

SPORTS MEDIA’S GAMBLE ON SPORTSBOOKS: WHY REGULATION OF SPORTS REPORTERS IS CRUCIAL TO PRESERVE JOURNALISTIC INTEGRITY IN THE WAKE OF LEGALIZED SPORTS BETTING

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INTRODUCTION

For sports fans, draft night is quite the spectacle; college-aged men see the culmination of their life-long goals, those drafted become millionaires in an instant, and onlooking fans scour the internet in search of information on who their team may select.¹ For some observers, this search is tied to the hunt for information to assist in placing bets on where draft prospects will land.² During the 2023 NBA draft, this was the case, as countless bettors looked for information regarding the landing spot of prospects Brandon Miller and Scoot Henderson.³ On draft day, NBA insider Shams Charania made the following post on X (formerly Twitter): “Sources: Scoot Henderson is gaining serious momentum at No. 2 with the Charlotte Hornets in tonight’s NBA draft. Hornets have been torn over the last week between Henderson and Brandon Miller. Team has final meetings today to settle on decision.”⁴ Ultimately, the Charlotte Hornets selected Brandon Miller with the second pick, which called into question Charania’s “sources” and left gamblers who

* J.D. May 2025 University of Louisville, B.A. History & Environment Science Florida State University. This note is dedicated to the Black Mamba, Kobe Bryant. His devotion to his craft and relentless desire to improve fostered my love for sports and continues to inspire me. This Note highlights a concerning trend I have noticed in sports coverage. Instead of focusing on the narratives of players and teams, the media is increasingly dominated by discussions of betting lines and odds. While watching coverage of these events, the constant barrage of gambling information from sponsoring sportsbooks perverts the pure joy of watching your team take the field or court and often diminishes the inspiring stories that the games offer. There is very little I enjoy more than watching the Seminoles play on Saturday or the Pelicans play their 82-game slate, and I hate seeing the teams I love get used by networks to openly promote gambling to the general audience.

¹ See Sopan Deb, *After Midnight at the N.B.A. Draft, Dreams Still Come True*, N.Y. TIMES (June 27, 2023), <https://www.nytimes.com/2023/06/23/sports/basketball/nba-draft-last-pick.html> [https://perma.cc/4MGM-MHPB]; Eric Mullins, *Here’s How Much Money 2023 NBA Draft Picks Will Make*, YAHOO SPORTS (June 22, 2023), <https://sports.yahoo.com/heres-much-money-2023-nba-131126038.html> [https://perma.cc/XC7H-LHFB].

² See Andrew Norton, *NBA Draft Betting Odds, Tips, and Strategies*, FORBES BETTING (Feb. 28, 2023), <https://www.forbes.com/betting/nba/draft/> [https://perma.cc/TQG7-L9GX].

³ See Ben Strauss, *FanDuel Makes Betting Lines. FanDuel’s Shams Charania Moves Them*, WASH. POST (June 23, 2023), <https://www.washingtonpost.com/sports/2023/06/23/shams-charania-fanduel-draft/> [https://perma.cc/FB9Q-ZWGE].

⁴ Shams Charania (@ShamsCharania), X (June 22, 2023, 12:28 PM), https://twitter.com/ShamsCharania/status/1671918203654619138?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1671918203654619138%7Ctwgr%5E6ace91f20ff97d21d662ae4e7b27fbfe5e5f4e64%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.si.com%2Fnba%2F2023%2F06%2F23%2Ffanduel-shares-statement-shams-charania-nba-draft-report-controversy-hornets-pick-brandon-miller-scoot-henderson [https://perma.cc/JA4C-T8TB].

relied on his report with lighter pockets.⁵ Normally, this would be a harmless instance of an NBA insider having incorrect information or a misinformed source, but Charania had recently signed a contract to be a paid contributor of FanDuel Sportsbook and a regular panelist on the sportsbook's weekday NBA show.⁶

Following Charania's post, the odds dramatically flipped on which prospect would be the second pick of the draft.⁷ The odds of the Charlotte Hornets picking Miller went from -650 prior to the post to +400 following the post; the odds of Henderson being the Hornets' pick similarly moved from +400 prior to the post to -700.⁸

After the draft, losing bettors angrily took to the internet to call into question Charania's journalistic integrity;⁹ he was the only notable insider who claimed that Henderson would be picked second, which heightened bettors' questions of his integrity.¹⁰ Notably, ESPN's counterpart to Charania, Adrian Wojnarowski, who at the time had no ties to a sportsbook, never wavered from his report that Miller would be picked second by the Hornets.¹¹ Although FanDuel claims that they are never privy to the news Charania breaks, bettors began to question the integrity of the insider's ties to the sportsbook and the ulterior motives he may have to move lines.¹²

Sports betting in its modern capacity is relatively new.¹³ Outside of Nevada, the sports betting market was previously reserved for local bookies running underground gambling operations, the mob, and offshore black-market entities soliciting business from bettors using Virtual Private

⁵ See Sloan Piva, *How Shams, Woj Tweets affected Scoot Henderson's & Brandon Miller's odds for No. 2 pick in NBA Draft*, THE SPORTING NEWS (June 22, 2023), <https://www.sportingnews.com/us/nba/news/betting-shams-woj-tweets-odds-scoot-miller-2-pick-nba-draft/ci4mgbpstmrtcjfeokefifse> [<https://perma.cc/7KWT-VZXM>].

⁶ See Strauss, *supra* note 3.

⁷ Frankie Taddeo, *FanDuel Shares Statement on Shams Charania NBA Draft Report Controversy*, SPORTS ILLUSTRATED (June 23, 2023), <https://www.si.com/nba/2023/06/23/fanduel-shares-statement-shams-charania-nba-draft-report-controversy-hornets-pick-brandon-miller-scoot-henderson> [<https://perma.cc/7WWD-5768>].

⁸ *Id.* American odds indicate the following payout on a \$10 bet: -650 is \$11.54, +400 is \$50.00, -700 is \$11.43. Positive odds show winnings on a \$100 bet; negative odds show how much the bettor must stake to win \$100.

⁹ Prince J. Grimes, *NBA Draft bettors cried foul after Shams Charania's tweet moved the line for the No. 2 pick*, USA TODAY (June 23, 2023), <https://ftw.usatoday.com/2023/06/shams-charania-nba-draft-fanduel-tweet-scoot-henderson> [<https://perma.cc/TP9E-WBKA>].

¹⁰ See Mike Mazzeo, *FanDuel Sportsbook Backs Shams Charania After NBA Draft Blowback*, LEGAL SPORTS REPORT (July 26, 2023), <https://www.legalsportsreport.com/121774/fanduel-sportsbook-defends-shams-charania-deal> [<https://perma.cc/38HF-BDXH>].

¹¹ Strauss, *supra* note 3. See also Grimes, *supra* note 9. Adrian Wojnarowski is no longer employed at ESPN.

¹² See Grimes, *supra* note 9.

¹³ See Matt Webber, *Sportsbook: What It Is, History, and Legality*, INVESTOPEDIA (Oct. 8, 2023), <https://www.investopedia.com/sportsbook-5217715> [<https://perma.cc/L6RK-TEZL>].

Networks to evade the law in their jurisdiction.¹⁴ Those days, however, are long over.¹⁵ As of February 2024, sports betting is legal in over 30 states—that number will continue to grow in the aftermath of *Murphy v. NCAA*, the 2018 case in which the Supreme Court struck down the Professional and Amateur Sports Protection Act.¹⁶ In the wake of sports betting's newfound legality, casinos have vastly expanded their online presence by creating apps like FanDuel, DraftKings, and Caesar's Sportsbook, which allow sports fans in legal markets to gamble on their favorite team, the performance of players, who will make the first basket, or even the incredibly unlikely scenario that a Super Bowl kicker will hit an upright (“a Super Bowl doink”).¹⁷

Previously, legacy sports media and popular networks attempted to avoid reporting about gambling odds, lines, and prop bets.¹⁸ For example, from 2008 to 2011, “beat reporters [at ESPN] were not allowed to make any references to gambling information in their coverage—even though writers on other parts of the site could discuss it.”¹⁹ More recently, however, television segments focusing on gambling have proven to be popular.²⁰ For instance, ESPN's Scott Van Pelt hosts a popular SportsCenter segment titled “Bad Beats” that displays unlikely plays that caused large segments of bettors to lose their wager so late in a game that they were probably already counting their winnings.²¹ Now, a cable subscriber would be hard-pressed to find a sports talk show that never mentions gambling lines along with their analysis.²²

This dramatic shift in the legality and public perception of sports betting opened the door for ESPN to announce a bold partnership with Penn Gaming; this partnership further calls into question the journalistic integrity of sports

¹⁴ See *id.* A Virtual Private Network is a technology that establishes a secure and encrypted internet connection, enabling users to access private networks and browse the web anonymously by hiding their IP addresses.

¹⁵ See *Murphy v. NCAA*, 584 U.S. 453, 486 (2018).

¹⁶ Chris Bengel & Shanna McCarriston, *U.S. Sports Betting: Here's where all 50 states currently stand on Legalizing Online Sports Betting Sites*, CBS SPORTS (Oct. 13, 2023), <https://www.cbssports.com/general/news/u-s-sports-betting-here-is-where-all-50-states-currently-stand-on-legalizing-online-sports-betting-sites/amp/> [https://perma.cc/4M9K-VGSH].

¹⁷ *Id.*

¹⁸ See Brian Moritz, *What Happens to Sports Media When Everyone's a Gambler*, GLOB. SPORTS MATTER (Jan. 11, 2022), <https://globalsportmatters.com/business/2022/01/11/what-happens-sports-media-sports-betting/> [https://perma.cc/V7VE-4B8M].

¹⁹ *Id.*

²⁰ Weston Blasi, *Have You Noticed How Much Gambling Talk There Is on Sports TV? How We Got Here*, MARKETWATCH (Mar. 19, 2021), <https://www.marketwatch.com/story/have-you-noticed-how-much-gambling-talk-there-is-on-sports-tv-how-we-got-here-11616166093> [https://perma.cc/X7UJ-TCER].

²¹ Sean Keely, *Stanford Steve on Appeal of Bad Beats: 'Everybody Remembers Their Worst Beats More Than Their Best Wins,'* AWFUL ANNOUNCING (Dec. 13, 2021), <https://awfulannouncing.com/espn/bad-beats-stanford-steve-van-pelt-gambling.html> [https://perma.cc/3RV5-SAVY].

²² See Blasi, *supra* note 20.

reporters.²³ ESPN's press release in advance of the release of ESPN Bet indicated a general desire to create a seamless product that minimizes friction between receiving news and placing bets.²⁴ In the same press release, ESPN outlined its priority to "contin[ue] ESPN's high standard of journalistic integrity when covering the sports betting space, develop an ESPN committee of responsible gaming, implement responsible marketing policies and guidelines to safeguard fans, [and] work with industry experts on best practices and continual review of responsible gaming programming."²⁵ Although a fairly standard corporate statement, ESPN's message displays the company's anticipation of the impending issues and concerns that come with entering the betting market, including ESPN insiders being perceived as line manipulators.²⁶

The ESPN and Penn Gaming partnership risks a great decline in public confidence surrounding the journalistic integrity of sports reporters.²⁷ Therefore, it is important that media companies—such as ESPN—who partner with sportsbooks do so under the guidance of regulations devised to maintain journalistic integrity and credibility moving forward.²⁸ The proliferation of legal sports betting blurs the line between unbiased sports reporting and profit-driven communications facilitated by media companies partnering with sportsbooks, making it ethically imperative to maintain a clear distinction.²⁹

Accordingly, this Note examines the lack of adequate law to regulate truthful reporting by sports reporters and prevent their ability to abuse learned insider information to manipulate the betting landscape. Section IA will provide relevant background information on the federal and state law that regulates sportsbooks. Section IB will display relevant statutes, mainly on the state level, that appear to have some role in the regulation of the media, in particular, the media's tendency to have non-public information. Section IB will also cover the in-house policies that typically affect members of the media.

Part II will examine other areas of law that could be adapted to create rules that better regulate media-sportsbook partnerships. Section IIA and IIB will

²³ See John R. Manzo, *ESPN to Launch ESPN BET in a New Agreement with PENN Entertainment*, ESPN PRESS ROOM (Aug. 8, 2023), <https://espnpressroom.com/us/press-releases/2023/08/espn-to-launch-espn-bet-in-a-new-agreement-with-penn-entertainment> [https://perma.cc/KUS7-7ZK5].

