

The Future of Legal Sports Gambling: What Everyone Needs to Know About *Murphy v. NCAA*

On May 14, 2018, after years of litigation on the legality of sports betting, the Supreme Court delivered a groundbreaking decision in *Murphy v. NCAA*, 138 S.Ct. 1461 (2018). The decision, authored by Justice Alito, struck down the Professional and Amateur Sports Protection Act of 1992 (“PASPA”), 28 U.S.C. § 3702 (1), as unconstitutional and opened the way for legalized sports betting in every state. Although just the opening salvo on this issue, the decision in *Murphy* has the potential to profoundly change sports in America.

Murphy v. NCAA Overview

The origins of the *Murphy* decision date to a 2011 New Jersey state referendum. As a way to increase the state’s revenue, New Jersey passed a referendum to legalize sports betting in the state, formally passed into law by the New Jersey Legislature in 2012. The NCAA, NFL, NBA, MLB, and NHL all sued to prevent its enactment. After an unsuccessful run through the lower courts and refusal to grant certiorari by the Supreme Court, the New Jersey Legislature passed a revised law in 2014. Again, the leagues opposed and sought injunctive relief. The sports leagues’ main argument was that the New Jersey law violated PASPA, which specifically prohibited states from licensing or authorizing sports betting. New Jersey argued that PASPA was an unconstitutional infringement on New Jersey’s sovereign authority to repeal its anti-gambling laws. Both the District Court and the United States Court of Appeals for the Third Circuit found for the leagues on this issue. After granting certiorari, the Supreme Court disagreed with the lower courts, delivering a 6-3 decision in favor of striking down PASPA in its entirety.

Specifically, Justice Alito based his decision on certain provisions of PASPA violating the anti-commandeering doctrine. The anti-commandeering doctrine relates to the unconstitutionality of federal statutes compelling states to enforce federal law and was previously examined by the Court in *New York v. United States*, 505 U.S. 144 (1992) and *Printz v. United States*, 521

U.S. 898 (1997). While the leagues argued that the anti-commandeering principle does not apply since PASPA’s prohibitions do not command states to take affirmative actions, the Court disagreed. Justice Alito held that, since PASPA specifically prohibited state authorization of sports gambling, it “unequivocally dictates what a state legislature may and may not do.” The Court explicitly rejected the leagues’ argument, finding no distinction between precluding action and requiring affirmative action. Finding that no provisions of PASPA were severable from any others, the Court held that PASPA was unconstitutional in its entirety. The decision concluded with Justice Alito’s explanation that the legalization of sports gambling is an important decision but is not specifically within the court’s purview – this power belongs to the states.

Writing an impassioned dissent, Justice Ginsburg disagreed with the Court’s decision to take a “wrecking ball” to PASPA. Her dissent, joined by Justice Sotomayor and in part by Justice Breyer, expressed concern at the lack of deference paid to congressional authority to regulate interstate commerce, as well as a disagreement with the majority’s severability decision. In closing, Justice Ginsburg offered her alternative vision of severing the commandeering directions from the rest of PASPA, while retaining an instruction to states and private parties to abstain from operating sports betting organizations. Whether or not this alternate framework could have succeeded is now irrelevant. With PASPA upended, a myriad of legal issues now surround almost every facet of the sports industry with everyone from state legislatures to the leagues to gaming companies attempting to figure out the appropriate way forward.

The Integrity Fee

Although the Supreme Court entirely striking down PASPA left some surprised, the sports leagues themselves had started to prepare for the possibility. In a prescient move, NBA Commissioner Adam Silver penned an op-ed for *The New York Times* in November 2014, specifically calling on Congress to

