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Should Georgia Bet on Sports?

H. Madison Short*

I. INTRODUCTION

Five years ago, in *Murphy v. National Collegiate Athletic Association* (*Murphy*),¹ the Supreme Court of the United States declared that the Professional and Amateur Sports Protection Act (PASPA),² which prohibited states from licensing and authorizing sports gambling schemes, violated the anticommandeering doctrine.³ This ruling resulted in a sudden and significant shift in the landscape of sports betting within the United States; in effect, overturning PASPA granted states the power to independently decide whether to legalize sports betting.⁴

Commercial sports betting is now available in thirty-two states, with more poised to join the trend.⁵ As of December 31, 2023, the total handle (an insider's term referring to the amount of money wagered) across all commercial sportsbooks (establishments or platforms that take bets on sporting events) has surpassed \$300 billion.⁶ This illustrates that whether individuals are betting for entertainment, financial gain, or friendly competition, Americans have a penchant for gambling.

*For those facing challenges with gambling, help is available through the National Problem Gambling Helpline at 1-800-GAMBLER. Trained professionals are ready to assist you confidentially, around the clock, every day of the year. They specialize in aiding individuals dealing with gambling-related concerns. No payment or insurance details are necessary. For further assistance, you can also visit <https://www.ncpgambling.org/help-treatment/> [<https://perma.cc/93VP-S4N6>].

1. 584 U.S. 453 (2018).

2. 28 U.S.C. §§ 3701–04 (2018).

3. *Murphy*, 584 U.S. at 480. The Court wrote the legalization of sports gambling required an important policy choice, but the choice was not theirs to make. “Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.” *Id.* at 486.

4. *Id.* at 486.

5. Chris Altruda, *Legal US Sports Betting Revenue, Handle and Tax Totals Since PASPA Repeal*, SPORTSHANDLE (Mar. 4, 2024), <https://sportshandle.com/sports-betting-revenue/> [<https://perma.cc/2JNJ-WYJ9>].

6. *Id.*

Recognizing the potential for substantial revenue, sportsbooks are allocating hundreds of millions of dollars to expansive advertising campaigns aimed at attracting new customers.⁷ However, limited regulation related to the sports betting industry leaves the public at risk, specifically those with a history of addiction and individuals who are too young to bet.⁸ States are far from disinterested parties in this matter, as they not only oversee the regulation of sports betting within their borders but also reap significant benefits from the taxes generated by sportsbooks.⁹ As betting activity surges, state government revenues see a corresponding increase. As of December 31, 2023, states had collected over \$4.5 billion in tax revenue that was nonexistent before the overturning of PASPA.¹⁰

Following the Court's decision in *Murphy*, Georgia legislators have repeatedly introduced bills to legalize sports betting.¹¹ However, despite these efforts, the 2023 legislative sessions concluded without the passage of multiple bills aimed at achieving this goal.¹² Nonetheless, with mounting pressure and support, it seems increasingly likely that Georgia voters will soon have the opportunity to amend the state's constitution to legalize it.¹³ This Comment analyzes whether legalizing sports betting would be in Georgia's best interest.

Part II will provide a brief overview of PASPA, followed by an examination of why the Supreme Court of the United States held it to violate the anticommandeering doctrine.¹⁴ Additionally, it will delve into the repercussions of the post-*Murphy* betting boom. Part III will explore the role of daily fantasy sports in normalizing sports betting. Part IV will reflect on advertising legislation pertaining to a similarly addictive industry and discuss modern predatory advertising campaigns employed by sportsbooks. Finally, Part V will analyze the challenges associated

7. Joe Hernandez, *Sports betting advertisements are everywhere. Some worry gamblers will pay a steep price*, NPR (June 18, 2022, 5:00 AM), <https://www.npr.org/2022/06/18/1104952410/sports-betting-ads-sports-gambling> [https://perma.cc/5XBD-PC52].

8. Samantha Thomas et al., *Protecting children and young people from contemporary marketing for gambling*, PUBMED CENT. (2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10024482/#:~:text=Inducements%20and%20celebrity%20promotions%20are,et%20al.%2C%202020> [https://perma.cc/CS4Q-PME2].

9. Altruda, *supra* note 5.

10. *Id.*

11. *See, e.g.*, Ga. S. Bill 57, Reg. Sess. (2023); Ga. S. Bill 172, Reg. Sess. (2023); Ga. H.R. Bill 380, Reg. Sess. (2023).

12. *Id.*

13. *See* Ga. S. Bill 386, Reg. Sess. (2024).

14. *Murphy*, 584 U.S. at 474.

with legalizing sports betting in Georgia, evaluating the pros and cons before concluding why Georgia should “bet on sports.”

II. THE END OF AMERICA’S FEDERAL PROHIBITION ON SPORTS BETTING

A. *The Professional and Amateur Sports Protection Act*

In February 1992, Congress exercised its authority under the Commerce Clause¹⁵ to enact the PASPA.¹⁶ Its purpose was simple: “to stop the spread of State-sponsored sports gambling and to maintain the integrity of our national pastime.”¹⁷ Consistent with prior anti-gambling legislation, the policy argument behind the bill was that sports betting threatens to change the nature of sporting events from “wholesome entertainment” to “devices for gambling.”¹⁸ PASPA aimed to achieve its goal by prohibiting any government entity from sponsoring, operating, advertising, promoting, licensing, or authorizing by law any “lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate.”¹⁹

However, because Nevada was the sole state offering the full array of sports betting options, PASPA effectively gridlocked the sports betting market, leading to a demand for illegal sportsbooks.²⁰ By 1999, online sportsbooks emerged as the preferred method for Americans to bet on sports. Consequently, much to the dismay of Congress, illegal bookmaking transformed into a multi-billion dollar industry throughout the 2000s.²¹

1. PASPA Challenges: Christie I and Christie II

In 2012, New Jersey amended its state constitution to authorize sports betting and enacted its “Sports Wagering Law,” legalizing sports betting

15. U.S. CONST. art. I, § 8, cl. 3.

16. 28 U.S.C. §§ 3701–3704 (2018).

