders through an evaluation.³⁵ Alternatively, someone who maintains a gambling disorder is likely to present with no obvious physical manifestations.³⁶ This creates issues in calculating the severity and prevalence of gambling disorders.³⁷

The science supporting substance addiction has been well tracked and

26. *Id.* at 7.

27. Seyed Amir Jazaeri & Mohammad Hussain Bin Habil, *Reviewing Two Types of Addiction – Pathological Gambling and Substance Use*, 34 INDIAN J PSYCHOL. MED. 5, 7 (2012).

28. *Id.*

29. *Id.*

30. *Help & Treatment*, NATIONAL COUNCIL ON PROBLEM GAMBLING (2024), <https://www.ncpgambling.org/help-treatment/faq/> [<https://perma.cc/GN94-LVGS>].

31. NATIONAL RESEARCH COUNCIL (US) COMMITTEE ON THE SOCIAL AND ECONOMIC IMPACT OF PATHOLOGICAL GAMBLING, *PATHOLOGICAL GAMBLING: A CRITICAL REVIEW* (1999) (“Here it is important to note that comparing and interpreting prevalence findings is problematic when different studies use different screening and/or diagnostic instruments or criterion levels to measure differing levels of intemperate gambling and associated problems. Unfortunately, such differences are common in the research literature on pathological and problem gambling [. . .], which creates problems in estimating prevalence rates in the United States.”)

32. De Visé, *supra* note 2.

33. *Id.*

34. *Signs and Symptoms of Drug Misuse in Adults*, GATEWAY (2024), <https://www.gatewayfoundation.org/about-gateway-foundation/faqs/signs-and-symptoms-of-drug-abuse-in-adults/> [<https://perma.cc/FL2U-QNP9>].

35. David J. Mersy, M.D., *Recognition of Alcohol and Substance Abuse*, 67 AM. FAM. PHYSICIAN 1529, 1530 (Apr. 1, 2003), <https://www.aafp.org/pubs/afp/issues/2003/0401/p1529.html> [<https://perma.cc/K8Q8-BBF5>].

36. *How to Recognize a Gambling Addiction*, WHEELER (Dec. 10, 2018), <https://www.wheelerclinic.org/news/2018-news-stories/how-recognize-gambling-addiction> [<https://perma.cc/ME4U-UALZ>].

37. *Id.*

documented for over a century.³⁸ Unfortunately, companies and individuals with profit motivations have weaponized the knowledge known about these addiction.³⁹ In their early days, companies that sold cigarettes or alcohol spent a considerable amount of time trying to calculate how to generate and maintain dependency on their products.⁴⁰ Their calculations proved successful, as millions of Americans developed addictions to alcohol, tobacco, and nicotine products.⁴¹ This exploitation has had far-reaching consequences, as many people with substance addictions experience health issues related to these vices.⁴² The online sports wagering industry could yield similar results, as the industry deploys nearly identical dependency tactics to those of the tobacco and alcohol industry.⁴³

B. The Emergence of Digital Wagering and Access to Sports Gambling

Traditionally, gambling disorders have not been as prevalent as substance disorders in the United States.⁴⁴ This result is due to many different factors; however, the lack of access has contributed dramatically.⁴⁵ For a long time in the United States, a handful of casinos in Las Vegas made up the only legalized forms of gambling.⁴⁶ Eventually, other states legalized casino gambling which led to a minimal increase in problem gambling.⁴⁷ Currently, in some states, placing a bet can be as simple as pulling out a smartphone.⁴⁸ Since the repeal of PASPA in 2018, the access barrier has lost a lot of its relevance.

Because of the shift from in-person sports wagering to online sports

38. See, e.g., David F. Musto M.D., *Drug Abuse Research in Historical Perspective*, INSTITUTE OF MEDICINE 284, 285 (1996) (explaining that morphine began to be studied for its addictive nature as early as 1875).

39. Symposium, *Casinos: An Addiction Industry in the Mold of Tobacco and Opioid Drugs*, U. ILL. L. REV. 1711 (2021).

40. *Id.* at 1714.

41. Amy Peacock et al., *Global statistics on alcohol, tobacco and illicit drug use: 2017 status report*, 113 SOC'Y FOR THE STUDY OF ADDICTION 1905 (2018).

42. *Id.* at 1906.

43. Gottlieb, *supra* note 39, at 1719.

44. See *Statistics on Gambling Trends in the United States*, RUTGERS ADDICTION RESEARCH CENTER, <https://www.addiction.rutgers.edu/about-addiction/facts-and-figures/gambling/> [<https://perma.cc/9YYW-3JEZ>]; *Statistics on Alcohol Use Trends in the United States*, RUTGERS ADDICTION RESEARCH CENTER, <https://www.addiction.rutgers.edu/about-addiction/facts-and-figures/alcohol/> [<https://perma.cc/CVH5-PY8W>]; *Statistics on Opioid Trends in the United States*, RUTGERS ADDICTION RESEARCH CENTER, <https://www.addiction.rutgers.edu/about-addiction/facts-and-figures/opioids/> [<https://perma.cc/5EG9-YDX5>].

45. Eliana Gabellini et. al., *Prevalence of Problem Gambling: A Meta-analysis of Recent Empirical Research (2016–2022)*, 39 J. OF GAMBLING STUDIES 1027, (2022).

46. I. Nelson Rose, *Pivotal Dates*, GAMBLING AND THE LAW (2017), <https://www.gamblingandthelaw.com/article/pivotal-dates/> [<https://perma.cc/X7JL-GRTB>].

47. *Id.*

48. Elizabeth A. Killick & Mark D. Griffiths, *Why Do Individuals Engage in In-Play Sports Betting? A Qualitative Interview Study*, 37 JOURNAL OF GAMBLING STUDIES 221 (Aug. 13, 2021), <https://pubmed.ncbi.nlm.nih.gov/32794012/> [<https://perma.cc/4UFN-B66R>].

wagering, bettors can bet anywhere, at any time, and in multiple jurisdictions.⁴⁹ This broad access encourages bettors to bet spontaneously, wagering money that they would not have if they had to go to an in-person venue to bet.⁵⁰ Not only has access to sports wagering broadened, but sports wagering also has a more continuous appeal through digital means.⁵¹ Following the introduction of “in-play” bets, where someone can bet on a live event, bettors now have unconstrained opportunities to wager throughout an event.⁵² This type of betting has a close relationship with high levels of problem gambling.⁵³

Resulting from this ease of access, the National Council on Problem Gambling reported that gambling has accelerated at its fastest pace in United States history.⁵⁴ Since 2019, the number of American citizens who consider placing a sports bet has grown by twenty-four million.⁵⁵ In the first three months of 2023, Americans gambled a total of \$31 billion on sports, a fifteen percent increase compared to the amount of money bet in 2022.⁵⁶ The growth of the industry in such a short time has caused the likelihood of developing a gambling addiction to increase thirty percent since 2018.⁵⁷ Aggressive marketing from sportsbook companies has played a tremendous role in the rising risk of addiction rates.⁵⁸

C. Marketing and Addiction: A Historic Relationship

Over the span of the nation’s history, the strategic marketing of addictive products has resulted in considerable profit.⁵⁹ Using behavioral science, companies that deal in substance products have created successful marketing campaigns that shape consumer habits.⁶⁰ Although beneficial for their margins, this type of marketing has resulted in exacerbating policy related issues associated with addiction.⁶¹ The federal government enacted legislation aimed,

49. Jamie Torrance et al., *The structural characteristics of online sports betting: a scoping review of current product features and utility patents as indicators of potential future developments*, 32 ADDICTION RSCH. & THEORY 204, 206 (2024).

50. *Id.*

51. *Id.* at 207.

52. *Id.*

53. *Id.*

54. Epstein, *supra* note 7.

55. *Id.*

56. *Id.*

57. *Id.*

58. Joe Hernandez, *Sports betting ads are everywhere. Some worry gamblers will pay a steep price*, NPR (Jun. 18, 2022), <https://www.npr.org/2022/06/18/1104952410/sports-betting-ads-sports-gambling> [<https://perma.cc/95U2-5H4K>].

59. Peter J. Adams, *Addiction Industry Studies: Understanding How Proconsumption Influences Block Effective Interventions*, 103 AMERICAN J. OF PUB. HEALTH 35, 35 (2013).

