

WAGERING ON WISDOM: THE IMPACT OF SPORTS GAMBLING LEGALIZATION ON THE ECONOMIC WELL-BEING OF THE ELDERLY

Diego Nevares

*The legalization of sports gambling in the United States, catalyzed by the Supreme Court's 2018 decision in *Murphy v. NCAA*, has ignited a multi-billion-dollar industry with widespread participation. However, this expansion has largely overlooked a critical demographic—the elderly—who may be uniquely vulnerable to the financial, social, and health risks posed by sports gambling.*

This Note examines the intersection of sports gambling regulation and the well-being of the elderly, highlighting the gaps in state regulatory frameworks that fail to address the specific needs of the elderly population. By analyzing the historical and current state of sports betting regulation, this Note exposes how the lack of uniform safeguards enables predatory practices that disproportionately affect elderly individuals, many of whom rely on fixed incomes and face cognitive or technological challenges. Finally, this Note proposes a model regulatory scheme aimed at mitigating these risks through targeted consumer protection measures, enhanced marketing restrictions, and stronger self-exclusion programs. It argues for a more robust federal role in overseeing sports betting regulations, ensuring the economic and social well-being of older adults in the rapidly evolving sports gambling landscape.

Diego Nevares, Administrative Editor 2024–2025, *The Elder Law Journal*; J.D. 2025, University of Illinois College of Law; B.A. 2020, Business Administration—Legal Studies of Business, Ethics, and Business Law, University of Saint Thomas. Thank you to the editors, members, and staff of *The Elder Law Journal* for their hard work on this Note. I dedicate this Note to my grandmother, LaVerne Johnson, for her love and support throughout my life.

I. Introduction

Sports and athletics are a unique aspect of human history that has captivated audiences for over three thousand years.¹ From the arenas of ancient Greece at the first Olympic Games in 776 BC to modern mega-events such as the National Football League's Superbowl, sports have been one of the most enduring human phenomena with profound cultural and economic impacts.² As quickly as sports became an established feature of society, sports betting, which involves placing a wager on the outcome of a sporting event, similarly followed.³

In the United States, the issue of sports betting entered the national consciousness following the 1991 Dowd Report. The report described the transgressions of then-Cincinnati Reds Manager Pete Rose, including his betting on baseball games.⁴ This revelation prompted widespread concern, culminating in the Professional and Amateur Sports Protection Act of 1992, effectively banning sports betting in nearly all U.S. states.⁵ However, the landscape of sports betting experienced a dramatic shift when the United States Supreme Court decided *Murphy v. Nat'l Collegiate Athletic Ass'n (NCAA)*, which overturned PASPA.⁶

Murphy v. NCAA allows states to decide whether to legalize the industry and to implement their policies and legislation to regulate sports betting within their borders.⁷ Since the 2018 Supreme Court

1. Mary Bellis, *A Brief History of Sports*, THOUGHTCO. (June 7, 2024), <https://www.thoughtco.com/history-of-sports-1992447> [perma.cc/6JAK-R7GY].

2. See *id.*; *The Importance of Sports in Society*, ARK. STATE UNIV. (May 7, 2020), <https://degree.astate.edu/online-programs/business/master-of-science-sports-administration/the-importance-of-sports-in-society/> [perma.cc/XM7L-VTCX]; Robert Fleeger, *The History of the Super Bowl*, ORG. OF AM. HISTORIANS, <https://www.oah.org/tah/extras/the-history-of-the-super-bowl/> [perma.cc/8WUW-96KF] (last visited Sept. 10, 2024).

3. See Katarina Vojvodic, *Rough Guide to History of Gambling: From Ancient Origins to Online Casinos*, ASKGAMBLERS (June 23, 2022), <https://www.askgamblers.com/gambling-news/blog/history-of-gambling> [perma.cc/9J38-9SHY].

4. Richard Janvrin, *PASPA Supreme Court Decision: Everything You Need to Know*, WSN, <https://www.wsn.com/sports-betting-usa/paspa/> [perma.cc/J9GZ-7LZB] (last visited Sept. 10, 2024).

5. Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. § 178.

6. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 486 (2018).

7. See Ward Williams, *Sports Betting Laws by State*, INVESTOPEDIA (Feb. 12, 2024), <https://www.investopedia.com/sports-betting-laws-by-state-5219064> [perma.cc/4TCF-G335].

decision, sports betting has been legalized in over thirty states⁸ and has grown exponentially, with the online sports betting market projected to reach \$9.65 billion in 2024.⁹ The industry shows no signs of slowing down.¹⁰ In fact, the industry revenue is projected to grow annually at 13.03%, leading to a projected \$15.75 billion market by 2028.¹¹ Despite the increasing popularity and user participation in the industry, primarily due to sports gambling companies now being able to legally operate throughout the United States, no federal regulations have been passed to regulate the industry.¹²

Without an established regulatory model or federal regulation to use as guideposts, the *Murphy v. NCAA* decision prompts state-by-state legislation of the sports betting industry. The resulting legislation has led to diverging regulatory schemes.¹³ They range from general oversight to minimal intervention, creating a patchwork of regulations that vary widely in terms of consumer protection, tax rates, and operational restrictions for sports betting entities across the United States.¹⁴ While state regulation may have beneficial features, such as the prevention of underage gambling and the requirement of voluntary self-exclusion programs, it lacks basic protections, such as gambling prevention and treatment programs, for especially vulnerable populations like the elderly.¹⁵

8. See Chris Bengel & Shanna McCarriston, *U.S. Sports Betting: Here is Where All 50 States Currently Stand on Legalizing Online Sports Betting Sites*, CBS (Oct. 13, 2023), <https://www.cbssports.com/general/news/u-s-sports-betting-heres-where-all-50-states-currently-stand-on-legalizing-online-sports-betting-sites/> [<https://perma.cc/AJ2S-FNSL>].

9. *Online Sports Betting—United States*, STATISTA, <https://www.statista.com/outlook/dmo/eservices/online-gambling/online-sports-betting/united-states> [perma.cc/HE5S-R2TB] (last visited Sept. 10, 2024).

10. See *id.*

11. *Id.*

12. See Williams, *supra* note 7.

13. Patrick Moran, *Anyone's Game: Sports-Betting Regulations After Murphy v. NCAA*, CATO INST. (Mar. 11, 2019), <https://www.cato.org/legal-policy-bulletin/anyones-game-sports-betting-regulations-after-murphy-v-ncaa> [perma.cc/Z3GC-JA88].

14. See Bengel & McCarriston, *supra* note 8; Moran, *supra* note 13.

15. See Kate Jackson, *Sports Gambling: Increasing Older Adults Vulnerability to Gambling*, TODAY'S GERIATRIC MED., https://www.todaygeriatricmedicine.com/news/ex_030620.shtml [perma.cc/HAD5-GXYD] (last visited Sept. 10, 2024); see also *Responsible Gambling Resources for Sports Betting*, NAT'L COUNCIL ON PROBLEM GAMBLING, <https://www.ncpgambling.org/responsible-gambling/safer-sports-betting/> [perma.cc/6VM7-VVUS] (last visited Sept. 10, 2024); see also *Responsible Gaming Regulations and Statutes Guide*, AM. GAMING ASS'N (Sept. 1, 2022), <https://www.americangaming.org/resources/responsible-gaming-regulations-and-statutes-guide/>

When states enact gambling laws, the elderly are often overlooked due to the presupposition that older adults are not affected by the deleterious effects of sports gambling, such as social isolation, financial loss, and addiction.¹⁶ The financial losses endured by the elderly from sports betting are particularly problematic due to the effect they may have on elderly individuals who often support themselves through a fixed income.¹⁷

The purpose of this Note is to address the lack of regulatory protections for the elderly at the federal and state level and to provide a model regulatory scheme to address this lack of protection.¹⁸ Part II explores the history of sports gambling and the regulation of the industry in the United States.¹⁹ Additionally, Part II examines the various rationales behind the implementation of regulations and decisions to repeal certain regulations over time.²⁰ It further discusses the current state of sports betting regulation within the United States, specifically focusing on *Murphy v. NCAA* and its effect on state sports betting legislation.²¹ This Part will also provide a brief examination of the elderly's relationship with money and the various factors that have historically led to their financial vulnerability.²²

Part III considers inconsistencies between state regulations of the sports betting industry²³ and how they open the door to sports betting companies to target vulnerable populations.²⁴ Additionally, it discusses the insufficient regulatory safeguards for the elderly resulting from the lack of uniform legislation across states.²⁵

Part IV provides a variety of proposed federal and state regulations that can be used as a model for state legislators to address the gaps

[<https://perma.cc/8YSY-Q9TB>] [hereinafter *Gaming Guide*] (defining "self-exclusion").

16. See Morgane Guillou Landreat, Jennyfer Cholet, Marie Grall Bronnec, Sophie Lalande, & Jean Yves Le Rest, *Determinants of Gambling Disorders in Elderly People—A Systematic Review*, 10 FRONTIERS PSYCHIATRY (Nov. 25, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6886010/> [<https://perma.cc/XX2Y-4NY6>]; see also Jackson, *supra* note 15.

