



**A LOSING PROPOSITION: HOW THE NEW JERSEY  
LEGISLATURE’S PROHIBITION ON IN-STATE COLLEGIATE  
BETTING ENSURES THAT YOU, THE SPORTSBOOKS, AND THE  
INTERNATIONAL SPORTS BETTING MARKET ALL LOSE**

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I. INTRODUCTION

The sports gambling market is one of the most rapidly growing markets in the United States.<sup>1</sup> As legal sportsbooks continue to launch

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1. See Associated Press, *Sports Betting Market Expected to Reach \$8 Billion by 2025*, MKT.WATCH (Nov. 4, 2019, 3:42 PM), <https://www.marketwatch.com/story/firms-say->

their online platforms, build state-of-the-art sportsbook locations throughout the country, and expand their customer base, more and more bets continue to be placed not only in the state of New Jersey, but also in all states where sports gambling has been legalized.<sup>2</sup> The legalization of sports betting in New Jersey has led to a surge in revenue for New Jersey casinos and race tracks, as the ability to offer bets on sports allows them to bring in millions of extra dollars in revenue that they previously had not been able to offer.<sup>3</sup> The legalization of sports betting in New Jersey has certainly had positive impacts on the New Jersey economy.<sup>4</sup>

Sportsbooks offer bets of all kinds, on any sport you can imagine, and in several different forms.<sup>5</sup> One would think that if the New Jersey sportsbooks offer bets as outlandish as the Gatorade color poured on the winning coach of the Super Bowl,<sup>6</sup> then they would certainly, at the bare minimum, offer bets on Rutgers Football and Seton Hall Basketball. Surprisingly, this is not so.<sup>7</sup> With the large variety of bets that may be placed in the State of New Jersey comes one type of bet that you are *not* allowed to make, and that is a bet on any collegiate event taking place within the state, or any out-of-state collegiate event involving a New

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sports-betting-market-to-reach-8-billion-by-2025-2019-11-04 (“Investment firm Morgan Stanley predicts the U.S. market will generate almost \$7 billion in revenue by 2025, up from \$833 million this year. That’s up from an estimate of \$5 billion the company had issued less than a year ago.”).

2. See Jennifer McDermott & Geoff Mulvihill, *Sports Betting’s Rapid Expansion Faces More Tests in 2020*, AP NEWS (Dec. 18, 2019), <https://apnews.com/article/d9edd944d0b924ddf2d42111f62cf7b5> (“In 2019, the first legal sports bets were made in Arkansas, Indiana, Iowa, New York and Oregon, joining eight states where betting was already running.”).

3. See Adam Candee, *Mobile NJ Sports Betting Hits Largest Share as 2019 Handle Goes Past \$4.5 Billion*, LEGAL SPORTS REP. (Jan. 15, 2020), <https://www.legalsportsreport.com/36842/mobile-nj-sports-betting-hits-largest-share-as-2019-handle-goes-past-4-5-billion/>.

4. See, e.g., Associated Press, *New Jersey Gamblers Wagered \$3.2 Billion on Sports in First Year It Was Legal to Do So*, MKT.WATCH (July 12, 2019, 4:39 PM), <https://www.marketwatch.com/story/new-jersey-gamblers-wagered-32-billion-on-sports-in-first-year-it-was-legal-to-do-so-2019-07-12>.

5. See, e.g., FANDUEL SPORTSBOOK, <https://sportsbook.fanduel.com/sports> (last visited Nov. 8, 2020). By accessing the sportsbook and seeing the “Sport A-Z” list, users can view available wagers on Baseball, Basketball, Boxing, College Basketball, College Football, Cricket, Cycling, Darts, Football, Golf, Hockey, MMA, NASCAR, Soccer, Table Tennis, and Tennis. See *id.*

6. See Kurt Boyer, *Super Bowl Gatorade Shower Prop Bets: Fun with Colors on Football’s Biggest Day*, FANDUEL SPORTSBOOK, <https://www.fanduel.com/super-bowl-gatorade-shower> (last updated Jan. 31, 2020).

7. See N.J. CONST. art. IV, § 7, para. 2(D) (“[W]agering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place[.]”).

Jersey state school.<sup>8</sup> In addition to this prohibition being very poor public policy, it is an unconstitutional burden on interstate commerce and affects the sports gambling market on a global scale.<sup>9</sup>

## II. THE LEGAL HISTORY OF NEW JERSEY SPORTS GAMBLING

For years, states were prohibited from passing their own laws that allowed legal sports gambling due to Congress' passing of the Professional and Amateur Sports Protection Act (PASPA) in 1992.<sup>10</sup> On December 8, 2011, however, the New Jersey Legislature amended the New Jersey Constitution to permit gambling "on the results of any professional, college, or amateur sport or athletic event" except collegiate games involving New Jersey colleges or venues.<sup>11</sup>

The New Jersey Legislature's actions did not go without resistance from the various professional and amateur sports organizations.<sup>12</sup> For a comprehensive breakdown of the procedural history of the legalization of sports betting in New Jersey, several cases<sup>13</sup> and law review publications<sup>14</sup> are available for background.

