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**Submitted to the Subcommittee on Crime, Terrorism, Homeland Security, and
Investigations,
United States House of Representatives Committee on the Judiciary,
Legislative Hearing on Sports Gambling
(submitted for September 27, 2018 hearing, and subsequently updated, January 17, 2019)**

**Realistically-Unresolvable Foreseeable Problems Which Will Arise from Expanded
Legalized Commercialized Sports Betting**

A. Loss of Community Control

Commercialized sports gambling's proponents claim that, until the recent U.S. Supreme Court ruling in *Murphy v. NCAA*, it was existing federal law (PASPA) that restricted local freedom to legalize sports betting. That simply is untrue. Federal courts had explicitly (and repeatedly) interpreted PASPA to permit states to allow intra-state sports wagering if their laws were appropriately crafted--but the proponents didn't want to follow these rulings and, ultimately, don't want to allow localities to decide for themselves. With PASPA now set aside by the *Murphy* decision, and if or when expanded commercialized sports gambling is authorized by various U.S. states and territories, this nation will likely have scores of varying laws and regulations to address businesses engaged in commercialized sports gambling. These variances will pose a level of inefficient complexity for the commercialized sports gambling industry. That complexity will drive the industry to ever-more insistently lobby Congress for single national standards (which would increase industry efficiency and, so, profitability)--but at what cost? A more recent force likely to prompt this lobbying is the 2019 US Dept. of Justice, Office of Legal Counsel (OLC), recognition that OLC's earlier (2011) re-interpretation of the federal Wire Act (which had limited the Act's scope) was in error. See, <https://www.justice.gov/olc/file/1121531/download> (re-establishing that most prohibitions in the Wire Act apply to both sports and non-sports gambling).

The foreseeable, inevitable industry push for nationwide legalization necessarily will undercut federalism, eroding local citizens' rights to determine at a local level what kind of vices they will or will not tolerate (and to what degree and at what costs, both tax-wise and social-harm-wise). This loss of local control is an incalculable loss of freedom.

The commercialized gambling industry-and-state-legislator partnership's supposed attempt to "protect" state's rights was fraudulent, for in *Murphy v. NCAA*, **New Jersey's attack on PASPA was but a step *en route* to the industry goal of a single national gambling law authorizing expansion of commercial gambling, nation-wide.** After all, there have long been ample channels already existing for citizens to engage in sports gambling using non-commercialized

means (e.g., social bets among friends and family; non-profit office pools; limited non-profit charitable wagering). Especially since multiple alternative and non-commercialized channels for sports gambling exist, Congress is not required to permit interstate commerce to be used to exploit citizens, whether by states partnering with the commercialized gambling industry or by anyone else. Neither should states through their commercial partners be allowed to enter into compacts with one another in multi-state schemes to increase their aggregate interstate “take” from bettors swayed by sophisticated interstate commerce-based marketing and privacy-invasive tracking tools used by modern commercialized gambling businesses. The power imbalances created by multi-state gambling pacts overwhelm individual choice, and they fund harmful practices, via industry spending in ways that responsible social health advocates can never hope to match. And, beyond the commercialized sports gambling industry’s transparent aim to eliminate or restrict local freedoms, there are other significant costs sure to flow from expanded commercialized sports gambling, as discussed, below.

B. Quality of Life/Environmental Degradations

Considering these costs, comparison of the U.S. and other nations’ experiences with commercialized sports gambling are largely ill-founded. Differences in history, culture, economies, and healthcare structures make such a comparison of little value.¹ For example, unlike some countries, this nation has the First Amendment and broad interpretations by courts of the expressive freedoms it protects. These interpretations permit both expansive commercialized speech and the associated spending by powerful interests to advance their commercialized interests--spending at levels that most citizens and community organizations can *never* match. This **imbalance of power gives commercialized sports gambling**

¹ Even if such comparisons had modest value, it would be tempered by recent reports and studies from English-speaking legalized-commercialized-sports-gambling nations that reveal massive and growing problems of behavioral addictions and loss of integrity. See, e.g., Phillip W. Newall, *How Bookies Make Your Money*, 10 *Judgment and Decision Making* 225-231 (2015); Mark D. Griffiths and Michael Auer, *The Irrelevancy of Game-Type in the Acquisition, Development, and Maintenance of Problem Gambling*, 3 *Frontiers in Psychol.*, 621 (2013); David Putnam and Ryan Rodenberg, *Future of Sports Betting: the Pitfalls*, http://www.espn.com/chalk/story/_/id/17910253/the-future-sports-betting-go-wrong-sports-betting-was-leg-al-united-states, as updated Nov. 1, 2016 (“Today, after what he calls the ‘gamblization’ of sports in Australia, [Dr.Christopher] Hunt says sports bettors make up one-third of the clinic’s patients” at the University of Sydney Gambling Treatment Center.). Regarding sports and non-sports commercialized gambling, a large, recent public health study in New Zealand found that “gambling causes over twice the amount of harm than [do] chronic conditions such as osteoarthritis (2.1x) and diabetes (2.5x), and three times the amount of harm from drug use disorders,” and that even “a low risk gambler typically has about 20% of their quality of life ‘subtracted’ by gambling.” The study identified six main areas of harm associated with gambling: “Decreased health. Emotional or psychological distress. Financial harm. Reduced performance at work or education. Relationship disruption, conflict, or breakdown. Criminal activity.” New Zealand Ministry of Health, “Measuring the Burden of Gambling Harms in New Zealand” (pub. online 06 July 2017), at <https://www.health.govt.nz/publication/measuring-burden-gambling-harm-new-zealand>. If its’ Commerce Clause powers no longer permit Congress to preclude a renegade state legislature from imposing these harms on the nation’s citizens, fatal flaws thought discarded with the Articles of Confederation will have reinfected interstate commerce.

interests a systemic advantage that most people, upon reflection, recognize as unfair. Moreover, expanding and **legalizing the commercialized sports gambling industry promises that gambling advertising will occur at unpleasant, irritating, environmentally-intrusive levels** (such as with the Daily Fantasy Sports gambling ad invasion of 2015-16; only, post-legalization, America will be awash in commercialized sports gambling advertising “on steroids”). Congressional authorization of such environmental intrusions invites voter backlash.