60. *Id.*

61. *Id.*

in part, at limiting these methods of marketing.⁶²

The tobacco industry serves as the quintessential example of federal regulatory intervention with a vice. At the introduction of the twentieth century, cigarette smoking increased dramatically in the United States.⁶³ At that time, the scientific community had little research showing that smoking cigarettes led to severe health problems.⁶⁴ In fact, cigarette companies often advertised that smoking cigarettes benefited health.⁶⁵ As more research began to reveal the health consequences of cigarettes, and cigarette sales began to decline, cigarette companies quickly regained their consumers with the introduction of the filtered cigarette.⁶⁶ Despite the name, no filtration occurred at all.⁶⁷ At its core, the concept of filtered cigarettes acted as nothing more than a marketing ploy to recapture cigarette smokers.⁶⁸

The filtered cigarette, however, revolutionized the tobacco industry.⁶⁹ In 1952, filtered cigarettes made up less than two percent of all cigarette sales.⁷⁰ Additionally, information began to circulate that cigarettes adversely affected human health.⁷¹ But by 1957, filtered cigarettes made up forty percent of all cigarette sales, and that number would reach sixty percent by 1966.⁷² Eventually, enough research surfaced to scientifically conclude that smoking cigarettes contributed to lung cancer.⁷³ Again, the tobacco corporations scrambled to come up with a way to counter these claims.⁷⁴ This included the practice of hiring medical professionals and academic scholars to claim that the anti-tobacco research amounted to “mere statistics.”⁷⁵ This deception continued for decades, with the goal of making the negative effects of smoking cigarettes seem like a controversial concept.⁷⁶ Deceptive advertisement proved fundamental to the tobacco companies' ambitions.⁷⁷

Cigarette advertisements became so popular, that at the time the Federal

62. See, e.g., Division of Advertising Practices, FED. TRADE COMM’N, <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/our-divisions/division-advertising-practices> [https://perma.cc/UUS6-WBYB] (last visited Nov. 5, 2024) (providing multiple examples of Federal Trade Commission rules that attempt to limit deceptive advertising).

63. K. Michael Cummings & Robert N. Proctor, *The Changing Public Image of Smoking in the United States: 1964–2014*, 23 CANCER EPIDEMIOL BIOMARKERS PREV. 1 (2014).

64. *Id.*

65. *Id.* at 1–2.

66. Committee on Government Operations, False and Misleading Advertising (Filter-Tip Cigarettes), H.R. REP. NO. 85-1372, at 13 (1958).

67. *Id.* at 15.

68. See *id.*

69. See Cummings & Proctor, *supra* note 63, at 2.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. K. Michael Cummings et al., *The Cigarette Controversy*, 16 CANCER EPI. BIO. PREV. 1070, 1072 (2007).

76. *Id.*

77. *Id.*

Trade Commission stated that it was “impossible for Americans of almost any age to avoid cigarette advertising.”⁷⁸ Their conclusion proved rational, considering that over a span of sixty-five years, cigarette companies spent \$250 billion to advertise in the United States.⁷⁹ These cigarette ads included doctors, actors, and even professional athletes.⁸⁰ This sort of advertising sought to attract new smokers at a young age.⁸¹ Ushering a new generation of cigarette smokers played a considerable role to the long-term monetary success of cigarette companies.⁸²

Today, cigarette advertisements have very little room to operate.⁸³ Starting in 1967, the Federal Communications Commission Fairness Doctrine required that news networks air one anti-smoking advertisement for every pro-smoking advertisement.⁸⁴ In the following decades, the public’s view on cigarettes had sharply shifted.⁸⁵ Though the cigarette industry again attempted to recapture positive public perception, the Public Health Cigarette Smoking Act made that goal improbable when it banned cigarette advertisements on TV and radio.⁸⁶

The history of tobacco advertisements draw many similarities to the current online sports gambling landscape.⁸⁷ There is a good chance of someone viewing an advertisement for a sportsbook app after just limited time watching TV or scrolling through their phone.⁸⁸ These advertisements often depict celebrities who promote the use of the sports betting app.⁸⁹ More worrisome, online sportsbooks devote a significant amount of time and money to combat any negative reputation attached with gambling.⁹⁰ Even after seeing what transpired with the tobacco industry, the federal government lacks urgency in attempting to combat the gambling industry’s advertising practices.

The widespread use of the Internet elevates these advertisements to a greater level of concern. People have more exposure to advertisements as a result of the technology boom compared to when cigarette use reached its peak.⁹¹ Sports betting companies spend a considerable amount of money on online

78. Cummings, *supra* note 64, at 2.

79. *Id.* at 3.

80. *Id.* at 2.

81. *Id.*

82. *See id.*

83. *Id.* at 3.

84. *Id.*

85. *Id.*

86. Public Health Cigarette Smoking Act of 1970, PUB. L. NO. 91-222, 84 STAT. 87 (codified as amended at 15 U.S.C. § 1340 (2012)).

87. Andrea H. Weinberger et al., *Cigarette smoking, problem-gambling severity, and health behaviors in high-school students*, 1 ADDICT. BEHAV. REP. 40-48 (2015).

88. *See* Hernandez, *supra* note 58.

89. Mark Rodgman, *The Spell Cast By Sportsbooks Commercials & Celebrity Bettors* INPLAYLIVE (Mar. 23, 2023), <https://www.inplaylive.com/news/sportsbooks-commercials-and-celebrity-betting> [https://perma.cc/MA6D-XN7Z].

90. Gottlieb, *supra* note 38, at 1721.

91. Sager Joshi, *History of Advertising 101: What You Need to Know* G2 (Aug. 1, 2024), <https://www.g2.com/articles/history-of-advertising> [https://perma.cc/4F6M-528X].

advertisements.⁹² Companies often advertise through social media sites as well, whose users largely belong to the demographic most inclined to bet on sports.⁹³ Sportsbook advertisements are virtually inescapable.⁹⁴

III. REGULATORY FRAMEWORKS AND CHALLENGES

A. “*We Aren’t in Nevada Anymore*”

It would be an understatement to say that the United States has a complex history with gambling laws. Nevada initiated the first form of legalized sports gambling in 1931.⁹⁵ Due to an increase in the bribery of athletes, the federal government wanted to discourage other states from legalizing sports betting, and imposed a ten percent tax on Nevada for any money profited from sports betting.⁹⁶ This led to a drastic decrease in Nevada’s gaming industry.⁹⁷ On September 13, 1961, former President John F. Kennedy signed one of the most substantial gambling regulations into law.⁹⁸ This regulation, the Federal Wire Act, made it illegal to transmit gambling information across state lines in an attempt to combat bookmaking by organized crime groups.⁹⁹

The next big development came in 1973, when the federal government lowered Nevada’s gambling tax to a quarter of a percent.¹⁰⁰ In tandem with the widespread popularity of satellite television, this decrease in the Nevada tax led to a surge in sportsbooks in Nevada.¹⁰¹ However, in 1992, the United States Congress applied a major blow to sportsbooks when they passed PASPA.¹⁰² PASPA prohibited states from authorizing sports wagering unless the state already had legalized sports wagering and elected to be grandfathered into the statute.¹⁰³ Fourteen years later, in an attempt to combat illegal gambling online, George W. Bush signed into law the Unlawful Internet Gambling Enforcement

92. Jared Beilby, *3 Charts That Show Gambling Spending in Television Ads Skyrocketing*, ASKGAMBLERS, (May 8, 2023), <https://www.askgamblers.com/gambling-news/industry/3-charts-that-show-gambling-spending-in-television-ads-skyrocketing> [https://perma.cc/L5CC-MJP4].

93. Emily Rodgers, *Sports Betting Statistics, Trends, & Predictions*, DRIVERRESEARCH (Aug. 2, 2023), <https://www.driverresearch.com/market-research-company-blog/sports-betting-statistics/> [https://perma.cc/6ARU-H22T].

94. Daniel Kaplan, *Sports gambling ads are everywhere. Should they be restricted — or even banned?*, THE ATHLETIC (May 12, 2023), <https://theathletic.com/4496847/2023/05/12/sports-gambling-ads-restrictions/> [https://perma.cc/JB5U-JS3R].

95. Matt Bonesteel, *Sports betting timeline: From Las Vegas to the Supreme Court*, WASHINGTON POST (Aug. 29, 2022), <https://www.washingtonpost.com/sports/2022/08/29/history-of-sports-gambling/> [https://perma.cc/6VJH-MHXQ].

96. *Id.*

97. *Id.*

98. *Id.*

99. 18 U.S.C. § 1084.

100. Bonesteel, *supra* note 95.

101. *Id.*

102. *Id.*

103. *Id.*

Act.¹⁰⁴ In 2018, the Supreme Court struck PASPA down as unconstitutional, allowing states to have the ability to control their own sports gambling laws.¹⁰⁵ This spurred disorganization and inconsistency in regulation, which brings the issue to where it rests today.¹⁰⁶

The evolution of gambling in the United States corresponds with the growth of technology.¹⁰⁷ Innovation in technology offers savvy entrepreneurs the ability to grow and advertise their product at rates historically not attainable.¹⁰⁸ The founders of online sportsbooks do not deviate from this practice, as they currently offer their product in the form of a mobile application and often advertise on social media sites.¹⁰⁹ This shift to digital sports wagering made PASPA even more crucial in preventing problem gambling.

