

BET ON IT: AMENDING THE WIRE ACT MOVES THE LINE FORWARD ON INTERSTATE SPORTS BETTING

Elsa Larsen *

INTRODUCTION	602
I. WELCOME TO HELL	603
A. Sinners and Their Unholy Games	603
II. GOING DOWN	610
A. Ding Dong! The Wicked PASPA Is Dead	611
B. No Sympathy for the Devil	615
1. Dante Meets Cato: Kennedy vs. the Mob	616
2. Into the Darkness: The Wire Act	619
C. City of Woe	622
1. Tale of Two Memos: 2011 Opinion	624
2. Tale of Two Memos: 2018 Opinion	626
III. INTO THE FIRE: AMENDING THE WIRE ACT	628
CONCLUSION.....	634

INTRODUCTION

Back in the day, your bookie was a friend: they knew your name, your favorite team, wrote you a ticket by hand, and celebrated when you came for a winning payout.¹ This is the Las Vegas sports betting era that Parker remembers.² Parker was lucky enough to live in Nevada—at the time, the state held a monopoly on sports betting—so she often received calls from friends outside of the state asking if she could place sports bets for them at the casino.³ Parker has lived her whole life in Sin City, and a drive down Las Vegas Boulevard with her demonstrates just how much the city has changed.⁴ The deafening sounds of hotel implosions are seared in her mind,

* Symposium Editor, *Vermont Law Review*, Volume 47; Juris Doctor Candidate, Class of 2023 at Vermont Law School. I owe a debt of gratitude to Vermont Law School Professor Catherine Fregosi for her support and advice, as both greatly enriched this Note.

1. Interview with Christy Parker, Dir. of Purchasing, Vegas Tickets, in Las Vegas, Nev. (Jan. 2, 2022) (on file with author).

2. [Michael Buffer voice] In this corner, born and raised in Las Vegas, Nevada, and representing the suburb of South-Central Henderson . . . Christy “CP” Parker! As a twenty-year veteran of the ticket-broker industry, she currently holds the title Director of Purchasing at Vegas Tickets, buying and selling tickets for shows, concerts, and sporting events. She still resides in Las Vegas and can often be found at shows around town or at the rodeo. *Id.*

3. *Id.*

4. *Id.*

along with the hope that visionaries like Steve Wynn and Kirk Kerkorian brought to the desert oasis in the form of hotel-casinos.⁵ These changes include witnessing the evolution of Vegas's sports betting scene. What started as a cash-rules-everything-around-me town has increasingly embraced the recent trend towards technology and virtual currency.⁶ Fast forward to the era of the internet: mobile sportsbooks and sports betting apps have replaced Parker as the friend to call to place sports bets for them.

In *Murphy v. NCAA*, the U.S. Supreme Court held that states have the authority to legalize sports betting schemes.⁷ But the Supreme Court's decision in *Murphy* did not affect the applicability of the federal Wire Act, and as such, *Murphy* did not authorize interstate sports betting by phone or internet. Currently, neither the text of the Wire Act nor *Murphy*'s holding approves of sports betting via internet or phone between states without both states having legalized sports betting.

This Note argues that the outdated Wire Act must be amended to enable interstate sports betting. Part I looks at the cultural history of gambling and sports betting legislation in America, including factors that led to the passage of the Wire Act. Part II discusses how the Wire Act's current form hinders bettors and sportsbooks. Part III proposes an amendment to the Wire Act that will authorize interstate sports betting and support betting across state lines using mobile sportsbooks.

I. WELCOME TO HELL

A. Sinners and Their Unholy Games

For a Nation so proud of its individual liberties, when it comes to gambling, the United States has clung to its Puritan roots like moss to a stone. Despite, or perhaps in spite of, his career in professional baseball,

5. "It was kind of scary and it was very loud," Parker says of the Sands Hotel implosion in 1996. *Id.* The Sands, once owned by Howard Hughes, was sold and imploded by another Las Vegas visionary: Sheldon Adelson. Adelson replaced the hotel with his own creation, The Venetian, which opened in 1999. See History Timeline, LAS VEGAS SUN, <https://lasvegassun.com/history/timeline/> (last visited Mar. 27, 2023); *Sands Hotel and Casino Opened 66 Years Ago*, LAS VEGAS REV.-J., (Dec. 5, 2018) <https://www.reviewjournal.com/local/the-strip/sands-hotel-and-casino-opened-66-years-ago-photo-archive-1543749/>; Peter Michel, *Howard Hughes' Vegas Hotels*, UNLV (June 23, 2014), <https://www.unlv.edu/news/article/howard-hughes-vegas-hotels>.

6. Parker reminisces about when "Pittsburgh Jack" still set the lines for the local's casino, Gold Coast, and acknowledges that the Stardust sportsbook really *did* set the standard. Interview with Christy Parker, *supra* note 1 (emphasis added). There are no more old-school "book joints" like the Stardust—they have been replaced by mobile sportsbooks in the form of internet kiosks and smartphone apps—showcasing the need for an updated Wire Act.

7. *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018).

early twentieth century conservative evangelist Billy Sunday railed against the evils of gambling, while Social Gospel founder Walter Rauschenbusch called it the “vice of the savage.”⁸ Some view gambling as a victimless crime that breeds societal problems.⁹ Others believe that Las Vegas rinses away sins like a morality car wash.¹⁰ Morality may hold great weight in America, but it is in a tug-of-war with its desire to play the odds.

Americans have been betting on sports since the earliest days of horseracing.¹¹ Due in part to concerns over gambling-related social ills, and in part to the crooked 1919 World Series,¹² many states began the twentieth century by initiating bans on sportsbooks and gaming operators.¹³ Following the 1919 Black Sox scandal, a sports betting cycle began. First, the aversion to gambling, based on moral sentiments, encouraged a response to persistent illegal sports betting.¹⁴ Next, anti-gambling legislation drove sports betting back underground—to bookies in shadowed corner bars offering lines of credit.¹⁵ Then, a steadfast demand for sports

8. Heather Vacek, *The History of Gambling*, CTR. FOR CHRISTIAN AT BAYLOR UNIV. ETHICS, Spring 2011, at 88 (internal citations omitted); see also Jack Klasey, *Billy Sunday vs. the Saloons*, DAILY J. (Jan. 13, 2017), https://www.daily-journal.com/news/local/billy-sunday-vs-the-saloons/article_80098b68-7a3d-508d-8254-1f676c40a4dc.html.

9. Vacek, *supra* note 8, at 88, 92.

10. CASINO (Universal Pictures 1995).

11. ARNE K. LANG, SPORTS BETTING AND BOOKMAKING: AN AMERICAN HISTORY 37–38 (2016). This Note does not go in-depth about horse racing, as that form of gambling has long been treated separately from other regulations aimed at gambling and sports betting.

12. The 1919 World Series, which led to the installation of the first Major League Baseball commissioner, gave the Cincinnati Reds their first ever world title when eight players of the favored Chicago White Sox, bribed by infamous kingpin Arnold Rothstein, intentionally threw the Series. Evan Andrews, *What was the 1919 ‘Black Sox’ Baseball Scandal?*, HISTORY, <https://www.history.com/news/black-sox-baseball-scandal-1919-world-series-chicago> (last updated Aug. 12, 2021).

13. Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, SPORTSHANDLE (Nov. 13, 2017), <https://sportshandle.com/gambling-laws-legislation-united-states-history/> [hereinafter *History of Sports Betting*].

14. *Id.*

15. *Id.*; see also Brett Smiley, *Q&A: Here’s How a Local Bookie Really Operates: Myths and Reality*, SPORTSHANDLE (Feb. 28, 2018), <https://sportshandle.com/how-local-bookie-works-operates-myths-reality-interview/> (“The biggest reason why there’ll always be a guy at the bar or an offshore book is because of one thing: credit.”). Casinos are not the ones handing out credit anymore; today, credit comes marketed to perfection in the form of promotions and free play. See, e.g., Will Yakowicz, *Why Local Bookies Have an Edge This NFL Season*, FORBES (Sept. 9, 2021), <https://www.forbes.com/sites/willyakowicz/2021/09/09/why-local-bookies-have-an-edge-this-nfl-season/?sh=5cdbca2c6e2a> (exploring why widespread legalization of sports betting will not eliminate the friendly, neighborhood-bookie, regardless of what executives in the legal sportsbook industry are saying). Amending the Wire Act—thereby creating a substantial legal sports-betting market in the United States—will not eliminate illegal sports betting for a variety of reasons, but one main reason is due to the human connection. Despite legal alternatives, local bookies, arguably, have the edge because of the longstanding relationships bookies have with their customers. Remember the sports betting era

betting displaced the notion that a total ban on wagering was possible.¹⁶ Eventually, public acceptance completed the cycle.¹⁷ Over time, sports betting became an “integral part of the game.”¹⁸

General acceptance of sports betting by the public is most pervasive in Nevada, the country’s first state to legalize casino gambling and sports betting.¹⁹ With three developments, sports betting has continued to grow in popularity: (1) the advent of the point-spread;²⁰ (2) the debut of televised sports; and (3) a federal tax reduction on legal sports bets.²¹

When talking about sports betting, the importance of the point-spread system cannot be understated. Before the point-spread, if a big underdog hit or if a bookie had too many customers all heavily betting on a favorite, bookmakers ran the risk of losing big.²² This risk caused bookies to only book games that were evenly matched.²³ Point-spread betting offered bookmakers a way to even out the betting action on both sides of a game.²⁴

that Parker recalls—back in the day, your bookie knew you, cheered for your team, and smiled when you won—because nothing strengthens a friendship like settling up your debts after a couple of bad beats. See Roy Larking, *Gambling 101: What is a Bad Beat?* SI (June 22, 2020), <https://www.si.com/betting/2020/06/22/gambling-101-bad-beat> (referring to a bad beat in sports betting as anything “[f]rom a buzzer beating three-point shot in basketball, an empty net goal in hockey, a last inning rally in baseball, or even a meaningless late score in football”).

16. *History of Sports Betting*, *supra* note 13.

17. *Id.*

18. Jodi S. Balsam, *Criminalizing Match-Fixing as America Legalizes Sports Gambling*, 31 MARQ. SPORTS L. REV. 1, 5 (2020) (internal citations omitted).

19. *Id.* at 6 (in 1931 and 1949, respectively).

20. *Point Spread*, DICTIONARY.COM, <https://www.dictionary.com/browse/point-spread> (last visited Feb. 15, 2023).

[A] betting device, established by oddsmakers and used to attract bettors for uneven competitions, indicating the estimated number of points by which a stronger team can be expected to defeat a weaker team, the point spread being added to the weaker team’s actual points in the game and this new figure then compared to the stronger team’s points to determine winning bets.

Id.

21. Balsam, *supra* note 18, at 6.

22. Bookmakers chanced losing their entire bankroll if an underdog hit or if all their customers bet on the favorite. Bookies even refrained from accepting bets on games that were particularly lopsided in order to lessen their risk. The point-spread system changed all this by giving bookies the ability to even out the handle on both sides of a game, even if the teams were not evenly matched. See Jeremy Martin, *History of Sports Betting and the Point Spread*, DOC’S SPORTS SERV. (May 30, 2017), <https://www.docsports.com/sports-betting-history.html> (“[W]ith the point spread [bookmakers] could offer any game they wanted because the line reflected the differences between the strengths and weaknesses of the two teams and helped them attract business on both sides of a game.”).

23. *Id.*

24. A point-spread, also known as the handicap, is a bet on the margin of victory in a sporting event. Bettors attempt to predict how close or far apart the final score of a sporting event will be, and to win, the score must cover the spread. To illustrate: Parker bets the Tampa Bay Buccaneers will win against the Philadelphia Eagles, and the Buccaneers are seven-point favorites. The Buccaneers need to

The point-spread reflects the differences between the strengths and weaknesses of two teams.²⁵ This created a virtual guarantee that bookies would make a profit, which, in turn, expanded a bookie's offerings of games to their customers.²⁶ Before point-spread betting ruled the line, sports bets were (and still can be) placed only on the moneyline.²⁷ For example, the Eagles are -240 favorites against the Jets. Translation: to win \$100 on the Eagles, a bettor must bet \$240 on the moneyline. Talk about an expensive vig.²⁸

Point spread creator Charles McNeil didn't set out to revolutionize sports betting, but that is exactly what happened with his invention of the point-spread.²⁹ In the 1940s, McNeil started his own bookmaking operation, offering point-spread betting as a way to separate the sharks from the whales.³⁰ Then called "wholesaling odds,"³¹ McNeil's approach evened out the sports betting system: in his system, the Eagles could be seven-point favorites over the Jets and all the bettor had to know is that if the Eagles

win by eight or more points for the score to cover the spread and for Parker to win her bet. If the Eagles lose by exactly seven points, that is called a push—a tie between the bettor and the sportsbook—where Parker's money is refunded, and the sportsbook does not take a vig. See Frank Ammirante, *What is Point Spread Betting? Spread Betting Explained*, GAMEDAY (Aug. 26, 2022), <https://thegameday.com/how-to-bet/spread/>; accord Danny Donahue, *What is a Push in Sports Betting?*, ACTION, <https://www.actionnetwork.com/education/push> (last updated Feb. 17, 2022); Martin, *supra* note 22; see generally *Sports Betting*, VEGAS.COM, <https://www.vegas.com/gaming/gaming-tips/sports-betting/#football.html> (last visited Feb. 28, 2023) (explaining how to make a variety of bets on different sports).

