

Ante Up or Fold: What Should be Done About Gambling in College Sports?

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COMMENTS

ANTE UP OR FOLD: WHAT SHOULD BE DONE ABOUT GAMBLING IN COLLEGE SPORTS?

I. INTRODUCTION

Sports gambling, and gambling in general, is an important issue in today's society, particularly for the National Collegiate Athletic Association (NCAA). In an effort to combat this problem, the NCAA has promulgated rules that prohibit gambling, actively supports education on gambling, and lobbies against the legalization of gambling by states.¹ The NCAA's rules apply only to those people under the control of the NCAA because the rules are internally promulgated by a private organization. In addition to the NCAA's rules, federal laws exist that specifically prohibit gambling on both professional and amateur sports, with a few key exceptions.²

This Comment will delve into sports gambling and demonstrate that, because the NCAA's rules and policies are not making a difference, the NCAA should change its viewpoint from actively policing its own members to advocating for a more comprehensive federal legislation. Part II of this Comment gives an overview of the need for gambling regulation. Part III examines federal law, case law, and NCAA regulations that have been enacted to deal with gambling. Part IV covers the recent proposal in Delaware to legalize sports wagering. Part V covers the gambling impact studies and gambling scandals in the NCAA that illustrate the lack of effectiveness of the NCAA's rules and efforts. Finally, part VI concludes with a discussion about why it is unnecessary for the NCAA to continue to be active in policing sports gambling and what the NCAA should do moving forward.

II. THE NEED FOR GAMBLING REGULATION

Beginning in the 1990s, a variety of studies were done to measure the

1. John W. Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away Our Youth?*, 8 VILL. SPORTS & ENT. L.J. 221, 227-28 (2002).

2. Interstate Wire Act of 1961 (Wire Act), 18 U.S.C. § 1084 (2011); Professional and Amateur Sport Protection Act (PAPSA), 28 U.S.C. § 3702 (2011).

impact of gambling, focusing both on general gambling with relation to sport³ and specifically on gambling among college athletes.⁴ These studies found an alarming pervasiveness of gambling on college sports,⁵ as well as a general lack of knowledge about the illegality of gambling.⁶

One such study, the National Gambling Impact Study Commission Report (NGISC), was concluded in 1999.⁷ The NGISC was intended to “conduct a comprehensive legal and factual study of the social and economic implications of gambling in the United States.”⁸ Although the report took two years, had vast findings both within and outside of sport, and provided recommendations, the NGISC emphasized that additional research and data was needed.⁹

Despite the presence of federal laws that make sports wagering illegal,¹⁰ the NGISC study noted that, although illegal, “informal or small-scale betting” is often ignored by law enforcement because of its “innocuous” nature.¹¹ After pointing out the litany of negative impacts and the dearth of beneficial influences of gambling, the NGISC recommended that the regulation of sports betting be significantly strengthened and more diligently enforced.¹²

To fully understand the propensity of gambling by student-athletes, the University of Cincinnati conducted a 1996 study that found 25% of athletes gambled on sporting events, 4% gambled on games that they played in, and 1% took money in exchange for a change in athletic performance.¹³

The University of Michigan Athletic Department did a 1999 study about gambling behavior among student-athletes.¹⁴ This decision came after a rash of gambling incidents with student-athletes from Arizona State University, Boston College, University of Colorado, Columbia University, Fresno State

3. See generally NATIONAL GAMBLING IMPACT STUDY COMMISSION FINAL REPORT (1999), available at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html> [hereinafter NGISC REPORT].

4. *College Athletes Admit to Gambling: Survey Also Finds Point Shaving*, HONOLULU ADVERTISER, Jan. 12, 1999, at D1; See MICHAEL E. CROSS & ANN G. VOLLANO, THE EXTENT AND NATURE OF GAMBLING AMONG COLLEGE STUDENT ATHLETES (1999), available at <http://www.umich.edu/~mgoblue/compliance/gambling/study.html>.

5. CROSS & VOLLANO, *supra* note 4, at Review of Literature.

6. NGISC REPORT, *supra* note 3, at 3-10.

7. *Id.* at 1-1.

8. *Id.* at 6-1 (citing National Gambling Impact Study Commission Act, Pub. L. No. 104-169, § 4(a)(1), 110 Stat. 1482 (1996) (current version at 18 U.S.C. § 1955 (2011))).

9. *Id.*

10. *Id.* at 3-8, 3-9.

11. *Id.* at 3-9.

12. *Id.* at 3-18.

13. Kindt & Asmar, *supra* note 1, at 228.

14. CROSS & VOLLANO, *supra* note 4, at Review of Literature.

University, Northwestern University, and the University of Notre Dame.¹⁵ The notable findings, according to the final report, were that (1) most student-athletes gamble, (2) casino gambling is a popular activity among student-athletes, (3) many student-athletes gamble on sports, (4) a number of student-athletes acted in ethically questionable ways or were put in contact with people who had an interest in affecting the outcome of a game, and (5) student-athletes who gamble with bookmakers are wagering large amounts of money.¹⁶

The study recommended further research into the matter accounting for more variables, such as sports, year in school, and race.¹⁷ Additionally, it suggested that the NCAA should continue to educate athletes on the dangers of gambling, educate administrators and coaches about the prevalence of gambling, and consider imposing stricter penalties for violations.¹⁸

Finally, the NCAA did studies on gambling among student-athletes in 2003¹⁹ and 2008.²⁰ These studies were done to provide information on the prevalence of gambling among student-athletes and check to see if student-athletes were aware of the NCAA's rules about gambling.²¹ The 2008 study showed that 29.5% of male student-athletes had gambled on sports within the last year and that 6.6% of female student-athletes had gambled on sports in the same time period.²² There was not a significant difference between the 2003 and 2008 statistics.²³ Student-athletes felt that the possibility of NCAA penalties was not as effective in deterring gambling as education by the NCAA and universities would be.²⁴

As evidenced by the fact that the government, two universities, and the NCAA felt the need to fund studies, there are clearly well-founded concerns about the dangers of gambling and the negative effects it brings. Gambling is

15. *Id.* at Executive Summary.