17. Erika Gosker, *The Marketing of Gambling to the Elderly*, 7 ELDER L.J. 185, 195 (1999).

18. See *infra* Part V and accompanying text.

19. See *infra* Section II.A.

20. See *infra* Sections II.A.2-3.

21. See *infra* Section II.A.4.

22. See *infra* Section II.D.

23. See *infra* Part III.

24. See *infra* Part III.

25. See *infra* Part III.

and lack of protection in current sports betting legislation.²⁶ Part V concludes that both federal and state regulatory laws must change to address the lack of regulatory protections for the elderly.²⁷

II. Background

Historically, the regulation of sports betting in the United States has extended beyond combating illegal conduct within the industry itself; the ebb and flow of regulation of the industry has also been influenced by social and economic factors.²⁸

A. The History of Sports Betting and its Regulation in The United States

1. THE ORIGINS OF SPORTS BETTING

Gambling began as a way to communicate with the divine.²⁹ By throwing marked sticks and various objects, then interpreting their landing patterns, people sought insights into the future and the will of deities.³⁰ This practice quickly evolved into wagering on the results of these throws.³¹ Gambling rapidly moved from games of chance to the sports arena.³² In ancient Greece, gladiatorial contests and the first Olympics not only served as a major form of public spectacle, but also became a bustling hub for sports betting.³³ The 18th century witnessed the formalization of sports betting, especially in horse racing, which swiftly gained popularity due to its high stakes, adrenaline-fueled competition.³⁴

Since the 18th century, sports betting has continued to grow in popularity.³⁵ With the advent of online gambling and sports betting, the industry has seen a significant and exponential rise in popularity across all age groups and demographics.³⁶ Experts speculate that the first

26. See *infra* Part IV.

27. See *infra* Part V.

28. See *infra* Section II.A.3.

29. Vojvodic, *supra* note 3.

30. *Id.*

31. *Id.*

32. See Kiko Badillo, *History of Sports Betting*, PLAY TODAY CO. (Mar. 6, 2024), <https://playtoday.co/blog/history-of-sports-betting/> [perma.cc/7UAY-Y8BN].

33. *Id.*

34. See *id.*

35. *Id.*

36. See Vojvodic, *supra* note 3.

online casino emerged in 1994.³⁷ Following this, the industry quickly moved to gambling on mobile phones and gaming devices.³⁸ When game developers designed a mobile specific casino software in 2005, the gambling industry saw significant increases in use and the foundation was laid for the industry's online presence.³⁹ In the post *Murphy v. NCAA* environment, the legalization of the activity and the expansive online platforms that support the sports betting industry have made sports betting more accessible than ever, allowing for a wider range of audiences to participate.⁴⁰ This ease of access has been a key factor in attracting sports fans who might have previously been deterred by the legality issues, or the inconvenience of betting through unofficial channels.⁴¹ Revenue figures indicate a consistent rise in popularity, underscoring the growing appeal of this form of wagering.⁴²

2. A HISTORY OF SPORTS BETTING IN THE UNITED STATES

Until recently, the United States has been apprehensive in embracing legalized sports betting.⁴³ Sports betting is a form of gambling where participants place wagers on the outcome of sporting events.⁴⁴ Sports betting is a popular form of entertainment worldwide, and it can encompass a wide range of sports, including soccer, American football, basketball, baseball, hockey, horse racing, and more.⁴⁵

Sports betting has fallen in and out of favor with the general populace throughout the history of the United States.⁴⁶ The current hot-

37. See generally *The Evolution of Gambling*, SMITHFIELD TIMES (Nov. 8, 2022, 11:03 AM), <https://www.smithfieldtimes.com/2022/11/08/the-evolution-of-gambling/> [perma.cc/5VSJ-B7R9].

38. *Id.*

39. *Id.*

40. Ty Stapleton, *The Evolution of Sports Betting*, COFC EXPLAINED (May 2, 2022), <https://www.cofcexplained.com/post/the-evolution-of-sports-betting> [perma.cc/ED2G-H4MF].

41. See *Online Sports Betting Rules and Regulations in the USA: An Overview*, BARRETT MEDIA (Aug. 3, 2022), <https://barrettsportsmedia.com/2022/08/03/online-sports-betting-rules-and-regulations-in-the-usa-an-overview/> [perma.cc/TMW4-25ZG].

42. Stapleton, *supra* note 40.

43. See *The History of Sports Betting in the USA*, BORGATA ONLINE (May 17, 2023), <https://sports.borgataonline.com/en/blog/history-of-sports-betting-in-the-usa/> [perma.cc/NXF3-LPDP].

44. 31 U.S.C. § 5362; see Devon Plantana & Brian Pempus, *How Does Sports Betting Work?*, FORBES (June 26, 2023), <https://www.forbes.com/betting/guide/how-does-sports-betting-work/> [https://perma.cc/4CH9-FC6N].

45. See Stapleton, *supra* note 40.

46. *The History of Sports Betting in the USA*, *supra* note 43.

button issues stemming from sports betting greatly differ from the worries of those in the 1860s who sought to prohibit the activity within the United States.⁴⁷ In the decades leading up to the 1860s, gambling was commonly associated with corruption and economic downturn.⁴⁸ Society during this period saw gambling as an activity that led to social decay, with concerns over rigged games, swindling, and the exploitation of the vulnerable.⁴⁹ These concerns were compounded by economic downturns, where gambling was often blamed for exacerbating financial instability.⁵⁰ In response, the federal government banned most forms of gambling to mitigate these issues.⁵¹ However, these “federal laws were weak because in the 1840s, 1850s and 1860s, it was widely believed that the federal government did not have much power.”⁵²

While the general view of gambling did not significantly change throughout the 1860s and 1870s, horse racing remained legal; it was considered an activity for the elite and not within the same category as other forms of betting and gambling.⁵³ This trend continued into the 1890s, by which time more than 300 horse racing tracks had been built across the United States.⁵⁴ While horse race betting was still reserved for the elites, the rapid popularization and spread of the sport is seen as a reflection of America’s more favorable attitudes toward gambling and sports betting.⁵⁵ However, this trend did not last; by 1910, almost all forms of gambling and sports betting, including horse racing, were banned at the state level.⁵⁶ The dramatic decline in the number of horse racing tracks in the United States, from over 300 to just twenty-eight by 1911, vividly illustrates the prevailing negative attitudes toward the

47. *See id.*

48. Aaron Gray, *The History of Sports Betting Legislation in the USA (Part 1)*, SBD (Nov. 23, 2020), <https://www.sportsbettingdime.com/guides/legal/sports-betting-history-part-i/> [https://perma.cc/8R3K-FWU9].

49. *Id.*

50. *Id.*

51. *The History of Sports Betting in the USA*, *supra* note 43.

52. I. Nelson Rose, *Gambling and the Law: The Third Wave of Legal Gambling*, 17 VILL. SPORTS & ENT. L.J. 361, 370 (2010).

53. *The History of Sports Betting in the USA*, *supra* note 43.

54. *Id.*

55. *Id.*

56. I. Nelson Rose, *Gambling and the Law: Pivotal Dates*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/gamble/etc/cron.html> [https://perma.cc/MVV9-EA67] (last visited Sept. 10, 2024); *History of Steeplechase*, NAT’L STEEPLECHASE MUSEUM, <https://steeplechasemuseum.org/history/> [https://perma.cc/PM48-YPRD] (last visited Sept. 10, 2024); *see The History of Sports Betting in the USA*, *supra* note 43.

betting industry during this period.⁵⁷ This reduction highlights the societal stigma surrounding sports betting and reflects the broader apprehension about betting practices at the time.⁵⁸ Sports betting in the United States continued to face negative perceptions. It reached its zenith of disapproval in 1919, primarily due to the infamous Black Sox Scandal, where eight members of the Chicago White Sox intentionally lost the World Series to the Cincinnati Reds after being “incentivized to do so by noted mobster Arnold Rothstein’s sports betting syndicate.”⁵⁹

Following this scandal, there was yet another surge of anti-gambling sentiment, rooted in moral objections and a widespread aversion to gambling activities.⁶⁰ In response, states enacted legislation aimed at curbing gambling, which paradoxically pushed sports betting further into the shadows, reflecting the dynamic interplay between societal attitudes towards gambling and regulatory responses.⁶¹

3. ATTEMPTS TO REGULATE THE SPORTS BETTING INDUSTRY

During periods of state and federal bans on sports betting throughout the 20th century, it was still accessible to the public through the use of sportsbooks operating outside of the law.⁶² When operated fairly, illegal sportsbooks, often referred to as “bookies,” would secure monetary compensation by calculating the odds that a certain event will occur within a sporting event.⁶³ Some of these illegal sportsbooks became so prominent that they employed teams of statisticians and developed complex data models to predict outcomes.⁶⁴ Additionally, some groups of illegal sportsbooks “established a national organization of expert observers who transmit their odds through a network of clearinghouses to individual bookmakers.”⁶⁵ Before the internet, these operations were primarily run in person, in venues ranging from street

57. Gray, *supra* note 48.

58. *Id.*

59. *Id.*

60. Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, SPORTSHANDLE (Nov. 13, 2017), <https://sportshandle.com/gambling-laws-legislation-united-states-history/> [https://perma.cc/7BHK-XS7G].

61. *Id.*

62. James Chen, Bookie: Definition, Meaning, Duties, How They Make Money, and Fee, INVESTOPEdia (Aug. 20, 2024), <https://www.investopedia.com/terms/b/bookie.asp>. [https://perma.cc/5XTK-QFYQ].

63. *Id.*

64. *Id.*

65. *Bookmaking*, BRITANNICA, <https://www.britannica.com/topic/bookmaking-gambling> [https://perma.cc/F97N-4B84] (last visited Sept. 10, 2024).

corners to private establishments.⁶⁶ Although some illegal sportsbooks operated ethically towards their patrons, it was common for these entities to be entangled with other forms of criminal activities.⁶⁷

Illegal sportsbooks were unregulated, and in doing so, were commonly associated with a myriad of illicit activities, including loan sharking and money laundering.⁶⁸ These unauthorized operations lacked the regulatory oversight of legal betting establishments, leading to concerns over rigged outcomes, no consumer protections being in place, no legal recourse for bettors, and no transparency or integrity in the betting process.⁶⁹ This environment was ripe for exploitation by criminal elements, which could have manipulated outcomes or defrauded bettors with relative impunity.⁷⁰ The cash-intensive nature of these operations also made them ideal for money laundering, wherein illicit funds from other criminal activities could have co-mingled with gambling revenues to obscure their origin.⁷¹

In the mid-20th century, former U.S. Attorney General Robert F. Kennedy prompted Congress to pass numerous bills to quash these illegal sports betting operations due to the proliferation of illegal sportsbooks and common corruption.⁷² These bills included the Federal Wire Act of 1961, the Travel Act of 1961, and the Interstate Transportation of Paraphernalia Act of 1961.⁷³

66. See UNODC, GLOBAL REPORT ON CORRUPTION IN SPORT ILLEGAL BETTING IN SPORT 23 (2021), https://www.unodc.org/res/safeguardingsport/grcs/section-9_html/SPORTS_CORRUPTION_2021_S9.pdf [<https://perma.cc/V7UZ-GY96>] [hereinafter UNODC]; Jay Albanese, *Race, Police, and the History of Urban Gambling*, RUTGERS (Nov. 2020) <https://cljbooks.rutgers.edu/books/running-the-numbers-race-police-and-the-history-of-urban-gambling/> [<https://perma.cc/CW2W-G9CE>].

