

Betting On Education

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*Two recent changes to U.S. federal law threaten the viability of colleges and universities. President Trump's signing of the Tax Cuts and Jobs Act (TCJA) into law at the close of 2017 signified a continued trend of decreasing funds previously available to higher education. National and state funding cuts are resulting in a cost-value educational crisis in the United States, with tuitions increasing, students needing to borrow more, and academic programs and faculty lines being cut. In addition, college athletic departments assert that the United States Supreme Court's holding in *Murphy v. National College Athletic Ass'n*, which declared that the Professional and Amateur Sports Protection Act (PASPA) unconstitutionally commandeered state legislatures into maintaining laws prohibiting sports wagering, could jeopardize the integrity of college sports. Only by examining the foundational relationships between gambling, taxation, and higher education in the United States is it evident that *Murphy* could actually be the catalyst for generating revenue back into colleges and universities rather than the apocalyptic threat some have predicted.*

*Following *Murphy*, more than thirty states have introduced bills legalizing sports gambling. Of those, only two have legislatively earmarked a portion of the projected revenue back into higher education specifically. States' de minimis interest in redirecting some of this revenue stream to colleges and universities is surprising for two reasons. First, public institutions directly finance the very sports that are helping to drive the newly legalized sports betting market. In addition, there exists a strong historical affiliation between gambling, tax revenue, and education in the United States. Consequently, college administrators should embrace sports wagering as a means of increasing the integrity of college sports and capitalize on this opportunity to recoup revenue lost due to the TCJA and states' continued reallocation of funding away from higher education.*

The intersection of sports gambling, taxation, and higher education is an undertheorized area of law. This Article highlights the historic

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connections that bind them and proposes a mechanism that public institutions and state legislators can adopt to better monitor sports-related integrity concerns while supplementing college and university budgets. This Article is the first to harmonize the relationship between education and gambling post-Murphy; the first to introduce various state tax frameworks surrounding legalized sports gambling in the United States; and the first to introduce a fee model to help redirect funding from legalized sports wagering back into higher education.

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I. INTRODUCTION

College athletic departments claim that two recent changes to federal law threaten their viability.¹ First, on December 22, 2017, President Donald Trump signed into law the Tax Cuts and Jobs Act (TCJA);² second, in 2018, the Supreme Court of the United States declared that the twenty-six-year-old federal prohibition on sports wagering unconstitutionally commandeered state legislatures.³ The TCJA was hailed by President Trump and his administration as a simpler tax process benefiting the majority of individuals and businesses in the country.⁴ Likewise, *Murphy v. National Collegiate Athletic Ass'n* was celebrated by states seeking new revenue streams to fight against depleted coffers.⁵ Supporting neither decision, however, were college athletic departments.⁶ A major aspect of collegiate funding was poised to suffer a significant blow as a result of the TCJA's tax overhaul.⁷ In addition, some college administrators deemed *Murphy* a major threat to the integrity of competition and the fight to prevent gamblers from manipulating college game results.⁸

¹ See Matt Murschel, *New Tax Law Could Prove Costly for College Athletics*, ORLANDO SENTINEL (Feb. 17, 2018), <https://www.orlandosentinel.com/sports/college-gridiron-365/os-sp-college-athletics-tax-law-changes-0219-story.html> [<https://perma.cc/9JXL-PCBK>]; David Porter & Regina Garcia-Cano, *Easier Gambling Has Sports Worried About Fighting the Fix*, ASSOCIATED PRESS (Sept. 17, 2018), <https://www.apnews.com/42b09c7fd1764bf196b13d5c44b2a188> [<https://perma.cc/3DTM-247Y>].

² Kathryn Kisska-Schulze, *This Is Our House! – The Tax Man Comes to College*, 29 MARQ. SPORTS L. REV. 347, 347 (2019).

³ See *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1478 (2018). While the Act struck down the Professional and Amateur Sports Protection Act (PASPA), referred to as a prohibition, it was technically more of a freeze, as states that had offered sports wagering in 1992, when the statute was passed, were allowed to continue doing so. See John T. Holden, *Prohibitive Failure: The Demise of the Ban on Sports Betting*, 35 GA. ST. U. L. REV. 329, 330 (2019).

⁴ Mark Mazur, *Taxpayers Are Very Confused*, ATLANTIC (Mar. 29, 2019), <https://www.theatlantic.com/ideas/archive/2019/03/tax-cuts-and-jobs-act-confusing-taxpayers/585907/> [<https://perma.cc/92H2-9R2E>].

⁵ See John T. Holden, *Regulating Sports Wagering*, 105 IOWA L. REV. 575, 579 (2020).

⁶ See Chris Smith, *New Tax Law Could Cost Top College Athletic Departments Millions*, FORBES (Dec. 22, 2017), <https://www.forbes.com/sites/chris-smith/2017/12/22/gop-tax-law-could-cost-top-college-athletic-departments-millions/#12d678f3abea> [<https://perma.cc/A5HF-KTPZ>]; see also Steve Berkowitz & Erik Brady, *Legalized Sports Betting Will Wreak Havoc on College Athletics. Or Not.*, USA TODAY (May 31, 2018), <https://www.usatoday.com/story/sports/college/2018/05/31/sports-betting-college-athletics-world-concerned-supreme-court-ruling/645367002/> [<https://perma.cc/7RDX-6EYL>].

⁷ See Murschel, *supra* note 1 (noting that for some schools, some of which saw a tax change under the new law, donations make up approximately fifty percent of their athletics budget); see also Kisska-Schulze, *supra* note 2, at 348 (pertaining to the repeal of the charitable deduction).

⁸ John Keilman, *Should Sports Gambling Become Legal in Illinois, Will You Be Able to Wager on Illini, Wildcats or Huskies? Don't Bet on It.*, CHI. TRIB. (May 9, 2019),

Although commentators predict the TCJA will have a direct negative impact on college athletic departments,⁹ it signifies a greater trend of decreased public university funding throughout the United States.¹⁰ Colleges have expressed reservations that increased legal gambling may escalate the risks of games being fixed.¹¹ These concerns may, however, be misguided. This Article argues that college administrators should redirect attention towards embracing legalized sports wagering as a means of increasing the integrity of collegiate sporting events,¹² expanding partnerships, and seeking a new source of revenue to supplement income lost due to the TCJA.¹³ *Murphy* opened the door for colleges and universities to capitalize on gambling tax revenue.

Taxing gambling has a contentious history, nearly as controversial as legalizing gambling. The first federal gambling excise tax passed in 1951 at a rate of ten percent of betting handle.¹⁴ It was subsequently reduced to two

<https://www.chicagotribune.com/news/ct-met-college-sports-betting-illinois-20190501-story.html> [https://perma.cc/5PTY-JZ8R]; Ryan Rodenberg, *NCAA Pivots to Address Sports Betting Integrity*, ESPN (Mar. 11, 2019), https://www.espn.com/chalk/story/_/id/26229344/how-ncaa-pivoting-address-sports-betting-integrity [https://perma.cc/WV6D-45M6]; Kyle Rowland, *A Sure Bet? Universities Wrestle with Potential Impact of Betting*, TOL. BLADE (Aug. 4, 2018), <https://www.toledoblade.com/sports/college/2018/08/04/A-sure-bet-Universities-wrestle-with-potential-impact-of-sports-betting/stories/20180804003> [https://perma.cc/DX83-8PQF].

⁹ See Kyle Rowland, *College Athletic Departments Wrestle with Impact of Tax Bill*, TOL. BLADE (Feb. 3, 2018), <https://www.toledoblade.com/College/2018/02/02/College-athletic-departments-wrestle-with-impact-of-tax-bill.html> [https://perma.cc/AQ3R-H9SJ].

¹⁰ See MICHAEL MITCHELL ET AL., CTR. ON BUDGET AND POLICY PRIORITIES, UNKEPT PROMISES: STATE CUTS TO HIGHER EDUCATION THREATEN ACCESS AND EQUITY 1 (Oct. 2018), <https://www.cbpp.org/research/state-budget-and-tax/unkept-promises-state-cuts-to-higher-education-threaten-access-and> [https://perma.cc/75V8-HLWE].

¹¹ See Dennis Dodd, *How to Fix a College Football Game and Influence Its Outcome—In Four Steps*, CBS SPORTS (Aug. 17, 2018), <https://www.cbssports.com/college-football/news/how-to-fix-a-college-football-game-and-influence-its-outcome-in-four-steps/> [https://perma.cc/A3L7-SV7Y]. While many college administrators have expressed concerns that increased legal sports wagering opportunities will increase match-fixing of college sports, most sophisticated match-fixers generally seek to avoid regulated markets, which are typically well-monitored and capable of identifying many match-fixing schemes, often before a game ever begins. See John T. Holden & Ryan M. Rodenberg, *The Sports Bribery Act: A Law and Economics Approach*, 42 N. KY. L. REV. 453, 468 (2015).

¹² See John Holden, *Match Fixing and Other Manipulations in Sports Betting: A Primer*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/20922/match-fixing-primer-sports-betting/> [https://perma.cc/MJ52-FS7Z] (last updated June 6, 2018).

¹³ See Jill R. Dorson, *How States Are Spending Their Sports Betting Tax Revenue*, SPORTSHANDLE (Oct. 25, 2018), <https://sportshandle.com/how-states-are-spending-their-sports-betting-tax-revenue/> [https://perma.cc/2UNU-VWKR] (discussing how states that have legalized sports wagering in the wake of the *Murphy* decision have decided to allocate the new revenue).

¹⁴ See John E. Coons, *The Federal Gambling Tax and the Constitution*, 43 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 637, 637 (1953); see also Eric Ramsey, *Nevada Congresswoman Calls for End to Federal Sports Betting Handle Tax*, LEGAL SPORTS REP. (Dec. 13, 2017), <https://www.legalsportsreport.com/16955/federal-sports-betting-handle->

percent, and again to 0.25% in 1984, which remains in effect today.¹⁵ Federal excise tax revenue is allocated to uses that the federal government deems necessary, though in 2018 Senators Schumer and Hatch introduced legislation designating tax revenue for use by a national gambling monitoring body.¹⁶ Allocating gambling funds to sources, including education, remains possible due in part to that bill failing in 2018.¹⁷

Indeed, there has long been a connection between gambling revenue and education.¹⁸ Historically, the challenge for educators has been to keep gaming money from being deployed to other state interests.¹⁹ Of the states that have legalized sports wagering, many are directing excess revenue to general funds; however, Nevada and Washington, D.C. have specifically earmarked sports betting revenue for educational purposes.²⁰ While states often reallocate money reserved for education to other causes,²¹ the nascent sports betting market is relatively well positioned for the imposition of a small tax or fee on sports bets made in order to benefit institutions of higher education.

This Article proposes that public colleges and universities actively lobby for state legislatures to impose a gambling interchange fee (GIF) on wagers made on college sporting events to compensate for economic losses suffered as a result of the TCJA, as well as states' reallocation of funding away from higher education.²² Unlike "integrity fees," which have been unsuccessfully promoted by professional sports leagues that already receive significant subsidies from taxpayers and private companies, a GIF would attach only to wagers made on

tax/ [https://perma.cc/Y5TG-ZSJT]. Betting handle refers to the amount of money wagered.
Id.

¹⁵ Kevin P. Braig, *Reform the Federal Sports Betting Excise Tax "Dilemma,"* LEXOLOGY (Nov. 3, 2017), <https://www.lexology.com/library/detail.aspx?g=2b160213-645e-48bf-b484-f7bcb6941831> [https://perma.cc/MS2K-K9VP].

¹⁶ Holden, *supra* note 5, at 591–92.

¹⁷ Joss Wood, *Federal Government Wants a Piece of Sports Betting Action, Says Sen. Hatch*, PLAYUSA (Dec. 18, 2018), <https://www.playusa.com/federal-government-legal-sports-betting/> [https://perma.cc/5H4P-EWUS].

¹⁸ Mimi Kirk, *For Schools, Gambling Funding Is No Jackpot*, CITYLAB (Feb. 21, 2017), <https://www.citylab.com/equity/2017/02/for-schools-gambling-funding-is-no-jackpot/516927/> [https://perma.cc/4ZYV-N49J].

¹⁹ *Id.*

²⁰ Dorson, *supra* note 13.

²¹ See, e.g., *Is the Texas Lottery Really Funding Education?*, KCBD, <https://www.kcbd.com/story/14579932/kcbd-investigates-is-the-tx-lottery-really-funding-education/> [https://perma.cc/YP82-VVHG] (last updated June 23, 2011).

²² While there is not an intellectual property right associated with the playing of a sporting event that mandates compensation, unlike professional team sports which are operated by private entities who seek to maximize revenues, public colleges and universities serve a public interest and do not seek profit maximization, and thus have greater justification in seeking an earmark than professional sports leagues, despite the fact that neither is entitled by law to a payment as result of wagering being offered on the contests that they facilitate. See generally Ryan M. Rodenberg et al., "Whose" Game Is It? Sports-Wagering and Intellectual Property, 60 VILL. L. REV. TOLLE LEGE 1 (2014).

college sporting events and be earmarked for disbursement back into states' underfunded public institutions.²³ These fees would not only benefit colleges and universities directly, but provide revenue to account for expenses tied to monitoring sports-related integrity concerns.²⁴

To fully evaluate these issues and proposal, this Article is divided into four substantive sections, followed by a conclusion. Part II examines the sports gambling landscape and what lies ahead following the *Murphy* decision. Part III analyzes the historical connection between gambling and educational funding. Part IV provides an overview of the state tax frameworks surrounding sports gambling, and the TCJA's impact on higher education. Part V proposes that colleges and universities pursue a stake in funding from states now legalizing sports gambling through the imposition of a GIF. In conclusion, this Article suggests that colleges and universities could recoup some of their economic losses suffered if, instead of opposing sports wagering outright, they act strategically to attract a portion of this newfound revenue.

II. *MURPHY V. NCAA*—OPENING NEW DOORS FOR SPORTS WAGERING

When Justice Alito wrote that the Professional and Amateur Sports Protection Act (PASPA) unconstitutionally commandeered state legislatures into maintaining laws prohibiting sports wagering,²⁵ a wave of states expressed interest in authorizing sports betting.²⁶ States' interests had little to do with giving individuals access to an activity that many were already illegally engaged in, but much to do with seeking a new revenue stream.²⁷ Seemingly gone from the contemporary discussion about expanding sports betting are moral concerns that drove much of PASPA's initial support.²⁸ The pre-*Murphy* era represented a very different time for how Americans and politicians perceived sports betting.

²³ The integrity fee is a fee that the NBA and Major League Baseball have repeatedly sought from states seeking to legalize sports wagering. It was initially suggested that the fee would compensate the leagues for added costs resulting from threats to the integrity of sporting events, like fixed games, as a result of legalized gambling. But, the language surrounding the fee changed to "royalty," despite there not being a property right associated with sports gambling that would typically receive such a fee. In reality, what the leagues sought was a private tax of sorts. See John Holden, *When They Say Integrity Fee, Are Pro Sports Leagues Really Asking for a Private Tax?*, LEGAL SPORTS REP. (Nov. 30, 2018), <https://www.legalsportsreport.com/26361/pro-sports-leagues-integrity-fee-private-tax/> [https://perma.cc/H9GS-TLPK].

²⁴ See *infra* Part V.C.

²⁵ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1478 (2018).

²⁶ See Matt Volz & Geoff Mulvihill, *Handful of US States Are Poised to Legalize Sports Betting*, ASSOCIATED PRESS (Apr. 23, 2019), <https://www.apnews.com/3ab98743f50a4a49a2fe64655234d495> [https://perma.cc/9D3H-UUTU].

²⁷ See Phil Helsel, *Sports Betting Is Now Legal in Several States. Many Others Are Watching from the Sidelines.*, NBC NEWS (Aug. 13, 2018), <https://www.nbcnews.com/news/us-news/sports-betting-now-legal-several-states-many-others-are-watching-n894211> [https://perma.cc/27NH-D4EU].

²⁸ See Holden, *supra* note 3, at 350–51.

To better understand *Murphy*'s evolution and ultimate impact, this Part proceeds as follows: Section A discusses the history of gambling in the United States pre-*Murphy*, Section B analyzes the dichotomy of disputes leading to the U.S. Supreme Court's 2018 decision in the case, Section C examines states' momentum to legalize sports gambling post-*Murphy*, and Section D opines on the impact of *Murphy* on higher education.

A. *Pre-Murphy*

America's connection with gaming began more than 100 years before the establishment of the nation itself.²⁹ The Jamestown lottery, as it was known at the time, funded the first English colony in North America.³⁰ Lotteries were far from the only gambling activities with which Americans engaged in prior to independence. New York first established horse racing in 1666.³¹ Lotteries during the pre-Revolution era were the most feasible means of funding both private and public infrastructure projects, as banks were not sufficiently widespread to make them accessible to many colonial areas.³² In the years leading to the Civil War, gambling in America fell out of favor, and many states embedded anti-gambling provisions into their new constitutions.³³ After the Civil War, much of the opposition to gambling and lotteries was dismissed, particularly since Reconstruction funds were needed and a lottery was preferred over a legislated tax.³⁴

During this period, Western expansion brought significant levels of gambling to the West; however, as cities developed, gambling became abbreviated.³⁵ In 1890, transportation improvements benefitted lotteries, and congressional concerns about the distribution of interstate lottery materials resulted in a federal ban on mailed lottery circulations.³⁶ Scandals associated with the lotteries, combined with Congress's clampdown, led to a legal gambling depression until 1931, when Nevada re-legalized casino gambling.³⁷ It was not until 1964 that New Hampshire became the first state to re-authorize a state lottery.³⁸

The 1960s were an important era for federal anti-gambling legislation; while most states maintained gambling prohibitions, organized crime developed a

²⁹ Ken Zurski, *The Jamestown Lottery*, UNREMEMBERED (Jan. 13, 2016), <https://unrememberedhistory.com/2016/01/13/the-jamestown-lottery/> [<https://perma.cc/GG5D-H2Z2>].

³⁰ *Id.*

³¹ I. Nelson Rose, *Gambling and the Law: The Third Wave of Legal Gambling*, 17 VILL. SPORTS & ENT. L.J. 361, 368 (2010).

³² *Id.*

³³ *Id.* at 369.

³⁴ *Id.* at 370.

³⁵ *Id.* at 370–71.

³⁶ *Id.* at 372.

³⁷ Rose, *supra* note 31, at 374.

³⁸ *Id.*

monopoly on the industry, and in particular, they focused on bookmaking.³⁹ In 1961, Congress passed the Wire Act based on recommendations from the Kefauver Committee,⁴⁰ which conducted a fourteen-city tour of the country investigating organized crime.⁴¹ Along with the Travel Act,⁴² and the Wagering Paraphernalia Act,⁴³ Congress sought to target organized crime's money-making operations. The legislature passed an omnibus crime bill in 1970, adding to the 1960s legislation that included one of the federal government's most powerful tools for disrupting gambling activities, the Illegal Gambling Business Act.⁴⁴

In 1990, Congress first attempted to pass a bill that would eventually become PASPA.⁴⁵ Originally, it was not a criminal law or civil prohibition; instead, it was a piece of legislation regulating intellectual property rights.⁴⁶ Two years later, the intellectual property bill morphed into a statute referred to as an "oddbity" and "Orwellian."⁴⁷ PASPA was no longer an intellectual property statute; it instead unleashed a sports gambling ice age.⁴⁸ The bill froze state laws in place, allowing states that were already operating sports betting schemes to continue, while estopping states that had not been offering sports betting at the time of passage.⁴⁹ There was, however, an exception made for a single jurisdiction that was granted a one-year window to enact a law allowing sports wagering.⁵⁰ The one-year window for Atlantic City, New Jersey closed without the state exercising its right, leaving Nevada as the sole jurisdiction with sportsbook style wagering.⁵¹

³⁹ See generally DAVID G. SCHWARTZ, CUTTING THE WIRE: GAMING PROHIBITION AND THE INTERNET (2005).

⁴⁰ See John Holden, *Legislative Sausage Making: How We Got the Wire Act, Part Two*, LEGAL SPORTS REP. (Sept. 11, 2018), <https://www.legalsportsreport.com/22329/making-the-wire-act-sports-betting-part-two/> [<https://perma.cc/J2LL-PPKT>].

⁴¹ See John Holden, *Legislative Sausage Making: How We Got the Wire Act, Part One*, LEGAL SPORTS REP. (Sept. 7, 2018), <https://www.legalsportsreport.com/22329/making-the-wire-act-sports-betting-part-two/> [<https://perma.cc/339N-XAPX>].

⁴² 18 U.S.C. § 1952 (2014).

⁴³ *Id.* § 1953.

⁴⁴ *Id.* § 1955. The Illegal Gambling Business Act effectively criminalizes intrastate gambling activity provided that the business involves more than five people, is in substantially continuous operation for thirty days, or has gross receipts of \$2000 in a single day. *Id.*

⁴⁵ Holden, *supra* note 3, at 337.

⁴⁶ *Id.*

⁴⁷ Ryan M. Rodenberg & John T. Holden, *Sports Betting Has an Equal Sovereignty Problem*, 67 DUKE L.J. ONLINE 1, 4 (2017) (footnotes omitted).

⁴⁸ See Holden, *supra* note 3, at 350–53.

⁴⁹ 28 U.S.C. § 3704 (1988).