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8. *See id.*

9. For an explanation of Congressional Commerce Power, *see infra* Part IV, Section A; *see also infra* Part IV, Section C for an explanation of why the New Jersey prohibition against sports betting on in-state schools and out-of-state events involving an in-state school violates the Dormant Commerce Clause of the U.S. Constitution.

10. *See* 28 U.S.C.A. § 3702 (West 1992).

11. Assemb. Con. Resol. 113, 215th Leg., at 4 (N.J. 2012); N.J. CONST., art. IV, § 7, para. 2(D). *See generally* N.J. STAT. ANN. 5:12A-2(a) (West 2012) (providing more background on the New Jersey Legislature's passing of sports betting in violation of PASPA).

12. Ilya Somin, *Federalism Comes Out as the Winner in Murphy v. NCAA*, REGUL. REV. (July 10, 2018), <https://www.theregreview.org/2018/07/10/somin-federalism-comes-out-winner-murphy-v-ncaa/> ("A coalition of sports leagues, including the National Collegiate Athletic Association, the National Basketball Association, the National Football League, and Major League Baseball, filed a lawsuit challenging two New Jersey state laws.")

13. *See generally* Nat'l Collegiate Athletic Ass'n v. Christie, 926 F. Supp. 2d 551 (D.N.J. 2013), *aff'd sub nom.* Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey, 730 F.3d 208 (3d. Cir. 2013), *abrogated by* Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461 (2018) (summarizing the procedural history of the legal issue between the State of New Jersey in attempting to implement laws that would allow sports gambling, and the professional and amateur sports leagues that sought to enjoin the Governor of New Jersey and other state officials from implementing those laws).

14. *See, e.g.*, George R. Brand, Note, *Breaking the Ban: Sports Gambling, Anti-Commandeering, and Lots and Lots of Money*, 84 MO. L. REV. 831, 836 (2019); Hunter M. Haines, *Passing the Ball: The United States Supreme Court Strikes Down PASPA and Throws Sports Gambling Back to State Legislatures*, 78 MD. L. REV. 604, 606 (2019) (showing that the Court's ruling did not change the per se legality of sports gambling, but rather left legalization of sports gambling to the individual states).

Soon after the decision by the United States Supreme Court, New Jersey Governor Phil Murphy signed into law Assembly Bill 4111,<sup>15</sup> which allows wagering at casinos and racetracks on the results of certain professional or collegiate sports or athletic events, with the exception, however, of “any collegiate sport or athletic event that takes place in New Jersey or a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place.”<sup>16</sup>

### III. SPORTS BETTING EXPLAINED

Before jumping into the legal analysis of whether or not Assembly Bill 4111 violates the Dormant Commerce Clause, it is important to understand how sports betting works. There are several specific types of bets that are available to sports bettors, each operating differently.<sup>17</sup> While it is unnecessary for the reader to be an expert on sports betting in order to understand and appreciate the issue at hand, the most popular ones must be understood in order to grasp the legal argument regarding why the New Jersey prohibition against betting on in-state collegiate events and out-of-state collegiate events involving a New Jersey state school violates the Dormant Commerce Clause. Several sources online are available in order to assist sports betting novices in

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15. See *Governor Murphy Signs Sports Betting Legislation*, NJ.GOV (June 11, 2018), [https://nj.gov/governor/news/news/562018/approved/20180611b\\_sportsBetting.shtml](https://nj.gov/governor/news/news/562018/approved/20180611b_sportsBetting.shtml).

16. Assemb. B. 4111, 218th Leg., 1st Ann. Sess. (N.J. 2018).

17. See Betting Expert, *Types of Bets*, NJ.GOV (Oct. 15, 7:59 PM), <https://www.nj.com/betting/academy/types-of-bets.html>.

understanding the primary types of bets that sportsbooks offer, such as spreads,<sup>18</sup> moneylines,<sup>19</sup> over/unders,<sup>20</sup> futures bets,<sup>21</sup> and parlays.<sup>22</sup>

#### IV. THE DORMANT COMMERCE CLAUSE

The “prohibited sporting events” clause of Assembly Bill 4111 is an unconstitutional violation of the Dormant Commerce Clause of the United States Constitution.<sup>23</sup> The Dormant Commerce Clause doctrine has been interpreted to mean that even if Congress has not attempted to regulate an area of interstate commerce that it has the ability to, that power lies solely with Congress, and not the states.<sup>24</sup> The “prohibited sporting events” clause that New Jersey has implemented falls under this classification, as the inability to bet on the prohibited games in New Jersey affects the odds on those games everywhere else where they *are* offered. Because the “prohibited sporting events” clause imposes a burden on interstate commerce that is “excessive in relation to legitimate local interests,”<sup>25</sup> New Jersey is violating the Dormant Commerce Clause.