67. UNODC, *supra* note 66, at 25.

68. See, e.g., *Illegal Sports Betting*, AM. GAMING ASS'N (May 31, 2022), <https://www.americangaming.org/illegal-sports-betting/> [<https://perma.cc/E9MN-HAQU>] (demonstrating past prosecutions of crime families committing similar acts).

69. See *Stop Illegal Gambling*, AM. GAMING ASS'N, <https://www.americangaming.org/stop-illegal-gambling/> [<https://perma.cc/ZTH3-GSHM>] (last visited Sept. 10, 2024); Larry Henry, *Blowing the Whistle on Mob-Connected Sports Betting*, MOB MUSEUM (Nov. 30, 2020), <https://themobmuseum.org/blog/blowing-the-whistle-on-mob-connected-sports-betting/> [<https://perma.cc/ZZ5S-BZM5>]; Zak Thomas-Akoo, *Tip of the Iceberg: Tackling Illegal Gambling*, IGB (Feb. 27, 2023), <https://igamingbusiness.com/legal-compliance/tip-of-the-iceberg-tackling-illegal-gambling/> [<https://perma.cc/8TR8-FSLK>].

70. See *id.*

71. *Sports Betting and Financial Crime*, ACGCS, <https://www.acgcs.org/articles/sports-betting-and-financial-crime> [<https://perma.cc/7AZE-6MDD>] (last visited Sept. 10, 2024).

72. See 18 U.S.C. § 1084; 18 U.S.C. § 1952; 18 U.S.C. § 1953.

73. See *id.*

The Federal Wire Act of 1961 (Wire Act) was primarily aimed at combating organized crime by targeting illegal gambling operations.⁷⁴ It prohibits the use of wire communications (such as telephones or telegrams) for the purpose of betting or wagering on any sporting event or contest.⁷⁵ The Wire Act was later interpreted to include forms of internet gambling, making it a key piece of legislation in the regulation of online betting and gaming.⁷⁶ However, post *Murphy v. NCAA*, the Supreme Court's decision complicated the Wire Act's applicability.⁷⁷ While individual states now have the authority to permit sports betting within their borders, the Wire Act imposes strict prohibitions on interstate sports wagering that utilizes wire communications, such as telephones or the internet.⁷⁸ Businesses operating within the sports betting industry may not "(1) accept or transmit an interstate sports wager via phone or internet or (2) transmit winnings on a sports wager via wire or electronic payment across state lines. [However,] [s]ports betting businesses may transmit sports wagering information between two jurisdictions where sports wagering is legal."⁷⁹ Nonetheless, this does not permit actual wagering or the remittance of funds from winning bets across state lines.⁸⁰ It is within these legal confines that sports betting businesses must navigate, ensuring compliance while operating within the territories that have legalized such gambling activities.⁸¹

The Travel Act of 1961 (Travel Act) was designed to fight interstate and foreign travel or transportation in aid of racketeering enterprises, including illegal gambling.⁸² The Travel Act made it a federal crime to travel or use any facility in interstate or foreign commerce with the intent to promote, manage, establish, carry on, or facilitate any

74. 18 U.S.C. § 1084(a).

75. *Id.*

76. *See id.*; *Federal Wire Act of 1961 Explained*, LEGAL BETTING ONLINE, <https://www.legalbettingonline.com/laws/federal-wire-act/> [https://perma.cc/3U5R-3LF3] (last visited Sept. 10, 2024); Matt Belenky, *The Future of The Wire Act and Online Gambling under the Biden Administration*, JURISTNEWS (Jan. 15, 2021, 9:00 AM), <https://www.jurist.org/commentary/2021/01/matt-belenky-wire-act/> [https://perma.cc/R8CX-DPN7].

77. *See* Belenky, *supra* note 76.

78. *See* Erica L. Okerberg, *The Wire Act and Interstate Sports Wagering Post-Murphy*, GREENBERG TRAUIG (Sept. 4, 2018), <https://www.gtlaw.com/en/insights/2018/9/the-wire-act-and-interstate-sports-wagering-post-murphy> [https://perma.cc/DBC8-XUD3].

79. *Id.*

80. *Id.*

81. *See id.*

82. 18 U.S.C. § 1952.

unlawful activity.⁸³ The Interstate Transportation of Wagering Paraphernalia Act of 1961 prohibits the transportation of any equipment or devices used for bookmaking, wagering for sporting events, or gambling across state or national borders.⁸⁴ The law exempts certain activities such as parimutuel betting at legal events, transportation of betting materials to states where such betting is legal, and transportation of lottery-related materials in compliance with state laws or to foreign destinations where lotteries are lawful.⁸⁵

Attorney General Kennedy also helped codify the Sports Bribery Act of 1964 (Sports Bribery Act) and the Illegal Gambling Business Act.⁸⁶ The Sports Bribery Act was created in response to concerns over the integrity of sports competitions.⁸⁷ It relates to betting due to bribery in sports, leaving the door open for large-scale betting fraud, as fixed matches allow for significant illicit financial gain.⁸⁸ The Sports Bribery Act addresses bribery in sporting contests.⁸⁹ It makes it a crime for a person to carry out, attempt to carry out, or conspire to influence a sporting contest through bribery.⁹⁰ This includes any schemes in commerce that are effectuated through interstate or foreign facilities for transportation or communication.⁹¹ The Sports Bribery Act covers all sporting contests, regardless of whether the athletes are amateurs or professionals.⁹² The Illegal Gambling Business Act criminalized the operation, financing, management, supervision, direction, or ownership of an illegal gambling business.⁹³ Such a business is defined as one that violates state law, involves five or more people, and either operates continuously for more than thirty days or earns over \$2,000 in a single day.⁹⁴ Despite this attempt at regulation, illegal bookmaking escalated during the 1970s and 1980s.⁹⁵

83. *Id.*

84. *Id.* § 1953.

85. *Id.*

86. 18 U.S.C. § 1955; 18 U.S.C. § 224.

87. 18 U.S.C. § 224.

88. See *An Overview of Sports Bribery*, LAWS (Dec. 22, 2019), <https://criminal.laws.com/bribery/sports-bribery> [<https://perma.cc/DG7T-GWDB>].

89. 18 U.S.C. § 224.

90. *Id.*

91. *Id.*

92. *Id.*

93. 18 U.S.C. § 1955.

94. *Id.*

95. *The History of Sports Betting in the USA*, *supra* note 43.

In 1978, Congress passed the Interstate Horseracing Act, which states, “the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders[.]”⁹⁶ However, in the Professional and Amateur Sports Protection Act of 1992 (PASPA), Congress decided to ban all states from most forms of sports betting.⁹⁷ PASPA stated:

“[i]t shall be unlawful for . . . a governmental entity . . . or a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.”⁹⁸

PASPA effectively made sports betting illegal in almost all U.S. states.⁹⁹ However, PASPA did not criminalize sports betting at the federal level; instead, it authorized the Attorney General of the Department of Justice, along with both professional and amateur sports groups, to initiate civil lawsuits to prevent breaches of the Act.¹⁰⁰ The reasoning behind the PASPA legislation was to stop the trend of legalized sports gambling throughout the United States.¹⁰¹ Numerous professional sports leagues and college sports associations pushed for the legislation to maintain the integrity of the game, describing it as a necessity for the industry.¹⁰² However, the enactment of PASPA inadvertently pushed sports bettors towards illicit channels, significantly bolstering the underground sports betting market.¹⁰³ In PASPA’s twenty-six years of existence, the “American Gaming Association reported that an estimated \$150 billion worth of bets were being placed illegally on

96. 15 U.S.C. § 3001.

97. See 28 U.S.C. § 3702.

98. *Id.*

99. Richard Janvrin, *PASPA Supreme Court Decision: Everything You Need to Know*, WSN, <https://www.wsn.com/sports-betting-usa/paspa/> [<https://perma.cc/J9GZ-7LZB>] (last visited Sept. 10, 2024).

100. HUNTON ANDREWS KURTH, CLIENT ALERT: SUPREME COURT FINDS PASPA UNCONSTITUTIONAL; CLEARS PATH FOR STATES LOOKING TO SUCCESSFULLY LEGALIZE SPORTS GAMBLING 1 (2018), https://www.huntonak.com/media/legal/37238_supreme_court_finds_paspa_unconstitutional.pdf [<https://perma.cc/5R5D-QU SQ>].

101. Jill R. Dorson, *What Is PASPA, The Federal Ban on Sports Betting*, SPORTSHANDLE (July 1, 2020), <https://sportshandle.com/what-is-paspa-sports-betting-ban-professional-amateur-sports/> [<https://perma.cc/33DL-3E5M>].

102. *Id.*

103. See Janvrin, *supra* note 99.

an annual basis.”¹⁰⁴ Despite continuing efforts after the enactment of PASPA, the existing regulatory scheme was insufficient in addressing the burgeoning online betting industry.¹⁰⁵ This regulatory gap, combined with the growing popularity of various forms of online gambling and the ease of access provided by the internet, led Congress to enact the Unlawful Internet Gambling Enforcement Act (UIGEA) of 2006.¹⁰⁶

On October 13, 2006, the UIGEA was enacted under President George W. Bush.¹⁰⁷ This legislation prohibits gambling companies from accepting payments related to any betting or wagering activities conducted over the internet that are illegal under federal or state laws.¹⁰⁸ Initiated in response to the surge in online poker and casino games, the law, nonetheless, makes an exemption for fantasy sports by categorizing them as skill-based rather than chance-based games.¹⁰⁹ This exception paved the way for the popular fantasy sports industry, which subsequently experienced a significant surge in users following the enactment of the UIGEA.¹¹⁰

B. The Current State of Sports Betting Laws

PASPA was challenged many times over its lifetime, but the two most significant challenges to PASPA both came from New Jersey.¹¹¹ The first of these challenges was by the citizens of New Jersey who voted to amend their state constitution to allow the legislature to legalize sports gambling.¹¹² The National College Athletic Association (NCAA) challenged this amendment leading to the 2013 case, *NCAA v. Governor of New Jersey*.¹¹³ The NCAA’s challenge focused on whether

104. *Id.*

105. Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2 UNLV GAMING L.J. 281, 291 (2012).

