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WHY GEORGIA SHOULD GET OFF THE BENCH AND PROFIT FROM THE INEVITABILITY OF SPORTS BETTING

Andrew Smith*

INTRODUCTION

Although Americans bet an estimated \$80 to \$380 billion annually on sporting events, only about \$2.5 billion was wagered legally before May 14, 2018.¹ Framed differently, at a minimum, the government has forgone collecting tax revenues on approximately \$75.2 billion. Rather than retain the power to tax this figure, Congress passed the Professional and Amateur Sports Protection Act (PASPA) in 1992, which prohibited sports betting outside Nevada.² In spite of the government's predilection for regulated oversight to reduce corruption, Congress believed a legalized sports betting market would increase fraud and ruin the integrity of sports.³ While the federal government cast a scarlet letter on sports betting, individual states retained discretion regarding the legality of other forms of gambling, such as casinos and lotteries.⁴ Despite its

* J.D. Candidate, 2020, Georgia State University College of Law. I want to give a special thanks to my fellow members of the *Georgia State University Law Review* for all of your time and effort leading up to publication of this Note.

1. NAT'L GAMBLING IMPACT STUDY COMM'N, FINAL REPORT 2–14 (1999); see also Michael Levinson, *A Sure Bet: Why New Jersey Would Benefit from Legalized Sports Wagering*, 13 SPORTS L.J. 143, 144 (2006); Andrew Vacca, *Sports Betting: Why the United States Should Go All In*, 11 WILLAMETTE SPORTS L.J. 1, 1 (2014).

2. 28 U.S.C. §§ 3701–3704 (2018); see also Andrew Brandt, *Professional Sports Leagues' Big Bet: "Evolving" Attitudes on Gambling*, 28 STAN. L. & POL'Y REV. 273, 277–78 (2017) (describing how the preexisting sports betting practices in Delaware, Montana, Oregon, and Nevada granted these states exemptions from PASPA, and noting only Nevada offered full-scale sports betting on professional and collegiate sporting events, whereas the Delaware and Oregon lotteries each only allowed multi-game parlay betting on National Football League games).

3. Justin Fielkow, Daniel Werly & Andrew Sensi, *Tackling PASPA: The Past, Present, and Future of Sports Gambling in America*, 66 DEPAUL L. REV. 23, 30–31 (2016); Christopher Polisano, *Betting Against PASPA: Why the Federal Restrictions on Sports Gambling Are Unconstitutional and How They Hurt the States*, 25 JEFFREY S. MOORAD SPORTS L.J. 453, 459 (2018).

4. Daniel N. Clay, *Playing the Odds: The Realities of State-By-State Suitability Determinations and the Need for Federal Regulation*, 8 UNLV GAMING L.J. 79, 80–81 (2018) (noting how courts have

prohibition, America's affinity to bet on sports only rose, and the rise of illegal bookmakers and offshore markets virtually neutered PASPA's efficacy. Moreover, in reality, the effect of PASPA shriveled the pool of money used legally to bet on sports and effectively shielded millions of dollars from government taxation each year.

Influenced by the inevitability of sports betting and changes in public perception, the Supreme Court of the United States struck down PASPA on May 14, 2018.⁵ Each state now retains the ability to decide for itself the legality of sports betting.⁶ In light of such retained state discretion, this Note examines whether Georgia should legalize sports betting and assesses the potential legislative and regulatory challenges that would arise. Part I discusses the history of gambling in America and the state of gambling in Georgia. Part II examines particular states that have legalized sports betting and compares their legislative and regulatory schemes with Georgia's existing gambling framework.⁷ Part III assesses and proposes different structures that would allow for Georgia to legalize sports betting.

I. Background

The appearance of gambling in America coincides directly with the arrival of the earliest Puritan colonists who played dice, played card games, and bet on horse races. These activities, however, opposed Puritan ideology and were quickly outlawed.⁸ Although the

recognized the ability of states to regulate various games of chance and grant casino licenses).

5. *Murphy v. NCAA*, 138 S. Ct. 1461, 1461 (2018) New Jersey argued PASPA violated the anti-commandeering principle of the Tenth Amendment, and the Supreme Court ultimately determined PASPA was unconstitutional. *Id.* In effect, the federal ban on sports betting was removed and individual states are now able to determine the legality of sports betting. *Id.*

6. *Id.* at 1484–85.

7. This Note will primarily address the sports betting structures in Nevada, New Jersey, Delaware, and Mississippi. Although, as of November 1, 2019, thirteen states have implemented legalized sports betting. Predominately each state that has subsequently legalized has broadly mirrored its legislative model based on Nevada's existing framework, while at the same time tailoring the regulatory and taxation aspects of legal sports betting to best fit their respective social and economic agendas.

8. Sarah Remes, *Legalizing America's New Pastime: Teaming Up with the House for Pari-Mutuel Sports Betting*, 16 WAKE FOREST J. BUS. & INTEL. PROP. L. 551, 552 (2016). Puritan ideals opposed unproductive activities and, in 1633, the Massachusetts Bay Colony passed the first anti-gambling law,

early colonies similarly outlawed gambling, lottery participation was encouraged as a necessary fundraising remedy to help struggling settlements.⁹ Lacking a strong central government, the Continental Congress even used lottery revenues to fund the Revolutionary War.¹⁰ However, public perception of state-sponsored lotteries decreased throughout the early nineteenth century as a result of widespread fraud and misappropriation of funds.¹¹ By the end of the nineteenth century, state legislatures had almost universally banned state lotteries, and they did not reappear until the 1960s.¹²

As lotteries disappeared, organized horse racing appeared, and by 1890, 314 tracks were operating across the country.¹³ Despite the formation of the American Jockey Club, which was created in part to combat corruption, fraud continued to plague the industry.¹⁴ By 1908, this instability, combined with the Progressive Movement's anti-gambling sentiment, left the nation with only twenty-five tracks.¹⁵ However, in 1908, pari-mutuel betting was introduced. Although this form of gambling served to stabilize the horseracing industry, interest in horseracing would fluctuate greatly throughout

the Idleness Statute of 1633, which outlawed the possession of cards, dice, and gaming tables. *Id.* See generally George G. Fenich, *A Chronology of (Legal) Gaming in the U.S.*, 3 GAMING RES. & REV. 65 (1996).

9. Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 24 (1992). In 1612, the Virginia Company of London held a lottery to raise funds for the Jamestown settlement and by the eighteenth century, colony-sanctioned lotteries helped establish universities, churches, and libraries. *Id.* at 25–26.

10. *Horner v. United States*, 147 U.S. 449, 458 (1893) (describing how the Continental Congress authorized a lottery to raise funds during the Revolutionary War); see also Rychlak, *supra* note 9, at 12, 29.

11. Rychlak, *supra* note 9, at 35. See generally HERBERT ASBURY, *SUCKER'S PROGRESS: AN INFORMAL HISTORY OF GAMBLING IN AMERICA FROM THE COLONIES TO CANFIELD* (1938).

12. Rychlak, *supra* note 9, at 42–44 (stating Louisiana remained the only state with a lottery until 1895, when Congress banned all lottery materials from interstate commerce, and it was not until 1964 that New Hampshire introduced a state-run lottery to help fund the state's school system).

13. Luke P. Breslin, *Reclaiming the Glory in the "Sport of Kings"—Uniformity is the Answer*, 20 SETON HALL J. SPORTS & ENT. L. 297, 301 (2010); Joan S. Howland, *Let's Not "Spit the Bit" in Defense of "The Law of the Horse": The Historical and Legal Development of American Thoroughbred Racing*, 14 MARQ. SPORTS L. REV. 473, 496 (2004).

14. Howland, *supra* note 13, at 495–96. The American Jockey Club was established to "promote the improvement of horses, to elevate the public taste in sports of the turf, and to become an authority on racing matters in the country." *Id.* at 495.

15. Breslin, *supra* note 13; Fielkow et al., *supra* note 3, at 26.

the ensuing decades.¹⁶ Nevertheless, all other forms of gambling were almost uniformly outlawed across the country throughout the early twentieth century.¹⁷

A. *The Rise of Modern Sports Betting*

As interest in horseracing declined, Americans began illegally betting on baseball games through organized crime syndicates.¹⁸ While baseball's popularity exploded after World War I, the 1919 "Black Sox Scandal" brought national attention to illegal sports gambling and immediately crippled the public's perception of sports gambling.¹⁹ The scandal involved members of the Chicago White Sox, who were accused of receiving money in exchange for intentionally losing the 1919 World Series.²⁰ In the aftermath of the scandal, Major League Baseball (MLB) appointed Judge Kenesaw Mountain Landis as the first commissioner of any professional sports league to protect the "integrity of the game."²¹ Despite the appointment, corruption in MLB continued, and the public's perception of sports betting only worsened when Pete Rose, the all-time MLB leader in hits, was found to have gambled on games while he was the manager of the Cincinnati Reds.²²

16. Breslin, *supra* note 13, at 301–02; Remes, *supra* note 8, at 569. Pari-mutuel betting is a pooled system of betting where the winners divide the total amount wagered in proportion to the sums they have wagered individually. *Id.* at 568–69.