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18. See, e.g., *What Is a Point Spread?*, THE LINES, <https://www.thelines.com/betting/point-spread/> (last visited Nov. 8, 2020) (“A -3 spread means that the favorite must win by more than a field goal to win the wager. A three-point win would result in a push and the sportsbook would refund the wager. A spread of +3 means the team listed as the underdog must win the game or lose by fewer than three points to cash the bet. A three-point loss would be graded as a push by the sportsbook and the bet would be refunded.”).

19. See, e.g., David Kaestle, *What Is a Moneyline Bet? How to Bet the Moneyline*, FANDUEL (Jan. 20, 2019), <https://www.fanduel.com/theduel/posts/6276165-what-is-a-moneyline-bet-how-to-bet-the-moneyline> (“A moneyline bet is picking which team will win a game.”).

20. See, e.g., *What Does Over/Under Mean in Sports Betting?*, ATHLON SPORTS (June 20, 2019, 6:29 AM), <https://athlonsports.com/over-under-meaning-sports-betting> (“‘Over Under’ refers to the betting line on the total number of a certain statistic — usually points or goals scored — in a sporting event, with action taken on whether there will be more (the over) or fewer (the under) of that statistic.”).

21. See, e.g., *What is Futures Betting?*, THE LINES, <https://www.thelines.com/betting/futures/> (last visited Nov. 5, 2020) (“A futures bet is a wager on an event, series or an award that will finish in the future.”).

22. See, e.g., *What is Parlay Betting?*, THE LINES, <https://www.thelines.com/betting/parlay/> (last visited Nov. 5, 2020) (“A parlay is a single sports wager that involves two or more bets combined into one. This can include point spreads, moneylines, totals, futures, or even prop bets, as long as the bets are on different games.”).

23. See Assemb. B. 4111, 218th Leg., 1st Ann. Sess. (N.J. 2018).

24. See GREGORY E. MAGGS & PETER J. SMITH, CONSTITUTIONAL LAW: A CONTEMPORARY APPROACH 296 (4th ed. 2018).

25. *Id.* at 296.

A. *An Explanation of Congressional Commerce Power*

Article 1, Section 8, Clause 3 of the United States Constitution states that Congress shall have the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”<sup>26</sup> These powers afforded to Congress, however, stretch beyond just what is stated in the plain text.<sup>27</sup> Congress also has the power to regulate the instrumentalities and channels of commerce, “and even intrastate economic activities that substantially affect interstate commerce.”<sup>28</sup> As explained by constitutional law experts, Judge Gregory E. Maggs and Peter J. Smith, the grant of these powers to Congress imposes limitations on state commerce powers:

Over time, the Supreme Court has said that the grant of power to Congress in Article I, § 8, Clause 3 to regulate interstate commerce imposes several implicit restrictions on state regulations of commerce . . . . Under current doctrine . . . a state cannot treat interstate commerce differently from intrastate commerce when there is a reasonable, nondiscriminatory, alternative way of furthering the state’s legitimate interests. . . . In addition, a state cannot impose a burden on interstate commerce that is excessive in relation to legitimate local interests.<sup>29</sup>

Furthermore, under the Dormant Commerce Clause Doctrine, even if Congress has not exercised its power to regulate a particular aspect of commerce, “Congress’s dormant power has a ‘negative’ implication: namely, that the states are subject to the implied limitations.”<sup>30</sup> The Supreme Court has determined “that the mere presence of the Commerce Clause in the Constitution may bar burdensome or discriminatory state commerce regulations.”<sup>31</sup>

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26. U.S. CONST. art. I, § 8, cl. 3.

27. See MAGGS & SMITH, *supra* note 24, at 295–96.

28. *Id.* at 295.

29. *Id.* at 295–96.