106. *Id.*

107. Matt Bonesteel, *Sports Betting Timeline: From Las Vegas to the Supreme Court*, WASH. POST: SPORTS BETTING (Aug. 29, 2022, 7:00 AM), <https://www.washingtonpost.com/sports/2022/08/29/history-of-sports-gambling/> [https://perma.cc/SPP7-MY6]].

108. *Id.*

109. *Id.*

110. *Id.*

111. Jarred M. Stindt, Note, *Never Tell Me the Odds: The Importance of Federal Legislation in Sports Gambling Regulation*, 46 IOWA L.J. 849, 855.

112. See Christopher Polisano, *Betting Against PASPA, Why the Federal Restrictions on Sports Gambling Are Unconstitutional and How They Hurt the States*, 25 JEFFREY S. MOORAD SPORTS L.J. 453, 462 (2018).

113. Nat’l Collegiate Athletic Ass’n v. Governor of N.J., 730 F.3d 208, 214 (3d Cir. 2013).

Congress had the power to restrict a state's ability to pass gambling legislation.¹¹⁴ The Third Circuit ruled that Congress was within its authority under the Commerce Clause to regulate state gambling laws, and it did not violate the Tenth Amendment's anti-commandeering principle.¹¹⁵ The second challenge occurred in 2014 when New Jersey passed a law that attempted to legalize sports gambling.¹¹⁶ Once again, the NCAA challenged this, leading to *NCAA v. Gov. NJ (2015)*.¹¹⁷ The Third Circuit's *en banc* decision relied on the decision in *NCAA v. Gov. NJ (2013)* and held that New Jersey's legislation effectively authorized sports gambling in the state, thereby violating PASPA.¹¹⁸ The Supreme Court then granted certiorari to examine PASPA's constitutionality.¹¹⁹

The 2018 Supreme Court decision in *Murphy v. NCAA* marked a significant turning point in the legal landscape of sports betting in the United States.¹²⁰ In this case, the central issue revolved around the constitutionality of PASPA.¹²¹ New Jersey sought to legalize sports betting within its borders and challenged PASPA, arguing that it violated the Tenth Amendment, which reserves powers not delegated to the federal government for the states.¹²² In a 6-3 decision, the Supreme Court ruled in favor of New Jersey, declaring PASPA unconstitutional.¹²³ The Court's ruling ultimately opened the doors for individual states to legalize and regulate sports betting as they saw fit.¹²⁴ States promptly moved to legalize and regulate sports betting, likely due to the economic benefits it can yield.¹²⁵ For example, regulating sports betting can lead to more than eight billion dollars in local tax benefits and hundreds

114. *Id.*

115. *Id.* at 240.

116. David Purdum, *Sports Betting Legalization: How We Got Here*, ESPN (May 22, 2018, 12:49 PM), https://www.espn.com/sports-betting/story/_/id/23561576/chalk-line-how-got-legalized-sports-betting [<https://perma.cc/4E65-UCY>].

117. *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 799 F.3d 259, 267 (3d Cir. 2015).

118. *Murphy v. Nat'l Collegiate Athletics Ass'n*, 584 U.S. 453, 464–65 (2018).

119. *Id.* at 465.

120. See Ronald Gaither & Elizabeth McCurrach, *The Murphy Decision Legalizing Sports Betting 'Could Fundamentally Alter the Sports Industry—An Analysis*, SPORTS LITIG. ALERT (Aug. 3, 2018), <https://sportslitigationalert.com/the-murphy-decision-legalizing-sports-betting-could-fundamentally-alter-the-sports-industry-an-analysis/> [<https://perma.cc/2B6Z-KHGZ>].

121. *Murphy*, 584 U.S. at 458.

122. *Id.* at 464.

123. *Id.* at 486.

124. *Id.*

125. Gaither & McCurrach, *supra* note 120.

of thousands of jobs.¹²⁶ The decision also prompted discussions about the need for federal and state oversight and integrity measures in the expanding sports betting market.¹²⁷

Since *Murphy v. NCAA*, thirty-eight states and the District of Columbia have passed sports betting legislation that is considered ‘Live, Legal,’ “meaning single-game sports betting may be offered to consumers through legal retail or online and mobile sportsbooks.”¹²⁸ Despite the legality of sports betting, restrictions may still apply.¹²⁹ Some states, including North Carolina, New Mexico, North Dakota, Washington, and Wisconsin, allow only tribal casino operators to conduct sports betting.¹³⁰ Consequently, despite the legality and existence of a sports betting market, these states do not host any online sportsbooks.¹³¹ Additional limitations may include restrictions on betting on in-state college teams or certain events.¹³² Furthermore, the legal age for gambling varies, with some states setting the minimum betting age at eighteen, whereas others require individuals to be at least twenty-one years old.¹³³ To date, no legislation has been passed on a federal level legalizing or regulating the activity.¹³⁴

C. Balancing Consumer Protection and Autonomy

Central to the debate on sports legislation is the government’s role in protecting consumers from the potential harms of sports betting, while respecting individual freedoms.¹³⁵ Laws and regulations, such as age restrictions and betting limits, illustrate attempts to mitigate the

126. *Economic Impact of Legalized Sports Betting*, AM. GAMING ASS’N (June 1, 2017), <https://www.americangaming.org/resources/economic-impact-of-legalized-sports-betting/> [https://perma.cc/RGE3-4TBT].

127. *Federal Sports Betting Proposals: The Sports Wagering Market Integrity Act of 2018*, O’MELVENY (Feb. 13, 2019), <https://www.omm.com/insights/alerts-publications/federal-sports-betting-proposals-the-sports-wagering-market-integrity-act-of-2018/> [https://perma.cc/7CGU-F5N4].

128. Williams, *supra* note 7.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *The Ethics of Gambling: Balancing Personal Freedom with Social Responsibility*, EYE ON ANNAPOLIS: LOC. NEWS (June 18, 2023, 6:00 PM), <https://www.eyeonannapolis.net/2023/06/the-ethics-of-gambling-balancing-personal-freedom-with-social-responsibility> [https://perma.cc/5XP2-DG4W].

risks associated with sports betting.¹³⁶ However, these measures often raise questions about paternalism and the extent to which the government should interfere in personal choices.¹³⁷

Consumer protection in the realm of sports betting is predicated on the understanding that gambling can lead to significant negative outcomes, including addiction, financial hardship, and social consequences, such as increased crime rates.¹³⁸ To mitigate these risks, state governments have instituted various regulatory measures such as age restriction, betting limits, and self-exclusion programs.¹³⁹

On the other side of the debate is the value placed on individual autonomy—the right of adults to make their own choices, even if those choices involve risk.¹⁴⁰ Advocates for minimal sports betting restrictions argue that individuals should have personal responsibility; individuals should have the freedom to decide how to spend their money and leisure time, including the choice to bet on sports, as long as they understand the risks.¹⁴¹

The principle of autonomy assumes that individuals are rational actors who can always make informed decisions—a premise that does not always hold true in the context of sports betting, where addiction can impair judgment.¹⁴² The challenge for lawmakers and regulators is striking a balance that respects individual freedoms, while providing adequate protections to prevent the social harms associated with sports betting.¹⁴³ This balance is especially difficult to find when dealing with the elderly population of the United States, which may be particularly susceptible to the negative effects of gambling; lawmakers and

136. *Responsible Marketing Code for Sports Wagering*, AMERICAN GAMING ASS'N (Mar. 28, 2023), <https://www.americangaming.org/responsible-marketing-code-for-sports-wagering/> [hereinafter *Code*] [<https://perma.cc/WG58-YNA4>].

137. Jay Pfeifer, *Legal Gambling Sure Bet to Change Business, Culture of Sports*, DAVIDSON COLL. (May 17, 2018), <https://www.davidson.edu/news/2018/05/17/legal-gambling-sure-bet-change-business-culture-sports>. [perma.cc/99T4-D59C].

138. *Trust and Safety: Protecting Consumers in Online Sports Betting and Paid Fantasy Sports*, FANTASY SPORTS & GAMING ASS'N, <https://thefsga.org/wp-content/uploads/2022/04/BettingSafetyUpdate2022.pdf> [perma.cc/YE65-NPZS] (last visited Sept. 10, 2024).

139. See *Gaming Guide*, *supra* note 15.

140. See Barney Frank, *With Gambling, Personal Freedom is Always the Best Bet*, *Says Barney Frank*, U.S. NEWS (June 1, 2009), <https://www.usnews.com/opinion/articles/2009/06/01/with-gambling-personal-freedom-is-always-the-best-bet-says-barney-frank> [perma.cc/B48X-TM5Y].