16. *Id.*

17. *Id.* at Discussion.

18. *Id.*

19. TODD PETR, ET AL., 2003 NCAA NATIONAL STUDY ON COLLEGIATE SPORTS WAGERING AND ASSOCIATED BEHAVIORS (2004), *available at* http://www.ncaapublications.com/product_downloads/SWAB03.pdf.

20. THOMAS PASKUS ET AL., *Results from the 2008 NCAA Study on Collegiate Wagering*, Nov. 13, 2009, *available at* http://www.ncaa.org/wps/wcm/connect/5a30d30040962f3190739a7e5b626114/Results_2008_NCAA_Study_Collegiate_Wagering.pdf?MOD=AJPERES&CACHEID=5a30d30040962f3190739a7e5b626114 [hereinafter 2008 NCAA Study].

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

regulated because of the negative social impacts of gambling addictions;²⁵ youth are in particular danger of forming gambling habits, especially with online gambling;²⁶ gambling jeopardizes the integrity of sport;²⁷ and the policies governing sports bodies alone have not been effective to stop gambling.²⁸

III. RULES AND LEGISLATION

The government's concern with gambling can be seen through various federal laws,²⁹ some of which are specifically applicable to sport.³⁰ In addition, private bodies, such as the NCAA, enforce antigambling regulations for their members.³¹

A. Federal Legislation

There are several federal laws that have an impact on sports gambling.³² Here, only the seminal Interstate Wire Act of 1961 (Wire Act)³³ and, arguably the most important, the Professional and Amateur Sports Protection Act (PASPA)³⁴ will be discussed. There have also been more stringent laws proposed, although none of them have yet succeeded in actually becoming law.³⁵

To establish the legitimate control over sports gambling, it must first be clear why the federal government can legislate against gambling at all. In

25. Kindt & Asmar, *supra* note 1, at 227.

26. Lori K. Miller & Cathryn L. Claussen, *Online Sports Gambling – Regulation or Prohibition?*, 11 J. LEGAL ASPECTS OF SPORT 99, 110 (2001).

27. *Id.* at 111.

28. *Id.* at 112.

29. 18 U.S.C. § 1084 (2011).

30. 28 U.S.C. § 3702 (2011).

31. NAT'L COLLEGIATE ATHLETIC ASS'N, 2010-2011 NCAA DIVISION I MANUAL 48 (2010) [hereinafter NCAA MANUAL].

32. 18 U.S.C. § 1084 (2011); 28 U.S.C. § 3702 (2011); The Transportation in Aid of Racketeering Enterprises Act of 1961 (The Travel Act), 18 U.S.C. § 1952 (2011); The Illegal Gambling Business Act of 1970, 18 U.S.C. § 1955 (2011); The Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO), 18 U.S.C. § 1962 (2011). For a discussion of these and other laws impacting the gambling industry, see Paul Anderson, *The Regulation of Gambling Under U.S. Federal and State Law*, 2009 INT'L SPORTS L.J. 68.

33. 18 U.S.C. § 1084.

34. 28 U.S.C. § 3702.

35. John Grady & Annie Clement, *Legal Issues and Reform in Intercollegiate Athletics: Gambling and Collegiate Sports*, 15 J. LEGAL ASPECTS OF SPORT 95, 98 (2005); Kindt & Asmar, *supra* note 1, at 245.

United States v. Harris, the appellants ran a gambling operation that featured craps and blackjack.³⁶ Although the appellants were being prosecuted under a racketeering statute,³⁷ the same general principles apply to all legislation that regulates gambling. The Commerce Clause of the United States Constitution³⁸ allows the regulation of interstate commerce, which includes illegal gambling because of its interstate activity.³⁹ Based on this power, the federal government has enacted several laws.

First, the Wire Act prohibits gambling businesses from transmitting bets or information via wire communications between states or countries.⁴⁰ To violate the Wire Act, a person must be in the business of betting and knowingly use a wire communication to transmit information for gambling purposes.⁴¹ Using wire communications includes use of the telephone and the Internet.⁴² However, a bet placed via wire communication between bettors in two states that have legalized gambling is a legal act under the Wire Act.⁴³ Additionally, the Wire Act has other limitations, like a lack of punishment for individual bettors. In *United States v. Baborian*, in which both a bettor and a bookie were on trial under the Wire Act, the United States District Court for the District of Rhode Island determined that the Wire Act was only applicable to the bookie.⁴⁴ There was no way to punish the individual bettor because “Congress never intended that the federal government should thus invade the criminal jurisdiction that properly belongs to the states.”⁴⁵ The Wire Act has broad application to gambling,⁴⁶ and thirty-one years after the Wire Act was passed, Congress decided to address sports gambling with specific legislation.⁴⁷

This sports specific legislation, PASPA, was enacted in 1992 in order to regulate sports gambling.⁴⁸ PASPA states that it is

unlawful for (1) a governmental entity to sponsor, operate,

36. *United States v. Harris*, 460 F.2d 1041, 1042 (5th Cir. 1972).

