

# SPORTS BETTORS' BILL *of* RIGHTS



## SPORTS FANS COALITION

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# INTRODUCTION

On May 14, 2018, the Supreme Court overturned<sup>1</sup> the Professional and Amateur Sports Protection Act, the federal statute prohibiting states from authorizing sports betting<sup>2</sup>, sparking a flurry of legislation and administrative actions in states across the U.S. Most such legislation focused on legalizing sports betting in order to realize quick tax revenues. Almost none of it sought to protect sports bettors from fraud, invasion of privacy, or the exploitation of vulnerable populations.

On June 21st, 2018, Sports Fans Coalition<sup>3</sup> (SFC), in conjunction with the George Washington University Law School, convened a symposium with leading experts in consumer protection, sports betting, and problem gambling, along with the Attorney General of Maryland, to address how policymakers could protect consumers in the era of legalized sports betting. The panelists debated what, if any, consumer protections should accompany sports betting legislation. Some panelists said that states should avoid legalizing sports betting, others supported minimal consumer protections, but most supported legalization in concert with a range of consumer protections.

Based in part on the views and recommendations of some (but not all) symposium participants, along with independent research, Sports Fans Coalition believes that, although sports betting could undermine the integrity of the games, as point-shaving scandals in years past revealed, and could distort amateur sports, such as high school or college competitions, with inappropriate profit-seeking behavior, it seems clear that most fans support sports betting. Many fans already participate in the black market, where they spend billions of dollars on illegal sports bets. SFC supports bringing this activity into a legal market but only if accompanied by consumer protections. Also, if states want to

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<sup>1</sup> U.S. Supreme Court. U.S. Supreme Court. *Murphy, Governor of New Jersey, et al. v. National Collegiate Athletic Assn. et al.*, No. 16–476, 584 U.S. \_\_\_ (2018), *slip op.* at 31 (hereinafter, *Murphy vs. NCAA*). Retrieved from [https://www.supremecourt.gov/opinions/17pdf/16-476\\_dbfi.pdf](https://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf) (last visited June 15, 2018)

<sup>2</sup> Professional and Amateur Sports Protection Act, 28 U.S.C. Ch. 178 § 3701 (1993). Retrieved from <http://uscode.house.gov/view.xhtml?path=/prelim@title28/part6/chapter178&edition=prelim>, (last visited July 11th, 2018) *vacated, Murphy vs. NCAA* (2018).

<sup>3</sup> Sports Fans Coalition (SFC), the country’s leading sports fans advocacy organization, is devoted to representing American sports fans wherever public policy impacts the games fans love. SFC, founded in 2009 as a bipartisan organization, has more than 50,000 members and covers all 50 states. SFC is best known for leading the campaign to end the Federal Communications Commission’s sports blackout rule, which was accomplished in 2014 despite massive opposition from the NFL and broadcast industry. Since then SFC has been advocating against media consolidation that threatens availability and variety of sports coverage, sports stadium financing deals that cause excessive burdens to the taxpayer while failing to adequately serve fans, the NFL’s concussion cover-up, corruption within the United States Soccer Federation and their inequitable treatment of women and youth, and online ticket sales fraud, among other things. The Coalition advocates on behalf of sports fans in all of these areas and more in Washington, DC and state capitals around the country. Learn more at [www.sportsfans.org](http://www.sportsfans.org).



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realize new tax revenues from sports betting, they first have to convince sports bettors to come out of the shadows and participate in a legal market. Strong consumer protections can provide that incentive. Moreover, states can and should take responsibility for protecting consumers, including in any new legal markets for sports betting.

For all these reasons, Sports Fans Coalition proposes a Sports Bettors' Bill of Rights for legislatures to consider if they move to legalize sports betting. The Sports Bettors' Bill of Rights includes five basic principles:

1. The right to integrity and transparency
2. The right to privacy and data security
3. The right to self-exclude
4. The right to protection of the vulnerable
5. The right to recourse

This paper explains the history of PASPA, explores the black market for sports betting, summarizes SFC's symposium on consumer protection in the era of legalized sports betting, and proposes the Sports Betting Bill of Rights for lawmakers who wish to legalize sports betting.



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# BACKGROUND

## The Supreme Court Vacates Congress' Ban on Sports Betting

The Professional and Amateur Sports Protection Act (PASPA, also referred to as the Bradley Act) prohibited states or individuals from authorizing, licensing, or engaging in sports betting.<sup>4</sup> PASPA went into effect in January of 1993 and grandfathered gambling practices in three states: Nevada, where all forms of gambling had been legal since 1949; Oregon, where the existing state lottery was allowed to operate its parlay<sup>5</sup> card system in place since 1989; and Montana, where licensed alcoholic beverage establishments could create betting square contests.<sup>6</sup>

Congress intended PASPA to slow the growth of legalized sports betting in the states. Former NBA star and presidential candidate Senator Bill Bradley's (D-NJ) bill, eventually enacted as PASPA, had massive support from the sports leagues. With scandals like the Black Sox and the 1951 college point-shaving scandal in mind, league representatives expressed concern that sports betting harmed “the integrity of the game.”<sup>7</sup>

On May 14, 2018, the Supreme Court unanimously vacated PASPA, reasoning that “PASPA ‘regulate[s] state governments’ regulation’ of their citizens” in derogation of the constitutional federalism “anti-commandeering” principle.<sup>8</sup> It left the door open for states to enact new laws legalizing sports betting and for Congress to enact federal legislation directly governing sports betting.

