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STATES LEARN TO BET ON SPORTS: THE PROSPECTS AND LIMITATIONS OF TAXING LEGAL SPORTS GAMBLING

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ABSTRACT

One year after the Supreme Court overturned the federal restriction on state authorization of legal sports gambling, seven states allow and tax sports wagers, and several others are close to joining them. But despite sports betting's ostensible popularity, the resulting state tax revenue is and will always be relatively small and volatile because of how sports betting operates and is taxed. This brief explains why sports betting emerged as a state finance issue in 2018, how state taxes on sports betting work, which states allow legal sports betting (both online and in person), and how much money states stand to gain from these taxes.

Betting on sports is both the newest form of widespread legal gambling in America and a long-pervasive part of sports culture in the US. For decades, every state but Nevada banned sports gambling, and for the past 25 years the federal government ensured they did so. But countless Americans participated in March Madness pools and placed bets on games with friends (or illegal bookies). For years, most sports fans could tell you the point spread of a major football game (mostly because it featured prominently in media coverage) despite living nowhere near a legal sportsbook.

As such, when the Supreme Court overturned the federal restriction on state authorization of legal sports gambling in May 2018, many state lawmakers were excited about the potential tax revenue. Today, a year after the decision, seven states allow and tax sports betting, and a handful of others are close to joining them. And these states are collecting new tax revenue, especially so if they permit online wagers as well as in-person bets. But despite sports betting's ostensible popularity, the resulting state tax revenue is and will always be relatively small and volatile because of how sports betting operates and is taxed.

This brief explains why sports betting emerged as a state finance issue in 2018, how state taxes on sports betting work, which states allow legal sports betting (both online and in person), and how much money states stand to gain from these taxes.

WHY SPORTS GAMBLING WAS ILLEGAL IN MOST STATES UNTIL 2018

Although Americans have wagered on sporting events since there were games to bet on, until very recently, a gambler could only place a legal sports bet in one state: Nevada.¹ The Silver State legalized casino gambling in 1931 and specifically approved sports betting in 1949.² Delaware, Montana, and Oregon allowed sports-related lottery or bingo games at various times in the 20th century, but none ever allowed a gambler to place a wager on a specific sporting event. When New Jersey authorized casino gambling in Atlantic City in 1976, legislators explicitly omitted sports gambling from the permissible games.³

In the early 1990s, however, as states rapidly authorized other forms of gambling such as lotteries and casinos, opponents worried sports betting might be next. Thus, in 1992, Congress preempted state action with the Professional and Amateur Sports Protection Act (PASPA).⁴ The PASPA—authored and cosponsored by Senator Bill Bradley of New Jersey, a former collegiate and professional basketball player—did not make sports gambling a federal crime, but instead prohibited “a government entity to sponsor, operate, advertise, promote, license, or authorize” any form of sports gambling. The PASPA made exceptions for Delaware, Montana, Nevada, and Oregon, but only to the extent that those states offered sports gambling between 1976 and 1990. (There were also exemptions for horse racing and a few other games.) And it gave New Jersey one year to legalize sports gambling in Atlantic City, but the state failed to act in time.

Delaware first challenged the PASPA in 2009. The state, looking for revenue during the depths of the Great Recession, approved sports gambling and cited its PASPA exemption as a means around the federal

restrictions. However, a federal court struck down Delaware’s law because its proposed allowance of wide-ranging sports gambling went well beyond the simple lottery-style game the state offered for a short period in 1976. The court only permitted Delaware to offer an NFL parlay game similar to its previous version.⁵

The next serious challenge came from New Jersey and then-governor Chris Christie, who hoped sports betting would help revive Atlantic City.⁶ After a successful ballot initiative, multiple pieces of legislation, and several court cases, the state’s efforts eventually ended up at the Supreme Court in *Murphy v. National Collegiate Athletic Association*.⁷

In May 2018, the Supreme Court ruled in favor of New Jersey and overturned the PASPA. Justice Samuel Alito, writing for the majority, concluded that although Congress has the authority to outlaw sports gambling, it does not have the constitutional authority to prohibit states from legalizing it. As Alito wrote in the majority opinion: “It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals. A more direct affront to state sovereignty is not easy to imagine.”

Since the Supreme Court’s ruling, Congress has shown no interest in a national ban on sports gambling. Thus, after the ruling, all states are now permitted to legalize and tax it.

SPORTS BETTING TERMS TO KNOW: HANDLE, GAMING REVENUE, AND HOLD

Three terms are essential to understanding how sports betting and the taxes on it work:

- The **“handle,”** also known as the **“drop,”** is the total amount of money wagered on sports. It can be used to describe how much was bet in a casino or in a state. For example, Nevada’s sports betting handle was \$5 billion in 2018 according to the UNLV Center for Gaming Research.⁸
- **“Gaming revenue”** is the money the sportsbook—a term for where bets are placed, whether in a casino, racetrack, bar, or online—collects from wagers after paying out successful bets but *before* it pays its expenses and taxes. Using an alternative definition of “revenue” in a brief on state taxes is confusing, but the term is universally used in state gaming commission reports. Nevada’s Gaming Control Board reported \$301 million in sports gaming revenue across the state in 2018.⁹
- The **“hold”** (or “win percentage”) is gaming revenue divided by the handle and presented as a percentage. Nevada’s sports betting hold in 2018 was 6.01 percent. Most sports betting operators anticipate roughly a 5 or 6 percent hold.¹⁰

Nevada taxes sports gaming revenue. Therefore, with a 6.75 percent tax rate on \$301 million in gaming revenue, Nevada collected roughly \$20 million in tax revenue from sports gambling in 2018, or 0.4 percent of the \$5 billion wagered on sports that year.