141. See *id.*

142. See Robin Stetzka & Stefan Winter, *How Rational Is Gambling?*, 37 J. ECON. SURVS. 1432, 1433 (Sept. 2023).

143. See Moran, *supra* note 13.

regulators face the challenge of respecting the autonomy of elderly individuals to participate in gambling while also implementing protections to mitigate potential harms.¹⁴⁴

D. Elements of the Elderly's Financial Vulnerability

1. HISTORICAL RELATIONSHIP BETWEEN THE ELDERLY AND GAMBLING

Historically, the elderly have engaged in gambling activities as a form of recreation and social interaction.¹⁴⁵ In many cultures, games of chance and wagers were a staple at social gatherings, serving both as entertainment and a way to potentially supplement limited incomes.¹⁴⁶ Community-based gambling activities, like bingo nights at local community centers or churches, have been particularly popular among older adults, providing them with opportunities for socialization, while also offering the thrill of small-scale betting.¹⁴⁷

In the late 20th and early 21st centuries, the expansion of the gambling industry and the advent of online gambling platforms have made various forms of betting more accessible to older adults.¹⁴⁸ There has also been a growing presence of the elderly in casinos and other gambling venues.¹⁴⁹ This demographic, often on fixed incomes (i.e., Social Security, pensions, and/or retirement savings accounts), may view gambling as a way to improve their financial situation or simply as an enjoyable pastime.¹⁵⁰

144. *See id.*

145. Amparo del Pino-Gutiérrez, Roser Granero, Fernando Fernández-Aranda, Teresa Mena-Moreno, Gemma Mestre-Bach, Mónica Gómez-Peña, Laura Moragas, Neus Aymamí, Isabelle Giroux, Marie Grall-Bronnec, Anne Sauvaget, Ester Codina, Cristina Vintró-Alcaraz, María Lozano-Madrid, Zaida Agüera, Jéssica Sánchez-González, Gemma Casalé, Isabel Baenas, Isabel Sánchez, Hibaí López-González, José M. Menchón & Susana Jiménez-Murcia, *Gambling Activity in the Old-Age General Population*, 42 *AGEING & SOC'Y* 2757, 2758, 2760 (2022).

146. *See* Abdul Alhazard, *The Origins of Games of Chance*, *HIST. & HEADLINES* (Jan. 11, 2020), <https://www.historyandheadlines.com/the-origins-of-games-of-chance/> [<https://perma.cc/PF8S-N7SC>].

147. *See* del Pino-Gutiérrez et al., *supra* note 145, at 2758.

148. *See* Marc J. Randazza & Daniel Russell, *The Legal Status of Gambling in America's Senior Communities*, 8 *MARQ. ELDER'S ADV.* 343, 343–44 (2007).

149. *See id.*; Dennis P. McNeilly & William J. Burke, *Gambling as a Social Activity of Adults*, 52 *INT'L J. AGING & HUM. DEV.* 19 (2001).

150. *See* del Pino-Gutiérrez et al., *supra* note 145, at 2775.

2. HEALTH AND TECHNOLOGY CHALLENGES

The growing accessibility of sports betting, facilitated by technological advancements, presents a range of challenges for the elderly.¹⁵¹ This demographic is particularly at risk due to cognitive decline and lower digital literacy levels.¹⁵² The Federal Trade Commission (FTC) has highlighted the importance of protecting older consumers in the marketplace, recognizing them as prime targets for various scams.¹⁵³ The convergence of these factors makes older adults prime targets for fraudulent activities, particularly in the digital realm of sports betting.¹⁵⁴

Due to cognitive decline and limited exposure to digital education, older adults are more likely to fall victim to sports betting scams.¹⁵⁵ These scams often come in the form of misleading emails and texts, promising guaranteed returns or free bets.¹⁵⁶ The complexity and sophistication of these scams have evolved with technology, making them harder to recognize and avoid.¹⁵⁷ Additionally, many elderly individuals struggle with digital literacy, including understanding the internet, email, and text messaging.¹⁵⁸ This lack of understanding significantly hampers their ability to discern legitimate communications from

151. John Grimaldi, *More Seniors are Using Computers for Entertainment and Some are Gambling at Internet Casino Sites*, THE NEWS (July 20, 2022), https://www.postandcourier.com/kingstree/opinion/more-seniors-are-using-computers-for-entertainment-and-some-are-gambling-at-internet-casino-sites/article_0beb447c-0397-11ed-92fa-2f18c2205ff7.html [<https://perma.cc/7S3A-HBWM>].

152. See Jackson, *supra* note 15; Daisuke Ueno, Yasuhiro Daiku, Yoko Eguchi, Minako Iwata, Shoka Amano, Nobutaka Ayani, Kaeko Nakamura, Yuka Kato, Teruyuki Matsuoka, & Jin Narumoto, *Mild Cognitive Decline is a Risk Factor for Scam Vulnerability in Older Adults*, 12 FRONTIERS PSYCHIATRY (Dec. 20, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8721598/> [<https://perma.cc/8GMH-8XQ2>].

153. See Bridget Small, *Keeping Older Adults Safe from Scams*, FTC (Oct. 18, 2021), <https://consumer.ftc.gov/consumer-alerts/2021/10/keeping-older-adults-safe-scams> [<https://perma.cc/J4NE-E22Y>].

154. See Jackson, *supra* note 15; Small, *supra* note 153.

155. Ueno et al., *supra* note 152.

156. See Jason Knowles & Ann Pistone, *Here's How to Protect Yourself from Sports Betting Scams*, ABC7 EYEWITNESS NEWS (Nov. 18, 2023), <https://abc7chicago.com/sports-betting-online-scams-better-business-bureau/14080697/> [<https://perma.cc/Q6Z2-FJ9C>].

157. See *id.*

158. Thomas Goldsmith, *Declining Tech Literacy Among Older Adults Can Put Them at a Disadvantage*, NC HEALTH NEWS (July 21, 2022), <https://www.northcarolinahealthnews.org/2022/07/21/declining-tech-literacy-among-seniors-can-put-them-at-a-disadvantage/> [<https://perma.cc/QP8H-3SF7>].

scams.¹⁵⁹ The confusion is further exacerbated by the often complex and jargon-filled language used on sports betting platforms, making it difficult for them to navigate and make informed decisions.¹⁶⁰ The increased risk of elderly individuals participating in the digital sports betting industry is particularly worrying due to the financial reality of many older adults.¹⁶¹

3. THE ECONOMIC STATUS OF THE ELDERLY DEMOGRAPHIC

A significant aspect of the elderly's economic reality is the diversity of their income sources.¹⁶² Traditionally, pensions have been a cornerstone of senior citizens' income, offering a dependable income stream;¹⁶³ however, the prevalence of pensions has diminished in recent times due to the economic difficulties companies experience from the use of these pension programs.¹⁶⁴ Social Security, which emerged in 1935 after the Social Security Act was signed by former President Franklin D. Roosevelt, is another pivotal income source for many elderly individuals, providing a fundamental income base, the adequacy of which is contingent on previous earnings and retirement age.¹⁶⁵ Additionally, personal savings and investments contribute variably to the financial condition of elderly individuals, with disparities reflecting broader socio-economic trends.¹⁶⁶ Employment income, though less common, also supplements the financial income for some elderly individuals, either by necessity or choice.¹⁶⁷ The similarity between these

159. *See id.*

160. *See* Knowles & Pistone, *supra* note 156.

161. *See* *Get the Facts on Economic Security for Seniors*, NAT'L COUNCIL ON AGING (June 8, 2022), <https://www.ncoa.org/article/get-the-facts-on-economic-security-for-seniors> [<https://perma.cc/QF3T-WPK3>].

162. *See id.*

163. *Why Do Pensions Matter?* NAT'L INST. ON RET. SEC. (Jan. 2010), https://www.nirsonline.org/wp-content/uploads/2017/11/final_module2_why_do_pensions_matter.pdf [<https://perma.cc/J7NA-ECFR>].

164. *See* Barbara A. Butrica, Howard M. Iams, Karen E. Smith, & Eric J. Toder, *The Disappearing Defined Benefit Pension and Its Potential Impact on the Retirement Incomes of Baby Boomers*, 69 SOC. SEC. BULL. 1 (2009).

165. *Historical Background and Development of Social Security*, SOC. SEC. ADMIN. <https://www.ssa.gov/history/briefhistory3.html> [<https://perma.cc/V93T-YYTZ>] (last visited Sept. 10, 2024).

166. *Retirement and Investments*, FED. RSRV. (May 2023), <https://www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-retirement-investments.htm> [<https://perma.cc/37AP-BQLW>].

167. *See* David Wagner, *More Seniors are Working — Some by Choice, Others by Necessity*, MARKETPLACE (May 1, 2019), <https://www.marketplace.org/2019/05/01/more>

varied sources of income is that they are limited and typically offer a fixed amount paid over various time periods.¹⁶⁸

These fixed income sources are often juxtaposed with substantial financial obligations and concerns.¹⁶⁹ Healthcare costs, notably, stand out as a primary financial burden, often exacerbated by the inadequacy of Medicare in covering long-term care needs.¹⁷⁰ Housing costs, whether as mortgage payments, rent, or maintenance expenses for homeowners, also consume a significant portion of the elderly's income.¹⁷¹ Basic living expenses and extant debts, including credit card debts, add to the financial strain.¹⁷² These financial obligations can lead to the amplified vulnerability of senior citizens due to the limited earning potential and increased healthcare needs characteristic of this age group.¹⁷³ The prevalence of fixed incomes, among the elderly, accentuates these challenges.¹⁷⁴ Fixed incomes inherently limit financial flexibility, rendering the elderly particularly susceptible to economic pressures.¹⁷⁵

Unlike working individuals who have the potential to increase their earnings, the elderly often rely on fixed incomes which grow, at

-seniors-are-working-some-choice-others-without-one/ [https://perma.cc/L4NK-UXBD].

168. Daniel Thompson & Michael D. King, *Income Sources of Older Households: 2017*, U.S. CENSUS BUREAU (Feb. 2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70br-177.pdf> [https://perma.cc/G6XY-R2P7].

169. See Edward F. O'Brien, *Older Adults on Fixed Incomes are Getting Squeezed as Inflation Nears a 40-year High*, Mont. Pub. Radio (Aug. 18, 2022, 6:56 PM), <https://www.mtpr.org/montana-news/2022-08-18/older-adults-on-fixed-incomes-are-getting-squeezed-as-inflation-nears-a-40-year-high> [https://perma.cc/3K5H-UTW5].

170. See Victoria Bailey, *Financially Burdened Seniors Struggle to Cover Healthcare Costs: In the Past Year, Seniors Reported Having to Delay Treatment or Postpone Other Expenses Due to High Healthcare Costs*, HEALTH PAYER INTEL. (Oct. 19, 2021), <https://healthpayerintelligence.com/news/financially-burdened-seniors-struggle-to-cover-healthcare-costs> [https://perma.cc/J3T8-59VR].

