

A CALL OF DUTY FOR THE LEGALIZATION AND
REGULATION OF ESPORTS BETTING

*Natanel Wainer**

Abstract

It is undeniable that the world of esports is quickly becoming a mainstream form of entertainment and competition. With changes to federal law allowing states to legalize sports gambling, individuals are attempting to capitalize on the burgeoning growth of esports. While there is no shortage of discussion on traditional sports betting, esports betting has yet to fully be explored. Esports is arguably a subset of the sports industry and with the United States currently going through a transitional period regarding the way it treats sports gambling, now is the perfect time to begin regulating esports betting. Because many states have recently begun passing esports-specific betting legislation, this Article discusses the challenges in regulating esports betting, before identifying and advocating for ideal regulatory solutions to assist in minimizing the major risks associated with esports betting.

INTRODUCTION40

I. THE HISTORY OF ESPORTS BETTING42

 A. *Betting Scandals*42

 B. *Esports Betting in America*.....43

II. FEDERAL GAMBLING LAWS.....44

 A. *The Professional and Amateur Sports Protection Act*.....45

 B. *The Wire Act*46

 C. *The Unlawful Internet Gambling Enforcement Act*.....47

III. STATE GAMBLING LAWS48

 A. *New Jersey*.....49

 B. *Nevada*.....50

IV. THE CALL OF DUTY: CONSIDERATIONS AND PROPOSALS51

 A. *Regulatory Risks*.....52

 B. *Crossover with Traditional Sports*53

 C. *The Solution*.....54

* Natanel “Natu” Wainer is a proud University of Florida Levin College of Law graduate, having received his J.D. in 2021. Prior to law school, Natu traveled throughout the United States competing in Call of Duty esports tournaments. Natu would like to thank everyone on the Florida Entertainment & Sports Law Review for their help in editing this Article. Natu would also like to give a special thanks to his wife, Esther, and his son, Michael, for all their continued love and support.

CONCLUSION.....56

INTRODUCTION

Electronic sports (esports)¹ is a rapidly growing industry in which players compete against other players in organized competitive video game matches and tournaments. The term “esports” comprises a group of different competitive video games and gaming competitions, much like the Olympics, which is comprised of various different sports. Among the most popular esports titles are League of Legends,² Call of Duty,³ and Counter-Strike: Global Offensive (CS:GO).⁴ Similar to traditional sports, fans across the globe attend tournaments in stadiums or tune in online to watch live broadcasts of the events. Over the past few years, esports has emerged as a top spectator sport, especially among younger viewers.⁵ In fact, in 2021, the League of Legends World Championship finals drew in approximately 73.8 million viewers.⁶ By comparison, the final game in the 2021 NBA Finals only drew in 12.52 million viewers.⁷

With continuing growth in the popularity of esports and its exposure to the mainstream, esports has also given rise to a lucrative gambling market.⁸ By 2027, the global esports betting market size is projected to

1. See Kieran Darcy, *Why the Associated Press Stylebook Went with esports, Not eSports*, ESPN (July 6, 2017, 10:57 AM), https://www.espn.com/esports/story/_id/19860473/why-associated-press-stylebook-went-esports-not-esports [<https://perma.cc/Q6Z9-AATV>] (noting that although there have been multiple different spellings of “esports,” the Associated Press determined that this would be the correct spelling).

2. See Agilio Macabasco, *Absolute Beginner’s Guide to League of Legends*, MOBALYTICS (July 5, 2019), <https://mobalytics.gg/blog/absolute-beginners-guide-to-league-of-legends/> [<https://perma.cc/B4H9-2TTK>] (explaining that League of Legends is a team-based strategy game where opposing teams face off to destroy the other’s base).

3. See *Call of Duty (series)*, CALL OF DUTY WIKI, https://callofduty.fandom.com/wiki/Call_of_Duty [<https://perma.cc/8RKQ-EDT9>] (explaining that Call of Duty is a first-person shooter game).

4. See Steven Rondina, *What is CS:GO?*, HOTSPAWN (Jan. 6, 2021, 7:30 PM), <https://www.hotspawn.com/counter-strike/guides/what-is-csgo> [<https://perma.cc/8UNC-XE2M>] (explaining that Call of Duty is a first-person shooter game).

5. See Christopher Ingraham, *The Massive Popularity of Esports, in Charts*, WASH. POST (Aug. 27, 2018, 2:59 PM), <https://www.washingtonpost.com/business/2018/08/27/massive-popularity-esports-charts/> [<https://perma.cc/E6P6-NSVN>].

6. Declan McLaughlin, *Worlds 2021 Final Draws 73.8 Million Peak Concurrent Viewers, Riot Reports*, UPCOMER (Nov. 21, 2021), <https://upcomer.com/worlds-2021-final-draws-73-8-million-peak-concurrent-viewers-riot-reports> [<https://perma.cc/3BW8-7QVC>].

7. *2021 NBA Finals Finishes Up 32 Percent in Viewership vs. 2020 NBA Finals*, NBA (July 21, 2021, 9:05 PM), <https://www.nba.com/news/2021-nba-finals-finishes-up-32-percent-in-viewership> [<https://perma.cc/U9UF-TBYS>].

8. See Andrew Meola, *How eSports Has Given Rise to Competitive Gaming Betting and Gambling — with Skins and Real Money*, BUS. INSIDER (Jan. 9, 2018, 10:52 AM), <https://www.businessinsider.com/the-rise-of-esports-betting-and-gambling-2018-1> [<https://perma.cc/488L-3QXP>].

increase by \$3.52 billion.⁹ Given the rise of esports, it is no surprise that esports is one of the fastest-growing sports markets in regards to betting volume.¹⁰

Esports betting largely falls into two specific categories: cash betting and skin betting.¹¹ Skin betting is the practice of wagering in-game virtual cosmetic items on the outcome of professional matches or other casino style games of chance.¹² These skins are then able to be sold online for real-world currency.¹³ Although skin betting has received a majority of the public's attention, this Article will focus mainly on cash betting.¹⁴ Cash betting works similar to its traditional sports counterparts. Companies calculate the odds on who will win a specific match or tournament and use those odds to determine how much money will be paid out to the winning bettors.¹⁵ Because the United States is currently going through a substantial transition period regarding the way it generally treats sports gambling,¹⁶ it is crucial to determine whether and where esports betting falls within the sports gambling spectrum.

This Article presents one of the first examinations of strictly esports cash betting and its position within the current gambling framework in America. It analyzes the current changes in federal law governing sports gambling and examines how some states have responded to these

9. See *Esports Market Size to Grow by USD 3.52 Billion from 2022 to 2027, Presence of Companies like Activision Blizzard Inc., Amazon.com Inc. and Beyond the Summit and More Makes the Market Fragmented – Technavio*, MARKETWATCH (Oct. 2, 2023, 2:30 PM), <https://www.marketwatch.com/press-release/esports-market-size-to-grow-by-usd-3-52-billion-from-2022-to-2027-presence-of-companies-like-activision-blizzard-inc-amazon-com-inc-and-beyond-the-summit-and-more-makes-the-market-fragmented-technavio-1415d49c> [https://perma.cc/F4TK-PZED].