legalize and regulate sports betting. Building on this proactive approach, the NBA, in concert with MLB, publicly undertook a cross-country effort to lobby for certain structures to help effectively protect the integrity of their sports. To that end, the leagues are lobbying for permitted mobile betting, influence over the types of betting offered by bookmakers, required bookmaker cooperation with league investigations, required sharing of real time betting data to facilitate the leagues' monitoring of suspicious activity, required league notification if bookmakers have information suggesting an integrity issue, and the required use of official league data. What has garnered the most media attention is the leagues' request for an "integrity fee." As presented to various state legislatures, an integrity fee would be an additional fee due to the sports leagues that operates as a royalty since the leagues' product is the primary input into sports betting. Although one could gamble on nearly anything, the sports leagues argue that their sports and the resultant data are foundational to sportsbooks. According to the leagues, the fee would operate as an insurance premium, to compensate the leagues for the increased risk as legalized gambling becomes more widespread. Since increasing revenue within the states was the main catalyst to overturn PASPA, states are still deciding whether or not to incorporate the fee into law. If the legislative angle fails to yield a favorable result for the leagues, it seems likely that litigation is bound to ensue over the critical issue of who owns the intellectual property that forms the basis of any gambling activity.

Data Rights

Since the *Murphy* decision, the leagues have been cautious when releasing public statements. While each has a different approach, the NFL, NBA, and MLB have each referred to the importance of protecting their intellectual property. What precisely constitutes this intellectual property remains up for debate. In what many consider to be the definitive ruling on the matter, *NBA v. Motorola, Inc.*, 105 F.3d 851 (2d Cir. 1997), the Second Circuit explicitly found that the actual performances of basketball games do not deserve federal copyright protection as they are not "original works of authorship." As recently as March 2014, the

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Solicitor General filed an amicus brief to the Supreme Court in *American Broadcast Companies Inc. v. Aereo, Inc.*, 134 S.Ct. 2498 (2014), stating that, in the case of a televised live sporting event, "the telecast itself is the only copyrighted work."

Each league's respective ownership of proprietary systems of data collected during games will likely be a critical issue going forward. In *Morris Communications v. PGA Tour*, 364 F.3d 1288 (11th Cir. 2004), the plaintiffs argued that the PGA Tour violated federal antitrust laws

through the tour's compilation and sale of golf scores on the internet. Ruling on narrow antitrust grounds, the 11th Circuit held that the PGA met the business justification burden of the Sherman Act by preventing the plaintiffs from "free-riding" on its Real-Time Scoring System ("RTSS"). The court elaborated on the extensive and proprietary nature of the RTSS while noting some of the distinctions of golf itself, namely that no spectator could simultaneously spectate each competitor in a tournament. The decision specifically states that "[t]he compiled real-time golf scores acquired through RTSS are not a product that

Morris has a right to sell because they are a derivative product of RTSS, which PGA owns exclusively." The court held that the PGA has a right to sell or license championship golf and the corresponding RTSS product on the internet, just as the PGA can sell and license television broadcasting rights. The court explicitly rejected the plaintiffs' attempts to recast the PGA's arguments as the futile copyright defense "sweat of the brow," noting again the antitrust thrust of the case. The court noted that "[t]he preventing of free-riding, which is an inherently economic motivation, provides a valid business justification on the facts presented here." Although a narrow holding, *Morris* still provides some guidance the legal rights that exist for the data collection and analysis conducted by the leagues and teams.

Refined Data in Sports

While the data referenced in *Morris* concerned the raw data of a golf match, this is only one type of data now at issue. Performance data measures the performance of individual athletes during a game. Many leagues and clubs now use advanced camera and sensor-based technology to track players' performances. While still

banned in games themselves, the Golden State Warriors openly use two pieces of wearable technology, Blast Motion and ShotTracker, to aid in their perpetual quest for on-court dominance. Refined data concerns the further statistical refinement of the raw data provided by the game performance. The greater the refinement of the data, the greater the legal argument that it is proprietary. Perhaps no game represents the collection and aggregation of performance and refined data more than baseball, with batting average, on base percentage, slugging average, and walks plus hits allowed per inning being standard lay vocabulary. Refining this raw data into sophisticated metrics to predict a team's value entered the mainstream consciousness in Michael Lewis's *Moneyball* and has been perhaps most successfully executed by Theo Epstein with his historic Boston Red Sox and Chicago Cubs World Series wins. MLB itself currently uses the Statcast system, a tracking technology that runs on Amazon Web Services. Statcast records players' every movement in the field in addition to capturing the flight of the baseball itself, including both pitch rotation and hit velocity information. On July 17, 2018, MLB and Amazon Web Services announced their continued relationship and commitment to the ongoing innovation of Statcast's metrics. While certain statistics have always permeated baseball, the success of these more advanced statistical methods has led to an advancement and proliferation of an analytics-based approach across sports. Sportradar and STATS LLC are two well-known operators in this field of data metrics, and each has significant licensing deals with the major sports leagues. Unlike the raw data in the public domain examined in prior jurisprudence, the compilation and analysis of performance data and refined data is far more likely to be considered proprietary information.