17. Fielkow et al., *supra* note 3, at 26. *See generally* I. Nelson Rose, *Gambling and the Law: The Third Wave of Legal Gambling*, 17 VILL. SPORTS & ENT. L.J. 361 (2010) (providing a comprehensive overview of the historical development of American horse racing).

18. Chil Woo, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)*, 31 CARDOZO ARTS & ENT. L.J. 569, 572 (2013) (detailing how the rise in popularity of professional baseball, in conjunction with illegal gambling laws, allowed organized crime to create their own underground sports gambling empire); Polisano, *supra* note 3, at 456–57.

19. Fielkow et al., *supra* note 3, at 26; Woo, *supra* note 18, at 572–73 (describing the perception that after the "Black Sox Scandal," organized crime threatened the sanctity of sports).

20. Brandt, *supra* note 2, at 275; Polisano, *supra* note 3, at 458–59. The scandal involved several members of the Chicago White Sox who would receive payment from organized crime members associated with famous New York mobster Arnold Rothstein. *Id.* at 458–59. As a result of the scandal, eight players were banned from baseball. *Id.*

21. Brandt, *supra* note 2, at 275.

22. Polisano, *supra* note 3, at 458; Woo, *supra* note 18, at 575.

1. Sports Betting Basics & Nevada's Legalized Sports Betting Monopoly

Similar to investing in a company's public stock, sports wagering generally entails committing an immediate cash outlay while making a prediction about a future performance. Various types of wagers exist, and the most common forms of betting include point-spread bets,²³ money-line bets,²⁴ and parlay bets.²⁵ To insulate themselves from volatility and to ensure a profit, sportsbooks and other entities that accept wagers will charge a commission on each bet, colloquially called the "vig."²⁶ As a result, sportsbooks develop betting spreads that seek to attract half of the bettors on one team and the other half of bettors on the other team.²⁷

While other states continued to prohibit sports gambling, Nevada capitalized on this lucrative activity and became the first state to legalize sports betting in 1949.²⁸ Nevada initially imposed a 10% tax on all sports bets and accordingly, the tax confined sports betting to

23. BO J. BERNHARD ET AL., UNLV INT'L GAMING INST., PROFESSIONAL TEAM SPORTS IN LAS VEGAS: WHAT THE RESEARCH SAYS, 8–9 (2016); Jeff Harris, *What Is a Sportsbook? (And How Does Such a Business Make Money?)*, GAMBLING SITES (June 9, 2018), <https://www.gamblingsites.org/blog/what-is-a-sports-book-and-how-does-such-a-business-make-money/> [<https://perma.cc/5FGL-AUGM>]. The point-spread takes into account the relative strength of a team versus its opposition and levels the playing field by requiring the "perceived" stronger team to win by a certain amount of points. Harris, *supra*. For example, a wager on an "underdog," (i.e., the perceived weaker team) can afford for the team to lose the game and still collect a winning ticket so long as the underdog does not lose by more than the point-spread. *Id.*

24. BERNHARD ET AL., *supra* note 23, at 9. A money-line bet does not include a point-spread and only requires bettors to pick the victorious team to win their wager. *Id.*

25. *Id.* Parlay betting must include at least two or more bets and requires the bettor to accurately select the outcome of each event to collect a winning ticket. *Id.* Consequently, parlay bets are more difficult to win, yet at the same time are attractive because potential profits are amplified. *Id.*

26. *Id.* at 9–10. When an individual bets on the point-spread, the bet is discounted by the vig, which normally averages around 1.1. BERNHARD ET AL., *supra* note 23, at 9–10. Thus, for example, a bettor who wagers eleven dollars may only stand to win ten dollars with a vig of 1.1. *Id.*; see also DAVID G. SCHWARTZ, UNLV CTR. GAMING RES., NEVADA SPORTS BETTING TOTALS: 1984–2018, at 2 (2019). Like other forms of gambling, the old adage "the house always wins" applies equally to sports gambling, and Nevada sportsbooks have posted positive annual revenues for thirty-three consecutive years. SCHWARTZ, *supra*.

27. BERNHARD ET AL., *supra* note 23, at 9–10. When making a hypothetical point-spread bet, a bettor must pay eleven dollars and in return would win only ten dollars. *Id.* Under ideal circumstances, if the sportsbook receives equal amounts of wagers on both sides, then a sportsbook has guaranteed itself a profit. *Id.*

28. Fielkow et al., *supra* note 3, at 26–27; Woo, *supra* note 18, at 573.

small clubs and organized crime.²⁹ By 1983, Nevada reduced the tax to 0.25%, and the economics of sports betting encouraged Las Vegas casinos to open and operate their own sportsbooks.³⁰ As the only state to offer unrestricted sports betting, Nevada developed and refined a regulatory system that protects against corruption and produces honest wager outcomes.³¹ At the same time, Nevada has also benefitted from its de facto sports betting monopoly. In 2017, Nevada sportsbooks handled \$4.8 billion in bets and reported revenue of \$248.8 million.³² For Super Bowl LII alone, Nevada sportsbooks accepted \$138.5 million in bets, although this figure pales in comparison to the \$4.6 billion the American Gambling Association estimates people bet illegally on the game.³³

2. Legislative Action

To combat illegal sports gambling, Congress passed the Interstate Wire Act of 1961 to curb organized crime's underground bookmaking operation.³⁴ Aimed primarily at "bookies" and not

29. Fielkow et al., *supra* note 3, at 27 (describing the prevalence of organized crime in the years shortly after Nevada legalized sports gambling); Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet For the States*, 2 UNLV GAMING L.J. 281, 287 (2011) (describing Congress's intention that a high tax would discourage sports betting).

30. Fielkow et al., *supra* note 3, at 27 (detailing the lucrative financial impact that resulted from Congress's tax reduction); see also Joshua Winneker, Ira Sprotzer & Lindsay Demery, *Sports Gambling and the Expanded Sovereignty Doctrine*, 13 VA. SPORTS & ENT. L.J. 38, 40 (2013). See generally *Nevada Sports Betting*, LEGAL SPORTS REP., (Jan. 9, 2020, 11:26 AM), <https://www.legalsportsreport.com/nevada/> [<https://perma.cc/2SU8-GXQ8>]. A sportsbook is a physical location, traditionally located within a casino, which is permitted to accept bets and is responsible for creating and posting point-spreads and betting odds for sporting events. *Nevada Sports Betting, supra*.

31. Keith C. Miller & Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 UNLV GAMING L.J. 153, 164 (2018) (describing the licensing, accounting, audit, and enforcement regulations established in Nevada and how other states will look to replicate the Nevada model).

32. Dustin Gouker, *Nevada Sportsbooks Set Record with a Quarter of a Billion Dollars of Revenue in 2017*, LEGAL SPORTS REP. (Jan. 31, 2018, 8:09 AM), <https://www.legalsportsreport.com/18130/nevada-sportsbooks-2017/> [<https://perma.cc/YD9K-JCFT>].

33. Press Release, Am. Gaming Ass'n, Americans to Wager More than \$4.6 Billion Illegally on Super Bowl LII (Jan. 30, 2018), <https://www.americangaming.org/new/americans-to-wager-more-than-4-6-billion-illegally-on-super-bowl-52/> [<https://perma.cc/N7GB-WXCF>].

34. 18 U.S.C. § 1084 (2018); see Miller & Cabot, *supra* note 31, at 154 (discussing how federal intervention was needed due to the difficulties of individual states investigating and prosecuting organized crime syndicates operating throughout multiple states); see also 38 AM. JUR. 2D *Gambling* § 33 (1999) (defining "bookmaking" as an operation that involves both the placing of bets and the paying off or collection of debts).

bettors, the Interstate Wire Act made it illegal for anyone engaged in the business of betting to use a wired communication to accept or facilitate interstate bets.³⁵ Despite further congressional action aimed at reducing organized crime's underground sports gambling operations, illegal betting and bookmaking thrived throughout the 1970s and 1980s.³⁶ Notably, in 1976, the Commission on the Review of the National Policy Toward Gambling proclaimed "effective gambling law enforcement [is] an impossible task," and although the Commission recommended the current prohibitions remain, it deemphasized enforcement against illegal sports wagering.³⁷

Despite nearly all states prohibiting sports betting, corruption continued to plague professional and collegiate sports leagues. In 1978, a member of the Boston College men's basketball team was convicted of conspiracy to commit sports bribery after being found implicated in a point-shaving scheme that involved members of organized crime.³⁸ Further, in 2007, a National Basketball Association (NBA) referee, Tim Donaghy, was convicted and imprisoned after being found to have personally accepted bribes and placed bets on basketball games that he officiated.³⁹

35. 18 U.S.C. § 1084; Remes, *supra* note 8, at 560.

36. COMM'N ON THE REVIEW OF THE NAT'L POLICY TOWARD GAMBLING, GAMBLING IN AMERICA IX (1976) [hereinafter GAMBLING IN AMERICA] (finding that over two-thirds of the population gambled in some form and 80% approved of gambling); see also Jeffrey Rodefer, *Federal Wire Wager Act*, GAMBLING-LAW-US.COM, <http://www.gambling-law-us.com/Federal-Laws/wire-act.htm> [https://perma.cc/SMD6-9LVX] (providing an overview of the Wire Act and describing how the Wire Act complements other federal bookmaking statutes, such as the Travel Act, the Interstate Transportation of Wagering Paraphernalia Act, and the Illegal Gambling Business Act).