25. Martin, *supra* note 22.

26. *Id.*

27. While point-spread betting is about who wins and by what margin, moneyline bets care only about who wins the game outright. Moneyline bets are basic and easier to win because you simply bet on which team you think will win the game. See Ryan Knuppel, *Moneyline vs Spread – Which Bet is Better?*, US BETTING REP. (Apr. 25, 2021), <https://usbettingreport.com/sports-betting-guides/moneyline-vs-spread/>; Chad Millman, *Who Invented the Point Spread? Charles McNeil, a Chicago Professor and Banker*, ACTION (last updated Nov. 18, 2021), <https://www.actionnetwork.com/general/charles-mcneil-point-spread>; see generally Michael Stevens, *7 Historical Facts About Sports Gambling*, GAMBLING SITES, <https://www.gamblingsites.org/blog/7-historical-facts-about-sports-gambling/> (last updated Feb. 10, 2021) (emphasizing the significance of sports gambling history).

28. *Vigorous* (also known as *juice*, *the cut*, *the rake*, *the margin*, or simply the *vig*) is the percentage the house takes from placing a bet. In sports betting, the difference between what the losing side bets and how much the winning side is paid out is how a sportsbook makes money. Sportsbooks attempt to find the sweet spot that splits betting action across lines evenly; finding that balance is difficult but crucial because an unbalanced betting line can cost a sportsbook. See Matt Chaprales, *What is the Juice in Sports Betting? Understanding the Vig*, VSIN, <https://www.vsin.com/what-is-the-juice-in-sports-betting-understanding-the-vig/> (last visited May. 3, 2023).

29. Millman, *supra* note 27.

30. *Id.*

31. Robert H. Boyle, *The Brain That Gave Us the Point Spread*, VAULT (Mar. 10, 1986), <https://vault.si.com/vault/1986/03/10/the-brain-that-gave-us-the-point-spread>.

win by more than seven points, the bettor wins.³² Given that McNeil’s creation requires less math than calculating traditional moneyline odds and payouts, one can see how such an approachable system for betting flourished in the post-Depression era,³³ almost as well as it has in the post-pandemic era.³⁴

Just a few years before McNeil revolutionized sports betting with the point-spread system, the appearance of televised sports was causing its own hullabaloo. Live sports consume more television time than any other subject worldwide,³⁵ and most of us find it difficult to imagine a time where SportsCenter was not on air, let alone in existence.³⁶ Much to the chagrin of fans, McNeil refused to give baseball the point-spread treatment,³⁷ but

32. Millman, *supra* note 27.

33. For those interested in the rest of the point-spread-wizard’s wild story: Following the end of his first football season running his own bookmaking operation, McNeil introduced point-spread betting to college football, then college basketball. In 1950, when the mafia came knocking, looking “to go partners with my brain,” McNeil decided to close shop and put his knowledge of betting to work for himself for the next three decades, turning a rough profit of \$320,000 each season, or about \$3 million today. Charles McNeil, who had been a winner for twenty-five of the past twenty-seven seasons prior to his death, left us in 1981 with but one piece of wisdom: “There are three things a gambler needs: money, guts, and brains. If you don’t have one, you’re dead. I’ve got all three.” Rob Miech, *The Spread, White and Blue’s Very Own Charles K. McNeil*, CHI. SUN TIMES (June 25, 2022), <https://chicago.suntimes.com/sports-saturday/2022/6/25/23179713/the-spread-white-and-blues-very-own-charles-k-mcneil-vegas-gambling-points-sports-betting-miech>. Now, I know what you’re thinking: does the NFL owe McNeil for creating a sports-betting system so accessible to fans that advertisements for easy betting now fill every commercial break and earns the League millions every year? If you are a law school student, you won’t like the answer: maybe. See *id.*; Boyle, *supra* note 31; Millman, *supra* note 27;; Ben Rolfe, *A Brief History of Betting on the NFL*, PRO FOOTBALL NETWORK (Feb. 1, 2023), <https://www.profootballnetwork.com/a-brief-history-of-betting-on-the-nfl/> (“As the 1940s approached the bet \$110 to win \$100 model began to become increasingly popular.”).

34. See Johnathan D. Cohen, *Sports Gambling Could be the Pandemic’s Biggest Winner*, WASH. POST (Feb. 5, 2021), <https://www.washingtonpost.com/outlook/2021/02/05/sports-gambling-could-be-pandemics-biggest-winner/> (reporting pandemic-induced budget deficits have prompted many states to look at sports betting as a new source of state revenue).

35. Leonard Koppett, *Baker Field: Birthplace of Sports Television*, COLUM. COLL. TODAY (Spring 1999), https://www.college.columbia.edu/cct_archive/spr99/34a.html; David J. Halberstam, *Eighty Years Ago Today, NBC Experimented with the First Ever Telecast of a Sporting Event*, SPORTS BROAD. J. (May 17, 2019), <https://www.sportsbroadcastjournal.com/eighty-years-ago-today-nbc-experimented-with-the-first-ever-telecast-of-a-sporting-event/>.

36. ESPN’s flagship show started on September 7, 1979, as a small sports news program on a brand-new cable television channel. Since then, SportsCenter has produced more than 50,000 episodes and has turned ESPN into the “four-letter icon” recognizable today. Dan Levy, *ESPN’s SportsCenter Continues to Change World of Sports After 50,000 Episodes*, B-R (Sept. 13, 2012), <https://bleacherreport.com/articles/1332984-espn-sportscenter-continues-to-change-the-world-of-sports-after-50000-episodes>; Josh Krulewitz, *Learn More about SportsCenter History with Timeline, Trivia*, ESPN FRONT ROW (Sept. 4, 2012), <https://www.espnfrontrow.com/2012/09/learn-more-about-sportscenter-history-with-timeline-trivia/>.

37. Baseball remains a moneyline-heavy sport—possibly because in baseball, “[i]f you get three strikes, even the best lawyer in the world can’t get you off.” *Quotes by Bill Veck*, ESPN CLASSIC

America's pastime does play a role here: the first regularly scheduled sporting event to be pictured over the airwaves was a Columbia-Princeton baseball game.³⁸ Less than a century ago, on May 17, 1939, the National Broadcasting Company (NBC) broadcasted the game to an estimated four hundred television sets capable of receiving the signal.³⁹ It worked well enough that NBC produced the first broadcast of a Major League game that summer, and, if you have ever been in a bar between the months of May and October, you know the rest is history.⁴⁰

From that first baseball game to the most recent Super Bowl, the impact of televised sports on the growth of sports betting is clear. Fans were offered more games to bet on thanks to the point-spread and now fans could watch the games they bet on at home or their local bar. With natural break points in games, televised sports bred advertisement, and sportsbooks went all in.⁴¹ As of 2021, industry giant DraftKings spent over \$200 million on sales and marketing to grow its position in the sportsbook market.⁴² This is a far cry from the belief that legalized sports betting would change the sport

(Nov. 19, 2003), [http://www.espn.com/classic/s/veeckquotes000816.html#:~:text="That's the true harbinger of spring, not crocuses or swallows returning to Capustrano, but the sound of a bat on the ball."](http://www.espn.com/classic/s/veeckquotes000816.html#:~:text=) *Id.* Millman, *supra* note 27.

38. Koppett, *supra* note 35.

39. *Id.*

40. See Halberstam, *supra* note 35 ("In a country of some 139 million people in 1939, only a few hundred homes had televisions . . . In 1950, only nine percent of American households had a television set. Yet by 1960 the figure had reached 90 percent."). Few knew just how much impact that first broadcast would have on the landscape of modern sports and ultimately, on the lives of American sports fans.

41. In 2020, estimated media spending from the five largest mobile sportsbooks was as follows: DraftKings, \$93 million; FanDuel, \$61.2 million; BetMGM, \$8.1 million; William Hill, \$1.2 million; PointsBet, \$730,000. Because only a few states allow in-person sports betting, advertising and marketing are crucial in capturing the estimated ninety percent of sports betting revenue that comes from online and mobile sportsbooks. See Michael Applebaum, *The U.S. Sports Betting Race is On—And Many Marketers Want a Piece of the Action*, ADAGE (Jan. 14, 2021), <https://adage.com/article/marketing-news-strategy/us-sports-betting-race-and-many-marketers-want-piece-action/2305551>; Jeff Edelstein, *Sportsbooks Continue to Spend Millions on Radio Advertising*, SPORTSHANDLE (Jan. 19, 2022), <https://sportshandle.com/sportsbooks-spending-millions-radio-advertising/> (reporting radio ad spending tripled in the first three quarters of 2021—arguably, sports betting has impacted sports talk radio the most by shifting programming from fandoms to financials); see also Brian Pempus, *NFL Allows Teams to Sell Official Sportsbook Sponsorship, Report Says*, SPORTSHANDLE (Feb. 21, 2020), <https://sportshandle.com/nfl-sportsbook-sponsorships-allowed/> (announcing the NFL's approval of sponsorship agreements between teams and U.S.-regulated sportsbooks; projected annual revenue of \$2.3 billion from sports betting prompted the sharp change in attitude from previous League responses to the issue).

42. *Editorial Board: Bettors Beware: Compulsive Gambling will be a Risk in Sports Betting by Phone*, BUFF. NEWS (Nov. 13, 2021), https://buffalonews.com/opinion/editorial/the-editorial-board-bettors-beware-compulsive-gambling-will-be-a-risk-in-sports-betting-by/article_52ec7a78-430b-11ec-a90e-cf8887c6a715.html [hereinafter *Bettors Beware*].

for the worse with games now representing “the fast buck, the quick fix, the desire to get something for nothing.”⁴³ That “something for nothing” idea is the backbone of Fox Bet Super 6—the free-to-play game requires players to pick six outcomes on Sunday NFL games.⁴⁴ Players choose the winner of each game and pick the margin of victory, picking all six correctly means winning a \$100,000 jackpot.⁴⁵

Fox Bet Super 6 is a boiled down version of point-spread betting. This model is becoming the new norm by bringing a different type of fan into the sports betting world, thus increasing profits and participation in sports betting.⁴⁶ Gone are the days of ambiguous on-air references to the point-spread, born out of a league’s fear that talking about sports betting threatened the sport’s integrity.⁴⁷ Today, sports betting has become a revenue stream.⁴⁸

43. *History of Sports Betting*, *supra* note 13 (internal quotation marks omitted).

44. *Id.*; see Kevin Cooney, *FOX Bet Super 6: Bears Fan Wins \$100,000 of Terry’s Money in Week 17*, FOX 13 NEWS (Jan. 3, 2022), <https://www.fox13news.com/sports/fox-bet-super-6-week-17-winner> (describing how to play the game and win).

45. See Cooney, *supra* note 44 (announcing a Chicago public school teacher as the winner of the \$100,000 jackpot after she correctly picked all six game outcomes).

46. *E.g.*, Emily Stewart, *Sports Betting: Pretty Fun, Probably Terrible*, VOX (Feb. 24, 2022), <https://www.vox.com/the-goods/22945877/sports-betting-promos-odds-draftkings-caesars> (“Sports betting gives Caesars a new line to its existing customers . . . [b]ut it also serves as a pipeline to get new customers into its broader ecosystem[.]”). Caesars, MGM, DraftKings, and FanDuel are all spending plenty of money on marketing, in the form of both bonus offers, including matching deposits, in addition to traditional advertising campaigns—with the hope of attracting and retaining a younger generation of sports bettors. *Id.* Caesars believes its excessive advertising will be worth it as the gaming giant estimates seeing profitability from sports betting by kick-off of the 2023 football season. Justin Byers, *Caesars Looks to Sports Betting to Bolster Casino Business*, FRONT OFF. SPORTS (Nov. 3, 2021), <https://frontofficesports.com/caesars-looks-to-sports-betting-to-bolster-casino-business/>.