Congress enacted PASPA during a time when the general public believed that illegitimate sportsbooks threatened the integrity of sport.¹¹⁰ Proponents of PASPA had two central concerns, the first of which had to do with limiting the spread of inconsistent sports gambling laws.¹¹¹ The second concern aimed to protect America's youth from the promotion of sports gambling.¹¹² The Supreme Court in *Murphy v. National Collegiate Athletic Association* did not give much weight to either of these concerns, as the majority in the case offloaded, at least temporarily, those responsibilities onto the states.¹¹³

B. The Murphy Decision

In *Murphy*, the National Collegiate Athletic Association (NCAA), along with professional sports teams, sued the state of New Jersey for enacting a law legalizing sports gambling in violation of PASPA.¹¹⁴ Though PASPA did not make sports betting a federal crime, it gave the United States Attorney General, the NCAA, and professional sports organizations the right to bring civil actions against states that authorized sports gambling.¹¹⁵ Thus, the issue in *Murphy*

104. *Id.*

105. *Id.*

106. Lily Faulconer, *The Danger of Dealer's Choice: Why State-by-State Regulation of Online Sports Betting Is Not Enough*, 21 N.C. J. L. & TECH. 137 (2020).

107. Jaydip Ramani, *The History of Online Gambling*, MEDIUM (Jan. 9, 2023), <https://medium.com/@jackbrown.iguru.uk/the-history-of-online-gambling-51ed8904be9b> [https://perma.cc/E59G-Z27R].

108. MONGE, *The Evolution of Technology and Its Impact on Business*, MEDIUM (Sep. 27, 2023), <https://medium.com/@monge/the-evolution-of-technology-and-its-impact-on-business-393fe6c6e8d2> [https://perma.cc/DM5G-7T2H].

109. Patrick Cwiklinski, *Best Sports Betting Sites & Sportsbook Apps 2024*, SBD (Feb. 5, 2024), <https://www.sportsbettingdime.com/sportsbooks/> [https://perma.cc/9TZQ-KCBA].

110. S. REP. NO. 102-248, at 4-5 (1992).

111. *Id.*

112. *Id.* at 5.

113. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

114. *Murphy*, 584 U.S. at 453.

115. *Id.* at 453; 28 U.S.C. § 3703, *invalidated by Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

turned on whether the provision in PASPA that made it unlawful for a state to “authorize” sports gambling adhered to the Constitutional guarantee of dual sovereignty.¹¹⁶

Specifically, the state of New Jersey asserted that PASPA prevented them from exercising their law making ability surrounding sports gambling.¹¹⁷ The federal government responded that PASPA did not compel New Jersey to do anything, therefore, the anti-commandeering principle does not apply in the case.¹¹⁸ Before ruling on the constitutional issue, the Supreme Court clarified that New Jersey undoubtedly “authorized” sports gambling in their state in direct conflict with PASPA.¹¹⁹ However, since the Court eventually ruled PASPA unconstitutional, that determination mattered little to the case outcome.

The *Murphy* majority detailed an extensive history lesson over the reasoning and applicability of the anti-commandeering principle.¹²⁰ In doing so, they highlighted three specific reasons why the anti-commandeering principle holds significance.¹²¹ In the majority’s opinion, the principle: (1) protects an individual’s liberty; (2) upholds political responsibility; and (3) forces Congress to carefully consider the cost of regulation.¹²² The majority ruled that §3702(1) of PASPA, the section responsible for prohibiting the states from “authorizing” sports gambling, contradicted all three of the majority’s listed principles.¹²³

The Court next considered whether the remaining portions of PASPA can survive without §3702(1), or if the entire legislation would be “doomed” without it.¹²⁴ *Alaska Airlines, Inc. v. Brock* provided the court with the analysis needed to make this determination.¹²⁵ As the Court stated in *Alaska Airlines, Inc.*, for the entirety of a statute to fall with one or more of its unconstitutional provisions, “it must be evident that [Congress] would not have enacted those provisions which are within its power, independently of [those] which [are] not.”¹²⁶ The Court took issue with the outcome that would result if the advertisement provisions existed without the remainder of PASPA.¹²⁷ In particular, the majority disfavored the idea of a federal law banning the advertisement of an activity that is legal under federal and state law.¹²⁸ On this subject, the Justices’ interpretations varied dramatically.¹²⁹

The dissent in *Murphy* based the crux of their disagreement with the

116. *Murphy*, 584 U.S. at 458.

117. *Id.* at 463.

118. *Id.*

119. *Id.* at 467.

120. *Id.* at 470.

121. *Id.* at 473.

122. *Id.* at 473–74.

123. *Id.* at 474.

124. *Id.* at 480.

125. *Id.* at 481.

126. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987).

127. *Murphy*, 584 U.S. at 485.

128. *Id.*

129. *Id.* at 494.

majority on the severability issue.¹³⁰ The dissenters argued that since the majority ruled that New Jersey could not authorize sports betting, they used it as ammunition to “cut down” the remainder of the statute.¹³¹ Further, they question how the majority could so easily assume that Congress would have preferred not to enact PASPA at all if it lacked its anti-commandeering proponent.¹³² The Senate Report supports the dissents understanding, and it lists many concerns of state-regulated sports gambling that bear no relation to the commandeering fears cited by the majority in *Murphy*.¹³³

While argument remains concerning the outcome of *Murphy*, the Court raised important constitutional issues resulting from PASPA’s enumeration. The anti-commandeering ruling specifically possessed a lot of weight and fell in line with previous Supreme Court rulings.¹³⁴ Additionally, the Supreme Court’s majority’s conclusion relating to PASPA’s ability to preempt state law has constitutional support.¹³⁵ Where the majority lacked weight, and where the dissenting Justices took issue, concerns the contention that the provision covering the advertisement of sports gambling in PASPA cannot be severed from the rest of the Act.¹³⁶

As mentioned above, the majority alludes to rare instances in which an activity remains legal at both the state and federal level, but advertisement of that activity has been prohibited or heavily regulated.¹³⁷ Interestingly, the majority momentarily mentions cigarettes and how they fall into this unusual category, but they do not explore this in detail.¹³⁸ It is a mystery how the majority can recognize an instance in which Congress prohibited the advertisement of a product legalized at the state and federal level, but then conclude that Congress in this instance could not have possibly wanted PASPA enacted at all if it did not have the unconstitutional provision.

Leaving this gap in legislation carries potential detrimental consequences to the overall public health of the United States. During the 1990s, when the Supreme Court struck down regulation aimed at putting restraints on tobacco advertisements, young adult’s cigarette usage increased significantly.¹³⁹ *Murphy* provided the Supreme Court an opportunity to prevent the same result from

130. *Id.*

131. *Id.*

132. *Id.*

133. S. REP. NO. 102-248, at 5 (1992).

134. See generally Caleb Seckman, *Anti-Commandeering: A Modern Doctrine for a Modern World*, 13 N.Y.U. J.L. & LIBERTY 150 (2019).

135. *Murphy*, 584 U.S. at 455.

136. *Id.* at 456.

137. *Id.* at 485.

138. *Id.*

139. *Overall Tobacco Trends*, AM. LUNG ASS’N, <https://www.lung.org/research/trends-in-lung-disease/tobacco-trends-brief/overall-smoking-trends> [https://perma.cc/3CB9-EYMD] (last visited Nov. 5, 2024).

happening with respect to sports wagering.¹⁴⁰ Severing the advertisement provisions from PASPA could have accomplished this, a method that the Court exercises when it deems that Congress would have enacted the legislation without the unconstitutional portions.¹⁴¹ Instead, the Court shifted the responsibility back to the legislature.¹⁴² Six years removed, and gambling disorder rates have already risen in connection to digital sports wagering.¹⁴³ In light of the mass legalization of digital sports wagering across the states, the rising rate of gambling disorders cannot be reduced to coincidence.¹⁴⁴

Ultimately, *Murphy* effectively gave states the ability to determine whether they wanted to allow sports wagering and struck down many safeguards aimed at limiting deceptive advertising from private actors.¹⁴⁵ Following this decision, multiple states followed New Jersey, and legislators began to push legalized sports wagering in their state.¹⁴⁶ Sports wagering industries cited many favorable incentives that states could expect as a result of legalizing sports gambling, the primary of which being favorable tax implications.¹⁴⁷

C. Recovery Costs Balancing Out Tax Revenue

After the *Murphy* ruling in 2018, gambling lobbyists promised billions in tax revenue on the other side of legalized online sports betting.¹⁴⁸ As it turns out, they made good on their promise. Since 2018, states that have legalized sports betting have raked in a total \$4.33 billion in taxes.¹⁴⁹ Not only that, but early projections assumed that sports betting operations have the potential to bring in

140. Cole Eisenshtadt, *Betting on Oversight: Repurposing Regulations for Cigarette and Tobacco Advertising to Address Sports Gambling, America's Fastest Growing Vice Industry*, 74 ADMIN. L. REV. 387, 399 (2022).