37. *Id.* at 1043.

38. U.S. CONST. art. I, § 8, cl. 3.

39. *Harris*, 460 F.2d at 1048.

40. 18 U.S.C. § 1084 (2011).

41. *United States v. Florea*, 541 F.2d 568, 569 (6th Cir. 1976).

42. *Miller & Claussen*, *supra* note 26, at 114-15.

43. *Id.* at 114.

44. *United States v. Baborian*, 528 F. Supp. 324, 329 (D.R.I. 1981).

45. *Id.* at 331.

46. *Kindt & Asmar*, *supra* note 1, at 232.

47. 28 U.S.C. § 3702 (2011).

48. *Kindt & Asmar*, *supra* note 1, at 231.

advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a government entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.⁴⁹

However, there are exceptions to PASPA.⁵⁰ These exceptions include gambling schemes in states to the extent that they occurred legally between January 1, 1976 and August 31, 1990.⁵¹ These existing schemes are “grandfathered” in and not subject to PASPA the way that a new form of gambling would be.⁵² This exception applies to only a few states, namely Nevada, Oregon, Washington, New Mexico, Delaware, and Montana, and the gambling allowed in each varies greatly.⁵³ At the time of the Act, Nevada had the most extensive sports betting scheme that was run through casino books.⁵⁴ Oregon had a lottery based on the National Football League (NFL).⁵⁵ In even more limited situations, Washington permitted one-dollar bets on racecars, and New Mexico allowed gambling on bicycle races.⁵⁶ Although Delaware and Montana had state statutes that allowed for sports gambling, neither of them actually had state-endorsed sports gambling at the time the PASPA was enacted.⁵⁷ Another important exception to PASPA was the fact that there was a one-year “window of opportunity” for any state to legalize casino gambling, which could have included sports betting.⁵⁸ No state capitalized on this opportunity during the time frame.

An interesting caveat of the PASPA is that it forbids sports gambling that is established by a State or person, but it provides no way to punish the gambling of individual bettors.⁵⁹ This enforcement issue is similar to that

49. § 3702.

50. § 3704.

51. *Id.*

52. *Flagler v. U.S. Att’y for the Dist. of N.J.*, 2007 U.S. Dist. LEXIS 70916, *2 (D.N.J. 2007).

53. Kindt & Asmar, *supra* note 1, at 231.

54. *Id.*

55. *Id.*

56. Miller & Claussen, *supra* note 26, at 113.

57. Kindt & Asmar, *supra* note 1, at 232.

58. *Flagler v. U.S. Att’y for the Dist. of N.J.*, 2007 U.S. Dist. LEXIS 70916, *2 (D.N.J. 2007).

59. Miller & Claussen, *supra* note 26, at 117-18.

found in the Wire Act.

Like the constitutionality of gambling legislation in general, the constitutionality of PASPA has been challenged.⁶⁰ For example, although the court dismissed *Flagler v. U.S. Attorney for the District of New Jersey* because of a lack of subject matter jurisdiction, the potential constitutional claim is addressed.⁶¹ *Flagler* was brought by an individual New Jersey resident who appeared *pro se* and believed that PASPA violated the Tenth Amendment of the United States Constitution.⁶² The Tenth Amendment reserves all rights not delegated to the United States or prohibited to the States by the Constitution to the States or the people.⁶³ The plaintiff also claimed that gambling is contained within a state's borders and, therefore, should not be subject to federal regulation under the Commerce Clause.⁶⁴ The court stated that the plaintiff had in no way proven that there was any "legally protected interest" of a right to gamble or that he had suffered any harm by not being able to gamble.⁶⁵ Additionally, the court noted that, even if the court invalidated PASPA, it would be unlikely for the state of New Jersey to engage in support of gambling on professional and amateur sports, as it did not feel the need to do that at any time before PASPA or during the one-year window that PASPA granted states to enact such laws.⁶⁶ The court did not make an official ruling on the constitutionality of the PASPA, but this decision may show that a court would find the law constitutional because of Commerce Clause powers, much like previous gambling regulation cases like *Harris*.

Although no law has yet been passed to supplement PASPA, there have been many proposed bills that would add to PASPA.⁶⁷ For example, the High School and College Gambling Protection Act was introduced in 2000.⁶⁸ This bill would have made all gambling on amateur sports illegal, specifically gambling on high school, collegiate, and Olympic sports.⁶⁹ This bill had bipartisan support because of the recommendations of the NGISC report from 1999.⁷⁰ This bill would have eliminated the exceptions within PASPA, even

60. *Flagler*, 2007 U.S. Dist. LEXIS at *2.

61. *Id.* at *6-7.

62. *Id.* at *1-2.

63. *Id.* at *3.

64. *Id.*

65. *Id.* at *6.

66. *Id.* at *2, *7.

67. Grady & Clement, *supra* note 35, at 102; Kindt & Asmar, *supra* note 1, at 245.

68. High School and College Gambling Protection Act, H.R. 3575, 106th Cong. (2000).

69. *Id.*

70. Kindt & Asmar, *supra* note 1, at 245.

in Nevada, which has by far the largest market for legal gambling on amateur sports.⁷¹ Although the bill received strong lobbying support from the NCAA, as well as other educational and sport organizations, it was ultimately defeated because of stronger (read: better funded) support from casino lobbyists and Nevada legislators.⁷² If enacted in the future, a law designed in the image of the High School and College Gambling Protection Act would be helpful to diminish the confusion, seen in the gambling impact studies, about whether or not gambling is illegal. Passage of such a bill would likely lead to the elimination of things like nationally published point spreads, which many people interpret as an endorsement of gambling by the mainstream.