⁵⁰ *Id.* § 3704(3). While the statute makes no geographic reference by the terms used, only Atlantic City, New Jersey qualified. See *id.*

⁵¹ Holden, *supra* note 3, at 354. Various states had limited exemptions; most commonly Delaware, Oregon, and Montana are cited for their limited exemptions, but certain activities

After Congress passed PASPA, Atlantic City—otherwise known as “America’s Playground”—struggled financially.⁵² Gambling revenues decreased, as did airport and road traffic.⁵³ The city faced competition from a variety of places, including Pennsylvania, which legalized casino gambling after PASPA passed.⁵⁴ It was Atlantic City’s decline that primed New Jersey to seek legalized sports gambling in an effort to boost tourism back into the city.⁵⁵

New Jersey lawmakers sought to recapture a portion of the purported hundreds of billions of illegally wagered dollars.⁵⁶ The exact size of the illegal sports wagering market is not known, but estimates range from \$80 billion to \$650 billion.⁵⁷ State lawmakers hoped that regulated gambling would draw funds otherwise routed to illegal bookmakers, even if only a small percentage of market reserves were recaptured.⁵⁸ In 2012, Chris Christie, then-Governor of New Jersey, signed a law authorizing the state’s casinos and racetracks to offer sportsbook-style betting.⁵⁹

B. Murphy: *The Long Road to “Unconstitutional Commandeering”*

Almost immediately following Governor Christie’s signing of the 2012 bill into law, a quintet of sports organizations—the National Collegiate Athletic Association (NCAA), the National Football League (NFL), the National Basketball Association (NBA), the National Hockey League (NHL), and Major League Baseball (MLB)—sued the Governor and other New Jersey officials under a PASPA provision granting sports organizations the same power to enforce the statute as the U.S. Attorney General.⁶⁰ The district court opinion, in what would become known as *Christie I*, was a near-total success for the sports organizations.⁶¹ The plaintiffs prevailed on PASPA being a rational exercise of

like wagering on Keirin bicycle racing is legal in New Mexico. *Id.*; see also Rodenberg & Holden, *supra* note 47, at 15–16.

⁵² See Suzette Parmley, *Telltale Signs of Hard Times in Atlantic City*, PHILA. INQUIRER (Aug. 19, 2009), https://www.inquirer.com/philly/business/20090819_Telltale_signs_of_hard_times_in_Atlantic_City.html [<https://perma.cc/V7CL-GB73>].

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Brent Johnson & Keith Sargeant, *Here’s All You Need to Know About N.J. Sports Betting Before It Launches on Thursday*, NJ.COM (June 12, 2018), https://www.nj.com/politics/2018/06/all_you_need_to_know_as_nj_legalizes_sports_betting.html [<https://perma.cc/V7TN-AZP7>].

⁵⁶ Anastasios Kaburakis et al., *Inevitable: Sports Gambling, State Regulation, and the Pursuit of Revenue*, 5 HARV. BUS. L. REV. ONLINE 27, 27–28 (2015).

⁵⁷ John T. Holden, *Legalized Sports Betting in Oklahoma*, OKLA. B.J. (Oct. 2018), <https://www.okbar.org/barjournal/oct2018/obj8926holden/> [<https://perma.cc/C7QL-J2WT>]; *If Vote Gets to Floor, Nevada Could Be in Trouble*, ESPN (Jan. 30, 2001), <http://www.espn.com/ncaa/news/2001/0130/1051772.html> [<https://perma.cc/PWV2-7PWH>].

⁵⁸ Holden, *supra* note 5, at 577–78.

⁵⁹ Holden, *supra* note 3, at 356.

⁶⁰ See Nat’l Collegiate Athletic Ass’n v. Christie, 926 F. Supp. 2d 551 (D.N.J. 2013).

⁶¹ See *id.* at 579 (holding for the sports organizations).

Congress's Commerce Clause powers that were found to neither offend the Tenth nor Fourteenth Amendments, nor violate the "Equal Footing Doctrine."⁶² The defendants appealed the decision to the Third Circuit Court of Appeals.⁶³

The panel returned a two-one decision in favor of the sports organizations.⁶⁴ The majority held that the leagues have standing to sue the state to stop implementation of the law, and that PASPA was a valid exercise of Congress's Commerce Clause powers.⁶⁵ The Third Circuit further held that PASPA did not impermissibly commandeer the states, stating, "PASPA does not require or coerce the states to lift a finger—they are not required to pass laws, to take title to anything, to conduct background checks, to expend any funds, or to in any way enforce federal law."⁶⁶ The Supreme Court's decisions in *New York* and *Printz* formed the basis for the New Jersey defendants' arguments, as it was their contention that PASPA required the state legislature to refrain from exercising their sovereign power to pass and repeal laws, without offering a supplemental federal regulatory scheme on which it could rely if the state chose not to enforce its laws any longer.⁶⁷ Nor did the Third Circuit find support for the defendant's argument that PASPA violated the Tenth Amendment, or that the law violated the equal sovereignty principle that states must be treated substantially the same.⁶⁸ Despite a dissenting opinion by Third Circuit Judge Vanaskie, who argued that PASPA violated the anti-commandeering principle, the sports leagues prevailed on appeal in *Christie I*,⁶⁹ and again when the Supreme Court denied certiorari.⁷⁰

Not to be deterred, in 2014 New Jersey repealed its laws prohibiting sports betting⁷¹ as proposed by the Solicitor General's office.⁷² Following the repeal, the sports organization quintet sued the state for a second time.⁷³ District Court Judge Michael Shipp—who oversaw *Christie I*—found that the law partially repealing New Jersey's 2012 law still ran afoul of PASPA and struck it down.⁷⁴ Once more the state appealed to the Third Circuit, where it again lost by a two-one decision; however, this time, attorneys for the state convinced Judge

⁶² *Id.*

⁶³ *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208, 215 (3d Cir. 2013), *abrogated by* *Murphy v. Nat'l Collegiate Athletic Ass'n*, 128 S. Ct. 1461 (2018).

⁶⁴ *Id.* at 241.

⁶⁵ *Id.* at 240–41.

⁶⁶ *Id.* at 231 (emphasis omitted).

⁶⁷ *Id.* at 227–32.

⁶⁸ *Id.* at 236–38.

⁶⁹ *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d at 241–51.

⁷⁰ *See Christie v. Nat'l Collegiate Athletic Ass'n*, 134 S. Ct. 2866, 2866 (2014).

⁷¹ Brent Johnson, *Christie Signs Law Allowing Sports Betting in N.J.*, NJ.COM, https://www.nj.com/politics/2014/10/chris_christie_signs_law_allowing_for_sports_betting_in_nj.html [<https://perma.cc/24PH-TW4P>] (last updated Mar. 29, 2019).

⁷² Brief for the United States in Opposition at 11, *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013).

⁷³ *Nat'l Collegiate Athletic Ass'n v. Christie*, 61 F. Supp. 3d 488 (D.N.J. 2014).

⁷⁴ *Id.* at 503–06.

Fuentes—who wrote the majority opinion in *Christie I*—that the 2012 repeal was PASPA-compliant.⁷⁵ In October of 2015, the state’s petition for rehearing en banc was granted. Despite being granted the somewhat extraordinary rehearing en banc, New Jersey lost for the sixth time in six attempts.⁷⁶ The state’s 9-3 loss at the Third Circuit en banc hearing left the state with one final attempt to appeal the decision to the U.S. Supreme Court for a second time.⁷⁷

The Supreme Court granted certiorari on the question of whether PASPA impermissibly coerced state legislatures into maintaining laws in June of 2017, and heard oral arguments in December that same year.⁷⁸ On May 14, 2018, the Supreme Court issued a decision in the *Murphy* case (*Christie II*), holding that “[t]he PASPA provision at issue here—prohibiting state authorization of sports gambling—violates the anticommandeering rule. That provision unequivocally dictates what a state legislature may and may not do.”⁷⁹ The Supreme Court further held that PASPA could not be saved by severing the portions of the law that impermissibly commandeered state legislatures, as without those, the statute would necessarily fail; unlike under permissible preemption schemes, there was no federal framework that the state could default to for enforcement.⁸⁰ In concurrence, Justice Thomas further opined that while PASPA impermissibly commandeered the state’s legislature, he was unconvinced that sports gambling was an interstate commerce issue.⁸¹ The *Murphy* decision resulted in PASPA being deemed unconstitutional and, consequently, interested states could pass laws regulating sportsbook style sports wagering outside of Nevada for the first time since 1992.⁸²

C. *Post-Murphy*

Even prior to the Supreme Court issuing the *Murphy* decision, states had begun preparing for a post-PASPA landscape. New York and Pennsylvania

⁷⁵ Nat’l Collegiate Athletic Ass’n v. Christie, 799 F.3d 259, 268–69 (3d Cir. 2015), *reh’g en banc granted, vacated*, Oct. 14, 2015.

⁷⁶ Nat’l Collegiate Athletic Ass’n v. Christie, 832 F.3d 389, 402 (3d Cir. 2016) (en banc).

⁷⁷ *See id.*

⁷⁸ *Murphy v. National Collegiate Athletic Association*, OYEZ, <https://www.oyez.org/cases/2017/16-476> [<https://perma.cc/8CFC-EP3Y>].

⁷⁹ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1478 (2018).

⁸⁰ *Id.* at 1484.

⁸¹ *Id.* at 1485 (Thomas, J., concurring) (“Unlike the dissent, I do ‘doubt’ that Congress can prohibit sports gambling that does not cross state lines.”). This position was raised in one of the amicus briefs filed in the case. *See* Brief of Amicus Curiae Researcher John T. Holden in Support of Petitioners at 29–33, *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

⁸² Marc Edelman, *Explaining the Supreme Court’s Recent Sports Betting Decision*, FORBES (May 16, 2018), <https://www.forbes.com/sites/marcedelman/2018/05/16/explaining-the-supreme-courts-recent-sports-betting-decision/#7e77af8b537c> [<https://perma.cc/F55K-H6L5>].

passed legislation to legalize sports gambling in the event of PASPA's failure, whether it came judicially or legislatively.⁸³ While there was great exuberance from coast to coast following the removal of the federal prohibition, the reality of passing gaming legislation slowed much of the early state momentum.⁸⁴ Still, despite the challenges of crafting sports betting regulations, with various stakeholders seeking a portion of the finite revenues, more than thirty states have now introduced bills to legalize sports betting since May 14, 2018.⁸⁵

Aside from Nevada, which has experienced legalized sportsbook-style betting since 1931, several states took early advantage of the newfound opportunity.⁸⁶ While observers assumed New Jersey would offer sportsbook-style wagering shortly after the *Murphy* decision,⁸⁷ Delaware accepted the first wagers.⁸⁸ New Jersey began accepting wagers shortly thereafter, and became the first state outside Nevada to allow mobile sports wagering.⁸⁹ Included in the

⁸³ See Jesse McKinley, *Sports Betting May Soon Be Legal in New York, but Only 4 Casinos Upstate Would Offer It*, N.Y. TIMES (Jan. 28, 2019), <https://www.nytimes.com/2019/01/28/nyregion/sports-betting-new-york-casinos.html> [https://perma.cc/5ZX8-NNL7]; see also Ben Nuckols, *Pennsylvania May Be Among Several States with Edge in Race to Legalize Sports Betting*, YORK DISPATCH (May 14, 2018), <https://www.yorkdispatch.com/story/sports/2018/05/14/pennsylvania-among-states-edge-race-legalize-sports-betting/609048002/> [https://perma.cc/B7R8-VFE5].

⁸⁴ Gaming authorization is a politically controversial topic in many states, and involves numerous stakeholders, including negotiations with tribal governments in a number of states. Tribal gaming negotiations for Class III activities, like sports betting, typically require the state and tribes to sit down and negotiate a compact, which is a process that has been historically contentious in many states. See Holden, *supra* note 5, at 607–08.

⁸⁵ See Dustin Gouker, *Legislative Tracker: Sports Betting*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sportsbetting-bill-tracker/> [https://perma.cc/JU59-RU86] (last updated Jan. 1, 2020).

⁸⁶ Vinny Magliulo, *History of Sports Betting in Las Vegas*, VSiN (Aug. 21, 2017), <https://www.vsin.com/history-of-sports-betting-in-las-vegas/> [https://perma.cc/RW4G-X847].

⁸⁷ See Nick Corasaniti, *Game On! Legislature Approves Sports Betting in New Jersey*, N.Y. TIMES (June 7, 2018), <https://www.nytimes.com/2018/06/07/nyregion/sports-betting-new-jersey.html> [https://perma.cc/FT7P-R8QJ].

⁸⁸ Rick Maese, *Delaware Is the First New State to Bet on Sports Gambling, but It Might Not Pay Off*, WASH. POST (June 5, 2018), <https://www.washingtonpost.com/news/sports/wp/2018/06/05/delaware-first-to-bet-on-sports-gambling-but-it-might-not-pay-off/> [https://perma.cc/VV2Y-CY4P].

⁸⁹ Eric Ramsey, *Here's Everything We Know About NJ Online Sports Betting Right Now*, LEGAL SPORTS REP. (Feb. 3, 2019), <https://www.legalsportsreport.com/21853/new-jersey-online-sports-betting/> [https://perma.cc/KK3S-JJRZ].

initial wave of states to legalize sports betting were Mississippi,⁹⁰ West Virginia,⁹¹ Pennsylvania,⁹² and Rhode Island.⁹³

In addition, Arkansas legalized sports betting via a referendum in 2018.⁹⁴ Iowa,⁹⁵ Indiana,⁹⁶ and Montana all legalized sports betting in May 2019.⁹⁷ Following these early movers, Tennessee passed a sports betting law that was significant, as it was the first to mandate that sportsbook operators purchase official data from sports leagues⁹⁸—a legally dubious mandate⁹⁹—without a commercial justification.¹⁰⁰ After failing to secure an official data order in the first year after *Murphy*, the sports leagues achieved a second victory in Illinois

⁹⁰ See Adam Candee, *New Day for Ole Miss as Mississippi Sports Betting Launches*, LEGAL SPORTS REP. (Aug. 1, 2018), <https://www.legalsportsreport.com/22474/mississippi-sports-betting-launches/> [<https://perma.cc/X9TY-RATS>].

⁹¹ Kim Yuhl, *Sports Betting in West Virginia Launching Sept. 1*, <https://www.playusa.com/west-virginia-sports-betting-launch/> [<https://perma.cc/B5S7-A7R5>] (last updated Mar. 14, 2019).

⁹² Nicholas Garcia, *PA Sports Betting Is Finally Here: Hollywood Casino Is Taking First Wagers Today*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/25946/first-pennsylvania-casino-ready-for-sports-betting/> [<https://perma.cc/DC3D-7YHZ>] (last updated Nov. 16, 2018).

⁹³ Gintautas Dumcius, *Legalized Sports Betting to Start in Rhode Island*, MASSLIVE, https://www.masslive.com/news/2018/11/legalized_sports_betting_to_st.html [<https://perma.cc/AC92-ZQU6>] (last updated Jan. 29, 2019).

⁹⁴ David Fucillo, *Arkansas Voters Pass Issue 4, Issuing Licenses to Four Casinos that Includes Potential Sports Gambling*, SBNATION (Nov. 7, 2018), <https://www.sbnation.com/nfl/2018/11/7/18070884/arkansas-midterm-election-results-2018-issue-4-casino-licenses-sports-gambling> [<https://perma.cc/8W3F-265S>].

⁹⁵ Sean Gruber-Miller & Ian Richardson, *When Can Iowans Start Wagering on Sports? Bet on Football Season.*, DES MOINES REG., <https://www.desmoinesregister.com/story/news/politics/2019/05/14/sports-betting-iowa-legal-online-when-kim-reynolds-casino-draftkings-fanduel-states-prairie-meadows/3665492002/> [<https://perma.cc/CK3U-QSER>] (last updated May 15, 2019).

⁹⁶ Brian Pempus, *It's Official: Indiana Becomes 10th State to Legalize Sports Betting*, SPORTSHANDLE (May 8, 2019), <https://sportshandle.com/indiana-sports-betting-becomes-legal/> [<https://perma.cc/TXW2-7S9H>].

⁹⁷ Adam Candee, *Montana Sports Betting Improbably First to the Finish Line in 2019*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/32061/montana-sports-betting-bill-signed/> [<https://perma.cc/4HGD-F8HA>] (last updated May 6, 2019).

⁹⁸ *Official League Data*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/official-league-data/> [<https://perma.cc/4T92-CLZ5>] (last updated Feb. 14, 2020).

⁹⁹ See John Holden & Mike Schuster, *The Sham of Integrity Fees in Sports Betting*, 16 N.Y.U. J. L. & BUS. 31, 48 (2019).

¹⁰⁰ Brett Smiley, *MLB, Sportradar Ink Sports Betting Data Deal as Controversy Brews*, SPORTSHANDLE (Feb. 27, 2019), <https://sportshandle.com/mlb-sportradar-announce-betting-data-deal/> [<https://perma.cc/2TDM-GUL9>]; see also Brett Smiley, *How 'Unofficial' Sports Betting Data May Be Better than 'Official League Data.'* SPORTSHANDLE (June 5, 2019), <https://sportshandle.com/unofficial-official-league-data/> [<https://perma.cc/X6A5-B6JW>] (explaining why “unofficial” data may deliver a better betting experience, be more accurate, and possibly be better suited for the flow of major U.S. sports and bettors for those contests).

when the state legislature granted an official mandate involving certain types of in-play wagers.¹⁰¹ While numerous states have expressed an interest in offering sports wagering, many hold complicated relationships with Tribal governments that dictate mandatory negotiating between the state-tribe and approval of the Secretary of the Interior before the state can offer sports wagering.¹⁰²

For example, New Mexico, which sought an exemption for Keirin bike racing during PASPA's legislative hearings,¹⁰³ has launched sports wagering at five tribal casinos.¹⁰⁴ The Santa Ana Star Casino and Hotel was the first to introduce sports wagering in New Mexico, which was the result of permissive language used in the gaming compact between the state and the Tribe.¹⁰⁵ In fact, the gaming compact grants virtually unfettered ability to New Mexico tribes to offer Class III gaming activities like sports betting, stating, "Permitted Class III Gaming. The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of Class III Gaming."¹⁰⁶ The agreement between state and Tribal governments seemingly grants the tribes, subject to the compact, extensive authority to authorize Class III gaming at their facilities.¹⁰⁷ The New Mexico tribal compact is very permissive, allowing the Santa Ana Pueblo and subsequently Pojoaque Pueblo¹⁰⁸ to begin accepting wagers. The compact's language is also exceptional, as most compacts specifically address which activities are permissible.¹⁰⁹ Sports wagering negotiations between Tribes and other states like Florida and Oklahoma, which have significant Tribal gaming infrastructure but lack a large

¹⁰¹ See Jill R. Dorson, *Warts and All, IL Senate Passes Capital Bill with Sports Betting*, SPORTSHANDLE (June 2, 2019), <https://sportshandle.com/illinois-sports-betting-legislature-passes-legalization/> [<https://perma.cc/4AQ4-WJPL>].

¹⁰² Holden, *supra* note 5, at 607–08.

¹⁰³ See Rodenberg & Holden, *supra* note 47, at 15–16.

¹⁰⁴ *Albuquerque-Based Isleta Resort & Casino Becomes Fifth Tribal Casino in New Mexico to Open Sportsbook*, NATIVEBUSINESS (Nov. 6, 2019), <https://www.nativebusinessmag.com/albuquerque-based-isleta-resort-casino-becomes-fifth-tribal-casino-in-new-mexico-to-open-sportsbook/> [<https://perma.cc/BKZ8-8HY4>].

¹⁰⁵ See John Holden, *So How Exactly Is New Mexico Sports Betting Legal, and What Does It Mean in Other States?*, LEGAL SPORTS REP. (Oct. 17, 2018), <https://www.legalsportsreport.com/24965/legality-of-sports-betting-in-new-mexico/> [<https://perma.cc/7LX2-RQ3S>].

¹⁰⁶ *Id.*

¹⁰⁷ See *id.*

¹⁰⁸ See Erik Gibbs, *New Mexico Gets Its Second Sportsbook*, CALVINAYRE.COM (Mar. 13, 2019), <https://calvinayre.com/2019/03/13/business/new-mexico-gets-its-second-sportsbook/> [<https://perma.cc/ZVZ6-QYB2>].

¹⁰⁹ See, e.g., John Holden, *Florida Sports Betting Efforts Not Finished as Governor, Tribes Continue Talks*, LEGAL SPORTS REP. (Apr. 29, 2019), <https://www.legalsportsreport.com/31740/holden-florida-sports-betting-update/> [<https://perma.cc/42ZN-QFWS>]; see also John T. Holden, *Legalized Sports Betting in Oklahoma*, 89 OKLA. B.J. 10, 12 (2018) (discussing proposed Oklahoma legislation that would act to legalize sports betting pools in tribal gaming).

Tribal gaming footprint, will likely fall behind states like New Mexico.¹¹⁰ Indeed, despite the gaudy numbers often associated with sports betting, the activity is a relatively low-margin product for gaming operators.¹¹¹ Tribes must carefully evaluate whether to open up Tribal gaming compacts and risk giving up something to state governments in order to offer a product that will not likely add significant value to a casino's bottom line.¹¹²

Despite the relatively low profit margins, legalized sports wagering has attracted a number of foreign sports wagering companies, as well as welcomed the conversion of the two largest daily fantasy sports providers into sports wagering operators.¹¹³ These companies have also moved from online-only fantasy sports platforms to mobile and brick-and-mortar sports betting operators.¹¹⁴ Both FanDuel and DraftKings have had immediate success, particularly in the mobile betting space, and quickly acquired more than seventy percent of New Jersey's online gambling market share.¹¹⁵ While states have been slow to adopt regulations and launch mobile wagering, the potential to capitalize on additional revenue is clear.¹¹⁶ However, collegiate athletics administrators remain adamant in opposing legalized sports wagering.¹¹⁷

D. Murphy's Impact on Collegiate Athletics

The impact of *Murphy* on collegiate sports remains to be seen in the protracted litigation against the State of New Jersey.¹¹⁸ College athletic administrators have long opposed legalized gambling for fear that gamblers would induce student-athletes into manipulating matches.¹¹⁹ College athletes are perhaps vulnerable to match-fixers by virtue of their poverty; as amateur

¹¹⁰ See Holden, *supra* note 5, at 619.

¹¹¹ See *Sports Betting Handle vs. Revenue*, LINES (May 24, 2018), <https://www.the-lines.com/sports-betting-handle-revenue/> [https://perma.cc/8VFQ-GLB3].