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Sam Neumann, *ESPN Will Have to Quickly Figure Out Conflicts of Interest in New Betting Partnership*, AWFUL ANNOUNCING (Aug. 10, 2023), <https://awfulannouncing.com/espn/espn-bet-conflict-interest-sports-betting.html> [https://perma.cc/K74T-J834].

²⁷ *See id.*

²⁸ *See id.*

²⁹ See William Skipworth, *ESPN Gambling Deal Face Criticisms of Conflict of Interest*, FORBES (Aug. 9, 2023), <https://www.forbes.com/sites/willskipworth/2023/08/09/espn-gambling-deal-faces-criticisms-of-conflict-of-interest/?sh=5b1bdca176c9> [https://perma.cc/3CG7-4DPP].

analyze existing U.S. Securities and Exchange Commission (SEC) regulations that mitigate fraudulent reporting related to securities and whether similar tactics could be used to regulate media members who partner with sportsbooks. Section IIC will focus on existing Federal Trade Commission (FTC) regulations directed at influencers, media-brand partnerships, and sponsored posts. The section will analyze whether an approach that promotes the disclosure of partnerships should be utilized to label media members who partner with sportsbooks. Overall, Section II will support the argument in the “Resolution” and “Conclusion” that a clear distinction should be made between media companies and sportsbooks. This should be done through a combination of in-house policies and regulation by state gaming commissions that draw inspiration from SEC and FTC guidelines to encourage disclosure of these media—sportsbook partnerships and prevent members of the media from defrauding the betting public.

I. BACKGROUND: THE REGULATION OF SPORTS BETTING AND APPLICATION TO REPORTERS

Even before its widespread legality, sports betting was regulated by a combination of national and state laws—none of which effectively targeted sports reporters.³⁰ Section A explores how the federal and state governments have traditionally regulated sportsbooks. Section B focuses directly on media members, discussing how states regulate individuals with access to non-public information and how sportsbooks set in-house regulations to prevent their partners from betting.

A. An Overview of Sportsbook Regulation and Its History: Who Has the Authority to Regulate?

In the United States, a combination of state and local laws regulate gaming.³¹ These laws set aside gambling locations and establish the legality of various gambling activities.³² Generally, operating a gambling entity violates federal law only if that conduct is illegal under state or local law.³³ That being said, the federal government enjoys broad regulatory powers related to the Commerce Clause.³⁴ This power is displayed in the criminalization of interstate transmission of wagering paraphernalia and

³⁰ See Brett Smiley, *A History of Sports Betting in the United States: Gambling Laws and Outlaws*, SPORTSHANDLE (Nov. 13, 2017), <https://sportshandle.com/gambling-laws-legislation-united-states-history/> [https://perma.cc/HP6D-DXKU]; Moritz, *supra* note 18.

³¹ See *Murphy v. NCAA*, 584 U.S. 453, 484 (2018).

³² See *id.*

³³ See *id.*

³⁴ U.S. CONST. art. III, § 8, cl. 3.

interstate transmission of information to assist in the placing of a bet (only when gambling is illegal under state law).³⁵ The federal government's commerce power also allows it to determine the extent to which gambling is allowed on tribal land.³⁶ Despite these broad powers, traditionally, most gambling regulations have been left to the states.³⁷

For a majority of its history, the United States outlawed sports betting; Nevada is the only state in the nation where sports betting has existed for any substantial period of time.³⁸ In 1931, following the impact the Great Depression on the local mining industry, Nevada's legislature legalized gambling, making the state a safe haven for gambling in the United States.³⁹ Shortly thereafter, in 1949, Nevada legalized sports betting, which allowed the state to be grandfathered into Congress' nationwide ban of the activity under the Professional and Amateur Sports Protection Act (PASPA) in 1992.⁴⁰ As early as the 1950s, sportsbooks were operating legally in Nevada and were subject to taxation by the federal government.⁴¹

The Nevada Gaming Commission and its enforcement arm, the Nevada Gaming Control Board, regulate the state's gaming industry.⁴² The responsibilities of the commission includes the licensing and approval of casinos, as well as ruling upon work permit appeal cases.⁴³ Overall, the primary purpose of the Commission is to "protect the stability of the gaming industry through investigations, licensing, and enforcement of laws and regulations; to ensure the collection of gaming taxes and fees an essential source of state revenue; and to maintain public confidence in gaming."⁴⁴ The Gaming Control Board has the power to perform audits, allows them to

³⁵ 18 U.S.C. § 1953; 18 U.S.C. § 1084.

³⁶ 25 U.S.C. § 270.1.

³⁷ See *Frequently Asked Questions*, N. AM. ASS'N STATE & PROVINCIAL LOTTERIES, <https://www.naspl.org/faq> [https://perma.cc/2HLV-RUYR].

³⁸ Smiley, *supra* note 30.

³⁹ *This Day in History: Nevada Legalizes Gambling*, HISTORY 1, 2 (Mar. 3, 2010), <https://www.history.com/this-day-in-history/nevada-legalizes-gambling> [https://perma.cc/8MJY-ZL2N].

⁴⁰ *The Granddaddy of Them All: Sports Betting has Been Legal in Nevada Since 1949*, USA TODAY, <https://sportsdata.usatoday.com/legality-map/nevada> [https://perma.cc/4LSU-CY8H].

⁴¹ Smiley, *supra* note 30.

⁴² See *About Regulation*, NEVADA GAMING COMMISSION & NEVADA GAMING CONTROL BOARD, <https://gaming.nv.gov/regs/about/> [https://perma.cc/K2CF-346H].

⁴³ *Gaming Commission*, NEVADA GAMING CONTROL BOARD GAMING COMMISSION, <https://gaming.nv.gov/index.aspx?page=2#:~:text=The%201955%20Legislature%20created%20the,and%20the%20operation%20of%20gaming> [https://perma.cc/WA2A-NC9F] ("The commission is the final authority on licensing matters, having the ability to approve, restrict, limit, condition, deny, revoke or suspend any gaming license.").

⁴⁴ *About Us*, NEVADA GAMING COMMISSION & NEVADA GAMING CONTROL BOARD, <https://gaming.nv.gov/index.aspx?page=2#:~:text=The%201955%20Legislature%20created%20the,and%20the%20operation%20of%20gaming> [https://perma.cc/H6P9-9FGL].

“inspect, examine, photocopy and audit all papers, books and records of any applicant or licensee, on his or her premises, or elsewhere as practicable.”⁴⁵

Nevada’s regulations on horse racing and sports betting are outlined in Nev. Rev. Stat. Ann. § 465.086, which makes it unlawful to place or accept wagers on any sporting event without first receiving licensure.⁴⁶ In many ways, Nevada’s gambling regulatory scheme serves as the blueprint for other states;⁴⁷ consequently, many states have similar commissions that can impose gambling regulations.⁴⁸

Typically, state gaming boards have a broad degree of control over the industry and have been granted the authority to promulgate their own regulations.⁴⁹ In Nevada, the Nevada Gaming Commission is charged with the responsibility of promulgating regulations to implement and enforce state laws governing gaming.⁵⁰ Similar gambling control structures are found in other states authorizing sports betting, such as Pennsylvania, where the state’s gaming control “board shall promulgate and adopt rules and regulations to govern the conduct of interactive gaming in order to ensure that it will be implemented in a manner that provides for the security and effective management, administration and control of interactive gaming.”⁵¹ Additionally, the trend in authority of allowing gaming control boards to promulgate regulations is also found in Kentucky, where the state’s racing commission is tasked with promulgating administrative regulations to establish the sports wagering system.⁵² The states listed are not exhaustive; they are instead meant to show a general trend.

While state regulations largely define the scope of gaming regulation, the federal government has also taken steps to regulate sports betting.⁵³ One

⁴⁵ NEV. REV. STAT. ANN. § 463.140(2)(d) (2023).

⁴⁶ *Id.* § 465.086.

⁴⁷ See *Nevada Sports Betting*, NAT’L FOOTBALL POST, <https://www.nationalfootballpost.com/sports-betting-legalization/nevada/> [https://perma.cc/QZ5X-TH6F].

⁴⁸ See *id.*

⁴⁹ See Nicole Laudwig, *Gaming Regulatory Systems: How Emerging Jurisdictions Can Use the Three Major Players as a Guide in Creating a Tailored System for Themselves*, 3 UNLV GAMING L.J. 277, 277 (2012) (discussing how states that have permitted gaming have developed complicated system to ensure the industry grows in a safe and secure way).

⁵⁰ See *About Regulation*, *supra* note 42.

⁵¹ 4 PA. CONS. STAT. ANN. § 13B02(a) (2024).

⁵² KY. REV. STAT. § 230.361(2) (2024).

⁵³ Jeremy Gordon & Logan Miller, *Overview of US Federal Gaming Law*, LEXOLOGY (May 11, 2022), <https://www.lexology.com/library/detail.aspx?g=d5a3f46a-4d09-4854-9c44-43beef09076a> [https://perma.cc/R9NP-LL7J].

federal government regulation, the Wire Act of 1961, continues to have an important role in modern sports betting.⁵⁴ It reads in part:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.⁵⁵

As noted in former U.S. Attorney General Robert Kennedy's commentary of the Wire Act, the law does not crackdown on all unlicensed gambling, such as wagers between friends; rather, it allows Congress to use its commerce power to squash interstate gambling operations traditionally tied to organized crime.⁵⁶ The Wire Act is still in effect for legally operating sportsbooks and is one of the regulatory powers the Federal Government enjoys over gaming that stems from Congress's commerce power.⁵⁷ The Wire Act still prohibits sports bets "over-the-wire" by individuals located in states that have not legalized sports betting.⁵⁸

More relevant to the current proliferation of states permitting sports wagering, rather than any type of federal control, is the now overturned PAPSA of 1992,⁵⁹ which stated:

It shall be unlawful for—

- (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
- (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on

⁵⁴ *Id.*

⁵⁵ 18 U.S.C. § 1084(a).

⁵⁶ Smiley, *supra* note 30.

⁵⁷ See *N.H. Lottery Comm'n v. Rosen*, 986 F.3d 38, 48 (1st Cir. 2021). As previously noted, the Wire Act is the law based in the commerce power that gives the federal government authority to prohibit interstate wagers via internet or phone from prospective bettors located in states that still outlaw sports betting.

⁵⁸ See Elsa Larsen, *Bet on It: Amending the Wire Act Moves the Line Forward on Interstate Sports Betting*, 47 VT. L. REV. 602, 603 (2023).

⁵⁹ Jill R. Dorson, *What is PASPA, the Federal Ban on Sports Betting?*, SPORTSHANDLE (July 1, 2020), <https://sportshandle.com/what-is-paspa-sports-betting-ban-professional-amateur-sports/> [https://perma.cc/88YP-GFH3].

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.⁶⁰

PASPA made it illegal to for sportsbooks to operate in the United States outside of Nevada (which received a grandfather exemption).⁶¹ PAPA effectively restrained the operation of sportsbooks until 2018—when New Jersey launched a successful challenge of the law in *Murphy v. NCAA* under the anti-commandeering doctrine.⁶² PAPA was found to violate the anti-commandeering doctrine because the statute, by rule of Congress, illegally mandated what a state legislature might and might not do in their regulation of sports betting.⁶³ In his opinion, Justice Alito stated that PASPA was unconstitutional as “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.”⁶⁴ Accordingly, the striking down of PASPA allowed states to determine their own policies regarding the in-state operation of sportsbooks, thus opening the door for the contemporary sportsbook market.⁶⁵ As of February 2024, the following states have permitted a sports betting market: Arizona, Arkansas, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, Wyoming, and Washington, D.C.⁶⁶ As a result of the increased growth of the sports betting market, sports media coverage has changed from merely reporting on

⁶⁰ 28 U.S.C. § 3702.

⁶¹ *Murphy v. NCAA*, 584 U.S. 453, 459–60 (2018).

⁶² *Id.* at 480.

⁶³ *Id.* at 470.

⁶⁴ *Id.* at 486.