This **onslaught of gambling advertising can be anticipated** to include the display of odds at sporting venues and during event broadcasts of all types (e.g., TV, radio, Internet); of logos and appeals in print media, on billboards, in direct mailings (“junk mail”), and on buses and taxis; ads popping up irritatingly on computer and handheld device screens; announcers and analysts, for pay, kickbacks, or favors, referring to odds, point spreads, and sportsbooks during and in pre- and post-game commentary; with occasional skywriters and blimps and brochures also intruding their forms of commercialized sports gambling ads into daily life; and, in a very short time, all this resulting in the very nature of sports itself being impacted and significantly altered. This converting of sports into a mere vehicle of commerce and greed is yet another incalculable environmental cost. Cf., Tom McMillen and Paul Coggins, Out of Bounds: How the American Sports Establishment is Being Driven by Greed and Hypocrisy--And What Needs to be Done about It (Simon and Schuster 1992), at 202-203.

This is not idle speculation: Industries spend billions on advertising because it *does* shape behavior. **Gambling entities**, such as states operating lotteries, **already “advertise so aggressively in poor neighborhoods”** where poor people view such gambling as “an investment’ when, instead, it is “a mirage of the American dream... .” Arthur C. Brooks, “Powerbull: The Lottery Loves Poverty,” Wall Street Journal, op-ed (August 27, 2017)(also noting that there is scholarly “evidence that states intentionally direct such ads at vulnerable citizens.”). Shaping Americans’ behavior into increasing their commercialized gambling on sports and, eventually, on non-sports gambling, as well, all **to advance corporate profitability while escaping corporate responsibility for harms caused, is precisely the unstated object of the commercialized gambling industry and its sports gambling subcomponent.**²

To avoid this harm, some have argued for imposing limits on commercialized sports gambling advertising. Imposition of gambling advertising limits, whether by law or by self-regulation, would have to address a kaleidoscope of issues (such as restrictions and standards addressing time and place, frequency, honesty of claims, media types and usage, targeted age groups, transparency regarding originating advertisers and hidden funding, free-play inducements,

² It is thus unsurprising that, when Murphy v. NCAA was pending, commercialized gambling industry consultants, counting unhatched chickens, promoted that their panel of experts would, via an August 9, 2017, webinar, reveal “how casinos can use sports betting for customer acquisition and retention... .” July 13, 2017, blast email received from “The Innovation Group,” of Littleton, Colorado (and citing the American Gaming Association’s Senior Director of Research as a panelist) (excerpt from email on file with the author).

bonuses, discounts to new players, and like promotions, endorsements by athletes and celebrities, prohibitions on exploitation of disadvantaged groups, use of tying arrangements with other industries or products, data-mining-based advertising, virtual and augmented reality-based ad techniques, subliminal or subconscious advertising, and the use of sexual-themed or similar psychological appeals). Even assuming no First Amendment challenges to such advertising limits (an unrealistic assumption), government and the industry would have to commit sufficient resources and funds to enforce these advertising limits for them to have any meaning whatsoever--and neither taxpayers nor the industry can be expected to willingly pay for these protections. Further, neither commercialized gambling-reliant state governments nor the industry can be expected to adequately enforce the limits, since the greed of each can be expected to adversely influence enforcement decisions. By enacting PASPA, Congress obviated these expensive and resource-diverting problems, in accordance with its constitutional powers to govern interstate commerce.

Nations where commercialized gambling operators exist and have arguably less expressive protections than provided in the United States by the First Amendment (and, so, which have been able to exert more control over advertising than in the U.S.) nonetheless **are now recognizing how commercialized sports gambling advertising negatively impacts children and promotes undesirable behavior**. See, H. Pitt, S. Thomas, A. Bestman, M. Daube, & J. Derevensky, "What do children observe and learn from televised sports betting advertisements? A qualitative study among Australian children," *Australian and New Zealand Journal of Public Health* (18 October 2017), at <http://onlinelibrary.wiley.com/doi/10.1111/1753-6405.12728/full#> ; T. Kelley, "Match of the Day pundits are 'pushing gambling' to children by promoting betting firms on Twitter...", *Daily Mail* (19 January 2018, updated 20 January 2018), at <http://www.dailymail.co.uk/news/article-5290253/BBC-sports-pundits-slammed-promoting-betting-firms.html> ; N. Toscano, "UNICEF urges Turnbull to toughen gambling ads ban," (January 18, 2018) at <http://smh.com.au/business/unicef-urges-turnbull-to-toughen-gambling-ads-ban-20180117-p4yyk2.html> ; "Gambling laws: Labour MP admits party was wrong to liberalise," (23 October 2017) at <http://www.bbc.com/news/uk-wales-politics-41723405> ; J. Reed, "Gambling adverts 'in 95% of TV matches'," (23 October 2017), at <http://www.bbc.com/news/business-41693866>. The "buyers' remorse" now surfacing in these nations provides a bracing caution, if American judicial and legislative eyes can remain unblinded by industry-funded campaigns. America's sports future may be foretold by a 27-year-old who participated in a recent University of Bath study of commercial gambling's impact in the UK, "...[G]ambling has ruined sport now...You just can't enjoy it [sport] for what it is....All my mates can't watch it without having a bet any more. It has ruined sport....I can't remember the last time I just watched the game like a real fan, without having a bet on it." See, "Revealed: the 'dire consequences' of football's relationship with gambling," (10 Jan. 2019) at <http://www.theguardian.com/football/2019/jan/10/football-gambling-dire-consequences-young-men-bet-new-study> (finding "catastrophic impacts" from the intensity of the online sports gambling experience).

C. Gambling Technology's Adverse Behavioral Implications

Expanded legalized commercialized sports betting, if allowed in the United States, will occur in an era where new technologies, added to existing computer technologies, will equal increased betting availability and convenience. In turn, this **increased online betting availability and convenience provably equals increased risk of and incidence of problem gambling**³ (and this term, here, refers to both problem gambling and pathological gambling, since both are categorically undesirable and harmful to individuals, families, non-gambling businesses, and communities). The **technological combinations also permit secret and ever-enhanced behavioral tracking and the resultant exploitation of bettor tendencies and weaknesses**. Anyone contending the commercialized gambling industry would never do such things is living in a dream world, as **casinos and online marketers already employ these hidden tactics to induce ever-more gambling**.