¹¹² See Holden, *supra* note 5, at 607–08.

¹¹³ See Dustin Gouker, *New Jersey Sports Betting*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/nj/> [https://perma.cc/5GCN-AUJQ] (last updated Feb. 5, 2020).

¹¹⁴ See, e.g., J.P. Pelzman, *FanDuel Sportsbook at Meadowlands Still Committed to In-Game Betting Despite Glitch*, FORBES (Sept. 28, 2018), <https://www.forbes.com/sites/jppelzman/2018/09/28/fanduel-sportsbook-at-meadowlands-still-committed-to-in-game-betting-despite-glitch/#546e41666aeb> [https://perma.cc/4UR4-LHW2].

¹¹⁵ See *New Jersey Sports Betting Revenue*, PLAY NJ, <https://www.playnj.com/sports-betting/revenue/> [https://perma.cc/PYT8-JW9N] (last updated Feb. 13, 2019).

¹¹⁶ By November 2019, mobile wagering accounted for approximately eighty percent of New Jersey's sports betting market. See *id.*

¹¹⁷ See, e.g., Adam Candee, *Arkansas Sports Betting Rules Clear Key Hurdle as State Inches Toward Launch*, LEGAL SPORTS REP. (Feb. 22, 2019), <https://www.legalsportsreport.com/29465/arkansas-sports-betting-rules-approved/> [https://perma.cc/WRW2-DJAD].

¹¹⁸ See generally *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018).

¹¹⁹ David Welch Suggs Jr., *A Risky Future on College Sports Betting*, INSIDE HIGHER ED (May 15, 2018), <https://www.insidehighered.com/views/2018/05/15/legalization-sports-gambling-poses-problems-colleges-ncaa-opinion> [https://perma.cc/B72D-J2RT].

athletes they may not receive the multi-million dollar salaries of professional athletes.¹²⁰ Since match-fixers have historically targeted student-athletes, college administrators may harbor legitimate fears.¹²¹

Concerns that legalized gambling will promote match-fixing and increase gambling amongst collegiate athletes are largely speculative.¹²² Some states have acknowledged college athletic departments' apprehensions by placing bans on in-state collegiate team wagering in order to limit student-athletes' exposure to would-be match-manipulators.¹²³ The challenge for college administrators is that while such fears are theoretical, athletic departments and universities will face increased monitoring and compliance costs until sports gambling is proven safe. Part III addresses the evolving relationship between gambling funding and education in the United States.

III. THE EVOLUTION OF GAMBLING FUNDING EDUCATION

Following September 11, 2001, the U.S. economy lapsed into a recession that eventually culminated in a period referred to as the Great Recession.¹²⁴ The nation's financial erosion caused Congress to curtail state and local governmental funding, forcing states to procure alternative revenue sources to offset lost subsidies.¹²⁵ Taxes on alcohol, cigarettes, strip clubs, soda, and marijuana emerged, furnishing innovative opportunities to boost state revenue production streams.¹²⁶ In addition, some states launched significant legal battles to expose fresh avenues of revenue, including successes in collecting sales taxes from nonresident online retailers and the newly expanded legalized gaming

¹²⁰ Holden & Rodenberg, *supra* note 11, at 465.

¹²¹ *See id.* at 464–65. College athletes have been the most frequent human targets of match-fixers, and horse racing is fixed at a higher rate than any human based sport. *See id.* at 458.

¹²² Regulated gambling markets have protections that unregulated markets do not have, though some studies have shown a proclivity of NCAA athletes towards sports wagering, which with increased availability may or may not exacerbate issues. *See* Jeffrey L. Derevensky & Tom Paskus, *Mind, Body and Sport: Gambling Among Student-Athletes*, NCAA, <http://www.ncaa.org/sport-science-institute/mind-body-and-sport-gambling-among-student-athletes> [<https://perma.cc/KH7B-FQA2>].

¹²³ *See, e.g.*, John Holden, *How NJ Sports Betting Set Up a Potential Constitutional Problem for Everyone*, LEGAL SPORTS REP. (June 7, 2019), <https://www.legalsportsreport.com/32820/in-state-nj-sports-betting/> [<https://perma.cc/A4SR-V9E8>]. This practice is likely futile, nonsensical, and unconstitutional. Not only does this have little effect when one looks at states like New Jersey and Pennsylvania, where New Jersey bans wagering on in-state teams, but those same bettors can cross a bridge and bet on those games in Pennsylvania, banning wagering on in-state teams because of a threat to game integrity raises significant problems under a dormant commerce clause analysis. *Id.*

¹²⁴ Kathryn Kisska-Schulze, *The Future of E-mail Taxation in the Wake of the Expiration of the Internet Tax Freedom Act*, 51 AM. BUS. L.J. 315, 326 (2014).

¹²⁵ *Id.* at 326–27.

¹²⁶ *Id.* at 327–30.

activities.¹²⁷ Revenue from these various sources ultimately falls into one or more state buckets—either a general fund to be used for broad discretionary purposes, or into numerous designated (earmarked) reserves for use toward specified public services.¹²⁸

To a certain degree, every state earmarks a percentage of tax revenue to fund governmental activities.¹²⁹ Earmarked beneficiaries vary extensively but tend to include highways and roadways, local government programs, education, health and welfare, and environmental causes.¹³⁰ Likewise, the sources of dedicated revenue are diverse, often complementing the political atmosphere of the jurisdiction.¹³¹ These sources may take the form of either “sin taxes” on items such as tobacco, alcohol, or soda, or Pigouvian taxes on select pollutants, like motor fuel.¹³²

Funding higher education has long challenged state governments.¹³³ While a significant portion of earmarked revenue supports state K-12 programs,¹³⁴ the Great Recession forced jurisdictions to reduce their fiscal support of post-secondary education.¹³⁵ This alteration placed a hefty burden on colleges and universities, requiring them to seek unique outlets to supplement about forty-

¹²⁷ See *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1484–85 (2018). See generally *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018) (holding that sellers must comply with a statute requiring internet sellers with no physical presence in the state to collect and remit state tax).

¹²⁸ See Armikka R. Bryant, *Taxing Marijuana: Earmarking Tax Revenue from Legalized Marijuana*, 33 GA. ST. U. L. REV. 659, 682 (2017).

¹²⁹ See Susannah Camic Tahk, *Public Choice Theory and Earmarked Taxes*, 68 TAX L. REV. 755, 766 (2015).

¹³⁰ ARTURO PÉREZ, NAT’L CONFERENCE OF STATE LEGISLATURES, EARMARKING STATE TAXES 3–4 (Sept. 2008), <http://www.ncsl.org/documents/fiscal/earmarking-state-taxes.pdf> [<https://perma.cc/2X6B-FDPE>].

¹³¹ See Tahk, *supra* note 129, at 766.

¹³² See TAX POLICY CTR., TAX POLICY CENTER BRIEFING BOOK: THE STATE OF STATE (AND LOCAL) TAX POLICY, https://www.taxpolicycenter.org/sites/default/files/briefing-book/how_do_state_and_local_sales_taxes_work.pdf [<https://perma.cc/WR2G-ZR9V>] (listing motor fuels, tobacco, alcohol, soda, and marijuana sales as avenues for earmarked state revenue production).

¹³³ See *Federal and State Funding of Higher Education*, PEW (June 11, 2015), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/06/federal-and-state-funding-of-higher-education> [<https://perma.cc/D3QC-NHY2>] (finding that higher education is the third largest category in state budgets but has been declining in recent years).

¹³⁴ Kasey Henricks, *Passing the Buck: Race and the Role of State Lotteries in America’s Changing Tax Composition*, 6 GEO. J.L. & MOD. CRITICAL RACE PERSP. 183, 203 (2014) (noting that twenty-nine states rely on lottery proceeds to help finance K-12 public education).

¹³⁵ See Andrew Barr & Sarah E. Turner, *Expanding Enrollments and Contracting State Budgets: The Effect of the Great Recession on Higher Education*, 650 ANNALS AM. ACAD. POL. & SOC. SCI. 168, 169 (2013) (noting the demise of higher educational funding due to the Great Recession).

seven percent of their total overhead costs.¹³⁶ As a result, tuitions magnified, online enrollments increased, federal aid programs expanded, students borrowed, programs and faculty lines were cut, and charitable donations became critical to the vitality of higher education.¹³⁷ These changes have resulted in a cost-value educational crisis in the United States, with public institutions becoming less affordable and accessible amid quality erosion.¹³⁸ There is no shortage of academic scholarship devoted to addressing this cataclysm in higher education.¹³⁹

In the ten years following the 2008 recession, states collectively spent \$9 billion less on higher education than they did in the year preceding its start.¹⁴⁰ While five states spent more money per student in 2017 than they did in 2008, most states decreased funding by about sixteen percent per student during that period, and funding in eight states fell by more than thirty percent.¹⁴¹ Budget cuts have largely been passed onto students, who today each contribute roughly \$1800 more toward university budgets than in the previous ten year period.¹⁴² Governmental spending on higher education has diminished by twenty-five

¹³⁶ See MICHAEL MITCHELL ET AL., CTR. ON BUDGET & POLICY PRIORITIES, A LOST DECADE IN HIGHER EDUCATION FUNDING: STATE CUTS HAVE DRIVEN UP TUITION AND REDUCED QUALITY 1–29 (Aug. 2017), https://www.cbpp.org/sites/default/files/atoms/files/2017_higher_ed_8-22-17_final.pdf [<https://perma.cc/R2WA-RDUV>] (noting that states provide about fifty-three percent of the costs associated with higher education, requiring that institutions themselves make up the difference through tuition and/or budget cuts).

¹³⁷ See Barr & Turner, *supra* note 135, at 170–86 (discussing various enrollment responses to the Great Recession); see also MITCHELL ET AL., *supra* note 136, at 1–29 (documenting that budget cuts have been instituted due to state funding cuts); Kisska-Schulze, *supra* note 2, at 371 (noting that in 2017 charitable donations made to U.S. colleges and universities rose six percent, resulting in \$43.6 billion in revenue that year).

¹³⁸ Brewster C. Denny, *Initiatives—Enemy of the Republic*, 24 SEATTLE U. L. REV. 1025, 1027 (2001).

¹³⁹ See generally Jennifer A. Delaney, *The Role of State Policy in Promoting College Affordability*, 655 ANNALS AM. ACAD. POL. & SOC. SCI. 56 (2014) (addressing the need for improved state policy to foster college affordability); Nora V. Demleitner, *Higher Education under Pressure: What Will the Future Hold?*, 66 SYRACUSE L. REV. 649 (2016) (examining the cost-value calamity in higher education); Kevin J. Dougherty et al., *Performance Funding for Higher Education: Forms, Origins, Impacts, and Futures*, 655 ANNALS AM. ACAD. POL. & SOC. SCI. 163 (2014) (examining performance funding within higher education); Jack Millman, *Paying for Failure: Subsidizing Schools, Not Education*, 10 DREXEL L. REV. 307 (2018) (examining the perplexities of “bad schools” of higher education and the need for governmental reform to help improve performance); Robert Sprague, *Editor’s Corner: Let Not Scholarship Become a Chimera*, 53 AM. BUS. L.J. 603 (2016) (presenting the “Crisis in Higher Education” affecting American universities).

¹⁴⁰ MITCHELL ET AL., *supra* note 136, at 1.

¹⁴¹ *Id.* at 2.

¹⁴² See Jon Marcus, *Most Americans Don’t Realize State Funding for Higher Ed Fell by Billions*, PBS (Feb. 26, 2019), <https://www.pbs.org/newshour/education/most-americans-dont-realize-state-funding-for-higher-ed-fell-by-billions> [<https://perma.cc/B96M-ANQY>].

percent.¹⁴³ Financial challenges have long been part and parcel of operating higher education institutions, and history supports that state lottery revenues have helped keep higher education in operation.¹⁴⁴ To examine the developing partnership between lotteries and higher education, this Part proceeds as follows: Section A discusses the early history of the American lottery system, Section B examines contemporary applications of lottery revenue for educational purposes, and Section C scrutinizes state initiatives to reallocate lottery funds away from education.

A. *Early History*

While modern gambling in America largely began around 1950, several hundred years earlier gambling played a very different role in the United States.¹⁴⁵ The first lottery in England is believed to have been drawn in 1569 and was intended to generate funds for harbor repairs and other public works projects.¹⁴⁶ English lotteries evolved, with the Crown finding them useful revenue mechanisms for a variety of projects, including plantation funding in the Virginia colony.¹⁴⁷ As Europeans colonized America, they brought their English gaming traditions with them, though Puritan rule resulted in statutes dating to 1631 that banned gambling in states like Massachusetts.¹⁴⁸ Lotteries, however, received different treatment than card and dice games.¹⁴⁹ Lotteries were a necessity for American colonists.¹⁵⁰ Prior to 1790, the country had only three incorporated banks, and the Crown kept a tight grip on funding going to the New World.¹⁵¹ As a result, colonists were forced to find alternative ways to generate revenue in order to develop, and provide for, colonial defense.¹⁵²

Lotteries were initially used as a private tool but quickly spread as a popular funding mechanism for both public and private uses.¹⁵³ While Massachusetts imposed a twenty-pound fine for running a lottery in 1719, colonists were able to avoid the fines by entering lotteries in other colonies that were less averse to the contests.¹⁵⁴ Despite the passage of law meant to rein in New York lotteries in 1721, lotteries remained popular, and many were even state-run despite the

¹⁴³ Julian Wyllie, *Why Are States Spending Less on Higher-Ed? Medicaid and Lazy Rivers Could Be to Blame*, CHRON. HIGHER EDUC. (May 1, 2018), <https://www.chronicle.com/article/Why-Are-States-Spending-Less/243281> [<https://perma.cc/23J9-Z334>].

¹⁴⁴ See *infra* Part III.B.

¹⁴⁵ See G. Robert Blakey, *Gaming, Lotteries, and Wagering: The Pre-Revolutionary Roots of the Law of Gambling*, 16 RUTGERS L.J. 211, 212 (1985).

¹⁴⁶ *Id.* at 228.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 237.

¹⁴⁹ See *id.* at 238.

¹⁵⁰ See *id.*

¹⁵¹ Blakey, *supra* note 145, at 238.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 240–41.

restriction.¹⁵⁵ Indeed, it was during this era that one of the first linkages between the lottery and higher education took place, as it was by means of a lottery that Kings College (now Columbia University) was established.¹⁵⁶ Pennsylvania similarly utilized a lottery for the construction and initial operation of Dickinson College.¹⁵⁷ New York and Pennsylvania were not isolated in their use of lotteries for establishing universities: Harvard, Yale, Dartmouth, Princeton, and William and Mary were all at least partially established using funds from lotteries.¹⁵⁸

Following the Civil War, lotteries and gambling taxes became an important means of generating revenue for the reconstruction of the South and the establishment of more than fifty universities.¹⁵⁹ Lotteries in the 1800s were typically privately run via a license obtained from the state.¹⁶⁰ The 1800s also saw a rise in the number of scandals associated with lotteries, leading some lawmakers to question their continued operation.¹⁶¹ It was the Louisiana lottery that generated a scandal of such proportion that Congress took interest in banning the above discussed use of the mail for distribution of lottery materials, resulting in a seventy-year freeze on legal state-run lotteries.¹⁶²

B. Contemporary History

In March of 1964, New Hampshire cities and towns voted to allow sweepstakes ticket sales.¹⁶³ Two days later, the state became the first to sell lottery tickets in almost seven decades.¹⁶⁴ Since the launch of the 1964 sales, forty-three other states, as well as the District of Columbia and Puerto Rico, implemented state-run lotteries.¹⁶⁵ In 2008, Americans spent \$60.6 billion on lottery tickets, and spent “well over a trillion dollars” across all gambling activities.¹⁶⁶ Lotteries, in their contemporary iteration, serve two predominant

¹⁵⁵ *Id.* at 248.

¹⁵⁶ *Id.*

¹⁵⁷ Blakey, *supra* note 145, at 253.

¹⁵⁸ George S. McClellan & Ken C. Winters, *Gambling: An Old School New Wave Challenge for Higher Education in the Twenty-First Century*, 113 *NEW DIRECTIONS FOR STUDENT SERVICES* 9, 14 (2006).

¹⁵⁹ *Id.*

¹⁶⁰ Rose, *supra* note 31, at 368–69.

¹⁶¹ *Id.* at 369.

¹⁶² *Id.* at 372–73; 18 U.S.C. § 1302 (2012).

¹⁶³ *About Us*, NH LOTTERY, <https://www.nhlottery.com/About-Us> [<https://perma.cc/5WZK-UMU4>].

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Rose, *supra* note 31, at 361–62.

state purposes: first, to supplement the state's general fund; and second, to supplement education funding.¹⁶⁷

Educational programs—particularly primary and secondary education—are paramount beneficiaries of various state earmarked tax revenues.¹⁶⁸ For example, in 2005 Alabama earmarked forty-percent of its tax revenue from beer sales to fund public education.¹⁶⁹ The first \$40 million of Colorado's annual tax revenue from marijuana sales goes to the Colorado Public School Capital Construction Assistance Fund, which subsidizes the Building Excellent Schools Today (BEST) grant program.¹⁷⁰ Another major source of educational funding comes from gaming tax revenue.¹⁷¹ In particular, state lotteries serve as attractive options for profit realization dedicated to funding public education.¹⁷² An example of this is the Helping Outstanding Pupils Educationally (HOPE) scholarship program, which is wholly funded by the Georgia Lottery.¹⁷³

The practice of earmarking lottery proceeds for a specific cause within the state budget is common.¹⁷⁴ One challenge facing lawmakers and funding recipients is maintaining additional revenue outlets, since states have a historical tendency to replace, rather than supplement, gaming revenues.¹⁷⁵ Despite this setback, one study found that earmarking increases educational spending by more than thirty-five cents when compared to one non-earmarked dollar, suggesting the net benefit of gaming funds earmarked for educational funding has a positive effect.¹⁷⁶ Presently, at least twenty states direct all of their lottery revenue to education, with others allocating at least a portion of the revenue

¹⁶⁷ Patrick A. Pierce & Donald E. Miller, *Variations in the Diffusion of State Lottery Adoptions: How Revenue Dedication Changes Morality Politics*, 27 POL'Y STUD. J. 696, 697 (1999).

¹⁶⁸ PÉREZ, *supra* note 130, at 3 (noting that thirty-five states dedicate selective tax revenues for educational funding).

¹⁶⁹ George R. Crowley & Adam J. Hoffer, *Earmarking Tax Revenues: Leviathan's Secret Weapon?*, in FOR YOUR OWN GOOD: TAXES, PATERNALISM, AND FISCAL DISCRIMINATION IN THE TWENTY-FIRST CENTURY 119, 123 (Adam J. Hoffer & Todd Nesbit eds., Mercatus Ctr. at George Mason Univ. 2018).

¹⁷⁰ COLO. CONST. art. XVIII, § 16(5)(d).

¹⁷¹ ALENE RUSSELL, AM. ASS'N OF STATE COLLS. & UNIVS., DEDICATED FUNDING FOR HIGHER EDUCATION: ALTERNATIVES FOR TOUGH ECONOMIC TIMES 2 (Dec. 2008), [https://www.aascu.org/uploadedFiles/AASCU/Content/Root/PolicyAndAdvocacy/PolicyPublications/08.decpm\(2\).pdf](https://www.aascu.org/uploadedFiles/AASCU/Content/Root/PolicyAndAdvocacy/PolicyPublications/08.decpm(2).pdf) [<https://perma.cc/4D27-Y6GF>] (documenting that at least thirty states earmark gaming tax revenue for educational purposes).

¹⁷² See Crowley & Hoffer, *supra* note 169, at 121.

¹⁷³ RUSSELL, *supra* note 171, at 3.

¹⁷⁴ See Mary O. Borg & Paul M. Mason, *Earmarked Lottery Revenues: Positive Windfalls or Concealed Redistribution Mechanisms?*, 15 J. EDUC. FIN. 289, 289 (1990).

¹⁷⁵ *Id.* at 300–01.

¹⁷⁶ Neva Kerbeshian Novarro, *Does Earmarking Matter? The Case of State Lottery Profits and Educational Spending* 3 (Stan. Inst. Econ. Policy Research, Discussion Paper No. 02-19), <http://www-siepr.stanford.edu/Papers/pdf/02-19.pdf> [<https://perma.cc/QX8R-C9DJ>].

directly to education funding.¹⁷⁷ However, the practice of earmarking has not resulted in funding actually reaching the state's educational coffers.¹⁷⁸

C. Money Getting Reallocated?

While lawmakers tout that state gambling dollars fund education, the reality is that the money earmarked for education is often usurped by other governmental agencies and expenses.¹⁷⁹ The State of Maryland is a prime example. After legalizing casino gambling in 2008, Maryland's casinos deposited \$1.7 billion into the state's education trust account.¹⁸⁰ While the casino money is purportedly going to education, the state has reallocated some of that money to other state causes.¹⁸¹ Maryland is not an isolated case.¹⁸² However, some state lotteries that fund scholarship programs, like Georgia's HOPE Scholarship, continue to survive and retain promised lottery funding.¹⁸³

While sports betting currently remains a low-revenue gaming product for commercial operators,¹⁸⁴ its legalization creates opportunities for increased state educational income sources. Facing an already steady decline of state funding for higher education, college athletic departments face new financial perils with the signing of the TCJA into law.¹⁸⁵ In Part IV, we discuss the financial impact of the TCJA on college sports and the broader spectrum of higher education, and present current data regarding states' initiatives to tax gambling revenue post-*Murphy*.

IV. MURPHY, THE TCJA, AND COLLEGE SPORTS

College sports are not immune to the effects of state funding cuts. Intercollegiate athletics are subsidized through two sources—allocated and generated revenues.¹⁸⁶ Allocated revenues derive from student fees, institutions,

¹⁷⁷ Daniel B. Jones, *Education's Gambling Problem: Earmarked Lottery Revenues and Charitable Donations to Education*, 53 *ECON. INQUIRY* 906, 906 (2015).