Leagues and teams now thrive on this information to efficiently run successful operations, and correspondingly, so do gambling houses. More information provides a greater ability to value and weight players and teams and thus accurately determine a spread. In 2016, the NBA entered into a multi-year partnership with Sportradar, resulting in immediate distribution of data and audio visual game feeds to gaming operators outside of the United States. Another aspect of the deal was the incorporation of Sportradar's Integrity Services into the NBA's current platform, providing the NBA an extraterritorial look at preserving

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the sport's integrity. On July 31, 2018, Commissioner Adam Silver announced a historic partnership between the NBA and MGM Resorts International, marking a historic first in the post-*Murphy* era and making MGM the NBA's official gaming partner. As the wider betting market opens up in America and other leagues follow suit, this imprimatur may likely create a massive pendulum swing in revenue for companies who reach these deals. One recent analogous situation was AT&T's exclusive deal for the iPhone in 2007. This exclusivity raised AT&T's revenue 41% in the quarter of its release and helped the company effectively compete with Verizon over the years. It follows that the NBA's relationship with MGM may well result in an immediate profit surge as well as a competitive edge for the foreseeable future. While a sponsorship deal could provide additional revenue for the leagues to defray the costs of new gambling-focused departments, the sheer level of influence requires careful consideration of the terms of a sponsorship deal.

What is Courtsiding and Why is it a Threat?

Should the other leagues and the gambling community reach deals concerning the use of official real-time league raw and refined data, the practice of courtsiding could undermine the leagues' advantages while aiding gambling institutions who refuse to negotiate. Courtsiding is the practice of transmitting information directly from sporting events by taking advantage of the delay between live action and digital television broadcasts. While some courtsiders are employed to give individual gamblers a competitive edge, the main beneficiaries of the practice have traditionally been gambling houses who retain these services to avoid paying a premium for official league data. For the most part, gambling institutions are incentivized to receive the most updated, real-time data from the leagues themselves. With official league data, bets can be closed out more quickly and lead to a lower latency. Yet, certain gambling operations find it more profitable to simply pay someone to sit in the stands and relay the information, thereby bypassing both the need to deal with the leagues and the issue of a television delay. The action has most prominently happened during tennis, but with the advent of *Murphy*, will undoubtedly spread to other sports, presenting a major issue for

leagues, teams and event owners. The practice gained some notoriety after a British man, Daniel Dobson, was arrested for courtsiding at the Australian Open. Dobson had a special device sewn into his shorts, allowing him to tap one of two buttons to relay instantaneous information on who had won each point. Within the international gambling community, it is not uncommon to bet not only on the outcome of matches but on the outcome of points themselves, and a few seconds could have large consequences.

While not a per se illegal activity, the practice likely violates the language of most ticket agreements. Leagues, teams and event owners would be wise to carefully review their ticket terms and conditions to discern what legal remedies currently exist and should exist in the future. For example, at the 2016 U.S. Open, the Tennis Integrity Unit expelled twenty courtsiders and punished each with a twenty year ban on attendance. When one attended the following year, authorities had an act of trespass against the violator and the authority to arrest him. Although not entirely apposite, the case of *Johnston v. Tampa Sports Authority*, 530 F.3d 1320 (11th Cir. 2008), provides some further legal guidance on the limited rights of ticket holders. While dismissing a challenge to the Tampa Bay Buccaneers' stadium's authority to conduct pat-down searches mandated by the NFL, the Eleventh Circuit specifically noted that "[h]is purchase of a ticket granted him at most a revocable license to a seat. As is typical of sporting events, the NFL and the Buccaneers explicitly retained the right to exclude him from the Stadium for any reason." If leagues and teams decide to aggressively revise these rights of exclusion, they can expand their rights and remedies. Appropriately training staff to correctly spot violators will be necessary to ensure the integrity of the games and to fully protect the intellectual property at issue.

