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Why Offshore Betting is Risky

Steven Henley

INTRODUCTION

Sports betting is a growing activity in a newly regulated era, yet many patrons who participate in the market are choosing to place their bets with offshore sportsbooks. This article aims to provide brief context into the sports betting market by discussing recent changes in U.S. regulations which have allowed for its lawful practice. In turn, the article will address how offshore sportsbooks came to be, the risk they pose to consumers, and how to avoid some common legal pitfalls.

Discussion of this topic can be nuanced, and it is important to provide some basic understanding. For purposes of this article, a sportsbook is referred to as a company or entity that operates by accepting wagers on most major sporting events.¹ In addition, it's worth knowing that sportsbooks can be either physical brick and mortar places, such as casinos, or they can exist and operate entirely online.² Sportsbooks can be further categorized as in-state or offshore, and for many consumers, it can be hard to differentiate between an in-state sportsbook and an offshore sportsbook.³ In this article, when referring to an in-state sportsbook, we mean those sportsbooks that operate within the jurisdiction of the United States, who maintain proper licensing, and operate in accordance with governing laws. On the other hand, when referencing an offshore sportsbook, we mean those sportsbooks which operate outside the jurisdiction of the United States. These offshore sportsbooks typically do not hold licenses to operate in U.S. jurisdictions and rarely are in compliance with governing law.

¹ Weber, Matt, *Sportsbook Definition*, INVESTOPEDIA.COM (May. 25, 2022) <https://www.investopedia.com/sportsbook-5217715>.

² *Id.*

³ Brad Allen, *Analysis: Why Offshore Sportsbooks Are Thriving Despite Regulated Competition*, LEGAL SPORTS REPORT (Sep. 20, 2021) <https://www.legalsportsreport.com/56009/are-offshore-sportsbooks-stronger-than-ever/>.

LEGAL HISTORY OF SPORTSBOOKS AND THE NEWLY REGULATED ERA

For a majority of U.S. history, the practice of betting on sports was strictly prohibited.⁴ Regulations such as the Interstate Wire Act, the Travel Act, and the Profession and Amateur sports Protection Act (“PAPSA”) were just a few of the culprits responsible for the dry market.⁵ Following the decision from the Supreme Court in *Murphy v. National Collegiate Athletic Association*, the drought for sportsbooks finally ended. In *Murphy*, the Court found that regulations like PASPA violated the 10th amendment and limited the states’ rights to decide for themselves on how to address the issue of sports gambling.⁶ As a result, this decision opened the gates to sports gambling in the United States.⁷ With power now bestowed to the states, each state is now able to decide whether to allow sports gambling.⁸ Currently, 21 states allow for legalized sports betting, with five additional states allowing for “In-Person-Only” sports betting, and that number continues to rise.⁹

Offshore sportsbooks came to rise during the late 1980’s and 1990’s with the formation of call agencies in areas such as the Caribbean Islands where bettors could place bets over the phone in order to dodge strict regulations.¹⁰ With the advent of the internet, offshore sportsbooks began to use the internet merely for advertising but eventually allowed patrons to place bets.¹¹ Since then, the market for offshore sportsbooks has continued to steadily grow.¹² The market for offshore sports betting has proved inherently difficult to measure as it lacks the regulation and tracking that legal operators maintain.¹³ Before the national legalization of sports gambling, estimates reveal Americans

⁴ Kelly, J. M., *Sports Wagering Prohibition in the United States: An Exercise in Futility and the Best Development for Organized Crime*, 15 GAMING L. REV. AND ECON. 257–59.

⁵ 18 U.S. Code § 1084; see also 18 U.S. Code § 1952; see also 28 U.S. Code Chapter 178.

⁶ *Murphy v. National Collegiate Athletic Association*, 584 U.S. (2018).

⁷ John T. Holden, *Regulating Sports Wagering*, 105 IOWA L. REV. 575, 583–91 (2020) (discussing the scope of the *Murphy* decision).

⁸ Lowe, *supra* note 3, at 2.

⁹ Don Preciado, *States Where Sports Betting is Legal*, FORBES BETTING (Aug. 6, 2019), <https://www.forbes.com/betting/sports-betting/legal-states/>.

¹⁰ *Offshore Sportsbooks-A Little History*, BETTORSWORLD.COM (Apr. 16, 2019) <https://www.bettorsworld.com/betting-library/2019/offshore-sportsbooks/>.