¹⁷⁸ See *supra* notes 135–44 and accompanying text.

¹⁷⁹ See, e.g., Luke Broadwater & Erica L. Green, *Maryland Casinos Are Pumping Out Billions for Education. So Why Are There School Budget Deficits?*, *BALT. SUN* (Jan. 22, 2017), <https://www.baltimoresun.com/maryland/bs-md-casino-education-20170121-story.html> [<https://perma.cc/YKR6-TRWR>].

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² See Kirk, *supra* note 18.

¹⁸³ *Id.*

¹⁸⁴ See *Sports Betting Handle vs. Revenue*, *supra* note 111.

¹⁸⁵ See *infra* Part IV.

¹⁸⁶ NAT'L COLLEGIATE ATHLETIC ASS'N RESEARCH, *REVENUES AND EXPENSES 2004–2016*, at 6 (Sept. 2017), https://www.ncaa.org/sites/default/files/2017RES_D1-RevExp_Entire_2017_Final_20180123.pdf [<https://perma.cc/N3SG-UFJM>].

and state and local governmental support.¹⁸⁷ Generated revenues are earned directly by athletic departments, and include income from ticket sales, broadcasting contracts, alumni donations, and royalties.¹⁸⁸ Cumulatively, allocated and generated revenue subsidize coaching salaries, student-athlete grants-in-aid, recruitment expenditures, building and grounds maintenance, travel expenses, and uniforms.¹⁸⁹ The revenue needed to cover these costs varies significantly across institutions, with most athletic programs falling in the red.¹⁹⁰ In 2014, the average Football Bowl Subdivision (FBS) athletic department subsidy from their parent institution was \$14.7 million.¹⁹¹ With institutions regularly facing budget deficits, internal measures to offset athletic expenditures are growing, and include increased student fees, purging non-revenue sports, and shifting budgets away from select academics.¹⁹²

Although not all agree that allocated revenue—like mandatory student fees—should be earmarked for college sports,¹⁹³ successful university athletic

¹⁸⁷ *Id.* Direct institutional support includes funds directed specifically to athletics, while indirect institutional funds include payment of utilities, maintenance, and support staff salaries. *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See William W. Berry III, *Enhancing “Education”: Rebalancing the Relationship Between Athletics and the University*, 78 LA. L. REV. 197, 199–200 (2017) (noting some of the expenses of college sports); see also William B. Gould IV et al., *Full Court Press: Northwestern University, A New Challenge to the NCAA*, 35 LOY. L.A. ENT. L. REV. 1, 18–19 (2014) (similarly listing expenses associated with collegiate sports).

¹⁹⁰ Brian Burnsed, *Athletics Departments that Make More than They Spend Still a Minority*, NCAA (Sept. 18, 2015), <http://www.ncaa.org/about/resources/media-center/news/athletics-departments-make-more-they-spend-still-minority> [<https://perma.cc/96WK-F6LN>].

¹⁹¹ *The 25 Universities that Spend the Most on Athletics*, SPORTS MGMT. DEGREE HUB (July 24, 2018), <https://www.sportsmanagementdegreehub.com/the-universities-that-spend-the-most-on-athletics/> [<https://perma.cc/CN53-ZDT9>].

¹⁹² See David Ridpath, *Who Actually Funds Intercollegiate Athletic Programs?*, FORBES (Dec. 12, 2014), <https://www.forbes.com/sites/ccap/2014/12/12/who-actually-funds-intercollegiate-athletic-programs/#429a2f9717af> [<https://perma.cc/E4W5-JUCN>] (documenting that student fees have increased at a rate thirteen percent higher than tuition); see also Taurus Myhand, *A Dream Still Deferred: The Unlawful Use of Student Fees for Instructional Technology in an Alabama Public School Causing a Disparate Impact for Minority Children*, 19 RUTGERS RACE & L. REV. 77, 82 (2018) (documenting that budget deficits are resulting in increased student fees); Lora Wuerdeman, Note, *Sidelining Big Business in Intercollegiate Athletics: How the NCAA Can De-Escalate the Arms Race by Implementing a Budgetary Allocation for Athletic Departments*, 39 N.C. CENT. L. REV. 85, 87 (2017) (noting that institutions have taken drastic measures to offset college athletic costs).

¹⁹³ See, e.g., Jon Marcus, *Should College Students Have to Pay Fees that Go to Groups They Don't Support?*, WASH. POST (Oct. 29, 2017), https://www.washingtonpost.com/local/education/should-college-students-have-to-pay-fees-that-go-to-groups-they-dont-support/2017/10/29/79276a24-b8e3-11e7-9e58-e6288544af98_story.html?utm_term=.08cfe6cc7bdf [<https://perma.cc/Z9J5-J9HM>] (reporting on proposals to give students the right to opt out of mandatory student fees geared towards certain groups, including

programs have positive impacts on institutional reputation.¹⁹⁴ For some schools, university success is directly linked to athletic performance.¹⁹⁵ Strong athletic programs boost enrollment, amplify college profiles, promote an internal culture of school spirit, and warrant long-term alumni relations.¹⁹⁶ While most NCAA athletic programs depend on allocated revenue, self-sufficiency is increasing.¹⁹⁷ Football and men's basketball programs—the revenue-generating sports at most institutions—have evolved into a billion-dollar industry.¹⁹⁸

The history of amateur sports commercialization dates back to the early part of the twentieth century.¹⁹⁹ Since then, the economic demands of college sports have amplified their commercialization, particularly with respect to the “money sports” subsidizing non-revenue generating athletics.²⁰⁰ The discourse surrounding the big business of college sports exploded after Johnny Manziel's “show me the money” gestures, Ed O'Bannon's antitrust litigation, and Northwestern University football players' attempt to unionize and bargain collectively.²⁰¹ Although dialogue surrounding pay-for-play, professionalizing

college athletics); Tovin Lapan, *College Students Begin to Cry Foul About Paying More for Sports*, HECHINGER REP. (Sept. 13, 2016), <https://hechingerreport.org/college-students-begin-cry-foul-paying-sports/> [<https://perma.cc/6HUG-CKH3>] (scrutinizing the increasing costs of student fees tied to college sports).

¹⁹⁴ Matthew J. Mitten et al., *Targeted Reform of Commercialized Intercollegiate Athletics*, 47 SAN DIEGO L. REV. 779, 818 (2010) (discussing that the success of a sports program increases university applications that lead to “superior student bodies, and increased alumni donations”).

¹⁹⁵ Randall S. Thomas & R. Lawrence Van Horn, *Are College Presidents Like Football Coaches? Evidence from Their Employment Contracts*, 58 ARIZ. L. REV. 901, 913 (2016).

¹⁹⁶ Linda Emma, *The Importance of College Athletic Programs to Universities*, SEATTLE PI, <https://education.seattlepi.com/importance-college-athletic-programs-universities-1749.html> [<https://perma.cc/M5RU-4N59>].

¹⁹⁷ See Gould et al., *supra* note 189, at 57–58 (providing that there are currently seven collegiate athletic programs that are self-sufficient and thus not dependent on their institutions for funds. These include: Texas, Ohio State, LSU, Penn State, Oklahoma, Nebraska, and Purdue).

¹⁹⁸ David A. Grenardo, *The Blue Devil's in the Details: How a Free Market Approach to Compensating College Athletes Would Work*, 46 PEPP. L. REV. 203, 207 (2019).

¹⁹⁹ Thomas J. Horton et al., *Addressing the Current Crisis in NCAA Intercollegiate Athletics: Where Is Congress?*, 26 MARQ. SPORTS L. REV. 363, 369 (2016).

²⁰⁰ *Id.* at 370; see also Berry, *supra* note 189, at 199–200 (noting that while football and men's basketball are generally deemed the revenue-generating sports, at some universities revenue generated from baseball and women's basketball also help support non-revenue generating sports).

²⁰¹ See Adam Epstein & Kathryn Kisska-Schulze, *Northwestern University, the University of Missouri, and the “Student-Athlete”: Mobilization Efforts and the Future*, 26 J. LEGAL ASPECTS SPORT 71, 92–97 (2016) (examining the activism of Northwestern University football players in their efforts to unionize and be considered employees of their institution); Kisska-Schulze, *supra* note 2, at 351–55 (discussing the “big business of college sports”); Kathryn Kisska-Schulze & Adam Epstein, *“Show Me the Money!”—Analyzing the Potential State Tax Implications of Paying Student-Athletes*, 14 VA. SPORTS & ENT. L.J. 13, 23 (2014) (noting that in 2013, Manziel reignited the debate over the pay-for-play model).

colleges sports, and the continued arms race of coaching salaries continues to grow,²⁰² the reality is that only a small fraction of university athletic programs generate revenue.²⁰³ Instead, like most academic and non-academic programs housed within college and university systems, allocated revenues are the lifeblood of college sports.²⁰⁴

President Trump's signing of the TCJA revolutionized the U.S. Tax Code.²⁰⁵ The law includes certain provisions that directly and negatively impact tax-exempt organizations, which include most colleges and universities.²⁰⁶ Certain changes made to individual and corporate taxes could further exacerbate financial ramifications for higher education. In addition, select provisions

²⁰² See Berry, *supra* note 189, at 213–15 (analyzing the arms race in collegiate salaries); Wayne M. Cox, *One Shining Moment to a Dark Unknown Future: How the Evolution of the Right of Publicity Hammers Home the Final Nail in the NCAA's Argument on Amateurism in Collegiate Athletics*, 80 ALB. L. REV. 195 (2016) (examining the evolution of intellectual property rights following *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015)); Marc Edelman, *From Student-Athletes to Employee-Athletes: Why a "Pay for Play" Model of College Sports Would Not Necessarily Make Educational Scholarships Taxable*, 58 B.C. L. REV. 1137 (2017) (exploring pay-for-play outside the risk of student-athletes' losing their tax-exempt status on qualified scholarships); Marc Edelman, *A Prelude to Jenkins v. NCAA: Amateurism, Antitrust Law, and the Role of Consumer Demand in a Proper Rule of Reason Analysis*, 78 LA. L. REV. 227 (2017) (exploring antitrust challenges to the NCAA's adherence to amateurism of student-athletes); M. Mark Heekin & Bruce W. Burton, *Compensation for College Athletes: The Non-Destructive Solution*, 15 WAKE FOREST J. BUS. & INTELL. PROP. L. 364, 372–74 (2015) (examining the "arms race" of coaching salaries in big time college sports); Kathryn Kisska-Schulze, *Analyzing the Applicability of IRC § 162 on the Pay-For-Play Model*, 16 VA. SPORTS & ENT. L.J. 190 (2017) (analyzing the tax implications of business expense deductions on the pay-for-play model); Josephine (Jo) R. Potuto et al., *What's in a Name? The Collegiate Mark, the Collegiate Model, and the Treatment of Student-Athletes*, 92 OR. L. REV. 879 (2014) (examining value and worth of student-athletes, and addressing considerations for compensating student-athletes); Meghan Rose Price, *O'Bannon v. National Collegiate Athletic Association: A Cinderella Story*, 22 JEFFREY S. MOORAD SPORTS L.J. 179 (2015) (critically analyzing the *O'Bannon* decision and its impact on the future of college sports); Andrew Steckler, Note, *Time to Pay College Athletes? Why the O'Bannon Decision Makes Pay-For-Play Ripe for Mediation*, 17 CARDOZO J. CONFLICT RESOL. 1071 (2016) (assessing the challenges to mediating pay-for-play disputes).

²⁰³ Darren A. Heitner, *Money & Sports: Economic Realities of Being an Athlete*, 8 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 161, 170 (2012) (noting that most collegiate athletic departments do not generate positive revenue); see also Kevin Brown & Antonio Williams, *Out of Bounds: A Critical Race Theory Perspective on 'Pay for Play'*, 29 J. LEGAL ASPECTS SPORT 30, 32 (2019) (documenting that the primary revenue-generating collegiate sports are NCAA Division I Football Bowl Subdivision (FBS football) and Division I men's basketball).

²⁰⁴ Heitner, *supra* note 203, at 170 (discussing that most athletic departments rely on their parent institutions for funding); see also Berry, *supra* note 189, at 199 (noting that most athletic departments lose money).

²⁰⁵ Kisska-Schulze, *supra* note 2, at 347.

²⁰⁶ See *infra* Parts IV.A.1–5.

directly target college sports.²⁰⁷ Combined, these changes could have serious impacts on higher education and collegiate athletics, resulting in the need for universities and their affiliated sports programs to secure new methods of funding. The *Murphy* decision could promulgate innovative channels for state governments to reinforce financial support to college athletic programs and higher education as a whole. To better analyze this initiative, it is important to first address the TCJA's effect on colleges and universities, as well as the evolving state tax frameworks post-*Murphy*. To examine these issues, this Part proceeds as follows: Section A discusses the impact of the TCJA on higher education, to include collegiate athletic programs, and Section B introduces the current status of state tax gambling initiatives.

A. *The Impact of the TCJA on Higher Education*

The TCJA significantly reformed U.S. federal tax legislation for the first time in over thirty years,²⁰⁸ affecting virtually every echelon of the American economy.²⁰⁹ As part of the overhaul, individual income tax rates and brackets were reduced.²¹⁰ The corporate tax rate transitioned from a graduated scale to a flat twenty-one percent.²¹¹ The standard deduction substantially increased,²¹² while the highest individual tax rate dropped to thirty-seven percent.²¹³ Moving costs and alimony payments became non-deductible,²¹⁴ as did business-related entertainment expenses.²¹⁵ Numerous changes were made to taxing foreign income.²¹⁶

In addition, the TCJA introduced new provisions that could directly or indirectly affect higher education and the college sports arena. Five provisions will change how colleges, universities and athletic departments operate. These include: (1) increasing the standard deduction for individual taxpayers; (2) eliminating the deduction previously available to charitable donors' receiving rights to athletic seating; (3) establishing a new excise tax on tax-exempt

²⁰⁷ See *infra* Parts IV.A.1–5.

²⁰⁸ See Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

²⁰⁹ Glenn Wong, *Significant Legal Issues in Intercollegiate Athletics*, ATHLETICDIRECTORU, <https://www.athleticdirectoru.com/articles/significant-legal-issues-in-intercollegiate-athletics-for-2018/> [<https://perma.cc/F92D-QA6X>].

²¹⁰ Tax Cuts and Jobs Act §§ 11001(a)–(b).

²¹¹ *Id.* § 13001(a)–(b).

²¹² *Id.* § 11021(a).

²¹³ *Id.* § 11001(a).

²¹⁴ *Id.* § 11051(a), 131 Stat. at 2089 (repeal of 26 U.S.C. § 215); see also § 11049(a), 131 Stat. at 2088 (codified at 26 U.S.C. § 217) (stating that the deduction for moving expenses is suspended for 2018–2025 (except for active-duty military)).

²¹⁵ *Id.* § 13304, 131 Stat. at 2124 (codified at 26 U.S.C. § 274).

²¹⁶ See Tax Cuts and Jobs Act §§ 13501, 131 Stat. at 2138–41; 13503, 131 Stat. at 2141–42; 14101–03, 131 Stat. at 2189–2208; 14201–02, 131 Stat. at 2208–16; 14211–15, 131 Stat. at 2216–18; 14221–23, 131 Stat. at 2218–21; 14301–04, 131 Stat. at 2221–26; and 14401–14502, 131 Stat. at 2226–35.

organizations' executive compensation; (4) including a new excise tax on private institutions' endowments; and (5) providing new tax provisions for colleges and universities earning unrelated business income (UBI).²¹⁷ Each of these provisions is discussed below separately.

1. Charitable Giving and the Standard Deduction

Following Congress's reconstruction of the Tax Code, changes made that directly impact individual taxpayers could also have an indirect effect on charitable contributions made to higher education. Through 2025, individual taxpayers can elect to take a significantly higher standard deduction on their individual income tax returns than previously available.²¹⁸ For most individuals, electing to itemize is no longer the optimal choice.²¹⁹ A 2019 study found that eighty-eight percent of taxpayers will now elect the standard deduction in lieu of itemizing.²²⁰ Congressional data further estimates that 18 million households elected to itemize in 2018, down from 46.5 million in 2017.²²¹

A negative side effect of this change is that taxpayers electing the standard deduction may moderate or eliminate their charitable contributions moving forward. Without itemizing, 28.5 million households will lose the charitable tax benefit associated with gifting.²²² Empirical evidence suggests that tax incentives directly affect gifting by lower and middle-class taxpayers.²²³ In fact, early indicators predict that doubling the standard deduction could result in a \$12 to \$20 billion reduction in annual gifting.²²⁴ Although recent data found

²¹⁷ See *infra* Parts IV.A.1–5.

²¹⁸ Tax Cuts and Jobs Act § 11021(a), 131 Stat. 2054, 2072 (2017) (codified at 26 U.S.C. § 63(c)(7)(A)(ii)). In 2017, the maximum standard deduction amounts were set at \$6350 for individuals, \$9350 for heads of household, and \$12,700 for married filing jointly. The TCJA almost doubled those amounts, increasing the maximum thresholds to \$12,000, \$18,000, and \$24,000 respectively.

²¹⁹ See Gary Strauss, *Higher Standard Deduction Means Fewer Taxpayers to Itemize*, AARP (Jan. 22, 2018), <https://www.aarp.org/money/taxes/info-2018/new-standard-deduction-fd.html> [<https://perma.cc/2X8C-2RVS>].

²²⁰ IND. UNIV. LILLY FAMILY SCH. OF PHILANTHROPY, CHARITABLE GIVING AND TAX INCENTIVES: ESTIMATING CHANGES IN CHARITABLE DOLLARS AND NUMBER OF DONORS RESULTING FROM FIVE POLICY PROPOSALS 7 (June 2019), <https://independentsector.org/wp-content/uploads/2019/06/Charitable-Giving-and-Tax-Incentives-Report-June2019.pdf> [<https://perma.cc/G5N8-A984>] (data indicators for tax year 2018).

²²¹ Jessica Dickler & Sharon Epperson, *What the New Tax Law Means for Your Charitable Giving*, CNBC (May 13, 2018), <https://www.cnbc.com/2018/05/11/what-the-new-tax-law-means-for-your-charitable-giving.html> [<https://perma.cc/V6LV-SKR2>].

²²² IND. UNIV. LILLY FAMILY SCH. OF PHILANTHROPY, *supra* note 220, at 7.

²²³ Kisska-Schulze, *supra* note 2, at 370 (citing to Alice Gresham Bullock, *Taxes, Social Policy and Philanthropy: The Untapped Potential of Middle- and Low-Income Generosity*, 6 CORNELL J.L. & PUB. POL'Y 325, 340 (1997)).

²²⁴ Elizabeth King, *Tax Reform, Mixed-Entity Markets, and Hospitals: How the 2017 Tax Cuts and Jobs Act Favors the For-Profit Hospital Model*, 37 YALE L. & POL'Y REV. 527, 574 (2019) (citing INDEP. SECTOR, 2017 FINAL TAX BILL SUMMARY, <https://>

that contributions to colleges and universities actually exceeded record highs in 2018, it also established that the total number of individual donors declined, suggesting that middle-income taxpayers were less inclined to make charitable donations last year as compared to wealthy donors.²²⁵

2. Athletic Seating & Fringe Benefit Deductions

Collegiate athletic departments depend on private contributions from alumni and boosters to subsidize their sports programs.²²⁶ Annually, NCAA Division I FBS fundraising accounts for \$26.72 million.²²⁷ Earmarked gifts from private donors to college athletic departments often support the building, renovation, or expansion of athletics facilities.²²⁸ Smaller gifts help fund named scholarship endowments, academic opportunities for student-athletes, and athletic leadership programs.²²⁹

Post-TCJA, donations made directly to college athletic departments could diminish due to the law's repeal of the deduction allowed on contributions made in exchange for athletic seating rights.²³⁰ Particularly, the TCJA disallows the so-called "80-20 rule," which permitted boosters an eighty percent deduction on gifts made in exchange for the right to buy tickets or seating at college athletic events.²³¹ Faced with the unpredictability of how the new law would impact their budgets, some universities suggested that donors make multi-year contributions at the close of 2017 to mitigate immediate budget shortfalls and ensure that priority seating rights remained.²³² In addition, the TCJA disallows companies to deduct fifty percent of the purchase price of tickets and stadium

independentsector.org/wp-content/uploads/2018/01/2017-final-tax-bill-summary.pdf [https://perma.cc/465D-3JP6]).

²²⁵ Nick Hazelrigg, *Larger Donations, Fewer Donors*, INSIDE HIGHER ED (June 20, 2019), <https://www.insidehighered.com/news/2019/06/20/donations-colleges-are-number-donors-down> [https://perma.cc/E3VA-GBR7].

²²⁶ Javonte U. Lipsey, *Assessing Fundraising Practices of Intercollegiate Athletic Departments: An Empirical Analysis of Tiered Reward Systems 1* (2019) (unpublished Master's thesis, University of North Carolina at Chapel Hill) (on file with *Ohio State Law Journal*).

²²⁷ *Id.*

²²⁸ *Athletics*, INSIDE PHILANTHROPY, <https://www.insidephilanthropy.com/campus-cash/athletics> [https://perma.cc/F96F-SR3V].

²²⁹ *Id.*

²³⁰ See Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 13704, 131 Stat. 2054, 2169 (codified at 26 U.S.C. § 170(l)).

²³¹ 26 U.S.C. § 170(l)(B) (2018).

²³² Darren Rovell, *Tax Reform Nixes Season-Ticket Donation Deductions; Schools Scramble into Action*, ESPN (Dec. 20, 2017), https://www.espn.com/college-football/story/_/id/21827570/tax-reform-bill-removes-deduction-donations-season-tickets-forcing-universities-make-other-plans [https://perma.cc/XK49-9FBY] (further noting that Southern Methodist University, Florida State, and the University of Oklahoma offered the multi-year contribution option to donors).

suites to concerts and sporting events for client entertainment purposes.²³³ Eliminating these deductions could result in a decreased number of individual booster and corporate donations.