47. *Bettors Beware*, *supra* note 42. The NFL’s policies on sports betting have changed drastically since the repeal of PASPA. See Brett Smiley, *Best Sports Betting Scenes: In ‘Silver Linings Playbook’ ‘You Think I F—d Up All the Eagles Juj?’*, SPORTSHANDLE (Mar. 27, 2020), <https://sportshandle.com/best-betting-scenes-silver-linings-playbook/> (explaining how the NFL cut an interview segment with *Silver Linings Playbook* star Bradley Cooper from a Thanksgiving Day broadcast because the movie talks about betting on football games. At the time, the NFL would not acknowledge the prevalence of sports betting throughout the NFL season); *cf.* Brian Pempus, *NFL Allows Teams to Sell Official Sportsbook Sponsorship, Report Says*, SPORTSHANDLE (Feb. 21, 2020), <https://sportshandle.com/nfl-sportsbook-sponsorships-allowed/> (announcing the NFL’s embrace of sports betting with its policy change allowing sponsorships between teams and U.S. sportsbooks).

48. Sports wagering has generated \$961.1 million in just the first three months of 2021. Compare that to 2017, just one year prior to the *Murphy* decision, when Nevada’s monopoly on fully legal sportsbook operations netted just \$248 million. See David Purdum, *3-Year Evolution of American Sports Betting: From Taboo to Revenue*, ESPN (May 14, 2021) https://www.espn.com/chalk/story/_/id/31423119/3-year-evolution-american-sports-betting-taboo-revenue.

Rounding out the series of developments that expanded the popularity of sports betting was a reduction in the federal tax on sports bets.⁴⁹ In 1951, two years after Nevada legalized sports betting, the federal government imposed a 10% tax on all amounts wagered.⁵⁰ Because the tax does not take into account how sportsbooks pay out customer winnings, the 10% vig was too much for Nevada sportsbooks to swallow, making sports betting no longer profitable to casinos.⁵¹ Congress lowered the tax to 2% in 1974,⁵² leading to a revival of sports betting and granting a revenue stream for the federal government.⁵³ In 1983, Congress reduced the tax rate again, this time to 0.25%, in addition to the 2% excise tax on illegal sports bets.⁵⁴ Seemingly a good choice since under the current rate, Nevada reported \$4.9 billion in bets placed with Nevada sportsbooks by 2017.⁵⁵

II. GOING DOWN

In a pre-cellphone world, a ban on sports betting was restricted to physical locations. States regulated and banned sports betting within geographic borders. With the expansion of the internet and cell phones, such a geographic limitation restricts sports betting farther than ever before by requiring bettors to be within specific physical boundaries before placing

49. See generally G. Robert Blakely & Harold A. Kurland, *Development of the Federal Law of Gambling*, 63 CORNELL L. REV. 923, 994-97 (1978) (discussing the history of gambling taxes, including special wagering taxes like excise and occupational taxes).

50. 26 U.S.C. § 4401(c) (imposing a 10% tax on lotteries, betting pools, and sports betting); Jennifer Roberts & Greg Gemignani, *Who Wore It Better? Federal v. State Government Regulation of Sports Betting*, 9 UNLV GAMING L.J. 77, 78 (2019).

51. To illustrate the impact of this tax, let's look at the tax if it had applied to the 2018 Super Bowl. Bettors in Nevada wagered approximately \$158.6 million (the "handle") on the NFL game. Had the 10% tax still been in effect, sportsbooks would have owed \$15.86 million to the federal government. When the underdog Philadelphia Eagles won, sportsbooks were left with roughly \$1.17 million after payouts (the "hold"). At the 10% tax rate, Nevada sportsbooks would have suffered a loss of over \$14 million. Roberts & Gemignani, *supra* note 50, at 78 n.12; Press Release, Nev. Gaming Control Bd. (Feb. 5, 2018), <https://gaming.nv.gov/modules/showdocument.aspx?documentid=12742> (reporting a record \$158.6 million was wagered on the 2018 Super Bowl across Nevada's 198 licensed sportsbooks, equaling a 0.7% hold for the state).

52. Blakely & Kurland, *supra* note 49, at 1002; Roberts & Gemignani, *supra* note 50, at 80.

53. *History of Sports Betting*, *supra* note 13.

54. 26 U.S.C. § 4401(a); see Blakely & Kurland, *supra* note 49, at 1009 n.391 ("[T]he tax reduction from 10% to 2% indicates that Congress did not contemplate a significant income from this provision.").

55. Balsam, *supra* note 18, at 6; *A Look Inside the Numbers of Sports Betting in the U.S. and Overseas*, SPORTS BUS. J. (Apr. 16, 2018), <https://www.sportsbusinessjournal.com/Journal/Issues/2018/04/16/World-Congress-of-Sports/Research.aspx>.

bets. This impacts each state’s ability to decide whether to be in the betting market.

A. Ding Dong! The Wicked PASPA Is Dead

Just as cultural norms around sports betting have changed, so too have the legal roadblocks surrounding it. Many states have legalized sports betting in the wake of the Supreme Court’s decision in *Murphy v. NCAA*,⁵⁶ which held that the Professional and Amateur Sports Protection Act (PASPA) was unconstitutional.⁵⁷ While PASPA was not the only federal law limiting sports betting, its demise is a win for sports betting.

Seeking a return to our Puritanical roots, in 1992, Congress passed PASPA.⁵⁸ In an attempt to stop the spread of state-sponsored sports betting,⁵⁹ PASPA made it unlawful for states to “sponsor, operate, advertise, promote, license, or authorize by law or compact . . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based” on competitive sporting events.⁶⁰ PASPA also prohibited someone from sponsoring, operating, advertising, or promoting such gambling schemes—

56. *Murphy v. NCAA*, 138 S. Ct. 1461, 1485 (2018).

57. *Id.*; see Matthew Kredell, *One Year After PASPA Repeal, Sports Betting Legislation Appears in More Than 75% of US*, LEGAL SPORTS REP. (May 14, 2019), <https://www.legalsportsreport.com/32440/sports-betting-legislation-after-paspa/> (explaining Pennsylvania, Mississippi, Rhode Island, and West Virginia have passed legislation to legalize sports betting in previous years, with more states to follow); Dave Bonderoff, *New Mexico Sports Betting - Where You Can Bet, Current Laws, and Online Prospects 2023*, SPORTSHANDLE, <https://sportshandle.com/new-mexico/> (last updated Dec. 19, 2022) (explaining New Mexico legalized sports betting in 2018); see also Matthew Waters, *Legislative Tracker: Sports Betting*, LEGAL SPORTS REP. (Mar. 10, 2023), <https://www.legalsportsreport.com/sportsbetting-bill-tracker> (tracking proposed and passed legislation at the state level).

58. Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. §§ 3701–3704 (1992) (*invalidated by* *Murphy v. NCAA*, 138 S. Ct. 1461 (2018)).

59. See DERRICK K. HACKEL, BEATING THE SPREAD: OREGON’S ROLE IN THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT, 1, 14–16 (Fall 2012) (discussing Oregon’s success enacting a sports lottery). State-sponsored sports betting, like Oregon’s Sports Action Lottery or the New Hampshire Lottery, are gambling schemes sanctioned by a state where the state collects tax revenue from the gambling scheme. These schemes differ from other forms of gambling, where the government taxes a gambling operator’s revenue. Either way, the state takes a rake. See discussion *supra* note 28; *State and Local Backgrounders: Lotteries, Casinos, Sports Betting, and Other Types of State-Sanctioned Gambling*, URBAN INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/lotteries-casinos-sports-betting-and-other-types-state-sanctioned-gambling> (last visited Apr. 29, 2023) (“State and local governments collect revenue from various forms of state-sanctioned gambling, including lotteries, casinos, parimutuel wagering (e.g., horse racing), sports betting, and video games (e.g., video poker).”).

60. 28 U.S.C. § 3702(1).

but only if done “pursuant to the law or compact of a governmental entity.”⁶¹ For the record: PASPA was not a federal ban on sports betting.⁶²

At the time the law was adopted, certain jurisdictions had already authorized some form of sports betting, so PASPA contained “grandfather” provisions allowing those states to continue sports-betting activities.⁶³ Oregon and Delaware, which both permitted sports lottery activities prior to PASPA, qualified under one exemption.⁶⁴ Another exemption applied to states where sports betting was already legal—most notably in Nevada—thus creating the “Las Vegas loophole.”⁶⁵ That exemption also applied to the limited sports betting schemes of Montana.⁶⁶ A final exemption gave New Jersey, the only state to meet the provision’s requirements, the opportunity to legalize sports betting—so long as it did so within one year

61. *Id.* § 3702(2); see *Murphy*, 138 S. Ct. at 1470 n.23 (discussing PASPA’s lack of definition for gambling “scheme”). The *Murphy* Court, after the United States suggested a loose description for the term, offered an even vaguer definition: “we will use the term ‘sports gambling’ to refer to whatever forms of sports gambling fall within PASPA’s reach.” *Id.* This imprecisely defined term is just another reason to update the Wire Act.

62. Forty-six states were prohibited from licensing sports betting in their states under PASPA, but the lawyers tell us the law was different from a ban. See *infra* notes 72–73 and accompanying text.

63. 28 U.S.C. § 3704(a)(1)–(2).

64. *Id.*; S. REP. No. 102-248, at 10 (1991) (explaining § 3704(a)(1) exempted Oregon and Delaware from PASPA because those states already “conduct sports lotteries on any sport”).

65. *History of Sports Betting*, *supra* note 13; see generally NEV. REV. STAT. §§ 463.010–820 (2017) (gaming control statutes). Because sports betting was already legal in Nevada casinos, PASPA’s second exemption authorized Nevada to continue casino sports betting operations, but only to the degree it was already happening, and expansion was not permitted. The exemption in § 3704(a)(2) effectively gave Nevada a monopoly on sports betting for over two decades.

66. *History of Sports Betting*, *supra* note 13; see generally MONT. CODE ANN. §§ 23-5-110 to -810 (2021) (gambling statutes). PASPA exempted Montana because the state had previously legalized sports betting schemes, such as sports pools, fantasy sports leagues, and sports tab games. See 137 CONG. REC. 12,973 (1992) (statement of Sen. DeConcini); see also Roberts & Gemignani, *supra* note 50, at 83 (explaining certain states were exempted from PASPA); David D. Waddell & Douglas L. Minke, *Why Doesn’t Every Casino Have a Sports Book?*, 7 GLOB. GAMING BUS., 34, 35 (2008) (describing the state sports betting schemes grandfathered in under PASPA). Montana’s limited betting laws permit only specified sports betting schemes, which exclude bets on individual games, like a point-spread bet. This move saved the state’s ability to host NCAA playoff games. See Chelsi Moy, *Everyone’s Cheering: NCAA Says Montana Can Wager on Sports and Host Playoffs*, MISSOULIAN (Aug. 6, 2009), https://missoulian.com/sports/everyones-cheering-ncaa-says-montana-can-wager-on-sports-and-host-playoffs/article_eea1c39a-8312-11de-81c0-001cc4c03286.html (praising the NCAA’s ruling allowing states like Montana to continue hosting postseason playoff games, despite the state’s legalization of certain forms of sports betting). Sadly, current NCAA regulations do not authorize hosting post-season playoff games in states that permit point-spread-style sports betting. The legalization of sports betting presents a lot of opportunity for professional leagues to get involved, which will hopefully spur the NCAA into modernizing its outdated rules. These out-of-touch regulations reinforce the idea that sports betting threatens the integrity of both professional and amateur sports and damages the “reputation and goodwill” of games. Complaint for Declaratory and Injunctive Relief ¶ 6, *NCAA v. Christie*, No. CV124947, 2012 WL 3171566 (D.N.J. Aug. 7, 2012).

of PASPA's passage.⁶⁷ So to recap: PASPA was a federal law that prohibited most states⁶⁸ from legalizing sports betting, without requiring the federal government to create a system to address or regulate the issue.