37. See GAMBLING IN AMERICA, *supra* note 36. Commission did not believe a regulated single-event sports wagering framework would provide sufficient tax revenues to states. *Id.* at 4; see also Fielkow et al., *supra* note 3, at 28.

38. Fielkow et al., *supra* note 3, at 29. See generally Ray Gustini, *How Point Shaving Works*, ATLANTIC (Apr. 12, 2011), <https://www.theatlantic.com/entertainment/archive/2011/04/how-point-shaving-works/349575/> [https://perma.cc/Y6ZC-7QX4]. Point-shaving entails bribing specific players or coaches into making certain in-game decisions to ensure the outcome of a sports bet. Gustini, *supra*. Point-shaving occurs more frequently in collegiate sports as amateur athletes are not compensated and collegiate referees have lower salaries compared to professionals. *Id.*; John Underwood, *The Biggest Game in Town*, SPORTS ILLUSTRATED (Mar. 10, 1986), <http://www.si.com/vault/1986/03/10/638301/the-biggest-game-in-town> [https://perma.cc/SQU6-C86N] (explaining the point-shaving scheme involving Boston College basketball players during the 1978–1979 season).

39. *United States v. Donaghy*, 570 F. Supp. 2d 411, 416 (E.D.N.Y. 2008). National Basketball Association (NBA) referee Tim Donaghy was sentenced to fifteen months in prison for conspiracy to engage in wire fraud and transmitting betting information through interstate commerce. Martha Neil,

Although most states independently prohibited sports betting, Congress remained largely silent on the topic and instead deferred to state lawmakers in a manner consistent with congressional involvement regarding the legality of other forms of gambling.⁴⁰ However, on October 28, 1992, Congress, with the support of the major professional leagues, enacted PASPA, which virtually prevented any government entity or individual from sponsoring or authorizing wagering on either professional or amateur athletic events.⁴¹ Created to protect the integrity of sports and shield America's youth from unvirtuous ideals, PASPA effectively made sports gambling illegal nationwide.⁴² Notably, however, Delaware, Montana, Nevada, and Oregon received exemptions from PASPA as each of these states previously offered sports wagering in some form.⁴³

B. Public Acceptance of Sports Betting

In the years after PASPA's enactment, illegal sports betting continued to grow, and despite the prohibition, nonregulated outlets, such as illegal bookmakers and offshore betting companies, continued to provide a host of avenues to wager on sports.⁴⁴ With

Ex-NBA Referee Tom Donaghy Gets 15 Months in Gambling Case, ABA J. (July 29, 2008, 10:31 PM), http://www.abajournal.com/news/article/ex_nba_referee_tim_donaghy_gets_15_months_in_gambling_case [<https://perma.cc/YHA9-N9VR>].

40. Fielkow et al., *supra* note 3, at 29.

41. 28 U.S.C. §§ 3701–3704 (2018); *see also* Fielkow et al., *supra* note 3, at 30–32 (enumerating the motivations of professional sports leagues to prohibit sports betting). *See generally* S. REP. NO. 102-248 (1991) (discussing the rationale for seeking a federal ban on sports betting and listing individuals who voiced support for legislation prohibiting sports gambling, including commissioners of NFL, NBA, NHL, and MLB).

42. S. REP. NO. 102-248, at 5 (discussing how former NFL commissioner Paul Tagliabue testified before Congress and vehemently opposed sports betting, stating “the spread of legalized sports gambling would change forever—and for the worse—what our game stands for”); *see also* Woo, *supra* note 18, at 587.

43. 28 U.S.C. §§ 3701–3704; *see also* Brandt, *supra* note 2.

44. Eric J. Carlson, *Drawing Dead: Recognizing Problems with Congress' Attempt to Regulate the Online Gambling Industry and the Negative Repercussions to International Trade*, 32 SUFFOLK TRANSNAT'L L. REV. 135, 154–55 (2008) (describing how Congress's restrictions are limited to United States borders and the majority of online gambling businesses are operated by foreign companies). *See* Ryan M. Rodenberg & John T. Holden, *Sports Betting Has an Equal Sovereignty Problem*, 67 DUKE L.J. ONLINE 1, 34 (2017) (classifying PASPA as pre-internet legislation that is ill-suited for the modern day).

increased popularity, the negative stigma that previously accompanied illegal wagering gradually dissolved, leading the general public, politicians, and sporting executives to entertain and even encourage legalization.⁴⁵ Essentially, it became evident to these former opponents that sports betting had become a normative social activity. Although measuring the amount bet in unregulated markets is impossible, a 2015 Ernst & Young survey found that 28% of American adults bet on sports and estimated these adults wagered approximately \$107 billion annually.⁴⁶ Alternatively, a 1999 report by the National Gaming Impact Study Commission estimated the illegal sports betting market to be between \$80 and \$380 billion.⁴⁷

The amount Americans wagered annually in illegal markets caused many politicians to succumb to the realization of sports betting's impactful societal presence and suppress their moral concerns in favor of the economic and civic benefits that could be derived from taxing a regulated market.⁴⁸ A recent study from Eilers & Krejcik Gaming, LLC estimated legalization could yield up to \$16 billion collectively in annual tax revenues if the majority of states implemented sports betting markets.⁴⁹ Paralleling the public's acceptance of sports betting, the commissioners of the major American sports leagues, which all previously opposed sports gambling, have publicly advocated for a legalized regulatory framework.⁵⁰ Noting these changing attitudes, on May 14, 2018, the

45. Michelle Minton, *Legalizing Sports Betting in the United States*, COMPETITIVE ENTERPRISE INST. (Mar. 15, 2018), <https://cei.org/content/legalizing-sports-betting-united-states> [https://perma.cc/P32K-Q9TM]. See generally David Purdum, *Inside How Sports Betting Went Mainstream*, ESPN (Aug. 9, 2018), http://www.espn.com/chalk/story/_/id/24310393/gambling-how-media-daily-fantasy-new-thinking-us-pro-sports-commissioners-helped-sports-betting-become-accepted [https://perma.cc/DXL5-7EFP].

46. OXFORD ECON., ECONOMIC IMPACT OF LEGALIZED SPORTS BETTING 8 (May 2017), <https://www.americangaming.org/sites/default/files/AGA-Oxford%20-%20Sports%20Betting%20Economic%20Impact%20Report1.pdf> [https://perma.cc/4LYE-GCCR].

47. *Id.* (detailing the inherent difficulties in measuring the scope of illegal sports betting); see also NAT'L GAMBLING IMPACT STUDY COMM'N, *supra* note 1.

48. Minton, *supra* note 45; Purdum, *supra* note 45.

49. Minton, *supra* note 45.

50. See, e.g., Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html> [https://perma.cc/VUC6-MZ4G] (“[T]he laws on sports betting should be changed. Congress should adopt a federal framework that allows states to authorize betting on professional sports,

Supreme Court in *Murphy v. National Collegiate Athletic Association* struck down PASPA and restored states' rights to legalize and regulate sports betting.⁵¹ Within only a few weeks of the Court's decision, Delaware and New Jersey quickly legalized and began accepting wagers on sports, and in the eighteen months following *Murphy*, a total of thirteen states legalized and implemented full-scale sports gambling.⁵²

Unlike many states, the Georgia legislature has not formally addressed the legalization of sports gambling following *Murphy*; however, a senate committee has been formed to study the issue and possibly introduce a sports betting bill during the 2020 legislative session.⁵³ Although the Georgia Constitution has some of the most restrictive language regarding gambling, three legal forms of gambling exist in the Peach State: a state lottery, bingo, and raffles.⁵⁴ In 1992, Georgia voters approved a state lottery to fund the HOPE Scholarship, which awards in-state collegiate scholarships to Georgia residents.⁵⁵ Since its implementation, the scholarship has provided more than \$18.7 billion and helped over 1.7 million Georgia students attend college.⁵⁶ Although the Georgia Constitution was amended to

subject to strict regulatory requirements and technological safeguards.”)

51. See *Murphy v. NCAA*, 138 S. Ct. 1461, 1478 (2018).

52. See generally *Legislative Tracker: Sports Betting*, LEGAL SPORTS REP. (Jan. 11, 2020, 12:24 PM), <https://www.legalsportsreport.com/sportsbetting-bill-tracker/> [https://perma.cc/8S8G-VWSK].

53. Jim Galloway, *A New Front in Georgia's Fight over Gambling: Sports Betting*, ATLANTA J.-CONST. (Aug. 23, 2019), <https://www.ajc.com/blog/politics/new-front-georgia-fight-over-gambling-sports-betting/2AMqzgUcQmARZjVjarp56K/> [https://perma.cc/9MUE-GB6D].

54. GA. CONST. art. I, § 2, para. 8 (“[A]ll forms of pari-mutuel betting and casino gambling are hereby prohibited.”); *Bingo*, GA. BUREAU INVESTIGATION, <https://gbi.georgia.gov/bingo> [https://perma.cc/5EUD-T3HW] (last visited Feb. 14, 2020); see also Phillip Conneller, *Georgia Republican Dreaming of Three Multi-Billion Dollar Integrated Resorts*, CASINO.ORG (Aug. 2, 2018), <https://www.casino.org/news/georgia-republican-dreaming-of-three-multibillion-dollar-integrated-resorts> [https://perma.cc/2ENS-YT4Z] (noting Georgia is one of only nine states in the United States that does not offer either commercial or Indian casino gaming).