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<sup>4</sup> Dorson, J. R. (2018, February 13). What Is PASPA, The Federal Ban on Sports Betting? Retrieved June 6, 2018, from <https://sportshandle.com/what-is-paspa-sports-betting-ban-professional-amateur-sports/>

<sup>5</sup> Doc's Sports. (2014). What Is A Parlay Card and How Does It Relate to Sports Betting and Wagering? *Doc's Sports Service*. Retrieved June 8 2018 from <https://www.docsports.com/how-to-what-is-does/parlay-card-how-relate-sports-betting-wagering.html>

<sup>6</sup> Sports Book Prop.Com. (2007-2013). Free Sports Betting Contests [Sportsbook resource site]. Retrieved June 6, 2018, from <http://sportsbookprop.com/contests/>

<sup>7</sup> Dorson, J. R. (2018, February 13). What Is PASPA, The Federal Ban on Sports Betting? Retrieved June 6, 2018, from <https://sportshandle.com/what-is-paspa-sports-betting-ban-professional-amateur-sports>

<sup>8</sup> 584 U.S. *Murphy v. NCAA* (2018), *slip op.* at 24, 31 (citations omitted). Retrieved July 11th from [https://www.supremecourt.gov/opinions/17pdf/16-476\\_dbfi.pdf](https://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf)



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## Consideration and Passage of Sports Betting Legislation in the States

Since the Supreme Court ruling, numerous states have raced to enact sports betting legalization. More than 100 individual pieces of sports betting and related legislation have been introduced in 24 states in recent sessions.<sup>9</sup> As of the publication of this paper, nine states have taken action after *Murphy v. NCAA* to legalize sports betting in some form.<sup>10</sup> Five of them enacted legislation months prior to the Supreme Court decision, such that immediately after the PASPA repeal, sports betting became legal: Delaware, New Jersey, West Virginia, Pennsylvania, and Mississippi. These states demonstrate the level of interest and political will across the country to move quickly in this area. Rhode Island did not enact a law before the *Murphy v. NCAA* ruling but quickly authorized sports betting after the decision.

According to some economists, states stand to earn hundreds of millions of dollars in tax revenues, increase jobs by the thousands, and bolster their GDPs through legalized sports betting. Wisconsin, for example, stands to receive more than \$20 million in state and local tax revenues, even under a

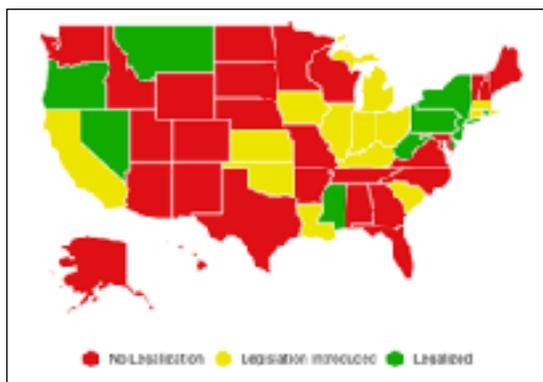


Figure 1. As of publication, ten States have some form of legal sports betting. Thirteen states have recently introduced a bill but have not passed legislation and 27 states have yet to introduce any sports betting legislation.

Source: (PlayUSA, June 2018)

restrictive legal scenario (brick-and-mortar casinos only). A geographically larger state like Texas would not benefit as much from this restrictive scenario. However, a more lenient scenario (allowing more brick-and-mortar locations including non-casino retail operations) would give Texas potential tax earnings of \$128 million versus Wisconsin's potential of \$41 million under a similar scenario. These values climb to even higher levels if online and mobile opportunities are included.<sup>11,12</sup>

<sup>9</sup> Bill Track 50.Com. (2011-2018). Bill Track 50; Research and Track Search Query [Legislative Tracker Site]. Retrieved June 6, 2018, from <https://billtrack50.com/> (last visited June 7, 2018)

<sup>10</sup> PlayUSA.Com. (2018). What's the Current State of Sports Betting in the US? [Resource for Legal Online Gambling]. Retrieved June 5, 2018, from <https://www.playusa.com/sports-betting/> (last visited July 1, 2018)

<sup>11</sup> Oxford Economics. (2017). *Economic Impact of Legalized Sports Betting* (pp. 1—70). Wayne, PA: Oxford Economics. Retrieved from <https://www.americangaming.org/sites/default/files/AGA-Oxford%20-%20Sports%20Betting%20Economic%20Impact%20Report1.pdf> (last visited July 1, 2018)

<sup>12</sup> The map includes data compiled from two primary sources: PlayUSA.Com. (2018). What's the Current State of Sports Betting in the US? [Resource for Legal Online Gambling]. Retrieved June 5, 2018, from <https://www.playusa.com/sports-betting/> (last visited July 1, 2018) What's the Current State of Sports Betting in the US? (2018). Retrieved July 5, 2018, from <https://www.playusa.com/sports-betting/> & Russ, H. (2018, June 22). Rhode Island legalizes sports betting, gets 51 percent of revenues [News site]. Retrieved July 5, 2018, from <https://www.reuters.com/article/us-usa-betting-rhode-island/rhode-island-legalizes-sports-betting-gets-51-percent-of-revenues-idUSKBN1J12TQ> (last visited July 02, 2018)