¹¹ *Id.*

¹² *Id.*

¹³ *Economic Impact of Legalized Sports Betting*, OXFORD ECON. 1, 7-8 (May 2017), <https://www.americangaming.org/wp-content/uploads/2018/12/AGA-Oxford-Sports-Betting-Economic-Impact-Report1-1.pdf>.

were wagering \$150 billion annually in the black market.¹⁴ With the decision of *Murphy*, many hypothesized that the offshore sportsbook market would become a thing of the past. However, that does not seem to be the case given a recent survey that was conducted in New Jersey.¹⁵ Before *Murphy* had been decided, the study asked its participants whether they would stop betting offshore following an affirmative decision in favor of a legal market in the United States.¹⁶ Initially, 70% of respondent stated they would move to the legal market but a subsequent poll, taken after the decision in *Murphy*, revealed that almost half were still wagering offshore.¹⁷

DANGERS OF OFFSHORE SPORTSBOOKS

Even though sports betting has become a more legal option in the United States, many still revert to offshore sportsbooks to do their betting,¹⁸ which can come with serious risks.¹⁹

Illegality of Accepting Outside Wagers Under the Wire Act, UIGEA, and Travel Act

A common misconception in the law of sports betting is that the Supreme Court in *Murphy* allowed *all* sports betting in the United States, and thus completely reversed PASPA as well as the Wire Act.²⁰ However, that is not the case. The Supreme Court overruled PASPA, granting states the right to determine for themselves whether sports betting was right for them.²¹ In those states yet to decide, the Wire Act still applies.²² This enables the federal government to charge offshore betting operators and patrons with federal crimes for their use of the internet in placing illegal wagers, which is considered a

¹⁴ Spencer, *supra* note 4, at 8.

¹⁵ John T. Holden and Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates its Most Lucrative Vice*, WIS. L. J. 937, 939 (2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Illegal Sports Betting: How Offshore Operators-and Those Who Support Them-Break U.S. Law*, AM. GAMING ASSOC. (May 31, 2022), <https://www.americangaming.org/illegal-sports-betting/>.

²⁰ Mark A. Clayton and Erica L. Okerberg, *The Wire Act and Interstate Sports Wagering Post-Murphy*, GREENBURG TRAURIG ALERT (Sep. 2018), <https://www.gtlaw.com/en/insights/2018/9/the-wire-act-and-interstate-sports-wagering-post-murphy>.

²¹ *Id.*

²² *Id.*

“wire communication” under the law.²³ Other laws like the UIGEA, target the money transfers that power offshore sports betting, and the Travel Act prohibits online sports wagering because it makes the use of interstate commerce to distribute proceeds of unlawful activities illegal.²⁴ The repercussions for violating these laws can be severe, with potential sentences of two years in a federal prison along with fines.²⁵

Match Fixing Becomes Ripe in Illegal Markets

A common concern with offshore sports betting has been the threat of bribing or fixing of games.²⁶ Match-fixing is defined as the dishonest activity to make sure that one team wins a particular sports match.²⁷ Notably, most match fixing happens in the offshore markets where those individuals responsible for fixing the matches are less likely to be caught, as offshore sportsbooks are likely to turn a blind eye on those attempting to fix without reporting them to appropriate authorities.²⁸ Unlike legal sportsbooks, illegal betting operators do not share information about suspicious betting patterns and do not cooperate with law enforcement or sport’s governing bodies.²⁹ Illegal sportsbooks ignore race- and match-fixing and may actively participate.³⁰ By facilitating offshore sportsbooks, patrons are not only putting themselves at risk for fraud but undermining the overall competitive nature of sports.³¹

²³ Sam Shefrin, *Offshore Betting Sites: US Lawmakers Cracking Down on Offshore Sportsbooks?*, LINEUPS (Sep. 29, 2022), <https://www.lineups.com/betting/online/us-lawmakers-targeting-offshore-books/>.

²⁴ *Citing* 31 U.S.C. §5361-5366; *see also* 18 U.S.C § 1952.

²⁵ Anthony Cabot and Greg Cloward, *Federal Wire Act Should Adjust to State-Regulated Sports Wagering, Not the Other Way Around: A Proposal for Change*, GAMING L. REV. 109–24. (Apr. 2021).

²⁶ *See* Declan Hill, *A Critical Mass of Corruption: Why Some Football Leagues Have More Match-Fixing than Others*, 11 INT’L J. SPORTS MKGT. & SPONSORSHIP 221 (2010) (*noting that one of the conditions necessary for match-fixing to thrive is the existence of illegal gambling markets*).

²⁷ Gregory Lu, *Esports Enforcement: How Criminal Sentencing Philosophy Can Stop Esports Match-Fixing*, 59 HOUS. L. REV. (2022).

