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**GAMBLING**

Four Ropes & Gray LLP attorneys discuss the ramifications of the recent U.S. Supreme Court decision allowing states to legalize sports betting. The authors go on to discuss opportunities for companies, and also risks and potential challenges as a result of this decision.

**Will *Murphy v. NCAA* Change the Sports Betting Landscape?**

BY RICHARD BATCHELDER, DENNIS COLEMAN, AARON KATZ, AND SEAN O'NEILL

The U.S. Supreme Court's recent decision in *Murphy v. NCAA* portends a quick and dramatic reshaping of the sports betting landscape—opening up a wide array of opportunities for states to consider. The exact contours of legalized betting will have deep implications for various industries while also presenting risks and ongoing challenges for regulators and law enforcement.

The Court took the most aggressive path available to it by invalidating the entirety of the Professional and Amateur Sports Protection Act (“PASPA”) on 10<sup>th</sup> Amendment anti-commandeering grounds. As Justice Samuel Alito colorfully put it in the majority opinion, Congress clearly overstepped its bounds in enacting PASPA: “It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine.” Once the Court decided the so-called “anti-authorization provision” was such an affront, it found that the rest of PASPA could not be severed from the offending provision and thus “doom[ed] the remainder of PASPA.” PASPA’s invalidation restores the

question of legalizing sports betting to the states, subject to other relevant federal statutes.

Many states have been preparing for this day, and are poised to enact laws legalizing sports betting within their borders. Even before the decision was announced, 22 states had already begun to examine the potential for legalized sports betting. According to LegalSportsReport.com:

- Six states have enacted laws allowing implementation of sports betting following a change in federal law;
- 14 other states have introduced legislation within the past year and a half to legalize some form of sports betting following a change in federal law;
- Two other states have introduced bills to study legalizing sports betting.

As we have seen with daily fantasy sports (“DFS”) legalization—18 states have now legalized the competitions in some form—state-by-state legalization of sports betting will likely come fast and furious now that the floodgate is open and every state angles to get a piece of the sports betting pie. Estimates of potential revenue from sports betting run from \$5 billion to \$19.6 billion, making it one of the biggest potential sources of new

revenue to a state. And just as has been the case with DFS, the sports leagues themselves—which were on the losing side of the Court’s decision in *Murphy*—will be at the forefront of all legalization efforts, both to secure a share of revenue and to protect the integrity of their sports. The leagues reacted quickly to the decision, with the NFL calling on Congress to “enact a core regulatory framework for legalized sports betting” and the NBA and MLB expressing their continued desire to see legalization efforts that preserve the integrity of their sports. The NCAA, another entity on the losing side in *Murphy*, has softened its long-held opposition to sports betting in the wake of the decision by allowing schools to host championships in states where sports betting is or will become legal.

## Opportunities

With the uncertain but growing future for sports betting in mind, here are some of the ways that states, businesses, and entire industries could attempt to take advantage of sports betting opportunities:

### Live Wagering

Live wagering will not necessarily be limited to casino sports books or betting parlors. States could allow sports bars, restaurants, and hotel chains to offer sports wagering as a lucrative entertainment offering.

### Online Wagering

Although the federal Wire Act, 18 U.S.C. § 1084, might still impose some restrictions, states may choose to allow some forms of online wagering as well. This would present opportunities for a variety of businesses, including consumer technology companies, app developers, credit card processors, and data privacy providers. Without federal legislation, betting across state lines would not be allowed, but Sen. Orrin Hatch (R-Utah) recently announced he plans to introduce legalization legislation that would address the issue.

### Licensing and Royalty Opportunities

Professional sports leagues own and control their product, and one key decision point for states that choose to legalize sports wagering is whether the professional sports leagues should likewise own and control the right to wager on their games. If states go in that direction, even professional sports leagues that choose not to engage directly in the sports wagering space could derive significant new revenue from licensing and royalty deals struck with the companies that do.

One current idea that has gained traction—due in large part to league lobbying—is an “integrity fee.” The basic proposal is that sports leagues would receive a percentage of total wagers, potentially a significant windfall.

### Securities & Finance

Nevada allows and has seen a significant rise in so-called “entity betting,” which is essentially when a hedge fund makes large sports wagers with money pooled from investors. Widespread legalization could take these types of hedge funds mainstream. It is also possible that wagers and wager derivatives could be traded on platforms resembling public stock exchanges, essentially opening up a new area of finance.

## Risks and Challenges

Sports wagering legalization will bring with it new regulatory and enforcement risks. The invalidation of PASPA does not prevent either the federal government or the states from the regulating sports wagering companies through banking laws, consumer protection statutes, and data privacy rules. Enforcement entities will be closely monitoring all developments and seeking to exert their regulatory influence early. This makes early, proactive compliance assessments and benchmarking a wise investment for companies that decide to play in the sports wagering space.

### Consumer Protection Laws

State Attorneys General will seek to use their considerable powers under broad consumer protection statutes to ensure that businesses that participate in the sports wagering space do so fairly and do not prey on vulnerable consumers. The DFS industry experience is again likely to be instructive. For example, Massachusetts Attorney General Maura Healey sought to implement consumer protection regulations as part of the DFS legalization process. Attorneys General likely will seek to ensure that businesses do not market to or take wagers from minors, do not exploit consumers who may be addicted, and adhere to other basic standards of fairness.

### Anti-Money Laundering

Legalized sports wagering will present significant anti-money laundering risks. The Department of Justice and U.S. Attorneys Offices along with the Securities and Exchange Commission have all made anti-money laundering laws an enforcement priority, and businesses that choose to enter the sports wagering space will need to ensure that their anti-money laundering policies and procedures follow best practices.

### Data Privacy

Particularly if legalization results in an explosion in online sports wagering, hackers and data thieves will no doubt make sports wagering businesses a target of their activities. Having best-in-class data privacy protections and compliance capabilities will be essential to businesses that obtain and store sensitive customer data.

### Securities Regulations

“Entity betting” and publicly trading wagers and wager derivatives may raise significant questions under the federal securities laws and regulations. Compliance with those laws and regulations will be paramount for hedge funds and other finance companies that choose to participate in the sports wagering space.

### Anti-Corruption Risk

For professional sports leagues, colleges and universities, the NCAA, players, and fans, the integrity of games is sacrosanct. States that legalize sports wagering will seek input from these stakeholders about how to ensure that any legalized sports wagering market has the guardrails necessary to avoid compromising the integrity of the games.

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## Conclusion

The American Gaming Association engaged Oxford Economics to study the scope of sports betting within the United States along with potential revenue estimates. Oxford collected research on the illegal wagering market as well as from states and countries with legal sports betting. Oxford gave a range of scenarios with wagering totals ranging from \$83.2 billion to \$287.4 billion, with revenue estimates ranging from \$5 billion to \$19.6 billion.

Given the potential size of the market—those revenue estimates would equal or surpass revenues for each of the four major sports in the United States—regulators and law enforcement (as well as states looking for tax revenue) will likely act just as fast as businesses to seize opportunities to establish themselves as key players in this new game. Industries will need to develop new policies and procedures to ensure new revenue streams become lucrative without increasing exposure.

While there are many uncertainties, one certain bet is that with this much money at stake, rapid change is

coming across industries as stakeholders try to cash in on sports betting.

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