17. S. Rep. No. 102-248, at 4 (1991).

18. *Id.* at 5.

19. 28 U.S.C. § 3702 (1992).

20. Becky Harris, *Regulated Sports Betting: A Nevada Perspective*, 10 UNIV. NEV. GAMING L. J. 75, 76 (2020).

21. Ari Weinberg, *The Case for Legal Sports Gambling*, FORBES (Jan. 27, 2003, 11:55 AM), http://www.forbes.com/2003/01/27/cx_aw_0127gambling.html [<https://perma.cc/Y7BQ-EPE6>] (last visited Feb. 1, 2024). In 2003, *Forbes* estimated that up to \$380 billion in bets were placed illegally throughout the prior year. *Id.*

throughout the entire state.²² This move directly contradicted PASPA and prompted the National Collegiate Athletic Association (NCAA) to file suit against New Jersey Governor Chris Christie.²³ New Jersey argued that PASPA unconstitutionally “infringed the State’s sovereign authority to end its sports gambling ban.”²⁴ The United States District Court for the District of New Jersey found no violation, a decision that the United States Court of Appeals for the Third Circuit upheld stating “while the guarantee of uniformity in treatment amongst the states cabins some of Congress’ powers, . . . no such guarantee limits the Commerce Clause.”²⁵

In 2014, New Jersey enacted a new sports gambling statute, framing it as a “repealer” statute that revoked its previous sports gambling ban.²⁶ Again the NCAA filed suit.²⁷ Again, the district court ruled in favor of the NCAA and the Third Circuit affirmed, holding that the law violated PASPA.²⁸ However, in 2017, the Supreme Court of the United States surprisingly granted certiorari to resolve the constitutional question argued below.²⁹

B. *Murphy v. National Collegiate Athletic Association*

In May 2018, the Supreme Court of the United States held that PASPA’s provision generally making it unlawful for a state to license sports gambling violates the anticommandeering doctrine.³⁰ The Court reasoned, as the Tenth Amendment³¹ confirms, all legislative power not conferred on Congress by the Constitution is reserved for the states.³² Thus, while Congressional power is sizable, it is not unlimited.³³ The Court held that absent from the list of conferred powers is Congressional

22. N.J. Stat. §§ 5:12A-1–5:12A-19 (2012) (invalidated by Nat’l Collegiate Athletic Ass’n v. Governor of N.J., 730 F.3d 208 (3d Cir. 2013)).

23. Nat’l Collegiate Athletic Ass’n. v. Christie, 926 F.Supp.2d 551 (D.N.J. 2013) [hereinafter *Christie I*].

24. *Murphy*, 584 U.S. at 462.

25. *Christie I*, 730 F.3d at 238.

26. *Murphy*, 584 U.S. at 464.

27. Nat’l Collegiate Athletic Ass’n. v. Christie, 61 F.Supp.3d 488 (D.N.J. 2014) [hereinafter *Christie II*].

28. *Murphy*, 584 U.S. at 465.

29. *Id.* Before the Supreme Court of the United States granted certiorari, Christie was replaced as New Jersey’s Governor by Phil Murphy.

30. *Id.* at 480.

31. U.S. CONST. amend. X.

32. *Murphy*, 584 U.S. at 471.

33. *Id.*

power to issue direct orders to state governments and that the anticommandeering doctrine simply represents this limitation.³⁴

Justice Alito, in delivering the opinion of the Court, wrote,

The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated in the Constitution, *i.e.*, the decision to withhold from Congress the power to issue orders directly to the States. When the original States declared their independence, they claimed the powers inherent in sovereignty – in the words of the Declaration of Independence, the authority “to do all . . . Acts and Things which Independent States may of right do.” . . . [Because] both the Federal Government and the States wield sovereign power . . . that is why our system of government is said to be one of “dual sovereignty.”³⁵

In sum, this means that while Congress has the power to regulate sports betting directly, it does not have the power to direct how states legislate sports betting.³⁶ Thus, without Congressional regulation relating to sports gambling directly, each state is free to act on its own. By rendering PASPA unconstitutional, *Murphy* changed the landscape of sports betting in the U.S. by granting states the power to independently decide whether to legalize sports betting.³⁷

C. The Post-*Murphy* Sports Betting Boom

By the end of 2018, seven states had legalized commercial sportsbooks.³⁸ Five years later, thirty-two states have passed legislation to legalize commercial sports betting, and the trend suggests that more states are likely to follow suit.³⁹ For over 146 million Americans, sports betting is not only legal but also easier than ever, thanks to mobile sportsbook apps that offer improved accessibility, convenience, and user experience.

To better understand the post-*Murphy* betting boom, it is useful to take an in-depth look at year-end gambling statistics since 2018. The table below presents data on the number of states with commercial betting available, the handle, and the state taxes collected at year-end⁴⁰:

34. *Id.*

35. *Id.* at 470 (quoting THE FEDERALIST No. 5 (James Madison)).

36. *Id.* at 474.

