

**Testimony of William C. Miller, Jr.
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Before the Senate Judiciary Committee
“Protecting the Integrity of College Athletics”**

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Introduction

Chairman Graham, Ranking Member Blumenthal, and members of the committee, thank you for the opportunity to testify today.

In May 2018, the United States Supreme Court declared that the Professional and Amateur Sports Protection Act (PASPA) is unconstitutional.¹ This important ruling enabled states and sovereign tribal nations to decide whether to legalize and regulate sports betting within their borders, which had been prohibited since PASPA’s enactment in 1992. The AGA strongly supported this decision, and we have continued to play a leading role in advancing an inclusive, fact-driven American sports betting market.

The AGA and our member companies knew that just legalizing sports betting was not enough. We had to work together to get sports betting right. As the voice of the gaming industry, we fully recognize the value and importance of a legal sports betting market that prioritizes consumer protections and integrity, ensures robust oversight, and creates economic benefits. The AGA developed critical policy principles for state legislatures and tribes to consider as they seek to authorize sports wagering.²

We have also undertaken extensive research to better understand important dynamics within the sports betting marketplace. Notably, research by the AGA and others has conclusively proven Americans have a longstanding and widespread interest in wagering on sports and will seek channels to place bets – regardless of their legality. That is the underlying reason for the failure of PASPA’s prohibition approach. Rather than preventing sports betting in the U.S., PASPA instead enabled a massive illegal sports betting market that the AGA estimated to be in excess of \$150 billion dollars annually.

Though certainly not what Congress intended, this failed policy inadvertently provided a near monopoly to illegal gambling operations that fuel other criminal activity, do not provide

¹ Murphy v. Nat’l Collegiate Athletic Ass’n, 584 U.S. ____ (2018).

² <https://www.americangaming.org/wp-content/uploads/2020/07/AGA-Sports-Betting-Principles-Final.pdf>

any consumer protections, and generate no economic benefits to states or tribal nations. Further, and at the core of today's hearing, the lack of transparency into illegal wagering may pose significant risks to both the integrity of sporting contests and the athletes who compete in them.

Fortunately, more than 4 in 10 (41.3%) Americans have – or will soon have – legal channels available to bet on sports in their home state. However, a vast illegal market continues to operate and remains the only option for far too many.

Accordingly, we believe the shared goal of policymakers and other stakeholders should be to seize this opportunity to bring betting activity into a legal market, under state and tribal regulatory oversight, which will enhance transparency, consumer protections, and game and bet integrity, while supporting jobs and generating tax revenue.

The Post-PASPA Landscape

In the two years since the Court's ruling, there has been extraordinary momentum behind state-level efforts to legalize and regulate sports betting. Today, 22 states and the District of Columbia have authorized sports betting and legal sportsbooks in 18 states and the District are currently operational. Citizens in three states – Maryland, South Dakota, and Louisiana – will vote on ballot initiatives in November to authorize sports betting.

In total, there has been some level of activity toward authorizing sports betting in all but three states since PASPA was invalidated. The momentum behind expanded legalization will undoubtedly continue as states and tribal governments recognize that legalizing and regulating sports betting reflects responsible social and fiscal policy and is also what their constituents want. Across the country, more than 7 in 10 Americans favor legal sports betting in their states.

Since May 2018, bettors have legally wagered nearly \$22 billion on sports nationwide, generating more than \$195 million in tax revenue to state and local governments. Nationwide, the amount wagered – known as handle – in 2019 was nearly double that of 2018, going from \$6.6 billion to \$13 billion. Before the COVID-19 pandemic brought American sports betting to a near halt in mid-March, 2020 was set to become another record-breaking year, with similar percentage year-over-year gains in January and February (\$3.5 billion legally wagered, up from \$1.9 billion the same time last year).

These trends are all encouraging and point to the long-term success of the legal marketplace, but there is still much work to be done to move consumers to legal options. Earlier this week, the AGA released research on the consumer movement from the illegal to the legal market.³ We found that while a slight majority of sports bettors (52%) still participate in the illegal market, bettors overwhelmingly say they prefer legal operators, with 73% saying it is important to only bet through legal providers. Illegal sports betting is driven

³ <https://www.americangaming.org/resources/2020-survey-of-american-sports-bettors/>

largely by confusion about the legality of online operators. More than half (55%) of consumers who placed most of their wagers with illegal operators believed they bet legally, and most are surprised to learn the site they are using is actually an unregulated, offshore operator.