10. Cort Smith, *Esports Betting Market Set to Explode to a Total Value of \$12.9B by 2020*, CASINO.ORG (Jan. 20, 2019, 2:00 AM), <https://www.casino.org/news/esports-betting-market-set-to-explode-to-a-total-value-of-12-9b-by-2020> [https://perma.cc/JJ6Q-MRW4].

11. See Myers, *infra* note 15; Meola, *supra* note 8; Cf. Kevin Liu, *A Global Analysis into Loot Boxes: Is It “Virtually” Gambling?*, 28 WASH. INT’L L. J. 763, 764 (2019) (examining how loot boxes are likely gambling).

12. See Taylor Stanton Hardenstein, “Skins” In The Game: Counter-Strike, Esports, and The Shady World of Online Gambling, 7 U. NEV. L.V. GAMING L.J. 117, 121–22 (2017); Evan Lahti, *CS:GO’s Controversial Skin Gambling, Explained*, PC GAMER (July 06, 2016), <https://www.pcgamer.com/csgo-skin-gambling/> [https://perma.cc/WH77-V7X9] (listing roulette, rock-paper-scissors, poker, and dice as some of the casino style games used to bet skins).

13. Hardenstein, *supra* note 12.

14. See generally *Valve’s Counter-Strike Illegal Gambling Controversy Continues*, POLYGON (July 23, 2016, 7:52 PM), <https://www.polygon.com/2016/7/7/12122834/valve-counter-strike-csgo-lawsuit-il-legal-gambling> [https://perma.cc/P4RW-BTSJ].

15. See Maddy Myers, *How Esports Gambling Works*, KOTAKU (Mar. 21, 2018), <https://comete.kotaku.com/how-esports-gambling-works-1823959797> [https://perma.cc/K3L2-6UUV].

16. See generally Marc Edelman, *Regulating Sports Gambling in the Aftermath of Murphy v. National Collegiate Athletic Association*, 26 GEO. MASON L. REV. 313 (2019); *infra* Part II.A.

changes. Ultimately, this Article argues that not only is esports betting consistent with the current changes in federal gambling law, but that regulating, rather than ignoring the issue, is the next logical step. Part I provides a brief overview on the history of esports. Next, Part II gives an overview of esports betting in general and prior scandals that have occurred. Then, Part III examines the current state of federal gambling laws and shows how esports fits within the current mold. Thereafter, Part IV analyzes how some states have addressed esports betting. Finally, Part V identifies and reconciles the problems with esports betting and the law by proposing potential regulations. Ultimately, this Article concludes that states are not only ready, but are also in the prime position to begin regulating esports betting.

I. THE HISTORY OF ESPORTS BETTING

As previously mentioned, esports has given rise to a new market of sports gambling. Although esports is a relatively new phenomenon, betting on sports has been around for centuries.¹⁷ Consequently, esports betting, and specifically cash betting, has followed the path of traditional sports by using data to determine betting lines for the outcome of matches.¹⁸ Some companies have also begun providing fantasy esports competitions.¹⁹ Fantasy esports, just like traditional fantasy sports, can be defined as “a wide range of contests in which participants construct virtual teams to compete against other participants’ teams, using statistics generated by real-life athletes in individual and team-based sporting events.”²⁰

A. Betting Scandals

The number of past scandals the esports scene has experienced reveals the dire need for gambling regulations. Arguably, the biggest esports scandal occurred in 2015 when South Korean authorities arrested twelve people regarding five fixed StarCraft 2 matches.²¹ By throwing the

17. See Chil Woo, Note, *All Bets Are Off: Revisiting the Professional and Amateur Sports Protection Act (PASPA)*, 31 CARDOZO ARTS & ENT. L.J. 569, 572–73 (2013) (noting that sports betting was extremely popular during the 1800s, in conjunction with the rise of professional baseball).

18. Myers, *supra* note 15.

19. See, e.g., *Fantasy Esports*, DRAFTKINGS, <https://www.draftkings.com/fantasy-call-of-duty> [<https://perma.cc/W4LL-3UDE>].

20. See Marc Edelman, *Regulating Fantasy Sports: A Practical Guide to State Gambling Laws, and a Proposed Framework for Future State Legislation*, 93 IND. L.J. 653, 656 (2017).

21. John T. Holden et al., *Esports Corruption: Gambling, Doping, and Global Governance*, 32 MARYLAND J. INT’L L. 236, 267 (2017); see Brendan Sinclair, *12 Arrested in Esports Match Fixing Scandal – Report*, GAMESINDUSTRY (Oct. 19, 2015), <https://www.gamesindustry.biz/articles/2015-10-19-12-arrested-in-esports-match-fixing-scandal-report> [<https://perma.cc/D7AT-ZVWA>].

matches, two players were able to win \$37,000 collectively through illegal betting websites.²² Unfortunately, esports match-fixing scandals continue to occur. The same year as the StarCraft 2 scandal, twenty-one CS:GO players were accused of match-fixing.²³ More recently, match-fixing scandals have also occurred in arguably the biggest esports, League of Legends.²⁴ Similarly, in 2021, Valve permanently banned an entire Dota 2 team from competing in all official Valve events due to the team's match-fixing.²⁵ While the industry has made efforts to combat match-fixing, it is clear that there is still work to be done.

B. Esports Betting in America

Estimated to be at least a \$1 billion industry, “[t]he US is one of the world’s largest esports betting black markets.”²⁶ This is primed to change with the shifts in federal gambling laws. These shifts in law and attitude have opened the door for legal esports betting to surge. In 2018, the United States Supreme Court issued its decision in *Murphy v. National Collegiate Athletic Association*²⁷ eliminating a federal ban prohibiting states from authorizing sports gambling.²⁸ Prior to *Murphy*, Nevada was the only state permitted under federal law to offer fully regulated sports betting in casinos.²⁹ Major Las Vegas casinos, such as the Downtown Grand and the MGM Grand, embraced esports by offering esports betting and esports competitions.³⁰ However, because paid fantasy sports fell into

22. Sinclair, *supra* note 21.

23. See Aurangzeb Durrani, *Match-Fixing Comes to the World of E-Sports*, TECHCRUNCH (Apr. 23, 2016, 10:30 AM), <https://techcrunch.com/2016/04/23/match-fixing-comes-to-the-world-of-e-sports/> [<https://perma.cc/MUU2-YZHF>].