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**Delaware:** As of June 5, 2018, sports betting was legal in Delaware. Governor John Carney authorized “a full-scale sports gaming operation” less than a month after the Supreme Court overturned the prohibition. Currently, sports betting is only available in three casinos in the state. However, in the coming months, there are plans to authorize more brick-and-mortar locations along with Internet sites.<sup>13</sup>

**Mississippi:** Mississippi passed HB 967, which legalized sports fantasy betting in May 2018.<sup>14</sup> At the time, the law included language that would legalize sports betting in Mississippi casinos if PASPA was overturned. Allen Godfrey, head of the state gaming commission, promised sports betting “within 45 to 60 days [of a decision], before football season.”<sup>15</sup> He also added that the law grants the gaming commission regulatory power.<sup>16</sup>

**New Jersey:** In early June, the New Jersey state assembly introduced A4111, which had bipartisan support. A week later, the bill had unanimously passed in the General Assembly and quickly passed in the Senate. Governor Phil Murphy signed the bill, immediately authorizing sports betting at brick-and-mortar casinos and racetracks, and allowing online sports betting 30 days later.<sup>17</sup>

**Pennsylvania:** In October 2017, a comprehensive gambling bill was signed into law by Pennsylvania Governor Tom Wolf. However, by its own terms, the law would not go into effect until after the *Murphy v. NCAA* decision. Pennsylvania now allows online gambling and permit-licensed sports betting. However, controversy still surrounds the hefty 35 percent tax rate and other associated fees.<sup>18</sup>

**Rhode Island:** At the end of June, Rhode Island became the third state to legalize sports betting in the

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<sup>13</sup> Rodenberg, R. (2018, June 11). How close is my state to legalizing sports betting? Retrieved June 11 2018 from [http://www.espn.com/chalk/story/\\_/id/22516292/gambling-ranking-every-us-state-current-position-legalizing-sports-betting](http://www.espn.com/chalk/story/_/id/22516292/gambling-ranking-every-us-state-current-position-legalizing-sports-betting)

<sup>14</sup> Gambling Sites.Org. (2018). Fantasy Sports Betting: Fantasy Beginners Guide [Online Gambling Resource]. Retrieved June 11, 2018, from <https://www.gamblingsites.org/sports-betting/beginners-guide/fantasy/> (last visited July 2, 2018)

<sup>15</sup> Sports betting legislation tracker in the United States of America. (2018). Retrieved June 12, 2018, from <https://sportshandle.com/legal-betting-legislation-tracker/> (last visited July 03, 2018)

<sup>16</sup> Pender, G. (2018, May 14). Will Mississippi have Sports Wagering in Casinos by Football Season? Don't bet against it. *Clarion Ledger*. Retrieved June 7, 2018 from <https://www.clarionledger.com/story/opinion/columnists/2018/04/29/mississippi-sports-betting/557795002/> (last visited July 3, 2018)

<sup>17</sup> State of New Jersey (n.d) *Governor Phil Murphy*. “Governor Murphy Signs Sports Betting Legislation”. Retrieved July 5, 2018 from [http://www.state.nj.us/governor/news/news/562018/approved/20180611b\\_sportsBetting.shtml](http://www.state.nj.us/governor/news/news/562018/approved/20180611b_sportsBetting.shtml)

<sup>18</sup> Sports betting legislation tracker in the United States of America. (2018). Retrieved June 12, 2018 from <https://sportshandle.com/legal-betting-legislation-tracker/> (last visited July 02, 2018)



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post-PASPA era. The legalization was included in the budget bill, with analysts estimating \$23 million in tax revenues in the 2019 fiscal year. Rhode Island only permits land-based betting in two casinos and does not permit mobile sports betting. Activity will begin in October of 2018.<sup>19</sup>

**West Virginia:** In March, West Virginia legalized sports betting at its five casinos/racetracks and authorized mobile sports betting pending the outcome of *Murphy v. NCAA*. The West Virginia Lottery Sports Wagering Act added an applicable tax rate of ten percent. Governor Jim Justice has worked closely with the Sports Leagues to make them licensed operators and to negotiate with them for integrity fees, a fee that sports betting operators would have to pay sports leagues.<sup>20</sup>

## Federal Legislation

At the federal level, there have been two pieces of legislation, predating the Supreme Court ruling, which sought to repeal PASPA. H.R. 783, “Sports Gaming Opportunity Act of 2017”<sup>21</sup>, and H.R. 4530, the “Gaming Accountability and Modernization Enhancement Act of 2017” (GAME Act), were introduced by Representatives LoBiondo (R-NJ) and Pallone (D-NJ), respectively. The GAME Act, in particular, laid out a number of consumer protections as precursors for state-level authorization of sports betting. However, the GAME Act was not prescriptive about how states should implement the recommended consumer protections.<sup>22</sup>

## Sports Betting Market Size Based on Illegal Sports Betting pre-Murphy v. NCAA

*What is the illegal sports betting economy?*

Despite most states’ prohibition against sports betting and the enactment of PASPA sixteen years ago, a