Another failed bill was the Amateur Sports Integrity Act.⁷³ This 2003 bill was very similar to the High School and College Gambling Protection Act.⁷⁴ It would have amended the Ted Stevens Olympic and Amateur Sports Act to, among other things, make it illegal to bet on amateur sports, including high school, college, and Summer and Winter Olympic sports.⁷⁵ The Olympic and Amateur Sports Act is the most important piece of legislation regarding amateur sports in the United States, as it sets requirements and legal guidelines for the United States Olympic Committee and its athletes.⁷⁶ Adding this provision prohibiting gambling, or one like it, would have been an important step forward in the antigambling crusade. These two proposed legislations, which are representative of the options out there, make it clear there is significant government interest in sports gambling, and Congress has the potential to have a profound impact on sports gambling.

While all of these potential bills were being pitched, the state of Nevada was actually expanding its power to allow gambling within its borders. Prior to January 25, 2001, Nevada had a decades old prohibition on betting on any collegiate team from the state of Nevada whether they were playing inside or outside of the state.⁷⁷ However, the Nevada State Gambling Commission eliminated this ban, allowing people to bet on any college team in the country, no matter where the school was located or where they were playing.⁷⁸ Nevada actually went in the opposite direction that both national lawmakers and the

71. *Id.*

72. *Id.*

73. Amateur Sports Integrity Act, S. 1002, 108th Cong. (2003).

74. H.R. 3575, 106th Cong. (2000).

75. S. 1002, 108th Cong. (2003).

76. *Id.*

77. Kindt & Asmar, *supra* note 1, at 241.

78. *Id.*

NCAA were hoping for.⁷⁹

Other events have had a large impact on how legislation has dealt with gambling. Between the passing of the Wire Act and the PASPA and its attempted progeny, the Internet came into widespread use. Since the proliferation of the Internet and its use by large contingents of the population, online sports betting has exploded.⁸⁰ Legislatures have been scrambling to identify an effective way to enforce their laws, particularly upon offshore companies, as this is how many online gambling sites are run.⁸¹ In the United States, the Unlawful Internet Gambling Act of 2006 was passed as a part of the Safe Accountability for Every Port Act of 2006.⁸² The act prohibits anyone

engaged in the business of betting or wagering [from] . . . knowingly accept[ing], in connection with the participation of another person in unlawful Internet gambling, credit . . . an electronic fund transfer . . . any check, draft, or similar instrument . . . or the proceeds of any other form of financial transaction . . . which involves a financial institution as a payor or financial intermediary⁸³

However, the law has received criticism because it is unclear what “unlawful Internet gambling” is, and it has the potential to be difficult to implement because of a lack of jurisdiction over foreign entities.⁸⁴ Of course, federal laws are not the only way to deal with gambling, as will be examined in the following section on private regulations by the NCAA.

B. NCAA Regulations

In addition to federal legislation, private bodies are allowed to institute rules that punish the gambling activities of their own members. One such private institution that has great concern about the gambling activities of its members is the NCAA.

The NCAA adopts rules and regulations, which are compiled into a yearly

79. *Id.*

80. Shekel Masoud, Note, *The Offshore Quandary: The Impact of Domestic Regulation on Licensed Offshore Gambling Companies*, 25 WHITTIER L. REV. 989, 989 (2004).

81. *Id.*

82. 31 U.S.C. § 5363 (2011).

83. *Id.*

84. Jennifer W. Chiang, *Don't Bet on It: How Complying with Federal Internet Gambling Law is Not Enough*, 4 SHIDLER J. L. COM. & TECH. 2, ¶12 (2007).

manual.⁸⁵ Included in this manual is the NCAA's antigambling rule, Bylaw 10.3.⁸⁶ This rule states that no NCAA athletic department staff member, non-athletics staff member with athletics responsibilities, conference staff member, or student-athlete may knowingly participate in sports gambling or provide information that would assist in sports gambling to any individual.⁸⁷ The punishment for a student-athlete found involved in point shaving is the loss of all remaining eligibility in regular and post-season athletic competition.⁸⁸ The punishment for a student-athlete involved in any other gambling, including using a bookkeeper or the Internet for gambling purposes, is loss of eligibility for at least one year.⁸⁹ The NCAA has a full-time employee on staff whose only focus is the issues regarding agents and gambling.⁹⁰ In addition to enforcement of this rule for its staff and athletes, the NCAA supports initiatives to raise awareness about the dangers of sports gambling.⁹¹ These efforts include public service announcements during the NCAA men's basketball tournaments,⁹² workshops and literature about the dangers of gambling,⁹³ and lobbying efforts against sport gambling, including Internet gambling.⁹⁴

However, the NCAA's ability to have its antigambling rules make a significant impact is limited because the NCAA can punish only those under its power, which does not include any college student that is not a student-athlete or any non-student who does not work for the NCAA, a conference, or an athletic department.⁹⁵ Although it may be particularly important to enforce the rules on these people because they may have some power to influence game outcomes, it is a very limited scope of power. The bigger focus should be enforcing antigambling rules on members of the general public who are betting on games but who have nothing to do with the outcome of the game. A plan to achieve this will be discussed in part VI.

85. *See generally* NCAA MANUAL, *supra* note 31.

86. *Id.* at 48.

