Legalized Sports Gambling: Doubling Down on the Immoral Inevitable?

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Legalized Sports Gambling: Doubling Down on the Immoral Inevitable?

By Robert Faugno

I. Introduction

The term “vice” has been used to refer to specific crimes that appeal to the darker desires of the human psyche. Specifically, the term “vice” has been used to refer to alcohol, drugs, pornography, and gambling.¹ The term has been defined as “the willing exchange, among adults, of strongly demanded, but legally proscribed, goods or services.”² Black’s Law Dictionary alternatively defines vice as “"[a] moral failing," and "[w]ickedness; corruption."³ The very definition of the term explicitly links vice to immorality.⁴ However, the term’s definitions also suggests that stringent regulation may be the key to destigmatizing vice by eliminating, or at least decreasing, the probability for corruption which is intrinsic with the term’s very definition.⁵

Of all the modern vices, gambling, may be traced back the farthest in human history. Gambling has existed in one form or another since the dawn of humanity.⁶ Human beings have always been drawn to activities that involve risk and reward.⁷ Yet, despite the natural inclination for people to participate in these activities, there have also been a great many people who wish to eliminate them.⁸ Particularly, throughout the history of the United States there have been large, passionate

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¹ FRANKLIN E. ZIMRING & BERNARD E. HARCOURT, CRIMINAL LAW AND THE REGULATION OF VICE 83 (Thomson/West 2007).
² Id. at 83 (quoting EDWIN SCHUR, Crimes Without Victims 169 (1965))
³ BLACK’S LAW DICTIONARY 1560 (7th ed. 1999).
⁵ Id.
⁷ Id.
⁸ Id. at 140-157.
movements to eliminate gambling from our society. Americans have never seemed to agree when it comes to the topic of gambling, and attitudes have consistently swayed on whether it should be prohibited. Over time, specific types of gambling have been legalized and regulated. The attitudinal changes toward gambling largely started during times of financial hardship. States passed laws authorizing State-run lotteries and casino gambling as a means to generate revenue. The monetary benefits that came with legalizing these forms of gambling seemed to outweigh the moral objections of our society.

The legalization of sports gambling, however, has continued to receive steadfast opposition. Those who oppose sports gambling argue that it is particularly addictive and especially enticing to young Americans who have a strong love for sports. Sports are a part of our very identity as Americans and the desire to maintain the purity of competition has long been cited as a reason for the continual prohibition of any type of legalized sports gambling outside of Nevada. But all of that changed earlier this year, when New Jersey made history by challenging the constitutionality of the Professional and Amateur Sports Protection Act (PASPA). On May 14, 2018, Murphy v. NCAA was decided and the Supreme Court found in favor for New Jersey by deciding that PASPA violated the anticommandeering principal by a 7-2 vote and declared the entire law unconstitutional by a 6-3 vote. The decision in Murphy v. NCAA has effectively written a new

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9 Id.
10 Murphy v. NCAA, 138 S. Ct. 1461, 1468 (2018)
11 Id. at 1468-1470.
12 Id.
13 Id.
14 Id.
15 Id.
16 Id. at 1484-85.
chapter in the history of sports gambling, but it has also left us with an important societal quandary: sports gambling may be legal but is it moral?

II. A Brief History of Sports Gambling

By the end of the 19th century, gambling was mostly prohibited in the United States. But through the 1920’s and 1930’s the attitudes toward gambling began to shift and the laws prohibiting gambling began to loosen. New Jersey’s history has always seemed to be intertwined with gambling and the State’s experience is illustrative. By 1897, New Jersey had adopted a constitutional amendment that completely prohibited gambling within its borders. However, financial hardships prompted New Jersey to authorize pari-mutuel betting on horse races as a means to increase state revenue. In 1970, New Jersey would again serve as one of the leaders in the movement to legalize gambling, when it became the third State to institute a state-run lottery.

Despite any moral objections society might have had with regard to gambling, New Jersey had come to see the loosening of its gambling laws as a way to address their financial issues. So when Atlantic City fell on hard times in the 1960’s, New Jersey once again turned to the legalization of gambling to help restore what was once one of considered the jewel of the Atlantic Coast. In 1976, New Jersey passed legislation allowing casino gambling in Atlantic City. New Jersey’s plan proved to be extremely effective as it became the only other State, besides Nevada, to have

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18 Murphy, 138 S. Ct. at 1469.
19 Id. at 1470.
20 Id.
21 Id.
22 Id.
23 Id.
24 Id.
legal casinos at the time. Legalizing casino gambling in Atlantic City created a monopoly on the east coast, making the city one of the most frequented tourist destinations in the Country. New Jersey had proven how lucrative legalized gambling could be and the Country had taken notice. In 1988, the Indian Gaming Regulatory Act was enacted and casinos began to open on Indian land all over the United States. Not long after, other States followed suit and decided to cash in by legalizing casino gambling. It seemed as though the entire Country’s attitude had changed toward gambling once it realized the potential this vice had to generate revenue. Yet, despite the overwhelming acceptance of legalized gambling as a whole, the Country appeared to remain unified in its desire for sports gambling to remained banned. Although incredibly popular, lawmakers had drawn a line in the sand when it came to sports gambling and Nevada remained the only legal venue for sports gambling.

It seems counterintuitive that the government’s treatment of sports gambling has followed the reverse trajectory of the various other forms of gambling activities. But sports gambling was perceived as presenting a unique danger to the American public, in that it had the ability to introduce young people to the pitfalls of gambling through their interest in sports. Gambling on sporting events also provided gamblers with the opportunity to corrupt both professional and amateur athletic organizations. American history is littered with instances where gamblers had

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25 Id.  
26 Id.  
27 Id.  
28 Id.  
29 Id.  
30 Id.  
32 Murphy, 138 S. Ct. at 1469  
33 Id.
 bribed or intimidated athletes into shaving points or throwing games. For these reasons, the major professional sports leagues and the National Collegiate Athletic Association (NCAA) had long opposed any legislation that would legalize sports gambling.34

III. The Rise and Fall of PASPA

By the 1990’s, there was a strong indication that the trend that had brought about the legalization of casino gambling would continue and eventually lead to the inclusion of legalized sports gambling in American Casinos.35 The parties who opposed sports gambling would respond to this trend by turning to federal legislation.36 Of the parties who opposed the legalization of sports gambling, the most notable were the major professional sports leagues and the NCAA.37 They strongly advocated that a law banning sports gambling was necessary to safeguard the integrity of sports.38 Thus, after much deliberation the PASPA was signed into law.39 PASPA makes it unlawful for:

a government entity40 to sponsor, operate, advertise, promote, license or authorize by law or compact . . . a lottery, sweepstakes, or other betting gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate or on one or more performances of such athletes in such games.41