37. *Id.* at 486.

38. Altruda, *supra* note 5.

39. *Id.*

40. *Id.*

Year End	States with Commercial Sportsbooks	Total Handle	Total State Taxes Collected
2018	7	\$4,618,927,053	\$37,797,161
2019	13	\$13,138,741,263	\$125,914,064
2020	19	\$21,545,027,984	\$244,796,997
2021	26	\$57,754,303,855	\$562,278,829
2022	27	\$93,792,843,522	\$1,506,621,103
2023	32	\$119,886,776,683	\$2,137,612,099
Total	32	\$310,736,620,360	\$4,615,020,253

What the above data shows is a meteoric rise in the popularity and total handle of legal sports betting. Since the Court's decision in *Murphy*, more than half of the states have elected to legalize commercial sports betting, over \$300 billion in sports bets have been legally placed, and over \$4.6 billion have been collected as revenue by states without directly taxing their citizens.⁴¹

III. THE RISE OF DAILY FANTASY SPORTS

By overturning PASPA, the Supreme Court of the United States effectively created a multi-billion dollar sports betting market overnight.⁴² In response, in an attempt to gain market share, sportsbooks have allocated hundreds of millions of dollars in advertising.⁴³ Many sportsbooks are even willing to lose money in the short term to draw in a large customer base they hope to retain or sell.⁴⁴ However, unlike other industries where there is a risk of addiction, there is limited regulation relating to sports betting advertising. Because of this, an increase in predatory advertising tactics has left the public at risk. To better understand this risk, it is essential to outline how sports betting has become integrated into American sports culture.

41. *Id.*

42. *Id.*

43. Joe Hernandez, *Online betting companies are kicking off a Super Bowl ad Blitz*, NPR (Feb 13, 2022, 6:35 PM), <https://www.npr.org/2022/02/11/1079880190/super-bowl-betting> [<https://perma.cc/G7NN-V9PY>]. According to the research firm MediaRadar, the gambling industry spent \$488 million on advertising between November 2020 and November 2021. *Id.*

44. *Id.*

A. *Daily Fantasy Sports: Betting for Beginners*

Throughout the Twentieth century, every major sports league in the U.S. was determined to keep sports betting separate from their internal operations. The mindset was that if the public lost faith in the purity of the competition, it would lead to a decline in fan interest, viewership, and revenue. National Football League (NFL) commissioner Roger Goodell, in a deposition on NFL policy, reinforced this long-held mindset by stating:

It's a very strong view in the NFL, it has been for decades that the threat that gambling could occur in the NFL or fixing games or that any outcome could be influenced by the outside could be very damaging to the NFL and very difficult to ever recover from. That's why we take the positions that we do with our policies and education [to ensure] that people understand that we'll enforce it vigorously.⁴⁵

However, league commissioners were forced to reevaluate their position when the daily fantasy sports (DFS) industry entrenched themselves in modern sports culture.

1. The Unlawful Internet and Gambling Enforcement Act

In 2006, the Unlawful Internet Gambling Enforcement Act (UIGEA)⁴⁶ prevented certain payment instruments from being used for online gambling transactions. While it did not make online sports betting illegal or punish bettors, it succeeded in driving many online sportsbooks out of the U.S. marketplace. The mechanism behind UIGEA was straightforward—if online betting platforms could not collect user fees, their services would no longer be economically viable.⁴⁷ Notably, UIGEA included an exception that allowed season-long fantasy sports leagues to continue operating legally.⁴⁸

DFS operated by exploiting the above-mentioned carve-out in the UIGEA for “any fantasy or simulation sports game . . . or contest” based on the premise that fantasy sports require knowledge and skill to win.⁴⁹ Obviously, the UIGEA was not written with the nonexistent DFS market

45. David Purdum & Ryan Rodenberg, *NFL's evolving stance on sports betting and Las Vegas*, ESPN (May 14, 2018, 12:44 PM), https://www.espn.com/chalk/story/_/id/19015998/nfl-oral-history-nfl-changing-stance-gambling-las-vegas [<https://perma.cc/NKG4-B89F>].

46. 31 U.S.C. §§ 5361–5367 (2012).

47. See Brendan F. Conley, *How the Rise of the Daily Fantasy Industry Can Catalyze the Liberalization of Sports Betting Policies in the United States*, 66 BUFF. L. REV. 715, 729 (2018).

48. *Id.* at 730.

49. 31 U.S.C. § 5362(E)(ix) (2006).

in mind. Although DFS has been championed as a “game of skill,” this point has been fiercely litigated.⁵⁰

2. DFS Workings and Popularity

Before the internet, sports fans had long played season-long fantasy, picking athletes for their teams and tallying points based on statistics printed in the morning newspaper.⁵¹ However, season-long fantasy never gained mass appeal and never led to a notable increase in league viewership or revenue. DFS was designed for the masses, “offering [sports] fans daily contests and the enticing possibility of winning millions of dollars,” which significantly contributed to its widespread popularity.⁵²

Playing DFS involves building a team of real-life athletes—a *fantasy team*—to compete against other participants in a single day or week-long contest for cash prizes.⁵³ Players are given the option to enter different pools in which the entry fee and number of players are all different. The payout structure is usually based on these numbers.⁵⁴ Consequently, there are high-risk pools with thousands of players and correspondingly high payouts, as well as low-risk pools with fewer players and lower payouts.