⁶⁵ Patrick Everson, *Regulated Sports Betting Industry Booming Five Years After PASPA's Repeal*, FOX SPORTS (May 19, 2023), <https://www.foxsports.com/stories/other/regulated-sports-betting-industry-booming-five-years-after-paspas-repeal> [<https://perma.cc/WL5K-8XRP>].

⁶⁶ Bengel & McCarriston, *supra* note 16.

games to including betting lines in their coverage and directly forming partnerships with sportsbooks.⁶⁷

B. Regulations that Apply to Media-Members

There is a notable lack of regulation applicable to media members related to sports betting at the federal level.⁶⁸ Even administrative law, such as the Code of Federal Regulations (C.F.R.), notably excludes sports betting from its list of banned forms of gaming that cannot be promoted on broadcast media.⁶⁹ Specifically, the C.F.R. makes it so that “[n]o licensee of an AM, FM, television, or Class A television broadcast station . . . shall broadcast any advertisement . . . concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance.”⁷⁰ However, the C.F.R. also includes a carve out for sports betting, stating this “does not include the placing or accepting of bets or wagers on sporting events or contests.”⁷¹

Even if this section of the C.F.R. did apply to sports betting,⁷² federal regulations affecting broadcast media are typically narrow.⁷³ These federal regulations affect advertisers and broadcasters, but they do not tend to reach individual reporters or media members.⁷⁴ In fact, the Wire Act actually offers some degree of protection from liability to sports media members;⁷⁵ it exempts media members from liability that transmit information assisting in placing bets on a sporting event from a state where betting is legal into another state in which such betting is also legal.⁷⁶ However, this “protection” merely covers fully legal discussions of betting lines being broadcast from a state where sports betting is currently legal.⁷⁷ With no directly applicable

⁶⁷ See J. Liu, *The Emergence of Sports Betting and Its Impact on Sports Media Coverage*, MEDIUM (Oct. 18, 2023), <https://medium.com/@yanchenliu05/the-emergence-of-sports-betting-and-its-impact-on-sports-media-coverage-2e622db2c6bd> [https://perma.cc/D42V-ET65].

⁶⁸ See Meredith Garrity, *Online Sports Betting, How a Lack of Federal Regulation has Impacted Consumers after Murphy*, J. OF HIGH TECH. L. (Oct. 29, 2024), <https://sites.suffolk.edu/jhtl/2024/10/29/online-sports-betting-how-a-lack-of-federal-regulation-has-impacted-consumers-after-murphy/> (discussing the general lack of federal oversight over sports betting since *Murphy*).

⁶⁹ 47 C.F.R. § 73.1211 (2024).

⁷⁰ *Id.* § 73.1211(a).

⁷¹ *Id.* § 73.1211(d)(1).

⁷² See *id.*

⁷³ See *id.* § 73.1211.

⁷⁴ See *id.*

⁷⁵ N.H. Lottery Comm'n v. Rosen, 986 F.3d 38, 59–60 (1st Cir. 2021).

⁷⁶ *Id.*

⁷⁷ *Id.* at 60.

regulation of individual media members at the federal level related to sports betting, individuals are instead mostly regulated at the state level.⁷⁸

1. Potentially Applicable State Statutes

No state has a statute directly prohibiting individuals who report on sports from placing wagers;⁷⁹ instead, regulations on media members usually come from statutes that prevent media members from utilizing their position for insider betting.⁸⁰ These regulations largely arise from state statutes that focus on regulating the utilization of non-public information to place wagers.⁸¹ Still, these state rules all fall short of preventing a reporter with ties to a sports book from intentionally manipulating a betting market for the benefit of his employer.

Colorado's sports betting statute directly prohibits the use of non-public information by anyone who bets on sports.⁸² While this is most likely meant to prevent players and those close to them from betting on games, it may also affect media members who work closely with the team and are often the first to learn about injuries and gameplans.⁸³ The Colorado statute states that a sports betting operator shall not accept a bet from any person whose identity is known to the sports betting operator and whose name appears on the exclusion list maintained by the master licensee.⁸⁴ It also excludes someone who is a director, officer, owner, or employee of the sports betting operator, any relative of the sports betting operator from the same household, someone who has access to nonpublic confidential information held by the sports betting operator, or someone serving as an agent or proxy for any other individual trying to place a bet.⁸⁵ This method of regulation impacting members with non-public information is quite common among states that offer legalized sports betting;⁸⁶ other jurisdictions restricting non-public information in a similar manner include Massachusetts, Michigan, Pennsylvania, and the District of Colombia.⁸⁷

Massachusetts provides some level of deference to sports leagues and governing bodies to reduce the use of non-public information in gambling.⁸⁸

⁷⁸ See Garrity, *supra* note 68.

⁷⁹ See Moritz, *supra* note 18.

⁸⁰ See Taddeo, *supra* note 7.

⁸¹ See *id.*

⁸² COLO. REV. STAT. § 44-30-1506(2)(b)(iii) (2024).

⁸³ See *generally id.* (appearing to cover sports journalists with non-public access to athletes' injury statuses and the game-plans for teams that they cover).

⁸⁴ *Id.* § 44-30-1506(2)(b)(i).

⁸⁵ *Id.* § 44-30-1506(2)(b)(i)–(iv).

⁸⁶ See MASS. ANN. LAWS ch. 23N, § 11 (2024); MICH. ADMIN. CODE r. 432.711(p)(x) (2024); D.C. Law 22-312, § 307 (2018); 58 PA. CODE § 1401.8(b) (2018).

⁸⁷ See ch. 23N, § 11; r. 432.711(p)(x); § 307; § 1401.8(b).

⁸⁸ See ch. 23N, § 11.

Mass. Ann. Laws ch. 23N, § 11 allows sports leagues' governing bodies to provide to the commission lists of individuals to be excluded from placing wagers, intending to reduce the use of the non-public information in placing wagers.⁸⁹ Michigan and Washington, D.C. take a different approach;⁹⁰ these two jurisdictions have placed broad restrictions on individuals with access to exclusive or non-public information, thus placing the onus on sportsbook operators to recognize and report violators of this prohibition.⁹¹ Pennsylvania's statute is similar to Michigan and Washington, D.C.'s statutes, in that it directly bans non-public information in placing wagers.⁹² Yet, Pennsylvania's statute is unique in that it ties non-public information to outlined banned groups of individuals; specifically, "collegiate or professional athlete[s], referee[s], official[s], coach[es], manager[s], handler[s] or athletic trainer[s] or employee[s] or contractor[s] of a team or athletic organization . . ." who typically receive non-public information.⁹³

This is not the only way to regulate the use of non-public information, and many states do so differently. For example, Arizona's analogous statute still restricts who may place bets and what betting activities are considered illegal but does so in a more vague manner.⁹⁴ Arizona's statute places less direct emphasis on members of the media placing wagers using non-public information.⁹⁵ Instead, the statute states that all licensees should report the following to the department and relevant sport's governing body: "Abnormal betting activity . . . indicat[ing] a concern with the integrity of a sports . . . events, or . . . conduct that corrupts a betting outcome of a sport[ing] event."⁹⁶ In Arizona, the onus is on the sportsbook licensee to report a perceived breach of the rules set by sport's governing body related to wagering.⁹⁷

A.R.S. § 5-1316(A)(1) appears intentionally vague in its description of "any other conduct that corrupts a betting outcome of a sports event or events for purposes of financial gain, including match fixing."⁹⁸ It is likely that non-public knowledge of a game used for insider gambling falls into this category, but due to the vagueness of this statute, intentional false reporting of pertinent

⁸⁹ *Id.*

⁹⁰ *See* r. 432.711 (p)(x); § 307.

⁹¹ *See* r. 432.711 (p)(x); § 307.

⁹² *See* r. 432.711 (p)(x); § 307; § 1401.8 (b).

⁹³ 58 PA. CODE § 1401.8 (b).

⁹⁴ *See generally* ARIZ. REV. STAT. § 5-1316 (2024) (Unlike Pennsylvania's statute, the Arizona statute does not explicitly bar certain groups, such as athletic trainers, from wagering.).

⁹⁵ *See id.* § 5-1316(A).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

game information may also fall into this category because it “corrupts the betting outcome.”⁹⁹

Arkansas has an even less restrictive statute describing who can place bets on sporting events.¹⁰⁰ Arkansas focuses solely on restricting bets that impact the “integrity of the game.”¹⁰¹ As a result, the statute seems to have no direct impact on members of the media.¹⁰² Arkansas also restricts which events wagers may be placed and places restrictions on betting by players and coaches.¹⁰³ Arkansas’ prohibitions include any amateur sport or athletic events that is not an Olympic sporting events or collegiate sporting events.¹⁰⁴ The statute explicitly prohibits betting on collegiate events by coaches or participants;¹⁰⁵ wagering on public election results;¹⁰⁶ and wagering on other events that do not fall into the categorization of a horse race, greyhound race, or sporting event, unless previously approved by the Arkansas Racing Commission.¹⁰⁷ Arkansas seems more concerned with preventing individuals directly involved in the competition from placing bets rather than ensuring that someone with non-public information does not place a bet.¹⁰⁸

Even Nevada, the state with the longest uninterrupted history of sports betting, also has rules that do not effectively govern media members.¹⁰⁹ Like other states, Nevada explicitly prohibits an official, owner, coach, staff, or a participant of a team from betting on sporting events.¹¹⁰ Nevada’s regulations, however, stop short of prohibiting individuals with insider non-public information from betting on games.¹¹¹ It is worth noting that in other casino based games, Nevada restricts individuals from placing, increasing, or decreasing a bet after acquiring knowledge that is not available to all players regarding the outcome; this rule has not been applied to sports betting.¹¹²

The covered statutes are not an exhaustive list; rather, they provide insight on the way in which many states address the use of non-public information typically attributed to media members. These statutes also display how

⁹⁹ *Id.*

¹⁰⁰ See generally ARK. CODE R. § 13-20.120 (2024) (only listing coach or participant as being barred, and no mention of non-public information).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* § 13-20.120(1)(b).

¹⁰⁴ *Id.* § 13-20.120(1)(a)(1).

¹⁰⁵ *Id.* § 13-20.120(1)(b).

¹⁰⁶ *Id.* § 13-20.120(1)(c).

¹⁰⁷ *Id.* § 13-20.120(1)(d).

¹⁰⁸ *Id.* § 13-20.120(1)(b).

¹⁰⁹ See Greg Brower & Matt Starr, *Insider Betting: Deep Threat or No Harm, No Foul*, BROWNSTEIN, HYATT, FRABER, & SCHRECK 29, 31 (Sept. 2019), <https://www.bhfs.com/Templates/media/files/insights/SportsBettingIntelligenceSept2019.pdf> [<https://perma.cc/ZK5L-ZE4E>].

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² NEV. REV. STAT. ANN. § 465.070(5)-(7) (2023); Brower & Starr, *supra* note 109.

current gambling statutes are ill-equipped to handle the modern gambling media landscape, where an incorrect or ill-intentioned report can influence bettors to make wagers.

2. In-House Regulation

In-house policies typically apply to members of the media who have employment relationships with sportsbooks.¹¹³ Virtually all reputable sportsbooks have implemented a series of rules and restrictions upon their employees, which often extend to members of the media who have partnered with the sportsbook.¹¹⁴

DraftKings Sportsbook provides a clear standard related to its employees, indicating that both employees and immediate family members are not allowed to gamble on the application.¹¹⁵ FanDuel has a similar rule forbidding employees and household-members from betting on the app.¹¹⁶ Additionally, FanDuel expands this ban to employees of other sportsbooks and daily fantasy sites including DraftKings and Yahoo.¹¹⁷ The extension of this restriction beyond direct employees to employees of Yahoo is important because former employees of Yahoo Sports, like Shams Charania, have served as FanDuel's media partners.¹¹⁸ Also, more recently, Yahoo Sports has formed a content creation partnership with MGM's sports betting operation.¹¹⁹

With the launch of ESPN Bet on November 14, 2023,¹²⁰ the media giant was required to make its own in-house policy to both limit its liability to

¹¹³ Sarah Scire, *Can Reporters Make Bets on the Sports They Cover?*, NIEMANLAB (Nov. 2, 2023), <https://www.niemanlab.org/2023/11/can-reporters-make-bets-on-sports-they-cover-we-asked-a-dozen-newsrooms/> [https://perma.cc/YN5F-NDCN].