24. See Alex Leckie-Zaharic, *Condi Suspended for 18 Months as Major LPL Match-Fixing Scandal Exposed*, DOT ESPORTS (June 18, 2019, 8:51 AM), <https://dotesports.com/league-of-legends/news/condi-suspended-for-18-months-as-major-lpl-match-fixing-scandal-exposed> [<https://perma.cc/5DWZ-9EFE>] (noting *League of Legends* player “Condi” violated match-fixing and betting rules during the 2019 season).

25. Danelie Purdue, *We Have 99 Problems and Match-Fixing is One of Them*, ONE ESPORTS (Apr. 7, 2023, 4:00 AM), <https://www.oneesports.gg/gaming/match-fixing-esports-problem/> [<https://perma.cc/C5BB-UQTC>].

26. Press Release, Esports Integrity Coalition, ESIC Comment on Legalized Sports Betting in the USA (May 15, 2018), <https://www.lawinsport.com/topics/item/esic-comment-on-legalized-sports-betting-in-the-usa> [<https://perma.cc/VHD8-FA4T>]; see Jake Seiner, *Esports Integrity Chief Concerned About Fortnite Gambling*, ASSOCIATED PRESS (Nov. 21, 2018), <https://www.apnews.com/dc3ee6764e5142619a38d85bc8e46293> [<https://perma.cc/M5AY-EJQ7>].

27. 138 S. Ct. 1461 (2018).

28. *Id.* at 1484–85.

29. *Id.* at 1471 (“At the time of PASPA’s adoption, a few jurisdictions allowed some form of sports gambling. In Nevada, sports gambling was legal in casinos, and three States hosted sports lotteries or allowed sports pools.”).

30. See Ian Lecklitner, *Global Esports Gambling is Worth Nearly \$13 Billion – and it’s Only Getting Bigger*, MEL MAGAZINE, <https://melmagazine.com/en-us/story/global-esports-gambling-is-worth-nearly-13-billion-and-its-only-getting-bigger> [<https://perma.cc/7CFE-25VQ>].

a grey area within America's gambling legislation, entrepreneurs began developing platforms for esports-dedicated fantasy leagues.³¹

Similar to paid fantasy leagues, betting on the outcome of "one-on-one" competitive video game matches fell outside the scope of federal gambling laws.³² Essentially, websites were created that allowed individuals to find competitors online and bet money on the outcome of their matches.³³ Thus, because players were betting on their own "skill" rather than on "chance," these wager matches were not prohibited by the federal gambling laws.³⁴ However, as the esports betting market continued to grow, it was only a matter of time until individuals began exploring the idea of betting on professional esports matches.

II. FEDERAL GAMBLING LAWS

It is important to analyze the current federal laws governing online gambling and sports betting to better understand how esports betting fits within the current mold. Regarding gambling legislation, no federal or state court has defined esports or ruled on whether esports should be considered a sport.³⁵ This initial question is important because depending on the answer, certain laws would or would not apply to esports betting. Observing the ways other areas of the law treat esports can help shed light on this crucial question.

Although U.S. immigration law can be very complex and unpredictable, many esports players have been granted P-1A visas.³⁶ The P-1A visa applies to individuals who enter the United States to perform as an athlete, individually or as a team, at an internationally recognized level of play.³⁷ While obtaining a P-1A visa as an esports player has been inconsistent, by at least granting some esports players the P-1A visa, the United States has essentially consented that some esports players are

31. See Eugene Kim, *Billion-Dollar Sports-Gambling Startups Draft Kings and FanDuel are Legal Because a Loophole in the Law*, BUS. INSIDER (Sept. 11, 2015, 8:50 AM), <https://www.businessinsider.com/why-draft-kings-and-fanduel-are-legal-2015-4> [<https://perma.cc/7BP6-VY98>] (noting that fantasy sports are legal under the Unlawful Internet Gambling Enforcement Act because they are considered a "game of skill" and not a "game of chance").

32. See Matthew Dobill, *Leveling (up) the Playing Field: A Policy-Based Case for Legalizing and Regulating Esports Gambling*, 37 LOY. L.A. ENT. L. REV. 139, 157–58 (2017).

33. See *id.* at 157; see, e.g., *Checkmate Gaming*, CMG, <https://www.checkmategaming.com/> [<https://perma.cc/YK3J-A4PE>].

34. See Dobill, *supra* note 32, at 158.

35. Cf. N.J. STAT. ANN. § 5:12A-10 (West 2021) (defining sports events as excluding certain "electronic sports" and "competitive video games"); *Navarro v. FIT*, No. 6:22-CV-1950-CEM-EJK, 2023 WL 2078264 (M.D. Fla. 2023) (holding that esports is not a sport within the purview of Title XI).

36. See Bridget A.J. Whan Tong, *A New Player Has Entered the Game: Immigration Reform for Esports Players*, 24 JEFFERY S. MOORAD SPORTS L.J. 351, 352 (2017).

37. Immigration and Nationality Act, 8 U.S.C. § 1184(c)(4)(A)(i)(I) (2023) (describing requirements to obtain a P-1A visa).

athletes.³⁸ Arguably, this means that some esports competitions must be sporting events. Accordingly, this Article takes the position that esports should be classified as sports.

This section will analyze three major federal gambling laws that play a role in determining how esports betting can and should be regulated. These laws are the Professional and Amateur Sports Protection Act (PASPA),³⁹ the Wire Act,⁴⁰ and the Unlawful Internet Gambling Enforcement Act (UIGEA).⁴¹

A. *The Professional and Amateur Sports Protection Act*

In 1992, to stop the spread of state-sponsored sports wagering, PASPA became law.⁴² Under PASPA, states could not “sponsor, operate, advertise, promote, license, or authorize by law or compact” any betting or wagering scheme based on the outcome of professional or amateur sports matches.⁴³ However, PASPA contained three grandfather clauses exempting states from this broad prohibition. The first exemption related to states that already had a wagering scheme in operation prior to the enactment of PASPA.⁴⁴ The second exemption related to states that already had statutes authorizing sports wagering, as long as the sports wagering was actually conducted in that state.⁴⁵ The third exemption related to any state that had an authorized and licensed gambling casino in a municipality throughout a specific ten-year period, to the extent that the state authorized legal sports betting at that casino within one year of the enactment of PASPA.⁴⁶ Effectively, these exemptions were only applicable to Nevada, Delaware, Oregon, and Montana.⁴⁷

On May 14, 2018, the Supreme Court issued the *Murphy* decision.⁴⁸ The Court held that PASPA’s provision prohibiting states from authorizing sports gambling was an unconstitutional violation of the

38. See Courtney New, *Immigration in Esports: Do Gamers Count as Athletes?*, FORBES (May 18, 2017, 3:49 PM), <https://www.forbes.com/sites/allabouttherupees/2017/05/18/immigration-in-esports-do-gamers-count-as-athletes/#70a3cdba468e> [<https://perma.cc/2Z7A-Y62Y>].