²⁸ *See* Jon Wertheim, *Will Legalized Sports Betting Curtail Corruption or Encourage It?*, 60 MINUTES (Mar. 24, 2019), <https://www.cbsnews.com/news/ncaa-march-madness-betting-will-legalized-sports-betting-curtail-corruption-or-encourage-it-60-minutes/> [<https://perma.cc/9Y7T-WXYE>].

²⁹ *Good Practices in Addressing Illegal Betting*, ASIAN RACING FED’N 1, 30 (Nov. 13, 2020).

³⁰ *Id.*

³¹ Jon Wertheim, *Will Legalized Sports Betting Curtail Corruption or Encourage It?*, 60 MINUTES (Mar. 24, 2019), <https://www.cbsnews.com/news/ncaa-march-madness-betting-will-legal>

Potential for Fraud

Another potential issue that arises from overseas and illegal sportsbooks is the potential for fraud. While legally regulated sportsbooks uphold key principles of responsible gaming, protection of consumer funds, data privacy, and more; offshore books do nothing to protect their patrons.³² For example, if a patron is having a difficult time withdrawing funds from their account or disagreeing with how a bet was settled, there is no one the patron can turn to in order to protect them from this predatory behavior in the offshore market.³³ As illustrated above, offshore sportsbooks do not fall under the jurisdiction of the United States and trying to enforce them is difficult.³⁴

In one instance, where the government was able to take action against an offshore platform, they discovered deep seated fraud. On April 15, 2011, what is commonly referred to in the offshore market as “Black Friday,” the Department of Justice carried out an operation to shut down offshore platforms that were availing themselves to the United States.³⁵ When investigation was underway, the Department of Justice found that these operations had grossly mismanaged player funds by not separating player funds from operating capital, and that player funds were so poorly managed that the platforms were unable to pay back millions of dollars owed to customers.³⁶

Together, these illustrations reveal some of the dangers that offshore sportsbooks pose, and it enforces the necessity of finding a quality in-state sportsbook. In order to avoid becoming a victim of fraud, it’s essential to choose a sportsbook which avails themselves to regulations and upholds the values of responsible gaming.

Tax Deficiency

In addition, issues and confusion often arise when it comes to determining whether the winnings from offshore sportsbooks are taxable.³⁷ Generally, the Internal Revenue Service (“IRS”), will recognize winnings from gambling as

ized-sports-betting-curtail-corruption-or-encourage-it- 60-minutes/ [https://perma.cc/9Y7T-WXYE].

³² See *supra* note 13.

³³ *Id.*

³⁴ *Id.*

³⁵ Jake Patel, *Offshore Gambling, BLACK FRIDAY*, <https://www.compare.bet/en-us/offshore-gambling>, (last visited Nov. 21, 2022).

³⁶ *Id.*

³⁷ *Id.*

“income.”³⁸ Therefore, that income is taxable.³⁹ In practice, states that allow gambling as well as the federal government each have respective thresholds and tax rates for this type of income.⁴⁰ As required by law, the payer, or the sportsbook, is required to issue the patron a W-2G form when receiving certain gambling winnings or when any gambling winnings are subject to federal income tax withholding.⁴¹ States will also share similar requirements.⁴²

However, offshore and illegal sportsbooks often do not comply with these requirements and will not report winnings to the IRS.⁴³ Many of these outside sportsbook carryout transaction via crypto currency, taking advantage of the unregulated currency in order to dodge tax.⁴⁴ Many gamblers believe that because they gamble offshore, they do not have to pay taxes, but this is not true.⁴⁵ Under the US Tax Code, all income for US citizens is taxable, whether earned in the US, overseas, or on the Internet.⁴⁶ Furthermore, section 61(a) of the Internal Revenue Code defines gross income as “all income from whatever source derived,” including gambling, unless otherwise provided.⁴⁷ If a taxpayer has unreported income that the government later finds out about, the taxpayer could face additional tax, penalties, and interest.⁴⁸ In the event that the IRS determines that the taxpayer willfully evaded taxes, they could even be subject to imprisonment.⁴⁹

³⁸ *Topic No. 419 Gambling Income and Losses*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/taxtopics/tc419>, Oct. 4, 2022).

³⁹ 26 U.S.C. § 61.

⁴⁰ *See supra* note 38.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Stan Fox, *Online Gambling Tax Guide (Updated for 2022)*, LETSGAMBLEUSA (Oct. 19, 2022), <https://www.letsgambleusa.com/online-gambling-taxes/>

⁴⁴ Victoria Graham, *Offshore Betting Via Bitcoin on the Rise*, BLOOMBERG LAW (Jan. 10, 2018), <https://news.bloomberglaw.com/business-and-practice/offshore-betting-via-bitcoin-on-the-rise>

⁴⁵ Fox, *supra* note 43.