¹¹⁴ See *Terms of Use*, FANDUEL (Dec. 5, 2023), <https://www.fanduel.com/terms> [https://perma.cc/GWW5-VSG4]. See also *Important Legal Notice Regarding Terms of Use of DraftKings Sportsbook and Casino*, DRAFTKINGS SPORTSBOOK (July 13, 2021), <https://sportsbook.draftkings.com/legal/on-terms-of-use> [https://perma.cc/9LD8-TT6T]. See also *House Rules*, CAESARS SPORTSBOOK, <https://caesars.com/sportsbook-and-casino/az/support/house-rules/> [https://perma.cc/7L8T-3JZT].

¹¹⁵ *Important Legal Notice Regarding Terms of Use of DraftKings Sportsbook and Casino*, *supra* note 114.

¹¹⁶ *Terms of Use*, *supra* note 114.

¹¹⁷ *Id.*

¹¹⁸ *Our Partners*, FANDUEL, <https://press.fanduel.com/Our-Company/Partnerships/> [https://perma.cc/CR2C-3HNY]. Shams Charania is a former employee of Yahoo; at the time of writing, he worked for the Athletic; he now works for ESPN.

¹¹⁹ *'Historic partnership' Formed Between Yahoo Sports and MGM as Heavyweights Come Together*, AFFIVERSE (Oct. 29, 2019), <https://www.affiversemedia.com/historic-partnership-formed-between-yahoo-sports-and-mgm-as-heavyweights-come-together/> [https://perma.cc/YE89-5KKW].

¹²⁰ Sam McQuillan, *ESPN Issues Employee Betting Guideline Ahead of ESPN Bet Launch Tuesday*, LEGAL SPORTS REPORT (Nov. 14, 2023), <https://www.legalsportsreport.com/150335/employee-betting-guidelines-ahead-of-espn-bet-launch-today/> [https://perma.cc/X3JS-YGM9].

consumers and to govern employee conduct.¹²¹ To limit the sportsbook's liability to consumers, before operating the app, the user must agree that by using ESPN Bet they have no legal claim against Penn Gaming, "any of its affiliated companies or group of companies, licensors, service providers, or their respective directors, officers, members, management companies, employees, subcontractors, third party service providers, agents, representatives, or any affiliates."¹²² This clause is meant to protect ESPN and Penn Gaming from any lawsuit related to bettors relying on the information of their pundits.¹²³ ESPN has also enacted in-house policies to keep their media personnel reasonably distant from the gambling space.¹²⁴ Insiders are not supposed to share non-public information "for any betting related purpose."¹²⁵ This policy is crucial to ensuring any resemblance of integrity. A sports media pundit must be able to share information about whether a player will suit up, and ESPN must ensure pertinent information is shared publicly, rather than privately with sportsbook operators.¹²⁶ ESPN has also placed limited prohibitions on the betting activity of their insiders.¹²⁷ Currently, ESPN employees are not allowed to place bets on games or events that they are assigned to work or cover, leaving the door open for insiders to still place bets on other events.¹²⁸ Moreover, "employees who learn confidential information from reporters or insiders should never use such information for betting-related purposes."¹²⁹

The implicit failure of all these in-house policies lies in their tendency to merely prevent partners and employees from gambling.¹³⁰ The in-house policies tend to mirror the primary goals of the previously discussed state statutes, protecting the integrity of sports leagues and preventing the use of non-public information for insider betting.¹³¹ While the reporters who are employed by sportsbooks are subject to their respective in-house terms and conditions, these rules merely prevent the reporter and their family members from gambling.¹³² In cases where a reporter is employed by a sportsbook, the

¹²¹ *Id.*

¹²² *Terms of Use*, ESPN BET, <https://espnbet.zendesk.com/hc/en-us/articles/19677753727245-Terms-of-Use> [<https://perma.cc/BR29-T2CL>].

¹²³ *See id.*

¹²⁴ *See* McQuillan, *supra* note 120.

¹²⁵ Eric Raskin, *ESPN Employee Guidelines Issued Ahead of ESPN BET Launch Emphasize Integrity*, SPORTSHANDLE (Nov. 13, 2023), <https://sportshandle.com/espn-employee-guidelines-espn-bet-integrity/> [<https://perma.cc/Z43Q-L64D>].

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *See Terms of Use*, *supra* note 114. *See also Important Legal Notice Regarding Terms of Use of DraftKings Sportsbook and Casino*, *supra* note 114; *House Rules*, *supra* note 114.

¹³¹ *See Terms of Use*, *supra* note 114.

¹³² *See Terms of Use*, *supra* note 114. *See also Important Legal Notice Regarding Terms of Use of DraftKings Sportsbook and Casino*, *supra* note 114; *House Rules*, *supra* note 114.

motivation may not be using non-public information for personal gambling gains; rather, it could be driven by incentives or bonuses offered by their employer.¹³³ The financial success of the book could be bolstered by reporters providing line-moving inaccurate reports or information.¹³⁴

ESPN Bet displays a new level of connection between the media and sports betting.¹³⁵ Rather than bettors receiving information from just a select few pundits that have ties to a sportsbook, now every member of an entire network can reasonably be seen as having ties to gambling.¹³⁶ In the time leading up to its launch, ESPN publicly emphasized that its primary focus in developing in-house regulations was journalistic integrity.¹³⁷ ESPN maintained the position that any public scrutiny over the relationship between reporters and oddsmakers is merely scrutiny and nothing more.¹³⁸ However, ESPN's own policies, now public, do not mandate disclosure of all information learned about games by insiders, nor do ESPN's policies mandate regular updates if information changes, only that non-public information be shared with the public before sportsbooks.¹³⁹

Even if these concerns are mostly illusory rather than based in fact, the main impact of the partnership is the decline in trust from the sports-following public;¹⁴⁰ there is a high standard of journalistic integrity that should be carried out by a major network like ESPN.¹⁴¹ Existing in-house policies cannot be the total extent of regulation when a media network ties themselves so closely to a sportsbook.¹⁴² These in-house policies should

¹³³ See Adel Bykova et al., *The Effectiveness of Bonus Payment as a Financial Incentive for Top Management*, WSEAS TRANSACTIONS ON BUS. AND ECON., vol. 19, 1476, 1488-89 (Sept. 6, 2022).

¹³⁴ See Arthur Weinstein, *ESPN BET Launch Draws Officials' Scrutiny*, AWFUL ANNOUNCING (Nov. 7, 2023), <https://awfulannouncing.com/espn/espn-bet-launch-draws-officials-scrutiny.html> [<https://perma.cc/BZ6W-5WHV>].

¹³⁵ See Manzo, *supra* note 23.

¹³⁶ Colin Young, *ESPN Sports Betting Brand Raises Concern in Mass.*, TELEGRAM & GAZETTE (Nov. 7, 2023), <https://www.telegram.com/story/news/local/2023/11/07/espn-bet-gambling-platform-raises-concern-in-massachusetts/71493673007/> [<https://perma.cc/M3YU-C89N>].

¹³⁷ See Manzo, *supra* note 23.

¹³⁸ *Id.*

¹³⁹ Raskin, *supra* note 125.

¹⁴⁰ See Manzo, *supra* note 23.

¹⁴¹ Darren Rovell, *ESPN BET Exec Addresses Relationship Between Reporters and Sportsbook, Regulatory Issues & More*, ACTION NETWORK (Nov. 14, 2023), <https://www.actionnetwork.com/general/espn-bet-addresses-relationship-between-reporters-and-sportsbook-regulatory-issues-more> [<https://perma.cc/2CL5-3T7B>].

¹⁴² See *id.*

employ more stringent restrictions to fully differentiate the work of network associated sports reporters from the operation of associated sportsbooks.¹⁴³

II. ANALYSIS: SEEKING REGULATORY INSIGHT OF SPORTS REPORTERS FROM THE SEC AND FTC

There are some obvious limitations in regulating sports reporters, even those with a connection to the betting landscape.¹⁴⁴ First, most sports reporters are not subject to existing laws that restrict the distortion of the news;¹⁴⁵ distortion of the news is largely overseen by the Federal Communications Commission (FCC).¹⁴⁶ This limitation is tied to the scope of the FCC's enforcement authority, which is restricted to the broadcast medium.¹⁴⁷ This means that with regards to the "news distortion policy . . . the FCC has no power to enforce it against cable news networks, newspapers or newsletters (whether online or print), social media platforms, online-only streaming outlets or any other non-broadcast news platform."¹⁴⁸ Because sports reporters typically do not work exclusively on broadcast mediums, FCC guidelines are typically not relevant.¹⁴⁹ Also, while existing legal restrictions and in-house policies aim to prevent reporters from using inside knowledge for personal betting gains,¹⁵⁰ these measures are insufficient to address potential collusion between media and sportsbooks for non-wagering financial benefits, such as defrauding bettors. It also does not ensure that the betting public is adequately informed of which reporters have ties to sportsbooks.

As a result of this deficiency in the law, state gaming commissions and wary media companies must look elsewhere to stricter standards that are not currently applicable for insight.¹⁵¹ Section A and B will focus on the regulatory tools that the SEC utilizes to target businesses and reporters to prevent the defrauding of potential investors. Section C will focus on the regulatory tools that the FTC utilizes to ensure that the public is adequately

¹⁴³ See *id.*

¹⁴⁴ See *Broadcast News Distortion*, FED. COMM'NS COMM'N, <https://www.fcc.gov/broadcast-news-distortion> [<https://perma.cc/5F5S-7JK5>].

¹⁴⁵ See *id.*

¹⁴⁶ *Id.*

¹⁴⁷ See *id.*

¹⁴⁸ *Id.*

¹⁴⁹ See *id.*

¹⁵⁰ See Rovell, *supra* note 141.

¹⁵¹ See Weinstein, *supra* note 134.

informed of paid sponsorships and material connections between paid advertisers and content creators.

A. Using SEC Regulations as a Guide to Regulate Sports Media

The SEC is a government agency responsible for the federal regulation of registered securities, public companies, and personnel engaged in activity related to securities.¹⁵² The foundation of the federal regulation of securities products is provided by four federal laws administered by the SEC: the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.¹⁵³ These acts were primarily enacted to establish a regulatory framework for the issuance and sale of securities, provide oversight of the securities markets, and ensure transparency by implementing ongoing disclosure obligations for publicly traded companies.¹⁵⁴ To protect investors, the SEC enforces these laws by ensuring full disclosure of investment offerings and imposing anti-fraud regulations.¹⁵⁵

Bets placed are obviously not securities, nor should they be thought of as securities. Securities are subject to extensive regulation because of the long-term financial interest many Americans place in them.¹⁵⁶ However, like securities, people often place deep financial stakes in their bets.¹⁵⁷ For example, any Texas sports fan is likely familiar with the high-stakes antics of bettor Mattress Mack.¹⁵⁸ Mattress Mack is a Texas businessman who famously places high-stake bets, such as a \$10 million bet on the Astros to win the World Series and later a \$3 million bet on TCU to win the College Football National Championship.¹⁵⁹ Although Mattress Mack was victorious with his Astros bet, his luck ran short on TCU.¹⁶⁰ While there is certainly an

¹⁵² *About the SEC*, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/strategic-plan/about> [<https://perma.cc/2642-9VQZ>].

¹⁵³ See 1995 Pa. Sec. LEXIS 68. See also *Roth v. Foris Ventures, LLC*, 86 F.4th 832, 834 (9th Cir. 2023).

¹⁵⁴ See 1 Securities Enforcement: Counseling and Defense § 2.01.

¹⁵⁵ *Dichter-Mad Family Partners, LLP v. United States*, 709 F.3d 749, 771 (9th Cir. 2013).

¹⁵⁶ See *Tom v. Schoolhouse Coins*, 236 Cal. Rptr. 541, 542 (Ct. App. 1987).

¹⁵⁷ See Chris Bengel, *Jim 'Mattress Mack' McIngvale lost at Least \$7.9 Million After Astros Fail to Reach 2023 World Series*, CBS SPORTS (Oct. 24, 2023), <https://www.cbssports.com/mlb/news/jim-mattress-mack-mcingvale-lost-at-least-7-9-million-on-astros-world-series-bets/> [<https://perma.cc/5YX6-JACN>].