Further, **with expanded sports gambling will come** increased availability of exotic bets, teaser bets, proposition bets, real-time in-game micro-bets, and cash-out wagering options (among others)--all of which are **variations designed to increase betting**. Likewise, **betting exchanges will appear and flourish, making it possible to bet on losing outcomes, with even greater corrosion of game integrity sure to follow**. Necessarily, a concomitant increase in risk of and incidence of problem betting will follow--and at extreme rates, since the majority of sports betting will largely be online, eventually, and **studies have established that online gambling promotes problem gambling at rates far above those of casino-based betting**. See, for example, Lia Nower, Rachel A. Volberg, and Kyle R. Caler, "The Prevalence of Online and Land-Based Gambling in New Jersey, Rutgers Center for Gambling Studies," (2017) at

<https://socialwork.rutgers.edu/centers/center-gambling-studies/research-reports-and-questionnaire>

³ "[T]he majority of studies show 'a link between the expansion of legal gambling opportunities and the prevalence of problem gambling.'" Natasha Dow Schull, *Addiction by Design* (Princeton University Press 2012), endnote 57, at p. 319 (citation omitted). Since "most gambling prevalence screens examine only whether individuals have had a gambling problem in the last year," and since "gambling problems wax and wane over time for individuals,...lifetime prevalence rates are much higher than annual prevalence rates." *Id.* (citations omitted) Moreover, the type of AGA-supplied "problem gambling prevalence rates expressed as shares of the adult population are misleading measures of the real risks when most of the adult population do not gamble regularly, or do not gamble at all." *Id.*, endnote 58, at p. 320 (citing Productivity Commission, "Australia's Gambling Industries: Draft Report" (2009), a report prepared for the Australian Government). That Prof. Schull largely focuses on electronic gambling machines (EGMs, a/k/a "slot machines") does not undercut her book's utility here, since commercialized sports gambling operators have and will continue to develop EGMs based on both current and completed sports events, and since online gambling, effectively, converts much of commercialized sports gambling into EGM-based activity, with its identified harms. New Jersey's statute at issue permits this "slotification" of sports gambling as a lure to anyone, whether traveling through or residing in the state. "Eventually, though, almost all sports betting will take place online, experts say." David Purdum and Ryan Rodenberg, *Future of Sports Betting: the marketplace*, at http://www.espn.com/chalk/story/_/id/17892685/the-future-sports-betting-how-sports-betting-legalized-united-states-the-marketplace-look-like. Internet usage invariably involves interstate commerce.

[ires/prevalence-gambling-new-jersey](#). Their study finds that, after adding online (non-sports) commercialized gambling availability in New Jersey, the prevalence rate of both gambling disorder and reported gambling problems increased approximately 300% (*id.*, p. 58). Additional findings were that “more than 31% of online gamblers indicated they gambled online from work or during work hours, 40% gambled one or two days a week and nearly 24% gambled three to five days per week,” (*id.*, p. 60); that “a majority of educators and parents are unaware of the severe adverse consequences that can result from [gambling online,] a seemingly harmless activity,” (*id.*); and daily fantasy sports gambling “players also reported higher levels of substance abuse, behavioral problems and mental health issues than other non-DFS gamblers. They were 13 times more likely to report suicidal ideation and nine times more likely to have attempted suicide compared to other gamblers.” (*id.*, p. 61)

D. Inherent Impracticalities and Weaknesses of Regulatory Proposals

Proponents of expanded legalized commercialized sports gambling ignore or grossly understate the difficulty of effectively regulating online gambling. Proponents tout that online sports gambling will allow a gambler to establish pre-commitment betting limits to control loss exposure; but (just as with falsification of identities, spoofing of geolocation software, and evasion of electronic “fences”) **pre-commitment limits can be easily evaded** (and, just as casinos did by sponsoring repeals of state statutes imposing gambling loss limits, eventually this profit-hungry industry can be expected to successfully lobby to end any required offering of pre-commitment limits). **Credit provision and misuse/abuse, as well as fraud, money laundering, terrorist financing, and corruption, simply cannot be fully effectively monitored when occurring via computers at lightspeed and mixed in with thousands and even millions of transactions, many of which are sure to be encrypted.** Even assuming computer programs can screen for, filter, or identify violations or patterns associated with addictive behaviors, **eventually these events have to be evaluated at human speed, by humans**, with follow-up interviews, document acquisition and reviews, and resource-intensive enforcement proceedings. Given the predicted numbers of sports gambling transactions, **there simply are practical limits on the availability of trained, skilled human resources needed to make proposed regulations effective.** The entirely-predictable industry desire to evade the costs of such resources and training, on an on-going basis, further undercuts industry claims that such regulations would be effective.

Impossible--and **impossibly-expensive--regulatory challenges will not only exist as to the commercialized sports gambling industry’s machinery, but also as regards the very sports subjected to commercialized wagering-induced stresses and temptations.** With state-authorized sports wagering, it is a certainty that increases will occur in risks of and instances of match-fixing and point-shaving at every level of sport, amateur or professional, so long as commercialized betting can occur on the event. Vastly-increased numbers of betting transactions necessarily will serve to mask and promote attacks on sport integrity, as players, officials, and staff can hide their own wagers by using family, friends, or others to wager on their behalf--such **“insider trading” cannot be effectively halted**--and this does not even address

the likely increase in organized crime and others' efforts to corrupt game outcomes and player performances or to improperly acquire confidential information having value to bettors. Who will bear the increased costs and massive resources needed to protect each sport's integrity? A proposed AGA-led integrity squad? That's the fox guarding the henhouse. **Given the commercialized sports gambling industry's historic aversion to bearing costs, one cannot realistically expect that industry to pay to ensure game integrity.** This leaves the costs to be borne by the sports teams and leagues who, of course, will pass their increased costs on to the fans, **meaning both non-gamblers and gamblers will lose from from expanded legalization of commercialized sports gambling.** These losses, of course, adversely impact interstate commerce, for they will not be borne only by in-state residents. Some sports gambling proponents claim that **"integrity agreements" at the team and league levels** will protect game integrity, but such agreements **are not self-enforcing and require costly independent monitoring and enforcement if they are to be something more than facades.** Furthermore, it only increases temptations for corruption to give leagues and teams, via these agreements, veto power over what type of bets to offer and what information will be exchanged or provided.