141. See generally John C. Nagle, *Severability*, 72 N.C. L. REV. 203 (1993-1994).

142. *Murphy*, 584 U.S. at 486.

143. Purdum, *supra* note 9.

144. *Looking Back: Five Years Post-PASPA*, GGB NEWS (May 15, 2023), <https://ggbnews.com/article/looking-back-five-years-post-paspa/> [https://perma.cc/HJE7-ANSF].

145. Sean Gregory, *The Risks and Rewards of the Supreme Court's Sports Gambling Decision*, TIME (May 17, 2018), <https://time.com/5280442/supreme-court-sports-betting-repeal/> [https://perma.cc/6N9J-NUU8].

146. Chris Bengel & Shanna McCarriston, *U.S. sports betting: Here's where all 50 states currently stand on legalizing online sports betting sites*, CBS (Oct. 13, 2023), <https://www.cbssports.com/general/news/u-s-sports-betting-heres-where-all-50-states-currently-stand-on-legalizing-online-sports-betting-sites/> [https://perma.cc/W8MY-MF6H].

147. Louis Leonardi, *The Economic Ramifications of Online Sports Gambling in the U.S.*, MICH. J. OF ECON. (Dec. 4, 2022), <https://sites.lsa.umich.edu/mje/2022/12/04/why-online-sports-betting-should-be-allowed-in-every-u-s-state/> [https://perma.cc/J2SU-VH43].

148. David Enrich, *Key Findings From The Times' Investigation of Sports Betting*, N.Y. TIMES (Nov. 20, 2022), <https://www.nytimes.com/2022/11/20/business/sports-betting-investigation.html> [https://perma.cc/WP4Y-CG27].

149. Jack Caporal, *Sports Betting Tax Revenue by State*, THE MOTLEY FOOL (Jan. 16, 2024), <https://www.fool.com/research/sports-betting-tax-revenue-by-state/> [https://perma.cc/TA3D-D7KB].

\$11 billion in labor income.¹⁵⁰ On paper, these results look promising to a legislator who wants to grow the economy and labor force of their state. However, public health officials have hesitations due to the expected social costs involved with treating those who develop gambling disorders.¹⁵¹ Legalization combined with loose regulation has in the past left state taxpayers to pay for the misfortunes of their more vulnerable citizens.

For instance, in 2010 alone, the United States lost nearly \$250 billion due to excessive alcohol use.¹⁵² Loss of productivity in jobs made up the majority of the loss at 71.9 percent, while health care services used for treating alcohol-related health issues made up 11.4 percent.¹⁵³ The median cost for the states totaled \$3.5 billion.¹⁵⁴ State governments, funded by taxpayers, had to cover forty percent of binge drinking-related costs.¹⁵⁵ Unfortunately, the losses do not stop at economic valuation. Between the years 2011 and 2015, excessive alcohol use accounted for roughly 261 deaths per day.¹⁵⁶ On average, American citizens took twenty-nine years off their lives.¹⁵⁷ To give a sense of scale, the total years of potential life lost due to excessive alcohol consumption between the years 2011 and 2015 equaled 2.8 million years.¹⁵⁸

The economic burden resulting from tobacco use provides an example just as stark. A 2018 study maintained that cigarette smoking costs the United States in excess of \$300 billion annually.¹⁵⁹ Productivity loss from premature death and secondhand smoking takes a backseat to healthcare-related costs in the tobacco category, although productivity loss costs still accounted for \$156 billion in losses.¹⁶⁰ Furthermore, productivity loss from cigarette smoking that resulted in morbidity accounted for nearly \$185 billion.¹⁶¹ The median cost for the states in 2018 alone totaled \$2.7 billion, with California leading the pack with a \$16.9 billion loss.¹⁶²

The relationship between gambling and substance abuse emphasizes the

150. *Economic Impact of Legalized Sports Betting*, OXFORD ECON. (May, 2017), https://www.americangaming.org/wp-content/uploads/2019/02/AGA-Oxford-Sports-betting-impacts-2017-May_FINAL-report.pdf [<https://perma.cc/CBF8-U76U>].

151. Andy Sheehan, *Public health advocates say to tap breaks on rapid expansion of online sports gambling*, CBS NEWS (Feb. 6, 2024), <https://www.cbsnews.com/pittsburgh/news/public-health-advocates-rapid-expansion-of-online-sports-betting/> [<https://perma.cc/4R5W-NGU6>].

152. Jeffrey J. Sacks et al., *2010 National and State Costs of Excessive Alcohol Consumption*, 49 AM. J. OF PREV. MED., 73, 74 (2015).

153. *Id.*

154. *Id.*

155. *Id.*

156. Marissa B. Esser et al., *Deaths and Years of Potential Life Lost From Excessive Alcohol Use - United States, 2011-2015*, 69 MORBIDITY & MORTALITY WKLY. REP. 1428, 1429 (2020).

157. *Id.*

158. *Id.*

159. Sundar S. Shrestha et al., *Cost of Cigarette Smoking—Attributable Productivity Losses, U.S., 2018*, 63 AM. J. PREV. MED. 478, 478 (2022).

160. *Id.*

161. *Id.* at 481.

162. *Id.* at 482.

relevance of the above research. Medical literature has long correlated gambling disorders with other substance abuse disorders.¹⁶³ A study from 2011 compiled and examined research from eleven different prior studies which found how often substance abuse disorders occur with gambling disorders.¹⁶⁴ The results revealed that 57.5 percent of people with a gambling disorder presented signs of some kind of substance use disorder, 28.1 percent presented alcohol use disorder, and 60.1 percent of the population presented nicotine dependence.¹⁶⁵ These correlations suggest that those with a gambling disorder face an increased risk for other substance disorders.¹⁶⁶ Therefore, it is logical to conclude that the cost of treating substance disorders will rise in proportion to the cost of treating gambling disorders.

D. Issues Concerning Enforcement and State Regulation

As it stands, the states have broad authority in enforcing their own operating, advertising, and licensing laws with respect to sports gambling.¹⁶⁷ Without federal interference, some speculate that the states will not legislate digital sports wagering strictly enough.¹⁶⁸ Unlike the tobacco industry, sportsbooks currently have near absolute control over their advertisements.¹⁶⁹ Some states have minor regulations that require a sports betting company to put the minimum age for gambling and to include the number to the gambling addiction hotline in their advertisements.¹⁷⁰ The overruling of PASPA encourages a self-regulating system, which has proved to be detrimental.¹⁷¹ As time passes and Congress refrains from intervention, the risk of experiencing nationwide problem gambling continues to mount.

Analyzing the current gambling epidemic in Australia supports the assumption that patchwork online sports wagering regulation will lead to

163. Carla J. Rash et al., *A review of gambling disorder and substance use disorders*, 7 SUBST. ABUSE REHABIL. 3, 6 (2016).

164. Felicity K. Lorains et al., *Prevalence of Comorbid Disorders in Problem and Pathological Gambling: Systematic Review and Meta-Analysis of Population Surveys*, 106 ADDICTION 490 (2011).

165. *Id.* at 493.

166. *Id.* at 495-96.

167. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

168. Mark Conrad, *The restriction of U.S. Sports Betting Advertising and First Amendment rights*, LAWINSPORT (Jul. 7, 2023), <https://www.lawinsport.com/topics/item/the-restriction-of-u-s-sports-betting-advertising-and-first-amendment-rights> [<https://perma.cc/T7ZF-TXEJ>].

169. Kindbridge, *Sports Betting Advertising Regulation Not Enough to Protect Youth*, KINDBRIDGE BEHAVIORAL HEALTH (Feb. 15, 2023), <https://kindbridge.com/gambling/sports-betting-advertising-regulation-not-enough-to-protectyouth/> [<https://perma.cc/UL27-6AX6>].

170. *See, e.g.*, 68 IND. ADMIN. CODE § 27-7-17 (2021) (requiring that a gambling addiction hotline and the legal gambling age be listed on advertisements).