Most governments with legal sports betting—including all US states—tax gaming revenue (Oxford Economics 2017). However, governments also can tax the handle. For example, the federal government levies a 0.25 percent excise tax on all authorized sports betting handles.¹¹ But taxing the handle, especially at higher rates, can quickly drive up costs for betting operators to the point that they exit the market. Even successful sportsbooks occasionally lose money in a given month, so taxing the handle could lead to high taxes on very little or negative gaming revenue.

Following the Supreme Court’s decision, the major American sports leagues pushed states to adopt “integrity fees.”¹² The integrity fees, designed as a percentage of the handle, would go directly to the leagues as compensation for their maintenance of the data necessary for fair sports betting. However, no state has adopted such a fee, and Nevada has offered legal sports gambling for several decades without one.

Ultimately, sports betting is a low-margin industry. The sportsbook keeps only a fraction of the total dollars wagered, and much of that gaming revenue is then eaten up by operating expenses such as staffing, marketing, and fees from outside vendors and technology firms. A study prepared for the District of Columbia’s Chief Financial Officer reported that operating expenses generally account for 60 percent of gaming revenue (Spectrum Gaming Group 2018). Thus, any tax on the gaming revenue or handle can further erode what’s left of a small profit.

BOX 1

Sports Betting Terms to Know

Money line: The money line is a three-digit number that shows the bettor how the game’s odds affect the payout for a successful bet. For example, a favored team might have a money line of -180. This means the bettor must bet \$180 on the team to win \$100. In contrast, an underdog might have a money line of +150, because a successful \$100 bet on this team will pay out \$150.

Point spread: The amount of points the favored team is expected to win the game by. For a bet on the favorite to win, that team must win by more points than the point spread (e.g., a point spread of -7 means the favored team must win by 8 points). For a bet on the underdog to win, that team must win outright or lose by fewer points than the spread. A winning bet on the favorite and underdog pays out the same amount.

Parlay: A single bet that links together two or more wagers. To win, the bettor must win every bet in the parlay. However, a winning parlay bet pays out more than individual successful bets.

WHAT STATES OFFER AND TAX LEGAL SPORTS BETTING

As of May 2019, gamblers can place legal bets on sports in Delaware, Mississippi, Nevada, New Jersey, Pennsylvania, Rhode Island, and West Virginia. All these states passed legislation approving sports betting

before the Supreme Court’s decision. Notably, Mississippi legislators *unknowingly* authorized sports betting with a 2017 bill meant only to approve and regulate fantasy sports games.¹³

The District of Columbia was the only jurisdiction to approve sports gambling legislation following the Supreme Court decision in 2018. Meanwhile, Arkansas voters supported a November 2018 ballot initiative that amended the state’s constitution to authorize casino gambling, and the initiative included language permitting sports gambling. Both Arkansas and the District of Columbia are still setting up their sports gambling systems and not yet taking bets. Indiana, Iowa, Montana, and Tennessee have approved legislation authorizing sports betting during their 2019 legislative sessions. For each’s state’s full legislative history, see appendix A.

TABLE 1

Sports Gambling Tax Rates



State	Tax rate
Arkansas	13% (first \$150 million) 20% (above \$150 million)
Delaware	43.75%
District of Columbia	10% on private operators DC Lottery collects revenue minus expenses
Indiana	9.5%
Iowa	6.75%
Mississippi	12%
Montana	Montana Lottery collects revenue minus expenses
Nevada	6.75%
New Jersey	9.75% in-person bet 14.25% online bet
Pennsylvania	36%
Rhode Island	51%
Tennessee	20%
West Virginia	10%

Source: State websites and legislation.

Notes: Each state’s tax is levied on gaming revenue, which is the operator’s take after paying winners. Mississippi’s and Pennsylvania’s rates include local taxes. New Jersey’s rates include the state’s 1.25% investment alternative tax, which is levied on both in-person and online sports wagers.

State tax rates on gaming revenue range from 6.75 percent in Nevada to 51 percent in Rhode Island. New Jersey is the only state that levies different tax rates for in-person bets (8.5 percent) and online wagers (13

percent). The state also levies an additional 1.25 percent tax on both in-person and online wagers—the revenue is dedicated for tourism and marketing programs for Atlantic City.¹⁴ Arkansas is the first state to use marginal rates on sports gaming revenue, with a higher rate on gaming revenue above \$150 million (these rates apply to all casino gaming revenue, not just gaming revenue from sports betting).

Delaware and Rhode Island technically use a revenue sharing system instead of a tax: gaming revenue is divided among the casino, the sports betting operator,¹⁵ and the state, but the state's share functions the same as a tax. In Delaware, the sports betting operator gets 12.5 percent of the total gaming revenue, then the remaining revenue is divided among the state (50 percent), the casinos (40 percent), and the state's horse racing industry (10 percent), making Delaware's effective tax rate 43.75 percent. In Rhode Island, the state collects 51 percent of the total gaming revenue, with the operator collecting 32 percent and casinos collecting 17 percent.¹⁶

The District of Columbia was the first jurisdiction to implement a publicly run sports gambling operation. Private vendors will be allowed to operate in the District, and their gaming revenue will be taxed at 10 percent. However, the Office of Lottery and Gaming (OLG) will not only regulate these private operators but also act as an operator itself, offering both in-person and online betting products. OLG will not pay tax but instead subtract operating costs (e.g., advertising, platform services, and vendor commissions) from its gaming revenues and transfer the remaining money to the District of Columbia's general fund.¹⁷ Montana's legislation established a similar system in which the Montana State Lottery will act as the regulator and operator. As in the District of Columbia, Montana's lottery will send gaming revenue minus expenses (e.g., retailer commission, platform services, and personal expenses) to the state's lottery and general fund.¹⁸ Montana, however, will not allow private operators.