39. Professional and Amateur Sports Protection Act, Pub. L. No. 102-559, 106 Stat. 4227 (1992) (codified as amended at 28 U.S.C. §§ 3701–04).

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

41. Unlawful Internet Gambling Enforcement Act, Pub. L. No. 109-347, 120 Stat. 1952 (2006) (codified as amended at 31 U.S.C. §§ 5361–67).

42. See Jennifer Roberts & Greg Gemignani, *Who Wore It Better? Federal v. State Government Regulation of Sports Betting*, 9 U. NEV. L.V. GAMING L.J. 77, 82 (2019).

43. 28 U.S.C. § 3702 (2023).

44. 28 U.S.C. § 3704(a)(1) (2023).

45. 28 U.S.C. § 3704(a)(2) (2023).

46. 28 U.S.C. § 3704(a)(3) (2023).

47. See Roberts & Gemignani, *supra* note 42, at 83 (noting that the first exemption applied only to Delaware and Oregon, while the second exemption applied only to Nevada and Montana).

48. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1461 (2018).

anticommandeering rule.⁴⁹ In invalidating the entirety of PASPA, the Court noted that Congress may still regulate sports gambling if they so choose.⁵⁰ However, the federal prohibition against states authorizing sports wagering schemes was lifted, giving each state the right to freely regulate sports betting.⁵¹

Taking the position that esports falls under the category of sports, the overturning of PASPA plays a major role in the future of esports betting. However, even if esports is considered to be a sport, state legislation might still require esports-specific verbiage.⁵² In other words, individuals who oppose including esports in the definition of sports for betting purposes may argue that esports was not envisioned by the legislators when that specific state's sports betting laws were written. Accordingly, including esports-specific verbiage would be ideal. Whether esports betting ends up falling into the same category as traditional sports betting may very well end up depending on how broadly each state's sports betting laws are interpreted. All that seems clear is that after *Murphy*, esports betting in the United States is primed to explode.

B. *The Wire Act*

Enacted in 1961, the original purpose of the Wire Act was to suppress organized gambling crime by prohibiting the use of wire communications to make bets or wagers.⁵³ While the Wire Act appears to relate to a broad range of gambling activities, the statute has been held to apply only to sporting events or contests.⁵⁴ In 2011, the Justice Department's Office of Legal Counsel (OLC) issued an opinion stating that the Wire Act is limited to governing activities associated with sports gambling.⁵⁵ Be that

49. *Id.* at 1478.

50. *Id.* at 1484–85.

51. *Id.*

52. See Noah Smith, *Esports Bookmaking? Globally, it's Already a Billion-Dollar Gambling Industry*, WASH. POST (Apr. 6, 2018, 1:13 PM), https://www.washingtonpost.com/sports/esports-bookmaking-globally-its-already-a-billion-dollar-gambling-industry/2018/04/06/be89c282-2b99-11e8-8688-e053ba58f1e4_story.html?noredirect=on [https://perma.cc/A4PG-VNEU] (“There has to be clarity [regarding esports being classified as a sport for betting purposes by regulators], and right now there are more questions than there are answers.”).

53. H.R. REP. NO. 87-967, at 2631 (1961) (“The purpose of the bill is to assist the various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce.”).

54. See *In re MasterCard Int'l Inc.*, 313 F.3d 257, 262–63 (2002) (noting that the Wire Act relates to gambling on sporting events or contests).

55. U.S. Dept. of Just., Off. of Leg. Couns., Opinion Letter on Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act (Sept. 20, 2011).

as it may, in 2018, the OLC reversed the 2011 opinion, noting that the Wire Act also covers other forms of gambling that do not involve sports.⁵⁶

Following the 2018 OLC opinion, Judge Paul Barbadoro issued a decision in *New Hampshire Lottery Commission v. Barr*,⁵⁷ setting aside the 2018 OLC opinion and holding that the Wire Act “applies only to transmissions related to bets or wagers on a sporting event or contest.”⁵⁸ By merely setting aside, rather than providing a nationwide injunction of the 2018 OLC opinion, the door has been left open for arguing that Judge Barbadoro’s holding only extends to the New Hampshire Lottery Commission.⁵⁹ Nonetheless, if esports is deemed to fall under the category of being a sport, gambling site operators may be liable under the Wire Act.

C. *The Unlawful Internet Gambling Enforcement Act*

The remaining federal statute relevant to esports gambling is the UIGEA. The UIGEA prohibits any “person engaged in the business of betting or wagering” from knowingly accepting any financial transaction, “in connection with . . . unlawful Internet gambling.”⁶⁰ It is important to note that the UIGEA does not expressly ban individuals from gambling on the internet.⁶¹ Rather, it forbids institutions engaged in the gambling business from knowingly accepting electronic funds to be used in connection with an illegal internet bet or wager.⁶²

In essence, the UIGEA can be broken down into five elements: (1) the placing of a bet or wager; (2) on the internet; (3) knowingly accepted; (4) in a jurisdiction where external laws (state or federal) make such a bet illegal; and (5) exemptions for certain intrastate and intratribal gambling

56. U.S. Dept. of Just., Off. of Leg. Couns., Opinion Letter on Reconsidering Whether the Wire Act Applies to Non-Sports Gambling (Nov. 2, 2018) (“Only the second prohibition of the first clause of section 1084(a), which criminalizes transmitting ‘information assisting in the placing of bets or wagers on any sporting event or contest,’ is so limited.”).

57. 386 F. Supp. 3d 132, 160 (2019).

58. *Id.* at 160.

59. See Michael Casey, *Judge: Federal Wagering Law Only Applies to Sports Gambling*, ASSOCIATED PRESS (June 3, 2019, 10:46 AM), <https://www.apnews.com/20c298bea5c34a15a108dd2e348b4497> [<https://perma.cc/UC6U-8SK5>].

60. 31 U.S.C. § 5363 (2006).

61. Andrew M. Nevill, *Folded Industry? Black Friday’s Effect on the Future of Online Poker in the United States*, 2013 U. ILL. J.L. TECH. & POL’Y 203, 210 (2013).

62. *Id.*

operations are not met.⁶³ Thus, in order for the UIGEA to apply, there must have been a predicate law (state or federal) that was broken.⁶⁴

Continuing with the assumption that esports are considered to be sports, it appears clear that the UIGEA would extend to betting on the outcome of esports matches.⁶⁵ However, even if esports are not considered to qualify as sporting events under the UIGEA, esports betting would likely still be governed by the UIGEA simply because an esports match would fall under “a contest of others.”⁶⁶

III. STATE GAMBLING LAWS

After PASPA was overturned, states gained the ability to create legislation enabling esports betting.⁶⁷ Analyzing how certain states have incorporated esports betting into their sports betting legislation can help paint a clearer picture of how esports betting should be regulated. It is also worth noting that since PASPA has been overturned, some states have enacted legislation permitting sports betting while specifically excluding any esports-specific verbiage.⁶⁸ Because the law tends to be slow in catching up with the changes in time and technology, including esports-specific verbiage within betting legislation is preferred. Even though the law in other regards has inferred that esports would classify as a sport,⁶⁹ until a court affirmatively finds that esports are sports, the definition of a sporting event in gambling legislation should include specific mention of esports. Due to this preference, this Section will mainly analyze the two most popular laws regarding esports betting, while still shedding light on the more recent legislation.