¹⁵⁸ See *id.*

¹⁵⁹ David Purdam, *Notable bets: Mattress Mack and the wildest wagers and betting tales of 2022*, ESPN (Jan. 2, 2023), https://www.espn.com/chalk/story/_id/35362145/mattress-mack-wildest-wagers-betting-tales-2022 [<https://perma.cc/9KPV-CF2T>]; Coleman Bentley, *Watching Mattress Mack eat his \$3-million TCU bet was the only entertaining part of Monday's national championship game*, GOLF DIGEST (Jan. 10, 2023), <https://www.golfdigest.com/story/mattress-mack-tcu-georgia-college-football-playoff-national-championship-bet-gambling-loss> [<https://perma.cc/A3WH-8KWX>].

¹⁶⁰ Bentley, *supra* note 159.

argument to be made that incorrect information is just part of the high-risk activity of betting; however, with so much money on the line, it would likely be beneficial to hold reporters—who willingly tie themselves to sportsbooks—to a higher standard of information or at least a higher level of scrutiny. Securities law can provide insight on how to best regulate the media concerning gambling, largely because securities law focuses on mitigating fraud and the risk of fraud.¹⁶¹ The rules of enforcement utilized by the SEC to ensure investors are not defrauded can be used as guidance to develop rules to better guard bettors from being led astray by false reports from reporters who have decided to tie themselves to sportsbooks.¹⁶²

The SEC's two enforcement powers that display a potentially beneficial application to sports betting are: (1) 18 U.S.C.S § 1348 and (2) 17 C.F.R. § 240.12b-20.¹⁶³ They will be covered as follows: Section IIA1 will focus on 18 U.S.C.S § 1348, Section IIA2 will focus on 17 C.F.R. § 240.12b-20. Section IIB will then focus solely on their potential application to sports betting. The two statutes function to prevent the defrauding of individuals in the purchasing of securities.¹⁶⁴ Here, the analysis of these statutes will examine how a reporter partnering with sportsbooks may exploit their position to commit fraud against bettors and will be used to display how the creation of analogous sports betting regulations could protect bettors and uphold journalistic integrity. 18 U.S.C.S § 1348 makes it a crime to defraud anyone in the delivery or purchase of a security.¹⁶⁵ Additionally, 17 C.F.R. § 240.12b-20 primarily regulates companies that make misleading statements about financial records;¹⁶⁶ the rule requires the correction of misleading information.¹⁶⁷ The analysis of 17 C.F.R. § 240.12b-20 will be used in a manner that suggests that reporters who partner with sportsbooks

¹⁶¹ See 18 U.S.C. § 1348. See also 17 C.F.R. § 240.12b-20.

¹⁶² See *About the SEC*, *supra* note 152.

¹⁶³ See 18 U.S.C. § 1348. See also 17 C.F.R. § 240.12b-20.

¹⁶⁴ *Baker v. Smith & Wesson, Inc.*, 40 F.4th 43, 49-50 (1st Cir. 2022).

¹⁶⁵ 18 U.S.C. § 1348.

¹⁶⁶ 17 C.F.R. § 240.12b-20.

¹⁶⁷ *Id.* § 240.12b-1 (providing the scope of 17 C.F.R. § 240.12b-20).

should be required to correct misleading statements and misinformation that they publish to prevent the risk of fraud.

1. 18 U.S.C.S § 1348

The SEC's primary tool for dealing with fraud is 18 U.S.C.S § 1348;¹⁶⁸ this statute makes it a crime to:

defraud any person in connection with any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934.¹⁶⁹

This statute is not targeted at reporters, meaning it is not solely meant to impact those who report on the stock market. Rather, it deals with all types of fraud, and it is a powerful enforcement tool of the SEC that impacts businesses, employees of businesses, as well as those reporting on the stock market with the intent to deceive or defraud.¹⁷⁰ It impacts anyone who may benefit from defrauding the public.¹⁷¹

The following are examples of how the SEC utilizes this statute to prevent the defrauding of the public;¹⁷² it also displays general guidelines that could be applied in an effort to reform gambling laws to prevent the public from being defrauded by reporters partnering with sportsbooks.¹⁷³

In *United States v. Blaszcak*, the court interpreted 18 U.S.C. § 1348 as a broad criminal prohibition against securities fraud, specifically insider trading.¹⁷⁴ The court also noted that the statute does not require proof of a personal benefit to secure a criminal conviction; the benefit can be to another person or entity.¹⁷⁵ In *United States v. Greenlaw*, the defendants were convicted of conspiracy to commit securities fraud in violation of 18 U.S.C. § 1348.¹⁷⁶ The court held that the statute required the fraudulent act to be completed with a specific "intent to defraud."¹⁷⁷ For this to be shown, the government must prove an intent to deceive, and the deceit must have caused

¹⁶⁸ 18 U.S.C.S § 1348.

¹⁶⁹ *Id.*

¹⁷⁰ *Baker v. Smith & Wesson, Inc.*, 40 F.4th 43, 49–50 (1st Cir. 2022).

¹⁷¹ *Id.*

¹⁷² *See About the SEC*, *supra* note 152.

¹⁷³ *See Weinstein*, *supra* note 134.

¹⁷⁴ *United States v. Blaszcak*, 56 F.4th 230, 248–49 (2d Cir. 2022).

¹⁷⁵ *Id.*

¹⁷⁶ *United States v. Greenlaw*, 76 F.4th 304, 319 (5th Cir. 2023).

¹⁷⁷ *Id.*

harm.¹⁷⁸ Both elements are usually satisfied when a defendant acts knowingly with the intent to deceive and cause pecuniary loss to another or bring about some financial gain to himself.¹⁷⁹ Also relevant is *SEC v. Stein*, in which the defendant was charged with three counts of securities fraud under 18 U.S.C. § 1348, among other charges, for drawing up fraudulent purchase orders and orchestrating the dissemination of press releases reporting the sales.¹⁸⁰ This was designed to inflate the company's stock price so that the defendant could profit from selling its securities to investors.¹⁸¹ By applying a similar standard to sports reporters who partner with sportsbooks,¹⁸² gaming commissions could crack down on individuals who publish stories with the intent to deceive the public. Moreover, intent would not need to stem from the reporter receiving direct benefit from insider betting; rather, it could come from any kind of benefit to themselves or their employing sportsbook, such as in *Blaszczak*.¹⁸³ In summary, under a style regulation that mirrored the SEC's use of 18 U.S.C. § 1348,¹⁸⁴ state gaming commissions could enforce the regulation against sports reporters if there was intent to deceive, that deceit caused public harm, and any form of financial gain to the reporter or employing entity resulted.

This type of SEC-style regulation of individuals would be possible not just as a regulatory tool against media companies but against individual reporters as well; this is as 18 U.S.C. § 1348 has been used to target individuals' fraudulent actions.¹⁸⁵ Admittedly, however, when directly targeting individuals, SEC regulation tends to primarily be concerned with pump-and-dump schemes.¹⁸⁶ These long-outlawed schemes usually involve manipulating a stock price by divulging false information for the benefit of the holders—often the ones feeding false information to their audience.¹⁸⁷ While this kind of scheme is not new, more recently, online personalities, who hold themselves out as financial experts, have begun to be charged with pump-and-dump schemes.¹⁸⁸ When speaking about their positions, any

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *SEC v. Stein*, 906 F.3d 823, 827 (9th Cir. 2018).

¹⁸¹ *Id.* at 826.

¹⁸² 18 U.S.C. § 1348; *United States v. Blaszczak*, 56 F.4th 230, 248–49 (2d Cir. 2022); *United States v. Greenlaw*, 76 F.4th 304, 319 (5th Cir. 2023); *Stein*, 906 F.3d at 827.

¹⁸³ *See Blaszczak*, 56 F.4th 230 at 249.

¹⁸⁴ 18 U.S.C. § 1348.

¹⁸⁵ *See generally* *United States v. Constantinescu*, No. 4:22-CR-612, 2023 U.S. Dist. LEXIS 154543 (S.D. Tex. Aug. 31, 2023) (This case provides an example of SEC regulations being used to target individual action).

¹⁸⁶ *See Pump and Dump Schemes*, SEC, https://www.sec.gov/rss/your_money/pump_and_dump.htm (Aug. 07, 2006) [<https://perma.cc/RN4D-XNPD>].

¹⁸⁷ *Zweig v. Hearst Corp.*, 594 F.2d 1261, 1262–1263 (9th Cir. 1979).

¹⁸⁸ *SEC Charges Eight Social Media Influencers in \$100 Million Stock Manipulation Scheme Promoted on Discord and Twitter*, U.S. SEC. & EXCH. COMM'N (Feb. 21, 2022), <https://www.sec.gov/news/press-release/2022-221> [<https://perma.cc/U392-4FQP>].

online personality, even those who are not usually considered members of the media, have a duty not to defraud under 18 U.S.C. § 1348.¹⁸⁹ In the modern era, these schemes often amount to individuals building a substantial following on social media sites and then “posting price targets or indicating they were buying, holding, or adding to their stock positions.”¹⁹⁰ However, instead of giving legitimate financial advice, “when share prices and/or trading volumes [rise] in the promoted securities, the individuals . . . [sell] their shares without ever having disclosed their plans to dump the securities.”¹⁹¹

In 2022, a two-year-long pump-and-dump scheme came to a head when eight individuals utilizing a combination of X (formerly Twitter) and Discord were met by the SEC.¹⁹² All the defendants had more than 100,000 followers on Twitter and often showcased their wealth online, posting images of their expensive cars.¹⁹³ The years-long scheme was typically conducted in three phases.¹⁹⁴ At least one of the conspirators would choose a stock to target and would allow the others the chance to purchase shares before promoting it online to their followers.¹⁹⁵ They would then promote the stock to their followers on podcasts, and when they succeeded in raising the price, they would sell their shares to turn a profit.¹⁹⁶ All the while, those in charge of the scheme would tell their followers that they were not dumping their shares, leaving their followers to suffer the financial consequence.¹⁹⁷

In the digital age, online market manipulation and pump-and-dump schemes have become a growing concern.¹⁹⁸ Recently, an investor who gained a substantial following as a leader in the 2020 meme stock movement was accused of participating in a pump-and-dump scheme after claiming that he was purchasing a large number of shares in the dying company Bed, Bath, & Beyond.¹⁹⁹ While these charges were dismissed, it shows a growing

¹⁸⁹ See *Constantinescu*, 2023 U.S. Dist. LEXIS 154543 at *6.

¹⁹⁰ *SEC Charges Eight Social Media Influencers in \$100 Million Stock Manipulation Scheme Promoted on Discord and Twitter*, *supra* note 188.

¹⁹¹ *Id.*

¹⁹² Jennifer Calias, *DOJ, SEC Charge Eight Social-Media Influencers for Alleged Securities Fraud*, WALL ST. J. (Dec. 14, 2022), <https://www.wsj.com/articles/sec-charges-eight-influencers-in-100-million-securities-fraud-11671031747> [<https://perma.cc/2X53-MR6L>].

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ See *SEC Charges Eight Social Media Influencers in \$100 Million Stock Manipulation Scheme Promoted on Discord and Twitter*, *supra* note 188 (“Today’s action exposes the true motivation of these alleged fraudsters and serves as another warning that investors should be wary of unsolicited advice they encounter online.”).

¹⁹⁹ *In re Bed Bath & Beyond Corp. Sec. Litig.*, 687 F. Supp. 3d 1, 6 (D.D.C. July 27, 2023). The meme stock movement of 2020 was a movement by individuals on reddit and other social media sites to drive up the stock prices of heavily shorted companies like AMC and GameStop to defy traditional market forces.

concern by the SEC in individual pump-and-dump schemes among people with large online followings.²⁰⁰ Accordingly, federal law indicates that a financial columnist who recommends securities to the public should disclose that he or she has ownership of said security.²⁰¹ The columnist is further required to provide the public with all material information he or she has on that security, including his or her intent to profit based on the recommendation.²⁰²

A similar method of manipulation can occur in the gambling space when trusted reporters release misleading information from what they claim are “verified sources.”²⁰³ This can be seen in the way Charania’s statements have previously manipulated betting lines.²⁰⁴ In a more malicious scenario, false stories could be used to manipulate lines in ways that are favorable for the benefit of a reporter or their employing sportsbook, just like how pump-and-dump directors utilize the media.²⁰⁵ As such, it is important for the SEC that 18 U.S.C. § 1348 applies to both corporations and individuals. If state gaming commissions were to use the statute as a model to prevent sports reporters from defrauding bettors, then the commission could crack down upon both sportsbooks and individual reporters. Both may have ulterior motives and reasons to defraud.