⁴⁶ *Id.*

⁴⁷ *McClanahan v. United States*, 292 F.2d 630, 631–32 (5th Cir. 1961); *citing* 26 U.S.C. § 61(a).

⁴⁸ *Bookmaker to forfeit \$600k and Pay \$200k as Restitution for Running illegal Gambling Operation, Laundering Proceeds and Filing False income Tax Return*, U.S. ATT. OFF. NORTH. DIST. OF OHIO (Jul. 8, 2020), <https://www.justice.gov/usao-ndoh/pr/bookmaker-forfeit-600k-running-illegal-gambling-operation-laundering-proceeds-and>.

⁴⁹ *Id.*

HOW TO AVOID THE RISKS AND FIND A LEGITIMATE SPORTSBOOK

For many consumers, it can be hard to differentiate between a legal sportsbook and an offshore sportsbook.⁵⁰ In deciphering the two, there are some characteristics that help us distinguish legal and illegal operations.

One characteristic of a legitimate sportsbook is the use of “geo-fences” or “geo-tracking” which allow a legally licensed service provider to provide service within their jurisdiction.⁵¹ A “geo-fence” allows a sportsbook to validate that you are where you claim you are when placing a bet from your mobile device.⁵² A bettor operating outside this “fence” is not able to place bets, but they can still monitor their account.⁵³ This practice is done on behalf of legitimate sportsbooks to ensure that they act in accordance with the law, which cannot also be said for illegal sportsbooks, as jurisdiction is not something they enforce.

Another characteristic of licensed providers is that they are commonly affiliated and partnered with casinos or athletic teams, which is not the case for offshore operations.⁵⁴ These entities typically seek out partnerships to licensed gaming operators which can act as an indicator of legitimacy.

Also, when betting with a licensed sportsbook, they typically follow responsible gaming protocols which prevent them from participating in predatory practices, which ensures that patrons are gambling responsibly as a form of entertainment.⁵⁵ An offshore sportsbook may offer things like lines of credit, a lower restriction on age, among other things.⁵⁶ Licensed operators on the other hand, are typically restrained from allowing lines of credit and are required to only allow patrons over the age of 21 to participate.⁵⁷ Offshore

⁵⁰ Brad Allen, *Analysis: Why Offshore Sportsbooks Are Thriving Despite Regulated Competition*, LEGAL SPORTS REPORT (Sep. 20, 2021), <https://www.legalsportsreport.com/56009/are-offshore-sportsbooks-stronger-than-ever/>.

⁵¹ David Huber, *5 Distinctions: State-Licensed Vs. Offshore Betting Apps*, HOOSIER-STATEBETS.COM — BETTER COLLECTIVE USA (Aug. 5, 2022), <https://www.hoosierstatebets.com/5-distinctions-state-licensed-vs-offshore-sports-betting-apps/>.

⁵² Richard Janvrin, *What Are Location Validators and Why Do Sportsbooks Use Them?*, WORLDS SPORTS NETWORK, <https://www.wsn.com/betting-guide/location-validators/> (last visited Nov. 21, 2022).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Responsible Gaming Regulations and Statutes Guide*, AM. GAMING ASSOC. (Sept. 1, 2022), <https://www.americangaming.org/resources/responsible-gaming-regulations-and-statutes-guide/>.

⁵⁶ *Id.*

⁵⁷ *Id.*

sportsbooks may also take bets on events such as the Grammys or Oscars, whereas stateside, you could not place such bets.⁵⁸ All these practices, run counter to responsible gaming protocols and should be avoided.

CONCLUSION

In conclusion, we have discussed how the offshore market has attained success in the U.S. under strict regulation. As well, we have addressed that the transition to the legal market from the offshore market is difficult and can be confusing for uninformed consumers. We have further discussed the dangers that offshore sportsbooks pose to consumers who choose to place wagers with them, and we have revealed characteristics of legitimate operations which you should seek out when finding a sportsbook that is right for you. In close, sports betting now has a newly legal market in the U.S., and only time will tell as to whether instate sportsbooks have any success in combatting the offshore sportsbook market. In the meantime, as patrons of the sportsbook market, it is essential to maintain awareness and be vigilant of the risk that offshore sportsbooks present.

⁵⁸ Brett Smiley, *What Legal Sports Betting in the United States Means for Offshore Sportsbooks*, ESPN ENTERPRISES (Jul. 7, 2018), https://www.espn.com/chalk/story/_/id/24028247/what-legal-sports-betting-united-states-means-offshore-sportsbooks.