The AGA believes it is critical to address this through a combination of continued legalization, consumer education, and a sustained, coordinated effort between industry and law enforcement to ensure illegal sportsbooks cannot operate undeterred in the U.S. market.

Our Commitment to Responsibility

Core to our business is our commitment to responsible gaming. Our culture of responsibility began in casinos and has since extended to sports betting operations. Each year, we commit hundreds of millions of dollars to support enhanced employee training, customer education, and local and national problem gambling efforts.

The AGA Responsible Gaming Code of Conduct reflects the industry's commitment to protecting consumers and promoting responsible play.⁴ The Code of Conduct, which is applicable to both land-based and online sports betting, outlines operators' efforts to continue their rigorous support of robust employee training programs, prevention, treatment, and research initiatives, as well as public awareness programs surrounding responsible gaming and the prevention of underage gambling.

Building upon the commitments in our code of conduct, the AGA and our members developed the Responsible Marketing Code for Sports Wagering to define guiding principles for the responsible advertising and marketing of sports betting.⁵ This extension of the code of conduct serves as the guideline for operators, leagues, teams, broadcasters, and businesses involved in legal sports betting to make sure we market appropriately. The marketing code stresses the importance of respecting the legal age for sports betting, supporting responsible gaming, controlling digital media and websites, and monitoring compliance. Of particular relevance to today's discussion, the marketing code states that, "sports wagering should not be promoted or advertised in college or university-owned news assets (e.g., school newspapers, radio, or television broadcasts, etc.) or advertised on college or university campuses.

Further, in collaboration with leading academics from Yale and Harvard, responsible and problem gambling and advocacy groups, and other industry organizations, we launched the Responsible Gambling Collaborative to advance the most effective approaches to responsible gaming and the prevention of problem gambling. In January, the collaborative

⁴ <https://www.americangaming.org/responsibility/member-code-of-conduct/>

⁵ <https://www.americangaming.org/responsibility/responsible-marketing-code-for-sports-wagering/>

released Responsible Gambling Effectiveness Principles, a first-ever attempt within the U.S. to create a consensus statement, charting a modern approach for responsible gaming.⁶

We are also leading the way to make sure responsibility is a key tenant of every new sports betting market. Last year, the AGA launched a public service announcement campaign, *Have A Game Plan™ Bet Responsibly*, to educate fans and consumers about responsible sports betting practices.⁷ The campaign, launched in legal sports betting markets, proactively equips patrons with the tools they need to engage new offerings in a responsible manner.

Our Shared Commitment to Integrity

The gaming industry and sports governing bodies share a significant mutual interest in upholding the utmost integrity of all sporting events. Even the mere suggestion of scandal poses the risk of inflicting significant damage to our operators' brands and reputations, as well as real economic harm if a bet is placed on an event if the outcome is fixed.

That is why our industry takes sports integrity very seriously, deploying innovative technologies and other resources available to track legal wagering activity and identify suspicious activities. Analyzing data from legal wagers leads to identifying potentially irregular betting patterns that can uncover match fixing. In fact, the vast majority of sports betting scandals over the past 40 years were uncovered either directly by or with the assistance of legal sports betting operators in Nevada.

With the recent expansion of legal sports betting, we now have operators in more jurisdictions who have a vested interest in clean competition and can effectively magnify this “watch dog” function. To enhance coordination between legal sports betting operators across jurisdictions, the industry established the Sports Wagering Integrity Monitoring Association (SWIMA) in November 2018.⁸ SWIMA is a multi-jurisdictional entity that works in partnership with its member gaming operators; federal, state, and tribal regulators and law enforcement; and other various stakeholders involved in sports wagering to detect and discourage fraud and other illegal or unethical activity related to betting on sporting events in the U.S.