34 Id.
35 Id.
36 Id.
37 Id.
38 Id.
39 §3702
40 A State, political subdivision of a State, or an entity or organization that has governmental authority within the territorial boundaries of the United States. 28 U.S.C §3701(2).
41 §3702
PASPA did not make sports gambling a federal crime, but it instead, authorized both the Attorney General and the professional and amateur sports organizations to bring civil actions to enjoin violations.\textsuperscript{42}

\textbf{A. Reasons for PASPA}

The supporters of PASPA feared that legalized sports gambling would threaten the integrity of fair athletic competition in a number of different ways.\textsuperscript{43} The believed that these threats included: throwing games, point-shaving, prejudicial refereeing, and any other acts of cheating that may be committed by athletes, officials, and any other individuals who would have the ability or opportunity to influence the outcome of a game.\textsuperscript{44} Supporters gave validity to these fears by citing numerous examples of these activities taking place throughout American history. One of the most notable examples used was the 1919 Chicago White Sox “throwing” the World Series against the Cincinnati Reds.\textsuperscript{45} Gangster Arnold Rothstein bribed eight members of the Chicago White Sox to purposefully allow the Cincinnati Reds to win the series. \textsuperscript{46} This enabled Rothstein to turn a huge profit by betting a large sum of money on the Reds, knowing that they would win.

PASPA supporters also cited to more recent incidents, such as, the scandal involving National Basketball Association (NBA) referee Tim Donaghy.\textsuperscript{47} Donaghy bet

\textsuperscript{42} Murphy, 138 S. Ct. at 1471.
\textsuperscript{44} \textit{Id}.
\textsuperscript{45} Schwarts, \textit{supra} at 339.
\textsuperscript{46} \textit{Id}.
\textsuperscript{47} Mierswa, \textit{supra} at 466.
on NBA games, including the ones he was personally assigned to officiate. He would also provide inside information about games to friends and family who would place their own wagers on the games. Donaghy pled guilty to two federal conspiracy counts and was sentenced to fifteen months in prison. At trial, the plaintiffs argued that legalizing sports gambling would create more opportunities for this kind of conduct to occur.

Perhaps the most convincing argument proposed by PASPA supporters was the effect that legalized sports gambling would have on collegiate sports and their athletes. Supporters argue that most point-shaving scandals involve college players because they can be swayed with much lower monetary incentives to become involved in illicit activity. The famous Boston College point-shaving scandal was used to illustrate this point. Notorious gangsters Jimmy Burke and Henry Hill bribed players on the Boston College Basketball team to win or lose games by a certain amount of points so they could bet against the point spread. For example, if Boston College was favored to win by a margin of ten points, Burke and Hill would instruct the players to purposefully commit turnovers or miss shots when the team was winning so the team would win by a smaller margin or outright lose. In effect, Burke and Hill were able to make thousands of dollars while they only needed to pay the players a few hundred to ensure they remained compliant. College students, and specifically college athletes, often had little money and the promise of a few hundred dollars would likely be enough to influence them into

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48 Id.
49 Id.
50 Id.
51 Id. at 467.
52 Id.
53 United States v. Burke, 700 F.2d 70, 73-75 (2d Cir. 1983).
54 Id.
effecting the outcome of their games. Many believed that legalized sports gambling would encourage more people to influence college players due to the low cost relative to the high reward. Events, like these, proved to be sufficient to convince law makers that the PASPA was necessary to protect the integrity of the sports that the American public had historically held in such high regard.

B. The Lucrative Enterprise of Illegal Sports Gambling

It has been nearly twenty-six years since PASPA was signed into law and the research shows that the regulations have done little to stop the actions it intended to prevent. The American Gaming Association has conducted studies that show the illegal sports betting market is a thriving $150 billion dollar industry. Americans wagered an estimated $4.76 billion on Super Bowl 52 alone. A staggering 97 percent of those wagers were made illegally across the United States. “Only 3 percent, or $138.5 million, of Super Bowl bets are expected to be legally wagered through licensed sports books in Nevada.” The American Gaming Association and those opposed to PASPA have argued that the data indicates that the ban on sports gambling has clearly failed.

55 Mierswa, supra at 467.
56 Id.
58 Id.
59 Id.
60 Id.
61 Id.
62 Id.
PASPA cited historical examples to bolster their argument for why sports gambling should be banned but, in doing so, they failed to examine this Country’s history from a broader perspective. This is yet another example of a failed attempt to legislate a certain “immoral” behavior in the United States. The current effects stemming from the prohibition of sports gambling is yielding a similar result as the prohibition of alcohol in the 1920’s and 1930’s. During Prohibition, bootleggers became incredibly profitable by illegally dealing liquor. Banning alcohol did not stop Americans from drinking, rather it only served to create a lucrative, illegal industry. When the government banned alcohol, it created a supply vacuum that would inevitably be filled by organized crime. Rather than eliminate the behavior as the law intended, it created a new unregulated, untaxed industry that was enforced and controlled with violence. “The organized crime that thrives as a result of PASPA is the modern day relative of early twentieth century bootleggers.”

Putting aside any moral objections to gambling, America has made it clear that it is going to gamble on sporting events whether it is legalized or not. The question now is: how do we address the illegal activities that have resulted from the ban on sports gambling? The American Gaming Association believes that if sports gambling were to be legalized, the United States Government could create a regulated market that would account for consumer protections against potential problems that are associated with this.

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63 Mierswa, supra at 464.
64 Id.
65 Id.
66 Id.
67 Id.
form gambling. PASPA was intended to address the problems of match fixing and point-shaving but, in reality, it merely allowed these practices to go unnoticed in an unregulated environment.

In the case of Tim Donaghy or Boston College, there is no guarantee that legalized sports gambling would have prevented either events from transpiring. However, if sports gambling were to be legalized, the government could implement regulations and protocols that would help identify these kinds of crimes and stop them before they are allowed to go on. Illegal sports gambling run by local bookies makes it difficult for law enforcement to track. If these wagers were to be placed legally, law enforcement would be able to monitor wagers and investigate suspicious activity. Effectively making it harder for criminals to hide any potential match fixing or point-shaving schemes. When Prohibition had ended, many bootleggers left the liquor industry altogether. Legalized sports gambling would likely have the same impact, and ultimately, would help to eliminate one of organized crime’s most profitable revenue streams.