Advertising and Sportsbooks: A Rapid Increase?

Absent the integrity fee, the most direct route for leagues to receive financial benefits would be the creation of their own casinos and sportsbooks. Short of wading into this thicket, leagues now face

a major decision about whether or not any gambling organizations will be allowed to advertise in the stadiums and during games.

With gambling legal in Britain, an analysis of the relationship to advertising may portend what is on the horizon for the American market. Those watching the 2018 World Cup in Britain were bombarded with betting advertisements, each fighting for market share. While regulations attempt to clamp down on the pervasive nature of ads during games, jerseys themselves are

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inescapable ads. Gambling houses accounted for nine different team jersey sponsorships in the 2017-2018 Premier League, giving each continuous exposure on every pitch. Currently, the NBA is the only American professional sports league to allow advertisements on jerseys. Most of the deals thus far have had some hometown, cross-marketing appeal, but it seems likely that gambling houses, if allowed, would be the next frontier.

Apart from ads in stadiums and during games, there is the possibility of sportsbooks operating within the stadiums themselves. Last fall, betting house William Hill announced a two

year partnership with BD Stadia, a large in-stadium betting provider. This partnership includes plans to work together in a number of Premier League and English Football League stadiums, opening up a new revenue stream for William Hill. BD Stadia is also known for its streamlined online technology, potentially providing William Hill a more robust entrée into the world of online gaming.

Despite these opportunities for increased revenue, Britain is taking a hard look at its relationship with the gambling industry and the consequences of this approval. In June 2017, after years of partnerships with various betting houses, the governing body of football in England, the Football Association ("FA"), abruptly cancelled its sponsorship deal with Ladbrokes. The move occurred after a string of high profile punishments were doled out against footballers for betting on matches, most prominently Joey Barton. Over the decade from 2006 through 2016, Barton, a former Burnley midfielder, placed 1,260 bets on football matches, a clear breach of FA rules. Many decried Barton's 18 month ban as hypocritical, with Barton himself proclaiming that the FA's deals with betting houses amounted to "hush money." Although

the FA was guarded about its motivations to end its deal with Ladbrokes, increased credibility was almost certainly amongst them. The FA's about-face presents a cautionary tale for any leagues considering a direct sponsorship with gambling houses and may sway some to stay away entirely.

While the pressure to deal directly with gambling houses holds some appeal, leagues would be wise to carefully consider the effect on their respective regulation efforts. The ability to properly regulate sport may well outweigh the arguments for consumer ease.

Casinos and Fantasy: Strange Bedfellows?

Although the *Murphy* decision opens the door for sportsbooks to legally open in a number of states, most gaming companies will be hard pressed to do this without the blessing and cooperation of the casinos. Through their historic relationship with their respective state's gaming commissions, most casinos enjoy a monopoly on gambling activity. As brick and mortar enterprises, the casino industry is ripe for disruption. However, with PASPA in effect, and, as the only licensed gambling operators, casinos had no reason to invest in online technology. *Murphy* changes that. Although newcomers would still need to attempt to receive the appropriate gaming licenses, casinos are now incentivized to stake their claim in the developing world of e-gambling.