To their credit, professional sports leagues' views on sports wagering have also evolved. As legalized sports betting has grown, leagues have embraced the reality that a regulated marketplace is a far superior alternative to the unregulated, offshore market that clearly provides bad actors more opportunity to corrupt sports. We are pleased that leagues are now actively working in support of legislative proposals in state capitals across the country. The evolution of the leagues' views represents a critical opportunity for our industries to work with state legislatures and regulators to develop effective policies that will ensure a

⁶ <https://www.rgcollaborative.org/principles>

⁷ <http://haveagameplan.org/>

⁸ <https://www.swima.net/>

safe, successful sports betting market. It is also important to note that since May 2018, professional sports leagues and teams have established more than 80 partnerships with prominent casino and sportsbook operators, covering integrity protection, data sharing, and marketing opportunities.

Despite this evolution, we realize some stakeholders remain concerned about bets being placed on collegiate events – based primarily on the presumption that unpaid, amateur athletes are more at risk of being corrupted by those seeking to influence the outcome of sporting competitions. While that may indeed be the case, it is also perhaps the most compelling reason to apply strict regulatory oversight and that only comes from the legal market.

The AGA and the entire gaming industry welcome the opportunity for continued dialogue with the NCAA, policymakers, and regulators to better understand ongoing concerns and explore reasonable solutions to effectively mitigate potential risks. However, our strong view is that efforts to ban legal wagering on college athletics ignores the immutable fact that there has always been, and always will be significant public demand for betting on college sports.

The NCAA and its partners have worked hard to make college football and basketball wildly popular, as evidenced by engagement and viewership of these sporting events. Although regulators do not break out betting volume between collegiate and professional events, anecdotally we know that collegiate events account for about 30% of the basketball and football wagers placed in the legal market. The past several decades under PASPA have also demonstrated unequivocally that demand will be met by the illegal market. Therefore, the real public policy question is not if sports wagering will occur, but whether it should take place through legal or illegal channels.

Some states have imposed betting restrictions or prohibitions on in-state collegiate events and/or events involving universities from their states. To date, however, almost every jurisdiction that has legalized sports betting has made the wise decision to allow some form of wagering on collegiate sports. At the federal level, legislation introduced in 2018 by former Senator Hatch and Democratic Leader Schumer did not seek to prohibit betting on college athletics.

A Federal Framework for Sports Betting is Unnecessary

As Congress has refrained from regulating lotteries, slot machines, table games, and other gambling products, it should similarly refrain from engaging on sports wagering, barring an identifiable problem that warrants federal attention.

Some form of regulated gaming and/or lottery now exists in 48 states. The gaming industry is already one of the most regulated in the country and states and tribes have proven to be effective regulators. Not only do states and tribes allocate considerable resources to regulate all forms of gaming, they also have decades of experience effectively overseeing gaming operations within their jurisdictions.

The regulations currently in place in every jurisdiction already address issues like age restrictions, record-keeping requirements, and licensing and suitability determinations of businesses, officers, and employees, among others. On top of that, the gaming industry is subject to stringent federal anti-money laundering regulations and has a strong record of compliance. Tribal governments are also subject to the National Indian Gaming Commission's regulatory oversight, which also has a positive history of compliance. The AGA believes any entity offering sports betting should be subjected to the same level of rigorous licensing programs and regulatory oversight with which current commercial and tribal casino operators must comply.

Additionally, the AGA vigorously opposes efforts to use federal or state legislation to mandate certain relationships between the gaming industry and sports leagues. These are commercial relationships that are routinely left to private business contracts. The casino gaming industry and sports leagues are both committed to eliminating the thriving illegal sports betting market; protecting the integrity of both sports betting and sporting competitions; and protecting consumers. The AGA is confident these goals can and will be achieved through collaboration driven by mutual interest and cemented with commercial agreements.

Any efforts to use the power of government to impose costs, eliminate operators' market-based choices, or make it harder for consumers to place legal wagers will directly undermine the goals we all share. For example, the AGA holds firm that there is neither a need nor a legal precedent to mandate sportsbook operators purchase "official data" directly from leagues. A healthy market of accurate, consistent sports betting data providers already exists, and sportsbooks avail themselves of such services in the commercial market. Mandating every sportsbook contract with an official data company will allow individual, preferred data providers to set inflated, non-competitive monopoly prices for their services. Furthermore, federal courts have routinely rejected treating data or facts as if they are a property right under the First Amendment.