Ineffective, too, would be **"codes of conduct" that some have proposed for potential sports bettors to adhere to when they have access to specialized inside information or have a commercially-valuable association or participation in an event/series/team/league.** These codes **are easily evaded; they are unclear in application** (do they extend to only to Players? Officials? Staff? Spouses? Siblings? Offspring? In-laws? Neighbors? Friends? Co-workers? Investors?); **and they are prohibitively expensive to properly monitor and enforce** (and at whose expense?).

And what of inadvertent or improper release or use of internal or confidential information without the intent to gain untoward advantage or benefit, yet having precisely that effect (e.g., influencing game outcome, points spread, or odds)? How can the codes prevent these instances, which plainly put other bettors at an unfair disadvantage? How should the instances, if not prevented, be treated? Must the codes cover all intentional, reckless, grossly-negligent, and merely negligent behavior? If not, why not?

Even assuming that adequately detailed and comprehensive codes of conduct could be developed to address all likely eventualities, **who would enforce such codes, where would adequate multi-level resources to do so come from, and who would pay for them?** As noted previously, **the commercialized sports gambling industry will necessarily skimp on compliance, on staff training, and staff skills development, because these obligations cost the industry money. Expecting state or federal government regulators, rather than the industry, to serve these functions is illusory. Government regulators are characteristically underfunded, and the particular history of commercialized gambling regulatory efforts establishes that regulators are too-often "captured" by and subservient to industry.** (After all, regulators now allow slot machines and video poker machines to be

purposely designed to addict;⁴ some regulators even allow industry use of so-called historical horse race machines to evade states' prohibitions on slot machines;⁵ these are just two examples of how the commercialized gambling industry *has* captured regulatory bodies.) Nothing about legalized commercialized sports gambling suggests that citizens should expect any different outcome. Indeed, recent attendees at a European sports integrity conference learned that, there, “National gambling regulators are pessimistic about the investigation and enforcement of match-fixing cases, believing that police involvement does not guarantee offenders will be held to account[;]” that “difficulties in finding reliable evidence were among the reasons why organised crime groups are thriving[;]” and data sharing limitations among nations precludes effective enforcement. E. Grabbe, “Operators Told ‘Don’t Put Money On Police’ In Match-Fixing Probes,” (13 October 2017), at https://gamblingcompliance.com/premium-content/insights_analysis/operators-told-don%E2%80%99t-put-money-police-match-fixing-probes.

An oft-overlooked aspect of gambling-based corruption in sports is that, typically, the corrupt behavior can be accomplished by one person rather than there being a need to corrupt a group or an entire team to succeed. This **“atomization of risk” makes effective policing of corrupt behavior all the more difficult--and expensive--and impossible, in a purposely-increased market of millions.** Of course, at smaller participation levels, similar risks exist at present; yet, those risks increase geometrically if commercialized sports gambling expands at the levels urged and desired by the corporate gambling operators and their state legislative partners. Increased risks of corruption inherent with expanded commercialized sports gambling simply will not be matched by corresponding and proportionate abilities to regulate, investigate, and enforce at every level and type of sport.

Expanded legalized sports betting will invariably lead to betting on non-sports contests, such as elections, the integrity of which must not be undermined (as underscored by recent shockwaves from news reports of Russian cybermeddling in U.S. elections). Allowing commercialized betting on elections invites possibly large blocks of voters to decide and vote based on considerations other than candidate merit and policy preference. Generally, people quickly understand and **recognize this corruption risk to elective democracy.** Sometimes less quickly understood, but equally true, is that **allowing commercialized sports gambling**

⁴ See Natasha Dow Schull, *Addiction by Design*, (Princeton University Press 2012), pp. 90-91, 94, 298-299.

⁵ *Compare, e.g.*, Ky. Administrative Regulation 1:011 §3 to *State ex rel. Loontjier v. Gale*, 853 N.W.2d 494 (Neb. 2014) and *Rodeo Events LLC v. State*, 134 P2d 1223 (Wyo. 2006)(where the court, unlike the state’s regulatory body, would “not [be] so easily beguiled.”) The U.S. Supreme Court, too, would do well to be not easily beguiled by commercialized sports gambling industry claims voiced by New Jersey, a state that once sought to protect, rather than exploit, its citizens. **Using state legislation to call organized harm something other than organized crime does not reduce the harm, especially when the state’s action serves to expand the market.** (It is akin to the AGA’s continuing euphemistic fraud in calling gambling “gaming” when, in a 21st century world of electronic game platforms, gaming is clearly a different activity than gambling.) Moreover, these “Instant Racing” machines can properly be enjoined under PASPA since they do not offer parimutuel wagering. Liebman, B., “Pari-Mutuels: What Do They Mean and What is at Stake in the 21st Century?,” 27 Marquette Sports Law Review 45, 109-110 (2016).

similarly invites sports participants to direct or withhold effort and to make strategic decisions in ways other than in honest pursuit of victory. The naive or greedy downplay this risk, but it is every bit as real as the risk of distorting election results through large-scale commercialized gambling--and since sporting events occur far more frequently than elections, the likelihood of corrupted integrity in sports is all the greater.⁶

Returning to “cyber” issues, online *offshore* (“U.S.-facing”) **illegal commercialized sports betting will increase, not decrease, if commercialized sports gambling is “normalized” through expanded legalization in the U.S.** The offshore sites can always offer better odds, anonymity, and tax-evasive opportunities than can legalized onshore commercialized sports gambling venues. The betting market will gravitate to such offshore sites over time, especially as online commercialized sports gambling becomes ever-more normalized and widespread as a foreseeable product of post-*Murphy v. NCAA* state-legalization-of-sports-gambling schemes. Many offshore sportsbooks (which typically utilize shell corporations to hide true ownership) and UK-based sportsbooks recognize this future market shift and therefore support the U.S. commercialized sports gambling industry’s efforts to legalize sports gambling, knowing that an initial post-legalization decrease in their U.S. business would be temporary. No regulatory model can halt this foreseeable shift to offshore commercialized sports betting. Presently, onshore commercialized sports betting has not been normalized, because PASPA limited the legal onshore commercialized sports betting, and offshore betting had been at least somewhat limited by prohibitions, ISP bans, and payment bans. That these tools have not been more effective is largely due to insufficient resources being dedicated to their use, not due to the tools being inherently ineffective. A lack of commitment to enforcement permitted the growth of online sportsbooks; but, when enforcement has occurred, the cases have most often been quite successful and paid for themselves many times over via fines, forfeitures, and recoveries of back taxes. **Rather than surrender to the well-funded commercialized gambling lobby, governments must dedicate resources to (i) enforcement of laws against illegal U.S.-facing sportsbooks, (ii) forfeiture of their illegally-generated assets, and (iii) collection of evaded wagering excise and other taxes.**

