

PREDETERMINED EVENT WAGERING AND BETTING ON THE PAST

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The newfound freedom of states to legalize sports betting following the demise of the Professional and Amateur Sports Protection Act in 2018 has led to rapid growth of the sports betting market. In an attempt to further capitalize on the appetite for sports wagering, states and sportsbooks have recently started to expand their offerings by opening betting lines on entertainment award shows. This move, paired with WWE’s recent interest in entering the market, has raised concerns that predetermined events are particularly vulnerable to event manipulation and betting using insider information. This Note argues that the current state regulatory schemes are insufficient to safeguard the integrity of these predetermined events. By examining the history of sports betting legislation and analyzing the distinct ways in which integrity concerns manifest in predetermined event wagering compared to traditional sports betting, this Note will identify the gaps that exist in current regulatory schemes. This Note will then propose four regulations for states to adopt if they are to consider approving wagering on predetermined events.

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INTRODUCTION

What color of Gatorade will the winning team pour over their coach's head at Super Bowl LVIII? According to U.S.-based sportsbook DraftKings, purple was the betting favorite in 2024, followed by a tie between yellow and green, with "no Gatorade" trailing far behind.¹ Other bets on offer included the jersey number of the first and last scoring player, whether the coin toss will land on heads or tails, and whether any kick will hit the goalposts.²

¹ Grace McDermott, *What Color Gatorade Will Winning Super Bowl Team Dump on Their Head Coach?*, DRAFTKINGS NETWORK (Feb. 11, 2024, 6:00 AM), <https://dknetwork.draftkings.com/2024/2/11/23574832/super-bowl-gatorade-prop-bet-predictions-2024-what-color-winning-team-dump-coach-orange-purple> [https://perma.cc/YFJ7-HE85]. The Gatorade was, in fact, purple. Grace McDermott, *The History of the Gatorade Shower Color Bet*, DRAFTKINGS NETWORK (Feb. 11, 2024, 10:02 PM), <https://dknetwork.draftkings.com/2024/2/11/24048190/super-bowl-gatorade-color-history-odds-2024-predictions-49ers-chiefs-orange-red-yellow-green-purple> [https://perma.cc/4H2Q-899Z].

² *How to Bet Super Bowl LVIII Novelty Props on DraftKings Sportsbook*, DRAFTKINGS NETWORK (Feb. 10, 2024, 9:07 PM), <https://dknetwork.draftkings.com/sports-betting-picks/2024/2/5/24062313/how-to-bet-super-bowl-lviii-novelty-props-on-draftkings-sportsbook> [https://perma.cc/FA79-FSA4].

These kinds of novelty proposition (“prop”) bets, which are based upon something other than the outcome of a game, are not new.³ Still, in the wake of the Supreme Court’s invalidation of the Professional and Amateur Sports Protection Act (PASPA) in 2018,⁴ sports betting has exploded in popularity,⁵ and these prop bets represent a growing interest in betting on more than just winners and losers.⁶ “Sports” betting has also spread beyond the stadium.⁷ Betting on the Academy Awards (the Oscars), for example, was first authorized by New Jersey in 2019.⁸ Since then, six more states have approved entertainment award shows as wagering events.⁹ Sportsbooks, the organizations that offer bets, view these expanded offerings as an opportunity to capture a new market—one may not care about the Super Bowl but may want to bet on the Best Picture winner.¹⁰ The greatest distinction between award shows and the

³ Jodi S. Balsam, *Criminalizing Match-Fixing as America Legalizes Sports Gambling*, 31 MARQ. SPORTS L. REV. 1, 7 (2020).

⁴ Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2(a), 106 Stat. 4228 (1993) (codified at 28 U.S.C. § 3702), *invalidated by* *Murphy v. NCAA*, 584 U.S. 453 (2018).

⁵ See *American Attitudes Towards Gaming 2023*, AM. GAMING ASS’N (Oct. 9, 2023), https://www.americangaming.org/wp-content/uploads/2023/10/AmericanAttitudes2023_Public_FINAL-CS.pdf [<https://perma.cc/E3C9-NE3Z>]. Approximately 20% of American adults participated in sports betting in 2023, compared to 14% in 2022. *Id.* These bettors bet nearly \$120 billion, a 27.8% increase over the previous year. Press Release, Am. Gaming Ass’n, 2023 Commercial Gaming Revenue Reaches \$66.5B, Marking Third-Straight Year of Record Revenue (Feb. 20, 2024), <https://www.americangaming.org/new/2023-commercial-gaming-revenue-reaches-66-5b-marking-third-straight-year-of-record-revenue> [<https://perma.cc/P8ZN-5RXV>].

⁶ See Sarah Whitten, *This Is the First Year You Can Bet on the Oscars in the U.S. . . . and It Likely Won’t Be the Last*, CNBC (Feb. 22, 2019, 2:44 PM), <https://www.cnbc.com/2019/02/22/oscar-betting-is-legal-in-new-jersey-could-be-in-more-states-next-year.html> [<https://perma.cc/3RKJ-XNGE>].

⁷ Katherine Sayre, *Lights, Camera, Bet! Oscar Gambling Is Going Mainstream*, WALL ST. J. (Feb. 2, 2020, 11:00 AM), <https://www.wsj.com/articles/lights-camera-bet-oscar-wagering-expands-in-u-s-11580659200> [<https://perma.cc/GGY4-LU7J>].

⁸ *Id.*

⁹ Hallie Lieberman, *Lily Gladstone for Best Actress? Oscars Gamblers Are Betting Big*, N.Y. TIMES (Mar. 11, 2024), <https://www.nytimes.com/2024/03/09/business/oscars-betting.html> [<https://perma.cc/7UMJ-PQM3>].

¹⁰ Brett Smiley, *You Can Now Wager on the Academy Awards—Legally So Long as You’re in New Jersey (at Least for Now)*, VULTURE (Feb. 11, 2019), <https://www.vulture.com/2019/02/you-can-now-wager-on-the-academy-awards-legally.html> [<https://perma.cc/58EL-ZMCA>] (quoting a FanDuel spokesperson as saying that “[t]he Oscars presents an exciting opportunity for us to expand our offerings for current customers and reach potential customers who may not be interested in sports but are interested in Hollywood”).

Super Bowl, however, is that award show winners are decided by vote before they are announced live.¹¹

Opponents of sports betting have historically emphasized the ways in which gambling may compromise the integrity of the game, such as someone manipulating the outcome or acting based on confidential information.¹² Because the results of events with predetermined outcomes (“predetermined events”) are known to some before they are revealed to viewers, the outcomes are particularly vulnerable to these concerns.¹³ Even before authorization as a wagering event, award shows have attempted to assuage these fears by safeguarding voting results with major accounting firms.¹⁴ Despite this practice, critics still question whether the integrity of the selection process is adequately protected now that viewers and industry members can win money on the results.¹⁵ In addition, the authorization of award show betting may have opened the door for betting on other predetermined events with even more complex integrity concerns.¹⁶

In March 2023, CNBC published an article announcing that World Wrestling Entertainment (WWE), a professional wrestling (“pro wrestling”) entertainment company, was exploring the possibility of entering the betting market.¹⁷ While WWE matches, like award shows, are predetermined, the winners are not decided by voting.¹⁸ It also, despite its competitive trappings, is not a traditional sports event. Instead, pro wrestling is more akin to an athletic soap opera-*cum*-interactive

¹¹ See Elizabeth Flock, *Inside the Secret Process that’s Supposed to Prevent an Oscars Mishap*, PBS (Mar. 1, 2017, 1:31 PM), <https://www.pbs.org/newshour/arts/inside-secret-process-thats-supposed-prevent-oscar-mishap> [<https://perma.cc/ZM8P-PE9J>].

¹² See Balsam, *supra* note 3, at 3–4; see also S. REP. NO. 102-248, at 5 (1991) (arguing that legalized sports gambling would undermine the integrity of sports by “promot[ing] suspicion about controversial plays and lead[ing] fans to think ‘the fix was in’ whenever their team failed to beat the point spread”).

¹³ Smiley, *supra* note 10.

¹⁴ See Flock, *supra* note 11.

¹⁵ See Joss Wood, *Legal Oscars Betting Has Started in New Jersey, But Is It a Step Too Far?*, PLAYUSA (May 9, 2024), <https://www.playusa.com/oscars-betting-new-jersey> [<https://perma.cc/YDQ4-86XE>] (“The integrity of the existing system for choosing winners is questionable at best. Allowing betting on a contest that has enormous consequences for the revenues of winning films is surely to risk serious integrity issues.”).

¹⁶ See Alex Sherman, *WWE in Talks with State Gambling Regulators to Legalize Betting on Scripted Match Results*, CNBC (Mar. 9, 2023, 12:44 PM), <https://www.cnbc.com/2023/03/08/wwe-betting-scripted-match-results.html> [<https://perma.cc/9QUV-ZR7V>].

¹⁷ *Id.*

¹⁸ See *id.*

theater performance.¹⁹ Wrestlers create the matches through a combination of preplanned choreography and in-ring improvisation.²⁰ Meanwhile, the creative team decides the match results in advance to serve as climactic moments within a larger ongoing storyline²¹ and can change them at any point up to (or even during) the live event.²²

Because of this, WWE planned to base its regulatory framework upon that of the Oscars by securing its match results with a major accounting firm and only telling the wrestlers the outcome just before matches began.²³ There are undoubtedly holes in WWE's plan because of the differences between awards shows and quasi-scripted combat theater, but the idea is not necessarily far-fetched. In response to the CNBC report, a few states (specifically those with approved Oscars wagering) were careful to not rule out the possibility of future authorization.²⁴ Furthermore, other countries have allowed gambling on award shows and WWE for years.²⁵ While WWE has recently decided not to pursue

¹⁹ See SHARON MAZER, *PROFESSIONAL WRESTLING: SPORT AND SPECTACLE* 19 (1st ed. 1998) (“[Pro-wrestling’s] funky costumes and props, fancy footwork and posturing, outrageous rhetoric, scenarios that conflate soap opera with carnival, and ceaseless marketing all mark professional wrestling as a theatrical and television spectacle more than as an athletic contest. Yet . . . [pro-wrestlers] are not actors per se. Rather they are genuinely strong, exceptionally skilled athletes . . .”). In fact, the former owner of WWE (previously WWF), Vince McMahon, campaigned in the 1980s for the product to be classified as sports-entertainment to avoid state regulation of athletic competition. See Peter Kerr, *Now It Can Be Told: Those Pro-Wrestlers Are Just Having Fun*, N.Y. TIMES (Feb. 10, 1989), <https://www.nytimes.com/1989/02/10/nyregion/now-it-can-be-told-those-pro-wrestlers-are-just-having-fun.html> [<https://perma.cc/W-PZJ4>].

²⁰ MAZER, *supra* note 19, at 23.

²¹ *Id.* at 18 (“The actual display of violence is a culmination of past confrontations and part of an accumulating series of encounters . . .”); see also Marc Ambinder, *Here’s What a Pro-Wrestling Script Looks Like*, WEEK (Jan. 11, 2015), <https://theweek.com/articles/447375/heres-what-pro-wrestling-script-looks-like> [<https://perma.cc/LC48-NNCR>] (“What IS heavily scripted is the storyline. The wrestlers must weave into their matches the themes and angles that their characters are following. That means that matches aren’t random.”).

²² See Tim Fiorvanti, *Inside the Strange World of WWE Betting*, ESPN (Jan. 24, 2019, 12:54 PM), https://www.espn.com/wwe/story/_/id/25835244/inside-strange-world-wwe-betting [<https://perma.cc/34F2-RKY7>].

²³ Sherman, *supra* note 16.

²⁴ See, e.g., *Michigan Gaming Control Board Executive Director’s Statement Regarding WWE Event Wagers*, MICH. GAMING CONTROL BD. (Mar. 9, 2023), <https://www.michigan.gov/mgcb/news/2023/03/09/mgcb-exec-director-statement-on-wwe> [<https://perma.cc/EAS9-RPNC>] (quoting Henry Williams, Executive Director, stating simply that WWE has not had any direct communications with the Michigan Gaming Control Board and that requests for authorization must be submitted through the Board’s formal request process).

²⁵ *EY to Secure WWE Results in Fight to Legalise Wrestling Gambling*, CONSULTANCY.UK (Mar. 17, 2023), <https://www.consultancy.uk/news/33789/ey-to-secure-wwe-results-in-fight-to-legalise-wrestling-gambling> [<https://perma.cc/V47Y-QRRS>].

gambling for the time being, that decision was based on creative, not legal, concerns.²⁶ Between the growing push by sportsbooks to broaden their offerings²⁷ and the interest from states to recapture revenue from the illegal betting market,²⁸ there is still a chance that WWE receives authorization if the company ever changes its mind.²⁹

With that in mind, this Note argues that current state regulatory schemes do not adequately address the unique ways in which integrity concerns manifest in predetermined event wagering, and that more stringent restrictions are needed if states are to approve betting on such events. Part I of this Note begins by briefly discussing the history of sports betting in the United States, including an overview of relevant federal legislation, the enactment of PASPA and its subsequent invalidation in *Murphy v. NCAA*, and the development (or lack thereof) of federal and state legislation following the *Murphy* decision.³⁰ Part II first identifies what this Note considers to be the two most significant concerns with predetermined event wagering—event integrity and betting integrity—and examines how they manifest in traditional sports.³¹ Part II then

²⁶ Jason Reginato, Jessica Golden, Tala Havadi, Alex Sherman, *CNBC Sport Videocast: TKO Group COO Mark Shapiro on UFC Media Rights, McMahon, Gambling And More*, CNBC, at 13:28 (Nov. 7, 2024, 6:00 AM), <https://www.cnbc.com/video/2024/11/07/sport-videocast-episode-3-mark-shapiro.html> [<https://perma.cc/64K6-V5ZH>] (“[The WWE is] scripted . . . We’re not gonna be asking Triple H—Paul Levesque, who runs our creative—to keep his scripts so under wraps that we can start sports betting. It just doesn’t jive.”). This reversal occurred following the acquisition of WWE by media conglomerate Endeavor and the subsequent merger of WWE and Ultimate Fighting Championship into TKO Group. See George Szalai, *Endeavor Closes UFC, WWE Merger, Creating Powerhouse Firm TKO Group*, HOLLYWOOD REP. (Sep. 12, 2023, 6:00 AM), <https://www.hollywoodreporter.com/business/business-news/ufc-wwe-merger-close-tko-endeavor-1235579789> [<https://perma.cc/GF4Z-JMKD>]. The acquisition was announced in April 2023 and finalized in September 2023, both after the initial reports of WWE’s interest in sports wagering. See *id.*

²⁷ See Smiley, *supra* note 10.