In 2011, after failing to legalize sports betting within PASPA's one-year window,⁶⁹ New Jersey voters finally approved a state-constitutional amendment authorizing the New Jersey legislature to enact sports betting legislation.⁷⁰ Governor Chris Christie signed the law in 2012, and it was immediately challenged by sports leagues.⁷¹ Both the district court and the Third Circuit Court of Appeals rejected New Jersey's argument that PASPA was unconstitutional, and the U.S. Supreme Court denied certiorari to hear the case.⁷² The court opinions informed New Jersey that PASPA inhibited the state from legalizing and entering the sports-betting market, but did not force the state to make sports betting illegal.⁷³ Thus, the law survived New Jersey's constitutional challenge, at least for a time. PASPA did not authorize states to enact sports betting legislation, but because the law did not force states to *ban* sports betting, it was upheld until *Murphy*. Courts routinely upheld PASPA by interpreting the law as not requiring states to act—more so, courts construed PASPA as applicable only to state laws permitting sports betting.⁷⁴ This interpretation was affirmed by the

67. PASPA does not call out New Jersey by name but it was the only state qualified under the final exemption, which granted the legalization of sports betting “in a municipality” with a 10-year history of casino gambling. 28 U.S.C. § 3704(a)(3); see 138 CONG REC. 12,977–78 (1992) (statement of Sen. Grassley) (explaining the only state eligible for the exemption is New Jersey); see also *In re Casino Licensees for Approval of a New Game, Rulemaking, and Authorization of a Test*, 633 A.2d 1050, 1051 (N.J. Super. Ct. App. Div.), *aff'd per curiam*, 647 A.2d 454, 454 (N.J. 1993) (describing the New Jersey legislature's decision not to vote on a constitutional amendment proposal that would authorize casino sports betting).

68. PASPA applied to forty-six out of fifty states. Remember that Delaware, Montana, Nevada, and Oregon were exempted from PASPA. See discussion *supra* notes 62–66.

69. Brent Johnson, *The Story of When N.J. Almost Legalized Sports Betting in 1993*, NJ.COM, https://www.nj.com/politics/2015/03/the_story_of_njs_missed_opportunity_on_sports_bett.html (last updated Feb. 16, 2022).

70. N.J. CONST. art. IV, § 7, ¶ 2(D), (F) (West, Westlaw through Nov. 2020 amendments).

71. *NCAA v. Christie*, 61 F. Supp. 3d 488, 491 (D.N.J. 2014). Because PASPA did not impose criminal penalties, the law granted automatic standing to professional and college sports leagues to pursue injunctions. See 28 U.S.C. § 3703 (2018); see also Hunter M. Haines, Comment, *Passing the Ball: The United States Supreme Court Strikes Down PASPA and Throws Sports Gambling Back to State Legislatures*, 78 MD. L. REV. 604, 605 (2019) (explaining PASPA garnered support from those opposed to sports betting for fear of corrupting the game).

72. *NCAA v. Governor of N.J.*, 730 F.3d 208, 225 (3d Cir. 2013) (*en banc*), *cert. denied*, 573 U.S. 931, 931 (2014).

73. See Roberts & Gemignani, *supra* note 50, at 85.

74. *NCAA*, 730 F.3d at 235. The Third Circuit held that “PASPA gives states the choice of either implementing a ban on sports gambling or of accepting complete deregulation of that field as per the federal standard.” *Id.*

Third Circuit’s ruling that PASPA did not affirmatively command or compel a state to take action, although laws essentially authorizing sports betting were struck down.⁷⁵

Fresh off the Third Circuit’s ruling, New Jersey tried a different play—repealing the State’s criminal prohibitions against sports betting.⁷⁶ Spoiler alert: it didn’t work. Sports leagues quickly filed for injunctive relief, claiming the State’s repeal was tantamount to an approval of sports betting.⁷⁷ The district court and Third Circuit Court of Appeals remained unmoved by New Jersey’s argument that PASPA violated the Tenth Amendment’s anti-commandeering principles.⁷⁸ New Jersey again appealed to the Supreme Court. This time, the Court chose to hear the case.⁷⁹

New Jersey argued that PASPA, and thus the federal government, was “attempting to stop a state from doing something where the federal government itself has not spoken.”⁸⁰ New Jersey argued the federal government improperly commandeered power from the states by prohibiting states from legalizing sports betting within a state’s own borders.⁸¹

75. See *NCAA v. Christie*, 926 F. Supp. 2d 551, 561 (D.N.J. 2013), *aff’d sub nom. NCAA*, 730 F.3d at 227, 231, 235; *NCAA v. Governor of N.J.*, 832 F.3d 389, 392 (3d Cir. 2016), *rev’d sub nom. Murphy v. NCAA*, 138 S. Ct. 1461, 1472 (2018) (holding that New Jersey’s repeal of its state law prohibiting sports gambling at racetracks or casinos violated PASPA because the repeal “permissively channel[ed] wagering activity,” which thereby constituted an “authorization” of sports betting).

76. *NCAA v. Governor of N. J.*, 799 F.3d 259, 263 (3d Cir. 2015).

77. *Murphy v. NCAA*, 138 S. Ct. 1461, 1472 (2018).

78. *Id.*

79. *NCAA v. Governor of N.J.*, 832 F.3d 389, 392 (3d Cir. 2016), *cert. granted*, *Christie v. NCAA*, 137 S. Ct. 2327, 2327–28 (2017) (*mem.*), *rev’d sub nom. Murphy v. NCAA*, 138 S. Ct. 1461 (2018).

80. Vermont Law Review, *Crossing State Lines: Interstate Gambling and the Interplay Between Federal and State Laws*, YOUTUBE at 55:54 (Sept. 30, 2022), <https://www.youtube.com/watch?v=ZCGS8WrKaNU&t=13s> (quoting Michael McCann).

81. Randall Hsia, *Universities and Sports Betting: The Impact of the January 2019 DOJ Memorandum in Light of Murphy v. NCAA*, JDSUPRA (May 30, 2019) [hereinafter *Impact of 2019 DOJ Memo*], <https://www.jdsupra.com/legalnews/universities-and-sports-betting-the-30199/>; see generally *New York v. United States*, 505 U.S. 144, 188 (1992) (“The Federal Government may not compel the States to enact or administer a federal regulatory program.”); *Printz v. United States*, 521 U.S. 898, 935 (1997) (“The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”). PASPA violated the anti-commandeering principles established in *Printz* because the law authorized the federal government to command states to take certain actions to block sports betting. Given that the anti-commandeering clause has been interpreted to “prohibit the federal government from commandeering the state[s] to enforce federal law,” PASPA was unconstitutional because it directed states in how to act regarding sports betting and violated states’ ability to generate revenue. Amy Howe, *The 10th Amendment, Anti-Commandeering and Sports Betting: In Plain English*, SCOTUSBLOG (Aug. 14, 2017) (internal quotation marks omitted),

The Supreme Court favored New Jersey’s reasoning by holding PASPA violated anti-commandeering principles under the Tenth Amendment, leaving intrastate sports betting unchecked at the federal level.⁸² While invalidating PASPA, the Court noted Congress could still decide to regulate or criminalize sports betting; however, the federal prohibition on states legalizing sports betting was now lifted.⁸³ With the *Murphy* decision, the Supreme Court opened the door for states to regulate and authorize gambling; states are now in control of their own sports-betting future. However, before this golden age of gaming can begin, states must face the federal Wire Act.⁸⁴

B. No Sympathy for the Devil

The Wire Act, which was designed to go after organized crime and set broad federal policy, is very much at odds with what states want now.

<https://www.scotusblog.com/2017/08/10th-amendment-anti-commandeering-sports-betting-plain-english/>.

82. *Murphy*, 138 S. Ct. at 1478. (“It was a matter of happenstance that the laws challenged in *New York* and *Printz* commanded ‘affirmative’ action as opposed to imposing a prohibition. The basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event.” (internal citations omitted)).

83. *Id.* at 1484–85.

84. “Gaming,” as used in this Note, means to stake money on the result of a game, regardless of whether that game is one of pure chance or mixed skill and chance. “Gambling” is an activity that requires betting on the outcome of a game or event that may have an uncertain result. It is a game of chance which relies entirely on the theory of probability. Examples of games of chance include roulette, craps, and lotteries. Blackjack is an example of a game of skill; poker falls a bit on both sides of the line depending on who you ask. Pete Etchells, *Is Poker a Game of Skill, or a Game of Luck?*, GUARDIAN (Jan. 14, 2015), <https://www.theguardian.com/science/head-quarters/2015/jan/14/poker-game-skill-luck-cepheus-bot-program> (concluding that it’s both). For whatever it’s worth: Molly Bloom, the infamous Poker Princess, believes poker is a game of skill—and when you are running \$200,000 pots in games of no-limit Texas Hold ‘Em in the basement of a notorious club on the Sunset Strip, you call it like you see it. Robert Kolker, *Manhattan Fold ‘Em*, N.Y. MAG. (June 28, 2013), <https://nymag.com/news/features/gambling-ring-2013-7/> (detailing the rise and fall of Molly Bloom, the former U.S. skier who made a living organizing exclusive, high-stakes poker games in New York and Los Angeles before ultimately being arrested by the FBI); see also ROUNDERS (Miramax 1998) (“Why do you think the same five guys make it to the final table at the World Series of Poker every single year? What are they, the luckiest guys in Las Vegas? It’s a skill game, Jo.”). “Betting” is an organized activity between two parties: one side predicts the outcome and wagers on the bet while the other party either pays the total bet or forfeits the bet. A bet is placed when two parties agree that based on the outcome of an event, some payout will occur. While betting is one form of gambling, betting revolves around correctly predicting the outcome of future events. Jeremy Reynolds, *What is the Major Difference Between Betting and Gambling?*, WRESTLING ONLINE (Sept. 21, 2020), <https://www.wrestling-online.com/articles/what-is-the-major-difference-between-betting-and-gambling/>. “Wager” refers to something deposited on the outcome of some event, usually money. See *What Does Wager Mean in Sports Betting?*, DOC’S SPORTS (Oct. 11, 2014), <https://www.docsports.com/how-to-what-is-does/wager-mean-sports-betting.html> (highlighting the differences between gambling terms).

Technological and societal advances have eclipsed this once necessary legislation, but the statute's unclear wording has left a Wire-Act-sized blockade to sports-betting freedom.

1. Dante Meets Cato: Kennedy vs. the Mob

To hit organized crime where it hurt (their bottom line!), then-Attorney General Robert F. Kennedy proposed the Wire Act.⁸⁵ In 1961, Kennedy announced a collection of anti-racketeering bills to combat what he believed to be the mob's most lucrative enterprise—its gambling racket.⁸⁶ The success enjoyed by criminal organizations at the time was due to their ability to use the Nation's communications systems effectively.⁸⁷ Kennedy recognized that the use of federal wires—such as telephones—was so integral to illicit gambling schemes that prohibiting their use would be a “mortal blow” to organized crime operations.⁸⁸ The Wire Act is the result of Kennedy's attempt to cut organized crime's cash flow.

The Wire Act bans the interstate transmission of gambling information.⁸⁹ Kennedy described the Wire Act as a mechanism “to assist the various States in enforcement of their laws pertaining to gambling and bookmaking. It would prohibit the use of wire communication facilities for the transmission of certain gambling information in interstate and foreign commerce.”⁹⁰ Nevertheless, recognizing the legitimate public interest in sports generally, Kennedy created certain carve-outs to avoid interfering with print reporting of sports events and exempted wireless communication

85. Michelle Minton, *The Original Intent of the Wire Act and Its Implications for State-based Legalization of Internet Gambling*, UNIV. NEV., LAS VEGAS CTR. GAMING RSCH.: OCCASIONAL PAPER SERIES, no. 29, Sept. 2014, at 1, 1.

86. See *Hearings on S.1653, S.1654, S.1655, S.1656, S.1657, S.1658, S.1665 Before the S. Comm. on the Judiciary*, 87th Cong., 1st Sess. 3 (1961) [hereinafter *1961 Hearings*] (testimony before the Senate that the primary source of organized crime growth is illicit gambling); Roberts & Gemignani, *supra* note 51, at 80 (reporting on other laws in Kennedy's collection include “targeting interstate transportation of wagering paraphernalia, gambling devices, and aid for racketeering”).

87. D.G. Schwartz, *Not Undertaking the Almost-Impossible Task: The 1961 Wire Act's Development, Initial Applications, and Ultimate Purpose*, 14 UNLV GAMING L. REV. & ECON. 533, 534 (2010).

88. *1961 Hearings*, *supra* note 86, at 6; Bart Shirley, *A Guide to Understanding the Wire Act*, PLAYUSA, <https://www.playusa.com/us/wire-act/> (last updated Aug. 23, 2022).

