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DOUBLING DOWN ON SPORTS GAMBLING: WHY PASPA WOULD FAIL A CONSTITUTIONAL CHALLENGE

JEFFREY ROESKE

I. INTRODUCTION

Move over baseball, America has a new favorite pastime: sports gambling. Upon examining the facts, it is hard to debate the overwhelming and rampant obsession Americans have with sports gambling. Recent estimates show that Americans wager over \$500 billion per year on sports.¹ Of this staggering total, only \$2–3 billion per year are gambled legally within the state of Nevada, the only state in the country that currently allows individual sports betting.² The rest of the bets are placed with illegal bookmakers (bookies) or on Internet gambling sites.³

Sports gambling is not necessarily a new sensation. Ask a sports fan about betting within sports and the stories are widespread. Baseball experienced the Black Sox scandal of 1919, where some of the Chicago White Sox players were accused of, and in some cases admitted to, fixing the World Series.⁴ Baseball also saw the legendary Pete Rose go down in history as someone who bet on the game of baseball.⁵ Football saw both the Detroit Lions' Alex Karras and the Green Bay Packers' Paul Hornung suspended by NFL Commissioner Pete Rozelle for their involvements with sports gambling.⁶ Other sports have experienced similar problems with sports gambling and match fixing within the United States.⁷ Yet, these stories fail to tell the whole tale in regards to the

1. Chad Millman, *Authorities Expose \$50M Betting Ring*, ESPN, http://espn.go.com/espn/story/_/id/8550476/new-york-issues-25-indictments-50-million-betting-ring (last updated Oct. 25, 2012).

2. *Id.*

3. *Id.*

4. Amanda Rykoff, *Sports Scandals from Bountygate to Black Sox: 'Black Sox' Remain Black Mark on Baseball*, ESPNW (Mar. 5, 2012), http://espn.go.com/espnw/commentary/7647446/bounty_gate-black-sox-scandals-mars-every-sport.

5. *Id.*

6. Michael Weinreb, *In Memoriam: Alex Karras*, GRANTLAND (Oct. 11, 2012), <http://grantland.com/the-triangle/in-memoriam-alex-karras/>.

7. See Associated Press, *Giordano Ordered Held Without Bail in Gambling Ring*, ESPN, <http://sports.espn.go.com/espn/poker/news/story?id=2680087> (last updated Nov. 29, 2006); Associated Press, *New Jersey Businessman Sentenced to Probation*, ESPN, <http://sports.espn.go.com/nhl/news/>

scope of sports gambling.

Outside of athletes' involvement with sports gambling, American citizens have recently been indicted for their involvement in elaborate wagering schemes. In October 2012, following an eighteen-month investigation, the state of New York issued twenty-five indictments after authorities discovered an illegal betting ring.⁸ Authorities uncovered that illegal bets were placed on both professional and college sports, as well as horse racing.⁹ The scheme spanned over five states, and it is estimated that payments totaled \$50 million.¹⁰ Days after the New York indictments, nine youth football coaches in South Florida were also indicted for sports gambling.¹¹ In this case, authorities conducted an eighteen-month investigation that uncovered a "rampant, elaborate and high-dollar gambling [scheme] on little league football."¹²

While this Comment only provides a few examples of the widespread and elaborate nature of today's sports gambling, it does shed light on what has become a consistent problem. Legal or illegal, Americans continue to bet on sports. Recently, states have taken notice of the money to be made in sports gambling and have attempted to find ways to either circumvent the current law or replace the current law all together.¹³ At a time when the economy has struggled, states are looking to sports gambling as a way to increase their own budgets while keeping the money out of the hands of bookies and Internet gambling websites.¹⁴

One such effort to change the current law occurred when a New Jersey Representative proposed the Sports Gaming Opportunity Act of 2012 that would have legalized sports gambling throughout the country.¹⁵ The bill would have allowed states, over a four-year period, to create wagering schemes that would include the option to bet on single games.¹⁶ After the proposed legislation died in Congressional Committee, the Sports Gaming Opportunity

story?id=2989587 (last updated Aug. 24, 2007); Scoop Jackson, *Donaghy Isn't Only One with Gambling Addiction*, ESPN PAGE 2, <http://sports.espn.go.com/espn/page2/story?page=jackson/070723> (last updated July 23, 2007).

8. Millman, *supra* note 1.

9. *Id.*

10. *Id.*

11. Paula Lavigne, *Youth Coaches Face Gambling Charges*, ESPN, http://espn.go.com/espn/otl/story/_/id/8568724/nine-south-florida-youth-football-coaches-face-gambling-charges (last updated Oct. 30, 2012).

12. *Id.*

13. *See* Millman, *supra* note 1.

14. *Id.*

15. *See* Sports Gaming Opportunity Act of 2012, H.R. 3797, 112th Cong. (2012).

16. *Id.*

Act was reintroduced in 2013.¹⁷ To date, the reintroduced bill continues to be held in the Congressional Committee, where it has been since February 13, 2013,¹⁸ suggesting that it may face the same fate as its predecessor. However, new federal legislation is not necessary if the Supreme Court would declare the current law, the Professional and Amateur Sports Protection Act (PASPA),¹⁹ unconstitutional. In fact, this type of constitutional challenge is the argument that New Jersey has made in its ongoing case against the four professional sports leagues and the NCAA.²⁰

While the New Jersey case is most likely headed to the Supreme Court after the state lost in both the District Court and in the Third Circuit Court of Appeals,²¹ the purpose of this Comment is not to focus on pending actions, but rather to take a general approach to challenging the validity of PASPA. In doing so, this Comment will show that if the Court was to apply the Commerce Clause or the uniformity requirement of the Commerce Clause to its analysis of PASPA, states like New Jersey would be able to institute sports gambling systems that, in theory, would generate revenue for those states.

Part II discusses the history of sports gambling by examining the development of federal law that culminated with PASPA, as well as looking at the judicial interpretation of the law and the rationale courts have applied to sports gambling cases. Parts III and V look at potential constitutional claims that the Court should consider, including the Commerce Clause (Part III) and the uniformity requirement of the Commerce Clause (Part V). Part IV shows how sports gambling supporters could argue that PASPA violates the Commerce Clause. Finally, Part VI provides additional analysis to show that PASPA fosters unequal treatment among the states and, therefore, violates the uniformity requirement of the Commerce Clause.

