



**INTEGRITY FEES  
& OFFICIAL DATA IN  
REGULATED SPORTS  
WAGERING**

By Jennifer Roberts

It was less than two years ago that the United States Supreme Court invalidated the Professional & Amateur Sports Protection Act (PASPA), a law passed in 1992 that restricted states and tribes from legalizing and regulating sports betting, in the landmark case of *Murphy v. NCAA*.<sup>1</sup> What made PASPA especially interesting was the power that the law gave to major professional and amateur sports leagues. The law specifically granted to leagues “whose competitive game is alleged to be the basis of such violation” the authority to pursue injunctive relief against a state or tribe, which was the same authority held by the U.S. Attorney General.<sup>2</sup>

While PASPA successfully prevented legal sports betting in most states for many years, sports leagues fought several battles over the years to protect their brand and data, both in and outside the sports betting world. In 1989, to help prevent the spread of sports wagering products through state lotteries (like the Sport Action game offered in Oregon and proposed to be offered in Washington D.C.), Congress attempted to amend the Lanham Trademark Act “to protect the service marks of professional sports organizations from misappropriation by state lotteries.”<sup>3</sup> After that legislation failed, there were efforts in 1990 to ban state-sanctioned sports betting through amendments to the Comprehensive Crime Control Act and the Copyrights Amendment Act.<sup>4</sup> Congress finally achieved success with the passing of PASPA in 1992.

Even when there was only one state with full-scale sports wagering during the PASPA years, there were attempts to prohibit certain sports wagering activities from taking place in Nevada. For example, Senators John McCain and Lindsey Graham backed legislation in the early 2000s, with support from the NCAA, to prohibit all wagering on college sports and the Olympics.<sup>5</sup> Again, these legislative efforts failed.

Now, with PASPA being invalid and states and tribes permitting sports wagering, professional and amateur sports leagues have decided to take a different turn. Almost immediately, many leagues entered into major sponsorship deals with casinos that offer sports wagering.<sup>6</sup> In fact, the partnership between the NBA and MGM Resorts International was announced just

over two months after the Supreme Court’s decision in *Murphy*.<sup>7</sup> Recognizing the benefits of an expanded sports betting industry, some leagues have not shied away from pushing for a piece of the wagering pie. According to an executive of Major League Baseball, “Businesses are going to make hundreds of millions of dollars off betting on sport. ... We think it’s fair that we receive a small portion.”<sup>8</sup>



Meanwhile, most of the leagues have continued to lobby both federal and state legislatures for protections for sports integrity. As recently as July 15 of this year, the SEC (Southeastern Conference) Commissioner publicly declared “strong support for NCAA national office efforts to seek federal legislation that will regulate sports gambling.”<sup>9</sup> One attempt at federal sports betting legislation brought with it the support of the NFL, NCAA, and USTA<sup>10</sup> – the Hatch-Schumer Bill, also known as the Sports Wagering Market Integrity Act of 2018<sup>11</sup> – was met with sharp criticism by the sports betting industry and ultimately was unsuccessful.

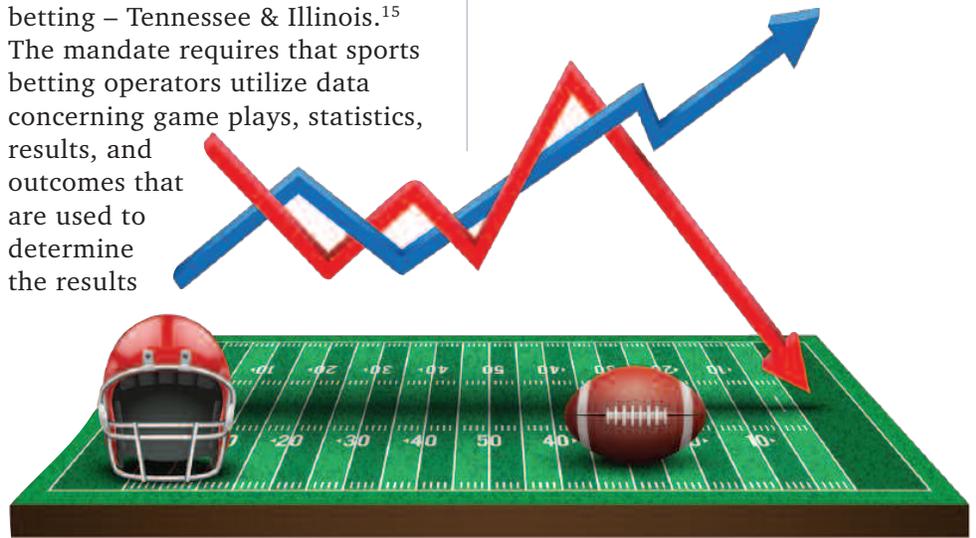
Leagues have also publicly pushed for a share of sports betting handle (i.e., amount wagered regardless of whether wager won or lost), which were first labeled as “integrity fees” and later called “royalty fees.” So far, that movement has not met with any success in the 10 states that currently have operational regulated sports wagering. Two major challenges in states mandating a share of sports wagering handle to go to sports leagues are: (1) the optics are not good if private commercial enterprises might receive financial benefit before tax revenues would be distributed to the state and (2) it could adversely affect sports betting businesses, which operate at much lower margins compared to other forms of gambling.<sup>12</sup> A stark example of how a handle-based fee could affect sports betting operations comes from the 2018 NFL Superbowl. That year, the Philadelphia Eagles played the New England Patriots and a record-breaking \$158 million was wagered (handle) throughout the nearly 200 sports books in Nevada at the time.<sup>13</sup> Of that amount wagered, the sports books only kept (after paying out winning wagers on the Eagles’