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69 Id.
70 Id., supra at 468.
71 Id.
72 Id.
73 Id. at 465.
C. Murphy v. NCAA

On May 14, 2018, the Supreme Court of the United States reversed the ruling made by the Third Circuit Court of Appeals in NCAA v. Governor of N.J. and officially found the PASPA to be unconstitutional.74 The Supreme Court held that “every form of preemption is based on a federal law that regulates the conduct of private actors, not the States.”75 Accordingly, the PASPA provision prohibiting State authorization of sports gambling cannot be classified as a preemption provision because it simply does not regulate private actors.76 PASPA clearly does not confer any federal rights on private actors to engage in sports gambling.77 Nor, does it impose any federal restrictions on private actors who do engage in sports gambling.78 §3702(1) would not provide any grounds for a civil action by the Attorney General if a private actor decided to start a sports gambling operation. The Supreme Court held that the provision of PASPA prohibiting state authorization of sports gambling amounts to a direct command to the States, and thus, is a direct violation of the anti-commandeering doctrine.79

The Supreme Court’s analysis proceeded to determine if any other provision of PASPA is severable. The Court found that §3702(1) and §3702(2) were clearly intended to work in tandem with one another.80 A State that attempted to authorize particular private actors to engage in sports gambling could be sued under §3702(1).81 Then that

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74 Murphy, 138 S. Ct. at 1485.
75 Id. at 1481.
76 Id.
77 Id.
78 Id.
79 Id.
80 Id. at 1483.
81 Id.
private actor could be sued simultaneously under §3702(2).\textsuperscript{82} Both provisions were intended to work together to prevent state legalization of sports gambling.\textsuperscript{83} However, because §3702(1) violates the anti-commandeering doctrine, "Congress lacks the authority to prohibit a State from legalizing sports gambling, the prohibition of private conduct under §3702(2) ceases to implement any coherent policy."\textsuperscript{84} Justice Alito concluded his majority opinion by stating,

The legalization of sports gambling is a controversial subject. Supporters argue that legalization will produce revenue for the States and critically weaken illegal sports betting operations, which are often run by organized crime. Opponents contend that legalizing sports gambling will hook the young on gambling, encourage people of modest means to squander their savings and earnings, and corrupt professional and college sports.

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. Our job is to interpret the law Congress has enacted and decide whether it is consistent with the Constitution. PASPA is not. PASPA "regulate[s] state governments' regulation" of their citizens, [citation omitted]. The Constitution gives Congress no such power.\textsuperscript{85}

The case presented a landmark decision. States are now free to make their own decision about whether to legalize sports gambling. Companies like Draft Kings and Fan duel wasted no time in taking full advantage of New Jersey’s new sports gambling laws and have already launched online sportsbooks.\textsuperscript{86} The sportsbooks can be accessed

\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id. at 1485-86.
online or through the companies mobile apps and can only be used by New Jersey residents. The application uses your device’s GPS settings to track your location so it can limit the services use to New Jersey residents. It also requires you to verify your age by entering in the last four digits of your social security number. Draft Kings has already planned for future States to follow suit and has expanded by opening offices in Boston, New York City, Hoboken, San Francisco, and Las Vegas. They have also stated that the plan to expand its Boston workforce by 75 percent by next year. The journey to legalize sports gambling in New Jersey has been a long one. But it is still only one chapter in the much longer story of sports gambling in the United States. New Jersey has opened the door for a new age of gambling in our Country. In the coming months we will see which States follow suit and which States fold on their own individual policies regarding sports gambling. Sports gambling has been brought out of the shadows and into the light but it still remains to be seen whether the Country as a whole will embrace the newly legalized vice.

IV. Finnis’ Theory of the Basic Goods

In Natural Law and Natural Rights, John Finnis writes about seven basic forms of human good: life, knowledge, play, aesthetic experiences, sociability, practical reasonableness, and religion. Finnis describes how these seven goods are the basic aspects of well-being and they provide insight as to why, we as human beings, choose to do something. He further posits,

\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Id.}\]
\[\text{Id.}\]

\[\text{Id.}\] at 85.
“From one’s capacity to grasp intelligently the basic forms of good as ‘to-be-pursued’ one gets one’s ability in the descriptive disciplines of history and anthropology, to sympathetically see the point of actions, lifestyles, characters, and cultures that one would not choose for itself.” Finnis also notes that one’s speculative knowledge of his fellow humans’ interests and ventures also affects one’s own practical understanding of the seven forms of good that “lie open to one’s choice.” However, Finnis is careful to clarify between these basic goods and moral good. But Finnis ultimately believes that we require all seven basic goods in order to thrive as human beings in one unified society.

A. Life

Finnis expounds that the first of the seven basic goods, is the value of life. Finnis defines the term ‘life’ in this setting to mean every aspect of vitality which puts human beings in a good position for self-determination. Within this category, Finnis includes both physical and cerebral health and freedom from pain. But this category also includes concept and intrinsic drive to procreate. Finnis notes, however, that there is an important distinction that must be made when contemplating procreation in regard to the basic good of life. The desire and decision to procreate, simply for the purpose of bearing a child, is different from the desire and decision to love and raise the child. The former desire and decision is a pursuit of the basic

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92 Id.
93 Id.
94 Id. at 86.
95 Id.
96 Id.
97 Id.
98 Id.
99 Id. at 86-87.
100 Id. at 87.
good of life.\textsuperscript{101} The latter desires and decisions are aspects of the pursuit of the other distinct basic goods, such as, sociability and truth.\textsuperscript{102} These latter desires and decisions run parallel to the continued pursuit of the value of life, in that, it involves “keeping the child alive and well until it can fend for itself.”\textsuperscript{103}

The basic good of “life” does not directly relate to legalized sports gambling. However, gambling in general does have indirect effects on the basic good of life. Gambling is a vice. And human vices have inherent danger when participated in excess. For example, just because a parent partakes in the occasional alcoholic beverage does not mean they are immoral. But if someone is an alcoholic, their drinking can affect their ability to be an effective parent. A mother who drinks while she is carrying a child is not morally pursuing the basic good of life because they are doing harm to their child as they consume alcohol.

Gambling is no different. Participating in legalized gambling does not deprive someone from participating in the basic good of life but if one develops a gambling problem it can have dire consequences. Gambling away money that is needed to provide food and shelter for you and your family would negatively affect your pursuit of the basic good of life. However, it can be argued that people are going to gamble whether it is legal or illegal. Legalized sports gambling does not completely solve this problem but it does provide safeguards. Illegal sports gambling often requires betting with a bookie who can be linked to organized crime. Illegal bookies will often allow you to place a wager without knowing if you have the money to pay the debt in the event you lose. Organized crime will often resort to violence and intimidation to coerce payment for these debts. Legalized sports gambling requires you to first deposit your money into an

\textsuperscript{101} Id.
\textsuperscript{102} Id.
\textsuperscript{103} Id.
account before you place a wager. Therefore, you cannot wager money you do not have. There is still a danger that someone will use money needed for other, more productive purposes but the collection method is a better than the illegal alternative. Debtors can still sue to collect gambling debts owed and it can result in bankruptcy, which will have a equally negative effect on someone’s life. But it is a better alternative to than being subjected to the illegal methods of intimidation and violence that are inherently used by organized crime. So while legalized sports gambling does not make solve the dangers of this vice, it does help soften the impact that these actions can have. For that reason, legalized sports gambling can at least indirectly help to promote the basic good of life.