171. Nathaniel Meyersohn, *The dark side of the sports betting boom*, CNN (Feb. 10, 2023), <https://www.cnn.com/2023/02/10/business/online-sports-gambling-addiction/index.html> [<https://perma.cc/6V2P-J2RB>].

outcomes detrimental to public health and economic growth.¹⁷² Australia has taken a patchwork approach to gambling and has largely allowed its individual states and the gaming industry itself to regulate gambling.¹⁷³ As described in detail below, Australia's methodology has led to outcomes adverse to the public health of their citizens, and should serve as a stark reminder to the United States as to the consequences of patchwork legislation in the gambling industry.

IV. AUSTRALIA—A GAMBLING CASE STUDY

Australia has drawn much attention from legislators all over the world with respect to gambling regulations.¹⁷⁴ The country has notoriously fallen behind the rest of the world, as the Australian federal government continues to disregard sharp rises in gambling disorders.¹⁷⁵ Nearly every year, Australia has the highest amount of gambling losses per adult, which hovers around \$25 billion a year in total.¹⁷⁶ Australia experienced an eight percent increase in online gambling in just the two-year period between 2020 and 2022.¹⁷⁷ A 2022 survey revealed that 73 percent of Australians eighteen and older spent money on gambling.¹⁷⁸ Out of that 73 percent, nearly 34 percent participated in sports betting, and 38 percent participated in horse race betting.¹⁷⁹ These numbers do not represent the product of a shift in regulation overnight, but rather the result of years of inconsistent state gambling legislation.¹⁸⁰

The legislators of different states and territories in Australia understand the influence that problem gambling has on their citizens.¹⁸¹ Many of them have proposed legislation aimed to combat the policy issues that surround problem gambling.¹⁸² These attempts led to little change due to their inconsistent and

172. See generally Austl. Inst. for Gambling Rsch., *Australian Gambling Comparative History and Analysis* (1999), https://www.vgccc.vic.gov.au/sites/default/files/Australian_gambling_comparative_history_and_analysis_project_report_1999.pdf [https://perma.cc/X8LW-HKYY].

173. Josh Taylor, *Australia's online gambling regulation far behind global pack, advocates find*, THE GUARDIAN (Jun. 1, 2023), <https://www.theguardian.com/australia-news/2023/jun/02/australias-online-gambling-regulation-far-behind-global-pack-advocates-find> [https://perma.cc/RMC3-797B].

174. *Id.*

175. *Id.*

176. *Gambling in Australia*, AUSTL. INST. HEALTH & WELFARE (Sep. 7, 2023), <https://www.aihw.gov.au/reports/australias-welfare/gambling> [https://perma.cc/2JCF-2QJD].

177. *ACMA research reveals slight increase in Australians gambling online*, Austl. Comm. & Media (Feb. 17, 2022), <https://www.acma.gov.au/articles/2022-02/acma-research-reveals-slight-increase-australians-gambling-online> [https://perma.cc/F2Q9-9HHY].

178. *Gambling in Australia*, *supra* note 176.

179. *Id.*

180. Jan McMillen & William R. Eadington, *The Evolution of Gambling Laws in Australia*, 8 N.Y. L. SCH. J. INT'L & COMPAR. L. 167, 173 (1986).

181. Paul Delfabbro & Daniel King, *Gambling in Australia: experiences, problems, research and policy*, 107 UNIV. AUCKLAND SCH. PSYCH. 1556, 1558 (2012).

182. *Id.*

fractured effect.¹⁸³ Each state and territory has its own legislation and regulators with different agendas.¹⁸⁴ Coupling that with the differences in available resources, implementing uniform regulation has proved challenging.¹⁸⁵

In addition, gambling conglomerates' privatization of gambling in Australia has limited transparency surrounding corporate policy initiatives and economic growth.¹⁸⁶ Sports wagering companies have developed tactics analogous to what tobacco companies in the United States used in the 1960s.¹⁸⁷ These methods, such as creating predatorial promotions and appealing to younger markets, have allowed the gambling industry to control the narrative surrounding the public health threats linked to gambling.¹⁸⁸

In Australia, the two largest sports betting companies donated millions of dollars to fund the creation of a gambling research center at the University of Sydney.¹⁸⁹ This move received backlash from the Australian Medical Association, who called the deal "appalling" and pleaded that the university return the money back to the sportsbooks.¹⁹⁰ Tobacco companies used similar strategies in the United States.¹⁹¹ Looking at the names of major universities in the United States evidences tobacco companies' interest in academia (Duke University is named after tobacco mogul James Duke, and until 1997 the medical school at Wake Forest was named after tobacco magnate Bowman Gray).¹⁹²

A. The Australian Approach

Gambling has long been a cultural pastime in Australia, and many Australians take pride in their risk-taking roots.¹⁹³ Great Britain, having an immense impact on the establishment and development of Australia, laid the foundation on which Australia built their regulations.¹⁹⁴ Though Britain's

183. *Id.*

184. *Id.*

185. *Id.*

186. House Committee on Social Policy and Legal Affairs, *You Win Some, You Lose More: Online Gambling and its Impacts on Those Experiencing Gambling Harm* (Report, June 2023), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000159/toc_pdf/Youwin some,youlosemore.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/RB000159/toc_pdf/Youwin%20some,youlosemore.pdf) [<https://perma.cc/DM34-SYT>].

187. Samantha Thomas et al., *Global Public Health Action is Needed to Counter the Commercial Gambling Industry*, 38 HEALTH PROMOTION INT'L 1, 1 (2023).

188. *Id.*

189. Henry Belot, *Gambling Companies Accused of Using Big Tobacco's Tactics in Push for Weaker Regulations*, THE GUARDIAN (Sept. 23, 2023), <https://www.theguardian.com/australia-news/2023/sep/24/gambling-companies-accused-of-using-big-tobaccos-tactics-in-push-for-weaker-regulations> [<https://perma.cc/F2Z3-3FGW>].

190. *Id.*

191. Nature America, *Tobacco Money and Medical Research*, 5 NATURE MED. 125, 125 (1999).

192. *Id.*

193. Susan Pinto & Paul Wilson, *Gambling in Australia*, 24 AUSTL INST. OF CRIMINOLOGY 1 (July 1990).

194. McMillen, *supra* note 180.

influence has not been prevalent for some time, early enforcement laws surrounding gambling in Australia derived directly from Britain.¹⁹⁵ The goal of this legislation focused on upholding the Victorian moral order, a comprehensive set of ethical standards that influenced social norms in Britain at the time.¹⁹⁶ At the end of the 1880s, Australia's economy began to grow substantially.¹⁹⁷ During this period, Australia started to diverge from the British and form their own style of gambling regulations.¹⁹⁸

In the opening decades of the twentieth century, Australia and other nations began to view gambling as a problem.¹⁹⁹ During that time, the Australian government primarily focused on where their citizens could wager bets and how to enforce regulation.²⁰⁰ Throughout the 1900s, the Australian federal government aided the states in creating commissions tasked with exploring the "economic and social implications" of different forms of gambling within a designated region.²⁰¹ Although Australia never seriously considered prohibiting gambling, up until the 1960s, the government took measures to control the marketing and criminal components of gambling.²⁰²

As technology began to advance, gambling in Australia started to shift dramatically. The State of New South Wales introduced electronic gaming machines (EGMs) in 1956.²⁰³ By the 1990s, all states besides Western Australia had introduced EGMs in their respective territory.²⁰⁴ Pressure from the powerful hospitality industry encouraged the states to implement these machines for "employment and economic growth."²⁰⁵ The states also had concerns that if they did not employ EGMs, they would lose potential revenue to another state who did have them.²⁰⁶

States and territories control a large majority of regulation and licensing of gambling entities in Australia today.²⁰⁷ However, the federal government has been more inclined to intervene over the last couple decades.²⁰⁸ At the federal level, the Australian Communications and Media Authority (ACMA) oversees the Interactive Gaming Act (IGA) and the Broadcasting Services Act (BSA).²⁰⁹ The IGA works to regulate any gambling that takes place through an app or a

195. *Id.* at 170.

196. *Id.* at 171.

197. *Id.* at 172.

198. *Id.*

199. *Id.*

200. *Id.* at 173; Geroge G. Fenich, *A Chronology of (Legal) Gaming in the U.S.*, 3 UNIV. LAS VEGAS GAMING RSCH. & REV. J. 65 (1996).

201. McMillen, *supra* note 180, at 172.

202. *Id.* at 173.