Its popularity has soared for many reasons. Casual sports fans now have a low-commitment way to engage in sports more interactively and strategically. Because contests are daily, fans can choose to participate at any time, instead of playing in traditional season-long fantasy contests. With a stake in the game, there is now a reason to watch: to track your roster in real-time to see if you are “in the money.” There is a social aspect as well. It provides an opportunity to interact with others to discuss daily picks, strategy, or game recaps. However, because DFS involves wagering real money on unknown outcomes, it can serve as a gateway to other, potentially more addictive forms of sports betting.⁵⁵

50. See Joshua Taggart, *Is Daily Fantasy a Form of Gambling Hidden by Skill?*, 83 MISS. SPORTS L. REV. 81, 98 (2016); Conley, *supra* note 46, at 722.

51. Priyanka Boghani, *Sports Leagues and Daily Fantasy: What's at Stake?*, PBS (Feb. 9, 2016), <https://www.pbs.org/wgbh/frontline/article/sports-leagues-and-daily-fantasy-whats-at-stake/> [<https://perma.cc/74VN-487G>] (last visited Feb. 1, 2024).

52. *Id.*

53. *How to Play Daily Fantasy Sports*, DRAFTKINGS, <https://www.draftkings.com/how-to-play> [<https://perma.cc/SZ7M-6Z9Y>] (last visited Feb. 1, 2024).

54. *Id.*

55. *What is Daily Fantasy Sports?*, ALGAMUS (Jan. 10, 2023), <https://www.algamus.org/blog/what-is-daily-fantasy-sports> [<https://perma.cc/DP26-D7VC>].

3. DFS Forces a Shift in Sports Betting Policy

As DFS exploded into a multi-billion dollar online industry, major sports leagues began to benefit from increased fan engagement. DFS caused sports fans to start tuning in to games that they might not have otherwise cared about. Thus, because DFS attracted viewers from beyond its typical market, TV ratings for nationally broadcast sports saw an increase.⁵⁶

League commissioners found themselves in a paradoxical situation as they entered sponsorship deals with DFS while maintaining a firm stance against traditional sports betting.⁵⁷ NFL Commissioner Goodell exemplified this stance by strongly asserting that DFS was a “game of skill.”⁵⁸ To emphasize their opposition to traditional sports betting, Goodell and the other commissioners repeatedly cited the risk of corruption or game-fixing in a single match. They argued that because DFS depends on the results of individual player statistics across entire leagues of play, it is nearly impossible to influence the outcomes.⁵⁹

By the end of 2015, fifteen NFL teams had signed multi-year multi-million dollar sponsorship agreements with DFS.⁶⁰ The National Basketball Association (NBA), Major League Baseball (MLB), and the National Hockey League (NHL) soon followed.⁶¹ The lure of a new revenue stream forced a shift in sports betting policy. It was the prospect of financial gain rather than the preservation of the sanctity of the game that prompted this change. Thus, with the backing of the major sports leagues, whether they fully realized it or not, sports betting rapidly became an integral part of how fans engage with sports.

IV. PREDATORY SPORTS BETTING ADVERTISING CAMPAIGNS

In 2018, when the Supreme Court of the United States in *Murphy* overturned PASPA, DFS platforms were strategically positioned to evolve into full-fledged online sportsbook operations.⁶² With state approval, betting became as easy as opening a sportsbook app on your

56. Jacob Grubman, *NFL Rating Rise With Expansion Of Legal Sports Betting*, FORBES (Feb. 11, 2022, 11:26 AM), <https://www.forbes.com/sites/jacobgrubman/2022/02/11/nfl-ratings-rise-with-expansion-of-legal-sports-betting/?sh=f7a3d105bc5b>.

57. Boghani, *supra* note 50.

58. *Id.*

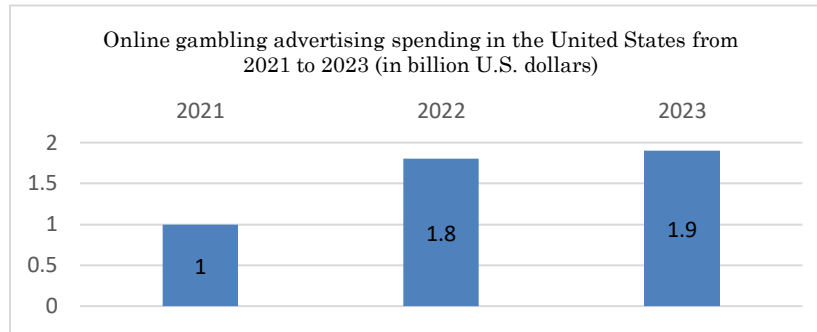
59. *Id.*

60. Dustin Gouker, *Advantage, FanDuel: DFS Site Now Has Deals With Nearly Half of NFL Teams*, LSR (Apr. 23, 2015), <https://www.legalsportsreport.com/1134/fanduel-deals-with-15-nfl-teams/> [<https://perma.cc/96D7-TRB2>].