Even wholly within the United States, cyberbetting on sports events, if legalized, will result in cross-state’s-border betting and the need for mechanisms of payment and collection of “product fees” to states allowing or accepting cross-border betting; these interstate transactions simply raise ever-greater and more costly complexities while adding no appreciable benefit, other than to the tiny minority who comprise the commercialized gambling industry. The Commerce and Supremacy Clauses, of course, allow for prohibition of such interstate wagering, Lottery Case

⁶ In the 1870s, wagering on elections helped produce a notorious “trifecta of government, corruption, and gambling.” Liebman, B., “Pari-Mutuels: What Do They Mean and What is at Stake in the 21st Century?,” 27 *Marquette Sports Law Review* 45, at 71-72 and fn. 148 (2016). Expansion of commercialized gambling beyond sports and elections, to judicial and criminal justice functions, is also more than foreseeable. See Chris Hines, “Gambling website sets odds on O.J. Simpson parole hearing,” *Chicago Tribune*, July 18, 2017, at <http://www.chicagotribune.com/sports/breaking/ct-oj-simpson-parole-hearing-betting-20170718-story.html>.

(*Champion v. Ames*), 188 U.S. 321 (1903), and PASPA helped accomplish that aim, until *Murphy v. NCAA* decided the means of achieving that aim had been improperly configured. No state has a right to defy Congress' constitutionally-assigned power, properly configured, in this context.

Relatedly, proponents of expanded legalized commercialized sports betting often speak broadly and in vague terms, as if there were only a few types of bet; but, **where commercialized sports betting occurs, evidence establishes that it swells, evolves, and morphs into wide varieties of schemes--some simple, some complex--to induce bettors to wager more, more often, and at increasing risks.** These schemes often involve betting on losing outcomes ("negative bets," which encourage athletes to underperform), exotic betting, in-play betting (whether on game outcomes or micro-level plays within the game), combination betting (trifectas and the like), and spot betting. One quickly-growing and pernicious form of sports betting, currently metastasizing in Europe, is often called a "cash-out" feature of sports bets. "Cash-out" betting allows bettors to end or increase their already-made wagers while the wagered-on event is underway. The mere existence of this **variation of commercialized sports gambling options is evidence of the commercialized sports gambling industry's deceit and desire to ever-push the envelope to increase profitability without real concern for patrons' health or financial well-being.** Promoted as a way for sports gamblers to increase their winnings or cut their losses, in truth **the commercialized sports gambling industry** uses this cash-out feature to further "engage" the bettor. That is, the **aim is to lure the bettor into a process of on-going multiple gambling decisions and, thereby, to weaken and destroy judgment and down-time for reflection which, otherwise, might prevent problem gambling and gambling addiction.**⁷ Since the commercialized sports gambling industry can be expected, if legalization comes, to follow Europe's lead and to offer and heavily promote (online and otherwise) cash-out commercialized sports gambling here, the risks of increased pathological gambling in the U.S. will increase enormously.

Policymakers familiar only with "straight" bets on sports among friends are often unaware of the multiple types of bets the commercialized sports gambling industry has designed and their purposely-corrosive impacts. The industry and its P.R. spinners gloss over their purpose, comparing the (to some, mystifying) number and varieties of betting variations as merely similar to the variety of products found on shelves in a grocery or department store. Their "spin," of course, deceitfully fails to acknowledge that **the commercialized sports gambling "product" is entirely unlike tangible products found in stores, in that commercialized wagering (i) is a behavior, not a product; (ii) is addictive; (iii) is individually economically harmful in the majority of instances (especially over the long term); (iv) is an increasing negative drag on productivity and the gross domestic product; (v) promotes economic inequality; and (vi) tends to harm families, communities, public health, and to spread corruption, embezzlement, and even violent crime** in private and government settings. Saying the array

⁷ Hibai Lopez-Gonzalez and Mark D. Griffiths, "'Cashing Out' in Sports Betting: Implications for Problem Gambling and Regulation," 4 Gaming Law Review 323-326 (May 2017).

of alluring commercialized betting options equates to products on a shelf is comparing apples to oranges, which has never been accurate--or smart (especially when the “apples”--commercialized gambling--provably causes disease, poverty, and even death).

Legalizing a pathogen is never good policy.

Commercialized sports betting’s proponents seldom discuss details of how the actual asset transfers and accounting will occur in the expanded legalized systems they tout: Cash? Check? Credit cards? Debit cards? Stored value cards? eCurrencies, such as Bitcoin or Ethereum? Other virtual currencies under development? Bank transfers? Account wagering (and, if so, subject to banking regulations and Bank Secrecy Act requirements)? Can bettors reverse transactions? Will the vig/rake/commission/fees (etc.) be “capped” or unlimited? Regulated? If credit gambling is offered, at what levels and at what interest rates? What debt collection practices will be allowed? **Who will police these, and at what cost, and who will pay that cost?** Will taxes be taken out at the time of the wager, or at the time the wager is determined to be winning or losing, or only when the bettor claims funds? What accounting principles will apply, and what if those vary from state-to-state? Again, **how and where will government expand to effectively enforce regulations of this type, and is such expansion even realistically possible?** How will disputes be resolved without burdening our already over-burdened courts? Will complex take-it-or-leave-it terms of service lock patrons into arbitration provisions? Who will pay the costs of the massive increases in government obligations stemming from commercialized gambling expansion in an era when many governments are already near bankruptcy? These and a host of further complexities simply are ignored by **the let’s-legalize-sports-gambling crowd who, at most, say these problems will be addressed as they arise--but such a failure to plan is, as the saying goes, planning to fail, with the harms from the failures calculated to fall upon the American public** rather than on the commercialized sports gambling industry or its parent, which (as noted, above) unjustly benefits from an undeserved immunity from civil liability for their contributions to social and individual harm.