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<sup>19</sup> Morrison, K. (June 26, 2018) *World Casino Directory*. “Sports betting legalized in Rhode Island” Retrieved July 5, 2018 from <https://news.worldcasinodirectory.com/sports-betting-legalized-in-rhode-island-56479> (last visited July 03, 2018)

<sup>20</sup> Smiley, B. (2018, May 10). What Just Happened at This West Virginia Sports Betting Meeting? *Sports Handle*. Retrieved June 11, 2018 from <https://sportshandle.com/wv-sports-betting-meeting-jim-justice-leagues-lawmakers/> (last visited July 03, 2018)

<sup>21</sup> Representative Pallone (D-NJ) was also a co-sponsor of the Sports Gaming Opportunity Act of 2017, (H.R. 783). Sports Gaming Opportunity Act of 2017, H.R. 783, 115th Cong. (2017). Retrieved July 5, 2018 from <https://www.congress.gov/115/bills/hr783/BILLS-115hr783ih.pdf> (last visited July 01, 2018)

<sup>22</sup> Gaming Accountability and Modernization Enhancement Act of 2017, H.R. 4530, 115th Cong. (2017). Retrieved July 5, 2018 from <https://www.congress.gov/115/bills/hr4530/BILLS-115hr4530ih.pdf> (last visited July 01, 2018)



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thriving black market for sports betting has developed and grown to incorporate online sports betting and interactive gaming elements. The American Gaming Association estimates that every year, \$150 billion is bet on sports illegally. Fans place a total of \$4.6 billion on Super Bowl bets — 97% of which are black market bets.<sup>23</sup> These bettors are sports fans who have no shield from fraud, no guarantee of data security or privacy and no recourse in the case of a dispute, these are all protections that would afford them a legal, well-regulated market.

Policymakers should be targeting existing black market sports betting with an eye toward shifting demand toward the regulated market. As sports betting laws proliferate through the states, consumers will face competitive gaming options from black market operators. These operators already offer seamless mobile sports betting products but in an environment devoid of even the most basic consumer protections. There is substantial demand for illegal sports betting in the U.S., in large part because it is well-established and widespread. Sports bettors are heavily engaged with black market sports betting operators that offer access to credit betting, convenience and anonymity.

### *How large is the illegal sports betting market?*

Estimates for the size of the illegal sports betting market vary widely. Industry experts point out that the most highly publicized figures fall short in that they tend to describe the size of the market in terms of “handle” (the total amount wagered by all bettors) as opposed to using revenues, which provide a more accurate representation of the business itself. According to gaming industry analysts critical of this practice, the size of the black market for sports in the U.S. is substantial but it is commonly overstated by 2-3x.<sup>24</sup>

The American Sports Betting Coalition estimates that in 2018, bettors’ wagers will amount to \$56 billion through illegal channels for NFL and college football games alone.<sup>25</sup> Bloomberg estimates that

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<sup>23</sup> American Sports Betting Coalition. (2017). Sports Betting Questions & Answers. American Sports Betting Coalition. Retrieved from [https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/5a78eee0e4966b21c8c8b482/1517874912595/HLG\\_ASBC\\_2\\_5\\_FAQ.pdf](https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/5a78eee0e4966b21c8c8b482/1517874912595/HLG_ASBC_2_5_FAQ.pdf) (last visited June 28, 2018)

<sup>24</sup> Grove, C., Krejcek, A., & Bowden, A. (2017). Regulated Sports Betting: Defining The U.S. Opportunity (pp. 1–86). Orange County, CA: Eilers & Krejcek Gaming, LLC. Retrieved from <http://ekgamingllc.com/downloads/regulated-sports-betting-defining-the-u-s-opportunity/> (last visited July 01, 2018)

<sup>25</sup>American Sports Betting Coalition, & The American Gaming Association. (2018). About: American Attitudes on Sports Betting Have Changed [Sports Betting Industry Advocacy site]. Retrieved July 5, 2018, from <http://www.sportsbettinginamerica.com/about/> (last visited July 10, 2018)



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illegal sports wagers in the U.S. range from \$50 billion to \$150 billion annually.<sup>26</sup> Others in the industry suggest that illegal sports bets are closer to \$196 billion if you include gambling with licensed offshore websites and black market, land-based bookmakers.<sup>27</sup>

Other gaming industry researchers estimate that 14 million Americans bet \$50 - \$60 billion annually through illegal channels which result in a market worth between \$2.5 to \$3 billion in annual revenue.<sup>28</sup>

### *What is the size of the offshore market for sports betting?*

Black market sports betting takes many different forms, including through casual fora like office pools, through a local bookmaker, or with betting through an online offshore operator. Given the illegality of these transactions, measurement is inherently difficult as there are no formal means of tracking or gathering statistics for illegal gaming. More specifically, the offshore market is especially hard to measure given the emphasis on anonymity.