203. Delfabbro, *supra* note 181, at 1557.

204. *Id.*

205. *Id.*

206. *Id.*

207. House Committee on Social Policy and Legal Affairs, *supra* note 186, at 15–16.

208. *See id.*

209. *Id.* at 105.

website.²¹⁰ The ACMA assigns regulation of the timing of advertisements on TV to the BSA.²¹¹ The states and territories have an influential role in regulating advertisements as well.²¹²

The National Consumer Protection Framework for Online Wagering (NCPF) also exists to reduce the harms of online gambling.²¹³ The federal government and the states share responsibility for administering the NCPF.²¹⁴ This shared approach has drawn criticism for its inability to create uniform law surrounding online gambling.²¹⁵ Australian states do not employ the NCPF in the same manner.²¹⁶ Varying implementation has stifled harm reduction because online gambling operators do business in the state or territory with the least amount of restrictions, and then other states and territories feel the need to loosen their restrictions to compete.²¹⁷ A similar competition ensued with the introduction of EGMs in the late 1900s.²¹⁸ A conflict also exists as to who should shoulder the social costs for those who experience harm from online gambling.²¹⁹ States or territories who offer the lowest tax rates receive the benefits on the front end, but spread the costs of treating gambling-related harm to the rest of the country.²²⁰

B. Australian Advertising Regulation

Australian citizens have expressed their displeasure with the prominence and regularity of digital sports wagering advertisements.²²¹ A survey of 1,765 Australian adults revealed that roughly seventy percent believed that sports wagering advertisements encourage people to start gambling for the first time.²²² Further, forty-eight percent supported an outright ban on sports wagering advertisements on TV, and forty-seven percent support a total ban on sports wagering advertisements on social media platforms.²²³ Examining Australian sports wagering advertising legislation reveals how the Australian public has gotten to this point of detest.

210. *Id.* at 90.

211. *See id.* at 106.

212. *Id.*

213. Department of Social Services, *National Consumer Protection Framework for Online Wagering: Baseline Study Final Report* 10 (2019).

214. *Id.*

215. *Id.* at 25.

216. *Id.*

217. *Id.* at 28.

218. Delfabbro, *supra* note 181, at 1557.

219. House Committee on Social Policy and Legal Affairs, *supra* note 186, at 19.

220. *Id.*

221. Austl. Gambling Research Centre, *Community attitudes towards sports and race betting advertising in Australia*, AUSTRALIAN INSTITUTE OF FAMILY STUDIES 1 (Mar. 2023), https://aifs.gov.au/sites/default/files/2023-03/2302_2_attitudes-towards-betting-ads.pdf [<https://perma.cc/8KSL-UJPX>].

222. *Id.* at 2.

223. *Id.*

Australia regulates online gambling advertisements in the same divided manner that they regulate other components of online gambling.²²⁴ The BSA and the IGA intersect with the Australian Association of National Advertisers' Code of Ethics and Wagering Code (AANA), as well as with state and territory regulation to oversee sports wagering advertising.²²⁵ The BSA mostly regulates when gambling advertisements may be shown on television.²²⁶ The ACMA ensures that any entity who wishes to advertise gambling services has a license.²²⁷ The AANA oversees the content of sports wagering advertisements.²²⁸ Notably, the AANA codes and ethics cannot be enforced as legislation.²²⁹

This approach of having multiple organizations share the responsibility of regulating sports wagering advertisements has many shortcomings. It invites sports wagering companies to write laws in ways that sidestep restrictions put in place to protect young people and those with gambling problems.²³⁰ To illustrate, though the Commercial Television Industry Code of Practice put restrictions in place that limited sports wagering advertising during sporting events, gaps in other areas of regulation permitted companies to display their logos on athletes jerseys and around the stadium during televised events.²³¹ Despite the prohibition on running direct advertisements, sports wagering advertisements remain visible throughout the entirety of an event.²³²

The codes set by the AANA giving the gambling and advertising industry the authority to decide their own rules give rise to further concern.²³³ More issues exist due to the way the AANA places the burden on the viewer to report any issues of non-compliance.²³⁴ Ad Standards, the entity responsible for administering the AANA codes and supervising complaints, asserts that companies strictly comply with the AANA codes.²³⁵ However, there remains difficulty in substantiating this claim. Consumers bear the responsibility of reporting violations, which they may not have awareness of or want to take the time to do.²³⁶ Decentralized regulation and minimal advertising restrictions have caused Australia's gambling issue to multiply.²³⁷

224. House Committee on Social Policy and Legal Affairs, *supra* note 186, at 104.

225. *Id.* at 105.

226. *Id.*

227. *Id.* at 88.

228. *Id.* at 109.

229. *Id.*

230. Marisa Paterson, *Inquiry Into Online Gambling and its Impacts on Those Experiencing Gambling Harm*, Submission No. 69, PARLIAMENT OF AUSTRALIA (2023).

231. See House Committee on Social Policy and Legal Affairs, *supra* note 186, at 107.

232. *Id.*

233. *Id.* at 112.

234. *Id.*

235. *Id.* at 109, 112.

236. *Id.* at 112.

237. See Melissa Davey & Natasha May, 'A Massive Public Health Problem': Australian Children as Young as 10 Are Hooked on Gambling, *THE GUARDIAN* (Oct. 2, 2023),

C. The Severity of Gambling Disorders in Australia

During the 2022-2023 financial year, the occurrence of people aged twenty-four and under contacting Gambling Help Online increased by sixteen percent, though public health specialists believe that number denotes only a fraction of the true percentage of youth exposed to harm from problem gambling.²³⁸ Federation University and the Coroners Court of Victoria revealed that between the years of 2009 and 2016, suicide related to gambling accounted for 14 of 184 deaths of people between the ages of seventeen and twenty-four.²³⁹ The Victorian Responsible Gambling Foundation has drawn a direct correlation from the increases in problem gambling in younger Australians to the rise in accessibility and subjection to advertisements through online platforms.²⁴⁰ An international gambling study found most adolescents in Australia experience exposure to sports wagering advertisements while watching televised sports.²⁴¹

The state-by-state and self-regulation approach has failed to provide proper safeguards to protect young adults and children from the risks associated with gambling.²⁴² Without intervention from Australia's federal government, public health authorities fear a sharp decline in the overall health of the country's youth.²⁴³ The estimated cost of problem gambling in Australia in 2012 totaled between \$4.7 billion and \$8.4 billion per year.²⁴⁴ Adjusted for inflation, that equals roughly between \$6.4 billion and \$11.5 billion in 2024.²⁴⁵ Legislators in the United States should take into consideration the human and economic costs of fragmented state-by-state regulation as they address the issue in the future.

<https://www.theguardian.com/australia-news/2023/oct/03/a-massive-public-health-problem-australian-children-as-young-as-10-are-hooked-on-gambling> [<https://perma.cc/QQP2-XJ58>].

238. *Id.*

239. *Id.*

240. Megan Freund et al., *The Prevalence and Correlates of Gambling in Secondary School Students in Victoria, Australia, 2017* 9-10 (Oct. 2019), https://responsiblegambling.vic.gov.au/documents/680/Freund-Gambling-in-secondary-school-students-in-Victoria-2017-Oct-2019_Qu9AD8V.pdf [<https://perma.cc/6UKU-8458>].

241. See Nerilee Hing et al., *Adolescent Exposure to Gambling Promotions During Televised Sport: An Exploratory Study of Links with Gambling Intentions*, 14 INT. GAMBLING STUDIES 374 (2014).

242. *Id.* at 375.

243. *Id.* at 27.

244. Simone Rodda et al., *Problem Gambling: Aetiology, Identification and Management*, 41 AUSTL. FAM. PHYSICIAN 9, 726 (Sep. 2012).

245. U.S. INFLATION CALCULATOR, <https://www.usinflationcalculator.com/> [<https://perma.cc/F742-AKH9>] (accessed Aug. 15, 2024).

V. MITIGATION MOVING FORWARD

A. *Issues with Patchwork Legislation*

As expected, after the Supreme Court ruled PASPA unconstitutional, many states moved to legalize online sports wagering.²⁴⁶ With no direction from the federal government, this naturally resulted in varying laws between the states.²⁴⁷ As of 2024, thirty-eight states and the District of Columbia have legalized sports wagering at either the mobile or retail level.²⁴⁸ Of the twelve remaining states who have not legalized sports wagering, two of those states have active legislation ready to move forward.²⁴⁹ This patchwork legislation presents cumbersome issues for sports betting operators and vendors.²⁵⁰

For every jurisdiction that the operators wish to do business in, they must ensure that they comply with that specific state's rules.²⁵¹ With each state having their own sports gambling regulations, this forces the operators to become familiar with multiple different compliance standards.²⁵² Influential figures in the gambling industry have expressed the challenges resulting from lack of uniformity across the gambling industry.²⁵³

The CEO of a gambling consultant firm in Nevada expressed his disapproval of the patchwork legislation, saying "[i]t would be nice if we just had one registry, to get all that in one catalog and then be able to offer that to each and every state for approval."²⁵⁴ He continued, "[i]t'd be nice to see one federal system across the board . . ."²⁵⁵ Additionally, the vice president of compliance at an online sport wagering app, explained that tracking the differing regulations in each jurisdiction has exhausted the compliance division at Betfred.²⁵⁶ These contentions accentuate the challenges that the industry itself currently faces, and indicate patchwork legislation's potential hindrance of proper problem gambling initiatives.