One immediate result is an uptick in M&A activity between online fantasy and tech companies and casinos. Within weeks of the *Murphy* decision, both DraftKings and

FanDuel announced deals. On June 1, 2018, DraftKings announced a partnership with Resorts Atlantic City to enter the New Jersey market under Resorts's land-based casino license. This sort of partnership may provide a model for casinos and fantasy companies to utilize each other's strengths – respectively, a gaming license and a streamlined online experience – while overcoming inherent weaknesses – namely, archaic technology and the lack of appropriate licenses. Similarly, on May 23, 2018, Paddy Power Betfair, a U.K. based sports betting house, acquired FanDuel to capitalize on what it sees as a huge sports betting

market in the United States. In addition to providing a built-in customer base, both deals provide potentially advantageous technology to the gambling organizations. Gambling houses are undoubtedly reviewing these deals closely and considering the best acquisitions to benefit and modernize their current operations. Tech and fantasy companies would be wise to consider the most strategic alliances to maximize their online expertise.

State Analysis

While the *Murphy* decision did strike down PASPA as unconstitutional, it did not per se legalize gambling. Instead, it opened the door for states to choose to legalize gambling through their state legislatures. Certain states already had their laws in near final form, perhaps most obviously New Jersey. While each state's law is unique, certain patterns are beginning to emerge, most specifically, casino control of the industry.

New Jersey, Mississippi and West Virginia

Nearly twenty states introduced bills in the lead-up to the *Murphy* decision to get gambling legalized as soon as practicable. New Jersey, Mississippi, and West Virginia all acted aggressively to implement their gambling laws. Each sets the legal betting age at 21 and allows betting on all professional sports. Notably, New Jersey's law does prohibit betting on any collegiate sports occurring in New Jersey, with additional prohibitions on high school athletics. To encourage traffic at casinos in New Jersey, the tax rates will include an 8.5% tax on gross revenue from bets placed at casinos or racetracks, and a 13% tax on gross revenue from online betting. In a

similar pro-casino nod, Mississippi's law, effective as of July 21st, 2018, has even more restrictive language concerning online gaming. Online and app-based betting is allowed but only within the walls of a brick and mortar casino. All Mississippi betting revenues will be taxed at a 12% rate. While West Virginia will require mobile users to register with casinos using computer or smartphone apps, the user can place bets anywhere within the West Virginia borders. West Virginia casinos will pay \$100,000 for a five year sports gaming license, with a 10% tax on gross gaming revenue. Despite lobbying efforts from the leagues, thus far, none of these

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states have included the integrity fee as part of the legislation.

Indiana and New York

Indiana and New York, while actively pursuing the legalization of gambling, are following a more cautious route than some of their peers. While two separate bills appeared in this year's Indiana legislative session, neither garnered enough support for a vote. Almost immediately after the *Murphy* decision, Indiana's Legislative Council announced a summer study on the potential impact of legalized gambling on college and professional sports within the state. While representatives hope to be in a position to tackle the issue when the legislature meets again in January, the influence of the Indianapolis-based NCAA may play a larger role in the state's considerations. Notably, the most recent version of the Indiana house bill did include a 1% integrity fee on money wagered for the sports leagues. The bills under consideration during New York's 2018 legislative session also included an integrity fee for the leagues, albeit a much reduced fifth of a percent of all wagers. However, New York closed their legislative session on June 20th, 2018, without passing a new sports betting bill. While it is possible that four New York upstate casinos could be approved for sports betting under existing law, many New York residents will likely flock to New Jersey to wager.

Texas and Utah

Certain states are currently refusing to even consider the option of legalizing sports gambling. In order to legalize gambling in the state of Texas for example, the Texas Legislature would need to change state criminal laws that currently prohibit gambling, adopt new regulatory schemes, and decide on the appropriate tax structure. The Texas Constitution also bans gambling so a constitutional amendment might be necessary as well. While unlikely in Texas, perhaps no state presents as many uphill battles for the pro-gambling lobby as Utah. A prohibition on gambling is currently written into the state's constitution, barring any form of gambling, including lottery tickets, table games, and sports betting.

State Revenue Case Studies: Marijuana and Lotteries

One of the main arguments to legalize gambling was an increase in state revenue. Proponents frequently pointed to the American Gaming Association's estimate of the illegal sports betting market at \$150 billion to bolster arguments in favor of legalization. Considering this figure is based on a shadow economy, it is difficult to predict its accuracy as well as the actual effects of taxed gambling on the overall figure. Prognosticators looking for guidance could look to states' experiences with both legalized marijuana and lotteries to predict the effect on state revenue.