victory) \$1.17 million, which was a 0.7% hold.<sup>14</sup> If a handle-based integrity fee of 1% was imposed on the \$158 million in wagers, the sports books would have lost money because \$1.58 million would have been paid to the NFL.

While the leagues have had little success in lobbying for integrity fees, the official data mandate has appeared in at least two states who have legalized sports betting – Tennessee & Illinois.<sup>15</sup> The mandate requires that sports betting operators utilize data concerning game plays, statistics, results, and outcomes that are used to determine the results

of wagering activities, such as in-play or proposition betting, that is officially derived from the sports leagues, although distributed by a league partner, such as Sportradar or Genius Sports. This official data

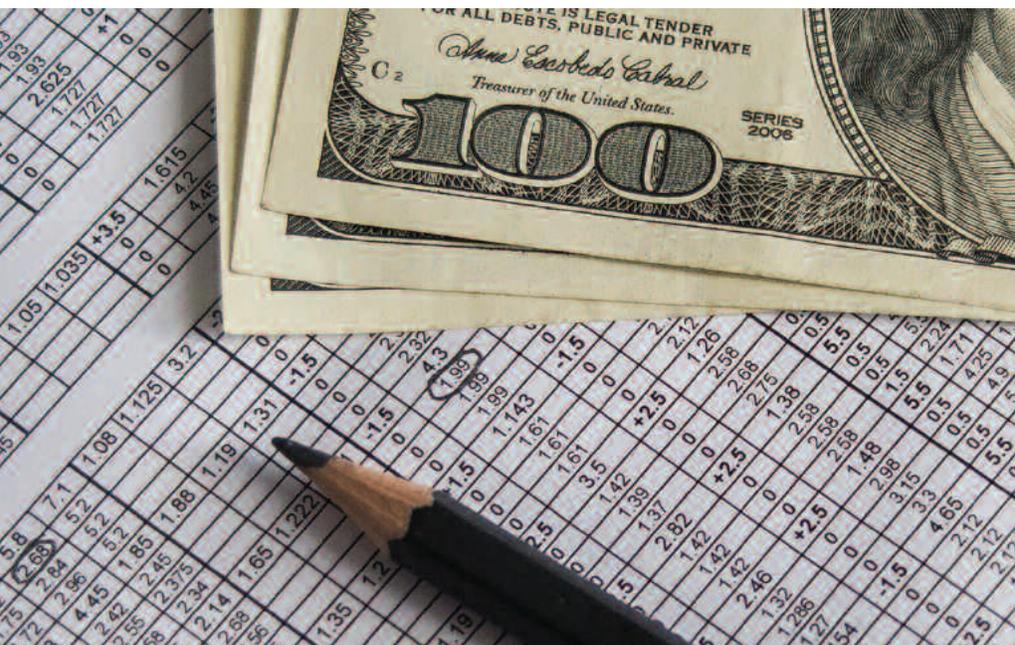
mandate means that operators are required to pay for a subscription to access the required data. Arguably more important than the data itself is the added component of adjusting odds based on the data,<sup>16</sup> which raises the inquiry of whether that would fall under the information service provider license requirement in Nevada.<sup>17</sup>



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One of the arguments is that official data increases “consumer confidence” and “alleviates the potential for fraud and disputes over settlement of wagers.”<sup>18</sup> Although I do not dispute that having an official source direct from the leagues is beneficial to operators, I would expect that consumers really don’t care what the source of the information is, so long as it is reliable and resolves the wager fairly and honestly. Moreover, the dispute is ultimately with the sports book operators (whose money is also at risk), so I wonder if there was an error using official data, would there be some form of indemnity by the supplier?