30. *Id.*

31. *Id.*

*B. How the U.S. Supreme Court Has Applied the Dormant Commerce Clause*

Several cases have been decided by the United States Supreme Court on the issue of the Dormant Commerce Clause.<sup>32</sup> Additionally, the Federalist Papers addressed the issue of local economic protectionism and discriminating against articles of commerce coming from outside the State.<sup>33</sup> Consistently, the Court has ruled that states may not accomplish their goal “by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently.”<sup>34</sup> The Court reasoned that “[a] State may not attempt to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade.”<sup>35</sup>

*C. Why Assembly Bill 4111 Violates the Dormant Commerce Clause*

The “prohibited sporting events” clause of Assembly Bill 4111, and the stipulation in the New Jersey Constitution restricting sports betting on collegiate events taking place in New Jersey and out-of-state collegiate events involving a New Jersey state school,<sup>36</sup> is an unconstitutional violation of the Dormant Commerce Clause Doctrine. The law unduly burdens interstate commerce because the New Jersey sportsbooks’ inability to take bets on these events affects the odds for the sportsbooks all over the country. This fact is central to the argument that interstate commerce is burdened by the restriction.

To put it into perspective, when the entire State of New Jersey is banned from betting on an NCAA Men’s Basketball game between Seton Hall University and Villanova University, the odds on the spread, moneyline, and over/under that are offered to bettors in all other states and other countries, do *not* reflect what they would be if the game was offered in New Jersey.<sup>37</sup> It *is* possible that the odds would be the same had New Jersey bettors been able to contribute, but only if they had bet

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32. See, e.g., *Gibbons v. Ogden*, 22 U.S. 1 (1824); *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978); *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994).

33. See THE FEDERALIST NO. 22 (Alexander Hamilton) (“The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others . . .”).

34. *City of Philadelphia*, 437 U.S. at 617.

35. *Id.*

36. See N.J. CONST. art. IV, § 7 para. 2(D), (F); see also Assemb. B. 4111, 218th Leg., 1st Ann. Sess. (N.J. 2018).

37. See *infra* Part IV, Section D.

in the exact same fashion as the rest of the world, and we would not know that fact until bets closed and they had been able to contribute.<sup>38</sup>

The stipulation in Assembly Bill 4111 does more than simply burdening interstate commerce, however. The Bill's allowing of all bets except for in-state collegiate events, or out-of-state collegiate events involving a New Jersey state school<sup>39</sup> falls directly into the category of legislation that the Dormant Commerce Clause is meant to avoid. As Justice Kennedy said in his opinion in *C & A Carbone, Inc. v. Town of Clarkstown*,<sup>40</sup> "[t]he central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic protectionism."<sup>41</sup> Assembly Bill 4111 does just that. By carving New Jersey state schools and in-state collegiate events out from the otherwise limitless sporting events in which New Jersey gamblers may place wagers on, the New Jersey legislature is affirmatively protecting the State of New Jersey's economy and favoring its own collegiate sporting events over those in other states with which they engage in commerce.<sup>42</sup> The prohibition is per se a commercial barrier that has the effect of discriminating against sports bets of schools that lie within the state's borders, as well as collegiate events taking place in the state regardless of the team's origin.<sup>43</sup> This practice of legislating by a state legislature is expressly deemed an unconstitutional violation of the Commerce Clause under *C & A Carbone*.<sup>44</sup>

If we compare the prohibited events stated in Assembly Bill 4111 to the facts in *City of Philadelphia v. New Jersey*,<sup>45</sup> we arrive at the same conclusion of unconstitutionality, although we see its effect going in the reverse direction.<sup>46</sup> The Court in *City of Philadelphia* states that, "[the purpose of the state legislature] may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently."<sup>47</sup> While the principle remains the same, what Assembly Bill 4111 does is discriminate against articles of commerce coming from *inside* the State, without a reason to treat them differently. Unlike in the

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38. See *infra* Part IV, Section D.

39. See Assemb. B. 4111 ("[P]rohibited sports event' means any collegiate sport or athletic event that takes place in New Jersey or a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place.").

40. 511 U.S. 383 (1994).

41. *Id.* at 390.

42. See *infra* Part IV, Section D.

43. See *infra* Part IV, Section D.

44. See *infra* Part IV, Section D; see also *C & A Carbone, Inc.*, 511 U.S. at 409–10.

45. 437 U.S. 617 (1978).

46. See generally Assemb. B. 4111. See also *City of Philadelphia*, 437 U.S. at 626–27.

47. *City of Philadelphia*, 437 U.S. at 626–27.

conventional sense of the Dormant Commerce Clause, where the State Legislature looks to discriminate against articles of commerce whose origin is from out of state, here, the New Jersey Legislature *invites* articles of commerce (sports bets) originating out of state, while discriminating against those same articles of commerce that originate within the State of New Jersey.<sup>48</sup>