55. Michael Lanford, *The Political History of the Georgia HOPE Scholarship Program: A Critical Analysis*, 1 POL’Y REVIEWS HIGHER EDUC. 8–9, 18 (2017). Due to the language in the Georgia Constitution, the Hope Scholarship had to pass a state referendum, and ultimately Georgia voters narrowly approved the lottery by a vote of 1,146,340 to 1,050,674. *Id.*

56. Press Release, Ga. Lottery Corp., Georgia Lottery Transfers over \$1.1B to Education (July 18, 2017), <https://www.galottery.com/en-us/media-center/pressreleaseinput/2017/july/georgia-lottery-transfers-over-a-billion-to-education.html> [https://perma.cc/7NLH-JWGW].

permit a lottery, Georgia politicians have been unsuccessful in legalizing casinos and other forms of gambling.⁵⁷

Nevertheless, as neighboring states begin to profit from legalized sports gambling while also generating income from visiting Georgia residents, pressure to address the future of sports betting in Georgia will quickly mount. Rather than forego these tax revenues, Georgia should confront the inevitability of sports betting and institute its own regulatory regime.

II. Analysis

A. Nevada Framework

States that have legalized sports betting have generally emulated Nevada's regulatory framework to ensure bettors wager in a fair and transparent environment.⁵⁸ Specifically, the Nevada Act and Regulations govern state gaming and empower the Nevada Gaming Commission and Nevada Gaming Control Board to regulate the gaming industry.⁵⁹ Nevada offers sports betting through physical casino sportsbooks, whereby an individual may place a bet directly

57. Griffin Hamstead, *Casino Bill Fails in Committee*, RED & BLACK (Feb. 28, 2017), https://www.redandblack.com/athensnews/casino-bill-fails-in-committee/article_f88f576a-fd52-11e6-b673-37a7b19aa354.html [<https://perma.cc/CV8A-E3J3>]. In February 2017, Senate Bill 79 sought to authorize the licensing of two destination resorts in Georgia and included a 20% tax on revenue earmarked for the Hope Scholarship fund, rural health care and rural broadband technology. *Id.* The year prior, Senate Bill 264 sought to legalize wagering on state horse races but fell two votes shy of reaching the Senate floor. *Id.*

58. Miller & Cabot, *supra* note 31. *See generally* NEV. GAMING COMM'N & NEV. STATE GAMING CONTROL BD. 8 (2014), https://www.leg.state.nv.us/Division/Research/LegInfo/Orientation/2014-15/Handouts/03-JudHandouts_Gaming.pdf [<https://perma.cc/LU9F-U7TC>] [hereinafter NEV. GAMING COMM'N]; Adam Candee, *Is It 'Revenue Sharing' or High Taxes for Sports Betting? Ask Rhode Island, Delaware How They Slice the Pie*, LEGAL SPORTS REP. (July 3, 2018), <https://www.legalsportsreport.com/21663/sports-betting-revenue-sharing/> [<https://perma.cc/3HEJ-YST7>].

59. BERNHARD ET AL., *supra* note 23, at 22; NEV. GAMING COMM'N, *supra* note 58, at 8. The Commission consists of five Governor-appointed members and is responsible for authorizing gaming licensing and ensuring that operators adhere to state gaming laws. NEV. GAMING COMM'N, *supra* note 58, at 3–4. The Control Board consists of six divisions (Administration, Audit, Enforcement, Investigations, Tax and License, and Technology) and seeks “to protect the stability of the gaming industry through investigations, licensing, and enforcement of laws and regulations; to ensure the collection of gaming taxes and fees an essential source of state revenue; and to maintain public confidence in gaming.” *Id.* at 6–7.

with a cashier; licensed companies also provide mobile services.⁶⁰ To place a mobile bet, an individual must first establish an account, in person, at a licensed sportsbook, and thereafter may wager indirectly through a sports betting application; however, these applications use geolocation tracking to make sure the bet is placed within Nevada's borders.⁶¹ Further restrictions were implemented to prevent match-fixing because sportsbooks are prohibited from knowingly accepting bets from athletes, coaches, and officials on events in which they participate.⁶² Sportsbooks are also required to obtain and share customer information with regulators upon request, and report suspicious wagering activity.⁶³

The Nevada gaming industry produces a substantial portion of the total revenues for the state's General Fund.⁶⁴ Nevada taxes operators' gross gaming revenues at a 6.75% tax rate, and in 2017, sports betting revenue totaled \$248.8 million, which in turn generated \$15 million in tax proceeds to the state.⁶⁵ Because Nevada has the lowest gross gaming tax in the nation, this amount is low compared to the total volume wagered. However, travelers commonly flock to Las Vegas to wager on popular sporting events, such as the Super Bowl, and this figure ignores indirect revenues brought to hotels, restaurants, rental cars, and entertainment.⁶⁶ Thus, states that have legalized sports betting are not only expecting increased revenues

60. BERNHARD ET AL., *supra* note 23, at 5.

61. *Nevada Sports Betting*, *supra* note 30. To place a mobile bet, an individual must complete a Nevada sports application account in person and provide the sportsbook with a government-issued identification and social security number. *Id.*

62. BERNHARD ET AL., *supra* note 23, at 48 (explaining how Nevada sportsbooks identified suspicious betting activity on Arizona State University basketball games, and ultimately aided law enforcement in apprehending the culprits).

63. *Id.* at 47.

64. NEV. RESORT ASS'N, 2017 NEVADA GAMING FACT BOOK 3 (2017). In 2017, licensing fees and taxation on gaming revenues enabled Nevada hotel-casinos to generate \$1.6 billion in industry-specific taxes, which accounted for 42% of the General Fund's yearly tax revenues. *Id.* at 3, 19.

65. *Id.* at 19 (while Nevada's revenue attributable to sports betting was only \$15 million in 2017, the state has the lowest gross gaming tax in the nation at 6.75%).

66. GLOB. MKT. ADVISORS, AN EXAMINATION OF SPORTS BETTING IN AMERICA & FORECAST OF REVENUES BY STATE 1 (2017), http://globalmarketadvisors.com/wp-content/uploads/2017/11/GMA_An-Examination-of-Sports-Betting-in-America-Forecast-of-Revenues-by-State_FINAL.pdf [https://perma.cc/3PEK-7C4D]. For a detailed report on the direct and indirect economic impact that legalized sports betting would have on individual states, see generally OXFORD ECON., *supra* note 46.

from sports gambling, but expect increased tourism revenues, especially from neighboring out-of-state residents who wish to take advantage of legal sports gambling.⁶⁷

1. Delaware Model

On June 5, 2018, Delaware became the first state other than Nevada to legalize unrestricted sports betting.⁶⁸ Due to the PASPA carve-out exception, the Delaware Lottery has allowed multi-game parlay betting on NFL games since 2009.⁶⁹ With approximately 100 sports lottery retail outlets located across the state, the Delaware Lottery in 2017 took in \$48 million in multi-game NFL parlay wagers, yielding a tax revenue of \$8.6 million for the state.⁷⁰ Regarding unrestricted, full-scale sports betting, bets can be placed with sportsbooks at the state's three casinos, and the Delaware Lottery is responsible for regulatory oversight.⁷¹ Further, although Delaware law does allow mobile betting, it does not allow online betting.⁷² Gamblers are additionally limited to wagering a maximum of \$1,000 on a single bet, but this limitation may be removed if the casino's risk manager approves the bettor based on past transactions.⁷³ Unlike the Nevada model where the state directly taxes a casino's gross gaming revenue, the Delaware Lottery has a

67. See generally OXFORD ECON., *supra* note 46.

68. DEL. CODE ANN. tit. 29, § 4825 (2017); see also Darren Rovell, *Delaware First State to Offer Sports Betting Since Supreme Court Ruling*, ESPN (June 5, 2018), http://www.espn.com/chalk/story/_id/23705846/delaware-becomes-first-state-offer-sports-betting-supreme-court-ruling [<https://perma.cc/BK4D-D7SZ>].

69. DEL. CODE ANN. tit. 29, § 4825; see also Brandt, *supra* note 2, at 278.

70. David Purdum, *Delaware Draws \$322,135 in Bets on Day 1 of Full-Scale Betting Tuesday*, ESPN (June 6, 2018), http://www.espn.com/chalk/story/_id/23716636/delaware-generates-322135-bets-day-1-full-scale-betting-tuesday [<https://perma.cc/54US-WWAF>]; see also *Delaware Sports Lottery*, DEL. LOTTERY GAMES, <https://www.delottery.com/Sports-Lottery/Monthly-Net-Proceeds> [<https://perma.cc/75B2-KB4K>] (providing a complete breakdown of monthly lottery revenues earned at casino sportsbooks and retail outlets).

71. See generally 10 DEL. ADMIN. CODE § 204 (2018); see also Rovell, *supra* note 68.

72. 10 DEL. ADMIN. CODE § 204.