Not only may there be antitrust concerns<sup>19</sup> and sports data and game results are generally not given copyright protection pursuant to *NBA v. Motorola, Inc.*,<sup>20</sup> the official supply of data for wagering





purposes may trigger licensing requirements because the data is used to determine the outcome of a wagering event.<sup>21</sup>

There are tremendous benefits to all stakeholders with legal, regulated sports wagering – transparency, patron dispute process, consumer and funds protections, and enforcement tools to combat the expansive illegal market that grew and thrived throughout the PASPA years. Sports betting can be a successful endeavor through cooperative and collaborative partnerships between leagues and operators without state-mandated contracts or federal intervention.



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<sup>1</sup> 584 U.S. \_\_\_, 138 S.Ct. 1461 (2018).

<sup>2</sup> 28 U.S.C. § 3703.

<sup>3</sup> Derrick K. Hackel, “Beating the Spread: Oregon’s Role in the Professional and Amateur Sports Protection Act,” Univ. of Wisconsin-Eau Claire at 20 (Fall 2012), <https://minds.wisconsin.edu/bitstream/handle/1793/65079/HackelFall2012.pdf?sequence=2&isAllowed=y>.

<sup>4</sup> *Id.* at 20-21.

<sup>5</sup> Amateur Sports Integrity Act and Gambling in Amateur Sports, S.2340, 106th Cong. (2000); see also Laurence Arnold, “Senators reopen debate on banning bets on college sports,” Tahoe Daily Tribune (Dec. 19, 2001), <https://www.tahoe-dailytribune.com/news/senators-reopen-debate-on-banning-bets-on-college-sports/>.

<sup>6</sup> Charles Watson, “NFL, NBA and MLB come around to sports betting as leagues could win big,” Fox News (Jan. 16, 2019), <https://www.foxnews.com/sports/sports-leagues-cautiously-coming-around-to-sports-betting-as-financial-picture-comes-into-focus>.

<sup>7</sup> National Basketball Association, “MGM Resorts International becomes official gaming partner of NBA,” NBA.com (July 31, 2018), <https://www.nba.com/article/2018/07/31/mgm-resorts-international-becomes-official-gaming-partner-nba-official-release>.

<sup>8</sup> See *supra* n. 5.

<sup>9</sup> Greg Sankey, @GregSankey, Twitter.com (July 15, 2019).

<sup>10</sup> Senate Democrats, “Schumer, Hatch Introduce Bipartisan Sports Betting Integrity Legislation,”

(Dec. 19, 2018), <https://www.democrats.senate.gov/newsroom/press-releases/schumer-hatch-introduce-bipartisan-sports-betting-integrity-legislation>.

<sup>11</sup> Sports Wagering Market Integrity Act of 2018, S. 3793, 115th Cong. § 101 (2018).

<sup>12</sup> See UNLV Center for Gaming Research, Sports Betting Win, 1984-2018 at [https://gaming.unlv.edu/reports/NV\\_sportsbetting.pdf](https://gaming.unlv.edu/reports/NV_sportsbetting.pdf) (showing hold percentages ranging from 1.55% to 7.89% over 35 year period); compare this to hold percentages of table games averaging between 12.23% and 18.80% found at UNLV Center for Gaming Research, Nevada Table Games: Historical Hold Percentage Variations, at [https://gaming.unlv.edu/reports/nv\\_table\\_hold.pdf](https://gaming.unlv.edu/reports/nv_table_hold.pdf).

<sup>13</sup> Nevada Gaming Control Board, Release (Feb. 4, 2019), at <https://gaming.nv.gov/modules/showdocument.aspx?documentid=14343>.

<sup>14</sup> *Id.*

<sup>15</sup> Joe Lemire, “Illinois Passes Sports Betting Bill with Official Data Mandate, In-Venue Kiosks,” Sporttechie (June 3, 2019), <https://www.sporttechie.com/illinois-sports-betting-bill-official-data-in-venue-kiosks/>.

<sup>16</sup> Brett Smiley, “Opinion: The War Over Sports Betting Data: Lies, Half-Truths and Statistics: Part I,” SportsHandle (July 17, 2019), <https://sportshandle.com/sports-betting-data-war-analysis-part-one/>.

<sup>17</sup> See NRS 463.01642; 463.160(1)(b).

<sup>18</sup> Buck Wargo, “ICE North America: Panel debates use of league data to grade wagers,” CDC Gaming Reports (May 14, 2019), <https://www.cdcgamingreports.com/ice-north-america-panel-debates-use-of-league-data-to-grade-wagers/>.