²⁸ See Adam Grundy, *Legal Sports Betting a Growing Source of Tax Revenue for Many States*, U.S. CENSUS BUREAU (Feb. 13, 2024), <https://www.census.gov/library/stories/2024/02/legal-sports-betting.html> [<https://perma.cc/3SV5-JGNN>].

²⁹ In addition to this, WWE is not the only option. All Elite Wrestling (AEW), which launched in 2019, is the second highest-grossing pro wrestling company as of 2024, and the third highest-grossing “combat” promotion overall. See Mike Ozanian & Justin Teitelbaum, *How Do UFC, WWE, Top Rank And Other Brands Match Up in The Battle Royale For Financial Supremacy? Start The Count.*, FORBES (Apr. 23, 2024, 2:48 PM), <https://www.forbes.com/sites/justinteitelbaum/2024/04/18/the-most-valuable-combat-sports-promotions-2024> [<https://perma.cc/3S3J-GAY2>]. If AEW were to attempt to enter the gambling market, the concerns discussed in this Note would apply equally to them and WWE.

³⁰ See *infra* Part I.

³¹ See *infra* Part II.

analyzes how these concerns are uniquely implicated in predetermined event wagering, with a particular focus on entertainment award shows and WWE.³² Finally, in Part III, this Note proposes four state regulatory standards that may reduce the particular risk of integrity violations posed by predetermined event wagering: (1) placing maximum wagering limits on wagers; (2) closing betting lines before the event; (3) prohibiting the offer or acceptance of prop bets; and (4) requiring the disclosure of certain key information to an independent integrity monitor.³³

I. BACKGROUND

A. *Pre-Murphy Federal Legislation*

Early attempts at federal gambling legislation were primarily concerned with addressing organized criminal activity in interstate commerce.³⁴ Most notable among these legislative efforts include the Wire Act,³⁵ the Sports Bribery Act,³⁶ PASPA,³⁷ and the Unlawful Internet Gambling Enforcement Act (UIGEA).³⁸ While the Wire Act, Sports Bribery Act, and UIGEA all still exist, PASPA was the law that most significantly inhibited legalized gambling in the United States, and its demise in 2018 set the stage for the current state-by-state framework.³⁹

³² See *infra* Part II.

³³ See *infra* Part III.

³⁴ John T. Holden & Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates Its Most Lucrative Vice*, 2020 WIS. L. REV. 907, 915 (2020).

³⁵ Wire Act, Pub. L. No. 87-216, § 2, 75 Stat. 491 (1961) (codified as amended at 18 U.S.C. § 1084).

³⁶ Sports Bribery Act, Pub. L. No. 88-316, § 1(a), 78 Stat. 203 (1964) (codified as amended at 18 U.S.C. § 224).

³⁷ Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, § 2(a), 106 Stat. 4228 (1993) (codified as amended at 28 U.S.C. § 3702), *invalidated by* *Murphy v. NCAA*, 584 U.S. 453 (2018).

³⁸ Unlawful Internet Gambling Enforcement Act, Pub. L. No. 109-347, § 802(a), 120 Stat. 1957 (2006) (codified as amended at 31 U.S.C. § 5363).

³⁹ See John T. Holden, Marc Edelman & Keith Miller, *Legalized Sports Wagering in America*, 44 CARDOZO L. REV. 1383, 1394, 1404 (2023) (stating that the enactment of PASPA “essentially put a halt to the expansion of legalized, state-licensed sports gambling,” while its invalidation “usher[ed] in the single greatest expansion of legalized gambling in our nation’s history”); see also *Murphy v. NCAA*, 584 U.S. 453, 486 (2018) (stating that, in the absence of federal gambling legislation, “each State is free to act on its own”).

1. The Wire Act

Before passage of the Wire Act, Nevada was the only state with legalized gambling activity—including sports wagering—which occurred primarily through casinos.⁴⁰ Following World War II, an increase in illegal betting activity prompted a series of congressional hearings in the 1950s that focused in large part on the intersection between bookmaking, organized crime, and wire communications.⁴¹ Following these hearings, Congress passed the Wire Act in 1961 as part of a larger initiative to inhibit organized criminal activity.⁴² The Wire Act in its final form criminalized the use of “wire communication facilit[ies]” in the interstate transmission of sports betting information.⁴³ However, a safe harbor provision provides that the Wire Act does not apply to transmissions sent between two states where sports wagering is legal.⁴⁴

The Wire Act has been heavily criticized for its convoluted phrasing, leading to significant debate regarding its scope.⁴⁵ First, starting in the 1990s, courts grappled with the question of whether internet transmissions fell within the meaning of “wire communication facility.”⁴⁶ The Supreme Court has yet to explicitly take up that question, but some circuit courts ultimately concluded that the internet is within the scope of the Wire Act because it transmits information “by aid of wire, cable, or other like connection.”⁴⁷ Further debates have addressed who precisely is included under the Wire Act, which applies to anyone “engaged in the business of betting or wagering.”⁴⁸ The Wire Act’s legislative history indicates that Congress only intended for the clause to capture bookmakers and “professional” gambling activities, while subsequent

⁴⁰ Holden et al., *supra* note 39, at 1390.

⁴¹ See generally John T. Holden, *Through the Wire Act*, 95 WASH. L. REV. 677, 692–712 (2020) [hereinafter Holden, *Through the Wire Act*] (providing a detailed overview of the congressional hearings leading to the passage of the Wire Act in 1961).

⁴² *Id.* at 693.

⁴³ 18 U.S.C. § 1084(a); Holden et al., *supra* note 39, at 1390.

⁴⁴ 18 U.S.C. § 1084(b).

⁴⁵ Anthony Cabot, *The Absence of a Comprehensive Federal Policy Toward Internet and Sports Wagering and a Proposal for Change*, 17 VILL. SPORTS & ENT. L.J. 271, 282 (2010) (“The Wire Act, in its entirety, reads poorly and, in parts, the Act is nearly incomprehensible Many commentators and courts have engaged in serious debate . . . regarding this Act, but the real truth is that its intent was probably obscured by its horrific drafting.”).

⁴⁶ Holden, *Through the Wire Act*, *supra* note 41, at 716–17.

⁴⁷ 18 U.S.C. § 1081. See generally *United States v. Cohen*, 260 F.3d 68 (2d Cir. 2001); *United States v. Lyons*, 740 F.3d 702 (1st Cir. 2014).

⁴⁸ 18 U.S.C. § 1084(a).

case law held that the language does not apply to acts of “mere betting.”⁴⁹ More significantly, the question of whether the Wire Act applied to *only* sports gambling was subject to much back-and-forth in the Department of Justice and federal circuit courts.⁵⁰ Until further legislative or judicial action is taken, the Wire Act is understood to refer only to interstate transmissions related to sports gambling activities.⁵¹

2. The Sports Bribery Act

The Sports Bribery Act arose out of the same congressional hearings that led to the Wire Act.⁵² Enacted in 1964, it similarly sought to target interstate revenue-raising activities of organized crime syndicates, this time by criminalizing bribes made to influence the outcome of sporting events.⁵³ It also sought to preserve the integrity and values of sporting events by deterring game manipulation,⁵⁴ a concern that would arise again in the support for PASPA.⁵⁵ The Sports Bribery Act forbids acts, attempts, or plans “to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest.”⁵⁶ Because it was intended to supplement, rather than displace, state-driven attempts to combat organized crime, the Sports Bribery Act’s text additionally

⁴⁹ Holden, *Through the Wire Act*, *supra* note 41, at 718–19.

⁵⁰ In 2011, the Office of Legal Counsel (“OLC”) issued a memorandum indicating that the Wire Act applied to the interstate transmission of information only if it related to sports gambling. *Whether the Wire Act Applies to Non-Sports Gambling*, 35 Op. O.L.C. 134 (2011), <https://www.justice.gov/olc/file/op-olc-v035/dl> [<https://perma.cc/T4G4-FDJJ>]. In 2018, the OLC reversed position, stating that while the first clause of § 1084(a) addresses sports gambling, the second clause is not so limited. *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. 1 (Nov. 2, 2018) (Slip Op.), <https://www.justice.gov/olc/file/1121531/dl> [<https://perma.cc/5U87-W5L8>]. In a subsequent case filed against the Department of Justice, the First Circuit held that the 2018 memo represented a misreading of the Act. *New Hampshire Lottery Comm’n v. Rosen*, 986 F.3d 38, 54–62 (1st Cir. 2021) (breaking down the construction of § 1084(a) and holding that the most natural reading indicates that the entire provision applies only to sports gambling).

⁵¹ *Rosen*, 986 F.3d at 61–62.

⁵² See Holden & Edelman, *supra* note 34, at 917–18.

⁵³ *Id.*

⁵⁴ See 18 U.S.C. § 224; H.R. REP. NO. 88-1053, at 2 (1963).

⁵⁵ See *infra* Section I.A.3.

⁵⁶ 18 U.S.C. § 224(a). “[S]cheme in commerce” is further defined as “any scheme effectuated in whole or in part through the use in interstate or foreign commerce.” *Id.* § 224(c)(1).

recognizes that it does not supersede any state law that would be effective in the Act's absence.⁵⁷

Despite the goals of the Sports Bribery Act, it has only been used to prosecute eighteen attempted or committed acts of bribery, none of which involved major sports leagues.⁵⁸ There are multiple reasons as to why this might be,⁵⁹ but a consistent criticism is that the breadth of the Sports Bribery Act, which only addresses bribery, is insufficient to capture most acts of game manipulation.⁶⁰ Commentators have suggested ways in which Congress could update the Sports Bribery Act to better reflect modern understandings of sports corruption,⁶¹ but there has yet to be legislative action to that effect.

3. The Professional and Amateur Sports Protection Act

Because the effect of the Wire Act and Sports Bribery Act was only to inhibit interstate sports betting activities, states were still free to legalize or prohibit gambling schemes.⁶² Even so, only Delaware, Montana, and

⁵⁷ *Id.* § 224(b).

⁵⁸ Balsam, *supra* note 3, at 11–12.

⁵⁹ See John T. Holden & Ryan M. Rodenberg, *The Sports Bribery Act: A Law and Economics Approach*, 42 N. KY. L. REV. 453, 460 & n. 44 (2015) (suggesting that there simply is no bribery-induced game-manipulation or that the fear of public scandal pushes sports leagues to handle such matters internally). Holden and Rodenberg also note the difficulty of detecting game manipulation as a potential explanation for the low prosecution rate. See *id.* at 466–67. Since they suggest that the most cost-effective detection mechanism is the monitoring of (then-illegal) betting lines, *id.* at 467–68, it will be interesting to see if widespread legal sports betting will lead to an increase in prosecutions under the statute.

⁶⁰ See *id.* at 467 (arguing that the statute's failure to reach extortion or blackmail means that many instances of game manipulation go unaddressed); see also Balsam, *supra* note 3, at 12–14 (detailing multiple scenarios in which clear match-fixing occurs but could not be prosecuted under the narrow construction of the Sports Bribery Act).

⁶¹ See, e.g., Holden & Rodenberg, *supra* note 59, at 472 (suggesting updates to the Sports Bribery Act that address blackmail, extortion, and lone-wolf manipulation; expand the scope of the statute to address both the outcomes and “non-significant portions” of games; and incentivize league cooperation by creating stronger whistleblower protections); Balsam, *supra* note 3, at 31–33 (describing a model federal law that would criminalize both match- and spot-fixing in “all sports or competitions”; apply to event participants, event personnel, and accomplices; and extend culpability to include blackmail, extortion, and lone-wolf manipulation); Alyssa Telles Wyatt, Note, *Protecting America's Favorite Pastime: An Analysis of Match-Fixing Laws in States with Legalized Sports Gambling*, 56 LOY. L.A. L. REV. 1431, 1470–71 (proposing a model state law that would criminalize bribery, extortion, insider betting, and both determinative and non-determinative event tampering).

⁶² Holden et al., *supra* note 39, at 1391–92.

Oregon started allowing sports betting following the passage of the two Acts, and only for a limited number of state-sponsored events.⁶³ In 1976, New Jersey opened casinos, but did not allow sports wagering.⁶⁴ Then, in the 1990s, California, Florida, and Illinois all introduced bills to legalize and capitalize on sports betting.⁶⁵ This led to backlash from major sports leagues, such as the National Football League (NFL), which lobbied Congress to enact greater restrictions.⁶⁶

Enacted in 1992, PASPA was proposed out of a concern for the integrity of athletic competition and what the bill's supporters saw as the "seductive" nature of gambling in the modern technological era.⁶⁷ The bill's goal of preventing the spread of sports betting⁶⁸ enjoyed widespread support from nearly all major professional and amateur sports organizations, including the NFL, Major League Baseball (MLB), National Basketball Association (NBA), and National Collegiate Athletics Association (NCAA).⁶⁹ Instead of federally prohibiting sports betting, PASPA made it illegal for states to "sponsor, operate, advertise, promote, license, or authorize" any form of sports wagering⁷⁰ or for any party to "sponsor, operate, advertise, or promote[]" any sports wagering pursuant to a state law.⁷¹ PASPA also created a civil right of action for professional and amateur sports organizations to seek injunctive relief against sports betting operations.⁷² Finally, the bill included a grandfather provision that allowed states to legally continue sports wagering where (1) a state had already legalized sports betting or (2) a state with legalized gambling took steps to authorize sports betting in casinos within a year of the law's passage.⁷³ This allowed the four states that already had an established system of legalized sports wagering in place—Nevada, Delaware, Oregon,

⁶³ *Id.*

⁶⁴ *Id.* at 1392.

⁶⁵ Marc Edelman, *Regulating Sports Gambling in the Aftermath of Murphy v. National Collegiate Athletic Association*, 26 *GEO. MASON L. REV.* 313, 318–19 (2018).

⁶⁶ Holden et al., *supra* note 39, at 1392.

⁶⁷ S. REP. NO. 102-248, at 5 (1991).

⁶⁸ *Id.* at 3.

⁶⁹ *Id.* at 8.

⁷⁰ 28 U.S.C. § 3702(1).

⁷¹ *Id.* § 3702(2).

⁷² *Id.* § 3703.