63. Thomas A. Flynn, Note, *The Ace in the Hole: Why the Unlawful Internet Gambling Enforcement Act Did Not Categorically Ban Online Poker in the United States*, 5 GEO. MASON J. INT'L COM. L. 75, 84 (2013).

64. Erik Gerstner, Note, *Losing the Digital Shirt off Your Back: Applying the Unlawful Internet Gambling Enforcement Act to Virtual Property Betting*, 9 WM. & MARY BUS. L. REV. 321, 330 (2017).

65. See 31 U.S.C. § 5362(1)(A) (“The term ‘bet or wager’ . . . means the staking or risking by any person of something of value upon the outcome of . . . a sporting event”); see also *United States v. Lyons*, 740 F.3d 702, 729 (1st Cir. 2014) (holding that taking bets on sporting events via the internet qualified as “unlawful gambling” under the UIGEA).

66. See 31 U.S.C. § 5362(1)(A).

67. See *supra* Part II.A.

68. See discussion *supra* pp. 8–10.

69. See *supra* Part II.

A. New Jersey

Shortly after the decision in *Murphy*, New Jersey legislators rushed to update the state's 2014 betting law.⁷⁰ Over the course of compiling an updated sports betting bill, the state legislators included a ban on esports betting.⁷¹ The bill stated that “[a] prohibited sports event includes all high school sports events, electronic sports, and competitive video games.”⁷² However, merely three days after the legislation was passed, New Jersey's Division of Gaming Enforcement (NJDE) issued emergency regulations to further explain the state's position on esports betting.⁷³ The emergency regulations explicitly included within the definition of “[s]ports event,” “all professional electronic sports and competitive video game events that are not sponsored by high schools, do not include high school teams, and do not include any participant under the age of 18 years.”⁷⁴ Over a year after the passing of the bill, in November of 2019, the NJDE allowed sportsbooks to take wagers on an esports competition for the first time.⁷⁵

Allowing esports betting so long as every participant is at least eighteen years old is a step in the right direction.⁷⁶ Esports are unlike traditional sports in that many players are able to compete at the highest level at ages well below eighteen. Because players can compete at such young ages, some established esports leagues and events lower the required age threshold below eighteen.⁷⁷ Nevertheless, some leagues in America satisfy the age requirement.⁷⁸ Those leagues are highly regulated and have become the next step in converting esports into a more traditional sports model. Therefore, by limiting esports betting the way

70. Maddy Myers, *New Jersey Added a Last-Minute Esports Betting Ban and No One Knows Why*, KOTAKU (June 8, 2018), <https://compete.kotaku.com/new-jersey-added-a-last-minute-esports-betting-ban-and-1826678155> [<https://perma.cc/36AF-Y6J8>].

71. *See id.*; S. 2602, 218th Leg. (N.J. 2018).

72. N.J. STAT. ANN. § 5:12A-10 (West 2018).

73. *See* 50 N.J. Reg. 1652(a) (June 13, 2018); *Sports Wagering Emergency Regulations*, DIVISION OF GAMING ENFORCEMENT, <https://www.nj.gov/oag/ge/docs/SportsBetting/SportsWageringEmergencyRegulations.pdf> [<https://perma.cc/CQ88-KYAN>].

74. N.J. ADMIN. CODE § 13:69N-1.1 (2018).

75. Marco Cerino, *Esports Betting Approved in NJ in Time for League of Legends World Championship*, THE LINES (Nov. 9, 2019), <https://www.thelines.com/esports-betting-nj-league-of-legends-championship/> [<https://perma.cc/U3LQ-42D2>].

76. *See infra* Part V.

77. *See* Mitch Reames, *New Jersey Allows Esports Betting with Massive Restriction*, NAT'L FOOTBALL POST (June 17, 2018), <https://nationalfootballpost.com/betting-esports/> [<https://perma.cc/RET9-BTJS>] (noting that the age threshold for *League of Legends* and *Rocket League* is 17 years old and 15 years old, respectfully).

78. *See id.* (noting that the *Overwatch* League, *Call of Duty* League, and *NBA 2K* League all require a minimum age of 18 to compete).

New Jersey's law does, the law essentially places esports on the same platform as traditional sports.⁷⁹

B. Nevada

Considering that Las Vegas has been the main hub for gambling in America, it comes as no surprise that esports betting is allowed in Nevada. Prior to the passing of any esports-specific legislation, the Nevada Gaming Control Board (NGCB) gave permission for sportsbooks to accept wagers on esports.⁸⁰ Shortly thereafter, Governor Brian Sandoval signed Senate Bill 240,⁸¹ which solidified the legality of esports betting in Nevada.⁸² The bill amended Nevada's statutes regarding pari-mutuel betting systems to include esports.⁸³ Ironically, while the bill has been dubbed "the esports betting bill," it actually failed to include the word "esports" in its language.⁸⁴ Instead, the phrase "other events" was added to the prior list of pari-mutuel betting activities.⁸⁵

Unlike the New Jersey law, Nevada failed to include any esports-specific verbiage in its legislation. However, it is clear that esports betting was a central point intended to be included under the law. For starters, during the Nevada Senate hearings discussing the law, former esports competitor Jonathan "FatalIty" Wendel spoke about his training regimen, arguing that esports competitions should be considered alongside traditional sporting events.⁸⁶ Furthermore, A.G. Burnett, chairman of the NGCB, expressed a desire to see esports events held at the T-Mobile

79. See Rick Maese, *NBA Commissioner Adam Silver Says Days of One-and-Done Players Will Soon Be Over*, WASH. POST (May 9, 2019, 4:40 PM), <https://www.washingtonpost.com/sports/2019/05/09/nba-commissioner-adam-silver-days-one-and-done-players-will-be-over-soon/> [<https://perma.cc/6X8A-RKPA>] (stating that the one-and-done rule of the NBA is likely to soon change to once again allow 18-year-olds to enter the NBA without going to college).

80. See David Sheldon, *ESports Betting Now Fully Recognized Under Nevada Law*, Gov. Sandoval Signs Parimutuel Bill, CASINO.ORG (May 30, 2017, 9:34 PM), <https://www.casino.org/news/esports-betting-now-fully-recognized-under-nevada-law-gov-sandoval-signs-parimutuel-bill/> [<https://perma.cc/EN3J-T8GP>].