2. 17 C.F.R. § 240.12b-20

While 18 U.S.C. § 1348 allows the SEC to crack down on a business or individual that defrauds the public for financial gain,²⁰⁶ 17 C.F.R. § 240.12b-20 works to ensure businesses correct misleading financial statements that have the potential to deceive investors.²⁰⁷ Under this regulation, it may be required that the business release further clarifying information so that individuals can make informed investment decisions.²⁰⁸ 17 C.F.R. § 240.12b-20 states: “In addition to the information expressly required to be included in a statement or report, there shall be added such further material information,

²⁰⁰ *Id.* at 20.

²⁰¹ *See* *Zweig v. Hearst Corp.*, 594 F.2d 1261, 1271 (9th Cir. 1979). In this case, the beneficiary of the scheme had a working relationship with the company.

²⁰² *See id.*

²⁰³ *See* Strauss, *supra* note 3.

²⁰⁴ *See id.*

²⁰⁵ *See id.* (“Someone, in theory, could give a reporter bad information and then capitalize on the odds. Or a reporter himself or herself could capitalize.”).

²⁰⁶ Quinn Owen, *Start-up CEO Charged in \$175 million Fraud Case*, ABC NEWS (Apr. 4, 2024), <https://abcnews.go.com/Business/startup-ceo-charged-175-million-fraud-case/story?id=98363900> [<https://perma.cc/HFW5-58HJ>].

²⁰⁷ 17 C.F.R. § 240.12b-1 (providing the scope of 17 C.F.R. § 240.12b-20).

²⁰⁸ *Id.* § 240.12b-20.

if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.”²⁰⁹

Essentially, this SEC-enforced regulation simply requires publicly traded companies to file complete and accurate financial reports.²¹⁰ If any information in these reports is later found to be incorrect or potentially misleading, it must be fixed.²¹¹ Liability for these incorrect statements extends beyond the public company and to the individual(s) responsible for making the misleading statements.²¹² The Eleventh Circuit previously held that 17 C.F.R. § 240.12b-20 is not to be considered an anti-fraud provision but rather a reporting regulation.²¹³ This is because it “is ambivalent as to the speaker’s state of mind;” it bases liability solely on the failure to “add such further material information . . . as may be necessary to make the required statements . . . not misleading.”²¹⁴ A similar kind of regulation could be used to govern sports reporters who partner with sportsbooks by requiring the correction of any incorrect report that these reporters make or follow any misleading story to its logical conclusion.

To display how the SEC uses 17 C.F.R. § 240.12b-20, the following cases are of note.²¹⁵ In *Ponce v. SEC*, the petitioner was found by the SEC to be in violation of 17 C.F.R. § 240.12b-20 for certifying the financial statements of the American Aircraft Corporation.²¹⁶ In this activity, the petitioner knew or was reckless in not recognizing the falsities it contained, and he failed to later correct the misleading or false information.²¹⁷ In *SEC v. Goldstone*, an action was brought against a company based upon an allegation of a material misrepresentation in a Form 10-K that stated the company had met its margin call.²¹⁸ The claim was dismissed, however, because the statement was found to be true when made; it only later became false.²¹⁹ In *SEC v. RPM International, Inc.*, the SEC stated a claim against a company for violating 17 C.F.R. § 240.12b-20 by not disclosing material information about loan defaults in required SEC filings.²²⁰ An analogous statute applied to sports betting would allow enforcement against reporters who knowingly or recklessly report misinformation and later fail to correct it.²²¹ A potential

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *United States SEC v. E-Smart Techs.*, 31 F. Supp. 3d 69, 76 (D.D.C. 2014).

²¹² *Id.* at 77.

²¹³ *Carvelli v. Ocwen Fin. Corp.*, 934 F.3d 1307, 1325 (11th Cir. 2019).

²¹⁴ *Id.*

²¹⁵ *See, e.g., Ponce v. SEC*, 345 F.3d 722, 725 (9th Cir. 2003); *SEC v. Goldstone*, 952 F. Supp. 2d 1060, 1165 (D.N.M. 2013); *SEC v. RPM Int’l, Inc.*, 282 F. Supp. 3d 1, 32 (D.D.C. 2017).

²¹⁶ *Ponce*, 345 F.3d at 725.

²¹⁷ *Id.*

²¹⁸ *Goldstone*, 952 F. Supp. 2d at 1077.

²¹⁹ *Id.* at 1165.

²²⁰ *RPM Int’l, Inc.*, 282 F. Supp. 3d at 32.

²²¹ *Ponce*, 345 F.3d at 725 (applying the rule of law from *Ponce* to sports betting).

protection afforded to the reporter, however, could be that enforcement is void if the story was true or reasonably appeared to be true when made.²²²

B. Applying 18 U.S.C.S § 1348 and 17 C.F.R. § 240.12b-20 to Sports Betting

These two statutes display the SEC's broad powers to regulate and punish businesses and individuals who engage in fraud.²²³ The statutes exist to protect investments and ensure that people can make informed financial decisions.²²⁴ The laws and extent of enforcement displayed above show the agency's dedication to this task.²²⁵ Before exploring how these regulations may be applied in the sports betting space, it is worth reiterating the following: first, the SEC can still regulate, even if the financial benefit is not money made directly from a stock but instead bonuses received by an employer in furtherance of fraud;²²⁶ second, the SEC has broad powers to regulate those with connections to businesses who tout misleading information that impacts investors' decisions or the market's integrity.²²⁷ Therefore, whether a sports reporter is working to line his or her own pockets through the act of insider betting or to bolster the profits of his or her employing sportsbook, the proposed regulation should apply equally.²²⁸

In many ways, league insiders operate as liaisons between their sources, which include both players, team officials, and the general public.²²⁹ Although it is becoming more common, an individual athlete or team rarely breaks their own news.²³⁰ Therefore, league insiders are usually trusted by

²²² *Goldstone*, 952 F. Supp. 2d at 1165 (applying the rule of law from *Goldstone* to sports betting).

²²³ See *Donahue v. United States*, 870 F. Supp. 2d 97, 105–06 (D.D.C. 2012).

²²⁴ 18 U.S.C. § 1341 (discussing scope for fraud law, including 18 U.S.C. § 1348).

²²⁵ See 18 U.S.C. § 1348; 17 C.F.R. § 240.12b-20.

²²⁶ *SEC v. Taronis Techs., Inc.*, No. 8:22-cv1939-TPB-AAS, 2023 U.S. Dist. LEXIS 154942, at *17-18 (M.D. Fla. Aug. 31, 2023).

²²⁷ *SEC v. C. Jones & Co.*, 312 F. Supp. 2d 1375, 1381 (D. Colo. 2004).

²²⁸ See *id.*

²²⁹ Kevin Draper, *Basketball's Biggest Reporter is Waging War on ESPN—And He'll Do Anything to Win*, NEW REPUBLIC (Dec. 16, 2014), <https://newrepublic.com/article/120572/adrian-wojnarowski-how-basketballs-reporting-machine-gets-his-scoops> [https://perma.cc/2G5Z-YQFT].

²³⁰ See Ken Berger, *How Players Are Controlling Their Own Media and What it Means for the League*, CBS SPORTS (Feb. 1, 2016), <https://www.cbssports.com/nba/news/how-players-are-controlling-their-own-media-and-what-it-means-for-the-nba/> [https://perma.cc/S6EW-D7TM].

the public and often gain access to important team or player information before anyone else.²³¹

In the past, this did not create many issues;²³² false or negligent reports mostly created internal backlash from the covered teams or athletes.²³³ In the worst cases, perhaps it impacted an opposing team's game plan or prompted a correction from the media conglomerate that employed the insider.²³⁴ Today, however, as media companies like ESPN have partnered with sportsbooks, these companies have financial incentives to deceive the public and profit from ill-informed betting.²³⁵ This is not unlike the individuals and business entities that the SEC targets for defrauding the public by keeping a public façade of success at the company they promote.²³⁶ For these reasons, state gaming boards should utilize 18 U.S.C.S. § 1348 and 17 C.F.R. § 240.12b-20 to update sports betting regulations.

Remember, the purpose of 18 U.S.C.S. § 1348 is to prevent the "defraud[ing of] any person in connection with any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities."²³⁷ Just as it is possible to swindle the general public to purchase securities through the release of incorrect company financial information, it is likely even easier to get a gambler to place a small wager on a sporting event through the release of false reports conveying a perceived advantage for one team.²³⁸ It is not much of a mental leap to consider this fraud. For most members of the media, a false report would just be considered one that was misled; continued false reports would likely damage long-term credibility.²³⁹ But for a sports reporter who directly

²³¹ See Draper, *supra* note 229.

²³² See Josh Lane, *Where Cutthroat Reporting Falls Short: False Reporting in Sports*, DAILY BEACON (Mar. 17, 2021), https://www.utdailybeacon.com/sports/where-cutthroat-reporting-falls-short-false-reporting-in-sports/article_4948319a-86d9-11eb-a537-5fb4813b72e0.html [<https://perma.cc/Q36W-W5CZ>].

²³³ *Id.*

²³⁴ See Zac Wassink, *'Alternative Facts' in Sports That Turned Out to Be False*, BLEACHER REPORT (Jan. 23, 2017), <https://bleacherreport.com/articles/2688696-sports-figures-stating-alternative-facts> [<https://perma.cc/T3SJ-9G85>].

²³⁵ See Strauss, *supra* note 3.

²³⁶ See Kyle Brasseur, *SEC Fine Blackrock \$2.5M Over Inaccurate Investment Disclosures*, COMPLIANCE WEEK (Oct. 24, 2023), <https://www.complianceweek.com/regulatory-enforcement/sec-fines-blackrock-25m-over-inaccurate-investment-disclosures/33765.article> [<https://perma.cc/KA6E-BY8F>].

²³⁷ 18 U.S.C. § 1348(1).

²³⁸ See Chris Pokony, *Browns' Opening Odds Against Jaguars See Major Shift After Trevor Lawrence Injury*, SB NATION (Dec. 5, 2023), <https://www.dawgsbynature.com/2023/12/5/23987233/browns-opening-odds-against-jaguars-see-major-shift-after-trevor-lawrence-injury> [<https://perma.cc/PZ2S-GD4K>].

²³⁹ Aikansh Chaudhary, *Kendrick Perkins Gets Cooked After He Trusted a Fake Source That Said Jonathan Kuminga Is Now 7'2" Tall*, FADEAWAY WORLD (June 21, 2023), <https://fadeawayworld.net/kendrick-perkins-gets-cooked-after-he-trusted-a-fake-source-that-said-jonathan-kuminga-is-now-72-tall> [<https://perma.cc/SRH6-PKFX>].

partners with a sportsbook, individuals who lose money due to the report are likely to feel defrauded.²⁴⁰

While there likely needs to be a heightened level of regulation, sports news changes.²⁴¹ Anyone who participates in a fantasy sports league knows the short notice at which players can be ruled out of contests.²⁴² Reporters are often dealing with players reporting soreness or minor injuries who may or may not suit up the following week.²⁴³ On top of this issue, it is not unheard of that key players are late scratches for personal reasons.²⁴⁴ There are even times when key players have missed games for completely unknown reasons.²⁴⁵ The goal is not to prosecute any member of the media whose story may change and later turn out to be untrue. Instead, it is to hold members of the media tied to sportsbooks accountable and ensure accurate reporting and correction of misinformation.

Therefore, gaming commissions should look towards the SEC regulation 17 C.F.R. § 240.12b-20 for guidance. As previously noted, this regulation says that “[i]n addition to the information expressly required to be included in a statement or report, there shall be added . . . information. . . [that] may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.”²⁴⁶ Just as the SEC forces public entities that produce potentially misleading information about securities to provide more information,²⁴⁷ gaming commissions should expect the same out of reporters partnered with sportsbooks. This would come in the form of story updates and continued reporting until the story reaches its logical conclusion. As a protection for the reporter, traditional

²⁴⁰ Strauss, *supra* note 3.