87. *Id.*

88. *Id.*

89. *Id.*

90. Kindt & Asmar, *supra* note 1, at 249.

91. Aaron J. Slavin, Comment, *The "Las Vegas Loophole" and the Current Push in Congress Towards a Blanket Prohibition on Collegiate Sports Gambling*, 10 U. MIAMI BUS. L. REV. 715, 725 (2002).

92. *Id.*

93. Kindt & Asmar, *supra* note 1, at 249.

94. Editorial, *NCAA Weights in on Internet Gambling Bill*, WASH. TIMES (D.C.), Sept. 28, 2000, at A22.

95. Kindt & Asmar, *supra* note 1, at 249.

IV. THE DELAWARE CASE

Because of the small wiggle room allowed to a select few states under PASPA, the state of Delaware tried to take the utmost advantage of it. This was quickly opposed by major sports leagues and the NCAA. This case is important because it shows that, because of the lucrative nature of sports gambling, it is an industry of high interest. If a state is interested in the revenues from sports gambling, individuals certainly are too. Due to this high interest, it is essential that there be comprehensive and loophole-free federal legislation put in place that can punish those who organize betting and those who bet.

Delaware, technically, has an exemption from PASPA because it had a statute that legalized gambling at the time PASPA was passed.⁹⁶ Under the assumption that it had a full exemption, the Delaware state legislature passed the Sports Lottery Act, which legalized single game betting, totality betting, and parlay betting on all amateur and professional sports.⁹⁷ Major League Baseball (MLB), the National Basketball Association (NBA), the NCAA, the NFL, and the National Hockey League (NHL) immediately sued the Governor of the state of Delaware.⁹⁸ They sought a preliminary injunction against the passage of the law but were denied because the court did not believe that they would succeed on the merits of the case.⁹⁹ This decision was immediately appealed by MLB, the NBA, the NCAA, the NFL, and the NHL.¹⁰⁰ The United States Court of Appeals for the Third Circuit held “as a matter of law that [the] elements of Delaware’s sports lottery violate federal law.”¹⁰¹ The court held that the only gambling that was allowed within the borders of the state of Delaware between January 1, 1976 and August 31, 1990—and was consequently exempt from PASPA—was parlay betting on NFL football games.¹⁰² Therefore, it would be a violation of the PASPA to legalize a more expansive gambling scheme than was in place before the passage of the federal law.¹⁰³ In other words, the purpose of the exemption is to allow the states to continue the gambling practices that were in place at the time PASPA

96. *Id.* at 231-32.

97. DEL. CODE ANN. tit. 29, § 4801 (2009).

98. Office of the Comm’r of Baseball v. Markell, 2009 U.S. Dist. LEXIS 69816, *1 (D. Del. 2009).

99. *Id.* at *2, *5.

100. Office of the Comm’r of Baseball v. Markell, 579 F.3d 293, 293 (3d Cir. 2009).

101. *Id.* at 295.

102. *Id.* at 300.

103. *Id.* at 301.

was implemented, not to allow states to expand their gambling practices.¹⁰⁴

This case demonstrates the strength of the existing federal law to prevent the expansion of gambling practices.¹⁰⁵ After this case, it seems highly unlikely that any state will be able to further its state-sponsored gambling schemes beyond what they presently are. Therefore, the only state that poses a major problem to entities such as the NCAA, MLB, the NBA, the NFL, and the NHL, as far as legalized gambling is concerned, is Nevada. The real problem is the fact that there is no enforcement mechanism to punish the bettors themselves and, therefore, little incentive for the individuals to change their habits.

As demonstrated, there is and has been extensive legislative and private concern and coverage of sports gambling. But with all of these laws in place, the real question is are they making an impact and changing anything? Sadly, the answer seems to be no.

V. IMPACT OF GAMBLING LAWS AND REGULATIONS

The following section will demonstrate that, although the government and NCAA have the very best intentions, the laws and rules they have promulgated are having very little effect on gamblers in general or even student-athletes who are gambling. As discussed, the government¹⁰⁶ and several universities¹⁰⁷ have done studies proving this, and there have been many, many scandals involving student-athletes.¹⁰⁸

A. Gambling Impact Studies

Specific sections of the NGISC, which was conducted after the passage of all of the major gambling laws previously discussed, dealt with sports wagering.¹⁰⁹ Although this study was conducted more than a decade ago, it is the last national scope survey done, and gambling as an industry shows no signs of slowing down. In Nevada, one of the few states where gambling is legal, it was estimated that 33% of the total wagering is on amateur sports, totaling up to \$380 billion annually.¹¹⁰ Additionally, the NGISC noted the

104. *Id.*

105. *See id.*

106. NGISC REPORT, *supra* note 3.

107. CROSS & VOLLANO, *supra* note 4; Kindt & Asmar, *supra* note 1.

108. Ante Z. Udovicic, *Special Report: Sports and Gambling a Good Mix? I Wouldn't Bet on It*, 8 MARQ. SPORTS L.J. 401, 424-27 (1998).

109. NGISC REPORT, *supra* note 3, at 2-14, 3-8.

110. *Id.* at 2-14.

prevalence of gambling on college campuses, citing studies that estimated 23% of college students gamble at least once a week.¹¹¹ The NGISC also pointed out the fact that the athletes themselves are gambling on games, despite NCAA prohibitions.¹¹² The NGISC recommended, among other things, “that the betting on collegiate and amateur athletic events that is currently legal be banned altogether.”¹¹³ Additionally, it called for education and prevention programs, as well as advertising guidelines.¹¹⁴ Although the NCAA and other groups are working on education and prevention programs, the University of Michigan and University of Cincinnati studies show that the amount of gambling has not been reduced.¹¹⁵ The best available option now is to ban legal gambling on sports altogether.