89. Schwartz, *supra* note 87, at 535.

90. *Statement Before the Subcomm. No. 5 of the H. Committee on the Judiciary, in Support of Legislation to Curb Organized Crime and Racketeering*, 87th Cong. 13 (1961) (statement of Robert F. Kennedy, Att'y Gen. of the United States). Kennedy acknowledged that social wagers were not the focus of the Wire Act—the bill was targeted towards bookmakers and professional gamblers making a profit from sports betting. See *1961 Hearings*, *supra* note 86, at 5, 12–13.

entirely, citing the Federal Communication Commission's (FCC) authority to regulate airwaves.⁹¹

The Wire Act's relevant language reads:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.⁹²

Essentially, the Wire Act makes it illegal to pass gambling information and instructions across state lines using federal electronic communication wires.⁹³ But the scope of the Wire Act has been debated from the very beginning.⁹⁴ The Wire Act first references "bets or wagers" modified by "sporting event or contest."⁹⁵ No more references to "sports" are made in the two following prohibitions on "bets or wagers."⁹⁶ During testimony in front of the House Committee on the Judiciary, Kennedy described a variety of betting activities (including lotteries and sports gambling) and used the word "gambling" unmodified by sports or sporting.⁹⁷ This suggests Kennedy used the phrases "bets or wagers on any sporting event or contest" and "bets or wagers" interchangeably, presumably with the intent that the prohibitions contained within the Wire Act apply only to sports gambling.

The term "wire communication facility" means:

[A]ny and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or

91. Schwartz, *supra* note 87, at 534; *see 1961 Hearings, supra* note 86, at 12 (reasoning that the Federal Communication Commission's authority and ability to discipline common carriers that misuse the airwaves was enough to excuse wireless communications from the Wire Act's purview).

92. 18 U.S.C. § 1084(a).

93. Keith C. Miller, *Sports Betting Integrity at Risk: The Role of the Wire Act*, 61 SANTA CLARA L. REV. 247, 259 (2020).

94. *See* Minton, *supra* note 85, at 1–2 (debating whether the Wire Act can be applied to internet gambling and whether the Act's prohibitions are limited to sports betting or extended beyond).

95. 18 U.S.C. § 1084(a).

96. *Id.*

97. Minton, *supra* note 85, at 4.

other like connection between the points of origin and reception of such transmission.⁹⁸

This language limits use of federal wires. But the Act also carves out several exemptions, including for the transmission of information to assist in the placing of sports bets between two states that have authorized legal sports betting.⁹⁹

Shortly after its passage in 1961, the Wire Act was overshadowed by more effective legislation aimed at eradicating organized crime.¹⁰⁰ The law's ambiguous application to sports betting has also been regularly challenged, with inconsistent interpretation from courts and federal agencies over the past decades.¹⁰¹ Expanding the Wire Act's exemptions for transmission of information between states with legal sports betting would bridge the 60-year gap between passing the Wire Act and current technological advancements accompanying society's rising acceptance of sports betting.

Kennedy believed gambling was a matter of "personal inclinations and morals"¹⁰² and did not attempt to end gambling for ordinary American citizens. The Nation's "top cop" emphasized that the purpose of the law was not to target ordinary citizens; social wagers between friends was not the problem—hoodlums and racketeers profiting from the "country's cash cow of organized" gambling were.¹⁰³ The New York Times reported Kennedy's legislation was "aimed at 'the bankrollers and kingpins of the rackets.'"¹⁰⁴ However, Kennedy's anti-crime sentiments stoked the fear of "a creeping moral decay within America."¹⁰⁵ That, along with "an increased

98. 18 U.S.C. § 1081. Internet transactions fall under the Wire Act's prohibition on the use of a "wire communication facility." *See, e.g.,* United States v. Lyons, 740 F.3d 702, 716–17 (1st Cir. 2014) (holding the Wire Act is applicable to the internet).

99. 18 U.S.C. § 1084(b).

100. *See, e.g.,* 18 U.S.C. § 1955 (Illegal Gambling Business Act); Minton, *supra* note 85, at 1 (discussing the 1970 passage of the Racketeer Influenced and Corrupt Organizations Act (RICO), a law still used today to target organized crime). In 2006, Congress passed the Unlawful Internet Gaming Enforcement Act (UIGEA), which targets the funding of online gaming. By criminalizing the financing, financial institutions were forced to crack down on their consumers' online gaming habits—a sign that prosecutions under the antiquated Wire Act are too difficult and possibly subject to reversal. *See infra* notes 139–44 and accompanying text; Schwartz, *supra* note 87, at 539.

101. *See* discussion *infra* Part II.C.

102. Schwartz, *supra* note 87, at 535.

103. *Id.*; *see also* *History of Sports Betting*, *supra* note 13 (describing Kennedy's package of bills aimed at taking down organized crime).

104. *Robert Kennedy Urges New Laws to Fight Rackets*, N.Y. TIMES, Apr. 7, 1961, at 1.

105. Schwartz, *supra* note 87, at 534.

public apprehension about organized crime,”¹⁰⁶ created a perfect storm for the passage of the stagnant Wire Act. With no sunset provision on the Act, Kennedy’s endeavor to cripple the mafia has remained the law of the land.¹⁰⁷

2. Into the Darkness: The Wire Act

The Wire Act was aimed at curbing the mafia’s ability to make money from interstate activities, a scare tactic of a bygone era in desperate need of updating to keep up with modern trends towards sports betting. Since the 1960s, the legal sports-betting landscape has shifted drastically: “We went from one [state with legal sports betting] in Nevada to where we have 31 [states], plus the D.C., and five legal but not yet [operational].”¹⁰⁸ With all but two states¹⁰⁹ embracing some part of the shift towards legalized gambling, it is clear sports betting is no longer the “pariah industry” it once was.¹¹⁰ The rapid proliferation of sports betting offers Congress the perfect opportunity to clean up the Wire Act.

The federal government works in conjunction with these states to prosecute people who offer or profit from gambling enterprises outside of the state-controlled environment.¹¹¹ For Hawaii and Utah, where all forms of gambling are illegal, this means prosecuting persons outside the states who offer gambling to persons physically located in the state.¹¹² Given the

106. *Id.* Even years later, the fear surrounding gambling operators and bookmakers was probably warranted. As Parker recalled, “It’s a mentality you are raised with. The mob got their money one way or another. I mean, I remember in high school, my teacher came in with broken fingers and his hand all in a cast because he did not pay his gambling debts.” Interview with Christy Parker, *supra* note 1.

107. Shirley, *supra* note 88. The Wire Act has never been more primed for an update because U.S. communications systems have changed drastically in the 61 years since the law was enacted. The lack of a sunset provision in the Act is detrimental in the modern world, given that most all communication equipment today crosses state boundaries, whether the user is aware of it or not. This, combined with an undetermined interpretation of exactly what the Wire Act prohibits, translates into what sports bettors call a “bad beat.” See Larking, *supra* note 15.

108. Vermont Law Review, *supra* note 80, at 31:35 (quoting Anthony Cabot and describing a graph by the American Gaming Association of states with legal sports betting).

109. Hawaii and Utah are the only states that prohibit all forms of gambling. See UTAH CODE ANN. §§ 76-10-1101 to -1109 (West, Westlaw through 2022 Third Special Sess.) (statutes prohibiting gambling); See HAW. REV. STAT. ANN. §§ 712-1220 to -1231 (West, Westlaw through 2022 Regular Sess.) (anti-gambling statute makes gambling a misdemeanor).

110. See Vermont Law Review, *supra* note 80, at 31:56 (quoting Anthony Cabot).

111. Dennis Romboy, *Utahns Find Ways to Gamble Despite It Being Illegal in the State—but the Cost Is High*, DESERET NEWS (July 5, 2013), <https://www.deseret.com/2013/7/5/20522164/utahns-find-ways-to-gamble-despite-it-being-illegal-in-the-state-but-the-cost-is-high> (describing Utah’s crackdown on illegal gambling).

112. *Id.* (describing the predatory gambling business).

varying range of state policies on gambling, federal policy supports state governments in the enforcement of state-specific gambling policies.¹¹³

In a post-*Murphy* world, states have the freedom to choose to enact sports-betting legislation, and states must now decide whether they do or do not want to be in the business of regulating sports betting.¹¹⁴ Amending the Wire Act should extend the carve outs already in place, which allow states with legal sports betting to use federal communication wires to transmit information regarding bets to another state with legal sports betting. Remember our friend Parker in Las Vegas, whom out-of-state friends would call to place sports bets for them? Today, there is functionally no difference between Parker, going in-person to a casino to place sports bets for her friend in California, and that same California friend placing a bet with the push of a button on a mobile sportsbook. Both are happening in real time and both bets are physically being processed in a state that has legalized sports betting. It should not matter where the call to place a bet is coming from, only that where the call is going to—where the bet is physically being placed and processed—is in a state with legal sports betting.¹¹⁵

States have the power to regulate gambling policy within their borders, and the *Murphy* decision only makes it easier for states to get into the sports betting business,¹¹⁶ but the Wire Act effectively prohibits sports betting beyond a state's boundaries. Under current interpretations of the Act, sports betting is legal as long as the entire betting transaction occurs *intrastate*, meaning both the bettor and sportsbook are located in the same state at the

113. See generally MICHAELA D. PLATZER, CONG. RSCH. SERV., R44680, INTERNET GAMBLING: POLICY ISSUES FOR CONGRESS 1 (2016) (explaining “state governments have the main responsibility for overseeing gambling,” while Congress helps shape the industry).

114. See *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (holding states are free to make their own decisions on the state's sports gambling future, so long as Congress does not supersede their authority).

115. See, e.g., Jesse McKinley, *Online Sports Betting's N.Y. Debut: \$2.4 Billion in Wagers in 5 Weeks*, N.Y. TIMES (Feb. 22, 2022), <https://www.nytimes.com/2022/02/22/nyregion/sports-betting-ny.html> (reporting since legalizing online sports betting in January 2022, New York has exceeded expected projections, reaching more than \$2 billion in bets placed, “[n]early \$80 million in tax revenue[,] [a]nd a quarter of the entire nation's mobile-sports wagers on the Super Bowl”). New York has already taken an estimated \$78.5 million in tax revenue, “far more than the \$49 million that the state budget office initially estimated.” *Id.* Many states are leaving behind a great source of tax revenue by not legalizing sports betting. Amending the Wire Act to permit interstate sports betting will open the door to even more money for states because bettors will be able to participate in legal sports betting markets, even if the bettor is not physically located in a state that allows sports betting. See also Cohen, *supra* note 35 (reporting state governments are turning to legalizing sports betting as a panacea for pandemic-induced economic problems).

116. See *Murphy*, 138 S. Ct. at 1469 (giving states the power to legalize sports betting).

same time the bet is placed.¹¹⁷ However, due to telecommunications infrastructure in the modern world, it is increasingly difficult to differentiate and separate intrastate versus interstate communications.¹¹⁸ Trying to distinguish between interstate and intrastate communications in a system like sports betting—where placing bets using the internet and mobile applications is the biggest driver of sports betting revenue today¹¹⁹—looks ridiculous.¹²⁰ Under *Murphy*, a bettor and a sportsbook may be in the same state, but the structure of the internet virtually guarantees that bets placed with online and mobile sportsbooks will employ federal communication wires to move data across state lines, thus violating the Wire Act.¹²¹ The Wire Act is ripe for amendment because this distinction is seemingly unconstitutional when applied to sports-betting schemes.

117. See Miller, *supra* note 93, at 269 (explaining how mobile sportsbooks located in New Jersey, where sports betting is legal, use geo-fencing technology to ensure that the bettor is only placing sports bets while located within the state).

118. See *United States v. Yaquina*, 204 F. Supp. 276, 279 (N.D. W. Va. 1962) (holding defendants violated the Wire Act when communications over a long-distance telephone line started in West Virginia and crossed into Ohio before crossing back into West Virginia). The court stated that the defendants did not have to know the communications crossed state lines for it to be considered interstate communications. *Id.* If you take nothing else away from this Note, let it be that this is the exact type of situation an amended Wire Act, such as the one proposed in this Note, would eliminate.