²⁴¹ *Navigating the Impact of NBA Late Scratches: A Comprehensive Analysis*, FANTASY LINEUPS, <https://fantasylineups.com/navigating-the-impact-of-nba-late-scratches-a-comprehensive-analysis/> [<https://perma.cc/K6ZB-NDWN>].

²⁴² *See id.*

²⁴³ *See* Josh Alper, *Sam LaPorta Questionable for Sunday*, NBC SPORTS (Jan. 19, 2024), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/sam-laporta-questionable-for-sunday> [<https://perma.cc/UE8J-KMNN>].

²⁴⁴ *See* Jeff Kerr & Kevin Steimle, *NFL Week 2 Injuries, Inactives, Live Updates: Cowboys' Brandin Cooks Out; Cam Akers a Healthy Scratch for Rams*, CBS SPORTS (Sept. 17, 2023), <https://www.cbssports.com/nfl/news/nfl-week-2-injuries-inactives-live-updates-cowboys-brandin-cooks-out-cam-akers-a-healthy-scratch-for-rams/live/> [<https://perma.cc/7VBA-9ZLA>].

²⁴⁵ *See* Yaron Weitzman, *What We Know About Derrick Rose's Mysterious Absence*, BLEACHER REPORT (Jan. 9, 2017), <https://bleacherreport.com/articles/2686162-derrick-roses-mysterious-absence-what-we-know> [<https://perma.cc/5GWD-F6QQ>]. In 2017, former NBA MVP, Derrick Rose, missed a game without informing the team.

²⁴⁶ 17 C.F.R. § 240.12b-20.

²⁴⁷ *Id.*

enforcement of 17 C.F.R. § 240.12b-20 does not consider reports that were true when originally made; this exception should still apply.²⁴⁸

C. Using FTC Regulations as a Guide to Regulate Sports Media

The FTC is a federal agency whose primary goal is “protecting the public from deceptive or unfair business practices and from unfair methods of competition.”²⁴⁹ To achieve the first goal, “protecting the public from deceptive or unfair business practices,” the FTC has placed restrictions on advertising partnerships and endorsements.²⁵⁰ Most applicable to this Note is the way the FTC has regulated influencers and celebrity partnerships.²⁵¹ The FTC primarily regulates endorsements by celebrities and influencers through 16 C.F.R. § 255.1-255.6.²⁵² The two most relevant provisions are discussed below.²⁵³

16 C.F.R. § 255.1(d) states: “Advertisers are subject to liability for misleading or unsubstantiated statements made through endorsements or for failing to disclose unexpected material connections between themselves and their endorsers.”²⁵⁴ The FTC holds that if the source of the content is clear, the viewer can make an informed decision with this knowledge; thus, the advertisement will not be considered deceptive.²⁵⁵ If, however, the advertisement promotes products or services, and the presence of an existing paid sponsor is not easily identifiable, then it is deceptive and in violation of truth-in-advertising laws.²⁵⁶

16 C.F.R. § 255.5 states: “When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement, and that connection is not reasonably expected by the audience, such connection must be disclosed clearly and conspicuously.”²⁵⁷ These are the primary regulatory tools that the

²⁴⁸ SEC v. Goldstone, 952 F. Supp. 2d 1060, 1165. (D.N.M. 2013).

²⁴⁹ *About the FTC*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/about-ftc> [https://perma.cc/MMH2-8NRS].

²⁵⁰ *FTC Endorsement Guides: What People are Asking*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/business-guidance/resources/ftcs-endorsement-guides-what-people-are-asking> [https://perma.cc/V2MQ-FHDQ].

²⁵¹ *See id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ 16 C.F.R. § 255.1(d).

²⁵⁵ FTC v. LeadClick Media, Ltd. Liab. Co., 838 F.3d 158, 174 (2d Cir. 2016).

²⁵⁶ *Id.* at 168.

²⁵⁷ 16 C.F.R. § 255.5.

FTC utilizes to crack down on the practice of deceptive brand sponsorships and native advertisements.²⁵⁸

Deceptive advertisements, sponsorships, and paid partnerships on social media often take the form of native advertisements.²⁵⁹ Native advertisements are advertisements created to bear resemblance to other forms of media such as news, featured articles, product reviews, entertainment, or any other medium adjacently featured.²⁶⁰ Some notable examples of native advertisements include so-called news articles that merely announce the release of a new product;²⁶¹ one such article appeared on Business Insider India in 2013 titled “*This Multi-Colored Corn Is Real and There's a Fantastic Story Behind It.*”²⁶² While the article appears to be a news story on its face, the article exists merely to promote a new corn variety.²⁶³ Other commonly seen examples of native advertisements include suggested results on Google meant to redirect the user to a paid advertiser's site and sponsored Facebook posts that appear on an individual's feed due to a company paying Meta for ad placement.²⁶⁴

These FTC regulations surrounding native advertisements do not solely exist at the corporate level but they also extend to social media posts from users who receive incentives to promote products or services.²⁶⁵ FTC violations have become an increasingly common issue, largely due to the rise of social media influencers on platforms, such as Instagram and TikTok.²⁶⁶ On these social media sites, it may appear that an influencer is using a product organically, when in fact they may only be promoting it due to their relationship with a paid sponsorship.²⁶⁷ To combat this issue, the FTC has come out with easily accessible infographics that make it abundantly clear that these same rules apply to individual influencers.²⁶⁸ Through these

²⁵⁸ *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf> [https://perma.cc/TZW2-3SET].

²⁵⁹ Laura Kloot, *10 Native Advertising Examples People Actually Enjoyed Reading*, HUBSPOT (Jan. 21, 2015), <https://blog.hubspot.com/marketing/native-advertising-examples> [https://perma.cc/9WUX-G4M6] (last updated Dec. 21, 2021).

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Meta Audience Network: Native Ads*, FACEBOOK, <https://www.facebook.com/audienetwork/monetize/ad-formats/native-ads> [https://perma.cc/MG3D-E77N].

²⁶⁵ *Disclosures 101 for Social Media Influencers*, FED. TRADE COMM'N (Nov. 2019), https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf [https://perma.cc/7FV7-D993].

²⁶⁶ *See Branded Content Policy*, TIKTOK (Nov. 1, 2023), <https://www.tiktok.com/legal/page/global/bc-policy/en> [https://perma.cc/4LBZ-CQAA].

²⁶⁷ *See FTC Endorsement Guides: What People are Asking*, *supra* note 250.

²⁶⁸ *Id.*

graphics, designed for lay people, the FTC emphasizes that disclosures should be made whenever there is a “financial, employment, personal, or family relationship” with a brand.²⁶⁹ Moreover, these financial relationships are not limited to money; influencers should disclose relationships such as receiving free or discounted products.²⁷⁰ The FTC asserts that disclosures surrounding the partnership should be placed within the endorsement message itself or in a non-conspicuous caption.²⁷¹

Due to shifts in the media landscape, characterized by a rise in online advertising and increased celebrity influence on social media, the FTC has made a point of targeting celebrities and influencers for improper disclosure of advertising partners and paid sponsors.²⁷² Even some high-profile celebrities have been targeted by the FTC for violating disclosure laws.²⁷³ In 2017, the FTC sent cease and desist letters to a list of more than 90 celebrities including members of the Kardashian family, Anne Hathaway, Blake Lively, Bella and Gigi Hadid, Emily Ratajkowski, Naomi Campbell, and Chrissy Teigen.²⁷⁴ This was due to their paid promotion of products and collective use of long strings of conspicuous hashtags to hide their partnerships.²⁷⁵ Moreover, in 2022, Larry David, Stephen Curry, and Tom Brady were investigated by the FTC due to their promotion of the cryptocurrency exchange, FTX.²⁷⁶ Celebrities, however, have not been the only targets.²⁷⁷ Smaller-level influencers have also been targeted by the FTC because of disclosure violations.²⁷⁸ For example, in 2022, Instagram models Taylor Gallo, Cindy Prado, and Priscilla Ricart were targeted by a plaintiff who alleged their violation of FTC disclosure laws in their promotion of Luli

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² See *FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship*, FED. TRADE COMM’N (Apr. 19, 2017), <https://www.ftc.gov/news-events/news/press-releases/2017/04/ftc-staff-reminds-influencers-brands-clearly-disclose-relationship> [<https://perma.cc/VD28-HCUB>].

²⁷³ Erika Harwood, *The FTC Cracks Down on a Kardashian/Jenner Potential Revenue Stream*, VANITY FAIR (Apr. 20, 2017), <https://www.vanityfair.com/style/2017/04/federal-trade-commission-influencer-letter> [<https://perma.cc/9M7U-CS4Q>].

²⁷⁴ *Id.*

²⁷⁵ *Id.* A social media hashtag functions as a metadata tag, aiding in content categorization and enhancing discoverability. To create a hashtag, a user adds the hash symbol (#) before a word or phrase.

²⁷⁶ Dominic Patter, *Tom Brady, Giselle Bündchen, Larry David & Steph Curry Caught in FTX Crypto Fallout with Class Action Suit*, DEADLINE (Nov. 16, 2022), <https://deadline.com/2022/11/tom-brady-giselle-bundchen-ftx-lawsuit-larry-david-steph-curry-crypto-1235174541/> [<https://perma.cc/S8VJ-8GLN>]. Regarding these celebrities, a heightened standard was used as the FTC was in the process of determining if the promoted FTX interest bearing accounts were securities.

²⁷⁷ See, e.g., *Pop v. Lulifama.com LLC*, No. 8:22-cv-2698-VMC-JSS, 2023 U.S. Dist. LEXIS 125429, at *3 (M.D. Fla. July 20, 2023).

²⁷⁸ *Id.*

Fama bikinis.²⁷⁹ The plaintiff alleged their promotion caused him to purchase incorrect Luli Fama products that were of inferior quality.²⁸⁰

Companies that utilize native advertisements and influencer partnerships typically utilize the same web-based mediums that many modern-day sports reporters utilize.²⁸¹ A sports reporter usually utilizes a combination of both social media to post updates and a long-form news site to post more developed stories.²⁸² A major problem surrounding sports reporters who also work for a sportsbook is that they provide pertinent updates regarding upcoming games on the same social media page where they also promote their employing sportsbook.²⁸³ When sports betting is involved, the line between which posts are news and which are designed to drive traffic to a betting app is blurred.²⁸⁴ This is because receiving more information often provokes a bettor to make a wager;²⁸⁵ popular sports betting blog, Punter2Pro, explains that this urge is prompted by the advent of new information, spiking the desire to immediately place a new bet for instant gratification.²⁸⁶ When the reporter places new pertinent information alongside a sportsbook advertisement, this only heightens the problem.

To display more directly how well-known sports reporters are utilized in a way that promotes gambling in a manner akin to sponsored content, consider Shams Charania.²⁸⁷ Charania currently works for FanDuel, but he still maintains his position at the Athletic.²⁸⁸ He, as have many other reporters, signed on to promote a sportsbook while still maintaining his employment at a more traditional media outlet.²⁸⁹ Essentially, the prestige of certain high-level reporters with massive online followings, like Charania, is used to drive traffic to FanDuel's app.²⁹⁰ This drive comes from posted advertisements and content creation such as Charania's very own FanDuel show, *Run It Back*.²⁹¹ In short, the relationship between reporters like

²⁷⁹ *Id.* at *3.

²⁸⁰ *Id.* at *4.

²⁸¹ Delbert, *What is the Role of Social Media in Sports Journalism*, CPI JOURNALISM (Jan 4, 2023), <https://cpijournalism.org/social-media-sports-journalism/#:~:text=Journalists%20can%20use%20platforms%20such,engage%20in%20conversations%20with%20fans> [https://perma.cc/92VS-H8EY].

²⁸² *Id.*

²⁸³ See Shams Charania (@ShamsCharania), X (Jan 31, 2024, 4:19 PM), <https://twitter.com/ShamsCharania/status/1752803833355342029> [https://perma.cc/8BZJ-LN5T].

²⁸⁴ See Delbert, *supra* note 281.

²⁸⁵ See Toby, *The Impact of Media Coverage on Sports Betting | Pros & Cons*, PUNTER2PRO (Nov. 22, 2023), <https://punter2pro.com/impact-media-coverage-sports-betting/> [https://perma.cc/5RJ4-7YPU].