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For the state of Colorado, legalizing marijuana has been a tremendous monetary success. Through taxes and fees, the state has raised over half a billion dollars since marijuana's legalization in 2014. The state levies three separate cannabis taxes: a 2.9% sales tax on medical marijuana; a special 15% sales tax on retail marijuana; and a 15% excise tax on retail marijuana. These taxes feed into the state's marijuana tax fund which then go to public schools, substance abuse prevention and treatment services, affordable housing, and law enforcement. Additionally, an unspecified amount fills in state budget gaps. While these financial figures are promising, certain other problems persist. The number of taxes levied on marijuana means that a black market remains alive and well. While arrests for distribution are drastically down in the state as a whole, in urban areas, the decrease has not been quite as pronounced. While the revenue increase is undeniable, not every effect has been positive. If Colorado's experiences can provide any guidance as state lawmakers navigate the legalization of gambling, the tension will be to find the correct taxation structure that both benefits the state and decreases the black market.

Lotteries are another source of state revenue that may prove instructive for lawmakers. Americans spent over \$70 billion on traditional lottery tickets last year alone. While prize money accounts for approximately 60% of this number, the majority of the remainder went to education, state funds, and social programs for the homeless and substance abusers. In New York alone, over \$64 billion has gone towards funding New York State K-12 public education since 1967. Similar to marijuana legalization, the basic financial success of

lotteries is undeniable as well as the publicized positive impact on public education.

Both marijuana and lotteries have moral hazard elements in common with gambling that will present a dilemma for state lawmakers. With increased availability and profitability, the dangers of both gambling addiction and youth gambling become more prevalent. Lawmakers need to carefully analyze all available facts as they balance the potential profitability of such ventures for their states with the resultant ethical considerations.

Corruption

Although the federal government is free to draft a new regulatory framework to replace the unconstitutional aspects of PASPA, for the moment, it appears likely that a loose framework of state laws will compose the legal landscape. As each state moves to legalize gambling, it will need to establish proper compliance and anti-money laundering controls.

One major area of concern is money laundering. The impetus will now fall to casinos to have proper “Know Your Customer” and “Early Warning Systems” in place to detect irregular betting patterns or potential attempts to fix games. Even assuming the competence of respective state gaming institutions to properly spot illegal activity, jurisdictional questions loom. For example, presume a sportsbook based in Mississippi suspects an NBA game in Los Angeles was fixed. The sportsbook’s investigative capabilities as well as the jurisdictional capacity to properly regulate offenders outside of state lines remain unknown. Referring back to the current league lobbying effort, assuming the sportsbook alerted the appropriate authorities and the league, it seems likely that the NBA would bear the costs of properly investigating this infraction.

While many have viewed the *Murphy* decision as a fatal blow to organized crime’s longstanding presence in the illegal gambling realm, it would be premature to assume criminal elements would simply let go of one of its primary revenue streams. The International Centre for Sport Security estimates that \$140 billion is laundered through global sports betting, with match fixing the primary means. In November 2017, the United Nations Convention Against Corruption

convened in Austria to discuss the ways organized crime has invaded international competitive sports. The discussion centered on the problem of match fixing and the resultant manipulation across the betting markets, with the end goal of laundering money internationally. The advent of online sports betting sites has led to a startling criminal presence in the expanding global sports market, providing organized crime the opportunity to launder money and maintain a positive margin. The UN Convention adopted Resolution 7/8 on Corruption in Sport, specifically calling on member states to adopt a proactive legal stance to combat corruption. How to best effectuate this remains unclear. Certain

sports leagues are focusing their efforts on educating their athletes and officials on possible sanctions of match fixing, with FIFA even offering players who have been pressured to fix a match potential whistleblower protections. Others are looking to the predictive value of refined data to isolate potential cases of match fixing. As the law changes, criminal enterprises will continue to adapt. A coordinated effort amongst the gambling industry, law enforcement, and the leagues will be the only path forward to ensure honesty in sport.