3. Excise Tax on Executive Compensation

The TCJA imposed a new twenty-one percent excise tax (equivalent to the new flat corporate tax rate) on the top five highest paid employees of tax-exempt organizations whose annual compensation exceeds \$1 million.²³⁴ The tax likewise applies to excess parachute payments.²³⁵ The purpose of this tax was to better align compensation paid by tax-exempt organizations with for-profit companies.²³⁶ Tax-exempt organizations include corporations organized for educational purposes, as well as organizations fostering “national or international amateur sports competition.”²³⁷ Many public colleges, universities, and collegiate athletic programs could feel its impact.²³⁸

Today, compensating collegiate coaching staff in excess of \$1 million annually is the norm rather than the exception.²³⁹ The average college football coaching salary in 2018 was \$2.6 million,²⁴⁰ with the top overall coaches’ salaries across the United States concentrated in football and men’s basketball.²⁴¹ In fact, eight college basketball coaches and thirty-one college

²³³ Tax Cuts and Jobs Act § 13304, 131 Stat. at 2124 (codified at 26 U.S.C. § 274(a)(2018)).

²³⁴ *Id.* § 13602, 131 Stat. at 2157 (adding 26 U.S.C. § 4960(a)(1) (2018)).

²³⁵ *Id.* §§ 13602 (a)(1)–(2), (c)(2); see also Robert Lattinville & Roger Denny, *How the New Excise Tax Impacts Coach Compensation*, ATHLETICDIRECTORU, <https://athleticdirector.com/articles/how-the-new-excise-tax-impacts-coach-compensation/> [<https://perma.cc/E78K-WQJP>] (“[P]arachute payments are compensation paid upon the termination of the employee’s employment if the aggregate present value of such payment equals or exceeds three times the employee’s ‘base amount’ . . .”).

²³⁶ See H.R. REP. 115-409, at 333 (2017) (“The Committee further believes that alignment of the tax treatment of excessive executive compensation (as top executives may inappropriately divert organizational resources into excessive compensation) between for-profit and tax-exempt employers furthers the Committee’s larger tax reform effort of making the system fairer for all businesses.”).

²³⁷ See Tax Reform Act of 1976, Pub. L. No. 94-455, § 1313(a), 90 Stat. 1520, 1730 (codified as amended at I.R.C. § 501(c)(3)(2017)).

²³⁸ Betsy Field et al., *IRS Provides Guidance to Tax-Exempt Organizations in Applying New 4960 Excise Tax*, WILLIS TOWERS WATSON (Mar. 7, 2019), <https://www.willistowerswatson.com/en-US/insights/2019/03/insider-irs-provides-guidance-to-tax-exempts-for-4960-excise-tax> [<https://perma.cc/87H9-6RDF>].

²³⁹ See Steve Berkowitz, *Analysis: After Dabo Swinney’s Deal, How High Can College Football Salaries Go? Keep Watching.*, USA TODAY (Apr. 26, 2019), <https://www.usatoday.com/story/sports/ncaaf/2019/04/26/college-football-salaries-no-ceiling-after-dabo-swinney-deal/3591047002/> [<https://perma.cc/5X9F-2H2A>].

²⁴⁰ *Id.*

²⁴¹ Bobby Rich, *The 25 Highest-Paid College Coaches of 2019*, QUAD, <https://thebestschools.org/magazine/highest-paid-college-coaches/> [<https://perma.cc/7JXU-HTBZ>].

football coaches were the highest paid public employees in their state in 2017.²⁴² Lucrative coaching contracts propel the financial and successful endeavors of many college athletic departments, resulting in continued scholarly debates surrounding the arms race in collegiate coaching salaries.²⁴³ At the close of 2017, the Joint Committee on Taxation estimated that over a ten-year period this new excise tax will provide \$1.8 billion in revenue to the federal government.²⁴⁴

Despite initial concerns regarding this provision, on December 31, 2018 the IRS issued interim guidance, establishing that the twenty-one percent tax “will not apply to salaries of more than \$1 million paid to coaches of sports teams at state colleges and universities that abandon 501(c)(3) [tax-exempt] status but remain exempt from federal income tax as state instrumentalities.”²⁴⁵ Per this guidance, public colleges and universities can rely on the doctrine of implied sovereign immunity for tax-exempt status.²⁴⁶ The guidance clarified that institutions receiving a determination letter from the IRS recognizing their tax exempt status can proactively revoke such status, thus exempting them from the excise tax.²⁴⁷ However, a loophole was inadvertently created by Congress when drafting this provision, as public universities need not fall within the parameters of 501(c)(3) to enjoy tax-exempt status.²⁴⁸ Instead, as compared to private institutions, public colleges and universities are considered long-arms of the state and are therefore exempt from federal taxation.²⁴⁹ While public institutions

²⁴² Charlotte Gibson, *Who's the Highest Paid Person in Your State?*, ESPN (Mar. 20, 2018), http://www.espn.com/espn/feature/story/_/id/22454170/highest-paid-state-employee-s-include-ncaa-coaches-nick-saban-john-calipari-dabo-swinney-bill-self-bob-huggins [https://perma.cc/CU7N-7MZL].

²⁴³ Berry, *supra* note 189, at 213–14; *see also* Richard T. Karcher, *The Coaching Carousel in Big-Time Intercollegiate Athletics: Economic Implications and Legal Considerations*, 20 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 1 (2009) (analyzing the economics of college coaching contracts); Ted Tatos, *An Empirical Evaluation of EADA and NCAA College Sports Financial Data: Applications for Research and Litigation*, 29 *MARQ. SPORTS L. REV.* 411 (2019) (evaluating the reliability of college athletics financial data); Wuerdeman, *supra* note 192, at 85 (analyzing the arms race in college coaching salaries against antitrust law).

²⁴⁴ *See* JOINT COMM. ON TAXATION, ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 1, THE “TAX CUTS AND JOBS ACT”—FISCAL YEARS 2018–2027, JCX-67-17 (2017) (for fiscal years 2018 to 2027).

²⁴⁵ I.R.S. Notice 2019-09 (Dec. 31, 2018); Alexander L. Reid & Jason D. Dimopoulos, *Top State Colleges, Universities Could Dodge Excise Tax on Coaching Salaries*, *MORGAN LEWIS* (Jan. 23, 2019), <https://www.morganlewis.com/pubs/top-state-colleges-universities-could-dodge-excise-tax-on-coaching-salaries> [https://perma.cc/YXZ3-TWBV].

²⁴⁶ *IRS Answers Many Questions on New 21% Executive Compensation Tax*, *BKC* (June 10, 2019), <https://www.bkc-cpa.com/irs-answers-many-questions-on-new-21-executive-compensation-tax/> [https://perma.cc/85PP-TJQF].

²⁴⁷ Reid & Dimopoulos, *supra* note 245.

²⁴⁸ *See id.* (noting that Congress inadvertently created a “gap” which allows state colleges and universities not to pay the tax).

²⁴⁹ *See* Brian Faler, *Congress Fumbles New Tax on Nick Saban's Paycheck*, *POLITICO* (Jan. 11, 2019), <https://www.politico.com/story/2019/01/11/congress-tax-college-pay-1074839> [https://perma.cc/6LJN-ZZNY]; *see also* 26 U.S.C. § 115 (2012) (exempting

may currently rely on this interim guidance and avoid the twenty-one percent tax on coaching salaries, the Treasury anticipates promulgating forthcoming proposed regulations that could ultimately close this loophole.²⁵⁰

4. *Excise Tax on Private Institutions' Endowments*

The TCJA imposed a 1.4 percent excise tax on the investment income of certain private colleges and universities.²⁵¹ This so-called “Harvard tax” could impact numerous private institutions that will be required to pay millions of dollars on previously untaxed funds.²⁵² While not a direct tax on college athletic programs, the forfeiture of institutional revenue could impact future funding of more than 8000 student-athletes who compete in Division I athletics in Ivy League athletic programs.²⁵³ In conjunction with the \$1.8 billion that the federal government is expected to derive from the twenty-one percent excise tax on compensation, this endowment tax is also estimated to produce \$1.8 billion in federal revenue.²⁵⁴

from gross income “(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia; or (2) income accruing to the government of any possession of the United States, or any political subdivision thereof”).

²⁵⁰Lisa Christensen & Gabriel S. Marinaro, *Interim IRS Guidance on New Executive Compensation Requirements for Tax-Exempt Entities Creates New Challenges*, NAT'L L. REV. (Jan. 22, 2019), <https://www.natlawreview.com/article/interim-irs-guidance-new-executive-compensation-requirements-tax-exempt-entities> [<https://perma.cc/AE8F-WTDW>].

²⁵¹Tax Cuts and Jobs Act of 2017 § 13701, 131 Stat. 2054, 2167 (codified at 26 U.S.C. § 4968). The tax applies to private institutions that enrolled at least 500 students during the preceding tax year, have more than fifty percent of its tuition-paying students in the United States, and at least \$500,000 in aggregate fair market value of assets per student. *Id.* § 4968(b)(1)(A)–(D).

²⁵²Kisska-Schulze, *supra* note 2, at 375 (discussing the “Harvard tax”); *see also* Matthew Sussis, *Hit to Leading Universities from New Tax May Be in Tens of Millions of Dollars*, MARKETWATCH (Jan. 16, 2018), <https://www.marketwatch.com/story/hit-to-leading-universities-from-new-tax-may-be-in-tens-of-millions-of-dollars-2018-01-16> [<https://perma.cc/WH4N-DHXB>] (noting that at least twenty-seven Ivy league schools could be impacted by this tax).

²⁵³Kisska-Schulze, *supra* note 2, at 375 (citing *About the Ivy League*, IVY LEAGUE, https://ivyleague.com/sports/2017/8/13/HISTORY_0813173057.aspx [<https://perma.cc/DS9N-ZN47>]).

²⁵⁴*See* JOINT COMM. ON TAXATION, ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 1, THE “TAX CUTS AND JOBS ACT”—FISCAL YEARS 2018–2027, JCX-67-17 (2017).

5. *Unrelated Business Income Tax*

As noted, public colleges and universities are generally considered tax-exempt entities.²⁵⁵ However, any revenue derived from unrelated business income (UBI) is taxable at a rate of twenty-one percent.²⁵⁶ UBI is income earned by a tax-exempt organization from a trade or business that is not substantially related to the organization's exempted purpose.²⁵⁷ Activities that may be considered UBI include "advertising and exclusive provider arrangements, sports management agreements, facility rentals, arenas, food service, golf courses, hotels, recreation centers and programs, parking lots, commercial research, and bookstores."²⁵⁸

In addition, effective January 1, 2018, tax-exempt organizations must now include amounts paid or incurred for qualified transportation fringe benefits, including any parking facilities used for parking or for on-premises athletic facilities.²⁵⁹ Further, the TCJA requires that UBI be calculated on a per-business basis instead of a per-entity basis.²⁶⁰ Essentially, the new law disallows tax-exempt organizations from using net operating losses from one unrelated business activity to offset income earned from another of its unrelated business activities. One study determined that the new separate reporting requirement will annually diminish about \$12,000 in funds from each affected nonprofit's mission.²⁶¹

B. *State Tax Frameworks for Sports Gambling*

State expenditures on higher education remain at a historic low.²⁶² In addition, the TCJA will negatively impact funding to collegiate athletic programs. There is no doubt that Congress purposefully targeted higher education and college athletics in an effort to redirect revenue to the federal

²⁵⁵ See 26 U.S.C. § 512 (2018); see also INTERNAL REVENUE SERV., PUBLICATION 598: TAX ON UNRELATED BUSINESS INCOME OF EXEMPT ORGANIZATIONS 2 (Mar. 2012) (documenting that UBI is taxed at regular corporate tax rates).

²⁵⁶ See 26 U.S.C. § 512; see also INTERNAL REVENUE SERV., *supra* note 255, at 2 (documenting that UBI is taxed at regular corporate tax rates).

²⁵⁷ 26 U.S.C. § 512(a)(1).

²⁵⁸ INTERNAL REVENUE SERV., COLLEGES AND UNIVERSITIES COMPLIANCE PROJECT FINAL REPORT 11 (May 2013), https://www.irs.gov/pub/irs-tege/CUCP_FinalRpt_050213.pdf [<https://perma.cc/PWQ6-7BC9>].

²⁵⁹ See Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 13703, 131 Stat. 2054, 2169 (codified at 26 U.S.C. § 274).

²⁶⁰ See *id.* § 13702, 131 Stat. at 2168 (codified at 26 U.S.C. § 512(a)).

²⁶¹ *Unrelated Business Income Tax (UBIT)*, INDEP. SECTOR, <https://independentsector.org/policy/policy-issues/ubit/> [<https://perma.cc/RE3U-5MFD>] (last updated Apr. 17, 2019).

²⁶² MITCHELL ET AL., *supra* note 136, at 1.

deficit.²⁶³ However, with colleges and universities facing continued tuition increases, faculty cuts, and course reductions, state funding remains a critical component to help supplement—and perhaps now even substitute—lost internal revenue.²⁶⁴ Expanding funding models to address these financial pressures should be a strategic goal of state legislatures. *Murphy* could serve as the catalyst for generating new revenue back into colleges and universities.

Post-*Murphy*, fourteen states and the District of Columbia permit sports betting and are collecting tax revenue,²⁶⁵ while more than thirty states have introduced some form of pending legislation.²⁶⁶ The tax rates imposed on sports gambling vary across jurisdictions, from a low of 6.75 percent to a high of fifty-one percent.²⁶⁷ Similarly, the types of transactions upon which these levies are imposed differ across state lines. To better understand the national landscape surrounding the taxation of sports gambling, subsection (i) provides a chart identifying the current status of legislation, and subsection (ii) offers a more thorough discussion of the evolving measures taken by states to tax sports gambling in the United States.

²⁶³ Peter Cary & Allan Holmes, *The Trump Tax Law Has Its Own March Madness*, CTR. PUB. INTEGRITY, <https://publicintegrity.org/business/taxes/trumps-tax-cuts/the-trump-tax-law-has-its-own-march-madness/> [<https://perma.cc/PXT3-8F5R>] (last updated Apr. 7, 2019).

²⁶⁴ See MITCHELL ET AL., *supra* note 136, at 1 (identifying specific negative impacts of decreased funding following the Great Recession).

²⁶⁵ While both New York and New Mexico have very limited sports betting offerings currently, given that the offerings are not statewide, we have excluded them from the table. See Adam Candee, *Without Mobile, NY Sports Betting Finally Launches Upstate at Rivers*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/34442/ny-sports-betting-launch/> [<https://perma.cc/8XXF-QWYJ>] (last updated July 17, 2019); Holden, *supra* note 105. New York, by virtue of a 2013 law, allows in-person sports wagering at a small number of upstate casinos. See Candee, *supra* note 265. Whereas, by virtue of specific language in tribal compacts, a few New Mexico tribal casinos are able to offer sports wagering. See Holden, *supra* note 105.

²⁶⁶ Ryan Rodenberg, *United States of Sports Betting: An Updated Map of Where Every State Stands*, ESPN, https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization [<https://perma.cc/59P7-CNKZ>] (last updated Dec. 30, 2019) (the states with some form of enacted legislation are Arkansas, Delaware, Iowa, Indiana, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, and West Virginia).

²⁶⁷ RICHARD C. AUXIER, TAX POLICY CTR., STATES LEARN TO BET ON SPORTS: THE PROSPECTS AND LIMITATIONS OF TAXING LEGAL SPORTS GAMBLING 5 (May 2019).

1. Taxing Sports Gambling in the United States²⁶⁸

State	Legislation Specifications	Rate	Statute/ Bill	Date Passed/ Proposed	Projected Revenues
Legalized Sports Betting					
Arkansas ²⁶⁹	≤ \$150,000,000 net casino gaming receipts	13% ²⁷⁰	Ark. Const. Amend. 100	Passed 11/6/2018 ²⁷²	\$31,700,000 ²⁷³
	> \$150,000,000 net casino gaming receipts	20% ²⁷¹			
Colorado ²⁷⁴	N/A	10% ²⁷⁵	HB 1327	Engrossed on 04/24/2019 ²⁷⁶	\$104,000,000 ²⁷⁷

²⁶⁸ This subsection provides a chart summarizing the current status of states' sports gambling tax legislation as of March 1, 2020. As this is a quickly evolving area of law, readers should be aware that after March 1, 2020, information provided within this chart may have changed.

²⁶⁹ ARK. CONST. amend. 100, § 5.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Arkansas Issue 4, Casinos Authorized in Crittenden, Garland, Pope, and Jefferson Counties Initiative (2018)*, BALLOTPEDIA, [https://ballotpedia.org/Arkansas_Issue_4,_Casinos_Authorized_in_Crittenden,_Garland,_Pope,_and_Jefferson_Counties_Initiative_\(2018\)](https://ballotpedia.org/Arkansas_Issue_4,_Casinos_Authorized_in_Crittenden,_Garland,_Pope,_and_Jefferson_Counties_Initiative_(2018)) [<https://perma.cc/A4TN-ZZ68>].

²⁷³ We used the Oxford Economics estimate for Arkansas and cut it in half, as the model Arkansas adopted does not make sports betting as widely available as the Oxford Economics estimates. See OXFORD ECON., ECONOMIC IMPACT OF LEGALIZED SPORTS BETTING 36 (May 2017); see also Evin Demirel, *Don't Bet on It: Impact in Arkansas of Legalized Sports Gambling Unclear*, TALK BUS. & POL. (Aug. 13, 2018), <https://talkbusiness.net/2018/08/dont-bet-on-it-impact-in-arkansas-of-legalized-sports-gambling-unclear/> [<https://perma.cc/S8NR-6927>].

²⁷⁴ H.B. 1327, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019).

²⁷⁵ *Id.* § 44-30-1508(1).

²⁷⁶ *Colorado House Bill 1327*, LEGISCAN, <https://legiscan.com/CO/bill/HB1327/2019> [<https://perma.cc/B5SZ-FTZE>].

²⁷⁷ We are extrapolating projected \$10.4 million of tax revenue at a ten percent tax rate. See Kim MacCormack, *Colorado Online Sports Betting*, ROTOGRINDERS, <https://rotogrinders.com/sports-betting/colorado-online-sports-betting> [<https://perma.cc/QGF4-UTNK>].

Delaware ²⁷⁸	Revenue sharing model between state and casinos/horse racing industry Onsite (online launch pending) ²⁷⁹	50% ²⁸⁰	HB 100	Enrolled 05/12/2009 281	\$15,997,230.86 282
Indiana ²⁸³	On site and online ²⁸⁴	9.5% ²⁸⁵	HB 1015	Passed 05/08/2019 286	\$122,763,300 287
Iowa ²⁸⁸	On site and online ²⁸⁹	6.75% 290	SF 617	Passed 05/13/2019 291	\$49,128,081 ²⁹²

²⁷⁸ H.B. 100, 145th Gen. Assemb., Reg. Sess. (Del. 2009).

²⁷⁹ *Id.* § 22.

²⁸⁰ *Id.*

²⁸¹ *Delaware House Bill 100*, LEGISCAN, <https://legiscan.com/DE/bill/HB100/2009> [<https://perma.cc/388W-CAWW>].

²⁸² We extrapolated Delaware's potential revenue based on its first seven months of operation.

²⁸³ H.B. 1015, 121st Gen. Assemb., Reg. Sess. (Ind. 2019).

²⁸⁴ *Id.* at ch. 5, § 12.

²⁸⁵ *Id.* at ch. 10, § 1.

²⁸⁶ *Indiana House Bill 1015*, LEGISCAN, <https://legiscan.com/IN/bill/HB1015/2019> [<https://perma.cc/F8SB-8YBN>].

²⁸⁷ We extrapolated Indiana's potential revenue from the first three months of operation by multiplying the results by four. *See USA Legal Sports Betting States, Sites & Revenue 2020*, ACTION RUSH, <https://actionrush.com/sports-betting/> [<https://perma.cc/PVV3-DBAU>].

²⁸⁸ S.B. 617, 88th Gen. Assemb. (Iowa 2019).

²⁸⁹ *Id.* § 8.

²⁹⁰ *Id.* § 15.

²⁹¹ *Iowa Senate Bill 617*, LEGISCAN, <https://legiscan.com/IA/bill/SF617/2019> [<https://perma.cc/JR8U-8L2R>].

²⁹² We extrapolated Iowa's potential revenue from their first four months of operation by multiplying by three. *See USA Legal Sports Betting States, Sites & Revenue 2020*, *supra* note 287.

Michigan ²⁹³	Mobile and online ²⁹⁴	8.4% ²⁹⁵	HB 4311	Passed 12/31/2019 296	\$500,000,000 297
Mississippi ²⁹⁸	On site only ²⁹⁹	8% ³⁰⁰	HB 967	Passed 03/13/2017 301	\$100,800,000 302
Nevada ³⁰³	On site and online ³⁰⁴	6.75% 305	NRS § 463 <i>et seq.</i>	Legalized 1949	\$301,048,000 306
New Hampshire ³⁰⁷	Reserving right to set revenue-sharing agreements individually with licensees ³⁰⁸	N/A	HB 480-FN	Passed 07/16/2019 309	\$15,000,000 ³¹⁰

²⁹³ Michigan Gaming Control and Revenue Act, MICH. COMP. LAWS § 432.201 (1996); H.B. 4311, 100th Leg., Reg. Sess. (Mich. 2019).

²⁹⁴ Mich. H.B. 4311, § 4(1).

²⁹⁵ Michigan Gaming Control and Revenue Act § 432.212(16).

²⁹⁶ *Michigan House Bill 4311*, LEGISCAN, <https://legiscan.com/MI/bill/HB4311/2019> [<https://perma.cc/QL7C-PVXZ>].

²⁹⁷ *With Legalization Here, Michigan Poised for Sports Betting Boom*, PR NEWswire (Dec. 20, 2019), <https://www.prnewswire.com/news-releases/with-legalization-here-michigan-poised-for-sports-betting-boom-300978445.html> [<https://perma.cc/B8ZF-6EQY>].