II. HISTORY OF SPORTS GAMBLING

Prior to 1961, several legislative statutes were implemented to regulate

17. See Sports Gaming Opportunity Act of 2013, H.R. 625, 113th Cong. (2013).

18. *H.R. 625: Sports Gaming Opportunity Act of 2013*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr625> (last visited Apr. 11, 2014).

19. 28 U.S.C. §§ 3701–3704 (2012).

20. See generally Associated Press, *Brief Calls N.J. Law ‘Blatant Violation’*, ESPN N.Y., http://espn.go.com/new-york/nba/story/_/id/8723991/pro-leagues-ncaa-file-brief-new-jersey-betting-law (last updated Dec. 7, 2012).

21. See Chris Sieroty, *U.S. Supreme Court Is Last Option in New Jersey Sports Betting Case*, LAS VEGAS REV.-J., <http://www.reviewjournal.com/business/us-supreme-court-last-option-new-jersey-sports-betting-case> (last updated Nov. 18, 2013) [hereinafter Sieroty, *U.S. Supreme Court Is Last Option*].

gambling, but none were specifically enacted to limit sports wagering.²² This changed in 1961, when the enactment of three laws extended federal regulation of gambling to sports.²³ The Wire Communications Act (WCA) not only made it illegal to use the phone to send or receive bets or provide gambling information, but also prohibited wagers on sports events made over any form of wire communication.²⁴ Congress expanded upon the WCA by enacting the Transportation in Aid of Racketeering Enterprises Act, which extended the WCA to any form of travel or mail.²⁵ Finally, the Interstate Transportation of Wagering Paraphernalia Act made it illegal to transport wagering pool paraphernalia related to sporting events.²⁶ Since the enactment of these three laws, sports gambling has been illegal in the United States.²⁷

As time progressed, Congress continued to implement federal legislation to prevent sports gambling. Other anti-gambling initiatives that have furthered the purpose of preventing sports gambling include acts that have required financial transactions greater than \$10,000 to be reported,²⁸ initialized protections against money laundering,²⁹ and prohibited fund transfers from financial institutions to Internet gambling websites.³⁰ All of these laws eventually paved the way for Congress to enact PASPA in 1992.³¹

PASPA was created with the purpose of prohibiting a person or government entity from creating or authorizing a wagering scheme that involved professional or amateur athletes.³² Specifically, PASPA states as follows:

It shall be unlawful for—

- (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, . . .

. . .

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

22. Paul Anderson, *No Gambling Allowed: The Ban on Sports Gambling in the United States*, 3 GLOBAL SPORTS L. & TAX'N REP. 24, 24 (2012).

23. *Id.*

24. 18 U.S.C. § 1084(a) (2012); *see also* Anderson, *supra* note 22, at 24.

25. 18 U.S.C. § 1952(a)–(b) (2012); *see also* Anderson, *supra* note 22, at 24.

26. 18 U.S.C. § 1953(a) (2012); *see also* Anderson, *supra* note 22, at 24.

27. Anderson, *supra* note 22, at 24.

28. 31 U.S.C. § 5311 (2012).

29. 18 U.S.C. § 1956 (2012).

30. 31 U.S.C. § 5361 (2012).

31. Professional And Amateur Sports Protection Act, 28 U.S.C. §§ 3701–3704 (2012).

32. *Id.* § 3702.

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.³³

The statute defines “governmental entity” as “a State, a political subdivision of a State, or an entity or organization . . . that has governmental authority within the territorial boundaries of the United States.”³⁴ Further, the statute clarifies the meaning of “State” as “any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.”³⁵ States could be exempted from PASPA if the states operated wagering schemes prior to PASPA taking effect in 1992.³⁶

Since the enactment of PASPA, cases challenging a state’s ability to implement a sports wagering scheme have often been turned away by courts for a failure to follow federal law. One such case was *OFC Comm Baseball v. Markell*, which was initiated in 2009 after Delaware’s Governor Markell “proposed legislation authorizing sports betting . . . at existing and future [gaming] facilities in Delaware.”³⁷ The planned legislation would have created a sports betting scheme that included wagering on the outcome of individual professional or collegiate sporting events, excluding all events involving college or professional teams within the state of Delaware.³⁸ Markell’s argument for installing the betting scheme was that Delaware met the exemption contained in PASPA, as the state had a wagering system in place within the PASPA exemption period.³⁹

The court disagreed with Markell’s argument, holding that while Delaware was exempted under section 3704(1)(a) of PASPA, the state was only allowed to conduct the scheme as it existed between 1976 and 1990 and could not further that system.⁴⁰ The court went on to state that “[c]ertain aspects of [Delaware’s sports] lottery may differ from the lottery as conducted in 1976, as long as [Delaware] do[es] not effectuate a substantive change from the scheme that was conducted during the exception period.”⁴¹ As single game betting was not conducted by Delaware between 1976 and 1990, Markell’s proposed scheme

33. *Id.*

34. *Id.* § 3701(2).

35. *Id.* § 3701(5).

36. *Id.* § 3704(a)(1)–(2).

37. 579 F.3d 293, 295 (3d Cir. 2009).

38. *Id.* at 296.

39. *Id.* at 301.

40. *Id.* at 301–03.