Advocates for sports gambling often emphasize that setting the tax rate too high may encourage illegal sports gambling and thus depress state tax revenue. As a 2017 study from Oxford Economics explained, "At higher tax rates, sports betting is anticipated to be offered at less attractive odds, and operators are expected to spend less on marketing and other aspects of the customer experience, including technology, content (e.g. broadcast video and game stats), and customer service, thereby encouraging more bettors to bet in illegal markets. As a result, lower tax rates are expected to result in higher legal [gaming revenue]" (Oxford Economics 2017). In fact, when estimating the economic and fiscal effects of legalization, that study used 15 percent as a maximum tax rate scenario.

As the range of current tax rates shows, however, states have not always heeded this warning. Rhode Island's governor championed her state for having "the highest percentage of revenue in the nation for sports wagering" when approving legal sports betting.¹⁹ This could change as more states adopt sports gambling and compete on tax rates, though.

States can also collect revenue from sports betting license fees. Typically, these fees are relatively low, ranging from a couple thousand dollars a year in Nevada and Mississippi to \$100,000 every five years in West Virginia. But in Pennsylvania, a betting operator must pay a one-time license fee of \$10 million. The exorbitant fee was blamed when casinos were slow to open sportsbooks following the Supreme Court decision, but several casinos in Pennsylvania eventually purchased the licenses and now offer sports betting. In Tennessee, the annual licensing fee was increased from \$7,500 to \$750,000 in a last-minute amendment.

Online Sports Betting and the District of Columbia's Gamble

Nevada casinos began offering mobile sports betting apps in 2010.²⁰ Bettors looking to wager online in Nevada must first register an account in person at a sportsbook but can then place bets using mobile phone apps anywhere within the state. Geolocation systems prevent gamblers from placing bets outside of Nevada. (These geolocation systems are now standard in all other states that allow online gambling apps.) Some Nevada sportsbooks now collect most of their gaming revenue from online sports betting.

New Jersey also approved mobile betting when it legalized sports gambling. As in Nevada, a gambler must register the online app in person at a sportsbook but can then place bets anywhere in the state. In Mississippi, gamblers can place bets online while within a casino but cannot make online wagers outside of it. Pennsylvania, Rhode Island, and West Virginia allow statewide online sports wagering, but no operators currently offer it. The legislation approved in Indiana and Iowa permits online sports gambling throughout both states, while Montana's legislation will allow online sports gambling only within eligible establishments.

In all of the states with online sports betting, private operators run the online betting programs. The operators are either casinos (such as MGM in Nevada) or online companies partnering with brick-and-mortar sportsbooks (for example, the betting website DraftKings, which also offers online fantasy sports games, operates an online sportsbook in New Jersey in a partnership with Resorts Casino in Atlantic City).

Tennessee is the first state to authorize only online sports wagering. The state still needs to establish its regulatory system, but it plans to let private operators offer online sports betting apps and allow individuals to register remotely. Otherwise, online gambling in Tennessee should parallel online gambling in other states.

In contrast, the District of Columbia's legislation established an "uncharted and unprecedented" system (Spectrum Gaming Group 2018). In the District, privately operated, brick-and-mortar sportsbooks are allowed to offer online gambling but only within their establishments. The sole online betting option for gamblers in the rest of the city will be a mobile betting app run by the District's OLG. This means more revenue for the District for three reasons: (1) The city will have a monopoly on nearly all online wagers; (2) rather than taxing private operators, the District will collect all revenue from online OLG wagers after subtracting expenses; and (3) this system might negatively affect District gamblers (and thus positively affect District revenue). Specifically, the OLG sports betting app could offer slightly worse odds than the private operators because (unlike in the other states) there will be no competition from private operators. In short, the District might bet that the typical

mobile gambler will accept slightly worse odds from the OLG app in exchange for the convenience of betting on their phone, and only a smaller group of proficient sports gamblers will seek out the better odds with the in-person private operators. The worse odds (for the gambler) plus the larger share of revenue from OLG betting could significantly increase revenue to the District. In fact, the District of Columbia anticipates revenue from OLG sports wagering will be roughly 10 times higher than revenue from private operator sports wagering.

REVENUE FROM SPORTS GAMBLING: ESTIMATES (AND POLITICAL PROMISES) VERSUS REALITY

State legislators support legal sports betting in their states for one major reason: tax revenue. Indeed, some politicians promised a “boon” for their budgets.²¹

- Sports betting is “a great revenue generator” for the state that can support “spending money on renovations of the new schools,” according to Rhode Island State Senator Dominick Ruggerio.²²
- “With sports betting we are truly competing against neighboring states while raising revenue without raising taxes on West Virginians,” said West Virginia Delegate Shawn Fluharty.²³
- “There aren't many folks in the General Assembly who want to raise taxes, so any opportunity you can come up with without touching everybody, I think that led to a discussion that got the number up, too,” Pennsylvania Representative Rob Matzie said.²⁴
- “Let's just hope a lot of people gamble and we get a lot of money,” said District of Columbia Councilmember Jack Evans.²⁵

Some of the exuberance might be chalked up to a misunderstanding of what is being taxed. In a widely cited number, the pro-gambling American Sports Betting Coalition estimated Americans illegally wager \$150 billion a year on sports.²⁶ But even if that number were correct and all of America's illegal betting became legal and taxed, it would not produce much tax revenue, because only a fraction of it would be taxed. Assuming a 6 percent hold, the resulting gaming revenue would be \$9 billion, and the resulting tax revenue (assuming a 10 percent tax rate) would be \$900 million. That rough calculation is not far off from the Oxford Economics estimate of \$1 billion in annual state and local tax revenue in its 2017 study of legalized sports betting (Oxford Economics 2017). For comparison, in fiscal year 2017, 44 states offered lotteries and collected \$18.9 billion in revenue through them, and 24 states had commercial casinos and collected \$9 billion in tax revenue from them (Dadayan, forthcoming).