81. S.B. 240, 2017 Leg., 79th Sess. (Nev. 2017).

82. See *id.*

83. See *id.*

84. See Jacob Wolf, *Nevada Governor Approves Esports Betting Bill*, ESPN (June 3, 2017, 12:08 AM), https://www.espn.com/sports-betting/story/_/id/19512317/chalk-nevada-governor-approves-esports-betting-bill [<https://perma.cc/63NM-63Z6>]; see also *Nevada Governor Passes "Esports Betting Bill"*, MCV (May 30, 2017), <https://mcvuk.com/business-news/Nevada-governor-passes-esports-betting-bill/> [<https://perma.cc/HBA6-MFCH>].

85. *Id.*

86. See Minutes of the Meeting of the Assembly Committee on Judiciary, 81st Sess. (May 25, 2021), leg.state.nv.us/Session/81st2021/Minutes/Assembly/JUD/Final/1286.pdf [<https://perma.cc/AEE6-US32>].

Arena.⁸⁷ The combination of these factors, together with the prior green light given for sportsbooks to accept esports bets, demonstrated why the public was so quick to call this “the esports betting bill.”⁸⁸ Nonetheless, in the last three years, various states have followed New Jersey’s example and enacted legislation containing esports-specific verbiage allowing betting on esport competitions.⁸⁹

IV. THE CALL OF DUTY: CONSIDERATIONS AND PROPOSALS

In light of the current trends of esports betting in the United States, it is important for states to find an effective way to regulate the market. Currently, thirty-six states have regulated full-scale sports betting.⁹⁰ While some of these states expressly prohibit esports betting,⁹¹ many of them lack clarity as to whether esports betting is permitted.⁹²

87. Dejan Zalik, *Nevada Governor Signs Bill Legalizing Pari-Mutuel Wagering on Esports Events*, THE LINES, <https://www.thelines.com/nevada-esports-betting-law/> [<https://perma.cc/MLE2-TALP>] (Jan. 22, 2018) (“Ideally, you would have people coming from all over the globe to compete, with people paying to come in and bet on that event like you would a sportsbook.”).

88. *See supra* note 84.

89. *See* S.B. 1797, 55th Leg., 1st Sess. (Ariz. 2021) (defining “sports event” as “a professional sport or athletic event, a collegiate sport or athletic event, a motor race event, an e-sport event or an Olympic event”); H.B. 19-1327, 2019 Sess. (Colo. 2019) (defining a “prohibited sports event,” in part as, “a video game that is not sanctioned by a sports governing body as an electronic competition”); H.B. 6451 (Conn. 2021) (defining “sporting event” as including an “e-sports event, except for those in which one of the participants is a Connecticut intercollegiate team and the event is not in connection with a permitted intercollegiate tournament”); S.B. 247, 2021 Reg. Sess. (La. 2021) (defining “sporting event” as “any competitive video game or other electronic sports event”); H.B. 940 (Md. 2021) (defining “sporting event” as “an electronic sports or video game competition in which each participant is at least 18 years old”); L.B. 561 (Neb. 2021) (stating that an authorized sporting event includes “an electronic sport, or a simulated game); H.B. 1 (Tenn. 2020) (defining “sporting event” as “any professional sporting or athletic event, including motorsports and e-sports”); S.B. 384 (Va. 2020) (defining “sports event” as including “electronic sports event, or competitive video game event”); H.B. 2638, 66th Leg., Reg. Sess. (Wash. 2020) (defining “sports wagering” as the business of accepting wagers on “an electronic sports or esports competition or event”); H.B. 0133, 66th Leg. General Sess. (Wyo. 2021) (defining “sporting event” as including “electronic sports”).

90. *See* Will Yakowicz, *Where is Sports Betting Legal? A Guide to All 50 States*, FORBES (Jan. 9, 2023, 9:56 AM), <https://www.forbes.com/sites/willyakowicz/2023/01/09/where-is-sports-betting-legal-america-2022/?sh=2d9011cc386b> [<https://perma.cc/ZY46-5G9K>].

91. IND. CODE § 4-31-2-20.9 (2019) (“Sports wagering . . . does not include . . . wagering on e-sports.”).

92. *See* MISS. CODE ANN. § 75-76-5 (2019); *see also* 2021 Gaming Compact Between the Seminole Tribe of Florida and the State of Florida, FLA. GOV’T, 14 ¶ CC (Apr. 23, 2021), <https://www.flgov.com/wp-content/uploads/pdfs/2021%20Gaming%20Compact.pdf> [<https://perma.cc/345C-7ZVE>].

A. Regulatory Risks

Increased esports betting comes with major implications. Before discussing some of the significant regulatory risks, it is important to understand some of the basic difficulties with legalizing and regulating esports betting. For starters, esports is a relatively new phenomenon, and, therefore, many sportsbooks lack sufficient data on the performance of esports teams and players that would be used to establish the odds for bets. Another difficulty is that, unlike traditional sports, esports has no governing body to uphold the integrity of the game. Furthermore, when analyzing the few regulated sportsbooks in the United States that have taken bets on esports, we have seen that the cost-benefit of accepting esports bets is not great due to the lack of volume of bets placed. Essentially, because the average bet on esports is proportionately low compared to traditional sports, there is not much room for profit.

Regarding regulatory risks, arguably the most talked about concern is the involvement of minors in underage esports betting.⁹³ In 2016, it was reported that approximately 80% of global esports enthusiasts were anywhere between ten through thirty-five years old, with about 27% being between the ages of ten years old through twenty years old.⁹⁴ However, while most people associate esports with younger audiences, the median age of American esports viewers is twenty-eight years old.⁹⁵ Nonetheless, because of the reputation that video games have, protecting minors will always be of great importance. Additionally, addiction to gambling is another considerable risk that comes with legalizing esports betting. The issue is exacerbated because many people no longer believe gambling is morally wrong.⁹⁶ As Rodger Svendsen, former director of the Minnesota Compulsive Gambling Hotline stated, “[w]e’re working with the first generation that has been raised when gambling has been seen as a positive thing.”⁹⁷ One need only explore the controversy surrounding

93. See Aaron Swerdlow & Uriah Tagle, *Legalized Gambling Could Have Major Implications for Esports*, VENTUREBEAT (Sept. 2, 2018, 7:15 AM), <https://venturebeat.com/2018/09/02/legalized-gambling-could-have-major-implications-for-esports/> [https://perma.cc/S56P-A5GH].

94. *Id.*

95. See Eoin “SilentEcho” Bathurst, *The Average Age of Esports Viewers is Higher than You May Think, Says GameScape from Interpret, LLC*, THE ESPORTS OBSERVER (Feb. 24, 2017), <https://esportsobserver.com/average-age-esports-viewers-gamescape/> [https://perma.cc/UNL5-STQV].