41. *Id.* at 303.

did not meet the exception to PASPA.⁴²

Despite the court's ruling in *Markell*, states were not done attempting to judicially overturn PASPA. As the *Markell* court failed to address the constitutionality of PASPA, another case, *Interactive Media Entertainment & Gaming Ass'n v. Holder*, attempted to test PASPA's validity under the U.S. Constitution.⁴³ Several plaintiffs, all of whom were connected to New Jersey in some way, brought the case against the U.S. government.⁴⁴ Plaintiffs challenged that PASPA violated several areas of the Constitution, including "the Commerce Clause, the First Amendment . . . , the Tenth Amendment, the Eleventh Amendment, . . . the Due Process Clause of the Fifth and Fourteenth Amendments, and the Equal Protection Clause."⁴⁵ The government challenged that the plaintiffs lacked standing to bring the case and that the "constitutional claims fail[ed] as a matter of law."⁴⁶ While the government's motion to dismiss was pending, plaintiffs filed a supplemental brief to show that pending legislation would amend the New Jersey Constitution to allow the legislature to "authorize sports wagering" within the state.⁴⁷ Despite this pending legislation, the court found for the government and dismissed the case for a lack of standing by all named plaintiffs for varying reasons.⁴⁸ In the court's view, New Jersey law at the time of the suit prohibited sports gambling, and any action brought to challenge PASPA's constitutionality could not be done based on pending legislation.⁴⁹

Based on the holding in *Interactive Media Entertainment*, in order for New Jersey to challenge the constitutionality of PASPA in the courts, it would seem that state law would need to be changed. Understanding this notion, New Jersey enacted legislation in 2012 that would allow for the state to institute wagering schemes involving single-game bets at Atlantic City casinos and state horse racing tracks.⁵⁰ The decision to enact this legislation was due to the New Jersey legislature and Governor Chris Christie's attempts to find a solution to save the struggling casino industry within the state.⁵¹ Upon New Jersey enacting the

42. *Id.* at 304.

43. No. 09-1301 (GEB), 2011 WL 802106, at *2 (D.N.J. Mar. 7, 2011).

44. *Id.* at *2-3. The group of plaintiffs included a New Jersey non-profit corporation consisting of members who provided Internet gambling services, associations involved in the New Jersey horseracing industry, and New Jersey State Senator Raymond J. Lesniak. *Id.*

45. *Id.* at *5.

46. *Id.*

47. *Id.* at *5-6.

48. *See generally id.* at *11, 18-19, 23.

49. *Id.* at *16.

50. N.J. CONST. art. IV, § 7, ¶ 2(D).

51. *See* Associated Press, *Judge Against N.J. in Sports Betting*, ESPN, <http://espn.go.com/espn/>

legislation, the professional leagues, the NCAA, and the U.S. Department of Justice sued the state, claiming that New Jersey's actions violated PASPA.⁵² New Jersey countered by claiming that PASPA was unconstitutional, which, if true, would allow for the state to implement its sports wagering scheme.⁵³

Hoping that the court would uphold its newly created legislation, New Jersey centered its legal arguments on the presumption that PASPA violated the Commerce Clause, the Tenth Amendment, the Due Process Clause, Equal Protection Principles, and the Equal Footing Doctrine of the U.S. Constitution.⁵⁴ However, on February 28, 2013, a U.S. District Court judge ruled against New Jersey and found that the State's constitutional arguments were not strong enough to overturn PASPA.⁵⁵ The court reasoned that PASPA was "a rational expression of Congress' powers under the Commerce Clause," that prior "Supreme Court precedent permits 'grandfathering,'" and that "Congress had a rational basis to enact PASPA in the manner it chose" as reasons for why the statute's constitutionality was upheld.⁵⁶ Despite being defeated, New Jersey was encouraged by one line in the judge's opinion, which stated "judicial intervention is generally unwarranted no matter how unwise a court considers a policy decision of the legislative branch."⁵⁷ Essentially, the court reasoned that if New Jersey disagreed with PASPA, the most efficient method to overturn PASPA was not through the judiciary, but through congressional legislative action, as courts would be unlikely to change a legislative policy decision.⁵⁸ However, the statement showed that, although not typically the case, a court could possibly declare a legislative policy unconstitutional if it felt the policy unwise.⁵⁹

Heeding this statement and hoping for better results, New Jersey appealed the case to the Third Circuit.⁶⁰ Once again, the court, in a split 2–1 decision, upheld the constitutionality of PASPA.⁶¹ Specifically, the court held that

story/_/id/9002043/judge-deals-setback-new-jersey-sports-gambling-effort (last updated Mar. 1, 2013).

52. Associated Press, *Justice Dept. Joining Betting Lawsuit*, ESPN, http://espn.go.com/espn/story/_/id/8869506/us-department-justice-join-suit-new-jersey-sports-betting-law (last updated Jan. 22, 2013).

53. *NCAA v. Christie*, 926 F. Supp. 2d 551, 554 (D.N.J. 2013).

54. *Id.* at 554.

55. *Id.* at 554–55.

56. *Id.*

57. *Id.* at 555.

58. *Id.* at 555.

59. *See id.*

60. *See generally* *NCAA v. Governor of N.J.*, 730 F.3d 208 (3d Cir. 2013).

61. *Id.* at 215.

accepting New Jersey's arguments would require the court to make the unprecedented step of "invalidating for the first time in [the Third] Circuit's jurisprudence a law under the anti-commandeering principle," something the court noted had only been done twice by the Supreme Court.⁶² Further, the court would have to expand the anti-commandeering principle in order to "suspend commonplace operations of the Supremacy Clause over state activity contrary to federal laws."⁶³ Finally, the court stated that going down this path would increase Congress's difficulty of enacting laws "pursuant to the Commerce Clause" if those laws treat states differently.⁶⁴ Similar to the district court, the Third Circuit mentioned that its job was not to decide whether PASPA was wise or whether it fulfilled its purpose to preserve the integrity of sports, but rather its purpose was to focus only on the "legality of these measures as a matter of constitutional law."⁶⁵

Again, though, New Jersey had reason to be encouraged, as the lone holdout in a dissenting opinion argued that while he concurred in parts of the majority opinion, he would have held PASPA violated federalism principles articulated in Court precedent.⁶⁶ The judge, in support of his conclusion, stated "PASPA is no ordinary federal statute that directly regulates interstate commerce or activities substantially affecting such commerce. Instead, PASPA prohibits states from authorizing sports gambling and thereby directs how *states* must treat such activity."⁶⁷ For these reasons, the dissenting judge felt "uphold[ing] PASPA as a constitutional exercise of congressional authority" was wrong.⁶⁸

Hoping the Third Circuit would reconsider its case, New Jersey asked for a rehearing but was denied in November 2013.⁶⁹ With that decision, the fate of New Jersey's law and the future of sports gambling likely rests with the Supreme Court,⁷⁰ as it is widely expected that the State will file the necessary paperwork to get the case in front of the Court.⁷¹ As of the writing of this Comment, the State has filed an appeal with the Court and awaits word on

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 251 (Vanaskie, T., concurring in part and dissenting in part).

67. *Id.* at 241.