With PASPA stricken, and if Congress fails to act to re-assert the sensible protective ban on interstate commercialized sports gambling PASPA sought to achieve, **commercialized sportsbooks can be expected to promote themselves (seeking to gain bettors who would, otherwise, never think of commercialized sports gambling) through linkages with so-called “free play” sites, and with casino and poker sites, as well as with non-sports gambling entities’ “free play sites.”** Such free play sites often offer unrealistic opportunities to win, as well as point spreads or odds not available at real-money wagering sites, **all of which help create in the novice a false sense of confidence or expertise. This serves as a “come-on” to get that person involved in real money gambling,** whether on sports or otherwise. It is no wonder that the commercialized gambling industry refers to its patrons as “whales” or “fish” (depending on the level of their wagering), for once the industry uses misleading techniques like “free play” sites to hook its prey, many are irrevocably “caught.” Of course, the commercialized sports gambling industry does not limit its bait to the use of “free play” sites, since legalized commercialized sports gambling is characterized by intensive

advertising and inducements such as “cash-back” programs, bonuses, giveaways, and junkets. Use of these and like creative “baits” is a certainty, if expanded legalization of commercialized sports gambling comes to the United States.

The commercialized sports gambling industry will also invariably develop enhanced graphics, so-called information-rich betting sites, and more interactive games, with video streaming of events offered to induce ever-more wagering. **All this will be increasingly made available through mobile phones, tablets, and interactive television, so that commercialized gambling opportunities, inducements, and marketing ploys will be effectively inescapable and ever-present, “24/7.”** As virtual reality (VR) and augmented reality (AR) systems are improved and made more affordable, they too will become platforms for the commercialized sports gambling industry to exploit. The intensity of the VR/AR experience and the loss of control VR/AR immersion already invites suggests to gambling industry executives that VR- or AR-based commercialized sports and other gambling is a profit-seeker’s dream. Chasing this dream, **the industry ignores or minimizes the nightmares such exploitation will cause individuals, families, employers, police, and communities.**

The commercialized gambling industry’s experience with electronic gambling machines (also called “EGMs,” and most often referred to as “slot machines,” video lottery terminals (VLTs) or, using a term from abroad, “pokies”) has been proven to encourage and cause the development of gambling disorders. See, e.g., Natasha Schull, *Addiction by Design* (Princeton Univ. Press 2012). Online commercialized sports gambling services, necessarily, turn computers and so-called smart phones into electronic gambling machines--EGMs that are no longer casino-based but, with few exceptions, will be in Americans’ homes, schools, businesses, pockets, and hands. One can readily foresee that **an industry required by its obligation to investors to maximize profits will ensure that the structural characteristics that make EGMs so harmful will be incorporated into future online commercialized sports gambling applications.** These structural characteristics will “include high event frequencies (enabling continuous play), random ratio reinforcement schedules, near misses, losses appearing as wins, multiline betting, and exaggerated audible and visual reinforcements.” M. Yucel, A. Carter, K. Harrigan, R. van Holst, & C. Livingstone, *Hooked on Gambling: A Problem of Human or Machine Design?*, 5 *The Lancet* 20-21 (Jan. 2018) (Correspondence). The harmful effects of these structural characteristics will be compounded by “[r]eady accessibility...and normalisation of gambling via advertising... ” *Id.* With PASPA undercut by the Supreme Court and by subsequent lobbyist-driven state legislation, “diminished control and increased drive to gamble” will be the result, *id.*, and, unless objective evidence persuasively establishes that the costs of that result would be dwarfed by its societal benefits, governments that exist to protect citizens from predatory business behavior would do well to recognize that social sports gambling provides an entirely-sufficient outlet for those seeking to wager on sports. Commercialized sports gambling is an entirely different animal--and not a friendly one.

If an environment of expanded legalized commercialized sports gambling is permitted to exist, online **“odds comparison sites” will appear. These will promote themselves (with**

gambling industry financial backing) as “consumer aids,” but **commercialized sports bettors are, in truth, consuming nothing; rather, the sportsbooks are the only consistent consumers, as they consume the bettors’ funds.** Odds comparison sites serve to encourage betting and, so, merely increase the industry’s consumption of bettors’ funds. Thus, the only consumers such sites truly aid are the already-wealthy interests running the commercialized sportsbooks. Likewise, **“tout services,” which purport to have inside information or expertise in sports gambling, also would expand** in an environment of expanded legalized commercialized sports gambling. The commercialized sports gambling industry supports tout services, since **tout services, too, exist to encourage betting, and they typically do so with bluster and salesmanship rather than access to information or expertise. Further, tout services are known to steer patrons to particular sportsbooks or types of bets in exchange for hidden payments or kickbacks from gambling industry figures.** Non-disclosure of these relationships and payments is yet another kind of deceit endemic to the commercialized sports gambling industry, an industry that, nevertheless, seeks--and buys--state government’s legislative blessing.