²⁹⁸ H.B. 967, 2017 Leg., Reg. Sess. (Miss. 2017).

²⁹⁹ *Id.* § 11(3).

³⁰⁰ MISS. CODE ANN. §§ 75-76-177(1)(a)–(c) (2013).

³⁰¹ *Mississippi House Bill 967*, LEGISCAN, <https://legiscan.com/MS/bill/HB967/2017> [<https://perma.cc/N8R3-XBJK>].

³⁰² We extrapolated Mississippi's revenues out based on its March 2018 revenue of \$8.4 million, but recognize this may result in a slightly higher projection as a result of the NCAA basketball tournament typically being one of the most popular sports wagering events, which occurs during March. See Jeff Amy, *Mississippi Casinos Win More as Sports Betting Boost Extends*, ASSOCIATED PRESS (Apr. 30, 2019), <https://www.apnews.com/1277d8e3c0484fd28a459aa8567c1508> [<https://perma.cc/ZYU8-3NWT>].

³⁰³ NEV. REV. STAT. § 463.

³⁰⁴ *Id.*

³⁰⁵ *Id.* § 463.370(1)(c).

³⁰⁶ We used Nevada's 2018 revenue, as it was the only state offering sports wagering for the entire year. Brian Pempus, *Nevada Smashes Sports Betting Revenue Record with \$300 Million Year*, US BETS (Jan. 31, 2019), <https://www.usbets.com/nevada-2018-sports-betting-revenue/> [<https://perma.cc/U8TQ-H4LY>].

³⁰⁷ H.B. 480-FN, 165th Gen. Court, 2019 Sess. (N.H. 2019).

³⁰⁸ *Id.* § 287-I:3.

³⁰⁹ *Id.*

³¹⁰ We extrapolated \$15 million from New Hampshire projecting \$7.5 million of revenue from fifty percent revenue sharing agreement. See Lisa Kashinsky, *Chris Sununu Says N.H. Sports Betting Wagers Net \$15.8 Million in One Month*, BOS. HERALD (Jan. 28,

New Jersey ³¹¹	Land based Online by Casino Online by Racetrack	8.5% ³¹² 13% ³¹³ 14.25% ³¹⁴	AB 4111	Passed 06/11/2018 315	\$199,176,986.40 316
Oregon ³¹⁷	Online app	N/A	N/A	App launched 10/16/2019 318	To date, Oregon has lost \$5.3 million since launching the app ³¹⁹
Pennsylvania 320	On site and online ³²¹	34% ³²²	HB 271	Passed 10/30/2017 323	\$808,400,000 324

2020), <https://www.bostonherald.com/2020/01/28/chris-sununu-says-n-h-sports-betting-wagers-net-15-8-million-in-one-month/> [<https://perma.cc/2RLX-B8RT>].

³¹¹ A.B. 4111, 218th Gen. Assemb., Reg. Sess. (N.J. 2018).

³¹² *Id.* § 7.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ We extrapolated New Jersey's projected revenue based on its year-to-date revenue total as of the end of May 2019. See *New Jersey Sports Betting Revenue*, *supra* note 115.

³¹⁷ Though not mentioned by name, Oregon is one of four states originally exempted under PASPA's grandfather clause. See 28 U.S.C § 3704 (1992). Because of this, Oregon takes the stance that it is authorized to enact new sports gaming laws already within its state structure. See Dustin Gouker, *Oregon Lottery Says It Has 'Broad Authority to Introduce' Sports Betting, Without New Law*, LEGAL SPORTS REP. (Apr. 19, 2019), <https://www.legal-sportsreport.com/19824/oregon-lottery-sports-betting-2018/> [<https://perma.cc/L6VX-NFRV>].

³¹⁸ See Jabari Young, *Oregon Lottery to Launch Sports Betting App Scoreboard with an Expected \$300 Million in Wagers*, CNBC, <https://www.cnbc.com/2019/10/15/oregon-lottery-to-launch-sports-betting-app-scoreboard.html> [<https://perma.cc/GEF2-238Z>] (last updated Oct. 15, 2019).

³¹⁹ John Canzano, *Canzano: Oregon Lottery Scoreboard Is Hamstrung with College Sports Wagering Ban*, OREGONLIVE, <https://www.oregonlive.com/sports/2020/02/canzano-oregon-lottery-scoreboard-is-hamstrung-with-college-sports-wagering-ban.html> [<https://perma.cc/8D4U-8JYY>] (last updated Feb. 26, 2020).

³²⁰ H.B. 271, 2017 Gen. Assemb., Reg. Sess. (Pa. 2017).

³²¹ *Id.* § 13C11(A)(1)(I).

³²² *Id.* § 13C62(A).

³²³ *Pennsylvania House Bill 271*, LEGISCAN, <https://legiscan.com/PA/text/HB271/201> [<https://perma.cc/Z8D6-U5J5>].

³²⁴ To estimate Pennsylvania's projected revenue, we used a 2017 Oxford Economics report based on convenient availability of the product, because as of the time of writing, Pennsylvania had not yet launched mobile wagering, though it was slated to during Summer 2019. Though Oxford Economics used a lower tax rate than Pennsylvania actually

Rhode Island ³²⁵	Revenue sharing model between state, IGT (partner company), and casinos On site only ³²⁶	51% to the state, 32% to the partner, and 17% to the casino ³²⁷	S 0037A	Passed 03/25/2019 ³²⁸	\$11,500,000 ³²⁹
Tennessee ³³⁰	Online ³³¹	20% ³³²	HB 1	Passed 06/04/2019 ³³³	\$29,750,000 ³³⁴
West Virginia ³³⁵	On site and online ³³⁶	10% ³³⁷	SB 415	Passed 04/23/2018 ³³⁸	\$23,864,696.60 ³³⁹

implemented, we have used the Oxford Economics projections for simplicity. *See* OXFORD ECON., *supra* note 273, at 39.

³²⁵ S. 0037A, Gen. Assemb., Jan. Sess. (R.I. 2019).

³²⁶ *Id.* § 42-61.2-5(a).

³²⁷ *Id.* § 42-61.2-5(a)(1)-(3).

³²⁸ *Rhode Island Senate Bill 37*, LEGISCAN, <https://legiscan.com/RI/text/S0037/id/1851946> [<https://perma.cc/5R6P-RG64>].

³²⁹ Rhode Island's sports betting revenue projection is based off of the Governor's estimation of \$11,500,000 in the state budget. *See* Patrick Anderson, *R.I. Sports Betting Numbers Improved in March, but Remained Below Expectations*, PROVIDENCE J. (Apr. 22, 2019), <https://www.providencejournal.com/news/20190422/ri-sports-betting-numbers-improved-in-march-but-remained-below-expectations> [<https://perma.cc/5Z73-2BML>].

³³⁰ H.B. 1, 2019 Gen. Assemb. (Tenn. 2019).

³³¹ *Id.*

³³² *Id.* § 4-51-304(b).

³³³ *Tennessee House Bill 1*, LEGISCAN, <https://legiscan.com/TN/bill/HB0001/2019> [<https://perma.cc/W9W5-3BLF>].

³³⁴ We extrapolated Tennessee's gross revenue from a \$5.95 million projection on 20% tax revenue for 2021. *See* JACKSON BRAINERD, NAT'L CONFERENCE OF STATE LEGISLATURES, SHOW ME THE (SPORTS BETTING) MONEY (Aug. 2019), https://www.ncsl.org/Portals/1/Documents/Fiscal/Sports_Betting_SALT_Presentation_2019.pdf [<https://perma.cc/UY84-87DW>].

³³⁵ S.B. 415, 2018 Leg., Reg. Sess. (W.V. 2018).

³³⁶ *Id.* § 29-22D-15(a)-(c).

³³⁷ *Id.* § 29-22D-16(a).

³³⁸ *West Virginia Senate Bill 415*, LEGISCAN, <https://legiscan.com/WV/bill/SB415/2018> [<https://perma.cc/DGH2-6Q9A>].

³³⁹ We extrapolated West Virginia revenue based on revenue earned through the week of June 29, 2019. *See* *West Virginia Sports Betting Revenue*, PLAYWV!, <https://www.playwv.com/revenue/> [<https://perma.cc/AS9T-SYYN>].

Washington, D.C. ³⁴⁰	Tax on private gross sports wagering revenue On site and online ³⁴¹	10% ³⁴²	CB B22-0944	Passed 01/23/2019 343	\$92,000,000 ³⁴⁴
Legislation Introduced					
Alabama ³⁴⁵	N/A	10% ³⁴⁶	HB 315	Introduced 04/02/2019; died in committee ³⁴⁷	
Alaska ³⁴⁸	Establishing Alaska Lottery Corporation that would be permitted to institute video and sports betting ³⁴⁹	N/A	HB 246 SB 188	Introduced 02/12/2020 ³⁵⁰ Introduced 2/12/2020 ³⁵¹	
Arizona ³⁵²	Allowing Native American tribes exclusive	6.75% 354	SB 1158	Introduced 01/23/2019; died in chamber ³⁵⁵	

³⁴⁰ C.B. B22-0944, 22d Council (D.C. 2019).

³⁴¹ *Id.* § 311(a)(1).

³⁴² *Id.* § 315(a)(2).

³⁴³ *Washington D.C. Council Bill 220944*, LEGISCAN, <https://legiscan.com/DC/text/B22-0944/2017> [<https://perma.cc/TB65-X67A>].

³⁴⁴ Martin Austermuhle, *Sports Betting Is Coming to D.C., and Here's Everything You Need to Know About It*, WAMU (Dec. 18, 2018), <https://wamu.org/story/18/12/18/everything-you-need-to-know-about-sports-bettings-likely-arrival-to-d-c> [<https://perma.cc/PUA8-GZ7A>] (projection based over a four-year period).

³⁴⁵ H.B. 315, 2019 Leg., Reg. Sess. (Ala. 2019).

³⁴⁶ *Id.* § 16(a).

³⁴⁷ *Alabama House Bill 315*, LEGISCAN, <https://legiscan.com/AL/bill/HB315/2019> [<https://perma.cc/E2GY-BNL7>].

³⁴⁸ H.B. 246, 31st Leg., 2d Sess. (Alaska 2020); S.B. 188, 31st Leg., 2d Sess. (Alaska 2020).

³⁴⁹ H.B. 246, 31st Leg., 2d Sess. at Art. V, § 05.18.500 (Alaska 2020); S.B. 188, 31st Leg., 2d Sess. at Art. V, § 05.18.500 (Alaska 2020).

³⁵⁰ *Alaska House Bill 246*, LEGISCAN, <https://legiscan.com/AK/bill/HB246/2019> [<https://perma.cc/AC6R-NDZ8>].

³⁵¹ *Alaska Senate Bill 188*, LEGISCAN, <https://legiscan.com/AK/bill/SB188/2019> [<https://perma.cc/WR2E-TLGS>].

³⁵² S.B. 1158, 54th Leg., 1st Reg. Sess. (Ariz. 2019).

³⁵⁴ *Id.* § 42-5073(B)(7).

³⁵⁵ *Arizona Senate Bill 1158*, LEGISCAN, <https://legiscan.com/AZ/bill/SB1158/2019> [<https://perma.cc/F6DH-HVUQ>].

	rights to sports gambling ³⁵³			
California ³⁵⁶	Proposing a constitutional amendment that would remove a constitutional prohibition on certain types of gambling	N/A	ACA 16	Introduced 06/27/2019 ³⁵⁷
Connecticut 358	N/A	9.89% 359	HB 7331	Introduced 03/07/2019; died in committee ³⁶⁰
Florida ³⁶¹	N/A	15% ³⁶²	SB 972 SB 968	Introduced 01/14/2020 ³⁶³ Introduced 01/14/2020 ³⁶⁴
Georgia ³⁶⁵		10% ³⁶⁶	HB 570	Introduced 03/05/2019 ³⁶⁷
Hawaii ³⁶⁸	Introduced to establish an online gaming task force to examine and recommend policy issues regarding online gaming ³⁶⁹	N/A	HB 1107	Introduced 01/24/2019; died in committee ³⁷⁰

³⁵³ *Id.* § 5-1201(A).

³⁵⁶ A.C.A. 16, 2019 Leg., Reg. Sess. (Cal. 2019).

³⁵⁷ *Id.*

³⁵⁸ H.B. 7331, Gen. Assemb., Jan. Sess. (Conn. 2019).

³⁵⁹ *Id.* § 1 (g)(7)(i).

³⁶⁰ *Connecticut House Bill 7331*, LEGISCAN, <https://legiscan.com/CT/bill/HB07331/2019> [<https://perma.cc/U2XV-WEXS>].

³⁶¹ S.B. 968, 2020 Leg., Reg. Sess. (Fla. 2020); S.B. 972, Fla. Leg., Reg. Sess. (Fla. 2020).

³⁶² Fla. S.B. 972, § 547.009.

³⁶³ *Florida Senate Bill 972*, LEGISCAN, <https://legiscan.com/FL/bill/S0972/2020> [<https://perma.cc/CL3Z-MDMG>].

³⁶⁴ *Florida Senate Bill 968*, LEGISCAN, <https://legiscan.com/FL/bill/S0968/2020> [<https://perma.cc/8Y37-ECV3>].

³⁶⁵ H.B. 570, Gen. Assemb., Reg. Sess. (Ga. 2019).

³⁶⁶ *Id.* § 57-27-133(a).

³⁶⁷ *Georgia House Bill 570*, LEGISCAN, <https://legiscan.com/GA/bill/HB570/2019> [<https://perma.cc/ADA9-NU9P>].

³⁶⁸ H.B. 1107, 30th Leg., Reg. Sess. (Haw. 2019).

³⁶⁹ *Id.* § 1.

³⁷⁰ *Hawaii House Bill 1107*, LEGISCAN, <https://legiscan.com/HI/bill/HB1107/2019> [<https://perma.cc/4YU9-LUFZ>].

Illinois ³⁷¹	Contains short provision title only ³⁷²	N/A	HB 3315	Introduced 02/15/2019 ³⁷³
Iowa ³⁷⁴	N/A	6.75% 375	SSB 1080	Subcommittee Meeting 02/06/2019 ³⁷⁶
Kansas ³⁷⁷	Integrity fee on aggregate amount wagered Tax	0.25% 378 6.75% 379	HB 2068	Introduced 01/24/2019 ³⁸⁰
Kentucky ³⁸¹	Placed at licensed track/professional sports venue Placed online, via smart phone, or other off-site technology	10.25% 382 14.25% 383	HB 175	Introduced 02/05/2019 ³⁸⁴
Louisiana ³⁸⁵	N/A	13% ³⁸⁶	HB 587	Introduced 04/15/2019; died in chamber ³⁸⁷

³⁷¹ H.B. 3315, 101st Gen. Assemb., Reg. Sess. (Ill. 2019).

³⁷² *Id.* § 1.

³⁷³ *Illinois House Bill 3315*, LEGISCAN, <https://legiscan.com/IL/bill/HB3315/2019> [https://perma.cc/AFP4-67F5].

³⁷⁴ S.S.B. 1080, 88th Gen. Assemb., Reg. Sess. (Iowa 2019).

³⁷⁵ *Id.* § 13(4).

³⁷⁶ *Iowa Senate Study Bill 1080*, LEGISCAN, <https://legiscan.com/IA/bill/SSB1080/2019> [https://perma.cc/C5PG-MWZK].

³⁷⁷ H.B. 2068, 2019 Leg. (Kan. 2019).

³⁷⁸ *Id.* § 6(a).

³⁷⁹ *Id.* § 16(H)(19)(i).

³⁸⁰ *HB 2068*, KAN. LEGISLATURE, http://www.kslegislature.org/li/b2019_20/measures/hb2068/ [https://perma.cc/VTU7-QZM7].

³⁸¹ H.B. 175, Gen. Assemb., Reg. Sess. (Ky. 2019).

³⁸² *Id.* § 19(2)(a).

³⁸³ *Id.* § 19(2)(b).

³⁸⁴ *House Bill 175*, KY. GEN. ASSEMBLY, <https://apps.legislature.ky.gov/record/19RS/hb175.html> [https://perma.cc/ER8K-SS4A].

³⁸⁵ H.B. 587, La. Leg., 2019 Reg. Sess. (La. 2019).

³⁸⁶ *Id.* § 610(A).

³⁸⁷ *Louisiana House Bill 587*, LEGISCAN, <https://legiscan.com/LA/bill/HB587/2019> [https://perma.cc/FHW6-JS9B].

Maine ³⁸⁸	N/A	25% ³⁸⁹	LD 1348	Introduced 03/21/2019; failed 05/14/2019 ³⁹⁰
Maryland ³⁹¹	License fee \$300,000 ³⁹² Annual renewal \$50,000 ³⁹³	20% ³⁹⁴	HB 1132	Introduced 02/08/2019 ³⁹⁵
Massachusetts ³⁹⁶	N/A	12.50% ³⁹⁷	S 201	Introduced 01/22/2019 ³⁹⁸
Minnesota ³⁹⁹	N/A	6.75% ⁴⁰⁰	SF 1894	Introduced 02/28/2019 ⁴⁰¹
Missouri ⁴⁰²	N/A	6.75% ⁴⁰³	SB 222	Introduced 01/09/2019; died in chamber ⁴⁰⁴
Montana ⁴⁰⁵	N/A	8.50% ⁴⁰⁶	SB 330	Introduced 03/13/2019; vetoed 05/03/2019 ⁴⁰⁷
Nebraska ⁴⁰⁸	N/A	N/A	LB 990	Introduced 01/14/2020 ⁴⁰⁹
New Mexico	Sports betting only permitted at two tribal-	N/A	N/A	N/A

³⁸⁸ L.D. 1348, 129th Leg., 1st Reg. Sess. (Me. 2019).

³⁸⁹ *Id.* § 1085(1).

³⁹⁰ *Maine House Bill 1348*, LEGISCAN, <https://legiscan.com/ME/bill/LD1348/2019> [<https://perma.cc/MV2Q-L2BW>].

³⁹¹ H.B. 1132, 2019 Leg., Reg. Sess. (Md. 2019).

³⁹² *Id.* § 9-121(C)(3).

³⁹³ *Id.* § 9-121(C)(5).

³⁹⁴ *Id.* § 9-121(D)(1).

³⁹⁵ *See generally id.*

³⁹⁶ S. 201, 191st Gen. Court (Mass. 2019).

³⁹⁷ *Id.* § 2(g).

³⁹⁸ *Massachusetts Senate Bill 201*, LEGISCAN, <https://legiscan.com/MA/bill/S201/2019> [<https://perma.cc/ZBV8-AM3P>].

³⁹⁹ S.F. 1894, 91st Leg., Reg. Sess. (Minn. 2019).

⁴⁰⁰ *Id.* § 297J.05(1).

⁴⁰¹ *See generally id.*

⁴⁰² S.B. 222, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019).

⁴⁰³ *Id.* § 313.1020(1).

⁴⁰⁴ *Missouri Senate Bill 222*, LEGISCAN, <https://legiscan.com/MO/bill/SB222/2019> [<https://perma.cc/8CFD-ST6B>].

⁴⁰⁵ S.B. 330, 66th Leg., Reg. Sess. (Mont. 2019).

⁴⁰⁶ *Id.* § 14(1).

⁴⁰⁷ *Montana Senate Bill 330*, LEGISCAN, <https://legiscan.com/MT/bill/SB330/2019> [<https://perma.cc/DX9Q-BLV7>].

⁴⁰⁸ L.B. 990, 106th Leg., 2d Sess. (Neb. 2020).

⁴⁰⁹ *Nebraska Legislature Bill 990*, LEGISCAN, <https://legiscan.com/NE/bill/LB990/2019> [<https://perma.cc/BH4L-PQET>].

	owned casinos ⁴¹⁰			
New York ⁴¹¹	On-site	8.50% 412	SB 17D	Introduced 01/09/2019 ⁴¹⁴
	Mobile wagering	12% ⁴¹³		
North Carolina ⁴¹⁵	Fantasy contests; initial registration fee	10% of previous year's net revenue 416	HB 929	Introduced 04/16/2019 ⁴¹⁷
North Dakota ⁴¹⁸	Gross proceeds ≤ \$1,500,000	1% ⁴¹⁹	HB 1254	Introduced 01/03/2019; engrossed 03/25/2019 ⁴²¹
	Gross proceeds > \$1,500,000	2.50% 420		
Ohio ⁴²²	N/A	10% ⁴²³	HB 194	Introduced 04/09/2019 ⁴²⁵
			SB 111	Introduced 03/14/2019 ⁴²⁶

⁴¹⁰ While New Mexico has allowed these two casinos to facilitate sports betting, there is no actual legislative authority to do so in the state. See Brittany Bade, *Second New Mexico Casino Launches Sports Betting Book*, KRQE, <https://www.krqe.com/news/new-mexico/second-new-mexico-casino-launches-sports-betting-book/> [<https://perma.cc/Z3JA-BL6Q>] (last updated Mar. 15, 2019).

⁴¹¹ S.B. 17D, 2019 Leg., Reg. Sess. (N.Y. 2019).

⁴¹² *Id.* § 1367(8).

⁴¹³ *Id.*

⁴¹⁴ See generally *id.*

⁴¹⁵ H.B. 929, 2019 Gen. Assemb., Reg. Sess. (N.C. 2019).

⁴¹⁶ *Id.* § 18E-603(b)(3).

⁴¹⁷ *North Carolina House Bill 929*, LEGISCAN, <https://legiscan.com/NC/bill/H929/2019> [<https://perma.cc/8PJU-HQ4Z>].

⁴¹⁸ H.B. 1254, 66th Leg. Assemb., Reg. Sess. (N.D. 2019).

⁴¹⁹ *Id.* § 53-06. 1-12(1)(a).

⁴²⁰ *Id.* § 53-06. 1-12(1)(b).