171. Jennifer Molinsky & Whitney Airgood-Obrycki, *Older Adults Increasingly Face Housing Affordability Challenges*, HARV. JOINT CTR. FOR HOUS. STUD. (Sept. 21, 2018), <https://www.jchs.harvard.edu/blog/older-adults-increasingly-face-housing-affordability-challenges> [https://perma.cc/MSU4-8YBT].

172. See David Cooper & Elise Gould, *Financial Security of Elderly Americans at Risk*, ECON. POL'Y INST. (June 6, 2013), <https://www.epi.org/publication/economic-security-elderly-americans-risk/> [https://perma.cc/Z9ZU-4P8K].

173. See Harvey A. Friedman Center for Aging, *The Financial Vulnerability of Older Adults*, INST. FOR PUB. HEALTH (Apr. 24, 2015), <https://publichealth.wustl.edu/the-financial-vulnerability-of-older-adults/> [https://perma.cc/U2E2-ZENR].

174. See O'Brien, *supra* note 169.

175. See *id.*

its maximum, at a moderate rate, but often not at all.¹⁷⁶ This fixed income means that any losses incurred from legalized sports gambling can have a more severe impact on the elderly compared to working adults, as they have limited means to recover from significant financial setbacks and may be more susceptible to unchecked marketing practices.¹⁷⁷ The significant financial risks sports gambling poses to older adults, who may lack the ability to recover from gambling losses, remain largely overlooked in current regulatory discussion.¹⁷⁸

III. Analysis

The rapidly expanding sports betting industry has prompted significant regulatory developments by many states who have legalized the industry within its borders. However, an often-overlooked demographic in this regulatory landscape is the elderly.¹⁷⁹ As this segment of the population typically relies on fixed incomes and may not possess the financial resilience of their working age counterparts, the absence of targeted safeguards within the sports betting regulatory framework presents unique risks.¹⁸⁰ This analysis seeks to explore the regulatory gaps and oversights that leave elderly bettors exposed to potential financial jeopardy, scrutinizing the industry's practices and legislative measures—or the lack thereof—that fail to shield these individuals from the economic perils of gambling.¹⁸¹

A. Inconsistencies of Current State Legislation

The inconsistencies across state sports betting regulations can be attributed to the fact that each state legislature has the ability to regulate the sports betting industry within its jurisdiction as it sees fit with no

176. See *What Does Living on a Fixed Income Mean?*, NCO (Apr. 18, 2024), <https://www.ncoa.org/article/what-does-living-on-a-fixed-income-mean/> [<https://perma.cc/M7C5-NAVS>].

177. Gosker, *supra* note 17, at 195.

178. See Maylis Fontaine, Celine Lemercier, Celine Bonnaire, Isabelle Giroux, Jacques Py, Isabelle Varescon & Valerie Le Floch, *Gambling and Aging: An Overview of a Risky Behavior*, 13 BEHAV. SCIS (2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10295151/pdf/behavsci-13-00437.pdf> [<https://perma.cc/X4EM-THBV>].

179. See Jackson, *supra* note 15; *Responsible Gambling Resources for Sports Betting*, NAT'L COUNCIL ON PROBLEM GAMBLING, <https://www.ncpgambling.org/responsible-gambling/safer-sports-betting/> [<https://perma.cc/6VM7-VVUS>] (last visited Sept. 10, 2024).

180. See Fontaine et al., *supra* note 178.

181. See *infra* Section III.A.

federal guidelines or model regulatory framework to reference.¹⁸² Some states have embraced the opportunity and created comprehensive legal frameworks, while others have taken more cautious steps or have not moved to legalize sports betting at all.¹⁸³ The rapid legalization and the aggressive marketing strategies by betting companies do not leave enough room for the developing industry to create mature and responsible regulatory frameworks focused on protection.¹⁸⁴ When the market grows quickly, there is often a lag before the implications of such expansion are fully understood and before adequate protective measures are implemented.¹⁸⁵ A tension often exists between the economic interests driven by the gambling industry, including tax revenue and job creation, and the social responsibility to protect consumers.¹⁸⁶ Lawmakers may face pressure to capitalize on these economic benefits of gambling, while mitigation of its potential harms remain unaddressed.¹⁸⁷ There is a growing recognition of the urgency to implement measures that address the negative impacts of sports betting, especially to shield minors from its potential harm.¹⁸⁸ It is widely understood that the industry itself is unlikely to impose the necessary restrictions independently.¹⁸⁹ Moreover, the online nature of sports betting poses unique challenges as it can be more difficult to enforce restrictions online, potentially exposing vulnerable individuals to even more risks associated with sports wagering.¹⁹⁰ There is also the issue of mobile betting apps, which make gambling activities highly accessible, sometimes without enough oversight or preventative measures.¹⁹¹

182. See Williams, *supra* note 7.

183. *Id.*

184. See Eric Lipton & Kevin Draper, *First Came the Sports Betting Boom. Now Comes the Backlash*, N.Y. TIMES (May 13, 2023), <https://www.nytimes.com/2023/05/13/sports/online-sports-gambling-regulations.html> [<https://perma.cc/URN4-JBA6>].

185. See Mark van der Maas & Lia Nower, *Contradictions of Responsible Gambling Policies and Gambling Provision in the Context of Rapid Market Expansion*, 24 GAMING L. REV. 456 (Sept. 16, 2020), <https://www.liebertpub.com/doi/10.1089/qlr2.2020.0009> [<https://perma.cc/QNA8-7T7Y>].

186. See Tyler Hogue, *Increasing Sports Gambling Taxes Through Regulation*, THE REGUL. REV. (Feb. 10, 2024), <https://www.theregview.org/2024/02/10/hogue-increasing-sports-gambling-taxes-through-regulation/> [<https://perma.cc/5PSB-LDAR>].

187. *Id.*

188. Lipton & Draper, *supra* note 184.

189. *Id.*

190. See *Online Sports Betting Rules and Regulations in the USA: An Overview*, *supra* note 41.

191. *Id.*

1. MARKETING REGULATION INCONSISTENCIES

The rapid expansion of the sports betting industry has been closely mirrored by a similar increase in sports betting companies' advertising efforts, leading to significant concerns about the breadth and impact of these advertisements.¹⁹² States have differing rules and restrictions on the advertising and marketing of sports betting services, leading to variations in how operators can promote their services.¹⁹³

The American Gaming Association (AGA), which "represents the U.S. casino industry, including commercial and tribal casino operators, sports betting and iGaming companies, gaming suppliers and other affiliated entities" developed the Responsible Marketing Code for Sports Wagering.¹⁹⁴ This Code is a set of self-regulatory guidelines designed to promote responsible advertising and marketing practices within the sports betting industry.¹⁹⁵ The rules and guidelines revolve around six standards: respecting the legal age for sports wagering, limiting college and university advertising, supporting responsible gaming, controlling digital media and websites, maintaining the code, and monitoring code compliance.¹⁹⁶ An example of a guideline under the "supporting responsible gaming" standard is "[n]o message should encourage players to chase their losses or suggest that betting is a means of solving financial problems."¹⁹⁷ Despite these guidelines, which are aimed to help reduce the risk of the sports betting companies taking advantage of individuals participating in the sports betting industry, states that have legalized sports betting do not uniformly require participating companies to follow the Responsible Marketing Code for Sports Wagering.¹⁹⁸ Without a universal mandate from state laws, adherence to the Code relies entirely on the companies' discretion.¹⁹⁹ The voluntary nature of this compliance highlights a gap between industry best practices and regulatory requirements.²⁰⁰

192. See Erik Shannon, *The Federalism Jackpot in Murphy v. NCAA: Going All in on Anti-Commandeering Fails to Protect the Vulnerable*, 41 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 1, 15 (2020).

193. Paulina Zawiślak & Mike Sweeney, *What is Gambling Advertising?*, CLEARCODE (May 15, 2024), <https://clearcode.cc/blog/gambling-advertising>. [<https://perma.cc/DM9Z-ZG5M>].

194. See *Code*, *supra* note 136.

195. *Id.*

196. *Id.*

197. *Id.*

198. See *id.*

199. See *id.*

200. See *id.*

Sports betting companies often employ various marketing tactics that can attract elderly and vulnerable populations, which can raise ethical concerns.²⁰¹ These tactics are designed to maximize profits and encourage continued gambling.²⁰² These aggressive advertising techniques, particularly during televised sports events, may feature enticing promotions, promises of free bets, and bonuses that can be especially appealing to vulnerable individuals looking for entertainment or financial gains.²⁰³

States like Ohio and Massachusetts have taken a lead in implementing strict regulations on sports betting advertising.²⁰⁴ Both states have prohibited promotions that use terms like “free” or “risk-free” in advertisements.²⁰⁵ This is because such promotions are considered misleading, as bettors are often required to deposit and risk their own money to access the free bets.²⁰⁶ New York, one of the biggest sports betting markets, also banned the use of the term “free bet” in advertising, requiring that all material terms and conditions of promotions be clearly disclosed, banning companies from marketing sports betting to underage individuals, and prohibiting advertising sports betting on college campuses.²⁰⁷

There is a commendable effort to shield younger individuals from the potentially harmful effects of sports betting advertising, owed to their perceived vulnerability and the impact such exposure could have on their development and decision-making processes.²⁰⁸ Youth are perceived to be at a higher risk of developing unhealthy gambling habits if exposed to aggressive marketing tactics.²⁰⁹ This demographic is also

201. Joe Hernandez, *Sports Betting Ads are Everywhere. Some Worry Gamblers Will Pay a Steep Price*, NPR (June 18, 2022, 5:00 AM), <https://www.npr.org/2022/06/18/1104952410/sports-betting-ads-sports-gambling> [<https://perma.cc/TVT3-7VPD>].

202. *Id.*

203. *Id.*

204. Bennet Conlin, *Requiem for the So-Called ‘Risk-Free Bet’*, SPORTSHANDLE (Feb. 2, 2023), <https://sportshandle.com/us-sportsbooks-move-away-risk-free-bets/> [<https://perma.cc/SA8D-2KMN>].