Politicians overestimating gambling revenue or overpromising its significance is not new or limited to sports betting. Many states that dedicate lottery revenue to elementary and secondary education emphasize this in advertisements for the state lottery, but such revenue is a mere fraction of what states spend on schools. For example, Ohio dedicates its lottery revenue to education (“Our mission: To offer entertaining games that

maximize profits for K–12 public education”²⁷), but its \$700 million in lottery revenue (Dadayan, forthcoming) in fiscal year 2017 was only 6 percent of the state’s \$11.6 billion in education expenditures that year (NASBO 2018).

Further, these pronouncements belie the actual revenue projections from state budget offices, where even the rosiest estimates project a small and volatile revenue stream. Looking at the first full year of implementation (because legalization often did not align with the start of a fiscal year), projected government revenue from sports betting ranged from \$5 million in Delaware to \$75 million in Pennsylvania. However, Pennsylvania’s total was almost entirely from its (one-time) \$10 million per operator license fees. The state only anticipated \$5 million in tax revenue from wagers in its first year, and its tax revenue projection for the second year of implementation was \$28 million. Behind Pennsylvania, the next-highest government revenue projection was \$52 million in Tennessee. Still, in none of these states were the projected government revenues from sports gambling close to even 1 percent of annual state general revenue.

TABLE 2

Sports Betting Revenue Projections



State	First full year of implementation
Arkansas	<i>Has not published a revenue projection for sports betting</i>
Delaware	\$5 million
District of Columbia	\$26 million
Indiana	\$3.4 million to \$20.4 million
Iowa	\$600,000 to \$1.9 million
Mississippi	\$5 million to \$10 million
Montana	\$3.8 million
Nevada	<i>Does not publish revenue projections for sports betting</i>
New Jersey	\$12 million to \$17 million
Pennsylvania	\$75 million
Rhode Island	\$23.5 million
Tennessee	\$52.0 million
West Virginia	\$5.5 million

Sources: State fiscal notes, budget documents, and media reports. See appendix B for more details and links to state revenue projections.

Notes: Some projections are rounded. Some state revenue projections include both tax revenue and license fee revenue. Notably, Pennsylvania’s first-year revenue projection includes \$70 million in one-time licensing fees (\$10 million per license) and \$5 million in tax revenue. For its second year, the state projects \$28 million in tax revenue and no license fee revenue. No other state charges more than \$750,000 for a license fee.

Many state revenue projections also repeatedly underscored the difficulty in accurately estimating this new revenue stream. A fiscal note attached to West Virginia’s legislation reads, “Additionally, it is important to reiterate that these projections are conservative, and because of the multiple variables involved with implementing this new program, a wide range of projections have been made by industry experts.” And New Jersey’s legislative statement warned, “competition from neighboring States, uncertainty between Internet and non-Internet wagering, consumer behavior, changes in the economy, and potential growth (positive or negative) in the sports wagering market can affect tax revenues.” Still, political sound bites often set high expectations for sports betting tax revenue, and these expectations have not always been met in the first year of legal sports betting.

In fact, several media reports have highlighted lower-than-anticipated state tax revenue collections from sports betting.²⁸ Rhode Island predicted sports betting would bring the state more than \$20 million in tax revenue during its first year, but the state has not yet collected even \$1 million over its first five months of legal sports gambling. One reason Rhode Island’s tax revenues are so low is that its casinos lost money on sports betting in February (the casinos blamed too many New Englanders betting on the Super Bowl–winning Patriots²⁹). The first year of tax revenue from legal sports betting will probably also only be a fraction of what was projected in Mississippi and West Virginia.

TABLE 3

Sports Betting Tax Revenue

Millions of dollars



State	Months of reported collections	Tax revenue collected	Annual projection
Delaware	10	\$6.0	\$5
Mississippi	8	\$3.1	\$5–10
Nevada	12	\$20.3	NA
New Jersey	10	\$20.0	\$12–17
Pennsylvania	5	\$4.5	\$5
Rhode Island	5	\$0.7	\$23.5
West Virginia	6	\$0.9	\$5

Sources: State gaming and lottery reports and the University of Nevada Las Vegas Center for Gaming Research. See appendix A for each state’s regulatory agency. Representatives from Delaware and Rhode Island provided additional information.

Notes: Each state’s reported tax revenue collections were from the first month of legal wagers to March 2019, except Nevada, which shows calendar year 2018 tax revenue, and West Virginia, which has not reported March 2019 revenue. Delaware’s total does not include its lottery-style football game. Mississippi’s and Pennsylvania’s revenue totals include state and local tax revenue. New Jersey’s total includes revenue from the state’s 1.25% investment alternative tax. Pennsylvania’s and West Virginia’s annual projections only include tax revenue (i.e., they exclude projected revenue from license fees). Nevada does not publish revenue projections for tax revenue from sports betting.

Delaware, on the other hand, is generating roughly as much revenue as it predicted from taxes on sports betting. The state also collected \$6 million in revenue over this period from the lottery-style football game it has offered since 2009. And not only is Pennsylvania collecting more revenue than it estimated for its first year, but because eight gambling operators opened sportsbooks, the state also collected \$80 million in licensing fees.