⁴²¹ *North Dakota House Bill 1254*, LEGISCAN, <https://legiscan.com/ND/text/1254/id/1896087> [<https://perma.cc/6P24-H7RQ>].

⁴²² H.B. 194, 133d Gen. Assemb., Reg. Sess. (Ohio 2019); S.B. 111, 133d Gen. Assemb., Reg. Sess. (Ohio 2019).

⁴²³ Ohio H.B. 194, § 5753.02.

⁴²⁵ *Ohio House Bill 194*, LEGISCAN, <https://legiscan.com/OH/bill/HB194/2019> [<https://perma.cc/H7N9-MURK>].

⁴²⁶ *Ohio Senate Bill 111*, LEGISCAN, <https://legiscan.com/OH/bill/SB111/2019> [<https://perma.cc/2AUS-EN7K>].

		6.25% 424		
South Carolina ⁴²⁷	Proposing a constitutional amendment to allow the legalization of sports betting ⁴²⁸	N/A	S.J. Res. 57	Introduced 01/08/2019 ⁴²⁹
South Dakota ⁴³⁰	Proposing a state constitutional amendment granting the legislature power to authorize sports betting only in Deadwood, South Dakota ⁴³¹	N/A	S.J. Res. 501	Enrolled 02/11/2020 ⁴³²
Texas ⁴³³	Per wager	6.25% 434	HB 1275	Introduced 02/01/2019; died in committee ⁴³⁵
Vermont ⁴³⁶	≤ \$50,000 revenue \$50,000 – \$134,000	3.50% 437 4.50% + \$1750 438	H0484	Introduced 02/28/2019 ⁴⁴⁰

⁴²⁴ Ohio S.B. 111, § 5753.021.

⁴²⁷ S.J. Res. 57, 2019 Gen. Assemb., 123d Sess. (S.C. 2019).

⁴²⁸ *Id.* at 1.

⁴²⁹ *See generally id.*

⁴³⁰ S.J. Res. 501, 95th Leg., Reg. Sess. (S.D. 2020).

⁴³¹ *Id.*

⁴³² *South Dakota Senate Joint Resolution*, LEGISCAN, <https://legiscan.com/SD/bill/SJR501/2020> [<https://perma.cc/7SSH-6MAP>].

⁴³³ H.B. 1275, 86th Leg., Reg. Sess. (Tex. 2019).

⁴³⁴ *Id.* at § 2005.108(a).

⁴³⁵ *Texas House Bill 1275*, LEGISCAN, <https://legiscan.com/TX/bill/HB1275/2019> [<https://perma.cc/EN2G-BQYG>].

⁴³⁶ H.B. 484, 2019 Gen. Assemb., Reg. Sess. (Vt. 2019).

⁴³⁷ *Id.* § 1310(a)(1).

⁴³⁸ *Id.* § 1310(a)(2).

⁴⁴⁰ *Vermont House Bill 484*, LEGISCAN, <https://legiscan.com/VT/comments/H0484/2019> [<https://perma.cc/3K84-JNUN>].

	> \$134,000 revenue	6.75% + \$5530 439		
Virginia ⁴⁴¹	N/A	15% ⁴⁴²	HB 1638	Introduced 11/20/2018; died in chamber ⁴⁴³
Washington ⁴⁴⁴	Legalizing sports gambling in tribal gaming facilities only ⁴⁴⁵	N/A	HB 1975	Introduced 02/08/2019 ⁴⁴⁶
Wyoming ⁴⁴⁷	Online only ⁴⁴⁸	16% ⁴⁴⁹	HB 225	Introduced 02/14/2020 ⁴⁵⁰
No Current Legislation Pending ⁴⁵¹				
Idaho				
Oklahoma				
Utah				
Wisconsin				

2. Taxing State Gambling Revenue—An Overview

Since the *Murphy* decision emerged, eight states have taken in almost \$8 billion in combined sports wagers.⁴⁵² Legislators across the country have introduced more than 100 bills that could legalize sports betting in the majority of states.⁴⁵³ Implementing sound regulations and appropriate tax rates are of significant consideration.⁴⁵⁴ Tapping into this new revenue source could prove

⁴³⁹ *Id.* § 1310(a)(3).

⁴⁴¹ H.B. 1638, 2019 Leg., Sess. (Va. 2019).

⁴⁴² *Id.* § 58.1-4036(A).

⁴⁴³ *Virginia House Bill 1638*, LEGISCAN, <https://legiscan.com/VA/bill/HB1638/2019> [https://perma.cc/K44T-K5DB].

⁴⁴⁴ H.B. 1975, 66th Leg., Reg. Sess. (Wa. 2019).

⁴⁴⁵ *Id.* § 2(1).

⁴⁴⁶ *See generally id.*

⁴⁴⁷ H.B. 225, 65th Leg., Reg. Sess. (Wyo. 2020).

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.* § 9-23-104.

⁴⁵⁰ *Wyoming House Bill 225*, LEGISCAN, <https://legiscan.com/WY/bill/HB0225/2020> [https://perma.cc/SH73-2ZFJ].

⁴⁵¹ As of the date of this publication.

⁴⁵² David Purdum, *One Year into Legal U.S. Sports Betting: What Have We Learned?*, ESPN (May 13, 2019), https://www.espn.com/chalk/story/_/id/26740441/one-year-legal-us-sports-betting-learned [https://perma.cc/SHK4-5BV2].

⁴⁵³ *See* Geoff Mulvihill, *State Lawmakers Place Their Bets on Sports Gambling*, ASSOCIATED PRESS (Feb. 21, 2019), <https://www.apnews.com/e257aa7d326d43259d66183253cd0563> [https://perma.cc/QRL2-YC8V].

⁴⁵⁴ Holden, *supra* note 3, at 375 (discussing the taxation of sports gambling); *see also* Jennifer Roberts & Greg Gemignani, *Who Wore It Better? Federal v. State Government*

integral to states' future budget plans; however, setting tax rates too high could spur illegal gambling and stifle revenues.⁴⁵⁵ To date, the rates imposed in those states that have legalized sports betting vary widely.

Currently, there is no direct federal oversight of sports betting.⁴⁵⁶ States can set tax rates without an established cap.⁴⁵⁷ Such liberties have resulted in a great variance of rates. Nevada boasts the lowest tax rate at 6.75%, while Rhode Island imposes the highest rate of 51%.⁴⁵⁸ Both Rhode Island and Delaware implement revenue sharing programs that require the division of gaming revenue between the state and supporting operators.⁴⁵⁹

New Jersey differentiates tax rates based on the type of wager made.⁴⁶⁰ Land-based wagers are taxed at the lowest state gambling rate of 8.5%, while online casino bets are taxed at 13%, and online racetrack wagers at 14.25%.⁴⁶¹ Pennsylvania sports betting is subject to a 34% state tax on land-based wagers and a 2% local tax on sports betting revenue.⁴⁶² In Mississippi, where only in-person betting is permitted, the tax includes an 8% state and 4% local tax.⁴⁶³ West Virginia imposes a 10% tax on both in-person and online wagers.⁴⁶⁴ In January 2019, the Washington, D.C. Council gave final approval to fast-track sports betting in the Nation's Capital.⁴⁶⁵ The law, which went into effect on May 3, 2019, imposes a 10% tax on revenue derived from gross sports wagering.⁴⁶⁶

Regulation of Sports Betting, 9 U. NEV. L.V. GAMING L.J. 77, 78–79 (2019) (noting that important issues to consider during legislative deliberations of legalized sports wagering include regulatory committees and tax rates).

⁴⁵⁵ AUXIER, *supra* note 267, at 6.

⁴⁵⁶ See Roberts & Gemignani, *supra* note 454, at 88.

⁴⁵⁷ See *id.*

⁴⁵⁸ See NEV. REV. STAT. ANN. § 463.3770(2) (LexisNexis 2019) (6.75% is the tax imposed on land-based wagering); see also S.B. 0037A, Gen. Assemb., Jan. Sess. (R.I. 2019).

⁴⁵⁹ See S.B. 0037A, 2019 Gen. Assemb., Jan. Sess. (R.I. 2019); H.B. 100, 145th Gen. Assemb., Reg. Sess. (Del. 2009); see also AUXIER, *supra* note 267, at 6.

⁴⁶⁰ See AUXIER, *supra* note 267, at 5–6 (discussing sports gaming taxation in the state).

⁴⁶¹ A.B. 4111, 218th Leg., Reg. Sess. (N.J. 2018).

⁴⁶² H.B. 271, 201st Gen. Assemb., Reg. Sess. (Pa. 2017); see also Jill R. Dorson, *Pennsylvania's Sports Betting Revenue Swoons in April, but Mobile Is Coming . . . Really Soon?*, SPORTSHANDLE (May 16, 2019), <https://sportshandle.com/pennsylvania-sports-betting-revenue-april/> [<https://perma.cc/C4KU-XEN9>] (noting the breakdown of state and local tax implementation).

⁴⁶³ *Mississippi Sports Betting Information—Sportsbooks, Betting Sites*, SPORTSHANDLE, <https://sportshandle.com/mississippi/> [<https://perma.cc/6JLG-NF5V>].

⁴⁶⁴ S.B. 415, 2018 Leg., Reg. Sess. (W. Va. 2018); see also Rodenberg, *supra* note 266.

⁴⁶⁵ C.B. B22-0944, 22d Council (D.C. 2019); see also Sports Wagering Lottery Amendment Act of 2018, D.C. Law 22.312 (2019).

⁴⁶⁶ D.C. C.B. B22-0944, § 315(a)(2); *B22-0944—Sports Wagering Lottery Amendment Act of 2018*, COUNCIL D.C., <http://lims.dccouncil.us/Legislation/B22-0944> [<https://perma.cc/4PC9-JUAV>].

To measure these laws' impact, it is appropriate to compare projected revenue to actual revenue collected.⁴⁶⁷ Nevada, although the longest running legalized sports betting jurisdiction in the nation, does not publish projected sports betting revenues.⁴⁶⁸ Delaware and New Jersey are the only two states meeting early revenue forecasts.⁴⁶⁹ Pennsylvania—projected to earn \$100 million in its first full year of implementation—generated only \$2.5 million in its first quarter.⁴⁷⁰ West Virginia projected earnings of \$5.5 million in its first year but collected just \$862,000 by the third quarter.⁴⁷¹ Mississippi is expected to capture approximately half of its \$5 million projected income during its fiscal year.⁴⁷² Rhode Island, boasting the highest tax rate, fell far short of its projected \$23.5 million in revenue.⁴⁷³ With three months left in its fiscal year, the state earned just \$925,000.⁴⁷⁴

While actual revenues are lower than first-year projections for most states, the American Gaming Association (AGA) found that of the \$7.9 billion wagered across the country since PASPA was overturned, \$3 billion derived from new

⁴⁶⁷ See William G. Gale & Aaron Krupkin, *Did the Tax Cuts and Jobs Act Pay for Itself in 2018?*, TAX POL'Y CTR. (Mar. 13, 2019), <https://www.taxpolicycenter.org/taxvox/did-tax-cuts-and-jobs-act-pay-itself-2018> [<https://perma.cc/7Z84-NMUJ>] (opining that the most appropriate test for revenue impact (of the TCJA) is to compare actual revenues to predicted revenues).

⁴⁶⁸ AUXIER, *supra* note 267, at 2, 9.

⁴⁶⁹ See *id.* at 9 (publishing a \$5 million revenue projection for Delaware and \$12 to \$17 million projection for New Jersey in first full year of implementation); see also Jennifer McDermott & Geoff Mulvihill, *Delaware an Outlier—Most States' Sports Betting Revenue Misses Estimates*, DEL. ONLINE (Apr. 2, 2019), <https://www.delawareonline.com/story/money/business/2019/04/02/delaware-sports-betting-outlier-making-projected-tax-revenue/3343764002/> [<https://perma.cc/6UWS-62R8>].

⁴⁷⁰ Nathan Frederick, *PA's Sports Betting Tax Revenue May Be Low, but Budget Will Be Just Fine*, PAONLINECASINO.COM (Apr. 8, 2019), <https://www.paonlinecasino.com/4298/pa-sports-betting-revenue-projections/> [<https://perma.cc/YK7Y-HLEB>] (revenue from November 2018 through February 2019).

⁴⁷¹ AUXIER, *supra* note 267, at 9 (listing the \$5.5 million projection in year one of operations); see also Jennifer McDermott & Geoff Mulvihill, *AP: Most States' Sports Betting Revenue Misses Estimates*, ASSOCIATED PRESS (Apr. 2, 2019), <https://apnews.com/21f9833e917948d6a36422bb286541b4> [<https://perma.cc/FJR3-M2GV>] (documenting West Virginia's partial year tax revenue and noting that a contract dispute led to a shutdown of two sportsbooks and West Virginia's only betting app at the onset of the NCAA March Madness tournament, one of the largest sports gambling events each year).

⁴⁷² McDermott & Mulvihill, *supra* note 471.

⁴⁷³ AUXIER, *supra* note 267, at 9 (offering Rhode Island's projected first-year revenue mark); see also Patrick Anderson, *R.I. Sports Betting Numbers Improved in March, but Remained Below Expectations*, PROVIDENCE J. (Apr. 22, 2019), <https://www.providencejournal.com/news/20190422/ri-sports-betting-numbers-improved-in-march-but-remained-below-expectations> [<https://perma.cc/LSV2-DJCQ>].

⁴⁷⁴ Anderson, *supra* note 473.

markets.⁴⁷⁵ Among the states that have legalized sports betting, \$55 million has been raised since May 2018.⁴⁷⁶ Although accounting for only 0.5% of the state's entire budget, Nevada's sports betting revenue set a record high of \$44 million in 2018.⁴⁷⁷

By the close of 2020, sports gambling is expected to be legal in thirty states.⁴⁷⁸ Projected gaming revenue from these states is high.⁴⁷⁹ In New York, a mature sports betting land-based and mobile market is expected to produce over \$1 billion in annual revenue.⁴⁸⁰ In Indiana, the annual revenue projection is \$12 million.⁴⁸¹ The estimated annual sports betting revenue range in Arizona is in between \$20 and \$33 million,⁴⁸² while Montana approximates generating \$3.7 million in the first full year of operation.⁴⁸³

Actual sports betting revenue, though variable, will have direct and indirect economic impacts.⁴⁸⁴ Employment opportunities will increase, labor income in the form of wages, salaries, and tips will grow, and the combined fiscal impact consisting of state, local, and federal taxes could total \$8.4 billion.⁴⁸⁵

⁴⁷⁵ AM. GAMING ASS'N, A YEAR OF LEGAL SPORTS BETTING IN THE U.S., <https://www.americangaming.org/wp-content/uploads/2019/05/A-Year-of-Legal-Sports-Betting.pdf> [<https://perma.cc/6PUM-P7EQ>].

⁴⁷⁶ *Id.*

⁴⁷⁷ See Adam Candee, *Nevada Sports Betting Crushes Records with \$5 Billion Year*, LEGAL SPORTS REP. (Feb. 1, 2019), <https://www.legalsportsreport.com/28482/nevada-sports-betting-revenue-december-2018/> [<https://perma.cc/EGV8-8FWK>] (documenting 2018 revenue); see also Wayne Parry & Geoff Muvihill, *Sports Betting Will Be No Home Run for State Budgets*, PRESS ATLANTIC CITY (Jan. 2, 2019), https://www.pressofatlanticcity.com/news/casinos_tourism/sports-betting-will-be-no-home-run-for-state-budgets/article_8594d921-6964-53e6-8313-12e4e7ddf720.html [<https://perma.cc/8VLK-93P2>].

⁴⁷⁸ Thomas Barrabi, *Legal Sports Betting: California Among States Set for 2020 Push*, FOX BUS. (Jan. 8, 2020), <https://www.foxbusiness.com/sports/legal-sports-betting-california-2020-states> [<https://perma.cc/UHZ6-VBGG>].

⁴⁷⁹ See, e.g., AUXIER, *supra* note 267, at 9. Gaming revenue is defined as “the money the sportsbook—a term for where bets are placed, whether in a casino, racetrack, bar, or online—collects from wagers after paying out successful bets but *before* it pays its expenses and taxes.” *Id.* at 3.

⁴⁸⁰ Eric Ramsey, *Comprehensive Sports Betting Hearing Wraps Up in New York*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/32249/ny-sports-betting-hearing-may-2019/> [<https://perma.cc/ABD2-59ZS>] (last updated May 22, 2019).

⁴⁸¹ Tom Davies, *Indiana Sports Betting, New Casinos Won't Mean Windfall*, ASSOCIATED PRESS (Apr. 9, 2019), <https://apnews.com/44b7606681d942e3ad2a5926c45ac75a> [<https://perma.cc/26UH-G73F>].

⁴⁸² Drake Dunaway & Blaine McCormick, *Betting on Your Favorite Teams Still on Hold in Arizona Legislature*, CRONKITE NEWS (Feb. 19, 2019), <https://cronkitenews.azpbs.org/2019/02/19/arizona-sports-gambling/> [<https://perma.cc/VH3L-5FXU>].

⁴⁸³ Steve Schult, *Montana Becomes First State to Legalize Sports Betting in 2019*, CARD PLAYER (May 7, 2019), <https://www.cardplayer.com/poker-news/23858-montana-becomes-first-state-to-legalize-sports-betting-in-2019> [<https://perma.cc/94YL-2MW3>].

⁴⁸⁴ OXFORD ECON., *supra* note 273, at 4–5.

⁴⁸⁵ *Id.*

Establishing revenue-maximizing tax rates that the market can bear is key to securing the benefits of this new revenue stream.⁴⁸⁶

Whether actual revenue meets, exceeds, or falls short of projections, there exists a strong historical connection between gambling and education.⁴⁸⁷ As previously noted, of the states with legalized sports betting in place, only Washington, D.C., Nevada, and Rhode Island direct some portion of earnings for educational purposes.⁴⁸⁸ The remaining jurisdictions direct sports gambling revenue to the general funds, without specifically earmarking any of such revenue for educational purposes.⁴⁸⁹ However, many of these states provide no restrictions on college sports betting. Specifically, there are no constraints for wagers made on college sporting events in Mississippi, Nevada, New Mexico, Pennsylvania, or West Virginia.⁴⁹⁰ Delaware permits general betting on college sports, but disallows bets made on in-state teams.⁴⁹¹ Rhode Island bans any form of college sports betting on in-state college teams, while New Jersey allows wagers made on multi-site college tournaments played outside the state.⁴⁹² Washington, D.C.'s legislation does not mention college sports betting at all.⁴⁹³

If legalized wagering in any given jurisdiction includes college sporting events, perhaps colleges and universities are justified in receiving a piece of the pie. Well-crafted sports betting legislation may provide opportunities for increased funding to higher education at levels not seen in decades.⁴⁹⁴ The remainder of this Article proposes that the emerging sports betting arena is well-situated to redirect a portion of state-earned gambling tax revenue to one of the biggest drivers of the market—higher education.

⁴⁸⁶ Ryan Prete, *2019 Outlook: States Eye Legalizing Pot, Sports Betting (Corrected)*, BLOOMBERG TAX, <https://news.bloombergtax.com/daily-tax-report-state/2019-outlook-states-eye-legalizing-pot-sports-betting-corrected> [<https://perma.cc/WPE8-L6X3>] (last updated Jan. 3, 2019).

⁴⁸⁷ See Kirk, *supra* note 18.

⁴⁸⁸ Dorson, *supra* note 13.

⁴⁸⁹ *Id.*

⁴⁹⁰ Ben Nuckols, *NCAA Can't Keep Tournament Games Away from Legal Gambling*, ASSOCIATED PRESS (Mar. 19, 2019), <https://www.apnews.com/66e15b3a43ef49619c57467cecd40b8c> [<https://perma.cc/B699-TQPJ>].

⁴⁹¹ *Id.*; *The State of Sports Betting*, SBNATION, <https://www.sbnation.com/a/sports-betting-gambling-state-legislation-tracker> [<https://perma.cc/KZ65-J6KU>].

⁴⁹² Nuckols, *supra* note 490.

⁴⁹³ *Id.*

⁴⁹⁴ The Oxford Economics group estimated that a 0.25% tax on the total amount wagered (the same amount as the federal gambling excise tax) under a base tax rate model of ten percent and a regulatory model that made sports gambling widely available (a measure they call convenient) could generate \$718 million dollars annually. See OXFORD ECON., *supra* note 273, at 5.

V. DIVIDING THE SPORTS BETTING PIE

Perhaps one of the most ubiquitous aspects of legalizing sports betting at the state level has been the search for a piece of the sports betting pie.⁴⁹⁵ The economics of a sports betting transaction would suggest that there is a fair-sized pie for everyone to receive a reasonably sized slice.⁴⁹⁶ For instance, if a sportsbook sees a total amount of \$500 million wagered in a month, and retains five percent,⁴⁹⁷ the sportsbook would hold \$25 million in that month, out of which the company must pay their operating expenses and taxes, leaving a small margin of profit for the company.⁴⁹⁸ Sportsbook profitability is essential to creating a viable regulated market.⁴⁹⁹ In order to create room for sportsbooks to function, operating taxes, licensing fees, and other expenses must be kept reasonable.⁵⁰⁰

One aspect that has drawn significant criticism has been a demand by certain professional sports leagues for a royalty of sorts, which they termed an “integrity fee.”⁵⁰¹ The “integrity fee,” or “royalty,” is effectively a private tax created by the NBA and MLB to extract a portion of gambling operator revenue for themselves.⁵⁰² Professional sports leagues lack a viable basis for claiming entitlement to gambling fees because they are private, profit-maximizing organizations that receive substantial public subsidies.⁵⁰³ In contrast, most collegiate sports programs run at a loss, relying heavily on allocated and generated revenue from the institutions within which they are housed and public charitable contributions.⁵⁰⁴ As such, finding an optimal approach that would allow colleges and universities—which internally fund the very sports now enticing legalized wagering across the United States—to recoup some of the

⁴⁹⁵ Charles Sauer, *Everyone Wants a Piece of the Legalized Sports Gambling Pie*, WASH. EXAMINER (June 11, 2018), <https://www.washingtonexaminer.com/opinion/everyone-wants-a-piece-of-the-legalized-sports-gambling-pie> [<https://perma.cc/VL5N-V8FC>].