119. Approximately 80% of New Jersey's sports betting handle "is generated through sportsbook apps and websites." Matthew Waters, *US Sports Betting Revenue & Handle*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sports-betting/revenue/> (last updated Mar. 21, 2023). In New York, mobile sports betting launched in January 2022, and the state is already the leader in sports betting. *Id.* New York has raked in nearly \$1.7 billion in handle in just the first month, bringing almost \$80 million in tax revenue with it. McKinley, *supra* note 115; see, e.g., Matthew Waters, *PA Sports Betting Needs Less than a Year to Reach Mobile Potential*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/36906/pa-sports-betting-december-2019-revenue/> (last updated Jan. 16, 2020), (reporting online sports betting accounted for 86.8% of Pennsylvania's total amount wagered while in-person sports betting dropped); Brian Pempus, *Global Online Gambling Market to Near \$1 Trillion by 2021, New Research Says*, CARD PLAYER (Sept. 15, 2016), <https://www.cardplayer.com/poker-news/20828-global-online-gambling-market-to-near-1-trillion-by-2021-new-research-says> ("According to [a study by Juniper Research], the value of wagers this year will be \$550 billion, so the market will nearly double over the next six years.").

120. See discussion *supra* note 118; cf. *United States v. Cohen*, 260 F.3d 68, 73–75 (2d Cir. 2001) (charging Jay Cohen with Wire Act violations by taking bets from New York residents over the telephone, even though the bets were physically placed in Antigua); *Yaquina*, 204 F. Supp. at 279 (convicted for violating the Wire Act when telephone communications unknowingly crossed state lines).

121. See Todd Blanche et al., *First Circuit Case Doesn't Move the Line on the Future of State Authorized Sports Betting*, NAT'L. L. REV. (Feb. 1, 2021), <https://www.natlawreview.com/article/first-circuit-case-doesn-t-move-line-future-state-authorized-sports-betting>.

C. City of Woe

Within the Wire Act, the biggest ambiguity is whether the language of the statute outlaws all forms of betting or betting specifically on sporting events or contests.¹²² Differences of opinion are bound to occur.

The Department of Justice's (DOJ) Office of Legal Counsel (OLC)¹²³—which provides legal advice to the President and all Executive Branch agencies and drafts legal opinions on issues where two or more agencies have disagreed—has made several attempts to clear up the Wire Act's ambiguity.¹²⁴ The DOJ previously issued statements applying the Wire Act to all forms of betting and all forms of electronic communications that cross state lines.¹²⁵ Looking at the language of the Wire Act, the DOJ applied the phrase “sporting event or contest,” found in the first prohibition

122. Congress has enacted unclear and confusing statutes regulating gambling activity which crosses state and national borders, including the Wire Act. Benjamin Miller, *The Regulation of Internet Gambling in the United States: It's Time for the Federal Government to Deal the Cards*, 34 J. NAT'L ASS'N ADMIN. L. JUDICIARY 527, 532–33 (2014).

123. Under 28 U.S.C. § 510, the Attorney General is authorized to render opinions and offer legal advice when requested by the President and Executive Branch department heads. Using this statute, the Attorney General has delegated these responsibilities to the Office of Legal Counsel. *See generally About the Office*, OFF. OF LEGAL COUNS., <https://www.justice.gov/olc> (last visited Mar. 26, 2023) (outlining the duties of the Office of Legal Counsel, including “provid[ing] its own written opinions and other advice in response to requests from the Counsel to the President, the various agencies of the Executive Branch, and other components of the Department of Justice”); Memorandum for the Attorneys of the Office, from David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Best Pracs. for OLC Legal Advice & Written Ops.* 1–2 (July 16, 2010) (outlining guiding principles for OLC opinions and advising attorneys on opinion preparation).

124. *See* Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, 35 Op. O.L.C. 1, 2 (2011) [hereinafter 2011 Opinion] (concluding that the Wire Act's prohibitions on the interstate transmission of bets and wagers apply *only* to bets or wagers involving sporting events); *see Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. 1, 2–3 (2018) [hereinafter 2018 Opinion] (reversing the 2011 interpretation to conclude that the Wire Act's prohibitions extend beyond sports betting). While not equal to Supreme Court rulings, OLC opinions are binding on the federal government. The OLC is responsible for “facilitating the work of the Executive Branch and the objectives of the President, consistent with the law.” Fred Barbash, *Justice Department Opinions Take on the Force of Law – But are not, in Fact, the Law*, WASH. POST (May 31, 2019), https://www.washingtonpost.com/world/national-security/justice-department-opinions-take-on-the-force-of-law—but-are-not-in-fact-the-law/2019/05/30/f4efe222-8280-11e9-933d-7501070ee669_story.html. Fun fact: OLC recently reexamined the law on nepotism—the federal anti-nepotism law, which Trump skirted to hire his son-in-law, was enacted after Robert Kennedy served as Attorney General to his brother, President John F. Kennedy. *See also id.*

125. *See* John G. Malcolm, U.S. DOJ CRIM. DIV., Statement at the World Online Gambling Law Report's Special Briefing: Money Laundering and Payment Systems in Online Gambling (Nov. 20, 2002) (describing the DOJ's position that prohibitions within the Wire Act apply to both sports betting and other forms of gambling); Kate C. Lowenhar-Fisher et al., *The Potentially Catastrophic Impact of Re-interpreting the Federal Wire Act (Using RAWA as a Guide)*, NEV. GAMING LAW., Sept. 2018, at 43, (discussing the DOJ's long-held view of the Wire Act's prohibitions).

of § 1084(a), to both “sporting events” and “contests” as separate forms of betting.¹²⁶ This interpretation meant that the interstate transmission of bets not related to sports would also violate the Wire Act, limiting all forms of betting.¹²⁷

The DOJ’s interpretation of the types of betting subject to the Wire Act was challenged in a Louisiana case: *In re Mastercard*.¹²⁸ In that case, the Federal District Court held—and the Fifth Circuit Court of Appeals agreed—the Wire Act applied only to sports betting.¹²⁹ *In re Mastercard*’s Wire Act interpretation was not relied upon by another court until the Federal District Court of Utah’s 2007 opinion in *United States v. Lombardo*.¹³⁰ *Lombardo* held that the phrase “sporting event or contest,” as used in the Wire Act, modifies only the first of the three prohibitions contained in § 1084(a).¹³¹ *Lombardo* interpreted the Wire Act so that the phrase “sporting” modified both “event” and “contest,” which limited the scope of the Wire Act to prohibit only sports betting.¹³²

However, the *Lombardo* opinion also noted two other prohibitions contained in the Wire Act: (1) a prohibition on the transmission of a “communication entitling a recipient to the payment of money or credit from such bets or wagers;”¹³³ and (2) a prohibition on the transmission of “information assisting in the placing of bets or wagers.”¹³⁴ Dicta in *Lombardo* noted that because every word of a statute must be given meaning, the first prohibition is limited to sports betting, and criminalizes activity related only to sports betting, while the other two prohibitions

126. Lowenhar-Fisher et al., *supra* note 125, at 44.

127. *Id.*

128. *In re Mastercard Int’l Inc.*, 132 F. Supp. 2d 468, 482 (E.D. La. 2001), *aff’d*, 313 F.3d 257, 263 258 (5th Cir. 2002); see Lowenhar-Fisher et al., *supra* note 125, at 44 (explaining how the Wire Act was used as the underlying federal crime in a civil RICO action under the theory that online gaming sites were violating the Wire Act and credit card companies were part of the crime ring because they profited from those Wire Act violations).

129. See *In re Mastercard*, 132 F. Supp. 2d at 482 (holding that because the Wire Act applied only to sports betting, and the case’s alleged Wire Act violations were not for sports betting, the RICO claims were defective); Lowenhar-Fisher et al., *supra* note 125, at 44.

130. *United States v. Lombardo*, 639 F. Supp. 2d 1271, 1281 (D. Utah 2007).

131. See *id.* (noting that this interpretation falls in line with jury instructions used in circuit courts). For example, the Tenth Circuit’s *Criminal Pattern Jury Instructions* does not attach the “sporting event or contest” qualifier to either the prohibition on providing information that assists in the placing of bets or wagers, nor the prohibition on using federal communication wires to inform someone of their monetary winnings resulting from placing a bet. *Id.*

132. See *id.* (concluding that the provisions modified by the phrase “sporting event or contest” are limited to sports betting, so the provisions not modified by the phrase are not limited to sports betting).

133. *Id.* at 1278.

134. 18 U.S.C. § 1084(a); see Lowenhar-Fisher et al., *supra* note 125, at 44 (examining the significance of the Wire Act interpretation opined in *Lombardo*).

within the statute apply to all forms of betting.¹³⁵ After the *Mastercard* and *Lombardo* decisions, the OLC attempted to clarify the DOJ's position on the Wire Act by publishing two separate memorandums, and producing two contradictory interpretations, first in 2011 and then again in 2018.¹³⁶

1. Tale of Two Memos: 2011 Opinion

In 2009, New York and Illinois asked the DOJ's Criminal Division to clear up its prior interpretations that the Wire Act applied to all forms of wagering; more specifically, states requested guidance on the legality of using out-of-state payment processors in intrastate online lottery sales.¹³⁷ The Criminal Division believed that the proposed intrastate online lottery sales would violate the Wire Act.¹³⁸ However, it also recognized this interpretation conflicted with another federal gambling law: the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).¹³⁹ This clash between the Wire Act and UIGEA required the OLC to step in.¹⁴⁰

In 2011, after much consideration, the OLC issued an opinion announcing the Wire Act did not apply beyond sports betting.¹⁴¹ The 2011 Opinion declared that because Illinois and New York's online lotteries did not involve betting on sports, these lotteries did not violate the Wire Act.¹⁴²

135. *Lombardo*, 639 F. Supp. at 1281–82.

136. See, e.g., 2011 Opinion, *supra* note 124, at 1 (“[W]e conclude that interstate transmissions of wire communications that do not relate to a sporting event or contest . . . fall outside the reach of the Wire Act.”) (internal quotation marks omitted); 2018 Opinion, *supra* note 124, at 2 (“[W]e conclude that the words of the [Wire Act] are sufficiently clear and that all but one of its prohibitions sweep beyond sports gambling.”).

137. 2011 Opinion, *supra* note 124, at 2; Minton, *supra* note 85, at 2.

138. Minton, *supra* note 85, at 2.

139. See generally 31 U.S.C. §§ 5361–67 (statutes prohibiting the funding of unlawful internet gambling).

140. The UIGEA specifically exempts intrastate online gambling from its prohibitions. *Id.* § 5362(10)(B). To illustrate the adversity between the laws: if the entire transaction of an online purchase of a lottery ticket takes place in a state where that form of gambling is legal, then the online transaction does not violate the UIGEA. This means that the Criminal Division's interpretation of the Wire Act to prohibit all online gambling—even when the entirety of the online gambling transaction remains in a single state—conflicts with the UIGEA exception. See Minton, *supra* note 85, at 2. Upon discovering the conflict created by their interpretation, the Criminal Division asked for an opinion from a higher office in the DOJ—the OLC. *Id.*

141. 2011 Opinion, *supra* note 124, at 4 (“[T]he Wire Act prohibits only the transmission of communications related to bets or wagers on sporting events or contests.”).

142. See *id.* at 10–11 (concluding that prohibitions within the Wire Act are “limited to sports betting” and thus do not apply to state lotteries at all). Given the OLC's interpretation, the 2011 memo did not address conflicts between the Wire Act and UIGEA. *Id.* at 2. Nevertheless, the 2011 interpretation shifted the DOJ's focus on prosecuting offenses unrelated to sports betting, causing

The OLC diverged from the Criminal Division’s reading of the Act by interpreting § 1084(a) as containing two clauses.¹⁴³ The first clause prohibits anyone engaged in the business of betting or wagering from knowingly using a wire communication facility “for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest.”¹⁴⁴ The second clause prohibits “the transmission of a wire communication which entitles the recipient *to receive money or credit [either]* as a result of bets or wagers, *or* for information assisting in the placing of bets or wagers.”¹⁴⁵ The OLC interpreted § 1084(a)’s phrase “sporting event or contest” as modifying *both* clauses: “both provisions are limited to bets or wagers on or wagering communications related to sporting events or contests.”¹⁴⁶ When read in context with the Act’s other sections, the OLC concluded the only logical interpretation is that both provisions are limited only to sports betting.¹⁴⁷

When the 2011 Opinion declared “the Wire Act does not reach interstate transmissions of wire communications that do not relate to a ‘sporting event or contest,’”¹⁴⁸ this meant the DOJ would only enforce the Wire Act against bookmakers—and then only when “the bookmaking activity involved bettors and service providers in different states.”¹⁴⁹ The 2011 Opinion left regulation of “intrastate online casinos, internet lotteries, and other internet, wire-based gambling activities” to the individual states, so long as the gambling was not related to sports.¹⁵⁰ While some district courts have held to the contrary, the 2011 Opinion follows the First and Fifth Circuit decisions that eased restrictions on gambling under the Wire Act.¹⁵¹ The Supreme Court continued this trend in its *Murphy* decision.¹⁵²

another hurdle for online gaming prosecutions. It also meant states could now sell lottery tickets online to citizens of the state located within the state without fear of violating the Wire Act.