B. Knowledge

Finnis asserts that the second basic value is knowledge. Specifically, “it is knowledge, considered as desirable for its own sake, not merely instrumentality.” Furthermore, “any proposition, whatever its subject-matter, can be inquired into in either of the two distinct ways, (i) instrumentality or (ii) out of curiosity, the pure desire to know, to find out the truth about it simply out of an interest in or concern for truth and a desire to avoid ignorance or error as such.” Finnis makes an important distinction between ‘good’ referring to some specific objective or goal that one considers to be desirable, and ‘good’ as it refers to a general form of good that can be participated in indefinitely many ways or occasions. The word ‘value’ signifies only the latter form of

104 Id.
105 Id.
106 Id.
107 Id. at 61.
‘good’.\textsuperscript{108} A specific action and a specific endeavor is definite, in that, it can be completely attained or completed.\textsuperscript{109} Finnis directs us to “reserve the word ‘commitment’ for that sort of participation-in-a-value which is never finished and done with (except by abandonment of the commitment) and which takes shape in a potential inexhaustible variety of particular projects and actions, each with its particularized first premiss of practical reasoning.”\textsuperscript{110} Finnis concludes that good of knowledge is self-evident.\textsuperscript{111} And upon reflection, one pursues knowledge simply so that ignorance is to be avoided, “and not merely in relation to a closed list of questions that one has raised.”\textsuperscript{112}

Legalized sports gambling, again, does not directly impact the basic good of knowledge. However, one can argue that it indirectly promotes it by bringing to light the details of a multi-billion dollar a year industry. As stated earlier, the vast majority of sports gambling is done illegally and is therefore hard to accurately track and monitor. The legalization of sports gambling helps the authorities gain more insight as to the true impacts and effects of gambling. The teachings of Finnis might indicate that this knowledge is only pursued to answer a “closed list of questions raised.” However, because gambling is a vice, information about sports gambling can be desirable for its own sake. Human beings have always been fascinated by the effect that vices have on our society. The information acquired through legalized sports gambling can help scholars and doctors to gain insight into the impact this ancient form of recreation has on us. It can help us to understand why we are drawn to activities that are known to be risky and

\textsuperscript{108} Id.
\textsuperscript{109} Id. at 64.
\textsuperscript{110} Id.
\textsuperscript{111} Id.
\textsuperscript{112} Id. at 61.
dangerous. Therefore, it can again be argued that legalized sports gambling, at least indirectly, helps support the basic good of knowledge.

C. Play

Finnis states that the third aspect of human well-being is play.\textsuperscript{113} Finnis explains that, "each one of us can see the point of engaging in performances which have no point beyond the performance itself, enjoyed for its own sake."\textsuperscript{114} Humans can engage in play in a number of different forms: it can be isolated or social, it can be a physical activity or a mental one, it can be strenuous or relaxed, and it can be structured or informal.\textsuperscript{115} Finnis admits that an element of play can exist in any human activity, however, it is always distinguishable from its 'serious' context because some endeavors are entirely or primarily for the purpose of pure play.\textsuperscript{116} "Play, then, has and is its own value."\textsuperscript{117}

Play is the basic human good that most relates to legalized sports gambling. Gambling, specifically sports gambling, is a form of play. There are people who chose to engage in sports gambling simply because it is a form of recreation. Spectators often tune into sporting events as a way to relax and partake in a form of community. Sports gambling can allow someone, who otherwise wouldn’t be interested in the outcome of a game, to engage with other members of their community. Of course any benefits this activity might have on the basic good of play are quickly extinguished when one gambles in excess. If one only wagers in order to make money, they are not engaging in play. There is a fine line between gamblers who bet a nominal sum on a

\textsuperscript{113} Id. at 87.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
game just to make the participation in the activity more enjoyable and those who wager large sums of money because they are have a gambling problem. Again, when participating in any vice, human beings walk a moral tight rope but many would argue that legalizing sports gambling at least helps to ensure the dangers of the activity are kept to a minimum.

As human beings we should have the freedom to choose which forms of play we wish to engage in. For many people, recreational sports gambling is a preferred form of recreation. And for those who engage in the activity because they wish to test their knowledge and acumen as a sports fan are doing so in the honest pursuit of play. Any activity can be fanatically pursued to the point of one’s own detriment. Therefore, the legalization of sports gambling does not directly impede the basic good of play. Rather, it simply allows a safer, legal way for people to participate in a form of play and is up to the individual to make their own decision as to whether they will participate in this activity in a moral way.

D. Aesthetic Experience

Finnis’s fourth basic value is aesthetic experience. Finnis explains that aesthetic experience and play are closely related. He states that “many forms of play, such as dance or song or football, are the matrix or occasion of aesthetic experience.” However, Finnis also clarifies that “beauty is not an indispensable element of play.” The key difference between aesthetic experience and play is that aesthetic experience does not require action of one’s own.

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118 Id.
119 Id.
120 Id.
121 Id.
"What is sought after and valued for its own sake may simply be the beautiful form ‘outside’ one, and the ‘inner’ experience of appreciation of its beauty.”\textsuperscript{122}

Aesthetic experience is the basic good that is put in the most danger when one choses to engage in sports gambling. Sport is often thought of as pure and innocent. Many people chose to watch sports purely to admire the beauty of the game. When one choses to watch a sporting event for no other reason than to appreciate the skill and beauty of the game, they are undoubtedly pursing the basic good of aesthetic experience. Those who oppose the legalization of sports gambling would most often argue that participating in this activity would hinder the value of its aesthetic beauty. Sports gambling provides an outlet and encourages people to watch sporting events for other reasons besides the pure appreciation of the aesthetic beauty it provides. Those who oppose the legalization of sports gambling argue that legalizing the activity makes it more socially acceptable and can help to disguise the dangers inherent with this vice. In a way, legalizing sports gambling helps to rid it of the negative stigma it has developed and can encourage people to choose to partake in an activity that robs them of the ability to watch sporting events purely to appreciate its aesthetic beauty.