68. *Id.*

69. Sieroty, *U.S. Supreme Court Is Last Option*, *supra* note 21.

70. *Id.*

71. See Reid Wilson, *Christie Will Take Sports Gambling Fight to the Supreme Court*, WASH. POST (Nov. 20, 2013, 2:00 PM), <http://www.washingtonpost.com/blogs/govbeat/wp/2013/11/20/christie-will-take-sports-gambling-fight-to-supreme-court/>.

whether the justices will accept the case.⁷² Throughout the process, New Jersey and Governor Christie believed the case belonged in the Supreme Court, and the State will now have its shot to persuade the Court that PASPA is unconstitutional.⁷³ While the Court could declare PASPA unconstitutional for numerous reasons, New Jersey's hope is that the Court will not hide behind precedent like the lower courts have done previously in this case and instead will be willing to hold states' rights over federal rights.⁷⁴

III. THE COURT'S HISTORY IN DECIDING INTERSTATE COMMERCE CLAUSE ISSUES

As New Jersey's case points out, there are several ways that the constitutionality of PASPA can be attacked.⁷⁵ While several options are available to the Court, one promising option that could be utilized to declare PASPA unconstitutional is through the application of the Court's interpretations of the Commerce Clause. Broadly speaking, the United States Constitution grants Congress the power to regulate commerce among the states.⁷⁶ While Congress has the power to regulate, the Court has ultimately held the power in deciding how the Commerce Clause has been applied.⁷⁷ In terms of the constitutionality of PASPA, critics have often pointed to a failure of sports gambling to "substantially affect" interstate commerce.⁷⁸ To understand how the Court has interpreted and applied substantial affect to Commerce Clause issues, it is necessary to turn to case law.

In *United States v. Lopez*, the Court established three categories where Congress could exercise power to regulate commerce.⁷⁹ The first category allowed Congress to regulate the channels of interstate commerce.⁸⁰ Second, Congress could regulate the instrumentalities of interstate commerce, or those

72. Ryan Hutchins, *NJ Appeals Sports Betting Case to U.S. Supreme Court*, NJ.COM, http://www.nj.com/politics/index.ssf/2014/02/nj_appeals_sports_betting_case_to_us_supreme_court.html (last updated Feb. 18, 2014).

73. Ryan Hutchins, *N.J. Sports Gambling to Place Final Bets in the U.S. Supreme Court*, NJ.COM, http://www.nj.com/politics/index.ssf/2013/12/sports_betting_chris_christie_us_supreme_court_appeal_atlantic_city_casinos_horse_tracks_ncaa_nba_ml.html (last updated Dec. 10, 2013).

74. *See id.*

75. *See generally* *NCAA v. Governor of N.J.*, 730 F.3d 208, 214 (3d Cir. 2013).

76. U.S. CONST. art. I, § 8, cl. 3.

77. *See generally* *Commerce Clause*, LEGAL INFO. INST., http://www.law.cornell.edu/wex/commerce_clause (last visited Apr. 14, 2014).

78. Jason J. Ranjo, Note, *Game Over?: The Potential Demise of the Professional and Amateur Sports Protection Act*, 42 RUTGERS L.J. 213, 218 (2010).

79. 514 U.S. 549, 558 (1995).

80. *Id.* at 558.

involved in interstate commerce, even if the law targeted intrastate activities.⁸¹ The third category gave Congress the power to regulate those activities that substantially affect interstate commerce.⁸²

The Court furthered its analysis of the commerce clause in *United States v. Morrison*.⁸³ In *Morrison*, the Court established four factors to help determine whether a federal statute should be upheld under the commerce clause.⁸⁴ These considerations include: (1) the economic activity to be regulated;⁸⁵ (2) whether the statute contains a jurisdictional element that might limit the effect on interstate commerce;⁸⁶ (3) whether the statute or the statute's legislative history shows an effect on interstate commerce;⁸⁷ and (4) whether the link between the regulated conduct and its effect on interstate commerce is satisfied.⁸⁸ The Court reiterated from previous cases that the ultimate decision of whether particular activities affect interstate commerce is a judicial question and not a legislative one.⁸⁹

The last useful case in providing clarity to the Court's approach to substantial effect Commerce Clause issues is *Gonzales v. Raich*.⁹⁰ In *Gonzales*, the Court held that "Congress can regulate purely intrastate activity that is not itself 'commercial,' in that it is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity."⁹¹ The Court continued its analysis by reestablishing the rational basis test, which allows for the Court to uphold the statute if, when taken as a whole, the activity rationally affects interstate commerce.⁹² Essentially, the Court does not require a showing of fact that interstate commerce is affected, just a rational basis for reaching that conclusion.⁹³

81. *Id.*

82. *Id.* at 558–59.

83. 529 U.S. 598 (2000).

84. *Id.* at 610–12.

85. *Id.* at 610.

86. *Id.* at 611–12.

87. *Id.* at 612.

88. *Id.*

89. *Id.* at 614.

90. 545 U.S. 1 (2005).

91. *Id.* at 18.

92. *See id.* at 22.

93. *Id.*

IV. SPORTS GAMBLING'S SUBSTANTIAL AFFECT ON INTERSTATE COMMERCE

For the Court to declare PASPA unconstitutional via the Commerce Clause, it will need to examine sports gambling through the framework laid out in *Lopez*, *Morrison*, and *Gonzales*. Initially, in determining the constitutionality of PASPA, the Court must classify the category under *Lopez* in which Congress is allowed to exercise its power to regulate. The first two categories, the channels of interstate commerce and the instrumentalities of interstate commerce,⁹⁴ do not relate to or control the activity of sports gambling. Rather, the third category, activities that substantially affect interstate commerce,⁹⁵ would most likely be the area the Court would deem sports gambling would fall under.⁹⁶ From here, the Court would then be able to apply the *Morrison* factors to PASPA to determine if Congress had the power to regulate the sports gambling industry.