73. PJ Walsh, *What We've Learned From Day 1 of Delaware Sports Betting*, ACTION NETWORK (June 7, 2018, 4:35 PM), <https://www.actionnetwork.com/news/legal-delaware-sports-betting-day-1-what-we-learned> [<https://perma.cc/9WSW-HKJ3>] (attributing the sportsbooks' imposed betting limit to Delaware's cautious approach and also detailing how a bettor's historical interactions with a sportsbook will affect his ability to wager more than \$1,000).

revenue-sharing partnership with its casinos where the lottery receives 50% of the proceeds, the casinos receive 40%, and the remaining 10% is allocated to supplement horse racing purses.⁷⁴ Notably, distribution percentages of sports-betting income earned at these casino sportsbooks differ substantially from that of income earned through sports lottery retail outlets, which after paying a small percentage for vendor fees and retailer commissions, allocates 90% of the proceeds to the state and the remaining 10% to horse racing purses.⁷⁵

From June 5, 2018, through September 2019, bettors wagered over \$156.4 million at the three casino sportsbooks and generated a net revenue of \$19.06 million, with the state earning over \$8.3 million in taxable revenue.⁷⁶ This figure does not count the \$9.14 million in tax revenue generated during the same time period from NFL parlay wagering, which remains available in about 100 lottery retail locations around the state.⁷⁷ Given the favorable tax arrangement, research firm Eilers & Krejcik Gaming, LLC projects Delaware could receive sports betting revenues of at least \$23.1 million annually and as much as \$49.6 million once mobile betting is implemented.⁷⁸ Rather than standing idle, Delaware seamlessly instituted a comprehensive sports betting framework and effortlessly capitalized on American's longstanding appetite to wager on sports.

2. *Nevada Model—New Jersey and Mississippi Follow Suit*

On June 12, 2018, New Jersey legalized sports gambling, allowing individuals to place wagers at licensed casino or racetrack locations

74. DEL. CODE ANN. tit. 29, § 4815 (2017); *see also* DEL. DEP'T OF FIN., DELAWARE FISCAL NOTEBOOK 131 (2017), https://finance.delaware.gov/publications/fiscal_notebook_17/Section07/lottery.pdf [<https://perma.cc/QAQ9-NQKT>]; NEV. GAMING COMM'N, *supra* note 58, at 28, 30.

75. *See* DEL. DEP'T OF FIN., *supra* note 74 (providing a breakdown between the revenue allocation differences between casino sportsbooks and lottery sports retailers); Candee, *supra* note 58.

76. DEL. LOTTERY GAMES, *supra* note 70 (providing net monthly distribution totals between the three Delaware casinos sportsbooks and one hundred sports retailer outlets); *see also* *US Sports Betting Revenue and Handle*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sports-betting/revenue/> [<https://perma.cc/MGX3-69E6>] (last updated Oct. 31, 2019).

77. DEL. LOTTERY GAMES, *supra* note 70.

78. Rovell, *supra* note 68.

throughout the state.⁷⁹ Unlike Delaware, these operators are permitted to accept mobile bets, and like Nevada, will use geolocation tracking to ensure that all bets are placed within New Jersey state lines.⁸⁰ Under the law, the revenue from bets placed in person is subject to an 8.5% tax, while sums received from mobile wagering are taxed at 13%.⁸¹ Operators began accepting bets on June 14, 2018, and bettors wagered \$16.4 million through June 30, 2018.⁸² In the fifteen months since legalization, New Jersey quickly rivaled Nevada as the preeminent sports betting state with a handle over \$4.2 billion and total revenue of over \$284 million, \$37 million of which has been generated in tax earnings.⁸³ Despite New Jersey sportsbooks accepting more than twenty-five times as much betting volume as Delaware's sportsbooks, New Jersey's tax model only yielded roughly \$29 million more in tax revenue, and this figure shrinks to approximately \$20 million if revenue from Delaware's sports lottery retail outlets is included. Although these figures do not reflect the ancillary economic benefits derived by the New Jersey casino and entertainment industry, the tax revenue differential between Delaware and New Jersey serves to highlight how states are able to creatively tailor their regulatory and economic infrastructures to profit from legalized sports gambling.

79. S.J. Res. 4111, 218th Leg., Reg. Sess. (N.J. 2018); Eric Ramsey, *New Jersey Sports Betting Is Finally Here, as Governor Signs Bill*, LEGAL SPORTS REP. (June 11, 2018), <https://www.legalsportsreport.com/21121/new-jersey-governor-signs-sports-betting-into-law/> [<https://perma.cc/F4NK-2GVK>].

80. David Purdum, *New Jersey Adding Mobile Sports Betting to Offerings*, ABC NEWS (Aug. 1, 2018, 4:36 PM), <https://abcnews.go.com/Sports/jersey-adding-mobile-sports-betting-offerings/story?id=56974549> [<https://perma.cc/9QPS-XPNF>].

81. N.J. S.J. Res. 4111; David Danzis, *Murphy Signs Bill Directing Sports Betting Taxes to CRDA*, PRESS ATLANTIC CITY (Oct. 9, 2018), <https://www.pressofatlanticcity.com/business/murphy-signs-bill-directing-sports-betting-taxes-to-crda/article—9ca812f1-54fb-532e-b9e2-7dfa32b5b752.html>.

82. Ben Fawkes, *Debut of New Jersey Sports Betting Sees More Than \$16.4M Wagered in June*, ESPN (July 12, 2018), http://www.espn.com/chalk/story/_/id/24079224/new-jersey-takes-164-million-sports-bets-june [<https://perma.cc/V6GC-CFLS>].

83. For a comprehensive monthly breakdown of revenue earned at each sportsbook, see *US Sports Betting Revenue and Handle*, *supra* note 76. See also *Monthly Sports Wagering Revenue Reports*, DEP'T L. & PUB. SAFETY, <https://www.nj.gov/oag/ge/swrtaxreturns.html> [<https://perma.cc/5PT5-6RDZ>] (last visited Feb. 17, 2020).

On August 1, 2018, Mississippi became the third state to legalize sports betting after the Court struck down PASPA.⁸⁴ Mississippi regulations permit the state's twenty-eight existing gaming license holders to apply for a sports betting license and operate a retail sportsbook within the casino.⁸⁵ Most notably, Mississippi, unlike other states, does not permit mobile wagering unless a bettor is located within the casino premises.⁸⁶ Sports betting revenue will be taxed at 12%, with 8% going to the state and 4% going to local governments.⁸⁷ In August 2018, Mississippi casinos began accepting bets. As of the end of September 2019, they accepted almost \$373 million in wagers and yielded over \$40 million in revenue, \$5 million of which went to the state.⁸⁸

B. Georgia: Constitutional Prohibitions, Casino Legislation & HOPE Scholarship

As one of the nation's most conservative gambling states, Georgia's path for legalized sports betting is more complicated than other states'. The Georgia Constitution prohibits casinos, and all states that legalized and launched sports betting platforms offer wagering primarily through casino sportsbooks.⁸⁹ Although the Georgia legislature narrowly rejected casino proposals in the past, the issue will likely confront the General Assembly again in the 2020 session when State Representative Ron Stephens (R-164th), a leading

84. See David Purdum, *Mississippi Casinos Begin Taking Sports Wagers*, ESPN (Aug. 7, 2018), http://www.espn.com/chalk/story/_/id/24257989/mississippi-casinos-begin-taking-sports-wagers [https://perma.cc/TX6Y-SSDT]. See generally MISS. CODE ANN. § 75-76-89 (2016); 13-9 MISS. CODE R. § 2.1 (LexisNexis 2018).

85. 13-9 MISS. CODE R. § 2.1.

86. *Id.* at § 3.15; Purdum, *supra* note 84.

87. Jill R. Dorson, *Mississippi Rolls Out Regs: No 'Integrity Fee,' Ok to Bet on Mississippi College Teams*, SPORTS HANDLE (June 21, 2018), <https://sportshandle.com/mississippi-rolls-out-regs-no-integrity-fee-ok-to-bet-on-mississippi-college-teams/> [https://perma.cc/8JEJ-JDLG].

88. *US Sports Betting Revenue and Handle*, *supra* note 76. See also *Monthly Reports*, MISS. GAMING COMMISSION, http://www.msgamingcommission.com/index.php/reports/monthly_reports [https://perma.cc/774W-N43Z] (last visited Jan. 21, 2020), for a breakdown of revenue earned from specific casinos.