205. *Id.*

206. *Id.*

207. Geoff Zochodne, *New York Regulator Tightening Sports-Betting Ad Rules Amid Increased Scrutiny*, COVERS (Feb. 27, 2023, 19:44), <https://www.covers.com/industry/new-york-advertising-rules-regulator-sports-betting-new-february-2023> [<https://perma.cc/XDY9-XHNB>].

208. Samantha Thomas, Mary Schalkwyk, Mike Daube, Hannah Pitt, Darragh McGee, & Martin McKee, *Protecting Children and Young People from Contemporary Marketing for Gambling*, 38 HEALTH PROMOTION INT’L 1, 3 (2023).

209. *See Risks of Teen Gambling*, ALGAMUS RECOVERY SERV. (Aug. 16, 2022), <https://www.algamus.org/blog/risks-teen-gambling> [<https://perma.cc/3T4F-3936>].

seen as more impressionable and susceptible to the glamorization of gambling, potentially leading to a distorted understanding of risk and reward.²¹⁰ However, there is a critical gap in this protective shield: the neglect of the elderly population, an often overlooked but equally vulnerable group susceptible to the pitfalls of sports betting.²¹¹ This oversight is concerning, given that elderly individuals, particularly those grappling with social isolation, often find themselves more vulnerable to the communal allure of gambling and sports betting.²¹² Sports betting companies are aware of this, and some craft appealing narratives portraying betting as a conduit for social engagement and community bonding.²¹³ These narratives, carefully woven by sports betting companies, tend to gloss over the inherent risks of gambling.²¹⁴ They frequently spotlight tales of extraordinary wins, subtly cultivating a belief that betting is predominantly a low-risk venture with potentially high rewards.²¹⁵

The marketing strategies employed are not merely informative but also strategically persuasive.²¹⁶ They emphasize the “thrill” and “excitement” associated with gambling, which can effectively overshadow the less appealing realities, such as the risk of addiction and potential financial repercussions.²¹⁷ This selective portrayal not only entices engagement but also skews the perception of gambling, often making it appear as a harmless leisure activity rather than a serious financial commitment with inherent risks.²¹⁸ Additionally, some sports betting operators may allow users to bet using credit cards, allowing users the ability to wager up to their full lines of credit; this practice can

210. *See id.*

211. *See* Jackson, *supra* note 15.

212. David Surface, *High Risk Recreation—Problem Gambling in Older Adults*, SOCIALWORK TODAY (Apr. 2009), <https://www.socialworktoday.com/archive/031109p18.shtml> [<https://perma.cc/TB2V-XY79>].

213. *See* Mark Bett, *Sports Betting Ads and What Makes Them Work*, COLORMATICS (June 2023), <https://www.colormatics.com/article/sports-betting-advertising> [<https://perma.cc/PZ78-PCFD>].

214. *See id.*

215. *Id.*

216. *Id.*

217. *See* Chayil Champion, *Gambling Addiction Can Cause Psychological, Physiological Health Challenges*, UCLA HEALTH (Dec. 28, 2021), <https://www.uclahealth.org/news/gambling-addiction-can-cause-psychological-physiological-health-challenges> [<https://perma.cc/UJ7J-9QYF>]; Luke Clark, *The Psychology of Gambling*, UNIV. OF CAMBRIDGE (Apr. 1, 2007), <https://www.cam.ac.uk/research/news/the-psychology-of-gambling> [<https://perma.cc/UYM7-NL38>].

218. *See* Bett, *supra* note 213.

lead to financial difficulties and debt, particularly among vulnerable individuals who may not fully comprehend the consequences of their credit use.²¹⁹

2. FUNDING PROGRAMS

States have different approaches to funding programs aimed at treating problem gambling.²²⁰ Some allocate a portion of sports betting revenue to support these programs, while others may allocate minimal or no funding.²²¹ These divergent models for funding such initiatives reflect broader policy preferences and fiscal priorities.²²² By funding problem gambling treatment with gambling revenue, states are inherently conflicted; their interest in maximizing revenue may undermine efforts to combat problem gambling.²²³ This tension highlights the need for robust regulatory frameworks to ensure that the generation of revenue does not take precedence over the health and well-being of the populace.²²⁴

A common model among states with legalized sports betting is to earmark a portion of the revenue generated from the betting industry to fund problem gambling treatment programs. For instance, Virginia, which recently introduced mobile sports betting, has legislation that designates 2.5% of the tax dollars raised from sports betting revenue to aid in problem gambling.²²⁵ Similarly, Indiana has a system where 3.33% of the adjusted gross receipts tax revenue from sports betting is

219. Evan Coleman, *Why You Shouldn't Use a Credit Card for Sports Betting*, FORBES (Jan. 24, 2024, 2:05 PM), <https://www.forbes.com/advisor/credit-cards/sports-betting/> [https://perma.cc/W42F-5PDD].

220. Rachel Epstein, *The Big Business of Sports Betting*, MEN'S HEALTH (Aug. 22, 2023, 8:42 AM), <https://www.menshealth.com/trending-news/a44674774/problem-gambling-resource-allocation-state-guide/> [https://perma.cc/SU88-W3GH].

221. *Id.*

222. *See id.*

223. *See* Mariano Chóliz, *Ethical Gambling: A Necessary New Point of View of Gambling in Public Health Policies*, 6 FRONTIERS IN PUB. HEALTH 1 (Jan. 31, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5797763/> [https://perma.cc/M7JX-7M MT]; Off. of N.Y. State Comptroller, *A QUESTION OF BALANCE GAMING REVENUES AND PROBLEM GAMBLING IN NEW YORK STATE*, 4 (Nov. 2020), <https://www.osc.ny.gov/files/reports/special-topics/pdf/gaming-report.pdf> [https://perma.cc/R7RW-38FC].

224. *See* Chóliz, *supra* note 223.

225. John Brennan, *New Era For Compulsive Gambling Aid In U.S.?*, SPORTS-HANDLE (Feb. 2, 2021), <https://sportshandle.com/new-era-compulsive-gambling-aid/> [https://perma.cc/7BHK-XS7G].

directed towards the state's addiction services fund.²²⁶ Tennessee goes a step further in specializing its fund, reserving 5% of its gambling revenue for treatment and prevention, with specific funding for addiction research and treatment programs at universities in the state.²²⁷ This approach ostensibly aligns the interests of the state with the welfare of its citizens; as betting revenues increase, so do the funds available for treatment and prevention programs.²²⁸ This model operates under the "polluter pays" principle, suggesting that the industry contributing to the social issue should also finance its mitigation.²²⁹ The effectiveness of this funding model is contingent on several factors.²³⁰ First, it must be determined whether there is sufficient funding to support the program; the percentage of revenue allocated can vary widely, and in some cases, the funds are insufficient to meet the needs of affected individuals.²³¹ This can lead to underfunded programs that lack the resources to provide comprehensive support, education, and treatment services.²³² The next factor is the transparency of the allocated fund destination; the allocation of funds is sometimes not transparent or well-regulated, leading to situations where the money intended for problem gambling treatment is diverted to other state priorities or is not used efficiently.²³³

On the other end of the spectrum are states that allocate minimal or no funding from sports betting revenue to problem gambling treatment.²³⁴ These states may rely on general funds, charitable contributions, or other sources of revenue to support such programs.²³⁵ For instance, Delaware has not established additional financing for gambling

226. Brian Pempus, *Each State Different on Combating Problem Sports Gambling Under New Laws*, USBETS (Sept. 24, 2019), <https://www.usbets.com/state-sports-betting-problem-responsible-gaming-funding/> [https://perma.cc/5RBQ-GKFW].

227. See Stephen Elliot, *States are Learning on the Fly About Sports Betting Addiction*, VERITE NEWS (Mar. 27, 2023), <https://veritenews.org/2023/03/27/states-are-learning-on-the-fly-about-sports-betting-addiction/> [https://perma.cc/KBJ4-6JSQ].

228. See Brennan, *supra* note 225; Pempus, *supra* note 226; Elliot, *supra* note 227.

229. *What is the Polluter Pays Principle?*, LONDON SCH. OF ECON. & POL. SCI. (July 18, 2022), <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-polluter-pays-principle/> [https://perma.cc/JUH4-QYE4].

230. See *infra* notes 240–48 and accompanying text.

231. See Pempus, *supra* note 226; Elliot, *supra* note 227.

232. See Elliot, *supra* note 227.

233. See Christopher Gerlacher, *Problem Gambling: These States Spend the Most (and Least) to Prevent it*, GAMING TODAY (Oct. 11, 2022), <https://www.gamingtoday.com/news/problem-gambling-highest-lowest-sports-betting-state-spend> [https://perma.cc/38QG-XRDB]; Epstein, *supra* note 220.

234. See Epstein, *supra* note 220.

235. See Gerlacher, *supra* note 233.

problem funds in its expansion of sports wagering.²³⁶ While Illinois' massive gambling package does allow funds to be allocated from the State Gaming Fund to address gambling problems, it does not specifically require funding to be allocated towards problem sports gambling.²³⁷ This approach can result in unpredictable and unstable funding, as these programs must compete with other state priorities for limited resources.²³⁸ Without a dedicated funding stream, problem gambling treatment programs may not be able to provide consistent services.²³⁹

Problem gambling is an issue that transcends age groups, yet the impact on the elderly population is particularly concerning due to unique vulnerabilities.²⁴⁰ Studies and discussions within the field of social work and gerontology highlight the complexities and challenges that older adults face with betting, including a mix of social isolation, a desire for companionship, and, sometimes, a tendency to use gambling as a way to escape physical pain or loneliness.²⁴¹ As states adopt various funding models for problem gambling treatment programs, the adequacy of these models in addressing elderly gambling must be critically assessed. When states allocate a portion of sports betting revenue to combat problem gambling, it must ensure that a portion of these funds are used to address the specific needs of the elderly.²⁴² This includes funding for programs that provide targeted outreach and education for older adults, training for physical location sports betting companies to recognize and respond to signs of problem gambling in this demographic, and the establishment of dedicated treatment and counseling services that cater to the elderly.²⁴³

States that fail to provide adequate support may see higher rates of problem gambling-related issues among their elderly populations,

236. Pempus, *supra* note 226.

237. *See id.*

238. *See* David A. Lieb, *As Sports Betting Spikes, Help for People with Gambling Problems Expands in Some States*, NBC CHICAGO (Sept. 5, 2023), <https://www.nbcchicago.com/news/sports/as-sports-betting-spikes-help-for-people-with-gambling-problems-expands-in-some-states/3221108/>.