Global figures drawn from various industry reports provide estimates for the universe of online offshore sports betting.<sup>29</sup> The International Centre for Sports Security estimates that in 2014, 80% of global sports betting was transacted illegally. Growth predictions from 2012 estimated that the global illegal online gambling market would grow at an average annual rate of 6.3 percent to \$2.4 billion in 2021-2022. For the sake of comparison, we examined other industrialized countries with more data on the offshore sports betting economy. In the Australian market, an economy a one-fifth the size of the U.S. economy, total offshore sports wagering accounted for about USD \$295 Million in 2014. Using the same parameters, it is reasonable to assume that offshore sports wagering in the U.S. probably

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<sup>26</sup> Boudway, I., & Clark, G. (2018, May 18). Quicktake: Sports Betting [News site]. Retrieved July 3, 2018, from <https://www.bloomberg.com/quicktake/sports-betting> (last visited July 3, 2018)

<sup>27</sup> Glaun, D. (2018, May 18). Illegal sports betting is already big business in Massachusetts, where residents spent estimated \$680 million on offshore gambling in 2016 [Local state news site]. Retrieved July 1, 2018, from [https://www.masslive.com/news/index.ssf/2018/05/illegal\\_sports\\_betting\\_already.html](https://www.masslive.com/news/index.ssf/2018/05/illegal_sports_betting_already.html) (last visited July 02, 2018)

<sup>28</sup> Grove, C., Krejciak, A., & Bowden, A. (2017). Regulated Sports Betting: Defining The U.S. Opportunity (pp. 1–86). Orange County, CA: Eilers & Krejciak Gaming, LLC. Retrieved from <http://ekgamingllc.com/downloads/regulated-sports-betting-defining-the-u-s-opportunity/> (last visited July 01, 2018)

<sup>29</sup> Known offshore sports betting operators include: Pinnacle Sports, 5 Dimes Casino & Sportsbook, BetOnline, Bovada, BetCRIS and Heritage Sports bookmakers. Graham, V. (2018, January 9). Offshore Betting Via Bitcoin on the Rise [Financial Services Industry Resource Site]. Retrieved July 1, 2018, from <https://www.bna.com/offshore-betting-via-n73014473957/> (last visited July 01, 2018)



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exceeds five times Australia’s 2014 total of \$295 Million, or roughly \$1.5 billion in 2018.<sup>30</sup>

*What risks do illegal offshore sports betting operators present to consumers?*

Consumers assume enormous risks when placing sports wagers with illegal online operators. These consumers suffer because without any regulatory oversight, offshore operators can decide if and when they pay out winnings and they have no obligation to operate in good faith. The New York Times reported about a self-employed Bostonian who, in 2015, was never able to recover the \$3,600 he was owed after placing multiple winning bets. When contacted about the funds owed, the operator refused to engage and quoted U.S. law prohibiting U.S. located persons from opening and maintaining accounts. With no recourse, the consumer was forced to accept that he would never be paid.<sup>31</sup>

Just this past June, the Wall Street Journal reported about a D.C. area internet marketer who lost \$12,000 in winnings from a popular offshore betting site. The company refused to respond to requests for comment and the consumer has absolutely no hope for remedy.<sup>32</sup>

## CONSUMER PROTECTIONS

### Sports Fans Coalition Symposium on Sports Betting Consumer Protections

On June 21st, 2018, in the Moot Court Room of the George Washington University Law School, Sports Fans Coalition and the George Washington Law School hosted a symposium<sup>33</sup> to address consumer protection in the era of legalized sports betting. Moderators Alan Morrison, Professor and Associate Dean of George Washington Law School, and David Goodfriend, Chairman of Sports Fans Coalition Chairman and an adjunct professor at George Washington and Georgetown law schools,

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<sup>30</sup> Australian Wagering Council. (2015). Submission Review of the Impact of Illegal Offshore Wagering (pp. 1–83). Sydney, Australia: Australian Wagering Council. Retrieved from <https://engage.dss.gov.au/wp-content/uploads/2015/12/Australian-Wagering-Council-Submission-final.pdf>

<sup>31</sup> Bogdanich, W., Glanz, J., & Armendariz, A. (2015, October 15). Cash Drops and Keystrokes: the Dark Reality of Sports Betting and Daily Fantasy Games. *The New York Times*. Retrieved from <https://www.nytimes.com/interactive/2015/10/15/us/sports-betting-daily-fantasy-games-fanduel-draftkings.html>

<sup>32</sup> Costa, B., & Kanno-Youngs, Z. (2018, June 26). Your Neighborhood Sports Bookie Isn’t Going Anywhere. *The Wall Street Journal*. Retrieved from <https://www.wsj.com/articles/your-neighborhood-sports-bookie-isnt-going-anywhere-1530029329>, (last visited July 01, 2018)

<sup>33</sup> Sports Fans Coalition. (June 21, 2018). Sports Betting Symposium: Determining Fair Consumer Protections for Sports Betting: “GW Law Moot Stream Live Stream” [YouTube video] (hereinafter, *SFC Symposium*). Washington, DC: George Washington Law School. Retrieved from <https://www.youtube.com/watch?v=jM9mvfR-ANY> (last visited July 20, 2018)



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asked questions of panelists with the goal of crafting a “Sports Bettors’ Bill of Rights” based on input and conversation between the following participants:

**Panel 1:** “What happens now that states may legalize sports betting?”

- **The Hon. Brian Frosh**, Attorney General, State of Maryland
- **Sally Greenberg**, Executive Director, National Consumers League
- **Richard Batchelder**, Partner, Ropes & Gray



**Panel 2:** “What consumer protections should accompany legislation?”

- **Brianne Doura**, Director of Policy and Communications, Massachusetts Council on Compulsive Gambling
- **Kurt Eggert**, Professor of Law, Chapman University
- **Irene Leech**, President, Virginia Citizens Consumer Council and Professor of Consumer Studies, Virginia Tech.