96. Stephen F. Ross et al., *Reform of Sports Gambling in the United States: Lessons from Down Under*, 5 ARIZ. ST. SPORTS & ENT. L.J. 6, 12 (2015).

97. Tim Layden, *Bettor Education Gambling is the Dirty Little Secret on College Campuses, Where it’s Rampant and Prospering*, SPORTS ILLUSTRATED (Apr. 3, 1995), <https://www.si.com/vault/1995/04/03/8093095/bettor-education-gambling-is-the-dirty-little-secret-on-college-campuses-where-its-rampant-and-prospering-this-si-special-report-reveals->

loot boxes and skin betting to get a better idea of the dangers of stigmatizing gambling for minors.⁹⁸ For example, a thirteen-year-old boy was sent to rehab after using his grandparents' credit card without their permission or knowledge to wager on skins, and the boy eventually lost thousands of dollars.⁹⁹ Finally, the last major fear that legislators have regarding esports betting is match-fixing in professional competitions.¹⁰⁰ In spite of all the challenges concerning regulating esports betting, it is clear that none of these challenges are entirely new.

B. Crossover with Traditional Sports

Just like esports, traditional sports share many of the same risks and obstacles regarding betting. Many of the same individuals watching esports are likely to be avid sports fans as well.¹⁰¹ In fact, a 2016 report showed that "NBA fans are 114% more likely than the general population to be esports fans."¹⁰² Furthermore, experts in gambling addiction have warned about a predicted rise in gambling addiction due to the decision in *Murphy*.¹⁰³ In other words, the fear of gambling addiction is evident regardless of whether it involves solely traditional sports or esports. Lastly, there is no shortage of match-fixing scandals or integrity concerns in the history of sports. One of the biggest scandals occurred not long ago when NBA referee Tim Donaghy was arrested for betting on his own

how-easy-it-is-for-students-to-bet-with-a-bookie-become-consumed-with-wagering-and-get-ove [https://perma.cc/U5F9-MCYF].

98. See Shaun Assael, *Skin in the Game*, ESPN (Jan. 20, 2017, 3:00 AM), http://www.espn.com/espn/feature/story/_/id/18510975/how-counter-strike-turned-teenager [https://perma.cc/8JCD-GKRM] ("No extensive research has been done into skins gambling, much less how many of those who are hooked on it are minors. But Counter-Strike's popularity with kids undoubtedly puts many of them at risk.").

99. See Caroline McLeod, *More Than Skin Deep: Why It's Time to Go 'All-In' on Skin Gambling Regulation*, SSRN (Dec. 6, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3159661 [https://perma.cc/VTE3-9UAB].

100. See *supra* Part I.A.

101. See *Why Sports & Brands Want to be in Esports*, NEWZOO (Oct. 2016), http://resources.newzoo.com/hubfs/Reports/NEWZOO_Why_Sports_and_Brands_Want_to_Be_in_Esports.1.0.pdf?hsCtaTracking=b3a0262d-a819-40f3-a376-bfa571921bae%7Ca1594602-aff9-42bd-a6c5-118769c08d2a [https://perma.cc/G4MW-N85M].

102. Stephen Masters, *Year in Sports Media Report*, NIELSEN (2016), <https://www.nielsen.com/wp-content/uploads/sites/2/2019/04/nielsen-year-in-sports-media-2016.pdf> [https://perma.cc/VGP3-9KFB].

103. Josh Peter, *Sports Betting Ruling Will Lead to Costly Rise in Gambling Addiction, Experts Warn*, USA TODAY (May 14, 2018, 3:57 PM), <https://www.usatoday.com/story/sports/2018/05/14/sports-betting-rise-gambling-addiction/608989002/> [https://perma.cc/TJ5E-HALE] ("You've got people today that would never, ever gamble with a bookmaker and never do anything illegal, and now you're making it legal . . . They're going to be all over this sports betting thing.").

matches.¹⁰⁴ Even more recently, the Houston Astros illegally used a camera system to steal signs from opposing teams throughout their 2017 championship season.¹⁰⁵ In sum, the fears encompassing traditional sports betting are very similar to those encompassing esports betting.

C. *The Solution*

While no perfect solution exists, many practices may be helpful. One of the preliminary concerns that must be addressed is whether esports falls under the definition of “sports gambling.” It is important to note that while states can outright ban esports betting, it would be a better practice to instead find ways to properly regulate it. Esports betting is already happening on the black market, and there are no signs of it stopping.¹⁰⁶ By taking the time to regulate and monitor esports betting, states can ensure a safer betting environment and possibly profit from increased tax revenue.

Esports betting uses the exact same type of odds and bets as traditional sports betting. While creating strict betting lines is no easy task and requires a significant amount of data, many sportsbooks keep a lookout on other sportsbooks to get an idea of where to draw the lines.¹⁰⁷ Considering that there are already many sportsbooks offering bets on esports, it appears that the data needed to establish accurate betting lines is not as scant as many believe it to be.

Regarding the fact that esports has no governing body, a possible solution would be to limit esports betting to specific leagues and tournaments. For example, the Call of Duty League and the Overwatch League are both regulated by Activision Blizzard and have become the

104. See Scott Eden, *How Former Ref Tim Donaghy Conspired to Fix NBA Games*, ESPN (Feb. 19, 2019, 7:00 AM), https://www.espn.com/nba/story/_/id/25980368/how-former-ref-tim-donaghy-conspired-fix-nba-games [<https://perma.cc/4TDS-SD92>]; *Untold: Operation Flagrant Foul*, NETFLIX (2022) (documenting the 2007 gambling scandal where Tim Donaghy would place bets on the games he would officiate).

105. See Robert D. Manfred, Jr., *Statement of the Commissioner*, MLB (Jan. 13, 2020), <https://img.mlbstatic.com/mlb-images/image/upload/mlb/cglrhmlrwwbkacty2717.pdf> [<https://perma.cc/NR3X-2ZXU>]; see also Darren Rovell, *Daily Fantasy Player Files Lawsuit Against MLB Over Astros Scandal*, ACTION NETWORK (Jan. 24, 2020, 11:51 AM), https://www.actionnetwork.com/mlb/mlb-lawsuit-astros-red-sox-scandal-daily-fantasy-draftkings?utm_source=twitter&utm_medium=social&utm_campaign=darrenrovell [<https://perma.cc/3CMX-HMWY>] (reporting that a daily fantasy player has filed a class action lawsuit alleging that the MLB should be held responsible for the cheating scandal because it compromised the statistics which determined whether fans won or lost money on their bets).

106. See Conditt, *supra* note 26 (“The US is one of the world’s largest esports black markets.”).

107. See Chris Yuscavage, *Everything You Need to Know About How Betting Lines Work*, COMPLEX (Jan. 30, 2015), <https://www.complex.com/sports/2015/01/how-betting-lines-work/> [<https://perma.cc/29T4-C5MQ>].

next step in converting esports into the traditional sports model.¹⁰⁸ While having the game publisher regulate its own league brings on additional antitrust issues,¹⁰⁹ these leagues are still arguably the most primed for esports betting. Once more governance is in place, sportsbooks may then expand their coverage without much fear. This, in turn, would open the door for more people to bet on the esports they enjoy and, therefore, likely increase the volume of esports bets.