⁷³ *Id.* § 3704(a).

and Montana—to continue their gambling activities.⁷⁴ New Jersey, as a state with legal casinos, was given one year under the grandfather provision to add sports wagering to its gaming laws.⁷⁵ It elected not to do so.⁷⁶

The bill was not without its detractors. Richard May, then-Executive Director of the National Conference of State Legislatures, expressed concern that the bill as drafted represented a preemption of states' rights,⁷⁷ a sentiment echoed by Senator Chuck Grassley.⁷⁸ Senator Grassley also criticized the alleged integrity concerns, arguing that if integrity were the primary worry then the leagues would not support the grandfathering of Nevada's billion-dollar sports gambling scheme.⁷⁹ Despite these protestations, however, PASPA was passed by a substantial majority in both the House and Senate.⁸⁰

Despite PASPA essentially freezing legalized sports gambling in 1992, the growth of online betting—with servers primarily located outside of the United States—presented a new problem beyond PASPA's scope and troubling those who sought a complete ban on sports wagering activities.⁸¹ While the Department of Justice continued to try to use the Wire Act to restrict interstate and foreign gaming activity, Republican lawmakers pushed for more targeted legislation.⁸²

⁷⁴ See Holden et al., *supra* note 39, at 1394. The exemptions under the grandfather clause actually extended beyond these four states to cover North Dakota, South Dakota, Arizona, New Mexico, and Wyoming. Ryan M. Rodenberg & John T. Holden, *Sports Betting Has an Equal Sovereignty Problem*, 67 DUKE L.J. ONLINE 1, 16 (2017). The bases for these states' exemptions focus primarily on gambling activities such as sports pools, social gambling, parimutuel bike racing, horse racing, and rodeo. *Id.* at 15–16. This reflects the notion that, rather than protecting pre-existing sports gambling industries, the grandfather provision merely confused the Act's scope. *Id.* at 17.

⁷⁵ Holden et al., *supra* note 39, at 1394.

⁷⁶ *Id.*

⁷⁷ *Professional and Amateur Sports Protection Act: Hearing on H.R. 74 Before the Subcomm. on Econ. & Com. L. of the Comm. on the Judiciary*, 102d Cong. 59 (1991).

⁷⁸ S. REP. NO. 102-248, at 12 (1991).

⁷⁹ *Id.* at 14. In fact, Senator Grassley suggests that the sports leagues' sponsorship smacks of hypocrisy because they expressly benefit from some of these grandfathered schemes. *Id.*

⁸⁰ John T. Holden, *Prohibitive Failure: The Demise of the Ban on Sports Betting*, 35 GA. STATE U. L. REV. 329, 351 (2019) [hereinafter Holden, *Prohibitive Failure*].

⁸¹ Holden et al., *supra* note 39, at 1394–95.

⁸² *Id.* at 1395–96.

4. The Unlawful Internet Gambling Enforcement Act

UIGEA was flawed from the start—attached, without floor debate and at the last minute, to an unrelated antiterrorist bill.⁸³ As enacted, UIGEA places the onus on financial institutions to filter and prevent the transmission of funds (such as by credit card) from betting operators to bettors.⁸⁴ It also makes it a crime for gambling businesses to “knowingly accept” money for “unlawful Internet gambling,”⁸⁵ defined by the Act as “the use, at least in part, of the Internet” in a state where placing or receiving bets is illegal.⁸⁶

Even though UIGEA was intended to eradicate internet gambling in the United States,⁸⁷ it nevertheless contained an exception for “fantasy or simulation sports game[s]” because their outcomes were not based on the scores or point spreads of actual athletic competitions.⁸⁸ This carve-out led to a proliferation of “fantasy sports” companies that did not technically involve betting against the “house,” but grew increasingly indistinguishable from the sports wagering UIGEA sought to prevent.⁸⁹ In fact, the inclusion of this exception directly paved the way to PASPA’s downfall by increasing public interest in sports gambling.⁹⁰ It was also a financially successful endeavor for fantasy sports companies, who began to lobby for states to change their laws.⁹¹ Against this backdrop, New Jersey began the seven-year judicial journey towards overturning PASPA, the primary restriction on intrastate wagering activities.⁹²

⁸³ *Id.* at 1396.

⁸⁴ 31 U.S.C. § 5364(a). The regulations that the Federal Reserve Board and Department of Treasury ultimately enacted lowered the requirements to a “due diligence” standard. Holden et al., *supra* note 39, at 1396–97.

⁸⁵ 31 U.S.C. § 5363.

⁸⁶ *Id.* § 5362(10)(A).

⁸⁷ Holden et al., *supra* note 39, at 1395–96.

⁸⁸ 31 U.S.C. § 5362(1)(E)(ix).

⁸⁹ Holden & Edelman, *supra* note 34, at 921 (“This fantasy sports exemption ultimately paved the way for the emergence of the ‘daily fantasy sports’ industry—an industry that, in earnest, is far more akin to sports gambling than to traditional fantasy sports.” (citing Marc Edelman, Keynote Address, *A Sure Bet? The Legal Status of Daily Fantasy Sports*, 6 PACE INTELL. PROP. SPORTS & ENT. L.F. 1, 9–13 (2016))). For a brief description of “daily fantasy sports,” see *id.* at 922–23.

⁹⁰ See Holden et al., *supra* note 39, at 1398–99.

⁹¹ Holden & Edelman, *supra* note 34, at 922–23.

⁹² See *infra* Section I.B.

B. Murphy v. NCAA

New Jersey first challenged PASPA in 2012 by amending its state constitution and passing a new law that authorized sports wagering.⁹³ Opposed to the decision, the NCAA and other professional sports leagues sued for injunctive relief in *NCAA v. Christie*, alleging that the state's Sports Wagering Act violated § 3702(1) of PASPA.⁹⁴ New Jersey counterclaimed that PASPA violated the Commerce Clause and the Tenth Amendment.⁹⁵ In its first decision of several on this issue, the Third Circuit affirmed a lower court ruling that PASPA was a constitutional exercise of Congress's powers under the Commerce Clause.⁹⁶ In total, New Jersey lost in the Third Circuit five times,⁹⁷ including one denial of certiorari by the Supreme Court.⁹⁸ Then, in a surprising 2017 decision, the Court took up the case, now called *Murphy v. NCAA*, specifically to address whether PASPA violated the Tenth Amendment's anti-commandeering doctrine.⁹⁹

The Court ultimately held that the construction of § 3702(1) violated the anti-commandeering doctrine because it expressly prohibited state legislatures from authorizing sports wagering.¹⁰⁰ It reasoned that there was no material distinction between Congress *commanding* the states to take affirmative action and Congress *prohibiting* states from acting.¹⁰¹ Having found the provision to be unconstitutional, the Court then held that it could not be viably separated from the rest of PASPA and therefore the entire act must be invalidated.¹⁰² Despite its ruling, the Court did not prohibit Congress from taking future action to regulate or forbid sports

⁹³ See *NCAA v. Christie*, 926 F. Supp. 2d 551, 554, 556 (D.N.J. 2013), *aff'd sub nom.* *NCAA v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013).

⁹⁴ *Id.* at 554–55.

⁹⁵ *Id.* at 554. New Jersey also alleged violation of the Due Process and Equal Protection Clauses and the equal footing doctrine. *Id.*

⁹⁶ *Id.* at 559–60. The Third Circuit's affirmation further held that PASPA did not violate the Tenth Amendment because it does not require that a state maintain any law; rather, it simply prohibits the authorization of new gambling schemes. *NCAA v. Governor of New Jersey*, 730 F.3d 208, 232 (3d Cir. 2013), *abrogated by* *Murphy v. NCAA*, 584 U.S. 453 (2018).

⁹⁷ Holden et al., *supra* note 39, at 1401.

⁹⁸ *Christie v. NCAA*, 573 U.S. 931 (2014).

⁹⁹ See *Murphy v. NCAA*, 584 U.S. 453 (2018); Holden et al., *supra* note 39, at 1401–02.

¹⁰⁰ *Murphy*, 584 U.S. at 474.

¹⁰¹ *Id.* at 475 (“This distinction is empty The basic principle—that Congress cannot issue direct orders to state legislatures—applies in either event.”).

¹⁰² *Id.* at 485–86.

wagering.¹⁰³ Instead, it stated that Congress must do so in its own voice and not by forcing or prohibiting state action on Congress's behalf.¹⁰⁴

C. *Post-Murphy and the Sports Betting Landscape*

Following PASPA's downfall, sports gambling in the United States has grown rapidly. Free from federal prohibition and left to regulate for themselves, thirty-eight states and the District of Columbia have legalized some form of sports wagering as of 2024.¹⁰⁵ Within months of the *Murphy* decision, DraftKings, a popular daily fantasy sports platform, launched the first legal online sportsbook in New Jersey.¹⁰⁶ Since then, nearly all major U.S. sports leagues have entered into highly profitable partnerships with U.S.-based bookmakers.¹⁰⁷ Where sports betting is legal, operators have generated over \$35 billion in gross revenue and states have netted over \$6.3 billion in combined tax revenue since 2018.¹⁰⁸

Commentators and industry leaders have voiced their concerns with the current state-by-state approach to regulation.¹⁰⁹ Some emphasize the high burden on sportsbooks who must apply for licenses, pay fees, and ensure regulatory compliance in every individual state in which they want to do business.¹¹⁰ Others worry about a "regulatory race to the bottom."¹¹¹

¹⁰³ *Id.* at 486 ("Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.").

¹⁰⁴ *Id.*

¹⁰⁵ *Interactive U.S. Map: Sports Betting*, AM. GAMING ASS'N, <https://www.americangaming.org/research/state-gaming-map> [<https://perma.cc/R4QC-PHQZ>].

¹⁰⁶ *DraftKings Begins New Era with Official Launch of Sportsbook in New Jersey*, BUS. WIRE (Aug. 6, 2018, 11:59 AM), <https://www.businesswire.com/news/home/20180806005424/en/DraftKings-Begins-New-Era-With-Official-Launch-of-Sportsbook-In-New-Jersey> [<https://perma.cc/6M67-XT7T>].

¹⁰⁷ See, e.g., *NFL Announces Agreements with Four Approved Sportsbook Operators*, NFL (Aug. 30, 2021, 11:15 AM), <https://www.nfl.com/news/nfl-announces-agreements-with-four-approved-sportsbook-operators> [<https://perma.cc/7GG4-QCXD>] (announcing four new sportsbook partnerships to accompany previously announced partnerships with FanDuel, DraftKings, and Caesars Entertainment).

¹⁰⁸ See Eric Ramsey, *U.S. Sports Betting Revenue & Handle*, LEGAL SPORTS REP. (Sept. 23, 2024), <https://www.legalsportsreport.com/sports-betting/revenue> [<https://perma.cc/QT7C-KXG3>].

¹⁰⁹ See *infra* notes 110–112 and accompanying text.

¹¹⁰ See Keith C. Miller & Anthony N. Cabot, *Regulatory Models for Sports Wagering: The Debate Between State vs. Federal Oversight*, 8 U. NEV. L.V. GAMING L.J. 153, 164–65 (2018).

¹¹¹ *Post-PASPA: An Examination of Sports Betting in America: Hearing Before the Subcomm. on Crime, Terrorism, Homeland Sec. & Investigations of the H. Comm. on the Judiciary*, 115th Cong. 6 (2018) (statement of Jocelyn Moore, Executive Vice President, Communications and Public Affairs, National Football League).

Still others are concerned that this system may not adequately ensure the integrity of either the betting market or the underlying events.¹¹² While lobbyists have called on Congress to take federal action,¹¹³ and scholars have proposed various approaches to a federal regulatory framework,¹¹⁴ only two pieces of legislation has been proposed in Congress.¹¹⁵

1. Attempts at Federal Legislation

Despite explicit language in *Murphy* that Congress has the right to regulate sports wagering on a federal level,¹¹⁶ there have only been two attempts to do so as of this Note's drafting: the Sports Wagering Market Integrity Act of 2018 (SWMIA) and the Supporting Affordability and Fairness with Every Bet Act of 2024 (the SAFE Bet Act).

SWMIA was a bipartisan bill sponsored by Senators Orrin Hatch of Utah and Chuck Schumer of New York.¹¹⁷ If enacted, the bill would have outlawed sports wagering in the United States, with an exception for sports betting operators who were licensed in states that subscribed to a federal framework.¹¹⁸ This proposed framework included minimum criteria for the approval of a sports wager, requirements for state monitoring and enforcement, and internal controls that betting operators

¹¹² See Anthony Cabot & Keith Miller, *Moving Faster than the Speed of Regulation: Can State-Authorized Sports Wagering Dodge a Game-Fixing Bullet Without the Help of the Feds?*, 30 J. LEGAL ASPECTS SPORT 85, 99–102 (2020).

¹¹³ David Purdum, *Supreme Court Strikes Down Federal Law Prohibiting Sports Gambling*, ESPN (May 15, 2018, 12:25 AM), https://www.espn.com/chalk/story/_id/23501236/supreme-court-strikes-federal-law-prohibiting-sports-gambling [<https://perma.cc/AX5P-HXJJ>].

¹¹⁴ See, e.g., Ryan Grandeau, Note, *Securing the Best Odds: Why Congress Should Regulate Sports Gambling Based on Securities-Style Mandatory Disclosure*, 41 CARDOZO L. REV. 1229 (2020) (proposing a federal regulatory framework that takes inspiration from the Securities and Exchanges Commission's mandatory disclosure requirements); Meg Graham, Note, *All Bets Are On! . . . Line: The Varied Regulatory Framework of an Interconnected Online Sports Betting System*, 50 GA. J. INT'L & COMPAR. L. 720 (2022) (suggesting that Congress base a federal regulatory framework off that of the United Kingdom); Miller & Cabot, *supra* note 110 (comparing the risks and benefits of a federal system versus a mixed state and federal model).

¹¹⁵ See *infra* Section I.C.1.

¹¹⁶ *Murphy v. NCAA*, 584 U.S. 453, 486 (2018).

¹¹⁷ Sports Wagering Market Integrity Act of 2018, S. 3793, 115th Cong. (2018); Press Release, 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> [<https://perma.cc/WWJ7-KM7V>].