A. *Sports Gambling Is a Business*

The first factor in *Morrison* examines whether the regulated activity is commercial.⁹⁷ Sports gambling is a booming business within the United States. As mentioned earlier, it is estimated that Americans alone gamble in excess of \$500 billion a year on sports, with only \$2–3 billion gambled legally in the state of Nevada.⁹⁸ Yet, the question posed is whether this business should need to be regulated by the federal government. New Jersey does not believe so, as recognized by its continued efforts to implement a sports wagering scheme.⁹⁹ In response to a lawsuit by the professional sports leagues and the NCAA, New Jersey has argued that gambling is so widespread that any implementation of a state wagering system would have no effect on sports.¹⁰⁰ As the sports gambling industry continues to grow despite the presence of PASPA, it is worth suggesting that the federal government step aside and let states try to regulate the industry themselves. This type of action would not only benefit cash-strapped states that wish to have more options to raise capital,¹⁰¹ but would also

94. *United States v. Lopez*, 514 U.S. 549, 558 (1995).

95. *Id.* at 558–59.

96. *See Ranjo, supra* note 78, at 220–22 (explaining how gambling substantially effects interstate commerce).

97. *United States v. Morrison*, 529 U.S. 598, 610 (2000).

98. Millman, *supra* note 1.

99. *See Associated Press, Leagues Have No Standing, Brief Says*, ESPN, http://espn.go.com/espn/story/_/id/8350090/leagues-no-standing-sports-betting-suit-new-jersey-court-filing-says (last updated Sept. 7, 2012).

100. *Id.*

101. One report estimates that New Jersey alone would benefit from the implementation of sports

provide information as to whether sports gambling is capable of being regulated from a state-down approach.

A counter argument to the state-down approach could be to dissolve PASPA completely and introduce new legislation that bans all forms of sports gambling in the United States, including the schemes currently enjoyed by states, such as Nevada, which fell within PASPA's grandfather provision in section 3704.¹⁰² However, this type of approach is unlikely to be successful considering the widespread growth of the sports gambling industry.¹⁰³ It is unlikely that a federal ban on all sports gambling would be successful or the most efficient method to curb individuals placing bets, considering the amount of money that is already being gambled illegally in the United States.¹⁰⁴ In a way, "[t]he [federal] ban on sports betting does exactly what Prohibition did. It makes criminals rich."¹⁰⁵ To quote a gambling law expert, "'Gambling has typically been a state issue'" and should be left to state regulation.¹⁰⁶

B. No Jurisdictional Element Exists Within PASPA

Morrison's second factor looks at whether there is a jurisdictional element within the statute.¹⁰⁷ Within PASPA, there is no language that directly limits the statute's applicability to certain jurisdictions.¹⁰⁸ This includes the exemption, which allowed for states to conduct sports wagering schemes if the schemes existed in the period from 1976 to 1990.¹⁰⁹

C. PASPA's Legislative History Does Not Address Interstate Commerce

The third factor of *Morrison*, whether the statute or the statute's legislative history shows an effect on interstate commerce,¹¹⁰ could play a substantial role

wagering to the tune of nearly \$100 million annually. See Chris Sieroty, *Federal Court Tosses New Jersey Sports Betting Law*, LAS VEGAS REV.-J., <http://www.reviewjournal.com/business/casinos-gaming/federal-court-tosses-new-jersey-sports-betting-law> (last updated Sept. 17, 2013) [hereinafter Sieroty, *Federal Court Tosses N.J. Sports Betting Law*].

102. See 28 U.S.C. § 3704 (2012).

103. See Chad Millman, *Harm of Betting to Leagues Remains Unclear*, ESPN (Mar. 1, 2013, 9:48 AM), http://espn.go.com/insider/blog/_name/millman_chad/id/9002204/betting-new-jersey-ruling-harm-betting-sports-leagues-remains-unclear.

104. See James Surowiecki, *A Call to Action*, NEW YORKER (Feb. 11, 2013), http://www.newyorker.com/talk/financial/2013/02/11/130211ta_talk_surowiecki#ixzz2JwuurTAw.

105. *Id.*

106. *Id.* (quoting I. Nelson Rose, a gambling law expert at Whittier Law School).

107. *United States v. Morrison*, 529 U.S. 598, 611–12 (2000).

108. 28 U.S.C. § 3701 (2012).

109. *Id.* § 3704 (a)(1).

110. *Morrison*, 529 U.S. at 612.

in the Court's decision on whether sports gambling affects interstate commerce. According to U.S. Senator Bill Bradley, the real reason for creating PASPA was to prevent "the harm that state-sponsored sports betting causes" among America's fans and youth.¹¹¹ Further, in its recommendation for passage of PASPA, a Judiciary Committee report stated that the act was necessary in order "to maintain the integrity of our national pastime."¹¹² In essence the law was created for two reasons: 1) to protect America's national pastimes and preserve the integrity of sport and its athletes, and 2) to preserve the moral values of America's youth by preventing a culture of gambling.¹¹³ If these issues were so prevalent and dire that Congress passed an Act to federally regulate sports gambling, then why did it allow for an exemption for the states of Nevada, Delaware, Oregon, and Montana?¹¹⁴ What Congress ultimately created with PASPA was a culture that did not say gambling was something that needed to be eliminated but instead something that needed to be curtailed.¹¹⁵

Ultimately, what has happened is that Nevada continues to profit greatly from its monopoly on the sports betting industry while other states, including Delaware, Oregon, and Montana, are forced to swallow the restrictions of PASPA.¹¹⁶ However, while some believe that PASPA has proven effective in preventing the expansion of sports gambling,¹¹⁷ based off of the recent indictments and statistics reported previously in this Comment,¹¹⁸ one must question whether PASPA is indeed regulating the industry or if instead it has pushed the industry into areas that do not meet the legislative purpose of the Act. Regardless, the legislative history fails to properly address a link connecting PASPA to interstate commerce.

111. Bill Bradley, *The Professional and Amateur Sports Protection Act—Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORT L. 5, 8 (1992).

112. BILL BRADLEY, PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT, S. REP. NO. 102-248, at 4 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3555.

113. *Id.* at 4–5.

114. Anthony G. Galasso, Jr., Note, *Betting Against the House (and Senate): The Case for Legal, State-Sponsored Sports Wagering in a Post-PASPA World*, 99 KY. L.J. 163, 167 (2010–11).

115. *Id.*

116. *Id.*

117. *See, e.g., id.* at 169.

118. Looking specifically at the current estimated size of the betting industry and the indictments issued over illegal betting schemes concerning all levels of sports. *See generally supra* Part I.