Nonetheless, in order to properly combat against the regulatory risks, lawmakers should also look to other industries for guidance. Minimum-age verification measures have frequently been used as a way to protect minors from accessing adult content.¹¹⁰ However, this measure alone would likely not be sufficient to deter minors from betting on esports. Along with minimum-age verifications, states should set the minimum age to engage in esports betting at twenty-one.¹¹¹ Doing so would not only reduce the risk of underage betting, but would also reduce the risk of compulsive betting.¹¹² This age restriction recognizes that “college-aged males are the demographic group most likely to suffer from pathological gambling behaviors.”¹¹³ Another possible solution would be to cap the amount of money that any gambling operator may collect from any individual over a monthly period.¹¹⁴ Integrating such a cap on an individual’s monthly betting limit would functionally assist in mitigating the dangers of compulsive betting. By incorporating these safeguards, states can get one step closer to effectively regulating esports betting.

In addition, states should direct betting operators to provide warnings for esports bettors detailing the risks associated with the practice. Moreover, the esports industry should also look into regulating itself. For example, the Call of Duty League has rules set in place prohibiting participants from gambling on the outcome of any match, whether the

108. See Olivia Richman, *Activision Blizzard Earnings Call Spells Trouble for OWL, CDL, ESPORTS ILLUSTRATED* (May 6, 2023, 3:11 PM), <https://esi.si.com/call-of-duty/activision-blizzard-earnings-call-spells-trouble-for-owl-cdl> [<https://perma.cc/YYC3-5RYX>].

109. See generally Michael Arin, Note, *Competing Competitions: Anticompetitive Conduct by Publisher-Controlled Esports Leagues*, 104 MINN. L. REV. 1585 (2020) (discussing that publisher-controller esports leagues can manipulate their control over video game copyright protections and engage in anticompetitive practices).

110. See Matthew R. Yost, *Video Game Gambling: Too Big a Bet for New Jersey*, 70 RUTGERS U.L. REV. 335, 362 (2017) (stating that many pornographic websites use age verification measures prior to allowing access to their main page).

111. See W. VA. CODE § 29-22D-15(a) (2018) (providing an example of a state’s sports wagering statute setting the minimum age to bet at twenty-one).

112. See Edelman, *supra* note 16, at 338.

113. *Id.*

114. Edelman, *supra* note 16, at 337.

individual is playing in that match or not.¹¹⁵ But because some gamers may not be discouraged by mere rules, esports leagues should also implement anti-fraud and collusion detection systems.¹¹⁶ “The ease with which esports leagues can adopt new gambling policies and anti-fraud policies combats the policy motivation behind regulating gambling.”¹¹⁷ Furthermore, these leagues should follow in the path of traditional sports and attempt to work with lawmakers in order for the leagues to have a right to restrict certain bets that they deem to be more susceptible to manipulation.¹¹⁸ For instance, leagues may choose to allow betting on the outcome of a match or tournament but restrict bets on which player will get the first kill. Notably, if lawmakers decide to work with esports leagues, it is crucial that they do not specifically delegate any regulatory power to these leagues but should rather mandate league cooperation. Ultimately, following all of these practices is essential in providing a comprehensive and regulated betting space, ensuring that the least amount of harm occurs.

CONCLUSION

The United States Supreme Court’s decision in *Murphy* changed the way America views sports gambling. Nonetheless, the Court’s decision in *Murphy* did not simply legalize sports betting.¹¹⁹ Rather, it granted states the ability to enact their own sports betting legislation.¹²⁰ This decision caused a ripple effect that has recently begun to reach the world of esports. As esports continues to grow in popularity and exposure, it has become increasingly evident that esports presents a lucrative monetization opportunity for the gambling industry. While wagering on esports is an exciting new market, work must be done in order to effectively regulate it. Because esports is relatively in its infancy compared to traditional sports, there are major concerns regarding corruption and controversy. However, many of these concerns overlap with the concerns surrounding traditional sports betting. Therefore, to

115. See *Tournament Rules*, CALL OF DUTY CHALLENGERS (May 5, 2023), https://www.callofduty.com/content/dam/atvi/callofduty/esports-new/2023-cdl-programs/challengers_2023_season_tournament_rules_v1-1.pdf [<https://perma.cc/89KB-NUW6>].

116. See Dobill, *supra* note 32, at 167.

117. *Id.*

118. See Ryan M. Rodenberg, *Due Process, Private Nondelegation Doctrine, and the Regulation of Sports Betting*, 9 U. NEV. L.V. GAMING L.J. 99, 112–15 (2019) (explaining that the NFL, NBA, and MLB all submitted statements proposing that they be able to restrict wagering on their own events).

119. *Murphy*, 138 S. Ct. at 1484 (“The legalization of sports gambling requires an important policy choice, but the choice is not ours to make.”).

120. *Id.* at 1484–85 (“The legalization of sports gambling requires an important policy choice, but the choice is not ours to make. Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.”).

capitalize on the burgeoning growth of esports, both the states and the esports industry should work together to successfully regulate esports betting.

Because esports should fall under the category of sports, states must begin by including esports-specific verbiage in their legislation. Regarding the actual regulation of esports betting, states should set the minimum age of betting on esports at twenty-one. Additionally, standard regulatory betting protocols that are already in place should be followed. This includes using minimum-age verification measures and geo-blocking technology to make sure betting is available only where it is legal. As for self-regulation, the esports industry should increase its monitoring of players and team affiliates to make sure no corruption occurs.

If esports betting continues to be ignored in this new transitional gambling reality we live in, society will continue to see a rise in the dangers associated with unregulated esports betting. Individuals will continue to bet money through illegal black markets leaving them vulnerable to unsecure funds, digital security, and a lack of legal protections.¹²¹ States will continue to see a rise in gambling addictions, especially among young adults. Minors will continue to lack the safety measures that so desperately are needed. And esports will continue to see cases of corruption and match-fixing thus leading to esports being considered a more suspect domain. Ultimately, for esports betting to function effectively, the risks and obstacles outline in this Article must be tackled head on. In a world where the law is consistently slow to keep up with technology, the time is now to step up and regulate esports betting.

121. See *Illegal Sports Betting*, AMERICAN GAMING ASS'N (May 31, 2022), <https://www.americangaming.org/illegal-sports-betting/> [https://perma.cc/8Q36-ZKA4] (“While legal, regulated sportsbooks uphold key principles of responsible gaming, protection of consumer funds, data privacy, and more, offshore books do nothing to protect their patrons.”).