¹¹⁸ See S. 3793 § 101(a)–(b); 102(a)–(b); John T. Holden, *Regulating Sports Wagering*, 105 IOWA L. REV. 575, 591 (2020) [hereinafter Holden, *Regulating*].

must employ.¹¹⁹ To centralize the monitoring of sports data and suspicious betting activity, the bill proposed a National Sports Wagering Clearinghouse consisting of betting operators, sports governing bodies, state regulators, and law enforcement.¹²⁰ The bill also sought to clarify that the Wire Act explicitly allows the transmission of wagering-related data between states with legalized wagering schemes even where the data is intermediately routed through a state where gambling is illegal.¹²¹ Additionally, the bill would have modified the Sports Bribery Act to criminalize a broader variety of game manipulation methods, including extortion, blackmail, and betting using insider information.¹²²

The bill received enthusiastic support by groups such as the NFL, the NCAA, and the National Council on Problem Gambling,¹²³ and commentators praised it for its comprehensiveness.¹²⁴ Meanwhile, the gambling industry characterized it as “the epitome of a solution in search of a problem.”¹²⁵ Despite the support, the bill never made it to a vote and subsequently died in the Senate.¹²⁶

In September 2024, Senator Richard Blumenthal of Connecticut and Representative Paul Tonko of New York introduced the SAFE Bet Act into both the Senate and the House.¹²⁷ The SAFE Bet Act resuscitates the basics of SWMIA by prohibiting sports wagering except in states that receive federal authorization and abide by minimum federal standards.¹²⁸ From there, the two bills diverge. SWMIA was a comprehensive bill that

¹¹⁹ S. 3793 § 103(b); Holden, *Regulating*, *supra* note 118 at 592.

¹²⁰ S. 3793 § 106; Holden, *Regulating*, *supra* note 118, at 592.

¹²¹ S. 3793 § 301; Holden, *Regulating*, *supra* note 118, at 593.

¹²² S. 3793 § 302(a)–(b); Holden, *Regulating*, *supra* note 118, at 593.

¹²³ Press Release, Senate Democrats, *supra* note 117.

¹²⁴ See Balsam, *supra* note 3, at 16; Holden, *Regulating*, *supra* note 118, at 591, 594.

¹²⁵ Press Release, American Gaming Association, AGA Opposes Federal Government Overreach on Sports Betting (Dec. 19, 2018), <https://www.americangaming.org/new/aga-opposes-federal-government-overreach-on-sports-betting> [<https://perma.cc/42JP-FPZ2>].

¹²⁶ See S. 3793 (115th): *Sports Wagering Market Integrity Act of 2018*, GOVTRACK, <https://www.govtrack.us/congress/bills/115/s3793> [<https://perma.cc/R3UK-6GXR>]. The Act is widely considered to be symbolic and a conversation starter, considering Senator Hatch’s retirement mere days after its introduction. Holden, *supra* note 118, at 594.

¹²⁷ Supporting Affordability and Fairness with Every Bet Act, S. 5057, 118th Cong. (2024); Supporting Affordability and Fairness with Every Bet Act of 2024, H.R. 9590, 118th Cong. (2024).

¹²⁸ See S. 5057 §§ 101(a)–(b), 102(a)–(b). In fact, Sections 101, 102, and much of Section 103 of the SAFE Bet Act are virtually identical to the corresponding sections of SWMIA. Compare S. 5057 §§ 101–03 with S. 3793 §§ 101–103.

proposed a variety of restrictions on the industry,¹²⁹ but with a particular emphasis on integrity concerns.¹³⁰ In contrast, the SAFE Bet Act lacks many of SWMIA's integrity-protection mechanisms, instead choosing to focus on public health and gambling addiction.¹³¹

Unlike the enthusiasm for SWMIA, initial league response to the SAFE Bet Act has been mixed. The NFL, NBA, and NCAA showed support for legislation that would create consistency and praised provisions of the bill that focused on integrity.¹³² However, the NFL and NBA also expressed concern over the advertising restrictions and prohibition on in-game betting.¹³³ As with SWMIA, the gambling industry's response was once again negative.¹³⁴ Between the progression from the broad scope of SWMIA to the narrower SAFE Bet Act, the cautious response from leagues, and the rapid growth of the betting industry,¹³⁵ it seems like the United States has progressed past the point of a comprehensive federal framework.

¹²⁹ See *supra* notes 118–121 and accompanying text. SWMIA also addressed money laundering, interstate wagering compacts, law enforcement, and gambling addiction. S. 3793 §§ 104–05, 107, 401–03.

¹³⁰ See *supra* notes 118–121 and accompanying text. This focus can also be seen in the bill's title and preamble. See S. 3793 (“[T]o maintain a distinct Federal interest in the *integrity and character* of professional and amateur sporting contests . . .” (emphasis added)).

¹³¹ The bill expands SWMIA's restrictions on gambling advertising, compare S. 5057 § 103(b)(7), with S. 3793 § 103(b)(7); implements “affordability protections” aimed at protecting consumer financial health, S. 5057 § 103(b)(6)(F); forbids betting operators from using artificial intelligence, *id.* § 103(b)(6)(G); and prohibits gambling once a game has commenced, *id.* § 103(b)(2)(E). It also amends the Public Health Service Act to require annual surveys of gambling-related harm and to promote gambling addiction surveillance and research. *Id.* §§ 201, 204; see also John Barr, *Lawmakers Propose New Federal Regulations on Sports Betting*, ESPN (Sept. 12, 2024, 3:30 PM), https://www.espn.com/sports-betting/story/_/id/41234480/congressmen-propose-new-federal-regulations-sports-betting [<https://perma.cc/F2HD-7QEV>] (“‘This bill is a matter of public health,’ Blumenthal said. ‘It is a matter of stopping addiction . . .’”).

¹³² See David Purdum, *NFL, NBA Support Federal Betting Regulations, Wary of Other Restrictions*, ESPN (Sept. 19, 2024, 4:54 PM), https://www.espn.com/espn/betting/story/_/id/41329492/nfl-nba-support-federal-betting-regulations-wary-other-restrictions [<https://perma.cc/N235-XQ4U>].

¹³³ See *id.*

¹³⁴ See Press Release, Am. Gaming Ass'n, *AGA Statement on Introduction of SAFE Bet Act* (Sept. 12, 2024), <https://www.americangaming.org/new/aga-statement-on-proposed-safe-bet-act> [<https://perma.cc/52R3-XTCD>] (calling the bill “a slap in the face to state legislatures and gaming regulators who have . . . develop[ed] thoughtful frameworks unique to their jurisdictions”).

¹³⁵ See *supra* notes 105–108 and accompanying text.

2. State Legislation

In the United States, there are three commonly recognized regulatory models that states have employed: the so-called “Nevada Model,” or the Gaming Control Board Model; the Lottery Model; and the Tribal Governance Model.¹³⁶ The Nevada Model is considered the most well-structured—likely due to the state’s ninety-year head start in gambling regulation—and the model upon which the most liberalized state wagering schemes are based.¹³⁷ Regardless of the specific regulatory model a state uses, any event betting activity must be approved pursuant to that state’s sports wagering statute¹³⁸ before a sportsbook can accept wagers.¹³⁹ Furthermore, the continued existence of the Wire Act requires that all licensed betting operators maintain in-state servers to receive and process bets.¹⁴⁰

Under the Nevada Model, a gaming control board oversees all licensing and regulation of gambling activity.¹⁴¹ Betting operators or sport governing bodies who wish to offer sports betting in-state must apply to the board for a license.¹⁴² The Lottery Model, adopted by Delaware, Montana, and Oregon prior to PASPA,¹⁴³ entrusts regulatory authority with a state lottery rather than a gaming control board.¹⁴⁴ While this can allow for greater state control over the local sports gambling industry,¹⁴⁵ it can also lead to a lack of competition that is undesirable in states with a strong casino presence.¹⁴⁶ Finally, the Tribal Governance Model

¹³⁶ Holden et al., *supra* note 39, at 1406–10.

¹³⁷ *Id.* at 1406.

¹³⁸ The governing statutes for most states are called “Sports Betting Act” or a similar title. See, e.g., MICH. COMP. LAWS ANN. § 432.401 (2019). This seems to generally reflect the initial focus on sports gambling following *Murphy v. NCAA*. However, these laws govern all event betting activity, including the events discussed in this Note. Therefore, unless otherwise specified, any reference in this Note to “sports gambling statutes,” “sports wagering statutes,” etc., should also be understood to apply to all potential wagering events.

¹³⁹ See, e.g., *id.* § 432.405(4).

¹⁴⁰ See Holden et al., *supra* note 39, at 1424–25; Keith C. Miller, *Sports Betting Integrity at Risk: The Role of the Wire Act*, 61 SANTA CLARA L. REV. 247, 270 (2020) (“Even if the Wire Act is not enforced against intrastate markets, the law clearly prohibits the establishment of interstate sports betting markets.”).

¹⁴¹ Holden et al., *supra* note 39, at 1406.

¹⁴² See Holden, *Regulating*, *supra* note 118, at 596–600.

¹⁴³ Holden et al., *supra* note 39, at 1407.

¹⁴⁴ *Id.*

¹⁴⁵ Holden, *Regulating*, *supra* note 118, at 602.

¹⁴⁶ Miller & Cabot, *supra* note 110, at 163.

involves local tribal authorities maintaining at least partial control of sports wagering pursuant to the Indian Gaming Regulatory Act.¹⁴⁷ In some states, tribes took immediate advantage of the *Murphy* decision to partner with sportsbooks and launch sports betting within their tribal sovereignty.¹⁴⁸ In other states like Michigan, tribes coordinated with local gaming control boards to operate and be taxed as commercial operators.¹⁴⁹ This allowed these tribes to compete with other sportsbooks by offering mobile wagering.¹⁵⁰

Beyond their respective regulatory models, states have also diverged in their specific regulations. Tax rates have deviated wildly between states, from 6.75% in Nevada to 51% in New York.¹⁵¹ This variation tends to reflect a calculated attempt by the state to strike a balance between attracting competition and maximizing revenue.¹⁵² State tax rates are further complicated by how states address promotional offerings—some account for it in gross sportsbook revenue for taxation purposes, while others allow it to be deducted.¹⁵³ Finally, and most relevant to this discussion, states have diverged in how they account for predetermined event wagering in their regulatory scheme.¹⁵⁴ Some sports wagering statutes restrict betting to those events that fit the definition of “sporting events.”¹⁵⁵ Under this narrower construction, certain entertainment-based events would not be eligible for authorization in these states. Other statutes allow for the authorization of “other events,”¹⁵⁶ and therefore

¹⁴⁷ Holden et al., *supra* note 39, at 1408.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Steve Ruddock, *Sports Betting Tax Rates and Licensing Fees*, BETTINGUSA, <https://www.bettingusa.com/sports/taxes-and-licenses/#sports-betting-taxes-by-state> [<https://perma.cc/A8XA-AC4N>].

¹⁵² See Holden et al., *supra* note 39, at 1417 (comparing Iowa’s low tax rate and eighteen sportsbook operators with Rhode Island, who awarded a monopoly to a single operator in exchange for a 51% tax rate). Some states, like Kansas, hope their tax scheme leads to additional benefits. See *id.* at 1413.

¹⁵³ Ruddock, *supra* note 151.

¹⁵⁴ See *infra* notes 155–157 and accompanying text

¹⁵⁵ See, e.g., 4 PA. CONS. STAT. § 13C01 (2017) (defining sports wagering as “[t]he business of accepting wagers on sporting events” and sporting event as “[a] professional or collegiate sports or athletic event”); COLO. REV. STAT. ANN. § 44-30-1501(12)(a) (2023) (defining “sports event” as “any individual or team sport or athletic event” or portion thereof).

¹⁵⁶ See, e.g., ARIZ. REV. STAT. ANN. § 5-1301(4)(a), (12) (2021) (defining “other event” as “a competition of relative skill or an event authorized by the department under this chapter” (emphasis added)); MICH. COMP. LAWS § 432.403(bb) (2019) (“‘Sports betting’ means to operate,

may allow wagering on a broader variety of events subject to the approval of the state regulatory authority.¹⁵⁷

II. ANALYSIS

A. *Relevant Regulatory Concerns: Event and Betting Integrity*

While there are several regulatory issues that arise in sports wagering, two in particular are the most heavily and uniquely implicated in predetermined event wagering: that of the integrity of the sporting event (“event integrity”) and the integrity of the betting process (“betting integrity”).¹⁵⁸

1. Event Integrity

Event integrity is the concept that athletic competitions are fairly conducted events with an unplanned outcome, unencumbered by manipulation.¹⁵⁹ Part of this notion stems from a moral view of the “authenticity” of competition, and that interfering with this authenticity would impact viewers’ trust and enjoyment in the game.¹⁶⁰ The testimony of sports leagues in support of PASPA emphasized the importance of event integrity as a justification for outlawing sports wagering.¹⁶¹ The federal interest in protecting the integrity of sports in the United States is also enshrined in the Sports Bribery Act, which specifically criminalizes attempts to financially manipulate the outcome of sporting events.¹⁶²

conduct, or offer for play wagering . . . on athletic events *and other events approved by the board.*” (emphasis added)).

¹⁵⁷ See, e.g., N.J. ADMIN. CODE § 13:69N-1.11 (2019).

¹⁵⁸ Holden, *Prohibitive Failure*, *supra* note 80, at 379.

¹⁵⁹ Balsam, *supra* note 3, at 3–4.

¹⁶⁰ *Id.* at 4 (“The very legitimacy of the sport product and its appeal to fans depends on this unpredictability and authenticity.”); see also Richard H. McLaren, *Corruption: Its Impact on Fair Play*, 19 MARQ. SPORTS L. REV. 15, 15 (2008) (“Integrity is, in large measure, a perception Once lost it is very difficult to ever retrieve. The perception of integrity must be present for the sports enthusiast to believe that the outcome of a sporting competition is genuine.”).

¹⁶¹ See *supra* Section I.A.2.

¹⁶² 18 U.S.C. § 224; H.R. REP. NO. 88-1053, at 2 (1963) (“Bribery of players or officials to influence the result of sporting contests is a challenge to an important aspect of American life—honestly competitive sports.”).

One way in which event integrity can be compromised is by manipulating the outcome of an event, known as “match-fixing.”¹⁶³ This can be accomplished through actions that determine the winner or loser of the game or by manipulating the point spread.¹⁶⁴ Match-fixing practices may involve the coordinated effort of a sports team to throw the game, referees making penalty calls that deliberately shape the outcome, or the lone-wolf actions of individual players.¹⁶⁵ Because of the amount of coordination required to fix team sports, higher rates of match-fixing tend to be found where fewer players are required to manipulate the outcome.¹⁶⁶ Other attractive match-fixing opportunities arise where the damages suffered by losing a game are lower than the potential upsides.¹⁶⁷

Additionally, there is the manipulation of events unrelated to match outcome, known as “spot-fixing.”¹⁶⁸ This practice often arises in relation to prop bets placed upon actions within the game,¹⁶⁹ and includes wagers such as how many penalties a team will draw in a game or which team will score the first field goal.¹⁷⁰ These events are often easy to manipulate by individual players or referees because they require little to no coordinated effort and can be incredibly difficult to detect.¹⁷¹

There are both legislative and league-specific methods to prevent match- and spot-fixing and to safeguard event integrity, the Sports Bribery Act being the most significant federal effort.¹⁷² Most states have laws that criminalize sports bribery, as well as commercial bribery laws

¹⁶³ Balsam, *supra* note 3, at 1, 4.