Panelists addressed a range of issues, primarily around the following questions:

*Is sports betting a state or federal issue?*

Starting the conversation, the moderators posed the question of whether or not sports betting should be a federal or state issue. In response, Attorney General Frosh said, “I think Congress should set minimum standards for all of the states because we know that people become addicted to gambling.” He also stated, “I am no longer in the general assembly, and when I was, I . . . opposed gambling. In

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fact, I was the only person in the Maryland Senate to vote against the daily fantasy sports bill. I think expansion of gambling is a bad thing.”

Sally Greenberg also expressed her support for a federal standard on sports betting:

*“ . . . we need a federal baseline. We would hate to see the preemption of state laws, and when I say preemption I am referring to some of the bills that have been introduced in Congress . . . . It’s a base of minimum protection and then states can go in, and States Attorneys General can go in and do additional protections as they see fit for their constituents. ”*

Conversely, Richard Batchelder explained why allowing states to enact a variety of legalization measures was beneficial but cautioned:

*“ . . . states need to be careful that they don’t try to capture a market share and then leave their neighboring state with different regulations that will eclipse whatever they are trying to do in that state to raise revenue . . . . We are in the very early stages of this, but when we look back ten years from now, I hope we don’t look back and say, ‘wow, I can’t believe we had those initial regulations they seem so quaint now.’ We should allow consumers to do this responsibly. ”*

Later, on the second panel, both Kurt Eggert and Brianne Doura explained that before even discussing whether states or Congress should take the leading role, we should agree that either is preferable to relying solely on industry self-regulation. Eggert said, “I think it has to be the state’s role because there’s nobody else with the power to do that.” Similarly, Doura said, “there needs to be a regulator that’s put in place. People shouldn’t be able to operate without one regulating body. Like a gaming commission, we believe that is where it should start.” Additionally, Doura emphasized:

*“If you are going to receive any kind of revenue from sports betting, you should be responsible for funding initiatives to protect the consumers. If the media is going to generate revenue from this, then we should be able to take a cut to protect those who are most vulnerable. ”*

*What are the most important protections to be concerned about?*

When the discussion transitioned to more specific protections, panelists who positioned themselves across the spectrum agreed that the most important aspects of consumer protections in this new space were integrity and transparency. Batchelder harkened back to the 1919 Black Sox scandal,

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*“By knowing how much is being bet and who is betting there can be oversight and integrity. If you allow it to stay in the underworld, there will be the same problems like what happened with the Black Sox in 1919.”*

However, while the panelists agreed that integrity and transparency were necessary, some felt that the light-touch approach was insufficient. Greenberg listed several additional concerns:

*“... Fraud protection against phony online betting sites, so that we can monitor and shut these down. State of the art, prevention and detection software should be deployed and it will need to be continually updated. This needs to be in place in order to prevent . . . fraud . . . which by the way is very hard to regulate now. The magnitude will grow and then it will continually be hard to regulate.”*

As another way of fighting fraud, Greenberg recommended that bettors should have recourse through a private right of action against bad actors.<sup>34</sup>

It is important to differentiate between the panelists’ use of “integrity” and the major sports leagues’ use of “integrity.” The word has been associated with a fee that the league would collect from sports betting operators in order to fund activities to guard against the distortion of outcomes due to lucrative bet payouts. Eggert expanded:

*“the leagues are proposing ‘integrity fees,’ which is the leagues saying they want a cut on the gambling industry. Then, the players are going to want a cut . . . I disagree with this “integrity” because I think this will cause the leagues to have an interest in the amount of handle. They won’t care so much who wins or loses, but they will care about how much is bet total on a game because it would bring them more money.”*

Batchelder explained why transparency is so important for the sports betting marketplace:

*“Shining more light on this is better than keeping it in the darkness. [With transparency about odds and other key disclosures] people can feel like they are playing a fair game and that they are being protected.”*

*Should credit extensions be permitted?*

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<sup>34</sup> Full quote from Sally Greenberg, Executive Director, National Consumers League: “Bettors should have a private right of action to bring cases when they suspect online sports betting sites of wrongdoing... If a company is not using state of the art fraud protection, for example, consumers should have access to a private right of action as well as for other violations we know companies engage in.” (*SFC Symposium*, June 21, 2018)



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Another considerable concern for many of the panelists were credit offerings for gambling. Attorney General Frosh said:

*“We know that when people become addicted to gambling, and it’s really hard not to do, they will bet more than they can afford, and if they have access to immediate sources of cash or credit, they’ll go longer than they should have gone and they’ll lose more money.”*

Greenberg continued, “borrow-here-play-here arrangements should be banned, that just feeds the gambling addiction.” Irene Leech concurred, adding that “we need to try to avoid bringing credit into this situation.” She went on to explain how cash can still be dangerous when ATMs are present near a casino. Leech explained, “when you go to an ATM, there is no real way to know what people are using the money for. We’ve got a real problem there.” Batchelder also agreed that credit behavior differs from debit and cash behaviors, but said that automatic payments should still exist because people “just don’t carry cash.”<sup>35</sup>

### *Should the bettor hold some responsibility through self-exclusion?*

Doura explained a program that her organization helped establish in Massachusetts: “PlayMyWay, which is this infrastructure built into all of the games. It’s an embedded budget-limiting tool, so this allows people to manage their bets by setting a limit, notifying them when they get close to that limit over time.” Eggert, however, believed that harm minimization should not stop at self-exclusion.