89. GA. CONST. art. I, § 2, para. 8.

proponent of gaming, plans to introduce another bill proposing a constitutional amendment to legalize casinos.⁹⁰

Proponents contend that casinos will not only create jobs and stimulate economic activity, but will also generate stable tax revenues that can be used to fund Georgia's HOPE Scholarship.⁹¹ The HOPE Scholarship is a merit-based program that provides funding for Georgia students to attend in-state colleges and is entirely lottery funded.⁹² Though the scholarship was controversial at first and experienced strong resistance from religious groups who claimed lotteries would cause gambling addictions and financial ruin for many individuals, the constitutional amendment to institute a state lottery narrowly passed the state referendum.⁹³ In the years since, the HOPE Scholarship has been considered a monumental success by giving over \$18.7 billion to help more than 1.7 million Georgia students attend college.⁹⁴ However, because the HOPE Scholarship is

90. Mark Niese, *Gambling, Guns and Taxes Fall Short in Georgia Generally Assembly*, ATLANTA J.-CONST. (Mar. 11, 2019), <https://www.ajc.com/news/state—regional-govt—politics/gambling-guns-and-taxes-fall-short-georgia-general-assembly/dVz5lJexBFbWfu4aHrj19L/#> [<https://perma.cc/Y8VD-XPRW>] (discussing how House Resolution 327, which would allow casino gambling in Georgia, failed to reach the House floor). See generally Ella McDonald, *Gaming Lobbyists Continue to Push for Casinos in Georgia*, LEGAL GAMBLING & L. (Jan. 5, 2018), <https://www.legalgamblingandthelaw.com/news/gaming-lobbyists-continue-to-push-for-casinos-in-georgia-as-legislative-session-starts/> [<https://perma.cc/42HC-R7DL>] (describing previous futile attempts to pass casino legislation); Don McKee, *Effects on Governor's Race: Changing Attitudes on Gambling*, MARIETTA DAILY J. (Aug. 16, 2018), https://www.mdjonline.com/opinion/don-mckee-effects-on-governor-s-race-changing-attitudes-on/article_1719097c-a1cd-11e8-ab43-eb9d693af55c.html [<https://perma.cc/M5TV-HY2S>]. Stephens previously sought support for three resort-style casinos that would require each company bidding on a state license to invest at least \$1.2 billion dollars, and the project would be expected to generate a minimum of 10,000 new jobs for a total \$3.6 billion investment. McKee, *supra*.

91. Jarred Schenke, *New Georgia Push for Legalized Gambling Includes 3 Billion-Dollar Casino Resorts*, BISNOW ATLANTA (Aug. 1, 2018), <https://www.bisnow.com/atlanta/news/economy/three-site-casinos-eyed-for-georgia-including-metro-atlanta-91337> [<https://perma.cc/FS2V-LNNY>]; Dave Williams, *Legalized Gambling Supporters in Georgia Vowing Legislation in 2019*, ATLANTA BUS. CHRON. (Mar. 21, 2018, 1:21 PM), <https://www.bizjournals.com/atlanta/news/2018/03/21/legalized-gambling-supporters-in-georgiavowing.html> [<https://perma.cc/W3XB-QPJC>]. See generally Greg Rossino & Ryan Kruger, *New Analysis Shows HOPE Scholarship to Run Out of Money by 2028*, 11ALIVE (Aug. 10, 2016, 7:07 PM), <https://www.11alive.com/article/news/local/new-analysis-shows-hope-scholarship-to-run-out-of-money-by-2028/293407419> [<https://perma.cc/84UJ-6WGH>].

92. James Barlament, *HOPE Scholarship*, NEW GA. ENCYCLOPEDIA, <http://www.georgiaencyclopedia.org/articles/education/hope-scholarship> [<https://perma.cc/669S-GA75>] (last updated Apr. 30, 2019).

93. Lanford, *supra* note 55, at 7.

94. Georgia Lottery Corp., *supra* note 56.

funded entirely by lottery proceeds, the scholarship is susceptible to funding shortages since individuals purchase lottery tickets less frequently during economic downturns.⁹⁵ Due to a growing population size, there are concerns the HOPE Scholarship may not be able to sustain its demand, with some predicting it will run out by 2028.⁹⁶ Regardless of the sustainability of the scholarship fund, gaming revenues could be used to either augment the HOPE Scholarship or serve other areas of state need, such as health care, education, or infrastructure.

1. *Alternative Route via State Lottery*

Given the legislative hurdles impeding casino introduction, the simpler avenue for instituting sports betting in Georgia rests with the Georgia Lottery. For a number of years, the Delaware and Oregon lotteries have offered multi-game parlay betting on NFL games through state retail outlets such as restaurants, gas stations, and convenience stores.⁹⁷ Before being outlawed, the Oregon Lottery consistently yielded approximately \$2 million in annual state revenue, and the Delaware sports lottery most recently returned over \$8.6 million in 2017, which was the final year before full-scale sports betting was permitted.⁹⁸ Although these figures may not seem overly

95. Sarah Butrymowicz & Meredith Kolodner, *\$500M in HOPE Reserves Idle While Students Drop Out, Drown in Loans*, ATLANTA J.-CONST. (Aug. 4, 2017), <https://www.myajc.com/news/500m-hope-reserves-idle-while-students-drop-out-drown-loans/yyRVOvXi5xsYBuFBpxTk0I/> [<https://perma.cc/9Z8J-TQA9>] (describing how HOPE reserve funds have grown in recent years to combat the growing challenges of funding such a generous scholarship); see also Kim Severson, *Georgia Facing a Hard Choice on Free Tuition*, N.Y. TIMES (Jan. 6, 2018), <https://www.nytimes.com/2011/01/07/us/07hope.html> [<https://perma.cc/AE7K-4EZH>]. As a result of the HOPE Scholarship's popularity, in the aftermath of the Great Recession and end of federal stimulus packages, lottery sales could not cover the program's costs. Severson, *supra*. In 2010 and 2011, lottery sales were short by \$243 million and \$317 million respectively, and Georgia lawmakers were forced to allocate millions of dollars from the state's reserve fund. *Id.*

96. Schenke, *supra* note 91.

97. Anthony G. Galasso, Jr., *Betting Against the House (and Senate): The Case for Legal, State-Sponsored Sports Wagering in a Post-PASPA World*, 99 KY. L.J. 163, 168 (2011) (noting in 1989, the Oregon Lottery permitted multi-game parlay betting on NFL games, yielding approximately \$2 million in annual state revenue); see also Meer, *supra* note 29, at 288–89. Despite the relative success of the Oregon sports lottery, the lottery was outlawed in 2007 as the NCAA, long opposed to sports wagering, boycotted Oregon stadiums from hosting post-season collegiate basketball games. *Id.*

98. Galasso, Jr., *supra* note 97, at 168–69; Purdum, *supra* note 70; see also Nicholas Garcia, *Oregon Lottery Projects \$100 Million in Annual Revenue from Legal Sports Betting*, LEGAL SPORTS

impressive, greater potential lies beneath the surface. First, neither of these states offered mobile betting, which is expected to be the driving force behind future sports wagering growth as individuals can place bets remotely without having to drive to a physical location. Second, statistically, parlay bets are considerably more difficult to win because a bettor must win multiple games to collect a winning ticket, whereas betting on a single game offers a 50% chance of success. Absent the most risk-seeking bettors, individuals traditionally prefer to wager on single games rather than placing parlay bets. Finally, the tax figures from the Delaware and Oregon lotteries only produce revenue during the months when professional football games are played. Because the NFL season only runs from August to the first weekend of February, the majority of months earn no revenue. Given that Georgia already has a state lottery and also has a population nearly ten times greater than that of Delaware's, it is not presumptuous to predict that significant tax revenues from sports betting could be available to the Peach State.⁹⁹ In fact, a 2017 Oxford Economics report projects that even with limited wagering availability and a base tax rate, Georgia could conservatively generate nearly \$100 million in sports betting revenue each year.¹⁰⁰

C. *Opposing Rationales & Hypocritical Ideology*

Opposition to sports betting continues to rest on moral, religious, or financial grounds.¹⁰¹ Some opponents claim that tax revenues from

REP., <https://www.legalsportsreport.com/24409/oregon-lottery-sports-betting-revenue/> [https://perma.cc/XX77-P6LT] (last updated Sept. 26, 2018). According to a recent report, Oregon lottery officials believe that the addition of mobile betting could net the state over \$120 million in revenue from sports betting annually. Garcia, *supra*.

99. U.S. CENSUS BUREAU, QUICK FACTS DELAWARE (2017), <https://www.census.gov/quickfacts/de> [https://perma.cc/UGL6-AGET] [hereinafter QUICK FACTS DELAWARE] (noting Delaware's population was 961,939 as of July 1, 2017); U.S. CENSUS BUREAU, QUICK FACTS GEORGIA (2017), <https://www.census.gov/quickfacts/ga> [https://perma.cc/H4HN-54BK] [hereinafter QUICK FACTS GEORGIA] (noting Georgia's population was 10,429,379 as of July 1, 2017).

100. James Swift, *Local Legislators Shaky on Sports Betting Legalization*, DAILY TRIB. NEWS (June 2, 2018), <http://www.daily-tribune.com/stories/local-legislators-shaky-on-sports-betting-legalization,19009> [https://perma.cc/ULM4-RSVT].