However, engaging in this activity is a choice. Human beings chose to engage in sports gambling whether it is legal or not. Simply legalizing the activity does not hinder or prevent a person from choosing to watch a sporting event for the sole purpose of appreciating its aesthetic beauty. If anything, it helps regulate the activity. It helps ensure that only people over the age of 21 engage in the activity. Illegal sports gambling allows younger people to engage in the activity before they are old enough to make an informed, rational choice. Ultimately, sports gambling as a whole negatively effects the basic good of aesthetic experience, but legalized sports gambling

\textsuperscript{122} \textit{Id.} at 88.
at least helps to regulate the activity as to give each person enough time to make an informed decision. For that reason, legalized sports gambling helps to support the basic good of aesthetic experience because it helps to preserve the purity of watching sports until one reaches the age of maturity.

E. Sociability (Friendship)

Finnis proclaims that the fifth basic value of human well-being is sociability or, in other words, friendship.123 Finnis details that this value comes in many forms. In its weakest form it is realized by peace and harmony amongst people.124 On the opposite end of the spectrum, Finnis states that in its strongest form it is realized by developing full friendship.125 In order for society to function, it requires collaboration between its members.126 "Some of the collaboration between one person and another is no more than instrumental to the realization by each of his or her own individual purposes."127 However, friendship requires a person to act for the sake of their friend’s purposes or well-being.128 While friendship is the strongest form of this basic value, all forms of sociability or important for overall human well-being.129

Legalized sports gambling falls somewhere on the spectrum that Finnis defines for the basic good of sociability or friendship. Human beings have different interests and passions. Many people enjoy wagering on sports and do so socially. It gives people something to bond over and come together for. Engaging in a pick-up game of basketball undeniably helps support

\[\text{References}\]

123 Id.
124 Id.
125 Id.
126 Id.
127 Id.
128 Id.
129 Id.
this basic good because it provides an outlet for people to meet each other and develop friendships.

One could argue that, when done responsibly, sports gambling provides a similar experience. People who engage in the activity can bond with others who also enjoy participating in sports gambling and they can develop friendship. The legalization of sports gambling makes this outcome more likely. Many people engage in illegal sports gambling but they might not be very open about it. If someone is engaging in an illegal activity it is logical to conclude that they might be less motivated to discuss it with others. Legalizing sports gambling makes it more socially acceptable and allows people to connect with each other openly. Legal sports gambling is an extremely large and profitable industry and sub-industries will inevitably develop as a result. Social media platforms and group chat boards will be devoted to the topic of sports gambling and provide individuals who engage in this activity to meet others who share their passions. Therefore, legalized sports gambling supports the basic good of sociability.

F. Practical Reasonableness

The sixth basic value is practical reasonableness. Finnis explains that, “there is the basic good of being able to bring one’s own intelligence to bear effectively (in practical reasoning that issues in action) on the problems of choosing one’s action and lifestyle and shaping one’s own character.” Finnis goes into great detail about practical reasonableness and

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130 Id.
131 Id.
its nine basic requirements. Accordingly, I will discuss practical reasonableness and how it relates to legalized sports gambling in the next section of this paper.

G. Religion

According to Finnis, the seventh and final basic form of human good is religion.132 Finnis explains that, “for, as there is the order of means to ends, and the pursuit of life, truth, play, and aesthetic experience in some individually selected order of priorities and pattern of specialization, and the order that can be brought into human relations through collaboration, community, and friendship, and the order that is to be brought into one’s character and activity through inner integrity and outer authenticity…”133 Thus, there arises such questions as: (1) “How are all these orders, which have their immediate origin in human initiative and pass away in death, related to the lasting order of the whole cosmos and to the origin, if any, of that order?”134 and; (2) “Is it not perhaps the case that human freedom, in which one rises above the determinism of instinct and impulse to an intelligent grasp of worthwhile forms of good, and through which one shapes and masters one’s environment but also one’s own character, is itself somehow subordinate to something which makes that human freedom, human intelligence, and human mastery possible and which is free, intelligent, and sovereign in a way no human being can be?”135 Of course, Finnis realizes that that there will always be “those who doubt or deny that the universal order-of-things has any origin beyond the ‘origins’ known to the natural sciences…”136 Yet, it begs the question: “if there is a transcendent origin of the universal order-

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132 Id. at 89.
133 Id.
134 Id.
135 Id.
136 Id.
of-things and human freedom and reason, then one’s life and actions are in fundamental disorder
if they are not brought, as best one can, into some sort of harmony with whatever can be known or surmised about that transcendent other and its lasting order?" Essentially, Finnis argues
that, in pondering and ultimately answering these questions, we are maintaining a proper order
between our relationship with our self and omnipotent aspects of the universe.

This basic good of religion is not impacted by the legalization of sports gambling.
Legalizing this activity does not make and more or less likely that one will choose to believe in a
higher universal power. Of course, someone might pray that they win a wager and be
disappointed when they lose but this is not a rational form of thinking. Regardless, legalized
sports gambling does not make it any more likely that blessings or misfortunes will occur in your
life. It can be argued that winning or losing a vast number of bets could affect an individual’s
belief in a higher power. If one wins wager after wager they might believe they are blessed. In
contrast, if an individual loses wager after wager they might believe they are being punished by a
higher power. Regardless, the legalization of sports gambling does not make this any more or
less likely to occur. Those who gamble illegally might could be swayed just as easily in this
scenario. Therefore, this basic good is not effected.

V. Practical Reasonableness and Morality

Among the basic forms of good, Finnis notes that it is important not to leave out the good
of practical reasonableness. The good of practical reasonableness is "participated in precisely
by shaping one’s participation in the other basic goods, by guiding one’s commitments, one’s

\[137 \text{Id. at 89-90.} \]
\[138 \text{Id. at 90.} \]
\[139 \text{Id. at 100.} \]
selection of projects, and what one does in carrying them out.” Furthermore, “the principles that express the general ends of human life do not acquire what would nowadays be called a ‘moral’ force until they are brought to bear upon definite ranges of project, disposition, or action, or upon particular projects, dispositions, or actions.” The problem for practical reasonableness, thus, questions how they are brought to bear. Finnis explains, ‘ethics’, as it is classically conceived, are simply a reflective expression of this problem and “of the general lines of solutions which have been thought reasonable.” Each requirement concerns what a person must do, or think, or be if, said person, is to participate in the basic value of practical reasonableness. Those of us who live up to these requirements fulfill what is needed to attain reasonableness or practical wisdom. Those of us who fail to live up to these requirements are irrational. Summarily, Finnis indicates that following requirements concern the types of reasons why there are things that morally (using only the modern terminology of the word) ought to be done or not done. Accordingly, the following sections of this paper will discuss the nine basic requirements of practical reasonableness as identified by Finnis: (1) a coherent plan of life, (2) no arbitrary preferences amongst values, (3) no arbitrary preferences amongst persons, (4) detachment, (5) commitment, (6) efficiency, within reason, (7) respect for every basic value in every act, (8) requirements of the common good, and (9) following one’s conscience.