*D. The Impact of New Jersey on the National Sports Betting Market*

In order to understand how the prohibition against betting on in-state schools and events violates the Dormant Commerce Clause, it is important to understand how sportsbook oddsmakers arrive at the odds in the first place.<sup>49</sup> It is for these exact reasons that New Jersey's law prohibiting bets on events enumerated in the New Jersey Constitution<sup>50</sup> and in Assembly Bill 4111<sup>51</sup> violates the Dormant Commerce Clause. These sportsbooks that accept bets in New Jersey also accept sports bets all over the United States where sports betting is legalized, on the exact same sporting events that are offered in the State of New Jersey.<sup>52</sup> For example, sports betting websites such as FanDuel and Draft Kings only block users in nine states.<sup>53</sup> Because these sportsbooks can accept bets on the sporting events prohibited in New Jersey in all of the other states in which they operate, their odds on these events are directly impacted by New Jersey not participating. As incoming money on either team determines if the odds stay the same or change,<sup>54</sup> the prohibition means that New Jersey bettors cannot contribute to the odds on these events. The inability for New Jersey bettors to place bets on these games has the detrimental effect of making the national odds for the event less accurate than they would be if New Jersey was allowed to contribute.

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48. *See generally* Assemb. B. 4111.

49. For a comprehensive breakdown of how bookmakers arrive at the odds of a given game, *see Sports Betting: Why Odds Change – And How to Take Advantage*, HIGH-TECH GAMBLING, <http://www.hightechgambling.com/sport-betting/why-odds-change> (last visited Nov. 2, 2020) (explaining how the odds and prices for sporting events are generated and why they move as the start time for the game gets closer).

50. *See generally* N.J. CONST., art. IV, § VII para. 2(D).

51. *See generally* Assemb. B. 4111.

52. *See, e.g.*, FANDUEL SPORTSBOOK, *supra* note 5.

53. *See What Are the States Where You Can Play Daily Fantasy Sports?*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/daily-fantasy-sports-blocked-allowed-states/> (last visited Nov. 2, 2020) (listing the states where FanDuel and DraftKings block players as: “Arizona, Alabama, Hawaii, Idaho, Iowa, Louisiana, Montana, Nevada, and Washington”).

54. *See Sports Betting: Why Odds Change – And How to Take Advantage*, *supra* note 49.

To put into perspective just how much influence New Jersey bettors have on the national sports betting market, the State of New Jersey took in more sports bets in May 2019 than Nevada did to lead the nation.<sup>55</sup> According to gambling regulators in New Jersey and Nevada, “New Jersey saw \$318.9 million worth of bets, edging past Nevada, which took \$317.4 million.”<sup>56</sup>

From these facts alone, it is abundantly clear that if New Jersey bettors were able to place bets on these prohibited events, the odds would unquestionably be impacted and more representative of how the entire country predicts the game will result. The prohibition severely limits the amount of money taken in on these events. If New Jersey had participated, the odds would reflect the bets of the national sports betting market, not simply the odds as reflected by the national sports betting market minus their largest contributor.<sup>57</sup> There is simply no way to interpret sports betting in New Jersey as a totally intrastate activity, as the bets taken in New Jersey impact the odds of events everywhere else.

To elaborate, “[f]or Atlantic City, the [ability to bet on sports] is expected to give a new reasons [sic] for tourists to trek to the seaside gambling resort, which had been on the brink of bankruptcy in recent years because of casinos popping up in neighboring states.”<sup>58</sup> This essentially serves as proof that it was within the New Jersey Legislature’s intent to have out-of-staters travel to New Jersey to place sports bets.

In addition, an article that was published *before* New Jersey legalized sports gambling illustrates that Atlantic City attracts millions of people each year.<sup>59</sup> Through August of 2018, total toll-paying traffic at the Pleasantville plaza increased 2.1 percent from the previous year for all of 2018.<sup>60</sup> By late September of 2018, “more than 13 million vehicles [had already] passed through the toll plaza [for the year], compared with 12.78 million [for the entire year of] 2017.”<sup>61</sup> It is clear that a significant

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55. *New Jersey Tops Nevada in Sports Betting Volume in May*, CBS N.Y. (June 29, 2019, 2:11 PM), <https://newyork.cbslocal.com/2019/06/29/new-jersey-sports-betting-beats-nevada/>.

56. *Id.*

57. *See New Jersey Tops Nevada in Sports Betting Volume in May*, *supra* note 55 (noting that New Jersey led the nation in sports betting in May 2019).

58. Brent Johnson, *Phil Murphy Signs N.J. Sports Betting Law. You Can Start Betting on Thursday.*, NJ.COM (Jan. 30, 2019), [https://www.nj.com/politics/2018/06/sports\\_betting\\_to\\_begin\\_in\\_nj\\_after\\_phil\\_murphy\\_si.html](https://www.nj.com/politics/2018/06/sports_betting_to_begin_in_nj_after_phil_murphy_si.html).