101. Polisano, *supra* note 3, at 485; Elaine S. Povich, *How States Are Gambling on Sports Betting Case*, PEW CHARITABLE TR. (Jan. 31, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/01/31/how-states-are-gambling-on-sports-betting-case>

sports betting will produce short-term gains, with states that legalize shortly after *Murphy* experiencing brief economic success until neighboring states follow suit and saturate the marketplace.¹⁰² Other critics claim that the tax revenue proceeds the state would receive would not be large enough to justify legalization.¹⁰³ Although many factors will affect the amount of revenue a state earns from sports betting, such as population size, tax rates, and the presence of mobile betting, proponents of legalization contend that the extent to which profits are generated is largely irrelevant as sports betting is inevitable, and any revenues should be directed to benefit state governments instead of illegal bookmakers or offshore companies.¹⁰⁴

Regardless of the merits of these arguments, it is necessary to identify the hypocrisy underlying the opposition's rationales against legalizing sports betting in a state that has a lottery. At their core, the differences between playing the lottery and betting on a sporting event are quite minute. For instance, when an individual player plays the Powerball, she is betting that the numbers she has selected will be randomly chosen and she will be rewarded for her correct prediction. Undisputedly, this is gambling and virtually identical to when a sports bettor wagers that one team will outscore the other, and in doing so, the sports bettor will be rewarded for her correct prediction. Moreover, opponents citing moral and integrity concerns contend that match-fixing is likely to increase if sports betting is legalized. However, these arguments trigger ironic counterarguments. Before

[<https://perma.cc/6DR4-HSQ3>].

102. Jill Nolin, *Sports Betting Gains May Be Short-Lived*, VALDOSTA DAILY TIMES (July 23, 2018), https://www.valdostadailytimes.com/news/local_news/sports-betting-gains-may-be-short-lived/article_57c022e5-0cd2-5b2e-9231-749871c664de.html [<https://perma.cc/ZFT7-C3YR>] (positing that a cannibalizing effect will take place and states that legalize sports betting early will see their revenues decrease as newer states move to legalize); see also Povich, *supra* note 101.

103. Howard Gleckman, *6 Reasons Why States Shouldn't Be Counting Their Sports Betting Tax Revenue Yet*, FORBES (May 16, 2018, 11:35 AM), <https://www.forbes.com/sites/howardgleckman/2018/05/16/six-reasons-why-states-shouldnt-be-counting-their-sports-betting-tax-revenue-yet/#2a82d33b3897> [<https://perma.cc/2MA7-HPB9>] (predicting that states following the Nevada tax model will not generate material state tax revenues and referencing Nevada's \$15 million in tax revenue as support).

104. Povich, *supra* note 101 (quoting Minnesota State Representative Pat Garofalo's stance that "hundreds of thousands of Minnesotans already wager on sports" and inferring legalization will shift gambling away from the underground and into a transparent and regulated marketplace).

and throughout PASPA's enactment, match-fixing scandals plagued sporting events, thus demonstrating that an unregulated marketplace has not effectively preserved the purity of sporting outcomes.¹⁰⁵ Historically, government intervention has been implemented to decrease corruption by curbing certain actions and opportunities, yet it remains unclear why sports betting opponents believe an inverse relationship exists in a regulated marketplace.

III. Proposal

As more states legalize sports betting, Georgia should follow suit and move to allow for a vote to amend its constitution. As of October 31, 2019, thirteen states have already accepted bets on sporting events, including nearby states such as Kentucky, South Carolina, and Louisiana.¹⁰⁶ Quite simply, sports betting is only going to grow, and states that do not permit sports betting will reject a stable flow of tax revenues.¹⁰⁷ Further, residents of states that do not offer sports betting will travel to neighboring states to bet and will instead contribute to those states' tax revenues.

A. Why Georgia Should Legalize

Critics will continue to rely on moral and religious grounds, such as potential increases in gambling addiction, as their basis of opposition. For instance, Representative Matthew Gambill (R-15th) is not a proponent of sports betting because he believes it has a "deleterious social impact."¹⁰⁸ Regardless of the merits of these arguments, Georgia already has a state lottery, which effectively renders these contentions moot given the similarities between playing

105. See *United States v. Donaghy*, 570 F. Supp. 2d 411, 416 (E.D.N.Y. 2008); see also Fielkow et al., *supra* note 3, at 29; Underwood, *supra* note 38 (discussing a scheme to shave points by Boston College basketball players during the 1978-79 season).

106. *Legislative Tracker: Sports Betting*, *supra* note 52. As of October 31, 2019, thirteen states offer full-scale sports betting. *Id.*

107. SCHWARTZ, *supra* note 26. Nevada sportsbooks have been profitable for at least thirty-three consecutive years. *Id.*

108. Swift, *supra* note 100. Any sports betting legislation would likely begin with the Senate Committee on Regulated Industries and Utilities, who would draft initial frameworks and then present different scenarios to the state Senate. *Id.*

the lottery and betting on a sporting event. It is perplexing how opponents of sports betting categorically differentiate between the moral and social righteousness of playing the lottery, drinking alcohol, or smoking cigarettes with betting on sports, and even more confounding why the formers of these so-called vice activities are legally and socially permitted while sports betting is illegal.¹⁰⁹

Even assuming Representative Gambill is correct that betting on sports has a “deleterious social impact,” how does gambling on the lottery not have a similarly harmful or unvirtuous societal impact? Alternatively, what positive social impact does playing the lottery provide that sports betting fails to replicate? Both activities are done for either monetary reward or entertainment purposes, yet the odds of winning the Powerball or Mega Millions jackpots are infinitesimal, whereas betting on a sporting outcome against the point-spread is a coin-toss.¹¹⁰ Furthermore, though the majority of Americans wager on sports casually, there remains a sizable portion of individuals dedicated to betting on sports as a full-time profession.¹¹¹ Whereas gambling on the lottery requires no skill and relies solely on the luck of the draw, professional sports bettors research and analyze historical scoring trends, team personnel, player tendencies, weather reports, coaching schematics, travel schedules, and a host of other variables to increase the likelihood of winning their bets.¹¹² Though

109. See generally Franklin Liu, *Sin Taxes: Have Governments Gone Too Far in Their Efforts to Monetize Morality?*, 59 B.C. L. REV. 763 (2018) (providing a comparison of traditional and non-traditional sin taxes). Many goods and services, such as alcohol, tobacco, gambling, candy, and soft drinks, are subject to state “sin taxes” because their consumption is deemed harmful to individuals or socially undesirable. *Id.* at 764. The rationale for these taxes is that, as opposed to traditional sales taxes, sin taxes raise the price of such goods in an effort to discourage consumer demand. *Id.* at 764–65.

110. Kevin Breuninger, *The Odds of Winning Those Record Powerball, Mega Millions Jackpots Are Beyond Slim*, CNBC (Jan. 5, 2018, 1:42 PM), <https://www.cnbc.com/2018/01/05/odds-of-winning-a-lottery-jackpot-are-worse-than-you-expect.html> [<https://perma.cc/WQ4M-BX6R>]. The odds of winning the Powerball grand prize are 1 in 292.2 million while the odds of winning the Mega Millions jackpot are 1 in 302.5 million. *Id.*

111. See generally Matt Bonesteel, *Bob Voulgaris Made Millions Betting on the NBA. The Mavs Are Gambling on Him*, WASH. POST (Oct. 5, 2018, 7:58 AM), https://www.washingtonpost.com/sports/2018/10/05/bob-voulgaris-made-millions-betting-nba-mavs-are-gambling-him/?utm_term=.04892d66b4fe [<https://perma.cc/46YM-S3PX>]. In October 2018, the Dallas Mavericks hired former professional sports bettor Bob Voulgaris to be the director of their quantitative research and development department. *Id.* As a gambler, Voulgaris successfully studied game-management tendencies of three NBA teams to make millions of dollars betting. *Id.*

112. *Id.*

notable differences exist between betting and investing, in this regard, professional gamblers predicting and wagering on sporting outcomes mirrors the work of stock market analysts who similarly employ technical and fundamental analysis to determine an entity's intrinsic value and predict its future success.¹¹³

As to integrity concerns, lotteries have quite the checkered past when it comes to preventing corruption; fraudulent conduct was a leading factor in the nationwide lottery prohibition throughout the early nineteenth century.¹¹⁴ However, since lotteries reappeared in the early 1970s, strict state regulatory oversight has been effective in reducing the risk of corruption, and modern lottery fraud cases typically involve external actors rather than internal institutional operators.¹¹⁵ Similarly, a regulated marketplace for betting on sports, as opposed to an unregulated environment run via illegal, organized crime, logically seems far better suited to preserve the character and integrity of sporting outcomes.

Additionally, sportsbooks are motivated to offer a fair and trustworthy platform to retain the trust of sports bettors and thus share the same integrity concerns as professional and collegiate sports leagues.¹¹⁶ As such, a regulated framework encourages and incentivizes oversight while simultaneously protecting the integrity of sporting events. In fact, Nevada sportsbooks have a history of reporting and preventing numerous point-shaving schemes and have

113. See generally *Stock Market vs. Sports Betting: How Investing and Gambling Differ*, SPORTS BETTING DIME (last updated Oct. 11, 2019), <https://www.sportsbettingdime.com/guides/finance/how-investing-and-gambling-differ/> [<https://perma.cc/UM5V-LMWS>]. In addition to fundamental and technical analysis, behavioral analysis plays a significant role in both investing and gambling. *Id.* In the investment arena, investors are over three times more likely to invest with local firms where similarly casual sports bettors frequently bet irrationally on teams they root to win regardless of market signals. *Id.*

114. Rychlak, *supra* note 9, at 13, 35 (detailing how fraudulent conduct diminished the public's perception of lotteries and contributed to the prohibition of lotteries from the late 1800s until 1964, and providing instances where internal lottery operators were accused of fixing drawings and misappropriating funds).