D. A Rational Link May Not Exist Connecting PASPA and Interstate Commerce

The final factor from *Morrison*, whether a link between the regulated conduct and its affect on interstate commerce is satisfied,¹¹⁹ is not as clear cut as what it may seem. Typically, the Court has only upheld cases concerning the Commerce Clause when the activity itself is economic in nature and there is some resemblance of a link between the conduct and interstate commerce.¹²⁰ Here, it is hard to debate that sports gambling would be anything but economic in nature. This Comment has already shown the staggering amount of money that is gambled per year in the United States.¹²¹ If gambling were to be legalized, it no doubt would be a substantial economic endeavor for whoever is permitted to undertake and create a wagering scheme.¹²²

However, the true question within this fourth factor rests in the link between PASPA and interstate commerce. To answer this question, it is necessary to contemplate whether economic factors were considered when PASPA was established. As was seen previously, the legislature's intent did not mention nor discuss the financial implications that sports gambling possessed.¹²³ Instead, the legislature created PASPA for morality and integrity reasons.¹²⁴ This presents the question of whether the Court may expand upon the legislature's intent when determining if the regulated conduct is related to interstate commerce. As *Morrison* does not address this question directly, it would be helpful to apply the rational basis test that the Court reestablished in *Gonzales* to determine if there is indeed a credible link between PASPA and the regulation of interstate commerce.

The Court has two ways in which it could perform a rational basis test: (1) through a general approach; or (2) through a more in-depth analysis.¹²⁵ When applying a general approach to sports gambling, it would seem rational that a wagering scheme could affect interstate commerce. Using information already discussed in this Comment, if gambling were to be legalized, and the \$500

119. *United States v. Morrison*, 529 U.S. 598, 612 (2000).

120. *Id.* at 613.

121. *See* Millman, *supra* note 1.

122. *See generally* Sieroty, *Federal Court Tosses N.J. Sports Betting Law*, *supra* note 101 (specifically the economic benefit New Jersey alone would enjoy if allowed to implement a sports wagering scheme).

123. BILL BRADLEY, PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT, S. REP. NO. 102-248, at 4-5 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3555-56.

124. *Id.*

125. *See generally* *Gonzalez v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000).

billion that is gambled on sports per year in the United States continued,¹²⁶ it is quite conceivable that there would be some effect on interstate commerce. However, the Court must not stop at this simple approach. Rather, the Court should undertake an in-depth analysis of the rationality of PASPA and decide whether the Act accomplishes its intended purpose. In doing so, the Court would be wise to consider similar wagering schemes, such as horseracing, which are regulated by the states underneath their police powers.¹²⁷

Horseracing poses the closest relationship to sports gambling in society in terms of wagering schemes. In the early 1990s and for most of the 2000s, the amount of money gambled legally on horseracing escalated quickly.¹²⁸ Much of this was due to the increased presence of off-track betting sites and relaxed off-track betting legislation, as nearly eighty percent of the money gambled on horses was laid down at off-track betting sites.¹²⁹ Despite the downturn in the economy over the last few years, horseracing seems to have survived the recession, posting in 2012 its first increase in money gambled on the sport since 2006.¹³⁰

Much like sports gambling, horseracing is an economic activity that affects interstate commerce. However, with the exception of a period in the early 1900s, states have had the privilege and the power to institute horseracing wagering schemes.¹³¹ While this power has been passed down through the legislature with the Interstate Horse Racing Act of 1978,¹³² it poses the question as to why the legislature would allow state-sponsored wagering schemes on horseracing but not wagering schemes on sports. The logical answer is to revert back to the legislature's intent to outlaw wagering schemes in professional sports for morality and integrity reasons.¹³³ This, in turn, brings the argument

126. Millman, *supra* note 1.

127. See Hubel v. W. Va. Racing Comm'n, 376 F. Supp. 1, 4 (S.D.W.Va. 1974); Sandstrom v. Cal. Horse Racing Bd., 189 P.2d 17, 21 (Cal. 1948); Greenberg v. Western Turf Ass'n, 82 P. 684, 685 (Cal. 1905).

128. See generally Bethany McLean, *Billion-Dollar Horse Play: The Future of the Sport of Kings Is in the Hands of Three Very Different Players. Can Live Racing Be Saved?*, CNNMONEY (Oct. 29, 2001), http://money.cnn.com/magazines/fortune/fortune_archive/2001/10/29/312430/index.htm.

129. Joan S. Howland, Essay, *Let's Not "Spit the Bit" in Defense of "The Law of the Horse": The Historical and Legal Development of American Thoroughbred Racing*, 14 MARQ. SPORTS L. REV. 473, 504 (2004).

130. See Tom LaMarra, *Total Handle up for First Time Since 2006*, BLOODHORSE.COM (Jan. 5, 2013), <https://www.bloodhorse.com/horse-racing/articles/75370/total-handle-up-for-first-time-since-2006>. According to this report, almost \$11 billion was legally gambled on horse racing in the United States in 2012. *Id.*

131. See Howland, *supra* note 129, at 496–97.

132. 15 U.S.C. § 3001 (2012).

133. BILL BRADLEY, PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT, S. REP. NO. 102-

back to the link between PASPA and regulating interstate commerce, and at the very least, leaves some doubt as to whether a rational link does indeed exist.

After weighing the *Morrison* factors, it is not unreasonable to see how the Court could side with the states and declare PASPA unconstitutional. While sports gambling is no doubt a business and no jurisdictional element exists within PASPA, the legislative intent and the doubt as to whether a rational link exists between PASPA and regulating interstate commerce could create a strong enough reason for the law to not be upheld. The fact that PASPA regulates an economic activity that is extremely valuable should not be enough, on the merits, to prevent the Court from at least performing a Commerce Clause analysis on whether there is a substantial affect on interstate commerce.