For the foreseeable future, the segment of the U.S. population comfortable with interactive technology will be ever-increasing, over time, such that **commercialized sportsbooks (beholden to investors to maximize returns) will commit to manipulating online operations to increase profit at the public’s expense.** One way they will do this is to claim that their online operations are designed to allow only “responsible” gambling. **Claims that sportsbooks will only encourage “responsible” gambling are just that: claims, empty and devoid of meaning,** since what’s responsible always varies depending on one’s point of view and self-interest. (Liquor and brewing industries’ similar “responsible”-practice claims haven’t sufficiently halted alcoholism in the U.S.; pharmaceutical industries’ “responsible”-practice claims haven’t sufficiently halted opioid addiction in the U.S.; “responsible” firearms industry marketing claims haven’t sufficiently slowed the explosion of U.S. homicides, suicides, and crippling assaults; thus, why would anyone believe that, by also invoking the “responsible” behavior mantra, there is something special about the commercialized sports gambling industry that would enable it to limit the harms it causes?) Further, **a recent comprehensive survey of studies established that so-called “responsible gambling” programs have little or no scientific support; have remained unstudied in ways that meet criteria for scientific rigor’ have few principles or activities that can be considered best practices; and the most that can be said about them is that their “overall effectiveness and impact...remains uncertain.”** R. Ladoucer, P. Schaffer, A. Blaszczynski, & H. Shaffer, Responsible Gambling: A Synthesis of the Empirical Evidence, 25 *Addiction Research & Theory* 225-235 (14 Dec. 2016). “There is little empirical evidence as to whether such strategies work.” Editorial, “Science has a gambling problem,” 553 *Nature* 379 (25 Jan. 2018). Industry-financed research has been recognized as “distorted” and aimed to “inappropriately shift[...] responsibility from the industry--which wants to minimize regulations--to individuals.” *Id.*

History shows industry self-interest has *always* prevailed over showy claims of advocating for “responsible” behavior--and, anyway, such claims are purposely designed to distract citizens’ focus from the fact that the industry does not pay the industry’s share of responsibility for the harm it unleashes. Commercialized sports gambling industry avarice is no different from the avarice that drives the non-sports commercialized gambling industry: both design advertising, marketing, promotions, games, environments, business models, and communication efforts with an end goal of getting the bettor to transfer as much wealth as possible to the gambling entity--and both blame only the bettor when, in truth, the losing bettor often has been manipulated, in whole or part, to act exactly as desired by the far more powerful industry--and by states like New Jersey, which the industry has used as its’ stalking horse.

Proponents of expanded legalized online commercialized gambling, sports-based or otherwise, claim that because *online* gambling can record everything, permanently, it creates an electronic trail that makes money laundering impossible or, at least, detectable; that it enables detection of fraud and underage gambling; and that it permits pattern recognition which can identify problem gamblers and lead to their exclusion or getting treatment. However, these claims are plainly false or overstated. Even so-called immutable computer data can be hacked, modified, miscoded, deleted, falsified, time-altered, overwritten, or lost. Geo-fencing and age verification software can be spoofed or evaded. News reports of disturbing breaches of computer security occur almost daily; these involve intrusions into and losses from our nation’s most sensitive military and intelligence agency computers, as well as successful attacks upon the IT systems of major U.S. corporations and retailers. There is no reason to think that commercialized sports gambling’s computers will somehow be immune from similar attacks, particularly when attackers’ motivations are greed and the opportunity for financial gain. **Insider threats and criminality are a certainty in this industry**, whether motivated by self-dealing or by desire to advance corporate profitability at the public’s expense, **particularly since the industry is not known for being populated with law-abiding personnel.**

Even if problem sports gamblers could be reliably identified by **betting pattern analysis** and then excluded from gambling, whether through self-exclusion or by company policy, predictably, [1] this **will only happen after betting pattern analysis has enabled the sportsbook to exploit the gambler to the absolute closest point of problem gambling that the commercialized entity can get away with**; and [2] a gambler excluded from site A will simply go to sites B, C, D, etc., any of which may be in the U.S. or offshore, to continue the destructive behavior that site A put in motion. (Having started a snowball rolling down a mountainside, why should site A be able to wash its hands of all liability when the predictably-destructive path the snowball takes wrecks lives downhill?) Likewise, self-excluded commercialized sports gamblers from brick-and-mortar sites in state X will simply go to sites in state Y, Z, etc. **Having nationwide and industry-wide exclusion lists to avoid these scenarios might sound like a remedy, but our nation cannot even successfully track or exclude illegal immigrants and visa overstays. What makes anyone think it would do**

better with tracking potentially millions of excluded gamblers' online, interstate, and international activities? Also (and again), who would pay for these enforcement efforts? Who would monitor compliance and bear those costs, as well? What sanctions would be imposed and how would they be resourced? Present taxes cannot pay for already-needed services in many states--why add a need for an array of new, required, expensive enforcement, compliance, investigation, public health, and treatment services, especially when it is plain that no tax rate acceptable to the commercialized sports gambling industry proponents would suffice to pay for these newly-essential services?

E. Decreased Funding of Banks and Investment Funds and Increased Ignorance

Advocates of legalized commercialized sports betting salivate over what they claim will be the many billions of dollars of wagering activity in their expanded marketplace. Yet they fail to point out that, whatever the amount of wagered dollars, those funds are diverted from far more productive and rewarding purposes, such as savings accounts, stocks or bonds investments, insurance or annuity purchases, U.S. savings bonds investments, and similar proven and less-risk laden uses of money. By shrinking--by multiple billion--the pool of funds available for these smarter uses of money, expanded commercialized sports gambling will significantly harm U.S. financial industries, pension funds, and the national economy. Relatedly, this nation spends trillions of tax dollars on education, yet commercialized sports gambling advocates would waste much of these tax expenditures by undoing schools' efforts to increase intelligent financial behavior.

F. Summary of Harms: Commercialized vs. Non-commercialized Sports Gambling

Online commercialized sports gambling, if expanded and legalized, will increase social harms and public order problems such as gambling addictions, adverse impacts on the social determinants of health, increased dangers to children, misuse of personal data or credit cards, fraud, crime, eroded integrity--perceived and real--of sporting events, of government officials, and of government, itself. People who want to gamble on sports can already do so via friendly social wagers or non-commercialized office pools, for example, and can do so with minimal risks of widespread social or individual harms, since small-scale non-commercialized gambling tends to police itself through personal relationships and moral obligation. These **commonsense and folk psychological restraints disappear when overwhelmed by large commercialized gambling entities.** And “[t]he trouble is, **gambling and gaming companies are as addicted to their addicts as their addicts are to the companies' products. Doing the right thing is an existential threat...**” to commercialized gambling enterprises.⁸

⁸ Nir Eyal, “Tech companies, if you create addicts, you need to help them,” at <https://venturebeat.com/2017/05/09/tech-compaanies-if-you-create-addicts-you-need-to-help-them/>

Recent research even suggests commercialized sports gambling, like the environment of finance, may attract financial psychopaths or encourage and shape psychopathic behavior in those involved in the corporate gambling world, given that individuals and entities in the industry have too often displayed long-time reckless disregard for the safety of others, persistent irresponsibility, lack of remorse, deceitfulness, aggressiveness and irritability, and impulsivity while using “the tools of their trade--computers and financial transactions--to purposefully harm others.” Deborah W. Gregory, “Financial Psychopaths,” Chapter 9, in Baker, Filbeck, and Ricciardi’s Financial Behavior: Players, Services, Products, and Markets (Oxford University Press 2017), pp. 153-167. Of course, not all in the industry fit this description, but Congress and the states are not required to allow some minimally-acceptable number of financial psychopaths or psychopathic behavior to take root in the channels of interstate commerce.