New Jersey is also collecting more tax revenue than it projected, but where it's getting that revenue is more interesting than its total. Through March, the Garden State has collected \$4.2 million from in-person betting and \$13.9 million from online betting, even though online betting was not available during the first two months of legal sports gambling in the state. (The state collected another \$2 million from its 1.25 percent investment alternative tax on both in-person and online sports betting.) In February, New Jersey collected \$1.6 million in tax revenue from online operators even as in-person sportsbooks *lost* revenue. In March, the state collected six times more revenue from online operators than from in-person operators.

TABLE 4

New Jersey Sports Betting Tax Revenue



Month	In-person betting	Online betting
June	\$294,000	\$0
July	\$326,000	\$0
August	\$516,000	\$406,000
September	\$970,000	\$1,633,000
October	\$234,000	\$1,149,000
November	\$578,000	\$1,886,000
December	\$511,000	\$1,911,000
January	\$271,000	\$2,023,000
February	-\$6,000	\$1,668,000
March	\$522,000	\$3,180,000
Total	\$4,216,000	\$13,856,000

Source: New Jersey Division of Gaming Enforcement, Monthly Press Releases & Statistical Summaries, <https://www.nj.gov/lps/ge/pressreleases.html>.

Notes: Tax revenue does not include New Jersey's 1.25% tax on both in-person and online wagers. Numbers are rounded. Online sports gambling was not available in New Jersey in June and July.

Nevada was the only other state to provide widespread online sports betting through May 2019, but the state does not separate online wagers from in-person wagers in its gaming commission reports. Still, the evidence strongly suggests Nevada and New Jersey are collecting the most tax revenue from sports gambling because they allowed widespread online gambling and the other states did not.

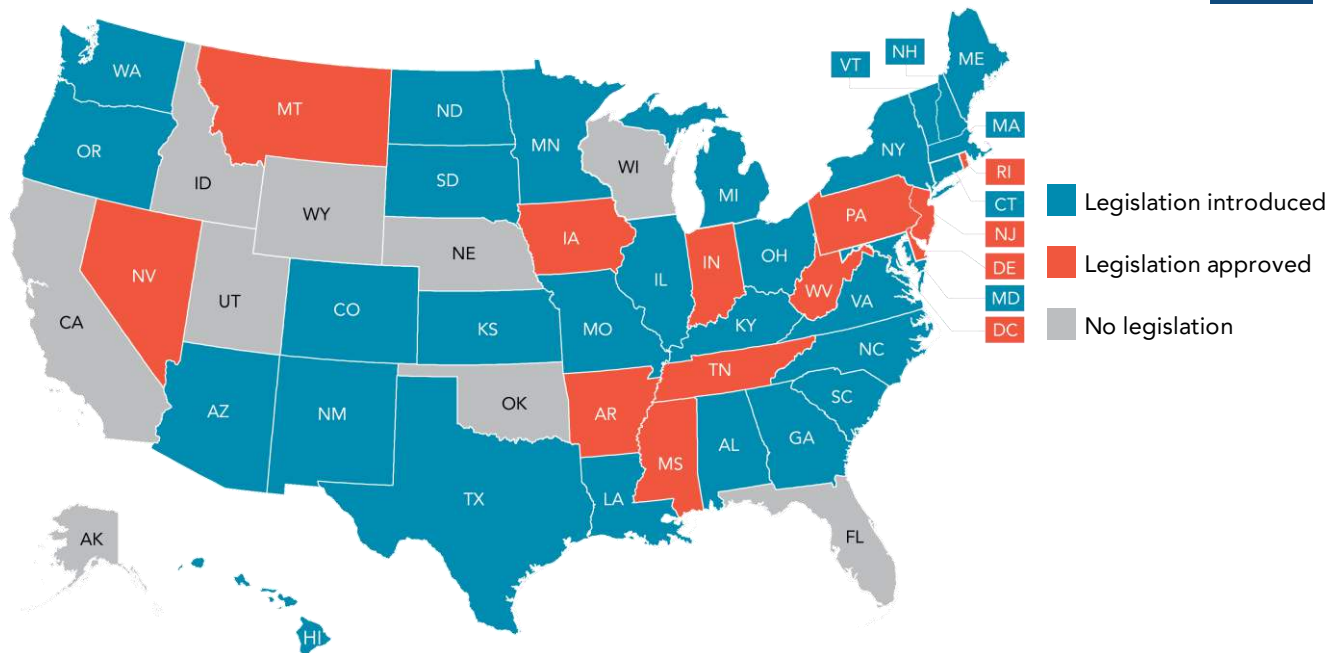
One outstanding question is how sports betting will affect other forms of state gaming revenue. Adding new forms of gambling can cannibalize existing gaming revenue. For example, a new casino often takes its customers (and state tax revenue) from older casinos in the state. Similarly, offering sports gambling could hypothetically reduce lottery ticket sales as players adjust their gambling habits. Tennessee’s fiscal note flags this possible revenue trade-off but concludes the fiscal impact “cannot be reasonably determined.”³⁰ However, many casinos offer sports betting specifically because it can *increase* other forms of gaming. That is, casinos use sports gambling (a low-margin business) to get customers in the door to play other (more profitable) games they otherwise would not play. Indiana’s fiscal note mentions this possibility but does not estimate how it might affect tax revenue.³¹

HOW MANY MORE STATES WILL GAMBLE ON SPORTS?