140 Id.
141 Id. at 101.
142 Id.
143 Id.
144 Id. at 102.
145 Id.
146 Id.
147 Id. at 103.
1. A Coherent Plan Of Life

Finnis identifies the first requirement by citing John Rawls, who has articulated it as a rational plan of life.\textsuperscript{148} Finnis explains, “implicitly or explicitly one must have a harmonious set of purposes and orientations, not as the ‘plans’ or ‘blueprints’ of a pipe-dream, but as effective commitments.”\textsuperscript{149} It would be unreasonable for one to live their life “merely moment to moment”, allowing themselves to only be guided by their spontaneous cravings or lusts.\textsuperscript{150} As it would be equally unreasonable to go through life drifting.\textsuperscript{151} Finnis further states that it would be “irrational to devote one’s attention exclusively to specific projects which can be carried out completely by simply deploying defined means to defined objectives.”\textsuperscript{152} Our lives require us to have both direction and control of impulses as we undertake specific projects or tasks but it also requires that we change and adapt.\textsuperscript{153} As such, we are required to redirect our inclinations, reform our habits, and the abandon old projects in exchange for new ones.\textsuperscript{154}

A coherent plan of life is indirectly impacted by the legalization of sports gambling. Sports gambling is a vice and it can be highly addictive for some individuals. However, the partaking in sports gambling is not, in itself, an immoral activity. It is no different than consuming alcohol. It is only when these forms of recreation are done in excess and are abused that partaking in them becomes immoral. Certainly gambling away all your money can negatively impact your coherent plan of life, but the legalization of this activity does not make this outcome any more likely.

\textsuperscript{148} Id.
\textsuperscript{149} Id. at 103-104.
\textsuperscript{150} Id. at 104.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
Rather, legalized sports gambling provides many safeguards to protect individuals from such dangers. For example, legal gambling websites require you to deposit money into your account to make a wager and do not allow you to bet on credit. Illegal bookies often allowed people to bet on credit and when there is no money actually changing hands it becomes easier to not realize how much money you have lost. The legal gambling sites also provide resources that inform people who might have a gambling problem on how to get help. In that same vein, legal sports gambling also makes the debt collection process safer. Illegal bookies often have ties to organized crime and will use violence to collect debts. If someone runs up a large debt on credit, criminal enforcers might use violence and threats to ensure the debtor pays. One can still lose a large sum of money gambling legally but the results are not so dire. Bankruptcy can negatively impact your coherent plan of life but it is a much better outcome than violence and possibly death. Legalizing sports gambling does not solve the problems completely but it does help protect people from the dangers that are inherent in illegal sports gambling. For these reasons, the legalization of sports gambling, at least indirectly, supports the requirement of a coherent plan of life.

2. No Arbitrary Preferences Amongst Values

Finnis explains that “any commitment to a coherent plan of life is going to involve some degree of concentration on one or some of the basic forms of good, at the expense, temporarily or permanently, of other forms of good.” 155 He further notes that such commitment will only be rational if it is based on one’s own assessment of one’s unique capacities, circumstances, and

155 Id. at 105.
tastes. However, it will be unreasonable if such commitments are based on the devaluation of any of the basic forms of human good, or the overvaluation of merely derivative instrumental goods like wealth, reputation, or pleasure. Essentially, Finnis illustrates that when we pursue a coherent life plan, it may be acceptable to prioritize certain basic goods over the others, but we must not disregard such goods for arbitrary reasons.

Legalized sports gambling does not hinder our ability to fulfill this requirement. The legalization of this activity either directly or indirectly promotes many of the basic forms of human good and the values of practical reasonableness. The regulations imposed by legal sports gambling provides safeguards that help protect against the dangers that might lead an individual to create arbitrary preferences amongst the values. For example, if an individual becomes addicted to sports gambling and gambles in excess, they might begin engaging in this activity for the wrong reasons. Instead of engaging in this activity as a form of play, one might only place wagers in the pursuit of gaining wealth. Or even worse, one can lose a large sum of money and continue to gamble to try and win the money back. However, these dangers are more prevalent when sports gambling is done illegally. Legalized sports gambling helps regulate the activity. It provides support and information to those who might have a gambling addiction. Legalizing this activity can only help to prevent the creation of arbitrary preferences amongst values. Because legalization of sports gambling provides regulations and protections it helps support the requirement of having no arbitrary preferences amongst values.

156 Id.
157 Id.
158 Id. at 106.
3. No Arbitrary Preferences Amongst Persons

Finnis notes that the basic goods are human goods and as human goods they can be pursued, realized, and participated in by any and all human beings. He elaborates by saying, "Other person’s survival, their coming to know, their creativity, their all-round flourishing, may not interest me, may not concern me, may in any event be beyond my power to effect. But have I any reason to deny that survival, knowledge, creativity, and flourishing are really good...and favour by those persons and by all who have to do with them?" We can only prefer our own well-being through our own self-demined and self-realizing participation in the basic goods that we can do what reasonableness suggests and requires. Accordingly, we must not improperly favor or show bias toward other persons that would be in opposition to the teachings of the Golden Rule.

The legalization of sports gambling has corrected an arbitrary preference amongst persons that has existed in this Country for nearly seventy years. The State of Nevada legalized sports gambling in 1949 and up until this year, it was the only venue in the United States where people could legal gamble on sporting events. Allowing one State to legalize an activity while simultaneously prohibiting the other 49 States from legalizing that same activity is the very definition of having an arbitrary preference amongst persons. By prohibiting the legalization of sports gambling in every State besides Nevada, our Country has given an arbitrary preference to Nevada residences over every other person in the Country. Nevada residence were permitted to engage in sports gambling, a form of play, whenever they chose, while every other person in the

159 Id.
160 Id.
161 Id.
162 Id. at 109.
Country had to travel to their State to legally engage in the same activity. And the hypocrisy does not end with the choice to engage in a specific form of play. Even those Nevada residents who do not engage in sports gambling are given an arbitrary preference over the residents of the other States because they benefit from the money that the Nevada makes as a result of being the only legal venue for sports gambling. Other States were not given the opportunity to generate revenue by legalizing sports gambling and thus have one less method to fund other important projects. In *Murphy v. NCAA*, the Supreme Court has effectively restored our Country’s ability to fulfill the requirement of having no arbitrary preferences amongst persons. Each State now has the option to legalize sports gambling and will be given the same opportunity as Nevada to benefit from the revenue that activity generates. As a result, the residents of those States will also benefit. Therefore, the legalization of sports gambling supports this requirement.