143. *Id.* at 4 n.5.

144. *Id.* at 4.

145. *Id.* at 4 n.5 (emphasis added).

146. *Id.* at 5; 18 U.S.C. § 1084(a).

147. 2011 Opinion, *supra* note 124, at 12; Minton, *supra* note 85, at 3.

148. 2011 Opinion, *supra* note 124, at 13.

149. Lowenhar-Fisher et al., *supra* note 125, at 45.

150. *Impact of 2019 DOJ Memo*, *supra* note 81.

151. *See* United States v. Lyons, 740 F.3d 702, 718 (1st Cir. 2014); *In re Mastercard Int’l Inc.*, 313 F.3d 257, 262 (5th Cir. 2002) (holding the Wire Act is limited to sports betting); *cf.* United States v. Lombardo, 639 F. Supp. 2d 1271 (D. Utah 2007) (rejecting the *Mastercard* interpretation and applying the Wire Act’s prohibitions to more than sports betting).

152. *See* *Murphy v. NCAA*, 138 S. Ct. 1461, 1484–85 (2018) (invalidating a law that banned states from legalizing sports betting, which opened the door for states to enact sports-gambling legislation).

The 2011 Opinion was hailed as a “game changer” because it gave freedom back to the states to start legalizing and offering other forms of gambling.¹⁵³ In reliance on the 2011 memo authorizing states to legislate their own online gambling industries, states had ample opportunity to grow gambling revenues and expand intrastate gambling operations.¹⁵⁴

2. Tale of Two Memos: 2018 Opinion

More recently, the OLC was asked again to clarify language of the Wire Act.¹⁵⁵ In a steep departure from previous guidance, the OLC broadly reinterpreted the Wire Act as prohibiting nearly all bets or wagers using interstate wires, including lotteries.¹⁵⁶

The 2018 Opinion looked at the text of the Wire Act as two clauses, with each clause defining two prohibitions on the use of wire communication facilities: (1) “the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest;” and (2) “the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.”¹⁵⁷ The OLC wrestled with how broadly to apply the sports-gambling modifier (“on any sporting event or contest”) of the first clause of § 1084.¹⁵⁸

The 2018 Opinion limited the statute’s sports-gambling modifier only to the second prohibition on “transmitting information assisting in the

153. Minton, *supra* note 85, at 2.

154. Sadly, not enough states took advantage of the 2011 Opinion’s offered gambling independence, which permitted opportunities to grow state revenue in the form of legal internet gambling operations. But have no fear! In reliance on the 2011 Opinion, Nevada, New Jersey, and Delaware all passed laws authorizing internet gambling. In 2014, Nevada and Delaware took advantage of the OLC’s 2011 interpretation and reached an agreement permitting interstate online poker games between players from the two states, showing the groundwork has already been laid to allow interstate sports betting. In 2017, New Jersey rolled the dice and took a risk by joining the pact with Nevada and Delaware. It’s paid off. *See* MULTI-STATE INTERNET GAMING AGREEMENT, at 12 (Sept. 27, 2017) (adding New Jersey to the internet gaming pact with Delaware and Nevada); Miller, *supra* note 93, at 263.

155. 2018 Opinion, *supra* note 124, at 2; *see* Byron Tau & Alexandra Berzon, *Justice Department’s Reversal on Online Gambling Tracked Memo from Adelson Lobbyists*, WALL ST. J., <https://www.wsj.com/articles/justice-departments-reversal-on-online-gambling-tracked-memo-from-adelson-lobbyists-11547854137> (last updated Jan. 18, 2019) (uncovering a memo to top officials at the DOJ from casino magnate Sheldon Adelson).

156. 2018 Opinion, *supra* note 124, at 9–10.

157. 18 U.S.C. § 1084(a); 2018 Opinion, *supra* note 124, at 6, 11.

158. 2018 Opinion, *supra* note 124, at 7–9.

placing of bets or wagers on any sporting event or contest[.]”¹⁵⁹ All other prohibitions contained within the Wire Act applied equally to all types of gambling—sports bets and every other style of bet. In reaching its decision, the OLC utilized the “rule of the last antecedent”¹⁶⁰ to determine that the sports-gambling modifier applied only to the conduct immediately preceding the phrase.¹⁶¹ The OLC opined that the first prohibition makes it a crime to transmit “bets or wagers,” whether or not they are related to sports betting.¹⁶²

The 2011 Opinion declared the statutory language was clear,¹⁶³ yet, in seven years, the statute with a plain meaning produced two contrary interpretations by the same Department.¹⁶⁴ So, is mobile sports betting legal even on an *intrastate* basis? The 2018 Opinion says no. Under that interpretation, even if the bettor and server are in the same state, the instrumentality—the internet—exists in such a way that there is no guarantee the transaction will stay wholly intrastate. Thus, the placing of a sports bet using a mobile sportsbook is an interstate transaction engaged in interstate commerce, which the federal Wire Act prohibits.

Understandably, the OLC’s 2018 reversal of its Wire Act interpretation caused a brouhaha among gambling businesses reliant upon the 2011 Opinion.¹⁶⁵ One such affected business is the New Hampshire Lottery Commission (NHLC), which conducts retail lottery operations across 1,400 sites throughout the state and contributes to New Hampshire’s education fund.¹⁶⁶ NHLC utilizes the internet and interstate wires in its lottery sales, in addition to “rel[ying] on computer gaming and back-office

159. *Id.* at 1. This interpretation of the Wire Act grossly overextended the law’s reach. This recent overreach, coupled with multiple contradictory understandings of the archaic legislation, presents Congress with a ripe opportunity to amend the Wire Act. In keeping with society’s progressing views on sports betting, the Wire Act must be amended to allow interstate sports betting, which will afford states another source of tax revenue. *Impact of 2019 DOJ Memo*, *supra* note 81.

160. N.H. Lottery Comm’n v. Rosen, 986 F.3d 38, 55 (1st Cir. 2021) (“The rule provides that ‘a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.’” (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)); Miller, *supra* note 93, at 266.

161. 2018 Opinion, *supra* note 124, at 10.

162. *Id.* at 15.

163. *Id.* at 16–17.

164. Compare 2011 Opinion, *supra* note 124, at 12, with 2018 Opinion, *supra* note 124, at 10–11.

165. The 2018 Opinion questioned the legality of state lotteries that had either sold tickets online to intrastate customers, or those that just used the internet in their lottery sales operations. *Impact of 2019 DOJ Memo*, *supra* note 81.

166. NHLC’s business does not involve sports betting. N.H. Lottery Comm’n v. Rosen, 986 F.3d 38, 47 (1st Cir. 2021).

systems . . . which in turn depend on out-of-state backup servers.”¹⁶⁷ Under the 2018 interpretation, the NHLC’s use of the internet to sell lottery tickets violated the Wire Act.¹⁶⁸

NHLC filed suit against the DOJ to prevent them from enforcing the Wire Act against internet and wire-based lotteries based on the 2018 interpretation.¹⁶⁹ In June of 2019, the U.S. District Court for the District of New Hampshire declared the 2018 Opinion wrong as a matter of law.¹⁷⁰ The court there held the 2011 Opinion correctly interpreted the Wire Act as applying only to sports betting.¹⁷¹ DOJ appealed to the First Circuit.¹⁷² Like a good tennis match, the First Circuit returned the DOJ’s serve and affirmed the district court’s decision that the Wire Act is limited to sports betting.¹⁷³ Looking at the Wire Act in the same two-clause format, the court was hard-pressed to find that the OLC’s 2011 reading of the statute created an awkward and vague piece of legislation.¹⁷⁴ The First Circuit, following the Fifth Circuit’s decision, thus held that the Wire Act applies only to interstate wire communications related to sporting events or contests.¹⁷⁵

With the OLC’s 2018 interpretation now vacated as a matter of law, the only consistent interpretation of the Wire Act is that there is no cohesive understanding of the Wire Act’s prohibitions.¹⁷⁶

III. INTO THE FIRE: AMENDING THE WIRE ACT

In response to the OLC’s 2011 Opinion, opponents of the decision started work on a piece of federal legislation aptly titled “Restoration of

167. *Id.*

168. 2018 Opinion, *supra* note 124, at 11.

169. *N. H. Lottery Comm’n*, 986 F.3d at 44; *see Impact of 2019 DOJ Memo*, *supra* note 81.

170. *N.H. Lottery Comm’n v. Barr*, 386 F.Supp.3d 132, 160 (D.N.H. 2019).

171. *See Impact of 2019 DOJ Memo*, *supra* note 81.

172. *N.H. Lottery Comm’n*, 986 F.3d at 44–45.

173. *Id.* at 44–45. The First Circuit departed from the district court only in its determination that vacatur under the Administrative Procedure Act was the proper form of relief.

174. *Id.* at 61.

175. *Id.* at 61–62; *see In re Mastercard Int’l Inc.*, 313 F.3d 257, 262 n.20 (5th Cir. 2002).

176. While the government may appeal the case to the Supreme Court, the change in Presidential administrations may prompt the government to abandon the case entirely. *N.H. Lottery Comm’n*, 986 F.3d at 62. It sounds kind of negligent that this one law, written before SportsCenter was on-air, has kept such a tight hold over this country’s ability to gamble when no one can even agree on what it means. *See Anthony Cabot, The Absence of a Comprehensive Federal Policy Toward Internet and Sports Wagering and a Proposal for Change*, 17 VILL. SPORTS & ENT. L.J. 271, 282 (2010) (“The Wire Act, in its entirety, reads poorly and in parts, the Act is nearly incomprehensible.”).

America’s Wire Act” (RAWA).¹⁷⁷ RAWA aimed to significantly extend the reach of the Wire Act by applying the Act’s prohibitions to all forms of betting.¹⁷⁸ Generally, RAWA attempted to ban all forms of online gambling—including online lottery sales.¹⁷⁹ At the same time, the Bill maintained the exemption allowing transmissions of sports betting information between two states that have legalized sports betting.¹⁸⁰ RAWA intended to “deem all use of the internet to be communications in interstate or foreign commerce, even if all of the parties to the communication are in the same state.”¹⁸¹ The goal of the Bill was to “restor[e]” the Wire Act back to its original 1961 form by reversing the 2011 Opinion and to expand the law’s prohibitions to all types of internet gambling.¹⁸² Currently, RAWA is dead in committee.¹⁸³

The Wire Act amendment offered in this Note varies substantially from RAWA. Where RAWA proposed an express ban of online gambling operations, thereby clearing out all references to sports betting,¹⁸⁴ the amendment proposed here keeps the Wire Act’s focus on sports betting. The amended language removes the criminal penalties associated with using federal communication wires to transmit sports bets and sports-betting data across state lines.

Although the Wire Act was enacted before the internet was thought of, the law still plays a key role in the ongoing dispute between federal and

177. Lowenhar-Fisher et al., *supra* note 125, at 45. RAWA was drafted in part by a lobbyist for Sheldon Adelson, the billionaire Las Vegas visionary. In 2014, the bill was introduced in Washington, D.C. by friends of Adelson. The bill was re-introduced in 2015 but has not gotten off the ground. *See* Tau & Berzon, *supra* note 153 (discovering a memo supposedly sent to top DOJ officials from casino tycoon Sheldon Adelson; the memo argued the 2011 Opinion was wrongly decided and urged a repeal); *see* H.R. 4301, 113th Cong. § 1 (2014); H.R. 707, 114th Cong. §§ 1–2 (2015) (proposing legislation to restore the Wire Act). Adopting the Wire Act amendment proposed here may be a more productive use of time, rather than attempting to weasel in more laws aimed at undermining the already difficult Wire Act.

178. Lowenhar-Fisher et al., *supra* note 125, at 45. Surprise, surprise: RAWA did not apply to horseracing. *See* H.R. 707 §§ 3. As mentioned before, horseracing is treated separately and apart from other laws aimed at gambling. LANG, *supra* note 11.

179. *See* Bill Grinstead, *A Complete Guide to the Restoration of America’s Wire Act (RAWA)*, PENNBETS, <https://www.pennbets.com/rawa/> (last updated July 12, 2022). Without regard to states already operating and regulating gambling within its borders, RAWA’s entire existence undermines the principles laid out in the Tenth Amendment to the Constitution. A state’s right to regulate its own gambling operations was reiterated in *Murphy*.