According to the pro-sports gambling website Legal Sports Report, 33 states introduced legislation to legalize sports gambling 2019.³² As of May, only Indiana, Iowa, Montana, and Tennessee had approved legislation legalizing sports betting. Why have only five states (including Arkansas) and the District of Columbia legalized sports betting following the Supreme Court’s decision (in addition to the seven that passed legislation before the ruling)? There are a few possible explanations.

FIGURE 1

State Sports Gambling Legislation, May 2019



Source: State websites and legislation; Legal Sports Report, "Legislative Tracker," accessed on May 9, 2019.

Notes: At the time of publication, the governor of Iowa had not yet acted on the legislation passed by the Iowa legislature. Tribal casinos in New Mexico are taking sports bets, but the state has not yet approved legal sports gambling. Alaska and Hawaii are not drawn to size.

In some states, procedural hurdles to legalization are simply time consuming. For example, Maryland's governor and legislative leaders all expressed support for legal sports gambling in 2019, but legalization requires a voter referendum, and the next election is in 2020.³³

Other states have seen strong opposition from Native American tribal organizations who fear legal sports gambling could spur the authorization of new casinos and eliminate their monopoly on casino-style gambling in some states. An Associated Press investigation reported that tribes helped derail legalization efforts in Arizona, Minnesota, Texas, and Washington, and they stopped sports betting legislation from being introduced in California, Florida, and Oklahoma.³⁴ However, tribes are pushing legalization in Connecticut and North Carolina, hoping sports betting will bring more customers into their casinos. Meanwhile, two tribal casinos are accepting sports bets in New Mexico even though the state has not yet authorized legal sports gambling.³⁵

And sizable public opposition to gambling persists in every state. As with all forms of gambling, sports betting carries some personal and societal costs, particularly costs related to gambling addiction. "This is my personal opinion: I do not support expansion of gambling because I think it's harmful to families," said Iowa Representative Steven Holt during his state's debate.³⁶ "I think the [sports gambling] legislation is pouring fuel on the addiction issues in our state," said Tennessee Representative Andy Holt.³⁷

But some form of gambling is already legal in every state except Hawaii and Utah, and many states have already embraced lotteries, casinos, slot machines, and several other forms of legal gambling. As such, most states have already decided to support legal gambling. Indeed, both the Iowa and Tennessee House of Representatives overwhelmingly approved legal sports legislation despite objections.

CONCLUSION: WHAT STATES SHOULD CONSIDER BEFORE LEGALIZING AND TAXING SPORTS BETTING

As states continue debating sports betting legislation, policymakers should draw on three lessons from the first year of widespread legal sports betting in the US:

1. **States should be cautious with their tax rates on sports gambling.** It's too early to tell how tax rates affect gamblers' decisions to bet legally. Rhode Island has not collected much tax revenue with its high tax rate, but Delaware and Pennsylvania have collected roughly what their states projected under similarly high rates. However, gamblers may increasingly make decisions on where to gamble legally as more states approve sports betting and begin to compete on tax rates.
2. **States can collect millions of dollars in tax revenue from legal sports betting, but that tax revenue will always be relatively small and volatile.** Nevada and New Jersey, and to a lesser extent Delaware and Pennsylvania, are all collecting millions of dollars in tax revenue from sports betting that they can put toward public services. But even in these states, the revenue is relatively minor compared to lotteries

and other taxes. As such, politicians should not overpromise what the revenue will do for state budgets, and legislators absolutely should not make critical spending programs dependent on that revenue.

3. **If states want to increase tax revenue from sports betting, they should allow online wagers.** As New Jersey demonstrated, allowing mobile sports betting in addition to in-person betting can exponentially increase tax revenue from sports gambling. Nevada and New Jersey were the only states to collect over \$20 million in tax revenue over the past year from sports betting, and they are also the only states that offered online wagering throughout their states. But increasing the accessibility of gambling also exacerbates its related problems. Policymakers should fully understand that by offering mobile gambling, they are increasing their state's revenue because more of their constituents are betting and losing money on sports wagers.

As with sports betting itself, it's fine for states to play as long as they know what they are doing and do not wager too much on the expectation of big returns.

APPENDIX A. SPORTS GAMBLING STARTS, LEGISLATION, AND REGULATION

ARKANSAS: IN PROGRESS

Arkansas voters approved Issue 4 in the November 2018 election. Supporting the initiative authorized four new casinos in Arkansas (the first allowed in the state) and sports gambling was included among the newly legalized casino games.³⁸

Sports betting in Arkansas is regulated by the Arkansas Racing Commission. All sports wagers must be placed in person at a casino or a racetrack (which also offer some games). Online sports wagers are not allowed.

DELAWARE: JUNE 2018

Delaware enacted House Bill 100 in 2009.³⁹ The legislation authorized widespread sports betting but did so by “reestablish[ing] a sports lottery.” That was a reference to a lottery-style game, where gamblers placed parlay bets on NFL games, that the state offered briefly in 1976. The PASPA ban on sports betting included an exemption for Delaware and three other states that allowed them to offer games that were legal in those states between 1976 and 1990. Delaware claimed its exemption for a sports lottery allowed it to offer all types of sports betting.

But the MLB, NBA, NFL, NHL, and NCAA challenged Delaware’s law, arguing PASPA only allowed betting in Delaware “to the extent that scheme was conducted by the state” between 1976 and 1990. In *Office of the Commissioner of Baseball, et al v. Jack Markell, et al*, a federal court agreed with the leagues that Delaware’s allowance of all types of sports betting violated federal law. Delaware was therefore only allowed to offer lottery-style football parlay games similar to those available in 1976.