59. *See* David Danzis, *Summer was ‘best in recent years’ for Atlantic City*, PRESS OF ATL. CITY (Sept. 24, 2018), [https://www.pressofatlanticcity.com/news/local/summer-was-best-in-recent-years-for-atlantic-city/article\\_03041d56-3666-5802-8fe4-345ef15ffb9d.html](https://www.pressofatlanticcity.com/news/local/summer-was-best-in-recent-years-for-atlantic-city/article_03041d56-3666-5802-8fe4-345ef15ffb9d.html).

60. *Id.*

61. *Id.*

number of people travel from other states to visit Atlantic City and place bets, and the increase in tourism immediately following the legalization of sports betting in New Jersey is no coincidence. To outlaw bets on specific games has a direct impact on those from other states who would have traveled to Atlantic City had these events been available for betting.

*E. The New Jersey State Legislature's Intent*

It is clear that the motive for the prohibition was to prevent cheating, as schools and officials feared that “college players may be influenced to manipulate the outcome of a game, or be pressured to share private information concerning, for example, team injuries.”<sup>62</sup> The restriction against in-state collegiate betting is redundant, however, as it already stipulates that any player, coach, referee, or any other individual with exclusive information concerning a team, may not place a wager or assist someone else in placing a wager, by threat of fine and a disorderly persons offense.<sup>63</sup> Therefore, a stipulation in the law that prohibits these games from being offered to all bettors in New Jersey is completely redundant, overly restrictive, and serves no purpose to safeguard against cheating.

If New Jersey was worried that those with a personal interest in the game would violate it anyway, then the answer should be to make the punishment harsher, as opposed to discriminating against sporting events taking place in your own state in violation of the Dormant Commerce Clause. If we look to the caselaw, the Court is adamant that states should select the means of protecting legitimate local interests that do the least possible harm to, or least burden interstate commerce.<sup>64</sup> In *C&A Carbone*, the Court stressed this point, saying that, “[d]iscrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest.”<sup>65</sup> Additionally, if we look to the Supreme Court’s holding in *City of Philadelphia*, the Court ruled that, “[s]ince the evil of protectionism can reside in legislative means as well as legislative ends, it is immaterial whether the legislative purpose of [the New Jersey statute] is to protect New Jersey’s environment or its economy.”<sup>66</sup> It is clear that the State of New Jersey

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62. See Dino Flammia, *Why Can't We Bet On New Jersey College Teams?*, N.J. 101.5 (Mar. 15, 2019), <https://nj1015.com/why-cant-we-bet-on-new-jersey-college-teams/>.

63. See Assemb. B. 4111, 218th Leg., 1st Ann. Sess. (N.J. 2018).

64. See, e.g., *C&A Carbone, Inc. v. Town of Clarkston*, 511 U.S. 383 (1994).

65. *Id.* at 392 (citing *Maine v. Taylor*, 477 U.S. 131 (1986)).

66. *City of Philadelphia v. New Jersey*, 437 U.S. 617, 617 (1978).

has already implemented a less restrictive means of advancing its legitimate local interest by making illegal the types of conduct that could result in cheating.<sup>67</sup> To go so far as it did in the “prohibited sporting events” clause is the New Jersey State Legislature simply enacting redundant legislation that oversteps the initial protections it took to ensure game integrity.

It is very important to note that even though it is illegal to gamble on New Jersey state schools no matter where you are located in the state, you are able to place bets on professional sports teams located in New Jersey from within their own stadium or arena on the day in which the event is held.<sup>68</sup> For example, a New Jersey resident living 150 miles from Seton Hall University’s campus is banned from betting on that school in any capacity; however, if the person attends a New Jersey Devils hockey game, he or she would be able to place a bet on the Devils from within the arena, at any time.<sup>69</sup> It seems incredibly contradictory that the New Jersey Legislature would be concerned about the possibility of cheating in the first instance, but not the latter.

It should also be noted that some schools that are not included in this prohibition are just a few miles from New Jersey’s border. Schools such as Villanova University, Temple University, Manhattan College, University of Delaware, New York University, and several more are all less than 25 miles from New Jersey’s border. It is very possible that someone involved in the athletic programs at any of these schools has a close relationship with someone living in New Jersey and could be solicited to cheat in a game for financial gain.

Furthermore, in today’s world, it is possible for people to have close relationships regardless of proximity. It is more than likely that there are certain New Jersey residents that have close friends or relatives that are involved with a collegiate athletic team somewhere else in the country. The basic point is that this scenario is already illegal in New Jersey under the same law that legalized sports betting in the State in the first place,<sup>70</sup> and prohibiting betting on these events to all located in New Jersey does nothing to prevent the problem that it is intended to prevent. It is incredibly underinclusive and needless based upon the fact

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67. See Assemb. B. 4111.