Government-sponsored commercialized sports gambling will contribute to rising economic inequality.⁹ In states sponsoring other forms of commercialized gambling, **all taxpayers--including the non-gamblers--end up paying higher taxes for less services and their states end up with a worse budget problem over the long term.** There is no reason to believe commercialized sports gambling would produce some different result. Expansion of commercialized gambling invariably leads to more social costs, which in turn lead to more economic costs--costs paid by all taxpayers (and not just by gamblers). Ultimately, PASPA protected the public fisc, interstate commerce, and local and individual freedoms.

Finally, the need for PASPA or, now, some suitably-designed substitute hearkens back to an ancient observation that speaks a pragmatic truth relevant in today’s world (considering the aggregate behavior of the commercialized gambling industry and its state governmental *de facto* partners): “*Quaeritur, ut crescant tot magna volumina legis? In prompta causa est, crescit in orbe dolus.*” [If you ask why there are so many laws, the answer is that fraud ever increases on this earth.] Lord Coke, Twyne’s Case (1601) 3 Co. Rep. 80b, 82a, 76 Eng. Rep. 809, 815-16 (K.B.).¹⁰

Conclusion

⁹ Of course, some economic inequality will always exist and, where rooted in earned reward and just deserts, few would argue against it. But a government policy that fosters inequality rooted in mere chance and driven by commercialized marketing ploys drives an increase in inequality and, recent study shows, that inequality leads to quite serious adverse health and social consequences. See, generally, Keith Payne, The Broken Ladder: How Inequality Affects the Way We Think, Live, and Die (Viking 2017)(excerpted at “How Inequality Shortens Lifespans: Poverty is a Matter of Life and Death,” at <http://lithub.com/how-inequality-shortens-lifespans/>), and Thomas M. Shapiro, Toxic Inequality: How America’s Wealth Gap Destroys Mobility, Deepens the Racial Divide, and Threatens Our Future (Basic Books 2017). Given these findings, Congress was prescient to enact PASPA.

¹⁰ It seems unlikely to be a mere coincidence that, in a period during which commercialized sports and other gambling grew markedly in England (which has no PASPA-like statute), fraud there “has risen by more than 500% over the last 15 years... .” “Total value of reported fraud in the UK breaches the £2 billion mark,” at <https://www.consultancy.uk/news/15491/total-value-of-reported-fraud-in-the-uk-breaches-the-2-billion-mark>

Making any government a partner with, or enabler of, the commercialized sports gambling industry simply makes government a tool in the further financial exploitation of its citizens. This inverts the traditional relationship between citizen and government. A government should exist to protect, rather than exploit, its people. As faith and trust in government to do the “right” thing wane, the last thing the federal government needs to do is to cast its lot with an industry that profits from exploitation.

At its core, sport can be pure fun and inspiring and even beautiful. At its core, long-term chasing money through commercialized gambling is none of these things--at least not for **the overwhelming majority of Americans who are sure to lose money in the long run or who will not wager at all but will experience grossly negative and costly changes in their environment.** Of those taking sufficient time to research and reflect deeply on the issue, **only the already-wealthy commercialized gambling operators see “beauty” (read: *increased profits, without paying for the inevitable harms*) in the legalization of commercialized sports gambling in America.**

Bringing sport down to the level of mere commerce and entangling it with normalized vice will pollute daily life¹¹-- a loss for which no amount of money can compensate. Only a Congress that has no capacity for shame would allow this to happen. Does pride still matter in America? Only Congress’ re-enactment of a clear, comprehensive ban on interstate sports gambling businesses and dedicating adequate resources to its’ enforcement would satisfactorily answer that question. Has Congress, a legislative body not known for integrity, the capacity to resist the integrity-destroying efforts of the commercial sports gambling industry? Will federal and state

¹¹ American observers nearly 150 years ago recognized this, when commercialized pool gambling on baseball was ruining the game: [The Philadelphia Public Record] “deplored the degradation of a National athletic game to the level of turf or other gambling...[adding] The whole system of baseball ‘professionals’ is a fraud upon the public, and places this so called National game upon the exact level of all mere money-making shows and entertainments.” Philadelphia Public Record, June 30, 1870, cited by Anthony P. Lampe, at p. 24, fn. 40, in “The Background of Professional Baseball in St. Louis,” Bulletin of the Missouri Historical Society, vol. VII, no. 1 (1951).

Lampe also described “the tendency for professional gamblers to make important games scenes of large scale betting. Eventually this fact would help considerably to bring on the downfall of the first professional organization of baseball players.” *Id.*, at p. 11. Some of today’s sports league executives ignore this history at their peril.

More recently, ethicist and author Chuck Klosterman saw that most college football bowl games--and sports--are now perceived as mere events to fill TV programming, making non-essential the human participant element, so that future computers can provide something that “would just be a TV show that provides an opportunity for gambling.” Chuck Klosterman, *But What if We’re Wrong* (Blue Rider Press 2016), at 192-193. Indeed, so-called historical horse racing machines foreshadow this depressing-to-sports-fans development. If upheld, PASPA would have helped to forestall this grim future. Now, if this grim future is to be avoided, **legislators have to have the backbone, the integrity, and the genuine concern for their constituents to resist the money and spin thrown at them by commercialized gambling industry lobbyists.**

legislators take this opportunity to show they do, in fact, have the best interests of the broader public at heart (and not those of moneyed campaign contributors out to exploit the public)? If we cannot count on federal and state legislators doing the right thing to save sport, rather than further enriching commercial gambling operators and skimming state revenue from desperate citizens' losses, what does that say about 21st Century America?