61. Boghani, *supra* note 50.

62. 584 U.S. 453 (2018).

smartphone. Moreover, DFS already had partnership agreements with every major sports league, paving the way for a flood of sports betting advertisements. Between November 2020 and November 2021, the sports betting industry spent \$488 million on advertising.⁶³ By the end of 2023, billions of dollars were being invested to acquire users for the expanding array of legal sportsbooks.⁶⁴ The chart below visualizes online gambling advertising spending in the U.S. from 2021 to 2023⁶⁵:



However, due to the absence of federal advertising rules specific to sports betting, it falls on the states to govern the content of sportsbook advertising, and few have done so. In this regulatory vacuum, sportsbooks have adopted various predatory tactics that place the public at risk, with minors and individuals struggling with addiction particularly vulnerable.⁶⁶

A. Celebrity Endorsements: Sports Betting and Tobacco

Some of the biggest names in sports, such as Shaquille O'Neal, Michael Jordan, Wayne Gretzky, Lionel Messi, Mike Tyson, and Peyton Manning, all have signed partnership deals with online sportsbooks.⁶⁷ This is a problem. Betting advertisements featuring sports icons encourage young people to perceive sports betting as safe.⁶⁸ Celebrity endorsements

63. Todd Shriber, *Sports Betting Advertising on Torrid Expansion Pace*, CASINO.ORG (Dec. 29, 2021, 8:26 AM), <https://www.casino.org/news/sportsbook-advertising-is-growing-and-more-is-on-the-way/> [https://perma.cc/4CER-GWEJ].

64. Statista Research Department, *Online gambling advertising spending in the United States from 2021 to 2023*, STATISTA (Oct. 9, 2023), <https://www.statista.com/statistics/1350628/online-gambling-ad-spend-usa/> [https://perma.cc/2RKR-NL3W].

65. *Id.*

66. Thomas, *supra* note 8.

67. Brant James, *Ranking The Sportsbooks Brand Ambassador Pro Athlete Deals*, PLAYUSA (July 1, 2021), <https://www.playusa.com/pro-athlete-sportsbook-ambassador-deals-not-uncommon/> [https://perma.cc/H2SS-F2DT].

68. Thomas, *supra* note 8.

contribute to trust in branded betting platforms and normalize otherwise risky behavior.⁶⁹

During the mid-Twentieth century, the U.S. tobacco industry infamously used celebrity and media endorsements to sell a similarly addictive product.⁷⁰ Cigarette packs included trading cards featuring celebrities and athletes smoking that could be collected and cherished by kids. Hall of Fame baseball player Micky Mantle liked Phillies Cigars, the Flintstones preferred Wintsons, and apparently, Santa Claus smoked Pall Malls.⁷¹

As the health risks associated with tobacco surfaced in the 1960s, celebrity tobacco endorsements began to disappear, and the Federal Communications Commission eventually banned cigarette advertisements on TV and radio in 1971.⁷² However, it was not until 1998 that fifty-two state and territory attorneys brought civil litigation against the U.S. tobacco industry, resulting in the permanent ban of billboard advertisements, cartoon advertisements, marketing toward youth, and brand sponsorship at sporting events across the U.S.⁷³

Greater exposure to tobacco advertisements has been shown to lead to a greater risk of becoming a smoker; it weakens the resolve not to smoke by influencing perceptions of the harm.⁷⁴ While many find comedy or nostalgia in mid-century tobacco advertisements, it is crucial to recognize how celebrity endorsements related to sports betting could have a similar impact as tobacco advertisements did on a generation of smokers.

B. The Danger of “Risk-Free” Bet Promotions

The “risk-free” marketing strategy employed by sportsbooks is a highly contentious approach. These promotions, similar to celebrity endorsements, tend to reduce users’ caution and create a false sense of security, particularly for inexperienced bettors. While “risk-free” bets can be advantageous for bettors, sportsbooks have made the terms and

69. *Id.*

70. Randy James & Scott Olstad, *Cigarette Advertising*, TIME (June 11, 2009), <https://content.time.com/time/subscriber/article/0,33009,1905530,00.html> [<https://perma.cc/W3YM-2B3C>]; Stuart Elliott, *When Doctors, and Even Santa, Endorsed Tobacco*, N.Y. TIMES (Oct. 6, 2008), <https://www.nytimes.com/2008/10/07/business/media/07adco.html> [<https://perma.cc/37WC-DSR8>].

71. *Id.*

72. Public Health Cigarette Smoking Act, 15 U.S.C. §§ 1331—41 (1970).

73. See *Master Settlement Agreement*, NAT’L ASS’N OF ATT’Y GEN., <https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/> [<https://perma.cc/WB9M-X7AW>] (last visited Mar. 10, 2024).

74. Thomas, *supra* note 8.

conditions increasingly complex. As a result, it is becoming more likely that first-time bettors will lose their money rather than win big.⁷⁵

For instance, BetMGM offered a promotion of up to \$1,000 paid back in bonus bets “if you don’t win.”⁷⁶ At first glance, this might seem like a great deal, but the devil is in the details.

Here is how it works: first, the customer is required to deposit \$1,000 into the app and place a \$1,000 bet.⁷⁷ If the bet wins, it is paid out in full with no promotional bonus.⁷⁸ If the bet loses the “risk-free” promotion comes into play, and BetMGM credits the customer with five \$200 “free bets.”⁷⁹ The issue is that a customer who loses their initial \$1,000 bet must now win five consecutive \$200 free bets to break even.⁸⁰ The odds of achieving this, akin to winning five consecutive coin tosses, are only 3.125%.⁸¹

1. A Promising Trend Away From “Risk-Free” Bet Promotions

The good news for sports fans is that the sports leagues and state legislators are becoming more aware of the risks associated with risk-free promotions. As of February 2023, the NBA has banned sportsbooks from using the term “risk-free” in advertising that appears on league and team-controlled platforms.⁸² Furthermore, regulatory authorities in Ohio and Massachusetts have also banned the use of this term.⁸³ If the sportsbooks fail to remove the phrase from their advertising voluntarily,

75. Danny Funt, *Sportsbooks call them risk-free bets. Just don't read the fine print*, WASH. POST (Dec. 26, 2022, 6:30 AM), <https://www.washingtonpost.com/sports/2022/12/26/risk-free-bets-mgm-draft-kings-fanduel-caesars/> [<https://perma.cc/ZJH4-R2A9>].