68. See Chris Imperiale, *William Hill Sports Lounge Makes Its Debut At NJ Devils’ Prudential Center*, NJ GAMBLING SITES, <https://www.njgamblingsites.com/17629/william-hill-sports-lounge-nj-devils/> (last updated Jan. 22, 2019) (describing how William Hill Sportsbook has partnered with the New Jersey Devils and opened their own sportsbook lounge inside the Prudential Center, and how users can place bets on the game from within the Arena).

69. See *id.*

70. See Assemb. B. 4111.

that there are several other ways that a gambler could be connected with an individual involved with a team, and upon the fact that laws are already in place that are designed to prevent this issue from occurring.

The risk of cheating also exists in the form of illegal betting.<sup>71</sup> This risk has been present in every state as long as collegiate athletic events have been played, and the New Jersey law does nothing to prevent this. Additionally, former New Jersey State Senator Raymond Lesniak, the main legislative driver behind New Jersey sports betting, stated that he “was and still is against the college-team disclaimer in the state’s law” and that he “included the exception in order to give the measure a better shot at advancing.”<sup>72</sup> If anything, that shows that the legislative intent, at least partially, was just to make sure that the law passed, and has no legitimate and necessary purpose.

The Supreme Court in *City of Philadelphia* made clear that the State Legislature may not discriminate against “articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently.”<sup>73</sup> This wording is particularly important because it provides that if there is a reason apart from where the article of commerce came from to treat it differently, then it may be okay for the state legislature to discriminate against it.

With Assembly Bill 4111’s restriction against betting on New Jersey state schools or out-of-state collegiate events, the only issue that the New Jersey State Legislature has with bets of this type is the origin. The New Jersey State Legislature has not shown that it cares about the risk of cheating for collegiate sporting events taking place in any other state other than its own, so to say that the legislative intent is to prevent cheating as a whole is inaccurate. The restriction is the New Jersey State Legislature’s attempt at insulating itself from the risk of cheating that may be present elsewhere and is a sign that it favors its own collegiate sporting events and state schools over those in other states.

#### V. HOW OTHER STATES HAVE TREATED THE ISSUE

At this moment, several states have legalized sports betting, both through brick-and-mortar sportsbooks and through online platforms, with more pending legislation and the launch of online sports betting platforms.<sup>74</sup> The first eight states to legalize sports betting alone are

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71. See Flammia, *supra* note 62.

72. *Id.*

73. *City of Philadelphia v. New Jersey*, 437 U.S. 617, 627 (1978).

74. See *College Football Betting 2020*, LEGAL SPORTS REP., <https://www.legalsportsreport.com/sports-betting/ncaaf/> (last visited Nov. 7, 2020).

home to a combined thirteen NCAA Division I football programs and forty NCAA Division I basketball programs.<sup>75</sup> Of all of these states creating their own laws in order to legalize sports betting, New Jersey is the only state to actively ban users in its state from betting on collegiate events held in-state, or collegiate events held out-of-state involving an in-state school.<sup>76</sup> Nevada used to implement this ban on its own in-state schools including UNLV and the University of Nevada, but that ban has since been withdrawn.<sup>77</sup> Due to New Jersey being the lone state featuring this ban in its sports betting law and the overall consistency between other states, it would be redundant to review the sports betting laws in each state. However, some states that particularly jump out, and the way in which legislators have reacted to calls for the same ban featured in New Jersey, require our attention.

#### A. *Pennsylvania*

In particular, the State of Pennsylvania has no provisions within its sports betting statutes that have the effect of banning sports wagering on collegiate events taking place in the State of Pennsylvania or out-of-state collegiate events involving a Pennsylvania school.<sup>78</sup> Under Section 1401.7a of Title 58, the only types of sporting events that the Board prohibits sportsbooks from accepting wagers on are high school athletic events and amateur athletic events other than collegiate events.<sup>79</sup>

While the Pennsylvania Board does not go to the same extreme as New Jersey in preventing cheating within its own state, it does have provisions in place to ensure that those with the capacity to influence games are banned from doing so.<sup>80</sup>

When compared to New Jersey, Pennsylvania's laws do not differ that greatly. Pennsylvania and New Jersey both set out prohibitions for those that may not place bets, namely those that are close enough to the team that they have the capacity to influence the outcome.<sup>81</sup> The obvious

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75. See Bill King & Michael Smith, *Colleges in States with Sports Betting Adapt to New World*, L.A. BIZ: SPORTS BUS. (Jan. 4, 2019, 7:58 AM), <https://www.bizjournals.com/losangeles/news/2019/01/04/colleges-in-states-with-sports-betting-adapt.html>. This illustrates how many college athletic programs will be affected by the legalization of sports betting in their states. See *id.*

76. *College Football Betting 2020*, *supra* note 74.