4. Detachment

Finnis categorizes the fourth requirement at Detachment. He explains that in order to be sufficiently open to all the basic forms of good, we must be careful to establish a certain amount of detachment from the projects we commit to.¹⁶³ Essentially, no individual, specific project or endeavor should be ascribed such importance that the failure in such endeavor would reduce one’s life to meaninglessness.¹⁶⁴ "Such an attitude irrationally devalues and treats as meaningless the basic human good of authentic and reasonable self-determination, a good in which one meaningfully participates simply by trying to do something sensible and worthwhile, whether or not that sensible and worthwhile project comes to nothing."¹⁶⁵ Finnis warns us that there are evil

¹⁶³ *Id.* at 110.
¹⁶⁴ *Id.*
¹⁶⁵ *Id.*
consequences of succumbing to the temptation to give a particular project overriding significance.\textsuperscript{166} He clarifies that these "...evil consequences that we call to mind we think of fanaticism."\textsuperscript{167} By this, Finnis is stressing the importance of balance in one's life. As human beings we sometimes need to take a step back or detach ourselves from a project to gain perspective.\textsuperscript{168}

To apply this requirement to the legalization of sports gambling an important question must be asked: is the enactment of legalized sports gambling the fanatical pursuit of the value of play or is it a dethatched judgment of practical reasonableness? Gambling is an activity that can become addictive for some people. In this regard it is, once again, no different than alcohol. Some people casually have one or two drinks as a way to relax and unwind. For others, one sip of alcohol can lead to a night of drinking to excess. Gambling is no different. Those who fanatically engage in gambling will continue to place wager after wager, with no regard to how much money they are losing. Fanatic gamblers are not happy unless they are chasing the high of their last win. So gambling can impede an individual from fulfilling the requirement of detachment.

However, the legalization of sports gambling actually supports the requirement of attachment. Engaging in the act of gambling, itself, does not prevent the fulfillment of the requirement of detachment. One can place a wager on a sporting event without ascribing overriding significance to the outcome of said wager. Therefore, engaging in the act itself cannot be considered a fanatical pursuit of the value of play. Furthermore, the legalization and regulation of sports gambling further protects individuals from falling into the pit of fanaticism.

\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} Id.
Legal gambling sites provide resources for people who develop a gambling addiction. It requires you to deposit money before you gamble so you are not able to gamble with money you do not have. The dangers of the activity are still present, but in its legalized form, it provides the person an opportunity to make a self-determination. The regulations can only help protect individuals against the fanatical pursuit of this form of play. Thus, legalized sports gambling promotes the requirement of detachment.

5. Commitment

Finnis explains how Detachment is closely related to the proceeding fifth requirement of Commitment.\textsuperscript{169} He explains that Commitment, “established the balance between fanaticism and dropping out, apathy, unreasonable failure, or refusal to ‘get involved’ with anything.”\textsuperscript{170} Finnis explains that is important for one to be “looking creatively for new and better ways of carrying out one’s commitments, rather than restricting one’s horizon and one’s efforts to the projects, methods, and routines with which one is familiar.”\textsuperscript{171} It is necessary to have such creativity and development to demonstrate that a person or society is actually living on the level of practical principal.\textsuperscript{172}

By fulfilling the requirements of detachment and commitment we are ensuring we maintain balance in our lives. The requirement of detachment ensures we do not become overly fanatical in our pursuits so that the failure of such pursuit does not make our life devoid of meaning. But life does require commitment and passion. The requirement of commitment

\textsuperscript{169} Id.
\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Id.
ensures that we do not become overtaken by apathy. As noted in the previous section, the regulations provided by the legalization of sports gambling help protect individuals from succumbing to the temptations of fanatically pursuing this form of play. On the other hand, the very act of making this activity legal also helps promote the requirement of commitment. The data discussed earlier clearly indicates that a large number of people enjoy engaging in sports gambling and are willing to do so regardless of the activity's legality. And therein lies the problem. The pitfalls that surround sports gambling, largely exist because of it is illegal. It is an enterprise that is unregulated and enforced almost exclusively by organized crime. The legalization of gambling, however, can be seen as a new and creative way to promote a moral good by promoting a means of participating in the value of play that avoids the dangers that are inherent in illegal sports gambling. It provides an outlet for people to engage in a form of play which helps avoid the danger of becoming apathetic. Accordingly, the legalization of sports gambling provides balance that allows people to engage in this activity while still fulfilling the requirements of detachment and commitment.

6. Relevance of Consequences: Efficiency, within Reason

Finnis explains that the sixth requirement is that one must bring good in the world, both in one’s own life and the lives of others.173 A person must do this through actions that are efficient for their own reasonable purposes.174 Finnis states, “one must not waste one’s opportunities by using inefficient methods.”175 Rather, their actions should be judged by their

173 Id. at 111.
174 Id.
175 Id.
effectiveness.\textsuperscript{176} Finnis illustrates the importance of this principal by indicating that when presented with the choice, it is reasonable to prefer basic human goods, such as life, over instrumental human goods, such as property.\textsuperscript{177} This requirement of practical reasonableness stresses the importance of both: our decisions and the process we utilize to make such decisions.

To apply this requirement to the legalization of sports gambling we must ask: does the benefits of legalizing this activity outweigh the costs? The answer to this question requires analysis of several different prongs. First, we must weigh the benefits and the costs it provides to the basic human goods. The legalization of this activity provides a benefit by creating a regulated method for people to engage in the value of play by enacting safeguards that protect people from succumbing to the dangers of gambling. In contrast, the legalization of this activity does impose a danger to the portion of the population who have not engaged in this activity because of its illegal status. As this paper has previously stated, the engaging in sports gambling is not, in itself, and immoral act. However, gambling in excess does impose a great danger. It can be argued that some people would never engage in sports gambling because it is illegal. But now that it is legal, some people might succumb to the temptations of fanatical sports gambling that they would have otherwise been exposed to. Nevertheless, when weighing the benefits and costs it is clear that the benefits still overcome any costs. People should be free to choose what forms of play they engage in. The legalization of sports gambling helps provide protections to guard against these dangers.

Similarly, the financial benefits outweigh the costs of legalizing this activity. Legal sports gambling provides a new way to generate revenue. Billions of dollars are wagered on sports and

\textsuperscript{176} Id.
\textsuperscript{177} Id.
currently that money is untaxed and is primarily used to fund criminal organizations. Legalizing this activity is a small financial cost that is mostly carried by the companies that provide legal gambling sites. Instead of funding criminal enterprises the revenues generated from sports gambling can be used to fund projects that benefit society as a whole. For these reasons, the benefits greatly outweigh any costs and legalized sports gambling supports this requirement.