Many Americans are not even aware that gambling on sports is illegal, possibly because of the prevalence of things like point spreads, which are easily available for all major sporting events even in places where gambling on those games is illegal.¹¹⁶ As far as enforcement, the NGISC applauded the NCAA’s regulations and their enforcement via a full-time staff position dedicated solely to gambling issues.¹¹⁷ However, the study does not give any indication about whether or not it thinks the NCAA’s regulations are actually effective. Although the NCAA regulations impact only a few people on any given college campus, the University of Michigan study shows that this may not be enough even for them.¹¹⁸

The University of Michigan survey was mailed to 3,000 NCAA Division I football and men’s and women’s basketball players, 758 of whom responded.¹¹⁹ First, the study looked at general gambling activities by student-athletes.¹²⁰ The study found that 72% of all student-athletes, 80% of male student-athletes and 60% of female student-athletes, have gambled since beginning college, with casino gambling being the most common activity.¹²¹ On a positive note, 84% of athletes reported that they wagered less than fifty

111. *Id.* at 2-15.

112. *Id.* at 3-10.

113. *Id.* at 3-18.

114. *Id.* at 3-18, 3-19.

115. CROSS & VOLLANO, *supra* note 4, at Results; Kindt & Asmar, *supra* note 1, at 226-27.

116. NGISC REPORT, *supra* note 3, at 3-10.

117. *Id.* at 3-11.

118. CROSS & VOLLANO, *supra* note 4, at Executive Summary.

119. *Id.*

120. *Id.* at I. General Gambling Activities.

121. *Id.*

dollars, and 94% had no current gambling debt.¹²²

Next, the study discussed sports-related gambling activities among student-athletes.¹²³ This analysis was important because of the illegality of sports gambling and the NCAA's strong stance against it.¹²⁴ In this limited sample, 34.9% of student-athletes indicated that they had bet on sports, which included the categories of "bet on sports" and "bet in an NCAA basketball tournament pool or picked Super Bowl squares for money."¹²⁵ However, the gender disparity was great, with 45.5% of male student-athletes gambling on sports and only 18.5% of female student-athletes doing so.¹²⁶ This statistic shows that the NCAA's antigambling regulations are not effective and are not being enforced.

The results displayed gambling practices that could be outcome-determinative for the sporting events that the athlete is involved in.¹²⁷ This included twenty-one student-athletes providing a bettor with inside information; four student-athletes betting on games in which they played, all of whom did so more than once; and three student-athletes accepting money to play poorly, which is also known as point shaving.¹²⁸ The survey combined these three groups to determine that 3.4% of all athletes, 5.2% of all male athletes, had participated in outcome-determinative gambling.¹²⁹ None of these players, all of whom committed very serious violations of the NCAA's policies, seem to have been caught by the NCAA and punished. Again, this shows that the NCAA's policies are not working.

One of the most telling studies, because of both the population it studied and its recent timing, is the 2008 NCAA study. In addition to the rates of gambling among college athletes, discussed previously, the study probed into who the athletes gambled with, if athletes were involved in gambling activities connected with their own games, and who was aware of these gambling habits.¹³⁰ Male student-athletes stated that their teammates or other athletes as the people they most frequently gambled with.¹³¹ Although the authors stress that it is quite challenging to get a true percentage, the study showed that 3.8%

122. *Id.*

123. *Id.* at II. Sports Related Gambling.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at III. Gambling with Bookmakers and Other Organized Gambling Activities.

128. *Id.*

129. *Id.*

130. 2008 NCAA Study, *supra* note 20.

131. *Id.*

of Division I men's basketball players and 3.5% of Division I football players had been contacted by an outside source for the purpose of getting inside information.¹³² Additionally, 1.6% of Division I men's basketball players and 1.2% of Division I football players had been asked to influence the outcome of a game.¹³³ Two percent of Division I men's basketball players, 2.2% of Division I football players, and 2.2% of all male student-athletes in other sports had bet on their own team.¹³⁴ Although only 38.7% of male student-athletes and 42.9% of female student-athletes believe that the coaches are aware if a student-athlete is gambling less than once a month or not at all, they reported that teammates have a much higher awareness of gambling issues amongst the team.¹³⁵

These studies show that there is still a clear sports gambling problem among the general public and the student-athletes themselves. However, as the next section shows, there has been very little recent action by the NCAA in regards to student-athletes who gamble on sports.

B. Collegiate Gambling Scandals

As discussed in the University of Michigan study, there has been a litany of gambling scandals in college sports.¹³⁶ These include game fixing, point shaving, and betting on both college sports in general and betting on an athlete's own team.¹³⁷ Gambling scandals occur at a wide variety of schools, from the University of Rhode Island and Bryant College to the University of Florida and the University of Arkansas.¹³⁸ Three of the most prominent scandals featured athletes from Boston College,¹³⁹ Northwestern University,¹⁴⁰ Arizona State University,¹⁴¹ and the University of San Diego.¹⁴² It is interesting to observe that the NCAA was not an integral party in discovering the gambling problems in any of these cases.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. CROSS & VOLLANO, *supra* note 4, at Review of the Literature.

137. *Id.*

138. *Id.*

139. *United States v. Burke*, 700 F.2d 70, 73 (2d Cir. 1983).

140. Udovicic, *supra* note 108, at 427; Ron Cook, *Don't Bet Against the Fix Being On*, PITTSBURGH POST-GAZETTE, Mar. 7, 1999, at D1.