¹⁶⁴ *Id.* at 8. The act of manipulating the point spread, or the difference between the winning and losing teams’ scores, is often called “point shaving.” *Id.*

¹⁶⁵ *Id.* at 8–9.

¹⁶⁶ Declan Hill, Chris Rasmussen, Michelle Vittorio & David Myers, *Red-Flagging the Leagues: The U.S. Sports Most in Danger from Match-Fixing*, 11 *SPORT SOC’Y* 1774, 1786 (2020) (comparing the relative ease of fixing individual sports, like tennis, with the complexity of coordinating fixes in team sports like professional football).

¹⁶⁷ *Id.* at 1783–84 (discussing how meaningless or “dead rubber” games are more likely to be fixed because the losing team has less incentive to win). For example, an NFL team that has a losing record is already incentivized to lose because it gives them an earlier position in the following year’s draft order (the draft being the event where teams select new players). *Id.* at 1783.

¹⁶⁸ Balsam, *supra* note 3, at 9.

¹⁶⁹ *Id.* at 7.

¹⁷⁰ *See id.*

¹⁷¹ *Id.* at 8–9; Holden & Rodenberg, *supra* note 59, at 461 & n.51. This also makes it difficult to compile or provide statistics regarding the frequency of such fixes. *See id.*

¹⁷² *See supra* Section I.A.2.

that are not specific to sports or gambling.¹⁷³ Furthermore, some state regulatory agencies attempt to avoid certain forms of match-fixing by forbidding wagers that are highly susceptible to manipulation, such as officiating-related prop bets.¹⁷⁴ The Sports Bribery Act and most equivalent state legislation have received criticism for focusing only on the act of bribery and not the actual manipulation of games.¹⁷⁵ In doing so, these laws disregard the potentially more salient reasons why key figures may match-fix—including the incentives presented by sports betting.¹⁷⁶

Alongside the threat of criminal punishment, sports leagues have implemented rules that prohibit players, coaches, referees, and other employees from accepting bribes in exchange for manipulating games.¹⁷⁷ These rules are often baked into collective bargaining agreements and league bylaws, and violating them can result in hefty fines and suspensions.¹⁷⁸ Some of these rules directly address athletes and league personnel engaging in match-fixing activities.¹⁷⁹ Others dictate that

¹⁷³ See Balsam, *supra* note 3, at 17–21. For a more in-depth breakdown of various states' match-fixing laws, see Wyatt, *supra* note 61, at 1451–70 (2023). As can be seen, these laws vary significantly in their comprehensiveness. *Id.*

¹⁷⁴ See, e.g., *Sports Wagering Rules & Approved Events*, MASS. GAMING COMM'N (Aug. 23, 2024), <https://massgaming.com/about/sports-wagering-in-massachusetts/sports-wagering-rules-and-approved-events> [<https://perma.cc/YGN2-YHB9>] (select “MA Sports Wagering Catalog”; then select “Guidelines and Comments” on the spreadsheet) (prohibiting prop bets based on referee decisions, such as “when will the first penalty flag be thrown/foul called, how many flags/fouls will be called, what will be the game’s first accepted penalty, what will be the result of coach’s challenge, etc.”).

¹⁷⁵ See Balsam, *supra* note 3, at 17–22 (criticizing the insufficiency of state bribery laws to address event integrity issues in sports).

¹⁷⁶ *Id.* at 12. See generally Wyatt, *supra* note 61. Other reasons include extortion, blackmail, or “lone wolf” actions taken for personal benefit. Balsam, *supra* note 3, at 12.

¹⁷⁷ See David Purdum, *Inside the NFL’s Gambling Policy and Uptick in Violations*, ESPN (June 5, 2023, 4:07 PM), https://www.espn.com/nfl/story/_/id/37419884/inside-nfl-gambling-policy-uptick-violations [<https://perma.cc/KW7G-SNTH>].

¹⁷⁸ See, e.g., Adam Kilgore, *NFL Alters Gambling Policy: Harsher on League Games, Lenient in Other Areas*, WASH. POST (Sept. 29, 2023, 4:51 PM), <https://www.washingtonpost.com/sports/2023/09/29/nfl-gambling-policy-revised> [<https://perma.cc/2D6V-2JD7>] (detailing amendments to the NFL’s gambling policy, which included adding a ban of at least one year for betting on the product and a lifetime ban for attempted match-fixing); NAT’L BASKETBALL ASS’N, NATIONAL BASKETBALL ASSOCIATION CONSTITUTION AND BY-LAWS 46–47, art. 35(b), (g)(ii) (2018), <https://ak-static.cms.nba.com/wp-content/uploads/sites/4/2018/10/NBA-Constitution-By-Laws-October-2018.pdf> [<https://perma.cc/SMK5-63F9>] (giving the league commissioner complete discretion to penalize players who attempt to manipulate the outcome of a game or violate standards of “fair play”).

¹⁷⁹ NAT’L BASKETBALL ASS’N, *supra* note 178, art. 35(b).

players engage in their “best efforts” to win the game, which theoretically would address spot-fixing.¹⁸⁰ While these league-specific regulations attempt to bridge the gap left open by legislative efforts, some argue they still do not go far enough.¹⁸¹

2. Betting Integrity

In contrast to event integrity, which focuses primarily on preventing manipulation of athletic competition, betting integrity focuses on the fair and proper operation of sportsbooks.¹⁸² Most relevant to this discussion, it includes the prevention of persons from gambling based on insider information.¹⁸³ This process is similar to insider trading, where an investor trades on the basis of nonpublic, material knowledge.¹⁸⁴ In the context of sports betting, a person uses confidential information to place a wager while the rest of the gambling market is betting against a line that does not reflect that information.¹⁸⁵ Those who engage in insider betting can include employees of sportsbook operators who have access to consumer identities and betting activities.¹⁸⁶ It can also include employees of sports leagues who have advance knowledge of potentially outcome-influencing information such as player injuries.¹⁸⁷ Another concern is that players or officials may engage in match- or spot-fixing and bet with

¹⁸⁰ Wyatt, *supra* note 61, at 1448.

¹⁸¹ See, e.g., Balsam, *supra* note 3, at 18; see also *id.* at 25 (arguing that, while federal and state laws inadequately address match-fixing, sports leagues simply lack the necessary resources and jurisdiction “over non-participants . . . to undertake complex investigations into corrupt schemes likely to encompass fraud, bribery, organized crime, and money-laundering”).

¹⁸² See Holden, *Prohibitive Failure*, *supra* note 80, at 379.

¹⁸³ *Id.*

¹⁸⁴ Grandeau, *supra* note 114, at 1254 (“[T]he threat of privately held information being sold, or used for unlawful gain, is an issue inherent in both securities trading and sports gambling.”); Akhilesh Ganti, *What Is Insider Trading and When Is It Legal?*, INVESTOPEDIA (May 15, 2024), <https://www.investopedia.com/terms/i/insidertrading.asp> [<https://perma.cc/T2CB-4757>].

¹⁸⁵ See, e.g., Brad Allen, *Analysis: Does Insider Trading in NFL Betting Concern the Shield?*, LEGAL SPORTS REP. (Apr. 28, 2022), <https://www.legalsportsreport.com/66790/nfl-betting-insider-trading-rule> [<https://perma.cc/3BMD-7DY5>] (quoting Joe Asher, then-president of International Game Technology: “It was unfair, not only to sportsbooks, but to other bettors The public was betting on other teams not knowing that [Tom] Brady is returning and at prices that do not reflect his return.”).

¹⁸⁶ See Holden, *Prohibitive Failure*, *supra* note 80, at 380–81.

¹⁸⁷ See Grandeau, *supra* note 114, at 1256, 1257 & n.225 (providing a hypothetical scenario where someone with advance knowledge of a player injury then bets on the other team before the injury is made known to the public).

special knowledge of their manipulation, an act that is not addressed by extant bribery laws.¹⁸⁸

As with event integrity, league policies forbid players, coaches, referees, and other such personnel from using or providing nonpublic knowledge for the purpose of wagering.¹⁸⁹ At a federal level, the Wire Act prohibits the interstate transmission of “information assisting in the placing of bets and wagers” in states where sports gambling is prohibited.¹⁹⁰ This may implicate the sharing of insider information, though historically courts have only applied the Wire Act to bookmakers and not bettors.¹⁹¹ On the other hand, state gambling statutes tend to explicitly prohibit sportsbook employees or members of a sports governing body from using or sharing confidential information for betting purposes.¹⁹² Pursuant to their statutory authority, a state regulatory agency may also mandate certain internal controls that a betting operator must implement to address potential illegal gambling activity.¹⁹³

For both event and betting integrity, the detection of fraudulent activity is primarily handled by independent, for-profit integrity monitoring companies that contract with sports leagues and betting operators.¹⁹⁴ These companies analyze betting markets for suspicious changes in betting lines that could indicate match-fixing or insider betting.¹⁹⁵ State regulatory agencies may require that betting operators and sports governing bodies only contract with agency-approved integrity monitors.¹⁹⁶ These states further require integrity monitors to

¹⁸⁸ See Balsam, *supra* note 3, at 13–16 (describing the case of Tim Donaghy, an NBA referee who bet upon games he officiated and likely engaged in “lone-wolf” match-fixing, but was not convicted for doing so because of the lack of federal laws criminalizing game manipulation).

¹⁸⁹ See, e.g., NAT'L FOOTBALL LEAGUE, GAMBLING POLICY FOR NFL PERSONNEL 2022 § 2.5, <https://nflpaweb.blob.core.windows.net/website/Gambling-Policy-from-2022-League-Policies-for-Players.pdf> [<https://perma.cc/99DE-UF7K>]; NAT'L BASKETBALL ASS'N, *supra* note 178, arts. 35(f), 35A(g).

¹⁹⁰ 18 U.S.C. § 1084(a).

¹⁹¹ Grandeau, *supra* note 114, at 1234.

¹⁹² See, e.g., MICH. COMP. LAWS § 432.413(1)(h)–(i) (2019) (prohibiting anyone from using or providing nonpublic information about a game—or information about a plan to match-fix—for the purpose of wagering).

¹⁹³ See, e.g., MICH. ADMIN. CODE r. 432.763 (2020).

¹⁹⁴ Holden, *Prohibitive Failure*, *supra* note 80, at 380–81.

¹⁹⁵ Kyle Hightower, *Pro Leagues Balance Profit, Integrity Risks in Legal Betting Era*, ASSOCIATED PRESS NEWS (June 14, 2023, 12:03 AM), <https://apnews.com/article/sports-betting-nfl-nba-mlb-nhl-e05bff6f8a0153dbded66d1dd5c6cd3a> [<https://perma.cc/Z8UR-VV8V>].

¹⁹⁶ See, e.g., N.J. ADMIN. CODE § 13:69N-1.6 (2019); MICH. ADMIN. CODE r. 432.711(l) (2020).

communicate any suspicious activity to all other licensed monitors and betting operators, the regulatory agency, and relevant sports governing bodies.¹⁹⁷ While the use of such monitors allows for quick detection,¹⁹⁸ concerns still exist that these companies lack investigative authority and are limited only to detecting and reporting suspicious betting movement.¹⁹⁹ Furthermore, because these companies are paid by both the leagues and the sportsbooks to monitor betting activity and are under no obligation to report such findings to the public, there is a concern about conflicts of interest.²⁰⁰

B. *Applying These Concerns to Predetermined Events*

The previous Section examined event and betting integrity in a traditional sports betting context, and how sports leagues, federal law, and state regulatory schemes address them in a post-*Murphy* world. The following Section examines how these concepts manifest differently in predetermined events and explores how extant regulatory mechanisms are insufficient to prevent these betting-related integrity concerns. This will include an overview of how these events are structured and a discussion of previous integrity-related controversies. As previously stated, while WWE owners have recently reversed course on their interest in becoming an authorized wagering event, this decision appears to be due to the restraints that would be placed upon the creative team rather than official rejection by regulatory bodies.²⁰¹ Because of this, Section II.B.2 will proceed with the assumption that authorization of pro wrestling is still possible.

¹⁹⁷ See, e.g., MICH. ADMIN. CODE r.432.743 (2020). This collaboration between integrity monitors, betting operators, and sports leagues was how the NBA uncovered the illegal betting activity of Toronto Raptors player Jontay Porter. Tim Reynolds, *NBA Bans Jontay Porter After Gambling Probe Shows He Shared Information, Bet on Games*, ASSOCIATED PRESS NEWS (Apr. 17, 2024, 6:11 PM), <https://apnews.com/article/nba-jontay-porter-banned-265ad5cb703d9483347037762ee90a8f> [<https://perma.cc/99TG-458K>].

¹⁹⁸ While it is difficult to show precisely how successful these integrity monitors are at catching insider betting, one company estimates that approximately 40% of their alerts result in punishment for sports betting violations, with a total of about 100 people per year. Prince J. Grimes, *How Integrity Monitors Help Sports Betting Operators and Regulators Catch Cheaters*, USATODAY: BETFTW! (May 25, 2023, 10:30 AM), <https://ftw.usatoday.com/2023/05/us-integrity-monitors-what-they-do> [<https://perma.cc/RU42-6FYG>].

¹⁹⁹ Holden, *Prohibitive Failure*, *supra* note 80, at 381–82; Holden & Edelman, *supra* note 34, at 964–65.

²⁰⁰ Hightower, *supra* note 195.

²⁰¹ See *supra* note 26 and accompanying text.

1. Entertainment Award Shows

The first attempt to approve Oscars betting was in 2011, when casinos in Las Vegas applied to the Nevada Gaming Control Board for authorization.²⁰² The Board refused, citing Nevada's then adherence to only allowing betting on legitimate sports competition.²⁰³ Since then, no betting operator sought authorization until, in 2019, New Jersey approved the Oscars as a wagering event.²⁰⁴ In the following years, six more states approved wagering on the Oscars,²⁰⁵ five authorized betting on the Emmy Awards (the Emmys),²⁰⁶ and three states offered betting on the Golden Globe Awards (the Golden Globes).²⁰⁷

Even before sportsbooks began taking bets on the Oscars, the Academy relied on its longstanding relationship with PricewaterhouseCoopers (PwC) to tabulate and safeguard voting results.²⁰⁸ Since 1934, results have been counted by PwC employees, two

²⁰² Sayre, *supra* note 7.