115. *Id.* at 60 (discussing the strict regulatory control modern lotteries are subject to, and providing that present fraud cases deal with issues such as altered tickets, awarding the prize to the wrong winner, and instances where an undisputed winner loses the ticket).

116. Todd Dewey, *Las Vegas Bookmakers Know a Fix When They See One*, L.V. REV.-J. (Sept. 8, 2017, 2:19 PM), <https://www.reviewjournal.com/sports/betting/las-vegas-bookmakers-know-a-fix-when-they-see-one/> [<https://perma.cc/XPE6-T282>].

worked alongside law enforcement to apprehend potential conspirators.¹¹⁷ Although no industry will ever be immune to scandal or rogue actors, a regulated sports betting market aligns all parties' interests and promotes transparency, whereas unregulated bookies operate under the guise of underground secrecy and self-interest.

From a political standpoint, Georgia Governor Brian Kemp opposes sports betting and referenced the 2018 NCAA College Football Playoff Final between Alabama and Georgia in his critique, saying “[a]s a Georgia grad and diehard Dawg fan, losing the national championship was painful enough. [It] [w]ould have been even worse if I had money on the game!”¹¹⁸ However, had sports betting been legalized, Governor Kemp would be no more obligated to bet on a sporting event than he would be obligated to buy a Powerball ticket. Thus, just like playing the lottery is discretionary, Governor Kemp could simply have decided not to bet. In contrast, former gubernatorial candidate Stacey Abrams was open to the topic of sports betting so long as the tax revenues are earmarked toward improving Georgia’s educational systems.¹¹⁹ This proposal is neutral with respect to where the revenues go, and only proposes that sports legislation take effect because of the relative ease with which Georgia could generate millions of dollars merely by taxing an activity that is inevitable, prevalently ongoing, and currently evading taxation.¹²⁰

117. *Id.*; see also John Grady & Annie Clement, *Gambling and Collegiate Sport*, 15 J. LEGAL ASPECTS SPORT 95, 99 (2005). In 1994, the Mirage sportsbook alerted the Nevada Gaming Control Board of suspicious betting activity on a collegiate basketball game between Arizona State and Washington. Dewey, *supra* note 116. Sportsbook officials at the Mirage had received over \$525,000 in bets on this game, while the traditional volume on such a game would only attract around \$40,000. *Id.* An FBI investigation ensued and ultimately two players, Steven Smith and Isaac Burton, plead guilty to charges of conspiracy to commit sports bribery. Grady & Clement, *supra*, at 99.

118. Jason Butt, *Could Sports Betting Actually Make Its Way to Georgia?*, TELEGRAPH (June 13, 2018, 11:30 AM), <https://www.macon.com/sports/college/university-of-georgia/bulldogs-beat/uga-football/article213092154.html>.

119. *Id.*

120. *Id.* Even under a conservative tax framework and limited wagering availability, Oxford Economics predicts Georgia could net approximately \$100 million in revenues from sports betting each year. OXFORD ECON., *supra* note 46, at 29.

B. Regulatory Framework

Given the absence and future uncertainty of casinos in the state, the Georgia Lottery is the most logical institutional mechanism through which to introduce and regulate statewide sports betting. For an introductory guide, Georgia lawmakers would be wise to mimic the two-tiered regulatory structure first established in Nevada.¹²¹ The first step would be to create a state gaming commission that would be responsible for establishing statewide regulations while delegating administrative, regulatory, and collection functions to the Georgia Lottery. Second, lawmakers interested in maximizing tax revenues should emulate aspects of Delaware's sports lottery retail model, wherein, after paying retailers a 5% sales commissions, the remaining percentage of the proceeds go to the state's general fund.¹²²

The most efficient, safe, and lucrative betting infrastructure would entail allowing the Georgia Lottery to set up its own retail outlets designated specifically for sports wagering that are equipped with lottery personnel to handle bets and payouts. Although Delaware's sports lottery permits NFL parlay betting at retail outlets such as convenience stores and restaurants, this infrastructure model is unlikely replicable for a state offering unrestricted sports betting, given that its limited betting menu requires only minimal employee training and lacks regulatory safeguards to identify suspicious wagering activity. Instead, lottery-operated, brick-and-mortar sportsbooks would operate similar to casino sportsbooks or betting shops in the United Kingdom. However, these sportsbooks, in contrast to Delaware's retail outlets, would be staffed with dedicated sports betting personnel and offer widespread betting options.¹²³ In

121. NEV. GAMING COMM'N, *supra* note 58, at 8. Pursuant to Nevada law, the Nevada Gaming Commission and Nevada Gaming Control Board work in tandem to regulate the state's gaming industry. *Id.*

122. See DEL. DEP'T OF FIN., *supra* note 74. After winning payouts, vendor fees, and retailer commissions are paid, 90% of revenues go to the general fund and the remaining 10% supplement horse racing purses. *Id.* Vendor fees include central computer system and terminal equipment. *Id.* at 133–34.

123. Zach Schreiber, *The Time Is Now: Why the United States Should Adopt the British Model of Sports Betting Legislation*, 27 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 353, 371, 375 (2017). Motivated to eliminate illegal bookmaking operations, the British Parliament passed the Betting and

addition to creating new jobs, these lottery-operated sportsbooks would allow regulatory personnel to handle all bets and uniformly monitor suspicious wagering activities across different operating locations.

Finally, the financial benefits that accompany legalization are simply too lucrative to ignore and would provide Georgia with a new source of stable tax revenues that can be used to improve specific programs and sectors of state concern. Though the true size of the Georgia sports betting market is impossible to discern in its current unregulated state, economic models and the recent success in New Jersey and Delaware suggest sports betting could yield somewhere in the vicinity of \$50 million to \$100 million in initial tax revenues.¹²⁴ Although Georgia has no experience in the sports-betting marketplace, it has a population over ten times the size of Delaware's, is home to four professional sports teams, and is centrally located in the heartland of collegiate football.¹²⁵ Even under a conservative approach, Georgia stands to earn millions of dollars in tax revenues, and the potential for annual revenues reaching \$100 million does not seem implausible.

Regardless of the framework ultimately drafted, proposed legislation should explicitly discuss any administrative limitations on sports wagering and enumerate individual rights and limitations applicable to individuals placing bets to create a transparent and trustworthy marketplace. For example, in an effort to diminish the potential for bribery of collegiate athletes, New Jersey law prohibits sportsbooks from offering wagers involving New Jersey college football teams.¹²⁶ In contrast, the Nevada and Mississippi regulations

Gaming Act of 1960, which legalized betting shops to accept sports wagers. *Id.* at 371. British betting shops are the functional equivalents of casino sportsbooks but are located in traditional retail locations throughout the country. *Id.* at 375.

124. See generally OXFORD ECON., *supra* note 46.

125. QUICK FACTS DELAWARE, *supra* note 99; QUICK FACTS GEORGIA, *supra* note 99. See generally Neil Irwin & Kevin Quealy, *The Places in America Where College Football Means the Most*, N.Y. TIMES (Nov. 8, 2014), <https://www.nytimes.com/2014/11/08/upshot/the-places-in-america-where-college-football-means-the-most.html> [<https://perma.cc/H6BS-D7A8>] (explaining the greater popularity of college football in the Southern states as compared to the rest of the nation).

126. S.J. Res. 4111, 218th Leg., Reg. Sess. (N.J. 2018).

have no restriction to betting on in-state collegiate teams.¹²⁷ Additionally, even if lawmakers are reluctant to permit mobile betting, which is understandable based on Georgia's relatively barren gambling landscape, proposed legislation should be sufficiently flexible to allow for such betting at a later date. This hybrid model provides a general framework and combines the best attributes of casino sportsbooks, namely full-scale betting options and regulatory oversight, with the tax advantages of Delaware's sports retail model to provide a financially successful and transparent sports betting marketplace.

CONCLUSION

With the repeal of PASPA, states are presented with the unique opportunity to enter into a mature marketplace and capitalize on a previously unavailable source of taxable revenue. States that have already implemented sports-betting platforms are already experiencing the financial benefits and are able to reinvest these dividends to bolster public education, health care systems, highway infrastructures, or other cash starved programs. Georgia has the opportunity to follow the lead of such states by crafting its own unique regulatory system that will allow for millions of dollars in annual tax revenues to be earned while preserving the sanctity of sporting outcomes.

Critics still rely on stale, outdated, and uninformed positions, and ignore the inescapable truth that sports betting is inevitable and Americans will gamble on sports regardless of legality. Rather than continuing to allow sports wagers to escape state taxation, anti-gambling lawmakers should concede this inevitability and take advantage of the opportunity to financially supplement undercapitalized state programs. In the event sports betting is legalized, these opponents and other uninterested state citizens can simply choose not to participate.

127. Dorson, *supra* note 87. See generally 13-9 MISS. CODE R. § 2.1 (LexisNexis 2018).

The decision in *Murphy* has firmly cemented legal sports betting as a reality of twenty-first century culture, and in the years to follow, more states will legalize and capitalize on America's affinity to wager on sports. Georgia would benefit from heeding the advice of NBA Commissioner Adam Silver, who proclaimed sports betting "should be brought out of the underground and into the sunlight where it can be appropriately monitored and regulated."¹²⁸

128. Silver, *supra* note 50.