Unfortunately, until Congress establishes a uniform set of rules and regulations, the remarks from those in the gambling industry above allude to the potential for severe breakdowns in compliance. Companies naturally gravitate

246. Patrick Moran, *Anyone's Game: Sports-Betting Regulations After Murphy v. NCAA*, CATO INSTITUTE (Mar. 11, 2019), <https://www.cato.org/legal-policy-bulletin/anyones-game-sports-betting-regulations-after-murphy-v-ncaa> [<https://perma.cc/3BNK-E9SR>].

247. *See id.*

248. *Interactive U.S. Map: Sports Betting*, AM. GAMING ASS'N (Sep. 25, 2024), <https://www.americangaming.org/research/state-gaming-map/> [<https://perma.cc/PE9S-JBAD>].

249. *Id.*

250. Mike Seely, *Rogue Nation: Is A Uniform Regulatory Process Achievable In The U.S.?*, SPORTSHANDLE (Aug. 10, 2023), <https://sportshandle.com/uniform-regulatory-process-achievable-us/> [<https://perma.cc/8HBS-SQBU>].

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

towards profit, and the United States' free market structure encourages competition.²⁵⁷ This results in companies moving quickly to capitalize on new markets that their competitors have not yet utilized.²⁵⁸ Trying to navigate the myriad of different regulations, that vary state by state, while at the same time moving quickly to capture new audiences, will inevitably lead to breakdowns in compliance.²⁵⁹ With patchwork legislation employed, and a multi-billion dollar industry left to regulate itself, there is minimal protection in place for people who are most vulnerable to gambling disorders.

B. Employing Federal Intervention

Instances exist in which the social well-being of the public clashes with the free market of the United States, and the federal government has a duty to protect its citizens from corporations and industries with the central objective of growing profits at the expense of the nation's health. History provides numerous examples of times when the federal government had to take control of regulating an industry to protect the public from harm. The federal government created the Securities and Exchange Commission in 1934 following a market crash in 1929 with the central objective of regulating market manipulation.²⁶⁰ In response to increasing concerns over the human impact on the environment, the Environmental Protection Agency materialized in 1970.²⁶¹ The federal government assigned the Food and Drug Administration with supervising several food and pharmaceutical products and practices.²⁶² These agencies came into existence because Congress felt the need to address issues that had vast detrimental effects on the public at large, which warranted a uniform set of standards.

While there have been efforts at the state level to regulate digital sports wagering, the national reach and prevalence of digital sports wagering creates challenges that the individual states cannot surmount.²⁶³ Financial incentives that accompany a loosely regulated vice industry also have the tendency to persuade states.²⁶⁴ As mentioned earlier, the short-term increase in tax revenue

257. Heather Boushey and Helen Knudsen, *The Importance of Competition for the American Economy*, THE WHITE HOUSE (Jul. 9, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/> [https://perma.cc/DPC6-HA6M].

258. *Id.*

259. *See* Seely, *supra* note 250.

260. U.S. Securities and Exchange Commissions, *Mission*, SEC, <https://www.sec.gov/about/mission> [https://perma.cc/52BZ-KGR2] (accessed Aug. 9, 2023).

261. Meir Rinde, *Richard Nixon and the Rise of American Environmentalism*, SCI. HIST. INST. (Jun. 2, 2017), <https://www.sciencehistory.org/stories/magazine/richard-nixon-and-the-rise-of-american-environmentalism/> [https://perma.cc/S944-STWQ].

262. Thomas R. Flemming et al., *Discussion: The role, position, and function of the FDA—The past, present, and future*, 18 *BIostatistics* 417 (2017).

263. *See* Faulconer, *supra* note 106.

264. *See* Caporal, *supra* note 149.

resulting from legalized of online sports wagering has hypnotized the states. Following the *Murphy* ruling state policymakers do not want to risk losing that potential profit to a neighboring state. For this reason, the federal government, not competing against any state for revenue from digital sports wagering, holds a superior position to analyze the long-term consequences of online sports gambling through a federal gaming commission.

C. Federal Gaming Commission

State law creates gaming commissions and tasks them with investigating illegal gambling.²⁶⁵ While their primary objectives vary depending on the state, most gaming commissions aim to educate people on gambling laws, enforce compliance with those laws, and generally maintain the integrity of gambling activities.²⁶⁶ Enforcement agents are employed to monitor casinos and ensure they comply with state law.²⁶⁷ Due to the rise in popularity of digital sports wagering, many state gaming commissions have created enforcement divisions charged with monitoring sports wagering and fantasy sports.²⁶⁸ While state regulation has been productive in most instances, state gaming commissions do not have the resources to effectively regulate digital sports wagering. Reviewing applicable state advertising statutes exemplifies this concept.

The Indiana statute governing sports wagering advertising has six total provisions.²⁶⁹ These requirements prohibit the sports wagering operator from falsely advertising, advertising directly to minors, and offering greater odds compared to their competitors or for wagering a higher amount.²⁷⁰ The sports wagering operator must also display the gambling hotline and the legal betting age, as well as provide the option to unsubscribe from all direct marketing.²⁷¹ These requirements have an important role in regulating advertisement at some level. However, federal commissions have the resources and authority to enforce more stringent regulations on a broader spectrum.

For comparison, the United Kingdom has regulated gambling using a federal gaming commission since 2007.²⁷² Gambling operators, including sportsbook operators, must have a license from the gambling commission to

265. See, e.g., *Gaming Control*, INDIANA GAMING COMMISSION, <https://www.in.gov/igc/gaming-control/> [https://perma.cc/45P5-BCUN].

266. See *id.*

267. See, e.g., *Enforcement*, IGC, <https://www.in.gov/igc/enforcement/> [https://perma.cc/YQ78-QN75] (last visited Nov. 5, 2024).

268. See, e.g., *Sports Wagering and Paid Fantasy Sports*, IGC, <https://www.in.gov/igc/sports-wagering-and-paid-fantasy-sports/> [https://perma.cc/7ABQ-Y78N] (last visited Nov. 5, 2024).

269. 68 IND. ADMIN. CODE § 27-7-17 (2021).

270. *Id.*

271. *Id.*

272. SELECT COMMITTEE ON THE SOCIAL AND ECONOMIC IMPACT OF THE GAMBLING INDUSTRY, GAMBLING HARM—TIME FOR ACTION, 2019-21, HL 79, at 24 (UK).

conduct business in the United Kingdom.²⁷³ Operators must adhere to federally administered advertising codes as a condition of licensure.²⁷⁴ The rules direct that gambling advertisements must not exploit people under the legal gambling age, feature anyone who looks under the age of twenty-five, suggest that gambling can solve financial issues, advocate that gambling can enhance personal qualities, and a whole range of other restrictions that strive to minimize the social harm of gambling.²⁷⁵ As of 2024, no federal agency or law that enforces similar standards exists in the United States.²⁷⁶

The United Kingdom introduced their federal gaming commission when they passed the Gambling Act in 2005.²⁷⁷ The commission regulates the operation and advertisement of all forms of gambling.²⁷⁸ Concern for player safety led to the creation of the commission, and the commission provides a stable balance between outright criminalization and rampant private industry overreach.²⁷⁹ The Gambling Act's primary objectives include diluting the presence of crime in gambling, safeguarding the integrity of gambling, and shielding children and vulnerable individuals from the harms of gambling exploitation.²⁸⁰

The commission has reflected their commitment to those objectives in recent amendments and regulations.²⁸¹ In April of 2023, parliament released a white paper that discussed the dangers that advertising can present to people prone to problem gambling, as well as the dangers that advertising can have on people under the United Kingdom's legal gambling age of eighteen.²⁸² In response to these concerns, the commission outlined proposals aimed at limiting deceptive advertising, as well as creating safer means of advertising.²⁸³ They further proposed protective legislation aimed at limiting minors' access to gambling, along with working with bookmakers to improve age verification measures.²⁸⁴ The commission's authority to regulate gambling nationwide ensures that suggested proposals like the ones above apply uniformly to all

273. JOHN WOODHOUSE, GAMBLING ADVERTISING: HOW IS IT REGULATED?, HC 7428, at 10 (UK 2024).

274. *Id.*

275. The UK Code of Broadcast Advert., *The BCAP Code: The UK Code of Broadcast Advertising* 88 (2010), <https://www.asa.org.uk/static/40293b82-443a-4416-9555ff5259585538/df33b22d-828e-406b-88b0d5de6bc3602e/The-BCAP-Code.pdf> [https://perma.cc/44GH-AQ9W].