7. Respect for Every Basic Value in Every Act

Finnis formulates the seventh requirement by saying that “one should not chose to do any act which of itself does nothing but damage or impede a realization or participation of any one or more of the basic forms of human good.”\textsuperscript{178} He further purposes that the only reason one might engage in such an act is because “the good consequences outweigh the damage done in and through the act itself.”\textsuperscript{179} However, Finnis is careful to distinguish this from the concept of consequentialism.\textsuperscript{180} For the reasons outlined in the previous section, Finnis notes that the “consequentialist ‘weighing’ is always and necessarily arbitrary and delusive…”\textsuperscript{181} He suggests that, “if one is to act intelligently at all one must choose to realize and participate in some basic value or values rather than others, and this inevitable concentration of effort will indirectly impoverish, inhibit, or interfere with the realization of those other values.”\textsuperscript{182} For practical purposes, Finnis tells us, “the seventh requirement can be summarized as: Do not choose directly against a basic value.”\textsuperscript{183}

\textsuperscript{178} Id. at 118.
\textsuperscript{179} Id.
\textsuperscript{180} Id. at 119.
\textsuperscript{181} Id.
\textsuperscript{182} Id. at 119-120.
\textsuperscript{183} Id. at 123.
The legalization of sports gambling directly supports this requirement. By making sports gambling illegal, we are effectively choosing against the basic value of play. PAPSA is hindering individuals from participating in an activity that clearly supports one of the basic human goods. The law should not prevent someone from engaging in the value of play and this argument is supported by the hypocritical position the Country has had previously held on this topic. Sports gambling has been legal in Nevada for nearly a century. It follows, that even the greatest critics of legal sports gambling could acknowledge that this is a form of play. By making this activity illegal in every other State, our Country is directly choosing against a basic human good in the other 49 States. Therefore, because the legalization of sports gambling supports the value of play, it supports this requirement.

8. Requirements of the Common Good

Finnis explains that there are different senses of ‘common good’. Finnis states, “there is a ‘common good’ for human beings, inasmuch as life, knowledge, play, aesthetic experience, friendship, religion, and freedom in practical reasonableness are good for any and every person.” He further explains that “each of these human values is itself a ‘common good’ inasmuch as it can be participated in by an inexhaustible number of persons in an inexhaustible variety of ways or on an inexhaustible variety of occasions.” But Finnis distinguishes that the third form of the ‘common good’ as: “a set of conditions which enables the members of a community to attain for themselves reasonable objectives, or to realize reasonably for themselves the value(s), for the sake of which they have reason to collaborate with each other in a community.”

184 Id. at 155.
185 Id.
186 Id.
together, Finnis illustrates that the ‘common good’ is important for both living our individual lives and the general welfare of society.\(^\text{187}\)

The legalization of sports gambling promotes the common good. Sports gambling is a unique legal concept in this Country. Before New Jersey’s landmark decision, sports gambling was only legal in Nevada. New Jersey’s actions have sparked a national debate on the topic as each State makes its own decision as to whether they will legalized sports gambling. Politicians, lawyers, athletes, and the public as a whole have all weighed in on this topic. It has created a dialogue between Federal and State governments, which is necessary for the general welfare of society.

Legalized sports gambling is also providing ancillary benefits to support the common good. This is a multi-billion dollar a year industry and until now, it has greatly gone untaxed. The tax revenues generated by legalizing gambling will help fund many New Jersey projects that will benefit every member of society.

9. Following One’s Conscience

Finnis notes that the ninth requirement is following one’s conscience.\(^\text{188}\) By this, he explains that one should not do anything that one believes should not be done.\(^\text{189}\) Or simply, “one must act ‘in accordance with one’s conscience’.”\(^\text{190}\) But it the “dignity of even the mistaken conscience is what is expressed by the ninth requirement.”\(^\text{191}\) Ultimately, Finnis stresses that “practical reasonableness is not simply a mechanism for producing correct judgements, but an

\(^{187}\) Id. at 156.

\(^{188}\) Id. at 125.

\(^{189}\) Id.

\(^{190}\) Id.

\(^{191}\) Id. at 126.
aspect of personal full-being, to be respected in every act as well as ‘over-all’- whatever the consequences.\textsuperscript{192}

To apply this requirement to the legalization of sports gambling we must ask: would someone who has a well-informed conscience promote legalized gambling? For all of the reasons stated in this paper, this question must be answered in the affirmative. Reviewing the totality of the facts demonstrates that a person with a well-informed conscience would support legalized sports gambling. To summarize, legalized sports gambling promotes many of the basic human goods and requirements of practical reasonableness. Most notably it supports the values of play and sociability by providing a new method for people to engage in such values. At the same time, it creates safeguards to help protect people from the pitfalls that are inherent in illegal sports gambling. For the same reasons it helps fulfill the requirement of no arbitrary preference amongst values because it allows people another method to engage in the value of play.

Furthermore, it also helps promote the requirement of no arbitrary preferences amongst person because it helps ensure that all States are able to legalize sports gambling. By doing so, an arbitrary preference is not provided to only those who live or travel to Nevada. Likewise, it helps create balance which fulfills the requirements of detachment and commitment. Legally allowing people to wager on sports provides a method for people to fulfill the requirement of commitment by engaging in play and not succumbing to apathy. At the same time, the regulations provided by legalized sports gambling help fulfill the requirement of detachment by protecting people from succumbing to the dangers of fanaticism. The requirement of efficiency within reason is also supported because it has been shown that the benefits outweigh the costs of enacting this law. Additionally, the legalization of sports gambling is necessary to fulfill the requirements of

\textsuperscript{192} Id.
respect for every basic value. If sports gambling were to remain illegal it would not respect the value of play because it would prohibit a method in which people chose to engage in play. And finally, this law also supports the requirements of the common good. Society as a whole benefits from the legalization of sports gambling for a number of reasons already stated. Therefore, a person with a well-informed conscience would review the totality of the facts and undeniably support the legalization of sports gambling.

VI. Conclusion

Finnis would agree that the legalization of sports gambling is morally just. It promotes many of the basic human goods and fulfills the nine requirements of practical reasoning. Finnis would recognize the dangers that sports gambling presents but he would also understand that these laws actually support practical reasonableness and are necessary to promote the basic human goods. The question presented here is whether the legalization of sports gambling is morally just and to that we must answer in the affirmative.

This is an activity that is going to happen. This law helps protect and regulate a vice and because it seeks to help and protect, it is morally just. Like many things worth doing in life, the legalization of sports gambling was a risky wager to place. It will take time to see whether this is a bet that will pay off for New Jersey and the Country at large. In that way, we are not unlike an anxious, excited bettor waiting to see if their team will cover the spread. But in the end, I believe Finnis would agree this bet has a payoff that is well worth the risk.