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. To calculate the odds (probability) of winning five consecutive sports bets, let us assume each bet has a 50% chance of winning, similar to a coin toss. To find the probability of winning five consecutive bets, we multiply the individual probabilities together because each bet is independent. Therefore, the probability of winning five consecutive sports bets is $(50\%)^5$, which equals 3.125%. See Andy Hayes et al., *Probability – Independent Events*, BRILLIANT, <https://brilliant.org/wiki/probability-independent-events/> [<https://perma.cc/KA G9-AAYV>] (last visited Feb. 1, 2024).

82. Bill King, *Concerned about betting's inherent dangers, NBA to ban 'risk-free' advertising*, SPORTS BUS. J. (Feb. 6, 2023), <https://www.sportsbusinessjournal.com/Journal/Issues/2023/02/06/Upfront/betting.aspx> [<https://perma.cc/U79G-E7LW>].

83. *Id.*

more sports leagues and states are expected to address this issue by imposing similar restrictions.⁸⁴

C. *The Future of Sports Betting Advertisements*

As the issue of the legality of “risk-free” language in sports betting advertising gains attention, sportsbooks are primarily using a brute force strategy.⁸⁵ Similar to other startup companies, sportsbooks are willing to incur short-term losses to capture market share in states that have recently legalized sports betting.⁸⁶ However, well-established sportsbooks based in Nevada have started to dominate the still-growing DFS industry.⁸⁷ For example, Caesars Entertainment has committed to spending \$1 billion to market its new sportsbook app.⁸⁸ Additionally, Disney-owned sports network ESPN (the Worldwide Leader in Sports) announced a \$2 billion deal to launch its sportsbook app “ESPN Bet” in late 2023; now fully operational.⁸⁹ Is Mickey Mouse my new bookie?

V. SHOULD GEORGIA BET ON SPORTS?

As mentioned above, the 2023 Georgia legislative sessions once again ended without the passage of several bills aimed at legalizing sports betting.⁹⁰ Nonetheless, given the growing support, it appears increasingly likely that Georgia will legalize sports betting soon.⁹¹ Should Georgia bet on sports? Absolutely. The financial benefits are significant. However, as we move forward, legislators must carefully consider the potential ills and implement a robust framework to protect citizens from the negative aspects of sports betting.

84. Angel Hristov, *FanDuel to No Longer Describe Products as “Risk Free”*, GAMBLING NEWS (July 7, 2022), <https://www.gamblingnews.com/news/fanduel-to-no-longer-describe-products-as-risk-free/> [<https://perma.cc/7ZTP-WNJV>]. FanDuel replaced the term “risk-free” with “no sweat.” *Id.*

85. Robert A. Fumerton et al., *Litigation risk for ‘risk-free’ sports betting promotions*, REUTERS (May 22, 2023, 12:46 PM), <https://www.reuters.com/legal/legalindustry/litigation-risk-risk-free-sports-betting-promotions-2023-05-22/> [<https://perma.cc/RSQ2-6KF7>].

86. Hernandez, *supra* note 42.

87. *Id.*

88. *Id.*

89. Ramishah Maruf, *ESPN is jumping into sports gambling in a \$2 billion deal*, CNN (Aug. 8, 2023, 8:56 PM), <https://www.cnn.com/2023/08/08/business/penn-entertainment-barstool-sports-espn/index.html#:~:text=Casino%20owner%20PENN%20Entertainment%20has,said%20in%20a%20statement%20Tuesday> [<https://perma.cc/RQK8-UNGH>].

90. *See, e.g.*, Ga. S. Bill 57, Reg. Sess. (2023); Ga. S. Bill 172, Reg. Sess. (2023); Ga. H.R. Bill 380, Reg. Sess. (2023).

91. *See* Ga. S. Bill 386, Reg. Sess. (2024).

A. The Challenges of Legalizing Sports Betting in Georgia

In 1992, an amendment to the Georgia Constitution was passed, legalizing the Georgia Lottery as a form of gambling.⁹² This initiative aimed to channel revenue toward funding the Hope Scholarship Program (HOPE) and pre-K education.⁹³ As a result, legislators are divided on whether sports betting should be operated like a lottery game under the Georgia Lottery. This approach could potentially allow for legalization without a referendum to amend the Georgia Constitution. Alternatively, others argue that sports betting should be considered distinct from the lottery, thereby requiring a constitutional amendment for legalization.

1. Legalizing Sports Betting Without a Referendum

When voters amended the state's constitution to allow the legislature to establish the Georgia Lottery for HOPE funding, they also expressly prohibited the legislature from approving two other forms of gambling: pari-mutuel betting and casino gambling.⁹⁴ These two forms of gambling were already prohibited by statute but not enshrined in the state's constitution.⁹⁵ Consequently, legislators who argue for considering sports betting as an extension of the Georgia Lottery believe that the crucial question is whether sports betting falls under the category of pari-mutuel betting or casino gambling. If not, they argue that a constitutional amendment would not be necessary.

Should sports betting be categorized as either pari-mutuel betting or casino gambling? Put simply, no. However, asserting that sports betting qualifies as a lottery game solely because it does not fit into the categories of pari-mutuel betting or casino gambling is a legal fiction. Such a stance could potentially prolong the process of legalizing sports betting in Georgia by inviting future litigation.

a. Pari-Mutuel Betting

Pari-mutuel betting differs from traditional sports betting primarily in how wagers are placed and how winnings are determined.