⁴⁹⁶ See, e.g., *US Sports Betting Revenue 2020: Sports Betting Handle, Revenue and Hold*, LINES, <https://www.thelines.com/betting/revenue/> [<https://perma.cc/VUQ3-SASE>].

⁴⁹⁷ A five percent “hold” is fairly typical of a sportsbook. See Jill R. Dorson, *MS Sportsbooks Take in \$7.7M in Handle in August and Much Bigger Numbers Ahead*, SPORTSHANDLE (Sept. 20, 2018), <https://sportshandle.com/ms-sportsbooks-take-in-6-2m-in-handle-but-not-all-were-open/> [<https://perma.cc/EC95-DGJS>].

⁴⁹⁸ Richard N. Velotta, *Supreme Court Sports-Betting Rule to Have Limited Nevada Impact*, L.V. REV.-J. (Apr. 28, 2018), <https://www.reviewjournal.com/sports/betting/supreme-court-sports-betting-ruling-to-have-limited-nevada-impact/> [<https://perma.cc/XV44-TKVW>].

⁴⁹⁹ See Sauer, *supra* note 495.

⁵⁰⁰ *Id.*

⁵⁰¹ *Sports Betting Integrity Fee*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/integrity-fee/> [<https://perma.cc/N3Q5-6SV5>] (last updated Jan. 11, 2020).

⁵⁰² Holden, *supra* note 23.

⁵⁰³ See, e.g., Scott A. Wolla, *The Economics of Subsidizing Sports Stadiums*, PAGE ONE ECON. (May 2017), <https://research.stlouisfed.org/publications/page1-econ/2017-05-01/the-economics-of-subsidizing-sports-stadiums/> [<https://perma.cc/DD9D-3KHN>].

⁵⁰⁴ Berry, *supra* note 189, at 210.

revenue generated is imperative. To examine these issues, this Part proceeds as follows: Section A discusses integrity fees, Section B examines integrity issues within college sports, and Section C proposes the implementation of a gambling interchange fee on wagers made on college sports.

A. Integrity Fees

The first appearance of the so-called integrity fee emerged when a bill was introduced in the Indiana legislature on January 9, 2018, roughly five months before the Supreme Court ruled PASPA unconstitutional.⁵⁰⁵ The bill required, “A sports wagering operator shall remit to a sports governing body . . . an integrity fee of one percent (1%) of the amount wagered on the sports governing body’s sporting events . . . at least once per calendar quarter.”⁵⁰⁶ The one percent fee transitions into an amount closer to twenty percent of a sportsbook’s profit when accounting for a five percent hold.⁵⁰⁷ A twenty percent reduction in profit would make Indiana’s market virtually untenable for a sportsbook operator.⁵⁰⁸ Indiana Representative Alan Morrison, who introduced the bill, obliged sports league representatives who requested inclusion of the integrity fee language.⁵⁰⁹

Within the month, NBA Executive Vice President Dan Spillane testified in a New York hearing that sports leagues should be compensated by the one percent fee because they are experiencing increased risk associated with legalized wagering.⁵¹⁰ On February 12, 2018, MLB joined the NBA in seeking an integrity fee, making the request via lobbyists in a variety of states considering legalizing sports pre-*Murphy*.⁵¹¹ Interest in integrity fees from the sports leagues has continued, though the NBA and MLB later rebranded the phrase as a “royalty,” suggesting that the leagues were entitled to a fee on an intellectual property theory based on the idea that the leagues put on sporting events, which are the subject being wagered upon.⁵¹²

⁵⁰⁵ Holden & Schuster, *supra* note 99, at 37.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ *See id.*

⁵⁰⁹ *Integrity Fees—What Are They and Why Are They So Controversial?*, SPORTSHANDLE, <https://sportshandle.com/integrity-fees/> [<https://perma.cc/AL5C-6YLC>].

⁵¹⁰ *Id.* The sports leagues, including the NBA, have been vague on increased expenses they suggest they will experience with legalized sports betting, but it is primarily thought that the leagues expect to increase the amount they spend on their security divisions. *Id.*

⁵¹¹ *Id.*

⁵¹² Though largely beyond the scope of this Article, the leagues’ theory that they possess an intellectual property right in the games themselves, or in the scores and newsworthy results associated with the games, is misguided. *See* C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media, 505 F.3d 818, 821 (8th Cir. 2007); *see also* Nat’l Basketball Ass’n v. Motorola, Inc., 105 F.3d 841, 853 (2d Cir. 1997); Daniels v. FanDuel, Inc., 109 N.E.3d 390, 393 (Ind. 2018); Marc Edelman, *Lack of Integrity? Rebutting the Myth*

The quest for integrity fees by professional sports leagues continued through the end of 2018, with the amount sought having been reduced to 0.25%; however, the decreased fee appeared no more palatable as no state has thus far passed a bill granting a fee.⁵¹³ While a number of states introduced legislation with integrity fees, no state has awarded any sports league a fee.⁵¹⁴ Instead, a number of leagues have shifted their requests to a mandate that sportsbooks use official data, provided by sports league contractors. Such requests have received a generally cool reception from lawmakers, except in Illinois and Tennessee where bills passed requiring that sportsbooks use league-approved data for certain types of wagers.⁵¹⁵ The NBA and MLB have primarily driven the search for compensation from legal sports betting operators, but most professional leagues have spoken on the issue.⁵¹⁶ The NCAA, however, an organization of amateur athletes, has remained relatively silent and steadfast in its opposition to legalized gambling with or without an integrity fee.⁵¹⁷

B. *Integrity of Collegiate Sports?*

While the term integrity fee may have been a marketing ploy created by the NBA, colleges may be most vulnerable to gambling-related threats as student-athletes are unpaid and thus potentially more susceptible to bribery.⁵¹⁸ Several institutions have inquired via lobbyists about the possibility of receiving an integrity fee associated with sports betting; but the NCAA has remained opposed to any expansion of sports betting whether legal or illegal.⁵¹⁹ Despite the opposition, NCAA President, Mark Emmert, stated: “Sports wagering is going to have a dramatic impact on everything we do in college sports. It’s going to threaten the integrity of college sports in many ways unless we are willing to

that U.S. Commercial Sports Leagues Have an Intellectual Property Right to Sports Gambling Proceeds, 15 N.Y.U. J.L. & BUS. 1 (2018).

⁵¹³ *Integrity Fees—What Are They and Why Are They So Controversial?*, *supra* note 509.

⁵¹⁴ *Id.*

⁵¹⁵ Holden & Schuster, *supra* note 99, at 72 (arguing that there is no legal or commercial justification requiring the use of official data, so the mandates effectively serve the same purpose for the leagues as an integrity fee); Adam Candee, *Allow Us to Volunteer: The Tennessee Sports Betting Bill Is Really Bad*, LEGAL SPORTS REP. (May 9, 2019), <https://www.legalsportsreport.com/32035/tennessee-sports-betting-official-data/> [<https://perma.cc/852M-ZQG6>].

⁵¹⁶ *Integrity Fees—What Are They and Why Are They So Controversial?*, *supra* note 509.

⁵¹⁷ David Purdum, *NCAA Reiterates Betting Stance, but Some Schools to Explore ‘Integrity Fee,’* ESPN (July 19, 2018), https://www.espn.com/chalk/story/_/id/24142645/ncaa-reiterates-sports-betting-opposition-some-schools-interested-getting-percent-age-amount-wagered [<https://perma.cc/AB5R-L6H3>].

⁵¹⁸ There is no indication that a legal regulated market would increase match-fixing incidents. Indeed, regulated markets are conducive to identifying corruption in illegal markets. *See* Holden & Rodenberg, *supra* note 11, at 473.

⁵¹⁹ Purdum, *supra* note 517.

act boldly and strongly.”⁵²⁰ While the NCAA has opposed the expansion, it has endorsed the federal regulatory model as a lesser of two evils.⁵²¹

The NCAA is unique in regards to other sports leagues, who have been vying for a share of sports betting revenue.⁵²² The NCAA is a member organization composed of public and private educational institutions that generally offer athletics on a nonprofit basis, as opposed to the profit-maximization model of the professional sports leagues.⁵²³ The NCAA has long sought to educate athletes about the risks of associating with gamblers.⁵²⁴ The availability of widespread legal sports wagering may however create new temptations for college athletes, but a legalized and regulated market controlling who can place wagers offers protections not available in illegal markets.⁵²⁵ As a result, it has been suggested that the NCAA embrace the expansion of legal sports betting and seek viable shields to protect athletes.⁵²⁶

Indeed, the NCAA has begun building safeguards, including formalizing relationships to monitor the integrity of NCAA events.⁵²⁷ In addition, individual colleges and universities are communicating with legislators about sports wagering, with Marshall University and West Virginia University purportedly requesting integrity fee-type payments alongside professional sports leagues in West Virginia.⁵²⁸ Other schools have taken a different approach.⁵²⁹ Penn State University and the University of Pittsburgh, as well as the University of Arkansas, have sought restrictions on wagering on in-state schools, a practice that is antithetical to protecting integrity.⁵³⁰ Forcing bettors to wager on local teams outside of the state is likely to drive those persons to illegal sportsbooks, which do not comply with state regulatory requirements and may be less likely to report irregularities, thus creating a threat to those in-state teams.⁵³¹ Most colleges and universities, however, have been largely quiet in seeking

⁵²⁰ Dustin Gouker, *NCAA Head: Sports Betting Is 'Going to Threaten the Integrity of College Sports in Many Ways,'* LEGAL SPORTS REP. (Jan. 25, 2019), <https://www.legal-sportsreport.com/28038/ncaa-says-sports-betting-will-threaten-integrity/> [<https://perma.cc/C9EA-UUEU>].

⁵²¹ See Emily James, *NCAA Supports Federal Sports Wagering Regulation*, NCAA (May 17, 2018), <http://www.ncaa.org/about/resources/media-center/news/ncaa-supports-federal-sports-wagering-regulation> [<https://perma.cc/YH2C-RXEV>].

⁵²² Benjie Cherniak, *A Trader's View on How the NCAA Should Approach Legal Sports Betting*, LEGAL SPORTS REP. (Apr. 18, 2019), <https://www.legalsportsreport.com/31482/sg-ncaa-legal-sports-betting/> [<https://perma.cc/8TTX-GXAF>].

⁵²³ See *id.*

⁵²⁴ *Id.*

⁵²⁵ See *id.*

⁵²⁶ *Id.*

⁵²⁷ Rodenberg, *supra* note 8.

⁵²⁸ Purdum, *supra* note 517.

⁵²⁹ Rodenberg, *supra* note 8.

⁵³⁰ *Id.*

⁵³¹ Holden, *supra* note 123. The practice of exempting in-state teams may also violate the dormant commerce clause to the extent that sports betting is found to implicate interstate commerce. *Id.*

compensation from legal sports betting.⁵³² They may well be best positioned of all the sports leagues to do so; by virtue of being predominately state-funded institutions, it may be appropriate that a percentage of wagering revenue be earmarked to these schools in a way that is distinct from the allocation of a tax benefiting private organizations.⁵³³

C. *Gambling Interchange Fees*

As discussed, the unyielding needs of colleges and universities to source funds is a growing problem.⁵³⁴ Legal, regulated sports wagering could provide higher education an opportunity to recoup some of the funding cuts resulting from the Great Recession and the TCJA. Sports wagering provides a unique opportunity for states to legislate a funding mechanism geared towards universities without implementing new taxes or diverting funds from other beneficiaries.

A gambling interchange fee (GIF), earmarked to benefit state colleges and universities, would provide institutions with additional revenue to account for expenses tied to monitoring sports-related integrity concerns and supplement budgets that have long been the victims of state funding cuts.⁵³⁵ A GIF is a transaction fee charged on every wager made to a sportsbook on a national college sporting event.⁵³⁶ In particular, the GIF would be comprised of (1) a set percentage fee attached to all wagers made on college sporting events with a state-registered sportsbook, and (2) an increased fee attached to wagers that may pose a greater risk to the integrity of college athletics. Increased integrity risks include certain types of in-play events that could lend themselves to manipulation (such as a missed penalty kick in a soccer game), without necessarily having a significant impact on the overall outcome of the game.⁵³⁷

For example, suppose the State of Mississippi imposes a two percent GIF on all wagers made at registered Mississippi sportsbooks on NCAA sporting events. In addition, assume Mississippi imposes a 10-cent flat fee on wagers made on certain in-play events, including college football field goal attempts. X places a \$100 bet at a Mississippi casino on Ole Miss winning the upcoming

⁵³² See Rodenberg, *supra* note 8.

⁵³³ See generally Holden & Schuster, *supra* note 99.

⁵³⁴ Jeffrey J. Selingo, *Colleges Struggling to Stay Afloat*, N.Y. TIMES (Apr. 12, 2013), <https://www.nytimes.com/2013/04/14/education/edlife/many-colleges-and-universities-face-financial-problems.html> [https://perma.cc/A4EE-5ALN].

⁵³⁵ See Frank Kehl, *What Are Interchange Fees for Credit Card Processing?*, MERCHANT MAVERICK, <https://www.merchantmaverick.com/what-are-interchange-fees/> [https://perma.cc/ZB9M-7EPG] (last updated Aug. 20, 2019). Interchange fees are common in the banking industry and represent the amount that an issuing bank and credit card company receive each time a card is used by a customer to make a purchase. *Id.*

⁵³⁶ See *id.*

⁵³⁷ See John T. Holden & Ryan M. Rodenberg, *Lone-Wolf Match-Fixing: Global Policy Considerations*, 9 INT'L J. SPORT POL'Y & POL. 137, 138 (2017). An example would be a player missing a penalty kick in a soccer game. *Id.*

football rivalry game against Mississippi State University (MSU), and a \$50 wager on MSU's kicker missing four attempted field goals during that game. The total GIF charged on \$150 of X's wagers is \$3.10.⁵³⁸

Data shows that in the first three months of 2019, 64% of all bets placed in Mississippi were tied to college sports.⁵³⁹ If Mississippi's total gambling revenue during that period was \$25,200,000, \$16,128,000 of that total was linked directly to college sports betting. With a 2% GIF attached to wagers made on collegiate athletic events, Mississippi could have remitted \$322,560 to state colleges and universities in a manner legislatively determined within the state. That base amount could have increased based on the number and types of wagers made on in-play events posing greater risks to college sports integrity.

Although a GIF will not likely replace the total amount of losses suffered by institutions, it may supplement some of the financial harms suffered by institutions as a result of the TCJA.⁵⁴⁰ The following chart depicts projected revenues derived from college sports betting in those states that have legalized sports-betting, accompanied by projected revenues from GIF based on the application of a sample 2% rate.

⁵³⁸ The total GIF amount includes a 2% fee added to each of the two wagers made (\$100 and \$50), as well as an additional 10-cent fee on the \$50 wager made due to the high risk involved in sports manipulation of field goal attempts. In addition, the GIF in this example is applied pre-tax.

⁵³⁹ Jill R. Dorson, *Betting on College Sports—Or Not—Often a Game of Political Football*, SPORTSHANDLE (July 11, 2019), <https://sportshandle.com/sports-betting-on-college-sports/> [<https://perma.cc/9DT9-ZHDG>].

⁵⁴⁰ Brian Murphy, *Tax Bill Eliminates Deduction for College Sports Boosters*, NEWS & OBSERVER, <https://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article190121014.html> [<https://perma.cc/Z99W-XR8G>] (last updated Dec. 16, 2017).

State	Projected Revenue ⁵⁴¹	50 Percent of Projected Revenue derived from college sports betting ⁵⁴²	Projected Revenue from GIF (2%)
New Jersey	\$199,176,986.40	\$99,588,493.20	\$1,991,769.86
Nevada	\$301,048,000.00	\$150,524,000.00	\$3,010,480.00
Pennsylvania	\$808,400,000.00	\$404,200,000.00	\$8,084,000.00
Mississippi	\$100,800,000.00	\$50,400,000.00	\$1,008,000.00
West Virginia	\$23,864,696.60	\$11,932,348.00	\$238,646.96
Delaware	\$15,997,230.86	\$7,998,615.43	\$159,972.30
Rhode Island	\$11,500,000.00	\$5,750,000.00	\$115,000.00
Arkansas	\$31,700,000.00	\$15,850,000.00	\$317,000.00
Indiana	\$122,763,300.00	\$61,381,650.00	\$1,227,633.00
Iowa	\$49,128,081.00	\$24,564,040.50	\$491,280.81
Michigan	\$500,000,000.00	\$250,000,000.00	\$5,000,000.00
Colorado	\$104,000,000.00	\$52,000,000.00	\$1,040,000.00
New Hampshire	\$15,000,000.00	\$7,500,000.00	\$150,000.00
Tennessee	\$29,750,000.00	\$14,875,000.00	\$297,500.00
Oregon	-\$5,300,000	\$0	\$0
Total			\$23,131,282.93

Implementing a 2% GIF on college sports betting revenue (as opposed to “handle”)⁵⁴³ on half of all legalized projected gambling revenue nets over \$23 million to be distributed back for use in higher education. Although outside the scope of this Article, the success of the GIF ultimately rests on states individually adopting reasonable regulations that accompany the prescribed fee. Equitable regulations must include moderate yet competitive tax rates that

⁵⁴¹ For projected revenue amounts, see *supra* notes 273–451.

⁵⁴² There is little published information regarding the average percentage of sports gambling revenue derived from college sports betting as compared to professional sports betting. Documentation supports that in the first quarter of 2019, 64% of Mississippi’s sports wagering revenue came from college sporting events. Dorson, *supra* note 539. We surmise that this percentage is higher than expected due to the March Madness series taking place during that period. For purposes of this Article, we have reduced that percentage to 50% for all states. Actual projected revenue derived solely from college sports wagering (as compared to professional sports wagering) in any given state could be greater or less than this proposed projection.

⁵⁴³ “Handle” refers to the total amount wagered, as opposed to the amount the bookmaker wins, which is a fairer means of estimating the financial success of a bookmaker. See Dustin Gouker, *Handle Does Not Equal Revenue in Sports Betting or Daily Fantasy Sports, and Why It Matters to Get It Right*, LEGAL SPORTS REP., <https://www.legal-sportsreport.com/15160/revenue-sports-betting-and-dfs/> [<https://perma.cc/33M2-64JM>] (last updated Aug. 8, 2019).

minimize revenue siphoning across state borders and disincentive wagers made in the untaxed illegal market, as well as statutory language designating GIF revenue for use by public colleges and universities.⁵⁴⁴

The GIF is not a panacea, but instead, a measure to alleviate losses that higher education institutions have experienced over the past several decades, and even more recently via the TCJA. Introducing a GIF may invite opponents, particularly as bookmakers seek to maximize profits while lobbying for the lowest possible total tax rate, and private, professional sports leagues similarly seek their own piece of the pie. However, neither of those interests meet the substantial purpose that public colleges and universities fulfill.⁵⁴⁵ Gambling has long been tethered to education in the United States. The Supreme Court's decision in *Murphy* could serve as the catalyst for reinventing funding to higher education, and their affiliated college athletic departments.

VI. CONCLUSION

Both the TCJA and *Murphy v. NCAA* stand to impend the viability of U.S. institutions and college athletic departments.⁵⁴⁶ The 2018 federal tax overhaul included a direct hit on collegiate funding, resulting in the continued diminishment of public educational financing.⁵⁴⁷ In addition, college athletic directors identified *Murphy* as posing a significant threat to the integrity of collegiate sports.⁵⁴⁸ While more than thirty states have introduced bills legalizing sports betting within their jurisdictions, only two have earmarked any of their newfound gambling tax revenue for higher education.⁵⁴⁹

States' de minimis interest in using a portion of sports gambling revenue to secure the economic future of public colleges and universities is surprising for two reasons. First, public institutions and their affiliated athletic departments directly finance—through allocated and generated resources—the very sports that are helping drive the legalized sports betting market.⁵⁵⁰ Second, there exists a lengthy historical connection between gambling and education in the United States.⁵⁵¹ Based on these premises, we suggest that higher education be entitled to a piece of the revenue pie.

⁵⁴⁴ See generally Holden, *supra* note 5.

⁵⁴⁵ For one viewpoint on the purpose of the public university, see Michael T. Benson & Hal R. Boyd, *The Public University: Recalling Higher Education's Democratic Purpose*, 2015 NEA HIGHER EDUC. J. 69, http://www.nea.org/assets/img/HE/i-Benson_Boyd__rev.pdf [<https://perma.cc/32HY-HXER>].

⁵⁴⁶ See Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054; see also *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018).

⁵⁴⁷ See *supra* Part IV.A.

⁵⁴⁸ See *supra* Part II.D.

⁵⁴⁹ See *supra* note 13 and accompanying text.

⁵⁵⁰ See *supra* notes 186–92 and accompanying text.

⁵⁵¹ See *supra* Part III.A–B.

This Article proposes that college administrators embrace sports wagering as a means of increasing the integrity of college sports,⁵⁵² and advocates that public institutions are well-positioned to capitalize on a portion of states' gambling tax revenue.⁵⁵³ This Article introduces the implementation of a gambling interchange fee attached to wagers made on college sporting events to redirect funding back into higher education.⁵⁵⁴ Unlike integrity fees, which the professional sports leagues are currently lobbying for, a gambling interchange fee would fit well within the historic blueprint of lottery and gambling revenue being reinvested into U.S. public education. A gambling interchange fee attached to college sports wagering would financially benefit state institutions and generate new revenue to account for expenses associated with sports-related integrity concerns. Post-*Murphy* the time is ripe for states to give back to the institutions and athletic departments helping to influence the newly legalized U.S. gambling market.

⁵⁵² See *supra* Part V.B.

⁵⁵³ See *supra* Part V.B.

⁵⁵⁴ See *supra* Part V.C.