*“I think we could go a lot further because a lot of harm minimization techniques involve changing the game itself. A good example is pop-ups that pop up while you’re playing, especially ones that cause you to self-reflect like, ‘You have been playing this game for 2 hours, and you’ve spent more than you normally spend. Do you think this is a good idea?’ Having that pop-up can cause you to reflect. It’s not taking away your time. It’s not telling you what to do.”*

Eggert went on to add, “giving people the power to regulate themselves, that’s what we are talking about it.”

### *How should regulators and other stakeholders handle the issue of privacy and data protection?*

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<sup>35</sup> Full quote from Richard Batchelder, Partner, Ropes&Gray: “I agree that a debit card can be used very differently from a credit card because you are not borrowing money. But people don’t carry cash anymore so there has to be a system whereby people can have some sort of automatic pay because people just don’t carry cash.” (*SFC Symposium*, June 21, 2018)



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Top of mind for many consumer advocates is data privacy and protection. This is especially important for sports betting protections. As Greenberg explained:

*“...we need privacy and data security safeguards because every single day there are millions of attempts to get into our data and breach our data and that will be a new playground for fraudsters.”*

Later Greenberg stated that transaction processing companies like PayPal could play an important role to protect sports bettors from fraud.

*“I absolutely believe there is a role for PayPal and other players in [the fintech] industry because [PayPal and other fintech platforms are] fraud experts and . . . continue to improve on . . . technology to ensure that fraud is kept to a minimum.*

Batchelder supported Greenberg’s sentiment by adding,

*“One of the advantages of Paypal is that for certain transactions, Paypal will refund the money if it is found that a user was a victim of fraud. There are a lot of entrants in the market like Paypal.”*

Echoing Greenberg on the second panel, Leech posed the question, “in a country that hasn’t done much with privacy compared to the rest of the world, what will happen to this information?”

### *What about age limits?*

Multiple state legislatures currently are debating how to approach age limits for sports betting. While all the panelists agreed there should an age limit, there was no consensus on whether the age should be 18 or 21. Doura explained why a higher age limit is important:

*“The age is 21 right now to go into Massachusetts casinos and 18 for the lottery. But, I think this doesn’t need to be a sports betting vs. casino gambling discussion. Right now, we know that youths who start gambling are more likely to develop a gambling disorder. And, if we are gambling in colleges, are we exposing our youth to gambling too soon? Maybe their brains aren’t mature enough to handle it? Could this legitimately lead to having more individuals with a gambling disorder?”*

Leech, citing her experience with college athletes, also agreed the age should be 21 to keep sports

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betting out of colleges. She said:

*“Let’s just keep gambling out of college. In my role as a faculty member, I am on the university athletic committee, and there are enough issues around paying the players because of the money they get back and the cost of attendance, there are a whole lot of things there that we haven’t gotten resolved. When you start talking about 18 and 20-year-olds I just don’t think its a place where the gambling ought to occur.”*

Eggert concurred by saying, “I have concerns about people going to college and then wanting to bet on the team while they're in college, and having gambling organizations profit from this.”

However, on the earlier panel, Batchelder offered a different opinion.

*“Speaking as of a father of two college-aged students who enjoy sports and who I am sure would like to place a bet on sports, they both have gone online to buy stocks and there are new apps now where you can buy a single share of stocks without paying fees and they could do that and they could also join the military, they can vote for the President of the United States and in Massachusetts they can buy a lottery scratch ticket. And in a lot of states, the proposed legislation is so that couldn’t place a \$10 wager on a Celtics game.”*

### *What kinds of protections should be in place to support problem gamblers and addicts?*

The biggest threat that sports betting poses is addiction. Every panelist expressed concerns about exacerbating problem gambling. “We need to have a framework that protects people who are vulnerable, prevents the kind of addiction that can come along with this but recognize that this is what people want and people should be able to do this if they want to, with their own money,” said Batchelder. Similarly, Eggert added, “...we need to set up systems that help people not become problem gamblers, and also help problem gamblers control their gambling to the extent they can, and also to provide medical and other help for people who already are problem gamblers.”

It was Doura who, citing the law in her home state, emphasized how states can and should care for problem gamblers and addicts.



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*“Massachusetts has proven the system can work. In the 2011 Expanded Gaming Act- the state put in a revenue stream from the gaming revenues for the public health trust fund which goes towards harm minimization, the treatment of problem gambling to mitigate harm.”*

## Symposium Takeaways

Given the urgency of sports betting legalization in the states, partly due to the potential for revenue generation, there has been less discussion on consumer-related issues. Legal, state-sanctioned operators may soon face stiff competition from illegal sports betting operators who provide technologically advanced offerings and are already well known to consumers. State-sanctioned systems can compete with black market operators by enacting sensible consumer protections like meaningful disclosure of odds and other key information about the games; offering data security and privacy; providing support for problem gamblers; and offering bettors recourse in disputes with operators.