Under Georgia law, "pari-mutuel betting" is "a method or system of wagering on actual races involving horses or dogs at tracks which involves the distribution of winnings by pools."⁹⁶ Traditionally, instead of fixed odds, the final odds and payouts are determined by how much

92. GA. CONST. art. I, § 2, para. 8 (2023).

93. *Id.*

94. *Id.*

95. O.C.G.A. § 16-12-21 (2023).

96. O.C.G.A. § 50-27-3(20) (2023).

money is bet on each outcome.⁹⁷ The betting pool is divided among the winners, with a portion taken out to cover expenses and profit.⁹⁸

Thus, while traditional sports betting with a sportsbook offers fixed odds known at the time of placing the bet, pari-mutuel betting involves dynamic odds determined by the collective bets of participants. Therefore, traditional sports betting should not be categorized as pari-mutuel betting under Georgia law.

b. Casino Gambling

While both casino gambling and traditional sports betting involve placing wagers and risking money, they differ primarily in the types of events wagered on, the nature of the wagers, the role of skill, and availability.

Under Georgia law, “Casino gambling” means “a location or business for the purpose of conducting illegal gambling activities, but excluding the sale and purchase of lottery tickets or shares as authorized by this chapter.”⁹⁹ While Georgia law focuses on the “where,” casino gambling is traditionally a form of entertainment where people wager money on games of chance. The outcome is typically uncertain, and players can win money or prizes based on the games’ rules and luck.

Thus, while traditional sports betting involves wagering on the outcome of sporting events by analyzing statistics, team performance, and player form, casino gambling involves games of chance, such as slot machines, roulette, blackjack, and poker. Additionally, while traditional sports betting usually takes place on online platforms, casino gambling is typically available in a dedicated brick-and-mortar casino. Therefore, traditional sports betting should not be categorized as casino gambling under Georgia law.

2. Legalizing Sports Betting by Constitutional Amendment

Legislators advocating for a more conservative approach, argue that sports betting should be distinguished from a lottery game under the Georgia Lottery. As a result, they are proposing a constitutional amendment that would allow voters to decide the fate of sports betting in Georgia. On February 1, 2024, the Georgia Senate passed Senate Bill 386 (SB 386) by a 35-15 vote, which proposed just this.¹⁰⁰

97. *Pari-mutuel Gambling System*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/pari-mutuel> [<https://perma.cc/3BH9-ZZ6J>] (last visited Feb. 1, 2024).

98. *Id.*

99. O.C.G.A. § 50-27-3(7) (2023).

100. Ga. S. Bill 386, Reg. Sess. (2024).

Under SB 386, introduced by Senator Clint Dixon, the Georgia Lottery would take charge of regulating a new sports betting framework.¹⁰¹ However, unlike past disingenuous efforts to circumvent amending the state constitution by calling sports betting a lottery game, SB 386 met a two-thirds majority by requiring a referendum to amend the Georgia Constitution and by subjecting the sports betting industry to a 20% tax on its revenue, to contribute funds to support higher education through HOPE.¹⁰²

Although Georgia sports fans may anticipate the opportunity to vote in 2024 to legalize sports betting, achieving this goal requires a two-thirds vote during the legislative session to place an amendment on the ballot.¹⁰³ Despite several previous sports betting bills, such as those similar to SB 386, reaching this stage, they have ultimately failed.¹⁰⁴ Nonetheless, voters must comprehend the pros and cons of sports betting to make informed decisions.

B. The Pros and Cons of Sports Betting in Georgia

Georgia is a sports state. Its major professional and collegiate sports teams are cherished. However, Georgia sports could suffer if the state continues to shy away from betting. As surrounding states begin to embrace sports betting, rival teams will have more financial resources to compete.¹⁰⁵ For example, state neighbor and sports rival, Tennessee legalized online commercial betting operations in 2020.¹⁰⁶ Since then, over \$9 billion has been wagered and over \$157 million in taxes has been collected.¹⁰⁷

1. The Benefits of Revenue Without Tax

The prospect of boosting state revenue without imposing direct taxes on its citizens is compelling. Illinois, which shares similarities to Georgia in terms of its major U.S. city and population size, has collected \$366 million in taxes since 2020.¹⁰⁸ Similarly, New Jersey has collected \$447

101. *Id.*

102. *Id.*

103. *Id.*

104. *See, e.g.*, Ga. S. Bill 57, Reg. Sess. (2023); Ga. S. Bill 172, Reg. Sess. (2023); Ga. H.R. Bill 380, Reg. Sess. (2023).

105. Brant James, *Atlanta Pro Team Owners Frustrated That Georgia Legislatures Botched Sports Betting*, PLAYUSA (June 24, 2022), <https://www.playusa.com/sports-betting-wanted-asap-from-atlanta-pro-team-owners/> [https://perma.cc/KM4E-M62Z].

106. Altruda, *supra* note 5.

107. *Id.*

108. *Id.*

million in taxes since 2018, while Tennessee has collected \$157 million since 2020.¹⁰⁹ Enacting a sports betting framework could significantly benefit Georgia citizens by providing funding for public education, local government, and mental health programs.