V. THE UNIFORMITY REQUIREMENT OF THE COMMERCE CLAUSE

If the Court holds that sports gambling does indeed substantially affect interstate commerce, there are other ways that PASPA could also be found unconstitutional. Another likely option would be that the law violates the uniformity requirement of the Commerce Clause.¹³⁴ In terms of uniformity, Congressional Acts should not treat individuals who are “similarly situated” differently.¹³⁵ Uniformity can be a tricky issue to prove, as Congress once again must only show a rational basis for linking the activity to interstate commerce and not necessarily direct facts showing the connection.¹³⁶ The key component in determining uniformity is understanding that the Constitution does not necessarily provide for equal rules, but rather requires equal treatment.¹³⁷

When considering the uniformity requirement’s application to sports gambling, it is important to take note of Congress’ rationale in passing the Interstate Horseracing Act of 1978.¹³⁸ The Interstate Horseracing Act essentially allowed for states to set up their own state-sponsored wagering schemes.¹³⁹ Specifically, the Interstate Horseracing Act of 1978 states that “the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders.”¹⁴⁰ In addition, the Act was developed to help “further the horseracing and legal off-track betting

248, at 4–5 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3555–56.

134. *See generally* Galasso, *supra* note 114, at 173.

135. *Id.* at 174.

136. *See id.* at 173.

137. *Id.* at 174.

138. *See generally* 15 U.S.C. § 3001 (2012).

139. *Id.*

140. *Id.* § 3001(a)(1).

industries.”¹⁴¹

When combining the rationale of the Interstate Horseracing Act and the goals of uniformity,¹⁴² it is clear that Congress was not meant to have the power to enact legislation that would treat one state different from the next.¹⁴³ Essentially, this is exactly what Congress did through the grandfather provision contained in PASPA.¹⁴⁴

VI. PASPA VIOLATES THE UNIFORMITY REQUIREMENT OF THE COMMERCE CLAUSE

As noted above, the uniformity requirement of the Commerce Clause requires that states be treated equally.¹⁴⁵ With PASPA, the legislature created an exemption that allowed for states to be excluded from the law if the wagering scheme existed prior to the law going into effect in 1992.¹⁴⁶ While this exemption was extended to four states (Nevada, Oregon, Delaware, and Montana), Nevada is the only state that has substantial options for those looking to place a wager on an individual game.¹⁴⁷ This exemption not only provides a monopoly for Nevada in individualized betting, but it creates a steady revenue stream for the state that other states are not able to realize.¹⁴⁸ One must question if this benefit that Nevada is able to enjoy is indeed an unequal treatment created by PASPA.

In cases where the uniformity requirement is questioned, the Court will apply a rational basis test to determine if the act treats similarly situated states differently.¹⁴⁹ By examining PASPA’s rationality, it is hard to conceive any possibility that would declare PASPA rational. In the Judiciary Committee’s report, U.S. Senator Chuck Grassley stated that the issue surrounding uniformity is even more of a problem than states’ rights issues.¹⁵⁰ Grassley went on to state that as a ““matter of Federal policy,”” no rational basis exists that would allow

141. *Id.* § 3001(b).

142. Essentially, the Horseracing Act allows states to be the primary decision makers on what forms of gambling will be allowed within the state, which complies with the uniformity requirement that states be treated equally. 15 U.S.C. § 3001; Galasso, *supra* note 114, at 174.

143. Galasso, *supra* note 114, at 173–74.

144. 28 U.S.C. § 3704 (2012).

145. *See generally* Galasso, *supra* note 114, at 173–74.

146. *See* 28 U.S.C. § 3704.

147. Galasso, *supra* note 114, at 164, 168.

148. *Id.* at 168.

149. *See id.* at 173.

150. BILL BRADLEY, PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT, S. REP. NO. 102-248, at 13 (1991), *reprinted in* 1992 U.S.C.C.A.N. 3553, 3563.

sports gambling to occur in three states¹⁵¹ but not the rest of the country.¹⁵² Similarly, Grassley contended that even the discrepancies between the states that fit under the exemption were not rational and simply made no sense.¹⁵³ Grassley used Delaware as an example, stating that when PASPA was accepted into law, the state had not conducted a wagering scheme for some time.¹⁵⁴ Yet, because of the exemption that Delaware was granted, the state can, at any time, resurrect its sport wagering scheme as it existed at the time of PASPA's initiation.¹⁵⁵ This no doubt creates an advantage for the four states with exemptions, allowing them to enjoy a benefit that other states do not have the right to enjoy.

Utilizing one individual's analysis of the uniformity restraint on the Commerce Clause, it is easy to see how PASPA creates a regulation that treats the same issue differently among the states.¹⁵⁶ The analysis proposes that if states were indeed allowed to legalize sports gambling, a system of uniform treatment would be initiated despite the fact that the rules could, and very well may, be different amongst the states.¹⁵⁷ Essentially, uniform treatment, and not uniform rules, is what the uniformity clause is intended to guarantee.¹⁵⁸ While some may argue that this rationale is not enough on its own to overturn the constitutionality of PASPA,¹⁵⁹ this Comment asks if that is truly the case. Even if the Court has shifted its course in regulating the Commerce Clause and the application of the Clause's provisions,¹⁶⁰ nothing is to say that the Court could not change its mind when considering the financial crises that many states are currently experiencing.

Much like has been seen with horseracing, where taxes have led to increased revenues for states and local governments,¹⁶¹ legalizing sports gambling could

151. While the exemption applies to four states (Nevada, Oregon, Delaware, and Montana), Grassley only mentions three states (Nevada, Oregon, and Delaware) as being grandfathered. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. Galasso, *supra* note 114, at 175–76.

156. *See, e.g., id.* at 173–74 (citing Thomas B. Colby, *Revitalizing the Forgotten Uniformity Constraint on the Commerce Power*, 91 VA. L. REV. 249, 255–56 (2005)).

157. *Id.* at 174 (quoting Thomas B. Colby, *Revitalizing the Forgotten Uniformity Constraint on the Commerce Power*, 91 VA. L. REV. 249, 265 (2005)).

158. *Id.*

159. *Id.* at 176–77.

160. *See id.* at 176–77.