There was a range of opinion from the panelists on what protections are necessary or appropriate for sports bettors. However, what was clear to Sports Fans Coalition was the need for proposed guidelines for sports betting legislation — The Sports Bettors’ Bill of Rights. The Bill of Rights includes five protections that SFC believes should be included in all sports betting legislation. These rights grant fans the ability to make safe, informed, and fair bets on games and player performance.

Sports Fans Coalition’s Sports Bettors’ Bill of Rights, which are explained in the next section, should not be interpreted as reflecting the views of each panelist, and some panelists may disagree with SFC’s proposals.

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# SPORTS BETTORS' BILL OF RIGHTS

## 1. The Right to Integrity and Transparency

First and foremost, the sports betting market is only as good as the consumer's faith in the operators, affiliates, and regulators.<sup>36</sup> Transparency in the marketplace will be the number one incentive for consumers to abandon their existing black market bets in exchange for legitimate ones. Therefore, bettors must have total, and equal, access to the necessary information for bet-making, and knowledge that the operator is fair. This information includes:

- The handle of the bet
- The odds and pertinent information used to calculate those odds
- Payout amounts and schedule of payouts
- Systems for reporting suspicions of fraud, such as internal reporting protocols and available legal actions
- Prohibition of athletes and team affiliates, including employees, from betting on games, leagues, or sports in which they participate
- License holders for the operator
- Contact information
- Resources for problem gambling, expressed in a clear and easily accessible manner.

## 2. The Right to Data Privacy and Security

Data privacy is top-of-mind for most consumers. In an industry like sports betting where there are high volume, high-frequency financial transactions based on data, the potential threat is significant and data privacy and security is even more of an issue. Operators need to have the capacity to ensure that their consumer's data is secure and protected to prevent bad actors from using betting and financial information to harm consumers. Data security is another protection that the current black market does

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<sup>36</sup> The right to the integrity of game play should not be confused with the NFL, NBA, NHL, or MLB's (hereafter referred to as "the Leagues") interest in "integrity fees," which the Leagues argue is necessary to maintain integrity of the games from distortions such as point-shaving or throwing a game. Such fees likely create an incentive for Leagues to earn more revenue from sports betting, rather than to protect fans. Integrity of games has been and should remain the role of sports leagues, regardless of whether or not they collect an integrity fee. The Leagues have failed to show evidence to support how integrity fees will improve betting activities. Instead, integrity fees will only serve the financial interests of the Leagues and will incentivize actions that may pose additional harms to the fans.



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not provide, thus incentivizing consumers to utilize the legal sports betting platforms.

### **3. The Right to Self-Exclude**

Self-exclusion is a proven system that protects bettors today. Notably, it is a pillar of the Massachusetts regulations on Daily Fantasy Sports.<sup>37</sup> Self-exclusion refers to systems employed within the gaming ecosystem that allow consumers to preemptively limit bet sizes, frequencies, types of advertisements, and other related behavior. It is also important that self-exclusion systems give the bettor the ability to exclude him- or herself from credit extension offerings. These protocols ensure that the gambler can only bet what he or she is comfortable with and will help to prevent him or her from getting caught up in the moment. Giving the fan the power to regulate themselves is paramount in any consumer protection legislation.

### **4. The Right to Protection of the Vulnerable**

Children and youth should not be able to place bets. Children and youth are some of the most vulnerable citizens when it comes to sports betting. As such, sports betting operators should be required to deploy commercially best efforts to verify the age of the account holder and block access by anyone below that state's minimum age for sports gambling.

Second, all sports bettors should have easy access, through their preferred operator, to resources about addiction warning signs and treatment. Sports betting operators should be proactive in preventing their at-risk customers from becoming problem gamblers. They can do so by implementing responsible gaming programs, training, and other practices to help sports bettors play responsibly.

### **5. The Right to Recourse**

The history of sports betting includes well-known cases of fraud and numerous bad actors. Fraudsters may try to participate in the newly legalized sports betting marketplace. After establishing clear standards of conduct for operators and the prominent, ongoing disclosure to consumers of those

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<sup>37</sup> Office of Attorney General Maura Healy. Daily fantasy sports contest operators in Massachusetts, 940 CMR§ 34.00 et seq. (2016). Retrieved from <https://www.mass.gov/files/documents/2017/09/13/940cmr34.pdf> (last visited July 05, 2018)



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standards, policymakers should ensure that consumers have recourse if a transaction goes awry. Whether through an internal complaint process, or filing complaints with a government agency, such recourse is essential to establish the credibility of legalized sports betting and to maintain consumer trust. If fraud occurs or an operator tries to avoid or delay financial obligations, the bettor should be able to take legal action and receive remuneration. Sports bettors should not have to give up their right to seek relief in court, and sports betting operators should have a clear, expeditious protocol to address concerns raised by bettors.

## CONCLUSION

It is only a matter of time before more states legalize sports betting. The potential revenue states could earn from taxing authorized sports betting is significant but dependent on incentivizing consumers to leave the black market and participate in legalized sports betting. States can and should protect consumers while seeking to enhance state revenues. Sports Fans Coalition’s proposed “Sports Bettors’ Bill of Rights” articulates five guiding principles for sports betting legislation; not hindrances to business, but incentives that will grant legitimacy to a brand new marketplace, protect consumers, and protect the games we love.

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