141. Slavin, *supra* note 91, at 731.

142. *Ex-San Diego star charged in scheme*, ESPN.COM, Apr. 12, 2011, <http://sports.espn.go.com/ncb/news/story?id=6330566>.

The Boston College incident stems from a point shaving scandal during the 1978-79 NCAA basketball season, which was previous to the implementation of PASPA.¹⁴³ Two brothers, the Perlas, who were “small-time gamblers with big-time ideas,” along with a few underworld figures, convinced three Boston College basketball players to fall short of the point spread in games where they were favored to win by a large margin.¹⁴⁴ After a few successful games, they decided to change their strategy to betting on Boston College to win by more than the spread, in order throw off any bookkeepers who might be getting suspicious.¹⁴⁵ Although this was successful, they ended up going back to their original strategy.¹⁴⁶ The plan was only discovered when one of the conspirators, underworld figure Henry Hill, was indicted on unrelated criminal charges and revealed the information as part of a bargain to reduce his own charges.¹⁴⁷ All defendants—the Perla brothers, gambling influence Paul Mazzei, underworld “Boss” James Burke, and Boston College basketball player Richard Kuhn—were convicted on conspiracy charges under the Racketeer Influenced and Corrupt Organizations Act (RICO) of 1970, conspiracy to commit sports bribery, and interstate travel with the intent to commit bribery.¹⁴⁸ They were given prison sentences ranging from four years, for Rocco Perla, to twenty years, for James Burke.¹⁴⁹ The defendants all appealed and lost.¹⁵⁰

Another string of important gambling incidents occurred at Northwestern University (Northwestern) in 1994 and 1998, post-PASPA implementation.¹⁵¹ In 1994, former Northwestern running back Dennis Lundy (Lundy) pled guilty to federal perjury charges in relation to a sports betting investigation with the Northwestern football program.¹⁵² His involvement pertained to point shaving in games against Iowa, Ohio State, and Notre Dame.¹⁵³ He admitted to intentionally fumbling at the goal line against Iowa in order to win \$400, betting that Northwestern would lose by more than the point spread to Ohio State, and betting that they would win by more than the point spread against

143. *Burke*, 700 F.2d at 73.

144. *Id.* at 73-74.

145. *Id.* at 74.

146. *Id.* at 74-75.

147. *Id.* at 75.

148. *Id.*

149. *Id.*

150. *Id.* at 85.

151. CROSS & VOLLANO, *supra* note 4, at Review of the Literature.

152. Cook, *supra* note 140.

153. *Id.*

Notre Dame.¹⁵⁴ In the Notre Dame game, Lundy even tried to enter the game to run a two-point conversion at the end of the game but was not allowed by the coaching staff, which made him lose a \$200 bet.¹⁵⁵ Lundy also said that he knew of other football players who had bet on games,¹⁵⁶ and Northwestern basketball player Kenneth Dion Lee (Lee) was suspended for betting on football games.¹⁵⁷

Then in 1998, Northwestern basketball players Lee and Dewey Williams (Williams) were indicted for point shaving and game fixing related to three games in the 1994-95 season against Penn State University, the University of Wisconsin-Madison, and the University of Michigan.¹⁵⁸ Kevin Pendergast (Pendergast), a private school math teacher who needed a way out of his excessive gambling debt, arranged the basketball point shaving scandal.¹⁵⁹ Pendergast is the one who recruited Lee, and Lee recruited Williams to participate.¹⁶⁰ Also included in the scheme was Brian Irving (Irving), who placed the bets in his hometown of Reno, Nevada, where sports gambling is legal.¹⁶¹ All parties were charged with conspiracy to commit sports bribery, and Pendergast and Irving were charged with using interstate facilities for the purpose of racketeering.¹⁶² Both Pendergast and Lee pled guilty and promised to assist in educating NCAA student-athletes about the dangers of gambling.¹⁶³

The final major gambling incident at an NCAA university that involved athletes to be discussed in this Comment, although there are many, many more,¹⁶⁴ is the Arizona State University (Arizona State) basketball point shaving scandal, also post-PASPA.¹⁶⁵ An Arizona State basketball point guard started as a small-time gambler but was soon swimming in gambling debt.¹⁶⁶ To get himself out of debt, he asked teammate Isaac Burton (Burton) to intentionally miss free throws so that the team would not cover the point

154. *Id.*

155. *Id.*

156. *Id.*

157. Udovicic, *supra* note 108, at 426.

158. Slavin, *supra* note 91, at 729.

159. *Id.* at 730.

160. *Id.*

161. *Id.*

162. *Id.* at 731.

163. *Id.*

164. Udovicic, *supra* note 108, at 424-27.

165. Slavin, *supra* note 91, at 731.

166. *Id.*

spread.¹⁶⁷ The Federal Bureau of Investigation (FBI) was notified of this change in pattern by bookkeepers in Nevada, and, after investigation, the FBI found evidence of point shaving in four 1993-94 games.¹⁶⁸ Smith and Burton ended up pleading guilty to conspiracy to commit sports bribery and served minimal sentences.¹⁶⁹ These examples are not the only college sports gambling scandals, but they are representative of the problems that exist and the NCAA's lack of involvement in the prevention, discovery, or punishment of the problems.¹⁷⁰

Recently, two former University of San Diego basketball players, Brandon Johnson (Johnson) and Brandon Dowdy (Dowdy), and a former assistant coach, Thaddeus Brown (Brown), were brought under investigation, and it was discovered that they had operated a sport betting business to affect the outcome of games.¹⁷¹ The indictment alleged that in 2008 Johnson took a bribe to influence the outcome of a game and that Johnson, Dowdy, and Brown asked a player to influence the outcome of a 2010 game at the University of California, Riverside.¹⁷² A total of ten people were arrested for charges including conspiracy to commit sports bribery, conduct an illegal gambling business, and distribute marijuana.¹⁷³ The NCAA did not have any involvement in the discovery of these events; all of the information was discovered during the investigation into the marijuana distribution.¹⁷⁴

A search of major NCAA infractions from 1999 through the present turned up only one infraction that dealt with gambling.¹⁷⁵ However, the infraction was committed by a coach, not a player.¹⁷⁶ Therefore, it is clear that, although there is a gambling problem amongst NCAA athletes, as shown through the studies and scandals, the NCAA has not been successful in identifying and punishing those athletes who are gambling on college sports.