²⁰³ *Id.*

²⁰⁴ *Id.* The reason for this lack of effort is most likely due to the restricted market in the pre-Murphy betting landscape. With Nevada taking a firm stance against award show betting, *see id.*, the only other options for operators were those states with grandfathered schemes: Delaware, Montana, and Oregon, all of whom were limited to a few state-sponsored offerings. *See supra* text accompanying notes 63–64, 74.

²⁰⁵ These states are Arizona, Indiana, Kansas, Louisiana, Massachusetts, and Michigan. *See Lieberman, supra* note 9.

²⁰⁶ These states are Arizona, Louisiana, Massachusetts, Michigan, and New Jersey. *Catalog of Approved Wagers*, ARIZ. DEP'T GAMING (Jan. 30, 2024), <https://gaming.az.gov/ewfs/catalog-approved-wagers> [<https://perma.cc/3ZXG-KMX3>] (select "View the full Event Wagering Catalog of Approved Wagers"; then select "Non-Sports" on the spreadsheet); *Sports Wagering Reports*, LA. GAMING CONTROL BD. (Aug. 22, 2024), https://lgcb.dps.louisiana.gov/sports_wagering_reports.html [<https://perma.cc/U28A-R4HU>] (select "CATALOG.LA Gaming Sports Wagering"); MASS. GAMING COMM'N, *supra* note 174 (select "MA Sports Wagering Catalog"; then select "Special Events" on the spreadsheet); *Internet Gaming and Fantasy Contests*, MICH. GAMING CONTROL BD. (Aug. 27, 2024), <https://www.michigan.gov/mgcb/internet-gaming-and-fantasy-contests> [<https://perma.cc/545M-KSR6>] (select "Sports Wagering Catalog"); *Approved Leagues/Events for Sports Wagering*, N.J. DIV. GAMING ENF'T (Feb. 29, 2024), <https://www.nj.gov/lps/ge/docs/SportsBetting/ApprovedEventsList.pdf> [<https://perma.cc/V6NZ-MK62>].

²⁰⁷ *See* ARIZ. DEP'T GAMING, *supra* note 206; LA. GAMING CONTROL BD., *supra* note 206; MICH. GAMING CONTROL BD., *supra* note 206. In addition, the Grammy Awards are currently authorized in Arizona and are pending approval in Michigan. ARIZ. DEP'T GAMING, *supra* note 206; MICH. GAMING CONTROL BD., *supra* note 206.

²⁰⁸ *See* Olivia B. Waxman, *The Academy Awards Scandal that First Got PwC Its Job Counting Oscars Votes*, TIME (Mar. 2, 2018, 6:10 PM), <https://time.com/5182902/pwc-academy-awards->

of whom stand backstage and hand sealed envelopes to the presenters as they walk out to announce the winners.²⁰⁹ The Emmys and Golden Globes follow a similar system using Ernst & Young.²¹⁰ Each award shows' governing bodies publish annual rules dictating their nominating, campaigning, and voting processes.²¹¹ Despite this long-standing system, questions have still been raised about the security of the process.²¹²

The event integrity of entertainment award shows, especially by way of results-fixing through bribery, is a twist on the match-fixing of traditional athletic competition. In sports, bribery-based match-fixing often arises when a third party engages a player or official to throw the game (or cause a loss or win by a certain number of points).²¹³ Conversely, historical attempts to manipulate award shows tend to arise from studios, directors, and actors bribing the award show's voting body to nab a

oscar-snob [<https://perma.cc/3B4X-262J>]. The relationship began when the lack of a Best Actress nomination for Bette Davis's starring role in *Of Human Bondage* raised concerns over the integrity of the process. *Id.*

²⁰⁹ See *id.*; Flock, *supra* note 11.

²¹⁰ 74th Emmy Awards Winners Announced, EMMYS (Sept. 12, 2022), <https://www.emmys.com/news/awards-news/emmy-winners-220912> [<https://perma.cc/J58B-KYDH>]; Ruben V. Nepales, "And the Golden Globe Goes To . . ."—A Conversation with E&Y's Andy Sale, GOLDEN GLOBE AWARDS (Jan. 2, 2022), <https://goldenglobes.com/articles/and-the-golden-globe-goes-to-a-conversation-with-eys-andy-sale> [<https://perma.cc/57R9-W9FK>].

²¹¹ See, e.g., OSCARS, AWARDS CAMPAIGN PROMOTIONAL REGULATIONS FOR THE 96TH ACADEMY AWARDS, https://www.oscars.org/sites/oscars/files/96o_complete_regulations.pdf [<https://perma.cc/L94A-9TT3>]; GOLDEN GLOBE AWARDS, 82ND GOLDEN GLOBE AWARDS ELIGIBILITY AND CONSIDERATION RULES 18–21 (July 29, 2024), https://goldenglobes.com/wp-content/uploads/2024/07/Golden_-Globe_-Awards_-82nd_-2024-2025_Eligibility_and_Consideration_Rules_072924-FINAL.pdf [<https://perma.cc/E7HS-3L4J>].

²¹² See Flock, *supra* note 11 (stating that, regarding the *Moonlight/La La Land* Best Picture mix up, "Erik Gordon, a business professor at the University of Michigan, said that . . . '[a]ccountants are supposed to set up systems that don't fail'"); see also Clayton Davis, *Academy Sets New Oscar Campaign Rules After Controversies Involving Andrea Riseborough, Tom Cruise, and Michelle Yeoh*, VARIETY (May 1, 2023, 2:00 PM), <https://variety.com/2023/film/awards/oscars-social-media-campaign-rules-andrea-riseborough-1235599651> [<https://perma.cc/C746-KM67>] (discussing the Academy's review of campaigning integrity following Andrea Riseborough's surprise Best Actress nomination). On the other hand, there are clues that the system is working as needed to prevent Academy members from possessing insider information. For example, the Academy restructured the 2021 Oscars for Best Actor to be presented last, a move that seemingly indicated a hope for the night to end with the late Chadwick Boseman crowned as winner. See Siladitya Ray, *Oscars 2021: Switched Ending and Surprise Chadwick Boseman Loss Prompts Confusion and Anger*, FORBES (Apr. 26, 2021, 4:06 AM), <https://www.forbes.com/sites/siladityaray/2021/04/26/oscars-2021-tweaked-awards-order-and-surprise-chadwick-boseman-loss-prompts-confusion-and-anger> [<https://perma.cc/ay6P-MZU5>]. Sir Anthony Hopkins, who was not at the ceremony due to COVID-19, was announced instead. *Id.*

²¹³ See *supra* notes 163–167 and accompanying text.

nomination or win for themselves.²¹⁴ This is because studios and artists have a significant non-gambling incentive to manipulate results, as industry awards can lead to increased financial success and greater career opportunities for the winners.²¹⁵

This is further complicated by the fact that entertainment award shows are not all built the same, with some having a higher—and more established—likelihood of manipulation than others. First, all award shows are voted on by a specified voting base, which ranges from approximately 300 for the Golden Globes to nearly 25,000 for the Emmys.²¹⁶ As previously discussed, the risk of match-fixing is higher in events that require less coordination to achieve a particular result.²¹⁷ A person or studio looking to win Best Actress, for example, would likely need to spend less money bribing the much smaller Golden Globes committee than they would Emmy voters. Because the outcome of award shows like the Golden Globes are often instructive as to how Academy and Emmy voters will vote,²¹⁸ how sportsbooks will set the line, and where bettors will put their money,²¹⁹ these integrity concerns could cause a ripple effect for these higher profile shows.

This notion is supported by the history of scandals that has followed the Golden Globes and its former governing body, the Hollywood Foreign Press Association (HFPA).²²⁰ These include accusations,

²¹⁴ See, e.g., Stacy Perman & Josh Rottenberg, *Golden Globes Voters in Tumult: Members Accuse Hollywood Foreign Press Assn. of Self-Dealing, Ethical Lapses*, L.A. TIMES (Feb. 21, 2021, 5:00 AM), <https://www.latimes.com/entertainment-arts/business/story/2021-02-21/hfpa-golden-globes-2021> [<https://perma.cc/FSV3-3L54>].

²¹⁵ Robyn Bahr, *Why Award Shows Still Matter for Movies*, HOLLYWOOD REP. (Jan. 31, 2020, 1:00 PM), <https://www.hollywoodreporter.com/movies/movie-news/why-awards-shows-still-matter-movies-1274059> [<https://perma.cc/9MJQ-3GL6>].

²¹⁶ FAQ *Golden Globes*, GOLDEN GLOBE AWARDS, <https://goldenglobes.com/faqs> [<https://perma.cc/DA2W-FNQT>]; *Membership: Who Can Vote for the Emmy Awards?*, EMMYS, <https://www.emmys.com/faq/membership> [<https://perma.cc/QU2Z-LVSR>]. Awards like the Emmys, however, are further broken down into “peer groups,” with only members of that category allowed to vote on category-specific awards. *Id.*

²¹⁷ See *supra* notes 166–167, 171 and accompanying text.

²¹⁸ See Jessica Welman, *How the Golden Globes Can Help You with Your Oscars Betting*, PLAYUSA (May 6, 2022), <https://www.playusa.com/golden-globes-predict-oscar-betting-winners> [<https://perma.cc/2SMP-5KEV>].

²¹⁹ *Betting on the Oscars Explained*, INSIDERS BETTING DIG. (Sept. 27, 2023), <https://insidersbettingdigest.com/guides/betting-on-the-oscars-explained> [<https://perma.cc/SHZ8-BL5V>]. While success at other award shows is not explicitly listed, it has been noted that different award shows have different levels of predictive accuracy. See Sayre, *supra* note 7. The Golden Globes in 2020, for example, had selected the eventual best supporting actor sixteen out of twenty-five years. *Id.*

²²⁰ Perman & Rottenberg, *supra* note 214.

stretching back to 1958, that HFPA members regularly received lavish gifts from studios in exchange for nominating—and sometimes awarding—certain artists or productions.²²¹ At that time, HFPA membership was nearly a third of the current number of Golden Globes voters,²²² but some accusations indicate that far fewer members need to be courted for the results to be manipulated.²²³ These scandals eventually led to the sale of the organization and the complete dissolution of the HFPA in 2023.²²⁴ While the new governing body intends to act with greater responsibility than its predecessor,²²⁵ the Golden Globes' history, nature of the voting members, and comparatively low number of members still create cause for concern.²²⁶ The new owner maintains that the retainment of former members as salaried employees will mitigate the likelihood of bribery, but the majority of voting members are non-salaried.²²⁷ This is worth noting because analyses of match-fixing have indicated that the risk of manipulation increases where the relevant players are badly paid in relation to their employers or industry.²²⁸ Additionally, the nomination and voting requirements for the Golden Globes, which prohibit event manipulation and include mandatory

²²¹ “Fix-Via-PR” Rumors Mar Foreign Prizes, VARIETY (Mar. 5, 1958), <https://archive.org/details/variety210-1958-03/page/n23/mode/1up?view=theater> [<https://perma.cc/B3TJ-TLEL>] (reporting on the recent resignation of HFPA president Henry Gris, who criticized the organization for giving out awards “more or less as favors”); see also Perman & Rottenberg, *supra* note 214 (highlighting other HFPA integrity controversies).

²²² The HFPA at the time of dissolution had 87 voting members, Perman & Rottenberg, *supra* note 214, while the current Golden Globes voting body is closer to 300, *FAQ Golden Globes*, *supra* note 216.

²²³ In 2019, one-third of HFPA members were flown to Paris and “treated . . . like kings and queens” by Paramount, the network behind the show *Emily in Paris*. Perman & Rottenberg, *supra* note 214. The following year, the show, which was mildly received, was nominated for best leading actress and best television musical or comedy. *Id.*

²²⁴ Nate Jones, *All of Your Questions About the First Post-HFPA Golden Globes, Answered*, VULTURE (Dec. 11, 2023), <https://www.vulture.com/2023/12/what-happens-to-the-golden-globes-post-hfpa-explained.html> [<https://perma.cc/WJL9-9P7Q>].

²²⁵ *Id.* The new owner claims, for example, that operating as a for-profit institution will enable the organization to penalize bad actors and remove the financial pressure on publicists to provide voters with access to stars. *Id.*

²²⁶ *Id.* Adding to this risk is the fact that the former HFPA members, including those accused of accepting bribes, remain in the new organization in a voting capacity. *Id.*

²²⁷ *Id.* Furthermore, the salary of \$75,000 may not be enough to remove the seductive appeal of lavish trips, gifts, and access to celebrities that the former HFPA enjoyed, especially in the face of a shrinking entertainment journalism industry. See Perman & Rottenberg, *supra* note 214.

²²⁸ Hill et al., *supra* note 166, at 1785.

disclosure provisions, are largely the same as they were when the HFPA was in control.²²⁹

Regarding betting integrity, it is unlikely that bribery and result-fixing would be heavily incentivized by potential betting payouts, as award winners stand to gain much more than a winning bet could offer.²³⁰ Theoretically, the safeguarding of results should mitigate the risk of anyone using insider information about award winners to gamble.²³¹ Betting integrity violations could arise, however, when someone with knowledge of voter manipulation bets on the basis of such information.²³² The issue of betting integrity also implicates the question of disclosures and voting restrictions. Some have suggested that sportsbooks and leagues should be subject to a level of mandatory public disclosure.²³³ While that may restrict the use of insider information in traditional sports, the nature of award shows is such that the most significant piece of insider information—the winners—cannot be publicly disclosed.

Like with sports betting, safeguarding both event and betting integrity in entertainment award shows is done through a mixture of internal and legislative regulations. As previously noted, the governing bodies of award shows have rules that require voting members to report gifts received and potential conflicts of interest.²³⁴ There does not, however, appear to be any rule forbidding voters from gambling on the winners.²³⁵ On a federal level, it is unclear whether entertainment award shows would fall within the scope of the Wire Act or Sports Bribery Act due to those statutes' narrow focus on sporting events,²³⁶ and many state

²²⁹ Compare GOLDEN GLOBE AWARDS, HOLLYWOOD FOREIGN PRESS ASSOCIATION GOLDEN GLOBE AWARD CONSIDERATION RULES 9–13 (June 19, 2020), https://www.goldenglobes.com/sites/default/files/golden_globe_awards_eligibility_descriptions_2020_revisions_approved_3-19-20conformed_5-27-20.pdf [<https://perma.cc/6J29-43T7>], with GOLDEN GLOBE AWARDS, *supra* note 211, at 18–21.