NCAA Issues

With gambling’s legalization, there is an additional irony that college players could make millions for others while receiving no formal compensation apart from their educational fees. On July 19, 2018, the NCAA announced that it would be creating a team of experts to determine how the integrity of games can be protected and betting can best be monitored. With gambling legalized, the NCAA’s mission to protect the “amateur” athlete is exponentially harder.

The Origins of Amateurism

The NCAA was originally founded in 1906 to determine the relevant safety standards of college football. It is currently an association of 1,061 colleges and universities who must adhere to its regulations in order to retain membership. While the games they regulate have altered, amateurism was foundational to the NCAA’s mission. At its inception, the vision of the student-athlete was a well-rounded gentleman who played sport purely for entertainment with no designs (or need) for compensation.

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These historic sensibilities were then ingrained in the rules themselves. The relevant NCAA rule, Bylaw 12, mandates that athletes must be student-athletes, explaining “[t]he student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports.” The NCAA’s main argument for the procompetitive aspects of Bylaw 12 is the importance of “integrating academics with athletics” and “preserving the popularity of the NCAA’s product by promoting its current understanding of amateurism.” An understanding of the actual finances at stake brings this second argument concerning the dilution of the product into focus. As just one example of the money currently on the table, in 2016, the NCAA and CBS reached an extension of their deal for the licensing rights to March Madness, bringing the total payout to the NCAA of over \$1 billion a year. Despite the NCAA’s explanation that this money goes entirely to funding programs for student athletes, the sheer numbers have drawn skepticism of whom the NCAA’s amateurism rules truly benefit. Whether or not the NCAA is formally violating the federal antitrust laws will take center stage in September 2018 in Judge Claudia Wilken’s court in the Northern District of California, *Jenkins et al. v. National Collegiate Athletic Association, et al.*, 4:14-cv-02758.

Federal Investigations into Corruption in College Basketball

The austere nature of the NCAA’s system overlooks the more unseemly side of college athletics in which schools face an agonizing decision on how to recruit top talent. Whispers of under the table pay for play echo throughout the top programs. This issue came front and center in September 2017 when the FBI and the DOJ launched full criminal investigations into certain Division I programs. Two different schemes were at play in the FBI’s investigation. The first involved the Louisville men’s basketball program in which recruits were guaranteed post-graduation contracts with Adidas if they committed to Louisville, an Adidas-sponsored school. The ongoing investigation led to the almost immediate ouster of Coach Rick Pitino. Although Pitino survived a prior scandal concerning providing prostitutes to recruits a few years prior, the evidence concerning the Adidas situation proved too overwhelming. The second part of

the FBI’s investigation concerned actual pay for play routed through certain assistant coaches to star players. While the schools themselves are not specifically facing federal charges, the implicated assistant coaches were employed at Arizona, University of Southern California, Oklahoma State, and Auburn. These targets send a strong message that the federal government is prepared to step in when the NCAA has not acted.

A Brief History of Point Shaving

With legalized gambling looming, the potential for manipulation by athletes in need of pay is rife. Point shaving scandals permeated college basketball in the 1980s and 1990s. In 1985, three basketball players and five others at Tulane were indicted for bribery related to point-shaving, resulting in the termination of the basketball program. In 1997, two former Arizona State players were convicted of taking bribes to fix games during the 1994 season. In 1998, two former Northwestern basketball players were indicted after charges that they took bribes to ensure the spread was covered during Big Ten games in the 1994-1995 season. As some of sport’s most vulnerable athletes, the NCAA will have to seriously contemplate the best path forward to protect their athletes and their games.

Conclusion

The effect of the Supreme Court’s recent decision in *Murphy v. NCAA* remains largely unknown. It may sound hyperbolic, but the decision could fundamentally alter the way sport is played and consumed in American culture. With some state laws already in effect and others currently being drafted, states hope that legalized gambling will be the revenue success they need. States made a big bet that it will be to their advantage, but the spread is unclear.

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