239. *See id.*

240. Landreat et al., *supra* note 16.

241. Surface, *supra* note 212.

242. *See, e.g.,* *Gambling & Seniors*, ILL. DEPT. ON AGING, <https://ilaging.illinois.gov/resources/gamblingandseniors.html> [<https://perma.cc/22XG-PUAD>] (last visited Sept. 10, 2024).

243. *See, e.g., id.*

such as financial instability and mental health decline.²⁴⁴ In states where minimal or no funding from sports betting revenue is allocated to problem gambling treatment, the elderly may be disproportionately affected.²⁴⁵ They may have less access to affordable treatment options and may not benefit from prevention programs.²⁴⁶ The varying levels of support across states mean that the quality of life for elderly individuals with gambling problems can be vastly different depending on their geographic location.²⁴⁷

3. SELF-EXCLUSION

The level of consumer protection measures, such as self-exclusion programs and responsible gambling resources, can vary between states, impacting the support available to individuals with gambling-related problems.²⁴⁸ Self-exclusion programs allow individuals to voluntarily ban themselves from betting platforms.²⁴⁹ These programs also require operators to remove patrons who have self-excluded if they are caught betting.²⁵⁰ The duration of self-exclusion can be self-chosen or fixed per jurisdiction, and the steps to end the exclusion may vary across jurisdictions.²⁵¹ Additionally, laws in some states require that sports betting operators cease all direct marketing to those who have self-excluded and refrain from offering them any marketing promotions.²⁵² Consumer protection measures in the gambling industry, particularly self-exclusion programs and responsible gambling resources, are critical in mitigating the risks associated with gambling, especially for vulnerable populations like the elderly.²⁵³ However, the level and efficacy of these protections, through the varied regulatory patchwork

244. See JEFFREY MAROTTA & GLENN YAMAGATA, 2021 SURVEY OF PUBLICLY FUNDED PROBLEM GAMBLING SERVICES IN THE UNITED STATES 7 (2022).

245. See *id.*

246. See *id.*

247. See *id.* at 5–6.

248. Dana Gentry, *Nevada's Lack of Casino Self-Exclusion Law Par for State, Say Experts*, NEV. CURRENT (Sept. 11, 2023, 5:00 AM), <https://www.nevadacurrent.com/2023/09/11/nevadas-lack-of-casino-self-exclusion-law-par-for-state-say-experts/> [<https://perma.cc/CWU6-X9VK>].

249. *Gaming Guide*, *supra* note 15.

250. See *id.*

251. See *id.*

252. See *id.*

253. Sally M. Gainsbury, *Review of Self-Exclusion from Gambling Venues as an Intervention for Problem Gambling*, 30 J. GAMBLING STUD. 229, 229 (2014).

of state safeguards, can either mitigate or exacerbate gambling-related problems among the elderly.²⁵⁴

Self-exclusion programs are meant to serve as a barrier to those who recognize their vulnerability to problem gambling.²⁵⁵ Yet, the effectiveness of self-exclusion can be compromised by inadequate enforcement and the ease with which self-excluded individuals can continue to gamble, particularly online.²⁵⁶ For the elderly, who may have cognitive impairments or less familiarity with digital platforms, navigating the complexities of self-exclusion can be particularly challenging.²⁵⁷

IV. RECOMMENDATION

As a result of *Murphy v. NCAA*, states have the freedom to choose whether to legalize sports betting within its borders.²⁵⁸ While many states do handle administration, promulgation, and enforcement of their regulatory schemes, much of the responsibility falls on sportsbook operators to ensure responsible play.²⁵⁹ It is important that uniform guidelines are adopted for sports betting to better protect vulnerable populations, especially the elderly.

A. Federal Oversight

Federal oversight of the sports gambling industry remains a possibility, despite the decentralization prompted by *Murphy v. NCAA*.²⁶⁰ As Justice Alito stated in the *Murphy v. NCAA* Supreme Court decision, Congress has the constitutional authority to regulate interstate commerce, under which sports betting could fall, especially as online betting crosses state lines.²⁶¹ This means that while the decision has led to a state-by-state approach in the short term, there is nothing preventing the federal government from enacting new legislation to provide a

254. See Epstein, *supra* note 220.

255. *Gaming Guide*, *supra* note 15.

256. *Does Self Exclusion Work for Online Gambling?*, KINDBRIDGE BEHAV. HEALTH (Sept. 26, 2022), <https://kindbridge.com/gambling/does-self-exclusion-work-for-online-gambling/> [<https://perma.cc/G7G8-MHYH>].

257. Jackson, *supra* note 15.

258. See *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 486 (2018).

259. Pempus, *supra* note 226.

260. *Murphy*, 584 U.S. at 479–80.

261. See *id.*

unified regulatory framework for sports betting across the country.²⁶² This uniform regulation can provide protections for the elderly to shield them from the vulnerabilities specific to their demographic.

B. Model Regulatory Scheme

While individual sports betting operators already have guidance in the AGA's Responsible Gaming Regulations and Statutes Guide (Guideline) and supporting Responsible Gaming Code of Conduct (Code), sports betting operator adherence to the Code is voluntary; the AGA does not have an enforcement arm to ensure compliance among its voluntary members, nor does it have the means to compel non-member sports betting operators to follow the Code.²⁶³ As such, in crafting a regulatory framework for sports betting that prioritizes the protection of the elderly and other vulnerable populations, a comprehensive approach modeled in the AGA Guideline and Code serve as an effective foundation.²⁶⁴ This framework, implemented through a congressional act, can mandate state enforcement of these guidelines, or provide incentives for states to adopt them, ensuring a uniform standard of protection across jurisdictions.²⁶⁵ To effectively safeguard the elderly, the following provisions must be included in the implemented regulatory framework.

First, the regulatory framework must include marketing restrictions to protect the elderly from advertisements targeted at their specific demographic risks: restricting the portrayal of sports betting as a way to solve financial problems, alleviating loneliness, and addiction.²⁶⁶ While the Code doesn't directly address older adults, it suggests not advertising in areas of high-risk populations.²⁶⁷ Therefore, restricting advertising in areas with high concentrations of elderly individuals, such as nursing homes or senior living facilities, could lessen potential negative impacts.²⁶⁸ Additionally, terms like "risk-free" or "guaranteed returns" in advertising should be explicitly forbidden to prevent creating false impressions about the nature of sports betting which is

262. *See id.*

263. *See Gaming Guide, supra* note 15.

264. *See id.*

265. Moran, *supra* note 13.

266. *See Gosker, supra* note 17, at 199–200.

267. *See Gaming Guide, supra* note 15.

268. *See id.*

particularly important for protecting the elderly, who may be more vulnerable to such deceptive claims.²⁶⁹

Next, a regulatory framework should require states to allocate funding for problem gambling programs, drawing from the examples of Virginia, Indiana, and Tennessee, which designate portions of their gambling revenues to such causes.²⁷⁰ The AGA Guideline provides that states should earmark revenues to support treatment for individuals with sports betting problems, education services concerning disordered or problem gambling, or research related to problem gambling.²⁷¹ In addition to general funding for problem gamblers, a portion of these funds should also support targeted programs addressed at education and research on more at-risk populations, such as the elderly, to find further ways to mitigate the risk of their age-related vulnerabilities.

Finally, in alignment with the AGA's principles on responsible gaming, a regulatory framework must establish a uniform self-exclusion policy.²⁷² These programs should enable individuals to self-ban from sports betting platforms and require operators to enforce the ban diligently, with clear guidelines on the duration and process of self-exclusion.²⁷³ To ensure the effectiveness of these programs, especially for the elderly who may face digital literacy challenges, this framework must enhance enforcement mechanisms, standardize the self-exclusion process across states, and ensure that all sports betting operators cease target marketing and available sports betting options to those who have self-excluded.²⁷⁴

Through the implementation of these comprehensive measures, the proposed regulatory framework aims to foster a safer and more responsible sports betting environment, safeguarding the autonomy of all elderly bettors, while providing protections for the elder population and those most vulnerable to sports betting risks.

269. *Gaming Guide*, *supra* note 15; *supra* Section II.D.2.

270. *See supra* notes 233–36 and accompanying text.

271. *Gaming Guide*, *supra* note 15.

272. *Id.*

273. *Id.*

274. *See supra* Section III.A.3.

IV. Conclusion

In the wake of the *Murphy v. NCAA* ruling, states have been left to individually regulate the sports betting industry.²⁷⁵ This state-by-state approach has led to inconsistent and insufficient protections for vulnerable populations, with the elderly at particular risk.²⁷⁶ The state-by-state patchwork of sports betting regulations allows sports betting companies to prey on the elderly demographic, making a uniform regulatory framework essential in solving this issue. Therefore, the federal government must adopt the AGA's Code and Guideline as a baseline for model regulations through a congressional act, mandating state enforcement, or providing incentives for states to adopt them.²⁷⁷ The framework should include specific marketing restrictions to shield the elderly from targeted advertising, along with requirements for states to allocate a portion of gambling revenues to fund problem gambling programs, with specific provisions for the elderly, and enforcement of self-exclusion programs designed to accommodate the challenges faced by older adults, especially those with cognitive impairments or limited digital literacy.²⁷⁸ By implementing such a framework, the federal government can provide a consistent, protective environment across all states, ensuring the well-being of elderly bettors and upholding responsible sports betting practices.

275. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 486 (2018).

276. *See supra* Part III.

277. *See supra* notes 271–73.

278. *See supra* notes 274–81.