²³⁰ See Richard N. Velotta, *New Jersey Is Taking Bets on the Oscars, But Not Nevada*, L.V. REV. -J. (Feb. 20, 2019, 11:48 AM), <https://www.reviewjournal.com/business/business-columns/inside-gaming/new-jersey-is-taking-bets-on-the-oscars-but-not-nevada-1601374> [<https://perma.cc/8TYF-M33K>] (noting that winning Oscar bets tend not to net significant payouts).

²³¹ See Flock, *supra* note 11.

²³² See *supra* notes 182–188 and accompanying text.

²³³ See Grandeau, *supra* note 114. These disclosures could include, for example, player injuries. *Id.* at 1259–60.

²³⁴ See, e.g., GOLDEN GLOBE AWARDS, *supra* note 211, at 18–21.

²³⁵ See *id.*

²³⁶ The Wire Act does not explicitly define sports gambling, but only refers to wagers on “sporting event[s] or contest[s].” 18 U.S.C. § 1084(a)–(b). Current interpretations of the Act’s scope

sports bribery laws have a similar construction.²³⁷ On the other hand, the bribery provisions of some states' sports betting laws may be broad enough to cover award shows,²³⁸ and the bribery of voting members could also be addressed by state commercial bribery laws.²³⁹ Furthermore, award shows approved pursuant to a state gambling law must conform to the requirements of that statute.²⁴⁰ State regulatory agencies also retain the right to limit how much bettors may wager on events,²⁴¹ even though New Jersey is the only state thus far to impose such a restriction.²⁴²

Currently, the mixture of internal regulation and state legislation appears to have provided enough faith in the voting processes to convince state regulators to allow wagering on these events. However, there are still risks, especially regarding the use of insider information, which could cause problems—especially as entertainment betting continues to spread.

2. World Wrestling Entertainment

Early discussion of the potential to legally bet on WWE in the United States tended to use Nevada policy as a reference point²⁴³ due primarily to the state's long history of gaming regulation and its influence on other state regulatory models.²⁴⁴ This reliance has grown more tenuous, however, as states have started to authorize events that Nevada has historically opposed.²⁴⁵ Nevada, for example, has remained uninterested in authorizing wagering on award shows, despite having avenues to

limit it to sports betting. See *supra* notes 48–51 and accompanying text. The Sports Bribery Act defines “sporting contest” as “any contest in any sport, between individual contestants or teams of contestants.” 18 U.S.C. § 224(c)(2).

²³⁷ See Balsam, *supra* note 3, at 19 (noting that the language of states' sport bribery laws tend to reflect the Sports Bribery Act).

²³⁸ For example, Michigan's bribery provisions prohibit bribery with the intent to influence the outcome of any authorized wagering event, or the placing or altering a bet on any wagering event after gaining nonpublic knowledge about an act of bribery. MICH. COMP. LAWS § 432.413(1)(g) (2019).

²³⁹ See Balsam, *supra* note 3, at 19.

²⁴⁰ See, e.g., MICH. ADMIN. CODE r. 432.745 (2020).

²⁴¹ See, e.g., MICH. ADMIN. CODE r. 432.746a(4) (2020); N.J. STAT. ANN. § 5:12A-13a(3) (West 2018).

²⁴² Wagering on award shows in New Jersey is limited to a \$1,000 bet or win limit, whichever is greater. N.J. DIV. GAMING ENFT, *supra* note 206.

²⁴³ Fiorvanti, *supra* note 22.

²⁴⁴ See *supra* note 137 and accompanying text.

²⁴⁵ See *supra* notes 202–207 and accompanying text.

authorization—²⁴⁶a viewpoint no longer shared by other states.²⁴⁷ Therefore, instead of concluding based upon one state’s policy that the chance of WWE authorization is out of the question, approval should be treated as an eventuality that regulators have prepared for.²⁴⁸

At first glance, pro wrestling lacks the event integrity concerns that affect traditional sporting events. A central focus of sports betting regulation is preserving the viewers’ trust in the integrity of the game, which is “at least somewhat dependent on the uncertainty of outcome.”²⁴⁹ Because the audience for WWE knows that pro wrestling is predetermined, there is no moral obligation for the company to maintain trust in the process—or even, for that matter, to preserve the outcome that they have chosen.²⁵⁰ However, enjoyment of pro wrestling does depend in part on the match fitting a narrative,²⁵¹ and WWE’s interest in the gambling market invites the concern that the matches could be manipulated to reflect betting lines rather than to serve the story being told.²⁵² It is because of this concern that WWE planned to follow the Oscars’ template by securing match results with Ernst & Young months in advance.²⁵³ While necessary, this plan only scratches the surface of

²⁴⁶ Velotta, *supra* note 230. Former Nevada Gaming Control Board Chairwoman Becky Harris invoked regulatory and integrity concerns as the reason behind Nevada’s historic wariness towards award-show betting. *Id.* Despite this, even Nevada has authorized wagering on league awards, including Most Valuable Player awards for professional sports leagues and the NCAA. See *Regulation 22.1201 Approvals*, Nev. Gaming Comm’n and The Nev. Gaming Control Bd. (last visited Nov. 15, 2024), <https://gaming.nv.gov/divisions/enforcement/reg-22-1201/approvals> [<https://perma.cc/WP9A-6AT5>].

²⁴⁷ See *supra* notes 202–207 and accompanying text.

²⁴⁸ See Nick Hennion, *WWE Betting Odds: Can You Wager on Professional Wrestling?*, FORBES BETTING (June 28, 2023, 12:58 PM), <https://www.forbes.com/betting/novelty/wwe> [<https://perma.cc/39C5-YADR>] (noting that, even with integrity concerns, there is an “undeniable appeal” to WWE betting due to its viewership and revenue). In proceeding with this analysis, this Section will refer to the plan that WWE had devised in the initial reports of its interest in gambling authorization. See Sherman, *supra* note 16.

²⁴⁹ Holden & Rodenberg, *supra* note 59, at 461; see also *supra* notes 159–162 and accompanying text.

²⁵⁰ Fans even know that the company has historically changed the results at the last minute. See Fiorvanti, *supra* note 22; see also Balsam, *supra* note 3, at 9 (theorizing that players may discount the ethical concerns with fixing activities that have no impact on the outcome of a game).

²⁵¹ See MAZER, *supra* note 19, at 28 (discussing how, despite knowing the outcomes are fixed, the narrative and storytelling elements inherent in pro wrestling “seems to satisfy the audience in the same way that a favorite story . . . never fails to excite or reassure”).

²⁵² See Holden & Rodenberg, *supra* note 59, at 461.

²⁵³ Sherman, *supra* note 16. This concern is also part of what led TKO Group COO Mark Shapiro to abandon the plan, due to his experience with award shows. See Reginato et al., *supra*

what is required to minimize the integrity issues that are implicated in potential authorization.

First, and maybe most obviously, is that plans change—wrestlers get injured, which can cause intended outcomes to be upended. How WWE would account for and disclose contingency plans would need to be considered in any regulatory plan. Second, WWE only intended to secure match *results* with Ernst & Young.²⁵⁴ This may prevent match-fixing—or re-fixing, as it were—by invoking external accountability. It does not, however, address the risk of spot-fixing. While the outcomes of pro wrestling are predetermined, the matches are not choreographed.²⁵⁵ Much of the match, outside of key moments, involves heavy improvisation by the wrestlers.²⁵⁶ Therefore, any prop bets that are offered on the event, such as “how many times X wrestler will perform his signature move,” could create the opportunity for spot-fixing. Since this type of manipulation does not require the coordination of multiple parties, it is easier to accomplish and more difficult to detect.²⁵⁷

This concern about the quasi-determined nature of pro wrestling further implicates betting integrity issues. Alongside the prevention of match-fixing, the justification behind safeguarding results with Ernst & Young was to limit the risk that match results may be leaked.²⁵⁸ Unlike award shows, however, WWE match results are not and cannot be restricted to a couple Ernst & Young employees. At various points before a match airs, the results must be known by the creative team, company executives, event producers, and wrestlers, all of whom would then have an opportunity to bet on the match using their insider knowledge.²⁵⁹ Even if the wrestlers and event producers are kept in the dark until a few hours before showtime, those few hours will still allow the opportunity for insiders to either bet upon this information or divulge it to others.²⁶⁰ Furthermore, the risk of spot-fixing also implicates insider betting, as a

note 26, at 13:29 (“Years ago, I ran Dick Clark Productions. We had enough challenge keeping the American Music Awards and the Golden Globe winners under wraps with an auditor”).

²⁵⁴ *Id.*

²⁵⁵ MAZER, *supra* note 19, at 23.

²⁵⁶ *Id.*

²⁵⁷ Balsam, *supra* note 3, at 9. Spot-fixing a moment in pro wrestling would require no more coordination than would be needed to create a normal moment—the fixing wrestler would not even need to tell his “opponent” about the plan. *See also* Hill et al., *supra* note 166, at 13 (describing how an athlete can easily fix a two-player sport with little, if any, input from the other player).

²⁵⁸ Sherman, *supra* note 16.

²⁵⁹ *See* Hennion, *supra* note 248.

²⁶⁰ *Id.*

wrestler who intends to spot-fix may use the knowledge of their own manipulation to place wagers.²⁶¹

As applied to WWE, state and federal gambling initiatives are spotty at best. If approved as a wagering event, WWE would be subject to the approving state's sports gambling statute.²⁶² However, because pro wrestling is not a "sport," it may not fall within the scope of the Wire Act or Sports Bribery Act.²⁶³ Similar to entertainment award shows, the bribery provisions of some state sport gambling laws may be broad enough to capture a non-sport event.²⁶⁴ However, not every state expanded their sports bribery laws when they legalized sports gambling, instead choosing to rely on the existing legislation.²⁶⁵ It is currently unclear whether those laws would apply to pro wrestling. First, pro wrestling may not fit within the scope of a state's sports bribery law, even if it may be defined as an "other event" under that same state's sports gambling statute.²⁶⁶ Second, even if the sports bribery laws do apply to pro wrestling, most apply only to bribery for the purposes of manipulating a competition's *outcome*,²⁶⁷ and therefore have minimal impact on spot-fixing. In contrast with award shows or sporting events, it is also unlikely that state commercial bribery laws would fill in any gaps, as it would be difficult to prove that a spot-fixing wrestler violated a

²⁶¹ See *supra* note 188 and accompanying text.

²⁶² See *supra* notes 192, 240–241 and accompanying text.

²⁶³ See *supra* notes 236–237 and accompanying text.

²⁶⁴ See *supra* note 238 and accompanying text.

²⁶⁵ See Balsam, *supra* note 3, at 18–19 (discussing the lack of sports bribery provisions included in new state gambling legislation and proposing that the reason may be due to extant sports bribery laws). For a more detailed discussion of state bribery laws, see Wyatt, *supra* note 61, at 1451–70

²⁶⁶ For example, Louisiana's Sports Wagering Act defines "sports event" as "any professional sport or athletic event . . . or any other special event or competition of relative skill as authorized by the board . . ." LA. STAT. ANN. § 27:602(22) (2022) (emphasis added). On the other hand, the state's sports bribery law prohibits bribery of "sports participants," which includes "any professional or amateur baseball, football, hockey, polo, tennis, or basketball player or boxer or any person or player who participates or expects to participate in any professional or amateur game or sport or any contest of skill, speed, strength, or endurance," or any owners, managers, coaches, or trainers of such events. *Id.* § 14:118.1A(1) (2014). While pro wrestling may be approved as a "special event" by the Louisiana Gaming Control Board, it is less likely to fit the scope of the state's Sports Bribery Law.

²⁶⁷ See Balsam, *supra* note 3, at 19–20. Fifteen states also have laws that criminalize "tampering with a sports contest," which could theoretically address spot-fixing should pro wrestling fit within the statutory scope. *Id.* at 20.

fiduciary duty to the company.²⁶⁸ Regarding internal controls, WWE may try to shape its internal regulations in a manner similar to sports leagues by prohibiting company personnel from betting on events, from using or divulging insider information to others for wagering purposes, or from manipulating the event in response to external influence.²⁶⁹ These controls, of course, are effective only as far as the company can detect violations, which would be difficult in cases of spot-fixing.²⁷⁰

The regulatory concerns with WWE's alleged proposal have led several states to preemptively indicate their disapproval with the idea.²⁷¹ Some have based their refusal on an existing statute or policy that prohibits wagers on predetermined events.²⁷² Others have cited policy and integrity concerns.²⁷³ Most notably, however, is that the three states that have declined to make a firm statement (Massachusetts, Michigan, and New Jersey) are all states that have already approved betting on entertainment award shows.²⁷⁴ As for sportsbook operators, BetMGM has unequivocally stated that it is not interested in having WWE betting on its platform.²⁷⁵ Conversely, WWE already has a partnership with market-leader DraftKings, which offers free-to-play pools on events;²⁷⁶ it is currently unclear whether DraftKings is willing to expand the partnership

²⁶⁸ See *id.* at 19. Balsam notes that many state commercial bribery statutes follow the Model Penal Code, which criminalizes an agent's solicitation, acceptance, or agreement to accept a bribe in exchange for "knowingly violating or agreeing to violate a duty of fidelity." MODEL PENAL CODE § 224.8(1)(a) (AM. L. INST., Proposed Official Draft 1962). Because pro wrestlers would be able to manipulate moments in a match while still theoretically performing in a manner consistent with WWE's best interests, this could be a difficult claim to establish.

²⁶⁹ See *supra* notes 177–180, 189 and accompanying text.

²⁷⁰ See *supra* note 257 and accompanying text.

²⁷¹ David L. Lebovitz, *13 States Comment on Possibility of Allowing Gambling on WWE Matches*, WRESTLING INC. (May 15, 2023, 2:07 PM), <https://www.wrestlinginc.com/1286167/states-possibility-gambling-wwe-matches> [<https://perma.cc/36YR-FFGV>].

²⁷² *Id.* Curiously, one state which cited a statutory or policy concern—Arizona—has since gone on to approve wagering on all major entertainment award shows. See *supra* notes 206–208 and accompanying text.

²⁷³ See Lebovitz, *supra* note 271.

²⁷⁴ *Id.*; Lieberman, *supra* note 9.