Given the Committee's jurisdiction over intellectual property matters, you understand that facts, such as the score of a baseball or football game, are not subject to copyright. Efforts to compel the use of "official data" is a backdoor attempt to treat such facts as a property right, giving the leagues a monopoly over information easily found in the sports page of every newspaper daily. Real-time information is crucial for sportsbooks to set accurate odds and compete in a crowded marketplace. If information is delayed or flawed, even by a few seconds, it can put sportsbooks at a severe disadvantage. As such, sportsbooks should retain the option to seek out the services that are the best for them, which in some cases may ultimately be getting data directly from the sports leagues at a rate determined by the free market.

Recommended Federal Considerations

While the AGA has serious concerns about an additional federal regulatory framework to dictate the contours of states' and tribes' sports betting policy, we do believe it is appropriate for Congress to consider targeted measures to help ensure the success of a safe, legal, regulated sports betting industry.

Increasing federal penalties for match-fixing

Match fixing is illegal at both the federal and state level.⁹ We support the aggressive enforcement of these common sense prohibitions to help deter fraudulent conduct. We believe Congress should consider increasing the maximum criminal penalty for match fixing beyond five years given the seriousness of this offense.

Repealing federal excise tax on sports wagers

Sports betting is a low-margin business, which is not economically viable without the proper policy environment. For every dollar a legal, regulated sportsbook accepts in wagers, it pays back, on average, 95 cents to winning bettors. That means for every dollar wagered, a sportsbook initially retains around five cents. But the effective margins that sportsbooks actually keep as true profit are much slimmer.

A legal sportsbook must pay state and federal taxes out of that five cents in earned revenue. It must also pay for employee salaries, rent, marketing, back-end technology and hardware that runs the sportsbook, and property taxes or casino leasing fees. After all of these and other business expenses are taken care of, the sportsbook is left with a very modest profit. Moreover, given the unpredictable nature of sporting events, this modest profit is even more volatile.

In contrast, illegal wagering operators generally have little overhead and virtually no tax or regulatory compliance outlays. This competitive advantage allows them to enjoy far higher profit margins, while also offering consumers better-paying odds.

Repealing the federal excise and head taxes levied on legal sports wagering operations is one important step Congress can take to help level the playing field and allow legal, regulated sportsbooks to more effectively compete. The Internal Revenue Code imposes a federal excise tax of 0.25% on the amount of any legal sports wager.¹⁰ It also imposes an additional \$50 annual head tax for every employee engaged in receiving wagers for or on behalf of any legal sports betting operator.¹¹ The excise tax was originally established at 10% of the wager amount in 1951 as a

⁹ 18 U.S.C. § 224

¹⁰ 26 U.S.C §4401

¹¹ 26 U.S.C §4411

tool to suppress illegal, organized gambling activities. While Congress subsequently reduced the tax to .25% for legal sports betting operators, the tax does not advance any specific policy goals, and continues to make it more difficult for legal operations to compete with illegal bookmakers. The \$50 tax on employees produces de minimis revenue to the government, while imposing significant administrative burdens on legal operators and serving as an impediment to hiring at a time when providing jobs is essential.

Conclusion

Thank you, again, for the opportunity to testify today. While there will always be legitimate concerns about the intersection of gambling and the integrity of college sports, I hope members of the Committee will recognize that prohibition has already proven to be a failed approach that creates significantly greater risk. Integrity is the foundational element of the states' and tribes' regulatory structures, which obviates the need to create a new federal bureaucracy to regulate sports betting.

The primary role of the federal government should remain enforcement against the illegal marketplace and represents the most meaningful solution to help ensure the integrity of sports. Legal sports betting operations have an overwhelming economic interest in clean competition and will continue to work with regulators and law enforcement to ensure that criminal efforts to undermine sports integrity are detected and deterred.

The AGA is unwavering in our commitment to continuing a constructive dialogue on sports betting toward the goal of establishing a robust legal sports betting market that protects consumers, the integrity of sports and wagers placed on them, and derives economic benefits to a variety of stakeholders.