But the 2009 law remained in Delaware’s statute, so when the Supreme Court overturned the PASPA, Delaware’s Department of Finance and Attorney General’s Office determined there were no legal obstacles to all forms of legal sports gambling approved in that legislation.⁴⁰ Thus, the state began offering legal sports betting without further legislation.

Sports betting in Delaware is regulated by Delaware State Lottery Office.⁴¹ However, sports betting is only offered at the state’s casinos. Delaware does not offer online sports gambling.

DISTRICT OF COLUMBIA: IN PROGRESS

The District of Columbia passed B22-0944 in December 2018.⁴² As with all legislation in the District of Columbia, the bill must also be approved by Congress. The District of Columbia hopes the bill will officially become law in May 2019 and vendors will begin taking sports bets in the fall.

Sports betting in the District of Columbia will be regulated by OLG. OLG will both issue licenses to private operators and operate its own sports wagering operation.

Two types of private operators facilitate legal sports gambling in the District:

- **Class A:** Private facilities located at Capital One Arena, Audi Field, Nationals Park, and St. Elizabeth's East Entertainment and Sports Arena (all professional sports facilities in the District). No other private operators are allowed within a two-block radius of Class A operators.
- **Class B:** All other private operators, most likely operating in bars and restaurants.

OLG will also operate in-person gambling at DC Lottery locations and operate an online sports gambling app in the District. Although private operators can offer a mobile sports betting apps within their establishments, OLG will be the only permissible online sports betting option in the city outside of those establishments.

INDIANA: IN PROGRESS

Indiana enacted House Bill 1015 in May 2019.⁴³ The bill made several legislative changes to Indiana's gambling laws, including authorizing a new casino, allowing table games at racetrack casinos, and establishing legal sports betting.

Sports betting will be regulated by the Indiana Gaming Commission. The state will permit both in-person sports wagers at casinos, racetrack casinos, and riverboat casinos, and allow mobile betting throughout the state.

IOWA: IN PROGRESS

Iowa enacted Senate File 617 in May 2019.⁴⁴

Sports betting in Iowa will be regulated by Iowa Racing and Gaming Commission. The state will permit both in-person betting at its casinos and online betting throughout the state (after gamblers register an account at a casino).

MISSISSIPPI: AUGUST 2018

Mississippi enacted HB 967 in June 2017 to regulate fantasy sports operators in the state.⁴⁵ However, while not the intent of the legislation, the language legalized sports betting in Mississippi if and when the federal ban was lifted.⁴⁶ Despite the confusion, after the PASPA was overturned, the state decided to proceed with legal sports betting.

Sports betting in Mississippi is regulated by the Mississippi Gaming Commission. The commission restricts sports betting to the state's casinos. Mobile sports betting is allowed within the casinos but is otherwise banned in the state. New legislation to allow online sports betting throughout the state failed in 2019.⁴⁷

MONTANA: IN PROGRESS

Montana approved widespread legal sports betting with HB 725 in May 2019.⁴⁸

The Montana State Lottery will regulate and operate sports betting in the state. Sports betting will only be permitted in establishments that hold a gambling operator license for video gambling machines (specifically, bars and taverns). Online gambling is only allowed within these establishments.

NEVADA: 1931

Casino-style gambling games has been legal in Nevada since 1931. Additional legislation specifically approving sports wagering was passed in 1949.⁴⁹

Sports betting in Nevada is regulated by the Nevada Gaming Control Board. Gamblers can place bets at casinos and through mobile betting apps within the state.

NEW JERSEY: JUNE 2018

New Jersey officially legalized and established sports gambling with Assembly Bill 4111 in June 2018.⁵⁰ In 2011, the state's voters approved an amendment to the state's constitution (Public Question 1) that authorized the legislature to allow sports gambling.⁵¹ The legislature passed legislation establishing state-regulated sports betting that same year (Senate Bill 3113),⁵² but it was overturned by federal courts citing the PASPA. In 2014, the legislature repealed the state's ban on sports gambling *without* any state regulation of sports betting (Senate Bill 2460),⁵³ knowing that without state regulation of sports betting, the legislation could get past the objections of lower courts and thus trigger a constitutional debate over the federal ban in the Supreme Court. Indeed, this legislation eventually led to *Murphy v. National Collegiate Athletic Association*. When the Supreme Court overturned the PASPA in 2018, the state then enacted Assembly Bill 4111 to establish its tax and regulatory systems.

Sports betting in New Jersey is regulated by the New Jersey Division of Gaming Enforcement, which operates under the Office of Attorney General.⁵⁴ All operators in New Jersey are private and must operate at a casino or racetrack (including former racetracks). Wagers can be placed in person or through mobile betting apps, but all licensed online operators must maintain a physical sports betting lounge where gamblers can establish their online accounts.

PENNSYLVANIA: NOVEMBER 2018

Pennsylvania enacted House Bill 271 in October 2017.⁵⁵ Although the legislation mostly concerned fantasy sport games, it also gave the Pennsylvania Gaming Control Board the authority to establish legal sports wagering if and when federal law changed. The legislation also created tax rates and licensing fee amounts.

Sports betting in Pennsylvania is regulated by the Pennsylvania Gaming Control Board.⁵⁶ The state currently only offers in-person betting at casinos and racetracks, but the law permits online wagering. Operators are expected to begin offering online sports betting apps in the summer of 2019.

RHODE ISLAND: NOVEMBER 2018

Rhode Island approved legal sports betting in June 2018 as part of its fiscal year 2019 budget.⁵⁷

Sports betting in Rhode Island is regulated by the Gaming and Athletics division of the Department of Business Regulation.⁵⁸ The state originally only allowed in-person betting at its two casinos but authorized online betting after approving Senate Bill 37 in January 2019.⁵⁹ Gamblers will still have to register a mobile account at a Rhode Island casinos.