As mentioned above, HOPE is fully funded by the Georgia Lottery, which was established when Georgia amended its constitution to allow for the lottery.¹¹⁰ Put simply, the Georgia Lottery is a state-run form of gambling designed for the public's benefit. Since its inception in 1992, HOPE has distributed over \$14 billion in financial aid to more than 2.1 million Georgia students for attending public colleges and universities within the state.¹¹¹

2. The Risks Associated with Sports Betting

When practiced irresponsibly, sports betting can create problems for Georgia's citizens. Like drugs and alcohol, gambling is an addictive product. Furthermore, with the advent of modern-day sportsbook apps, online sports betting is the most accessible form of gambling there is.¹¹² Sports bettors who find themselves in a hole are likely to "double down" to escape, this behavior can lead to mental health problems and financial ruin.

a. Sports Bettors Specifically at Risk

Professional sports teams and sportsbooks are both eager to boost youth engagement in sports. However, as children tune in to watch the games, they are being exposed to an unprecedented scale, form, and sophistication of sports betting advertisements.¹¹³ This increased exposure can shape positive attitudes toward addictive products like drugs, alcohol, and gambling.¹¹⁴ As discussed above, studies have shown that increased exposure weakens children's perceptions of harm relating to addictive products.¹¹⁵ The perception of harm, instilled in them from an early age, begins to break down as they become more familiar with these platforms.¹¹⁶

109. *Id.*

110. GA. CONST. art. I, § 2, para. 8 (2023).

111. Georgia Student Finance Commission, *HOPE and Pre-K*, GA. LOTTERY, <https://www.galottery.com/en-us/benefitting-georgia/hope-pre-k.html> [<https://perma.cc/GU66-V85Y>] (last visited Feb. 1, 2024).

112. Thomas, *supra* note 8, at 2.

113. *Id.* at 1.

114. *Id.* at 4.

115. *Id.*

116. *Id.*

However, children are not the only ones at risk. Compulsive betting is a diagnosable mental disorder.¹¹⁷ According to the National Council on Problem Gambling, over two million U.S. adults are estimated to meet the criteria for severe gambling problems each year and another five-to-eight million are considered to have moderate gambling problems.¹¹⁸ The advent of online sportsbook apps has made this vice instantaneously accessible. Unlike other addictive products, there are no physical or temporal limits to consumption, which can lead to rapid life-changing monetary losses.¹¹⁹

3. Potential Solutions to the Associative Risks

While the threat of addiction and rapid financial loss associated with sports betting poses risks to millions of adults and children, countries around the world and a few states in the U.S. are making strides in addressing this issue. By examining the most effective solutions, Georgia can implement a sports betting framework that ensures the benefits extend to all its citizens.

a. European Sports Betting Regulation

As concerns over online sports betting become increasingly prominent in the U.S., European countries have already begun to address this issue by enacting their own regulations. For example, Belgium has banned all advertisements that “normalize and trivialize” sports betting, while in the United Kingdom, the Committee of Advertising banned betting advertisements that feature former sports stars and social media influencers from various platforms, including broadcast media, online and print publications, billboards, and posters.¹²⁰

Furthermore, the Netherlands, dissatisfied with the outcomes of their previous ban on celebrity endorsements relating to sports betting, has now prohibited all advertising and sponsorship of online betting.¹²¹ These

117. *What is Problem Gambling?*, 1-800-GAMBLER: HELP FOR PROBLEM GAMBLING, <https://www.ncpgambling.org/help-treatment/faqs-what-is-problem-gambling/> [<https://perma.cc/EPW4-ARTR>] (last visited Feb. 1, 2024).

118. *Id.*

119. *Id.*

120. Joshua Cohen, *As Ads For Sports Betting Proliferate in U.S., Europe Clamps Down Due to Potential Risk of Compulsive Gambling*, FORBES (May 9, 2023, 10:00 AM), <https://www.forbes.com/sites/joshuacohen/2023/05/09/as-ads-for-sports-betting-proliferate-in-us-europe-clamps-down-due-to-potential-risk-of-compulsive-gambling/?sh=311e59b74d2e> [<https://perma.cc/F7LS-E9S9>].

121. *Id.*

laws, which aim to reduce the number of people addicted or in debt due to betting, demonstrate a significant effort to address the issue.

b. Modern State Sports Betting Regulation

Several U.S. states that have legalized sports betting and are concerned about potential harms. Maryland and Connecticut, for example, have passed legislation aimed at preventing marketing efforts targeted at underage bettors.¹²² They achieved this by banning sportsbooks from partnering with public universities and paying schools to promote their platforms.¹²³

Additionally, Maine has proposed rules to regulate sports betting TV advertisements. These rules restrict such advertisements to only appear during live sports broadcasts.¹²⁴ Furthermore, these rules would also prohibit the use of “risk-free” bonus language and the inclusion of “cartoon characters, professional or Olympic athletes, celebrities or entertainers” in advertisements.¹²⁵

VI. CONCLUSION

As shown above, in the post-*Murphy* landscape, DFS has transformed fan engagement, intertwining betting and sports for the foreseeable future. Although Georgia is five years late to the party, it should seize the opportunity to tax a thriving industry by creating an online sports betting framework that funds public programs and heavily regulates predatory advertisements. Similar to how the Georgia Lottery funds HOPE, if Georgia lawmakers allow Georgia citizens to vote on amending the state’s constitution to legalize sports betting, the potential benefits are staggering.

122. Eric Lipton & Kevin Draper, *First Came the Sports Betting Boom. Now Comes the Backlash*, N.Y. TIMES (May 13, 2023), <https://www.nytimes.com/2023/05/13/sports/online-sports-gambling-regulations.html> [https://perma.cc/9Y8N-KFQN].

123. *Id.*

124. *Id.*

125. *Id.*