180. Lowenhar-Fisher et al., *supra* note 125, at 45.

181. *Id.*

182. Lowenhar-Fisher et al., *supra* note 125, at 45. This was a frivolous attempt to block the internet gambling market from becoming mainstream. Despite Adelson’s many RAWA-supporting friends in D.C., the bill never made it out of committee. Miller, *supra* note 93, at 264–65.

183. Lowenhar-Fisher et al., *supra* note 125, at 45.

184. *Id.*

state regulation of sports betting.¹⁸⁵ Mobile sportsbooks are the contemporary equivalent of antiquated physical sportsbooks.¹⁸⁶ This begs the question: why is there still a physical barrier bettors must cross to place bets on mobile sportsbooks?¹⁸⁷ To illustrate the Wire Act's current physical barrier: Parker, the friend living in Las Vegas, places a sports bet on her mobile sportsbook app.¹⁸⁸ In order to do so under the Wire Act, Parker must physically be in Nevada when she places the bet, so that the origin and destination of the bet are in the same state.¹⁸⁹ Parker is using a mobile sportsbook to place her bet, so her phone will send the wager ("data packets" in tech-speak) along the most efficient path to data centers, regardless of state borders.¹⁹⁰ This means there is a possibility that communication wires sending the wager will cross state lines, even if neither Parker nor the sportsbook servers did.¹⁹¹

At issue is whether this "intermediate routing" transaction has transformed Parker's intrastate sports bet, permitted under the Wire Act, into an illegal interstate bet.¹⁹² If she were here, Parker would say "that's

185. Under the Commerce Clause, Congress has the power to regulate gambling activity that crosses state lines, while states have control of their own gambling policies within the state's borders. See U.S. CONST. art. I, § 8, cl. 3 ("To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."). The legal issues that arise when state and federal gambling regulations contradict one another are not worth the headaches anymore given the country's shift in values regarding sports betting. See also Miller, *supra* note 122, at 532–33 (2014).

186. See Will Yakowicz, *New York Picks Nine Operators to Launch State's \$1 Billion Sports Betting Market*, FORBES (Nov. 8, 2021), <https://www.forbes.com/sites/willyakowicz/2021/11/08/new-york-picks-draftkings-fanduel-and-others-to-launch-states-mobile-sports-betting-program/?sh=3a9a0a4d1a08> ("Importantly, mobile sports betting allows regulated sportsbooks to better compete and push out the predatory and pervasive illegal market.")

187. The physical barrier here is the action of having to physically be in a state with legal sports betting to place a bet on a mobile sportsbook. Mobile sportsbooks use "[g]eo-location technology, which uses data acquired from a person's mobile device to identify the user's actual physical location" See Miller, *supra* note 93, at 255 (internal citations omitted).

188. Some states, such as Nevada, require in-person registration at a retail sportsbook location before gaining access to the mobile book. In this example, Parker has already signed up and finalized registering her account in-person at a brick-and-mortar sportsbook. See Chris Altruda, *In-Person Registration for Mobile Sports Betting Returning to Illinois*, SPORTSHANDLE (Apr. 2, 2021), <https://sportshandle.com/illinois-goodbye-pritzker-202041/>; Marc Meltzer, *Nevada Regulators Approve Remote Cashless Account Registration*, PLAYUSA (Jan. 28, 2022), <https://www.playusa.com/remote-cashless-account-registration-receives-approval-by-nevada-regulators/> ("Nevada is one of the few states that require in-person mobile sportsbook account registration.")

189. See Miller, *supra* note 93, at 269.

190. See Pamela Fox, *Internet Routing Protocol*, KHAN ACADEMY, <https://www.khanacademy.org/computing/computers-and-internet/xcae6f4a7ff015e7d:the-internet/xcae6f4a7ff015e7d:routing-with-redundancy/a/internet-routing> (last visited Apr. 24, 2023) (illustrating internet routing protocol).

191. This is called "intermediate routing." *Id.*; Miller, *supra* note 93, at 269–70.

192. Miller, *supra* note 93, at 269–70. The Wire Act does not address the issue of "intermediate routing" because in 1961, at the time of the Act's passage, no one could imagine the existence of the

whack,”¹⁹³ mostly because of how it demonstrates the downfalls of relying on an archaic law enacted at a time before the internet. The path of internet data packets should not be the determining factor of whether a transaction is intrastate or interstate. When a law is so unclear that it could be interpreted to mean that people located in the same state using the internet to communicate could somehow be engaging in interstate commerce, it is long overdue for an update. With the world becoming rapidly reliant on virtual communication, the Wire Act desperately needs to catch up.

Advances in technology have made it so people can be virtually in two places at once now. For example, a law school student can attend their law school classes in Vermont virtually while living in California, perhaps even logging into their class from the beach while awaiting the next surf swell.¹⁹⁴ In today’s world, this is feasible with just an internet connection plus a laptop or cell phone—all technological developments that sponsors of the 1961 Wire Act could not have envisioned when proposing the law.¹⁹⁵ The concept of physical presence changes over time—although physically in California, the student is working on a degree program at a school in Vermont, thus participating in a way that is analogous to being in Vermont.¹⁹⁶ Less-than-favorable conditions have allowed the Wire Act, a law passed before the internet could even be fathomed, to remain good law—despite technological breakthroughs that have fundamentally changed the way the world operates.¹⁹⁷ If a student living in California is counted as “here” for attendance purposes in a class held virtually in Vermont, then it is conceivable for the same to apply in the sports-betting market. Given that the Act already contains an exemption on using federal wires to transmit sports-betting information between states with legal sports betting, amending the Wire Act is as easy as shuffling.

Every day, people physically cross state lines to place sports bets in states that permit sports betting. And because people have a right to travel, a state should not be able to prevent its citizens from doing something

internet, let alone foresee the massive impact it would have on modern sports betting and the world. *Id.* at 269.

193. She uses much more colorful language in real life.

194. Shoutout to Chad’s for the Wi-Fi and post-surf chocolate chip pancakes!

195. The Wire Act has more than outlived its usefulness, which is understandable given that nobody had any concept of the internet when it was signed. See Martin Bryant, *20 Years Ago Today, the World Wide Web Opened to the Public*, THE NEXT WEB (Aug. 6, 2011), <https://thenextweb.com/news/20-years-ago-today-the-world-wide-web-opened-to-the-public>.

196. More people than ever have been working-from-home due to the pandemic, hence someone can be both at “work” and at “home.”

197. You cannot tell me that when Kennedy proposed the Wire Act in 1961, he ever imagined a world where couples can get married in the Metaverse if they so choose.

virtually that they can do physically.¹⁹⁸ That being said, what was previously done by physical movement is now done over wire communications. The Wire Act should be updated to reflect the modernization of technology today, as well as society's increasing embrace of sports betting.

The natural progression of the Wire Act is amending the language to allow bettors to place sports bets using mobile sportsbooks from any state. It should not matter whether the state in which the bettor is physically located has legalized sports betting, *so long as* the state where the bet is physically placed is a state with legal sports betting. Amending the Wire Act is good policy for two reasons: (1) it opens up states' ability to generate revenue and fill in pandemic-related budget deficits; and (2) it brings an antiquated federal statute up to date with the modern ways of the world by expanding legal sports-betting offerings.

To bring the Act into the twenty-first century, where the internet is as deeply ingrained in modern society as cigarette smoke in casino floor carpets, the Wire Act should be amended to read: "Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in *foreign commerce* of bets or wagers . . ." ¹⁹⁹ The amendment should extend the exemptions of § 1084(b), which reads "for the transmission of information assisting in the placing of . . . wagers . . . from a State or foreign country where betting on that sporting event or contest is legal." ²⁰⁰

The current exemption under § 1084(b) is not applicable to American citizens calling offshore betting services because the telephone call is being made *to* a place where betting on sporting events is legal, rather than *from* a place where sports betting is legal.²⁰¹ Under the proposed amended Wire

198. See Richard Sobel, *The Right to Travel and Privacy: Intersecting Fundamental Freedoms*, 30 J. MARSHALL J. INFO. TECH. & PRIV. L. 639, 642 (2014) (detailing the Supreme Court's recognition and protection of the right to interstate travel, a right that entails privacy and movement).

199. 18 U.S.C. § 1084(a) (emphasis added). The Wire Act contains three prohibitions on "wire" transmissions in interstate or foreign commerce: (1) bets, wagers, or information "assisting in the placing of bets or wagers on any sporting event or contest," (2) communications that enables the recipient "to receive money or credit as a result of bets or wagers," and (3) "information assisting in the placing of bets or wagers. . . ." *Id.* Deleting the word "interstate" will de-criminalize the use of federal wires for sports betting purposes. States will have the ability to set up sports betting schemes if interested, but more importantly it will allow bettors to place sports-bets on mobile sportsbooks from any state so long as the state where the mobile sportsbook places the bet is in a state that has legalized sports betting.

200. 18 U.S.C. § 1084(b); see Mark Lynch, *The Smart Money is on Prosecutions: Using the Federal Interstate Wire Act to Prosecute Offshore Telephone Gambling Services*, 10 IND. INT'L & COMP. L. REV. 177, 184 n.40 (1999).

201. See Lynch, *supra* note 200, at 184 n.40.

Act, this same exemption will apply to calling sports-betting services within states that have legalized sports betting.

The goal of an amended Wire Act is to allow bettors to place a bet on a mobile sportsbook, regardless of where the bettor is physically located, if where the bet is physically placed and processed is in a state with legal sports betting. To illustrate: Parker's friend, Manny, is at home in California—a state *without* legal sports betting.²⁰² He opens his sportsbook app, checks the lines on the Los Angeles Rams, and finds the line he wants to bet from a sportsbook in Las Vegas. Manny can place his bet on the Rams from California, using a mobile sportsbook, because the bet is physically being processed in Nevada—a state *with* legal sports betting. Amending the Wire Act, as proposed in this Note, allows Manny to place sports bets regardless of where he is physically located, so long as the place where the bet is physically processed is in a state with legal sports betting. The place where a bet is physically processed is the state in which the mobile sportsbook hosts its server.

The Wire Act's proposed amendment exempting interstate transmissions on sports betting is controlled through Congress's Commerce Clause power because the gambling activity crosses state lines.²⁰³ Using this power, Congress has passed inconsistent and unclear federal gambling laws.²⁰⁴ Congress has the authority to enact regulations on sports betting, but in the absence of an overarching federal policy, the Wire Act must be amended to allow states the ability to collaborate and discover new revenue streams.

The Wire Act is a legacy law that no longer acts as a deterrent because the likelihood of prosecution under the Act is nominal due to more effective legislation being passed.²⁰⁵ Given the history of the Wire Act combined with Kennedy's stated intent for the Act,²⁰⁶ amending the Wire Act is necessary to keep up with modern betting trends and offer states new revenue opportunities.²⁰⁷

202. At the time of this writing, California still has not legalized sports betting—a sore subject for Manny because with two competing initiatives on the November 2022 ballot, California voters overwhelmingly rejected legalizing sports betting. See Guy Marzorati, *California Voters Reject Measures to Legalize Sports Betting*, NPR (Nov. 9, 2022), <https://www.npr.org/2022/11/09/1133986282/california-gambling-prop-26-27-midterm-results>.

203. See *supra* note 185.

204. See *supra* note 139 (detailing statutes prohibiting the funding of unlawful internet gambling).

205. See discussion, *supra* note 100.

206. See *supra* text accompanying notes 86, 90–91.

207. See David Purdum, *Sports Betting's Growth in U.S. 'Extraordinary'*, ESPN (May 14, 2020), https://www.espn.com/chalk/story/_/id/29174799/sports-betting-growth-us-extraordinary

CONCLUSION

With the *New Hampshire Lottery Commission* case vacating the restrictive OLC 2018 Opinion, states are in a position now to legalize sports betting and maximize state revenue. Nevertheless, the obsolete Wire Act is still a barrier for states' entry into the legal sports-betting market. Given society's increasing interest in legal sports betting, the Wire Act is overdue for reform. Congress is urged to delete one word ("interstate") in the first clause of the Act, thus authorizing interstate sports betting. While Congress has every right to enact federal regulations on sports betting, it has yet to do so. In the meantime, the Wire Act is primed for a reform that will increase state tax revenues across the country. Since the pandemic has caused millions in state budget deficits, it is hard to understand why Congress would refuse to make this easy change.

(reporting that the growth of the legal sports betting market has surpassed all expectations, leading to the belief that there will be an increase in sports betting initiatives to make up for pandemic-related losses).