77. *Id.*

78. See 4 PA. STAT. AND CONS. STAT. ANN. § 13C02 (West 2017); see also 58 PA. CODE §§ 1407–1411 (2018); see generally 58 PA. CODE §§ 1401.6–1401.8 (2018).

79. 58 PA. CODE § 1401.7(a).

80. See *id.* § 1401.7(b).

81. See *id.* § 1401.7(b)(2) (prohibiting a sports wagering certificate holder or sports wagering operator licensee from “[k]nowingly accepting wagers from a person who holds a

difference is that in Pennsylvania, sportsbooks are permitted to offer bets on their state schools, and on collegiate events taking place within their state.<sup>82</sup>

*B. Mississippi*

In June of 2018, the Mississippi Gaming Commission's website released sports betting regulations, which included everything from definitions and explanations of sports betting terms to how to pay out sports bet winnings.<sup>83</sup> On August 1, 2018, the Beau Rivage Casino and Resort and Gold Strike Casino Resort accepted the state's first sports bets.<sup>84</sup> By the end of the month, twenty of Mississippi's commercial casinos were offering sports betting.<sup>85</sup> As of now, sports bets in Mississippi are only accepted at brick and mortar sports betting locations, as mobile sports betting has yet to launch.<sup>86</sup> Like Pennsylvania, and every state other than New Jersey, the Mississippi Gaming Control Act does not feature any prohibition against betting on games located within the state, or out-of-state games involving a Mississippi state school.<sup>87</sup> It does, however, declare cheating unlawful, as well as clearly state what constitutes unlawful activities, including altering or misrepresenting the outcome of a game, giving someone insider information who will then bet on the game, or receiving insider information and betting thereafter.<sup>88</sup>

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position of authority or influence sufficient to exert influence over the participants in an athletic event . . . "); *see also* N.J. STAT. ANN. § 5:12A-11(f)(1) (West 2019) (prohibiting "a person who holds a position of authority or influence sufficient to exert influence over the participants in a sporting contest" from wagering on sports events).

82. *See* Ed Barkowitz, *Sports Betting: Unlike New Jersey, Pennsylvania Sportsbooks Have Gambling on College Games*, THE PHILA. INQUIRER (Oct. 4, 2018, 5:08 PM), <https://www.inquirer.com/philly/sports/eagles/pennsylvania-sports-betting-college-football-basketball-new-jersey-gambling-20181004.html>; *see e.g.*, PARX CASINO (on file with author), <https://pa.parxcasino.com/kambiSportsbook.shtml#event/1005422431> (last visited Jan. 31, 2020). By accessing the sportsbook and clicking on the "NCAAB" tab and clicking on "Futures," the user would have seen the odds for "NCAAB Championship 2019/20," of which Villanova, Penn State, Penn, Temple, and Pittsburgh all have odds listed. *Id.*

83. *Mississippi Sports Betting Information – Sportsbooks, Betting Sites*, Sports Handle <https://sportshandle.com/mississippi/> (last visited Nov. 7, 2020); *see also* MISS. CODE ANN. § 75-76-5 (West 2020) (definitions of sports betting terms); 13-000-009 MISS. CODE R. § 9 (LexisNexis 2020) (Rule 4.10 Payment on Wagers).

84. *Mississippi Sports Betting Information – Sportsbooks, Betting Sites*, *supra* note 83.

85. *Id.*

86. *Id.*

87. *See id.* ("Most sportsbooks offer wagering on a full menu of professional and collegiate athletic events, including Ole Miss and Mississippi State games."); *see generally* MISS. CODE ANN. § 75-76.

88. *See* MISS. CODE ANN. § 75-76-307; *see also* MISS. CODE ANN. § 75-76-301.

The NCAA rules have long prohibited individuals with a close relationship to a collegiate athletic team from placing sports bets, regardless of whether or not a jurisdiction permits it.<sup>89</sup> Schools in states that now allow sports betting have shifted their focus to educating their players and staff about the rules of sports betting as they apply to them.<sup>90</sup>

#### VI. CONCLUSION

The stipulation in New Jersey's sports gambling law that prohibits the placing of bets on collegiate events taking place in New Jersey or out-of-state collegiate events involving a New Jersey state school, is unconstitutional as it violates the Dormant Commerce Clause of the United States Constitution. The law unduly burdens interstate commerce in the way that it significantly affects the odds on these events on a national, if not international scale. The law discriminates against bets on collegiate sporting events within its borders, while favoring all others. The New Jersey State Legislature, through its sports wagering law, has shown that it is willing to protect its own economic interests and the integrity of its collegiate basketball games, to the detriment of the other states.

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89. King & Smith, *supra* note 75.

90. *Id.*