161. Luke P. Breslin, Comment, *Reclaiming the Glory in the "Sport of Kings"—Uniformity Is the Answer*, 20 SETON HALL J. SPORTS & ENT. L. 297, 303 (2010). For an example of how states and local governments have been benefitted financially, consider the following: CAL HORSE RACING BD., 42 ANNUAL REPORT OF THE CALIFORNIA HORSE RACING BOARD (2012), available at <http://>

create financial avenues for states through taxes on the wagering schemes.¹⁶² Despite the fact that the downturn in the economy has affected gambling on horseracing and the amount of money generated from the activity, the fact of the matter is that over \$12 billion was gambled on horses in 2009, a decline of about 9% from the national average.¹⁶³ If sports gambling's estimated total of \$500 billion dropped by the same percentage as horse racing, then the total gambled on sports would still be in excess of \$450 billion.¹⁶⁴ If states were given the power to regulate this activity, much like the state of Nevada is allowed to do currently, the profits from tax revenue could be extremely large.

Additionally, the lack of control that PASPA has on the sports gambling enterprise should be considered. A telling statistic concerning this control is, "Less than 1% of all sports wagering on human athletic events is done legally."¹⁶⁵ Further, enforcement of illegal gambling has dropped significantly in the last fifty years.¹⁶⁶ Based off this information, one must ask if PASPA is intended to prevent and stop the financial boom created by sports gambling, or if it is to sweep the activity under the rug for morality and integrity reasons. Looking at this problem rationally, it would be difficult to determine that the law has anything to do with economics. If PASPA did deal with economic reasons, it is unlikely the federal government, which is facing a severe financial deficit in its own right, would let this untapped resource drift afloat.

Without economics being the driving force behind the law, a return to the legislative history is needed. While the law may have been created for morality and integrity reasons,¹⁶⁷ sports gambling is still prevalent throughout society.

www.chrb.ca.gov/annual_reports/2012_annual_report.pdf (showing a benefit of \$3.8 million to local governments); and KEVIN T. MCNAMARA & MARY KNUDSON, *ECONOMIC IMPACTS OF INDIANA'S PARI-MUTUEL HORSE INDUSTRY ON INDIANA*, 1 (2001), available at <http://www.in.gov/hrc/files/CompleteStudy.pdf> (demonstrating payments of over \$4 million to the state from pari-mutuel racing operations).

162. See generally Sieroty, *Federal Court Tosses N.J. Sports Betting Law*, *supra* note 101 (estimating that New Jersey alone could see additional revenues from sports gambling of \$100 million).

163. Anthony Cabot, *The Absence of a Comprehensive Federal Policy Toward Internet and Sports Wagering and a Proposal for Change*, 17 VILL. SPORTS & ENT. L.J. 271, 271 (2010) (citing Frank Angst, *Another Billion-dollar Decline in Wagering*, THOROUGHBRED TIMES, (Jan. 6, 2010), <http://www.thoroughbredtimes.com/national-news/2010/January/06/Wagering-on-US-races-dips-in-December.aspx>).

164. While it is reported that the amount of money gambled on horseracing was calculated at just under \$11 billion in 2012, the general concept expressed using 2009 figures is still relevant. See LaMarra, *supra* note 130. If sports gambling saw a similar decline in wagers placed, the amount gambled would still be estimated at over \$400 billion. See *Id.*

165. Cabot, *supra* note 163, at 272.

166. See *id.* at 273.

167. BILL BRADLEY, PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT, S. REP. NO. 102-248, at 4-5 (1991), reprinted in 1992 U.S.C.C.A.N. 3553, 3555-56.

From fantasy sports leagues to daily lines being placed in the newspaper,¹⁶⁸ Americans are inundated with gambling information, almost to the point that it may seem as if sports gambling, and not the sports themselves, is America's favorite pastime. However, as was mentioned earlier, the problems with sports gambling continue to increase.¹⁶⁹ This leads to the question of whether another approach could reasonably accomplish the goals set out by the legislature in adopting PASPA, such as allowing states to regulate wagering schemes.

While this may raise the question of integrity and morality, one commentator notes that legal bookmakers have an economic interest in assuring that the competitions are fair and produce a just result.¹⁷⁰ This desire to protect the integrity of the game and root out any corruption within sports is more closely aligned with the goals of the legislature than what PASPA has shown to accomplish. If the Court is to act rationally, it must see how the Nevada gaming structure has not only benefited the economy of the state but has helped in weeding out corruption in sport. Other states should be given the opportunity to address sports gambling and decide for themselves whether they would like to institute a wagering scheme. Giving each state the choice is the only way to ensure equal treatment, unless the legislature bans sports gambling altogether. However, with such economic viability in this untapped resource, it would seem irrational to do anything but give states the power to decide if they would like to establish a scheme of their own. For these reasons, the Court should declare PASPA unconstitutional for a failure to rationally apply the uniformity restraint of the Commerce Clause.

VII. CONCLUSION

Sports gambling and the constitutionality of PASPA will remain to be a debated topic as states like New Jersey continue to push for the implementation of state-sponsored wagering schemes.¹⁷¹ If the Court would examine PASPA constitutionally, it is not a guarantee that the law would be upheld. While this Comment has only focused on two constitutional attacks on the Act, several other constitutional challenges exist that could ultimately spell an end to PASPA.¹⁷² In what has become an economic recession, federal, state, and local

168. See Cabot, *supra* note 163, at 273–74.

169. See Part I, *supra*.

170. Galasso, *supra* note 114, at 177.

171. New Jersey is not alone in trying to end PASPA, as legislators in California, Missouri, Rhode Island, and Iowa are all seeking to end the Act. Kyle Smith, *Legalize Sports Betting, and Let Gov. Chris Christie Spike the Football*, FORBES (Aug. 23, 2012), <http://www.forbes.com/sites/kyle-smith/2012/08/23/legalize-sports-betting-and-let-gov-chris-christie-spike-the-football/>.

172. *NCAA v. Governor of N.J.*, 730 F.3d 208, 214 (3d Cir. 2013).

governments continue to look for ways to raise capital and decrease growing deficits. Looking at PASPA rationally, it does not serve the purpose for which it was created, as a number of individuals associated with sports continue to be prosecuted for their involvement with illegal betting rings. These instances of illegal sports betting are not helping to maintain nor progress the integrity or morality of sports. If the Court is willing to step in a new direction and analyze PASPA with more than the economic effect on interstate commerce in mind, it is likely that the Act will be declared unconstitutional and states will have the power to regulate their own wagering schemes. In doing so, sports gambling may be able to not only produce revenue for the states, but also be controlled by those who wish to keep the integrity and morality of sports alive. That is a bet the legislature is sure to accept.