TENNESSEE: IN PROGRESS

The Tennessee legislature passed HB 1 (SB 16) in April 2019,⁶⁰ and the governor agreed to let the bill to become law without his signature.⁶¹ The law requires that local governments also authorize sports betting through a referendum before operators can open sportsbooks in their jurisdictions.

The legislation created the Tennessee Education Lottery Corporate Sports Wagering Advisory Council, which will regulate sports gambling in Tennessee. The law only permits online sports betting, and gamblers will be able to create accounts remotely.

WEST VIRGINIA: SEPTEMBER 2018

West Virginia enacted SB 415 in March 2018.⁶² The state's legislation was contingent on the Supreme Court overturning the PASPA that summer.

Sports betting in West Virginia is regulated by the West Virginia Lottery.⁶³ In-person betting is restricted to racetracks and casinos operating when the bill was enacted (plus one resort hotel singled out in the legislation). The law allows for online sports betting in West Virginia through partnerships with the casinos, but none of the casinos currently offer a mobile betting app.

APPENDIX B. SPORTS GAMING REVENUE ESTIMATES

ARKANSAS

Arkansas has not published an estimate specifically for sports gaming revenue. Revenue from sports gambling was not broken out of revenue estimates for the overall expansion of casino gaming following the November 2018 ballot initiative.

DELAWARE

Delaware has not published an estimate specifically for sports gaming revenue. A media article from June 2018 reported the state expected to collect about \$5 million a year in tax revenue.⁶⁴ In the June 18, 2018, meeting minutes of the Delaware Economic & Financial Advisory Council, Secretary of Finance Rick Geisenberger noted the estimate for lottery revenue was not changed after the Supreme Court decision because “lower margins do not warrant an increase for the moment.”⁶⁵

DISTRICT OF COLUMBIA

A memorandum on Bill 22-944 from Chief Financial Officer Jeffrey S. DeWitt concluded taxes on sports wagering would bring in \$7.7 million in fiscal year 2019 (assuming betting began in July 2019) and \$26.0 million in fiscal year 2020.⁶⁶ Over the four-year period analyzed, the memorandum estimated \$91.7 million from taxes on sports wagering—\$7.6 million from private operators and \$84.1 million from the OLG.

INDIANA

The fiscal impact statement from House Bill 1015 projected tax revenue from sports gambling to range from \$3.4 million to 20.3 million.⁶⁷ The lower-bound estimate was based on gaming receipts in Nevada; the upper-bound estimate was based on estimates of total US legal and illegal sports gambling and Indiana’s share of US personal income.

IOWAS

A fiscal note attached to Senate File 617 presented five projections for tax revenue from sports betting, ranging from \$629,588 to \$1,888,763.⁶⁸ Each estimate assumed a 6.75 percent tax rate, but the estimates for the percentage of Iowans participating in sports gambling ranged from 5 percent to 15 percent.

MISSISSIPPI

Mississippi did not publish an estimate for sports gaming tax revenue after the Supreme Court decision and does not break out sports gaming tax revenue from its overall gaming tax revenue estimates. A media article in July 2018 reported the state projected “less than \$10 million a year in state tax revenue.”⁶⁹ A media article in April 2019 reported the state’s “informal” estimated was \$5 million.⁷⁰

MONTANA

The fiscal note for House Bill 725 projected \$3,766,250 in net revenue (gaming revenue minus expenses) in fiscal year 2020. The analysis estimated government revenue (and wagers) would increase every year and Montana would collect \$5,368,950 in fiscal year 2023.”⁷¹

NEVADA

Nevada does not publish estimates of sports gambling tax revenue.

NEW JERSEY

The Assembly Appropriations Committee Statement to Assembly, No. 4111, reported, “The estimated State tax revenues that could be generated from sports betting are projected to range between \$12 million and \$17 million in the first full year of operation.”⁷²

PENNSYLVANIA

Pennsylvania did not include a revenue estimate for sports betting in the fiscal note for House Bill 271 because legal sports betting was dependent on a change in federal law. In July 2018, after the Supreme Court decision, the Pennsylvania Independent Fiscal Office estimated sports gambling would add \$30 million to state revenue in fiscal year 2019 (Pennsylvania Independent Fiscal Office 2018). All of that revenue was expected from one-time license fees (\$10 million per license). In January 2019, in the midyear revenue estimate, the Independent Fiscal Office increased its estimate to \$75 million in fiscal year 2019 (Pennsylvania Independent Fiscal Office 2019). This estimate included \$70 million from license fees and \$5 million from taxes. In the same report, the fiscal year 2020 estimate was for \$28 million from taxes and \$0 from license fees.

RHODE ISLAND

The governor's fiscal year 2019 budget included \$23.5 million in revenue from sports betting—even though PASPA was still in effect at that time.⁷³ The fiscal year 2020 budget includes \$30 million in revenue from sports wagering, including \$3 million in recently approved online sports betting (Rhode Island Senate 2018).

TENNESSEE

A fiscal note attached to House Bill 1—Senate Bill 16 projected the state would collect \$52,025,000 in revenue in fiscal year 2021.⁷⁴ The study did not attempt to guess which Tennessee localities would and would not authorize sports betting; it assumed all local jurisdictions in Tennessee would approve referendums for its statewide estimate.

WEST VIRGINIA

A fiscal note attached to Senate Bill 415 estimated the state would collect \$5 million in tax revenue and \$500,000 in license fees in the first full year of legal sports gambling.⁷⁵

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