167. *Id.*

168. *Id.* at 732.

169. *Id.*

170. Udovicic, *supra* note 108, at 424-27.

171. *Ex-San Diego star charged in scheme*, *supra* note 142.

172. *Id.*

173. *Id.*

174. *Id.*

175. *University of Washington Public Infractions Report*, NCAA NEWS RELEASE, Oct. 20, 2004, available at [https://web1.ncaa.org/LSDBi/exec/miSearch?miSearchSubmit=publicReport&key=577&publicTerms=\(gambling\)](https://web1.ncaa.org/LSDBi/exec/miSearch?miSearchSubmit=publicReport&key=577&publicTerms=(gambling)).

176. Ray Glier, *A Coach is Ousted, This One for Betting*, NYTIMES.COM, June 13, 2003, <http://query.nytimes.com/gst/fullpage.html?res=9C05E7D71F39F930A25755C0A9659C8B63>.

VI. WHERE THE NCAA SHOULD GO FROM HERE

Although there have been many attempts by both federal and private bodies to curb America's fascination with gambling, none of them have had the desired impact. Most of the federal laws that regulate gambling do not have a mechanism with which to punish individual bettors.¹⁷⁷ Even if there is the ability, it is hardly worthwhile to prosecute individual bettors when there are still those running the gambling business to prosecute. It is hard to believe that anyone will stop a habit as pervasive as gambling when there are no repercussions for their actions. The majority of states may no longer sponsor sports betting, but this leaves an opening for someone else to organize gambling, with no benefit being given to the state via taxes. And, although there are surely those who would organize betting who are deterred by the laws, the fact that there are plenty of places for the public at large to place bets means that the laws are not detrimental enough. The best way to prevent all sports gambling would be to amend the PASPA, or another law, or create an entirely new law that allows for prosecution of individual bettors.

Private bodies, such as the NCAA, have been very active in the crusade against gambling, but their range of influence is limited, and their effectiveness has been unconvincing at best. The NCAA's regulations, unlike the federal laws, have the power to punish individual bettors.¹⁷⁸ Unfortunately, their scope of influence is limited to NCAA student-athletes and NCAA and university staff with athletic ties.¹⁷⁹ In addition, the NCAA has had little to do with discovering the major gambling scandals. All of the scandals discussed in this Comment were discovered by bookkeepers in Las Vegas, admitted as part of plea bargains, or discovered in the course of other investigations. The NCAA regulations are not needed because they are ineffective. Gambling is occurring at a rampant rate among student-athletes, and the NCAA's antigambling rules enforcement and educational programs have not curbed this at all. Although preventing gambling against its members is a commendable goal, the energies of the NCAA could be better focused in other directions.

The solution to the gambling problem lies somewhere in the middle of everything that has been discussed in this Comment. At the moment, the federal laws do not have enough impact on individuals to change proclivities, and the NCAA's warnings are falling on deaf ears. Therefore, the federal laws need to be revamped, and the NCAA could assist in this effort, instead of

177. 18 U.S.C. § 1084 (2011); 28 U.S.C. § 3702 (2011).

178. NCAA MANUAL, *supra* note 31, at 48.

179. *Id.*

throwing good money away on initiatives that, while well-intentioned, are not helping. The main aim of a new federal law or amendment to an existing one is reporting of individual bettors by individuals who are aware of the situation (e.g., teammates and coaches for NCAA athletes) and individual prosecution under the law for violations. Those that enforce the laws also need to realize that individual bettors are not innocuous; there is a cumulative effect of small-time bettors. As seen in proposed legislation like the High School and College Gambling Protection Act,¹⁸⁰ this will be very challenging to do. But situations like Delaware reveal the fact that entities such as MLB, the NBA, the NHL, and the NFL may be willing to throw their weight and influence behind an antigambling regulation. Joining the NCAA's influence and ambition with a legislative initiative to ban all legalized gambling is the only way to stop the spread of sports gambling.

VII. CONCLUSION

The NCAA has put its full weight behind policing and punishing gambling among collegiate athletes and athletic departments. Unfortunately, this effort has failed to curtail the sports gambling problem among college athletes and has done absolutely nothing to stop the public at large from gambling on college sports. Federal and state laws have similarly failed to find an effective way to punish those who would gamble on college athletics. But, as demonstrated in the Delaware case, the full efforts of the NCAA coupled with others can make a difference in the legislative process, which could lead to the passage of a more comprehensive, individual bettor punishment-centered law. Therefore, this Comment proposes that the NCAA abandon its futile efforts in the small arena it governs and partner with those around it, professional sports leagues and concerned legislators alike, to promote a new and improved law that will once and for all close all the loopholes.

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180. Kindt & Asmar, *supra* note 1, at 245.

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