²⁷⁵ Contessa Brewer, *Betting on WWE Matches? 'NFW!' Say Gaming Operators and Regulators*, CNBC (Mar. 10, 2023, 5:56 PM), <https://www.cnbc.com/2023/03/10/wwe-legal-betting-skepticism.html> [<https://perma.cc/MXZ9-KRR7>].

²⁷⁶ Press Release, DraftKings, *DraftKings and WWE Enter Historic New Deal* (Mar. 29, 2021), <https://www.draftkings.com/news-2021-03-draftkings-and-wwe-enter-historic-new-deal> [<https://perma.cc/4RSY-6R4H>].

into proper wagering activities.²⁷⁷ While this may not be the enthusiastic response that WWE had initially hoped to see, and while WWE owners have since changed their mind on the idea,²⁷⁸ it means that their proposed Oscars template may still provide an avenue for future authorization—at least in some states.

III. PROPOSAL

As the foregoing has established, there are significant integrity concerns inherent in allowing betting on predetermined events.²⁷⁹ Authorizing these events, especially ones like WWE, poses a significant risk of event manipulation and betting with insider information, which current federal and state gambling legislation is currently unprepared to address.²⁸⁰ Despite this, the current trajectory of the sports gambling market indicates that states may start to authorize these events in the near future. Therefore, to help address the particular risks implicated in predetermined event wagering, this Note proposes the following state regulations on such betting: (1) impose maximum limits on the amount that may be wagered or won; (2) mandate that betting lines close a specific amount of time before the event broadcast; (3) prohibit prop betting and in-game betting; and (4) require mandatory disclosure of key information to an independent integrity monitor, and subject any deviations from the disclosed outcome to third-party review.

These proposals are based upon current offshore and foreign market trends, guidance offered by foreign gaming commissions, and restrictions that some state regulators have already enacted or are empowered to enact by their sports wagering statutes. They are intended to complement existing state laws, industry practices, potential federal legislation that resembles SWMIA and the SAFE Bet Act,²⁸¹ and proposed amendments to state sports bribery statutes that would target a broader range of event manipulation.²⁸² If implemented properly alongside internal regulations

²⁷⁷ When asked for a response, DraftKings did not outright deny the possibility and instead deferred to state regulators. Brewer, *supra* note 275.

²⁷⁸ See *supra* note 26 and accompanying text.

²⁷⁹ See *supra* Section II.B.

²⁸⁰ See *supra* Section II.B.2.

²⁸¹ See *supra* Section I.C.1.

²⁸² See *supra* note 61. While beyond the scope of this Note, the proposed bribery statutes, whether state or federal, could be further amended to explicitly expand the definition of “sporting

and extant wagering laws, these restrictions will help to minimize the incentive to manipulate events and limit the ability for people to bet using insider information.

First, placing a state-imposed cap upon predetermined event wagers will help protect betting integrity by limiting bettors' potential losses. This practice is already self-imposed by offshore sportsbooks that offer WWE betting, partially due to the risks of betting on pro wrestling in its current unregulated state.²⁸³ Restricting the size of the bets can reduce the likelihood of match-fixing because the cost of a fix would outweigh the gambling payouts.²⁸⁴ It also disincentivizes insider betting or the sharing of confidential information by making the potential earnings not worth the risk of getting caught.²⁸⁵ Furthermore, many states are already able to easily take this action. While New Jersey is currently the only state to restrict award show betting in this way,²⁸⁶ the authority to do so is enshrined in many states' sports gambling statutes.²⁸⁷

One potential concern regarding betting limits is that motivated bettors can simply place multiple wagers on the same event or place additional wagers by using a proxy. Because this is a concern that exists in traditional sports betting, it is already addressed by sportsbook rules and state gambling regulations.²⁸⁸ Through the use of internal controls and independent integrity monitors, sportsbooks should have the ability to detect and suspend bets that may indicate suspicious activity.²⁸⁹ Another worry is that low betting limits may be insufficient to attract

events" to include any event authorized under a state sports wagering scheme. This would at least provide an avenue to criminal prosecution that most states currently lack when it comes to potential WWE wagering. See *supra* notes 263–268 and accompanying text.

²⁸³ Fiorvanti, *supra* note 22 (“[T]he limited wagering cap tends to limit the damage for those who like to put down action on some long shots.”); *id.*

²⁸⁴ See Balsam, *supra* note 3, at 9 (noting that prop bets are less likely to be exploited in European markets due, in part, to the restriction on betting amounts).

²⁸⁵ Smiley, *supra* note 10 (“[B]etting limits, or a cap on the amount one person . . . may wager, or win, is a guard against potential abuse. Would anyone share confidential information, risking their reputation or career, for \$500 or \$1,000 . . . which might get sniffed out?”).

²⁸⁶ N.J. DIV. GAMING ENFT, *supra* note 206.

²⁸⁷ See, e.g., MICH. ADMIN. CODE r. 432.746a(4) (2020) (“Unless otherwise directed by the board, there is no limitation as to the minimum or maximum internet sports betting wager . . .” (emphasis added)).

²⁸⁸ See, e.g., *General Rules*, DRAFTKINGS 5.5, 5.6, <https://sportsbook.draftkings.com/help/general-betting-rules/general-rules> [<https://perma.cc/F5ZK-GZNW>] (allowing DraftKings to cancel repeat bets made by an individual or suspected syndicate); MICH. ADMIN. CODE r. 432.751(3) (2020) (requiring sportsbooks to establish internal controls to detect when an individual establishes multiple accounts, including accounts created through a proxy).

²⁸⁹ See *supra* notes 194–197 and accompanying text.

bettors from the offshore markets, though, again, this is a concern already inherent in sports betting.²⁹⁰

Offshore betting often occurs when a bettor is in a state without legalized gambling or when they get confused as to the legality of an online sportsbook.²⁹¹ Another explanation for offshore betting is that, even in states where sports betting is legal, the bettor wants to gamble on an event that the state has not yet authorized.²⁹² This may partially explain why, in 2022, approximately 34% of adult bettors placed wagers in both legal and illegal channels.²⁹³ If this is the case, approving wagering on events like WWE may help to reduce the number of bettors who use illegal sportsbooks. Since offshore sportsbooks already impose bet limits on WWE and bettors have expressed a preference for legal options,²⁹⁴ betting limits in legal sportsbooks is unlikely to be a significant hindrance.

Second, the mandated closing of betting lines before the broadcast will further reduce the risk of betting with insider information. This practice has already been advised by the United Kingdom's Gambling Commission, which has allowed betting on predetermined events for years.²⁹⁵ The Gambling Commission recommends that betting on events with voted-upon outcomes, like reality television, should conclude at the time that voting closes.²⁹⁶ Similarly, states that allow wagering on entertainment award shows have mandated that betting lines must close at the end of the voting period.²⁹⁷ For WWE, this would look similar: betting lines would close before the match results are revealed to the performers. If WWE's proposed system of disclosing results with Ernst & Young were to be properly conducted, then there would be a significantly reduced risk that wrestlers or other company employees could place last-minute bets using their nonpublic knowledge. Closing the betting lines before wrestlers learn of the outcome also prevents them from sharing

²⁹⁰ See *Sizing the Illegal and Unregulated Gaming Markets in the United States*, AM. GAMING ASS'N 5 (Nov. 30, 2022), <https://www.americangaming.org/wp-content/uploads/2022/11/Sizing-the-Illegal-and-Unregulated-Gaming-Markets-in-the-US.pdf> [<https://perma.cc/X8R7-W5PK>] (finding that approximately 49% of betting adults in the United States used an illegal sportsbook at some point between September 2021 and August 2022).

²⁹¹ *Id.* at 2.

²⁹² Holden & Edelman, *supra* note 34, at 939.

²⁹³ AM. GAMING ASS'N, *supra* note 290, at 5.

²⁹⁴ *Id.* at 2.

²⁹⁵ *A Reminder of the Risks Surrounding Novelty Markets*, GAMBLING COMM'N (July 27, 2023), <https://www.gamblingcommission.gov.uk/news/article/a-reminder-of-the-risks-surrounding-novelty-markets> [<https://perma.cc/R2PG-TMDV>].

²⁹⁶ *Id.*

²⁹⁷ See, e.g., MICH. GAMING CONTROL BD., *supra* note 206 (under "Guidelines and Comments").

match results with proxies to bet on the wrestlers' behalf. In addition, this rule includes the added benefit of further limiting the world of personnel with insider knowledge. If suspicious betting activity is detected, the organization or state regulators will theoretically have an easier time determining the source of leaked information.

Third, prohibiting prop bets and in-game betting on predetermined events has a basis in some extant state guidelines, such as Massachusetts's prohibition on prop bets that are "inherently objectionable" or officiating-related.²⁹⁸ While WWE may not be a high risk for match-fixing, there is still a concern that performers may manipulate moments during the match that are unrelated to the outcome.²⁹⁹ Since there is no competitive advantage to spot-fixing in pro-wrestling, the only incentive for doing so would be to capitalize on the betting markets.³⁰⁰ By removing this as an option, bettors are protected from losing money on manipulated betting lines; it would also foster greater trust in the ultimate process of safeguarding match results.

Fourth, requiring certain mandatory disclosures to independent integrity monitors will be instrumental in helping to convince states that predetermined events can be bet on with a reasonable level of integrity. This practice has already been proposed in the traditional sports betting context,³⁰¹ albeit with a focus on public disclosures that would be inadvisable for predetermined events—where both the enjoyment of the event and the ability to place wagers mandate concealment of key information.³⁰² Mandatory disclosures were also a significant element of SWMIA's proposal to establish a National Sports Wagering Clearinghouse.³⁰³ Furthermore, certain mandatory reporting requirements are already required by the governing bodies of some award shows.³⁰⁴ If betting operators or governing event bodies wish to receive authorization on predetermined events, then a system of mandatory

²⁹⁸ See *supra* note 174 and accompanying text.

²⁹⁹ See *supra* notes 254–257 and accompanying text.

³⁰⁰ See *supra* Section II.B.2.

³⁰¹ See *generally* Grandeau, *supra* note 114.

³⁰² See MAZER, *supra* note 19, at 23 ("Fans can be particularly contemptuous of overtly 'staged' events at the same time that they take pleasure in predicting the shape of the match as it unfolds."); see also Velotta, *supra* note 230 (indicating that there is less appeal to Oscars betting in years where there is an undeniable frontrunner).

³⁰³ Sports Wagering Market Integrity Act of 2018, S. 3793, 115th Cong. § 106 (2018).

³⁰⁴ See, e.g., GOLDEN GLOBE AWARDS, *supra* note 211, at 18–21 (requiring voting members to disclose to the retained accounting firm any gifts, communications, information, or activities that may affect their integrity as a voter).

disclosure to an independent organization will show that the relevant parties are taking reasonable steps to protect the integrity of both the betting process and in safeguarding their outcomes.

This reporting could include, for example, information of how the voting process, if present, is conducted and the identities of parties with conflicts of interest or insider information. In the case of WWE and similar events, any personnel with knowledge of the match, including the wrestlers involved, would be disclosed alongside the match result. Since most major award shows currently use PwC or Ernst & Young (and WWE had intended to use the latter),³⁰⁵ these companies could continue in their role as an integrity monitor for the event-hosting companies while betting integrity monitoring systems can detect and report any suspicious betting activity. Knowledge of parties with conflicts of interest should also be disclosed to participating sportsbooks to aid in the detection of suspicious activity by interested parties or their proxies. Finally, if a result occurs that runs counter to this disclosed information, it should be promptly communicated to sportsbooks so they can cancel or suspend the relevant bet.³⁰⁶ For example, if a wrestler is injured during a match, causing the performers to change the ending, the sportsbooks would be alerted to void all bets placed. This will provide an additional layer of accountability to an organization like WWE by preventing them from re-fixing a predetermined outcome under the guise of an injured performer.

Taken together, this proposal disincentivizes event manipulation and the sharing of insider information; removes the ability to place bets once necessary confidential information is disclosed to relevant parties; and creates accountability through disclosures and partnerships with integrity monitoring organizations. When combined with extant state regulations and internal guidelines that prohibit key figures from wagering on the event or accepting bribes to manipulate results, these standards may provide reasonable guardrails for any state that chooses to proceed with predetermined event wagering.

³⁰⁵ See *supra* notes 208–210, 253.

³⁰⁶ This power has been reserved by sportsbooks absent any state requirements. See DRAFTKINGS, *supra* note 288, at 5.2, 5.4.6 (providing that DraftKings may declare bets void on an event if the game has been “abandoned due to injury, bad weather, crowd trouble, etc.” or where an announcement occurs after the event that, had it been revealed earlier, would have affected how people chose to bet). For a statutory restriction, see, e.g., MICH. ADMIN. CODE r. 432.743(4) (2020) (authorizing betting operators to suspend bets related to suspicious wagering activity and permitting cancellation of a bet pursuant to approval of the Gaming Control Board).

CONCLUSION

The speed with which sports wagering exploded following *Murphy v. NCAA* has created a regulatory whiplash. Within only a few years, sports betting went from almost entirely outlawed in the United States to practically omnipresent, leaving regulators and sports leagues racing to keep up. Motivated by both consumer interest and the states' desire to recapture the offshore gambling market, sports wagering in the United States is continuing to gain momentum.³⁰⁷ At the same time, licensed betting operators are looking to diversify their offerings.³⁰⁸ Because of this, entertainment award shows and WWE, with their dedicated consumer bases, represent shiny new toys.³⁰⁹

With these factors creating pressure on states and sportsbooks to expand their authorized wagering event catalogs, it is necessary that regulatory bodies take measures to safeguard betting on these events. This Note presented several regulations, specific to the integrity risks presented by predetermined events, which could allow for reasonable authorization. These include limiting the wager amount on match outcomes; closing betting lines before the outcomes become known to company personnel; prohibiting prop bets and in-game betting; and requiring that event governing organizations disclose necessary information to independent integrity monitoring companies, thereby increasing accountability measures for both the event outcome and those who possess insider information.

When paired with comprehensive internal gambling policies, third-party industry monitors, and rigorous enforcement of state laws, these regulations may create sufficient safeguards to allow these events to be safely and legally gambled on within the United States. Sports wagering is expanding, and predetermined event wagering is on the horizon. States should be prepared for its arrival.

³⁰⁷ AM. GAMING ASS'N, *supra* note 290, at 2. American betting on illegal and unregulated operators was estimated in 2022 to be over \$500 billion, costing an estimated \$13.3 billion in lost tax revenue to states. *Id.* at 1.

³⁰⁸ See Smiley, *supra* note 10.

³⁰⁹ See Hennion, *supra* note 248; Sayre, *supra* note 7.