276. See Samantha Thomas et al., *Protecting children and young people from contemporary marketing for gambling*, 38 HEALTH PROMOT. INT. 1, 2, (2023).

277. Gambling Act 2005, (Commencement No. 6 and Transitional Provisions) Order 2006 SI 2006/3272 (UK).

278. Gambling Act 2005, c. 19 § 20 (UK).

279. Gambling Act 2005, c. 19 § 1 (UK).

280. HOUSE OF COMMONS LIBRARY, GAMBLING WHITE PAPER: A READING LIST, HC 9788, at 2 (UK 2023).

281. *Id.* at 3.

282. *Id.* at 4.

283. *Id.* at 4–5.

284. *Id.* at 6.

gambling entities. The commission's status as a government regulating body means that proposals that eventually pass into law require enforcement.

D. Surviving Judicial Scrutiny

The ruling in *Murphy* not only leaves room for the creation of a national gambling commission, but the Court even signs off on it in a way.²⁸⁵ At the close of the majority's opinion, Justice Alito explained that "Congress can regulate sports gambling directly, but if it elects not to do so, each State may act on its own."²⁸⁶ While the Court's enthusiasm provides some encouragement, Congress realistically would have to survive many constitutional challenges upon the creation of a federal gaming commission.

Article 1 of the Constitution provides Congress with the authority to regulate activity that has a substantial effect on interstate commerce.²⁸⁷ Interstate commerce refers to "trade, commerce, transportation, or communication among the several States."²⁸⁸ Over time, the Supreme Court has expanded the ability of Congress to regulate interstate activity.²⁸⁹ Interstate commerce unquestionably encompasses digital sports wagering.²⁹⁰ Further, the Necessary and Proper Clause permits Congress to enact laws necessary to conduct their enumerated powers.²⁹¹ Proposing a federal gaming commission to regulate and oversee gambling provides a rational and efficient way to guarantee uniformity. Indeed, many commissions that act as regulatory bodies have been deemed constitutionally valid.²⁹² Allowing a commission to oversee industry practices helped to implement the Consumer Financial Protection Bureau ("CFPB") following the financial crisis in 2007-2008.²⁹³ Congress created the CFPB to broadly govern consumer protection within the financial sector.²⁹⁴ The CFPB, which operates as a "independent agency," serves as a division of the Federal Reserve.²⁹⁵

The Tenth Amendment, which prevents Congress from commandeering a state to act or to refrain from acting, would also pose a constitutional hurdle to Congress.²⁹⁶ As noted earlier, the Court struck down PASPA under the Tenth

285. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

286. *Id.*

287. U.S. CONST. art. I, § 8, cl. 3.

288. 15 U.S.C. § 78(c).

289. *See, e.g., Wickard v. Filburn*, 317 U.S. 111 (1942).

290. Georgia R. Carroll, "*Consistency Is All I Ask!*": *Leveling the Playing Field of Online Sports Gambling*, 47 J. CORP. L. 215, 225 (2021).

291. U.S. CONST. art. I, § 8, cl. 18.

292. *See* TODD GARVEY ET AL., CONG. RSCH. SERV., R455442, CONGRESS'S AUTHORITY TO INFLUENCE AND CONTROL EXECUTIVE BRANCH AGENCIES(2018).

293. Jeff Neal, *Consumer Financial Protection Bureau on trial*, HARVARD LAW TODAY (Sep. 29, 2023), <https://hls.harvard.edu/today/supreme-court-preview-consumer-financial-protection-bureau-v-community-financial-services-association-of-america/> [https://perma.cc/X6A9-KPXS].

294. *Id.*

295. *Id.*

296. U.S. CONST. amend. X.

Amendment.²⁹⁷ The Court in *Murphy* explained that the Constitution gives Congress the power to regulate individuals, not the power to regulate the states.²⁹⁸ The distinction between regulating the individual and regulating the state has narrow application. One way to differentiate the concept is that if Congress has a strong federal interest in regulating an activity, they must do so directly.²⁹⁹ Congress cannot use the backdoor and have the states act as their agent.³⁰⁰ Put another way, Congress cannot tell a state what their state law should be.³⁰¹ Congress, upon creation of a federal gaming commission, would directly regulate sports wagering federally as opposed to compelling a state not to act which is what PASPA did. Under this approach, a state still has the final say in determining whether it wants to legalize digital sports wagering. All the federal gaming commission's regulations and policies would apply to individuals and businesses engaged in digital sports wagering.

Establishment of a federal gaming commission would also implicate the Preemption Doctrine. Born out of the Supremacy Clause, preemption directs that when federal law and state law conflict, federal law supersedes the state law.³⁰² The Court in *Murphy* made it clear that PASPA's ban on state authorization of sports gambling failed a preemption analysis because the provision in no way directs private actors.³⁰³ However, a federal gaming commission would preempt state regulation over sports gambling. The Supreme Court has ruled that preemption of state law goes beyond an act of Congress.³⁰⁴ A federal commission may also preempt state law if it is "acting within the scope of its congressionally delegated authority."³⁰⁵ This rule of law, in conjunction with the language in *Murphy* itself permitting the federal government to directly oversee sports gambling, likely guarantees that a federal gaming commission would successfully preempt state law.

A congressionally created federal gaming commission tasked with regulating and overseeing all aspects of gambling ensures that people digitally wager on sports in a safe and responsible manner. Importantly, this commission will also have the resources to adequately control the advertising practices of the digital sportsbooks. *Murphy* allows Congress to directly control this activity, and the Constitution provides avenues to do so. Unlike PASPA, the commission would provide federally mandated regulation and avoid the commandeering arguments that were raised in *Murphy*, all while having the effect of preempting conflicting state gambling regulation.

297. See *Murphy*, 584 U.S. 458.

298. *Id.* at 477.

299. *Id.* at 472.

300. See *id.*

301. *Id.*

302. Bryan L. Adkins et al., *Federal Preemption: A Legal Primer*, R45825, CONG. RSCH. SERV., at 1 (2018), <https://sgp.fas.org/crs/misc/R45825.pdf> [<https://perma.cc/66Y3-RPHE>].

303. *Murphy*, 584 U.S. at 479–80.

304. *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 379 (1986).

305. *Id.* at 368–369.

VI. CONCLUSION

Digital sports wagering has risen substantially every year since the Supreme Court struck down PASPA.³⁰⁶ Advertisements for sportsbooks have increased just as dramatically in that time.³⁰⁷ This correlation cannot be explained as mere coincidence.³⁰⁸ Rampant advertisement has historically been indispensable to the success of vice industries.³⁰⁹

Justice Alito opened *Murphy* by saying “Americans have never been of one mind about gambling, and attitudes have swung back and forth.”³¹⁰ The regulatory history of gambling holds this statement true, as various interests have prevailed at different times.³¹¹ At a time, however, Americans did not have one mind about the public health threats of tobacco.³¹² By the time the nation conclusively accepted that tobacco had a negative influence on overall health, the social and economic costs associated with tobacco had already devastated the country.³¹³ Current trends in Australia mirror the same outcome related to gambling.³¹⁴

This Note proposes the creation of a federal gaming commission to provide universal digital sports wagering regulation and enforcement procedures to all states that legalize digital sports wagering. A federal commission would provide consistency, better mitigate problem gambling, and protect consumer interests. Centralizing regulation will also signal to people the dangers associated with online sports wagering and the need to thread together the patchwork legislation that governs the industry. Perhaps most importantly, a federal gaming commission has the ability to adequately conduct a regulatory system that places an emphasis on the nation’s public health. To this extent, a federal commission avoids complete prohibition while at the same time achieves consumer protection from overreach on the part of the sports wagering industry.

306. German Lopez, *The Rise of Sports Betting*, THE NEW YORK TIMES (Apr. 5, 2024), <https://www.nytimes.com/2024/04/05/briefing/the-rise-of-sports-betting.html> [<https://perma.cc/L9AX-VQSQ>].

307. Kaplan, *supra* note 94.

308. See Beilby, *supra* note 92.

309. See Cummings, *supra* note 63.

310. *Murphy*, 584 U.S. at 458.

311. See *id.*

312. See Cummings, *supra* note 63.

313. See Henry Saffer et al., *The effect of tobacco advertising bans on tobacco consumption*, 19 J. HEALTH ECON. 1117, 1117 (2000).

314. See Davey, *supra* note 237.