²⁸⁶ See *id.*

²⁸⁷ See Strauss, *supra* note 3.

²⁸⁸ Shams Charania, ATHLETIC, <https://theathletic.com/author/shams-charania/> [https://perma.cc/4G7U-EDK8]. Charania now works at ESPN as of October 7, 2024.

²⁸⁹ Jason Dachman, *After Years of Planning, FanDuel TV is Finally Here to Serve the Sports Betting Fan*, SPORTS VIDEO GROUP (Nov. 17, 2022), <https://www.sportsvideo.org/2022/11/17/after-years-of-planning-fanduel-tv-is-finally-here-to-serve-the-sports-betting-fan/> [https://perma.cc/F6HQ-MQC6].

²⁹⁰ *Id.*

²⁹¹ *Id.*

Charania and sportsbooks functions largely like a paid sponsorship.²⁹² The blurred line between reporting news and driving traffic to a betting app is especially dangerous if the recipient of the news is unaware that the reporter works for the sportsbook—it has the potential to drive gambling lines.²⁹³ ESPN Bet particularly has this problem as ESPN has long been America's preeminent sports network, and now they have decided to closely associate themselves with gambling.²⁹⁴ This public perception problem exists even if the reporter is functionally separate from the sportsbook so long as their employing media company openly promotes the operation.²⁹⁵ This issue has been attested to by sports reporters from other networks without sportsbook connections.²⁹⁶

Applying similar standards that the FTC utilizes to denote native advertisements to sports reporting would provide more clarity amongst sports followers, especially in connecting reporters to sportsbooks.²⁹⁷ The FTC asks two main questions when regulating advertising:²⁹⁸ first, whether the content is advertising, and second, whether the source of such advertising is clear to the consumer.²⁹⁹ It appears as though Charania, as well as several other reporters who partner with sportsbooks, meet that test, especially on their social media pages.³⁰⁰

To regulate reporters in similar manner to FTC disclosure requirements,³⁰¹ all sports reporters who partner with sportsbooks would have to clearly indicate their relationship as a partner of the sportsbook in their social media biographies, before long-form articles, and when making television appearances. A stricter method of regulation is also possible that would require disclosure on all information and updates they post to social media as well. This would allow readers and viewers the ability to fully understand the source of the information and potentially seek out other news sources that they believe appear facially less biased. This is good practice even if there is no potential for collusion, especially since many bettors have shown concern

²⁹² Michael McCarthy, *Moving the Lines: How Will ESPN Insiders Play into ESPN Bet*, FRONT OFFICE SPORTS (Aug 9, 2023), <https://frontofficesports.com/moving-the-lines-how-will-espn-insiders-play-into-espn-bet/> [https://perma.cc/6S7S-LEKG].

²⁹³ Frank Schwab, *NFL Betting: Lions-Chiefs Line Moves with News of Travis Kelce's Injury*, YAHOO SPORTS (Sept. 5, 2023), <https://sports.yahoo.com/nfl-betting-lions-chiefs-line-moves-with-news-of-travis-kelces-injury-184900138.html> [https://perma.cc/LVM3-C679].

²⁹⁴ McCarthy, *supra* note 292.

²⁹⁵ See Young, *supra* note 136.

²⁹⁶ See Skipworth, *supra* note 29.

²⁹⁷ See *Native Advertising: A Guide for Businesses*, FED. TRADE COMM'N, <https://www.ftc.gov/business-guidance/resources/native-advertising-guide-businesses> [https://perma.cc/F9LC-UAZC].

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ See McCarthy, *supra* note 292.

³⁰¹ *Native Advertising: A Guide for Businesses*, *supra* note 297.

over this kind of bias. A large segment of bettors would likely consider this kind of partnership to materially affect the weight or credibility of the report.

In general, media consumers have a well-documented aversion to sources they recognize as sponsored or biased.³⁰² For example, consumers tend to view sponsored listings with suspicion and often prefer to click on “organic” listings.³⁰³ A study by University of California Riverside found that sponsored listings on search engines negatively influence click and conversion tendencies in the top-ranked positions relative to organic listings at the same positions.³⁰⁴ Despite the decline in click conversion,³⁰⁵ a different study found that there are direct benefits to consumer trust when these disclosures are made.³⁰⁶ A study by the Cornell College of Business found that individuals who read a blog post containing a conflict-of-interest disclosure reported increased trust in the blogger and sponsoring organization and viewed the blogger’s recommendation more favorably than recipients who read posts with obvious non-disclosures.³⁰⁷ These studies seem to indicate both a natural level of skepticism in the face of sponsored content, yet a journalistic benefit.³⁰⁸

Perhaps even more pertinent to sports betting is how Americans tend to consume their news and how bias influences news consumption habits.³⁰⁹ This analysis is applicable because, by requiring sports betting partners to disclose the partnership, they would essentially be labeled as a potentially misleading source. A RAND Corporation study indicated that only about 28% of people get their news from sources that they acknowledge are unreliable.³¹⁰ This indicates that most Americans seek out information that they perceive to be reliable, and it is likely they would do the same if reporters who have ties to sportsbooks were labeled.³¹¹ Moreover, about 20% of Americans indicate that they seek out sources with different viewpoints from their own, indicating an existing willingness among a sizable share of Americans to seek out different reports to ensure a lack of overt bias.³¹² Even

³⁰² Mingu Joo et al., *Do Sellers Benefit from Sponsored Product Listings? Evidence from an Online Marketplace*, 43 MKTG. SCI. 817, 818 (Mar. 19, 2024).

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *See id.*

³⁰⁶ Katelyn Goody, *How Disclosing Sponsored Content Affects Consumer Trust in Bloggers*, CORNELL SC JOHNSON COLL. BUS. (Aug. 14, 2018), <https://business.cornell.edu/hub/2018/08/14/disclosing-sponsored-content-consumer-trust/> [https://perma.cc/6Y2X-LT3H].

³⁰⁷ *Id.*

³⁰⁸ *See id.*

³⁰⁹ *See* Doug Irving, *American News Habits and the Challenge of Truth Decay*, RAND (Mar. 4, 2020), <https://www.rand.org/pubs/articles/2020/american-news-habits-and-the-challenge-of-truth-decay.html> [https://perma.cc/HK88-3H29].

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

if most readers would not seek out alternative sources, it is important that readers have that option. Moreover, disclosure maintains a level of journalistic integrity and increases trust broadly in sports reporting.³¹³

III. RESOLUTION: ADOPTING A TWO-FRONT APPROACH OF REGULATING REPORTERS THROUGH STATE GAMING COMMISSIONS AND IN-HOUSE REGULATION

There are two primary levels on which sports media personnel who partner with sportsbooks ought to be regulated. The first is by individual state gaming boards, and the second is through strengthened in-house policies.

A. Regulation by State Gaming Commissions

Regulation at the state level, typically through the promulgation of law by a state gaming commission, ought to be more uniform; currently, the landscape of state statutes vary greatly on how states regulate the ability of sports media personnel to place bets.³¹⁴ While a majority of states with legalized sports betting outlaw the use of non-public information typically accessible to league insiders to place bets, the best scenario would be for all states to adopt this regulation.³¹⁵ Sports insiders who receive pertinent information related to sporting events should be outright prohibited in every state from betting in the same manner that athletes are prevented from betting, especially on the sport they cover.³¹⁶ Without these kinds of direct prohibitions against the use of non-public information, sports reporters may utilize gambling outcomes for personal gain.³¹⁷

Regulating reporters' use of non-public information to place bets, however, only solves part of the issue. This is because even in a world with a complete prohibition on the use of non-public information, the prohibition only prevents direct benefits that flow from insider betting. Regulation of the use of non-public information ignores incentives that may exist, such as bonuses from employing sportsbooks for manipulating betting lines.

Line manipulation through false reports may occur, as currently no prohibitions exist against sportsbooks sharing their own information or news; this is displayed by FanDuel's web shows and ESPN's coverage of gambling

³¹³ See Goody, *supra* note 306.

³¹⁴ See Smiley, *supra* note 30.

³¹⁵ See, e.g., COLO. REV. STAT. § 44-30-1506(2)(b)(iii) (2024); MASS. ANN. LAWS ch. 23N, § 11 (2024); MICH. ADMIN. CODE r. 432.711(p)(x) (2024); D.C. Law 22-312, § 307 (2018); 58 PA. CODE § 1401.8(b) (2018).

³¹⁶ See ARK. CODE R. § 13-20.120 (showing an example of a statute banning athletes, quite common across jurisdictions where sports betting is legal).

³¹⁷ See Brower & Starr, *supra* note 109.

lines.³¹⁸ New regulations ought to provide guidelines for false reporting and penalties related to releasing unverified reports. This is because networks who partner with sportsbooks have a financial incentive and the capability to unilaterally manipulate betting lines through the dissemination of news.³¹⁹

Current statutes fall short of achieving regulation of line manipulation through the media. Analyzing in-place statutes, Arizona's sports betting statute comes the closest to regulating false reporting.³²⁰ It explicitly prohibits "[c]onduct that corrupts the betting outcome of event wagering for purposes of financial gain, including match fixing."³²¹ It is possible that false reporting on a sporting event to receive a financial benefit stemming from an employer would fall into this category; however, it has never been tried in court.³²² Since state gaming commissions typically have the power to promulgate regulations, the best course of action would be to create a new statute that grants the board the ability to regulate sportsbooks in a similar manner that 18 U.S.C. § 1348 allows the SEC to punish members of the media that engage in fraud.³²³ A model statute that combines the goals of the Arizona statute³²⁴ and the SEC's fraud provision³²⁵ is as follows:

"All licensees under this chapter shall immediately report to the department and the relevant sport's governing body that has requested to receive it any information relating to any of the following:"³²⁶ Any conduct that corrupts the betting outcome of event wagering for purposes of financial gain, including but not limited to, match fixing, insider betting, or actions to defraud any person in connection with any sporting event listed on a sportsbook and to obtain any money or property in connection with the spread of said fraudulent information meant to mislead bettors.³²⁷

A statute like the above model protects bettors from being defrauded; the proposed model statute is also inclusive of multiple incentives that a reporter may have to release false information regarding sporting events including

³¹⁸ See Strauss, *supra* note 3.

³¹⁹ See Michael Maiello, *How Bookies Can Outwit Smart Bettors*, CHI. BOOTH REV. (June 10, 2019), <https://www.chicagobooth.edu/review/how-bookies-can-outwit-smart-bettors> [https://perma.cc/8VJ7-5JK2] (discussing the importance of moving lines to be a profitable bookie).

³²⁰ See ARIZ. REV. STAT. ANN. § 5-1316 (2024).

³²¹ See *id.* § 5-1316(A)(3).

³²² See *id.* § 5-1316(A).

³²³ 4 PA. CONS. STAT. § 13B02 (2017) (serving as an example to display that state gaming boards typically promulgate their own regulations).

³²⁴ See ARIZ. REV. STAT. ANN. § 5-1316(A).

³²⁵ See 18 U.S.C. § 1348.

³²⁶ ARIZ. REV. STAT. ANN. § 5-1316(A).

³²⁷ § 5-1316(A)(3). See also 18 U.S.C. § 1348. Both statutes use the language to draft a model statute.

insider betting and financial incentives from his or her employing sportsbook to manipulate betting lines.

State gaming boards should also promulgate a regulation like 17 C.F.R. § 240.12b-20 to ensure that reporters who partner with sportsbooks correct any misleading information they previously reported and follow it up with either a correction or added context.³²⁸ The goal of employing this kind of regulation is not to punish or criminalize reporters for any report that turns out to be false. News in sports changes regularly.³²⁹ Instead, the goal of this regulation is to ensure that members of the media that willingly choose to be partnered with a sportsbook follow stories to their logical conclusion and provide updates; it is a higher level of scrutiny.³³⁰ For example, this kind of regulation in sports reporting would require updates such as a player's progression through injuries and whether that injured player is trending toward playing. These updates are already a hallmark of good sports journalism.³³¹

In addition to the SEC style regulations proposed above, state gaming boards should also consider passing FTC style regulations with the goal of requiring any member of the media partnered with a sportsbook to identify said relationship in clear and non-conspicuous terms when releasing news. This regulation should mirror the disclosure requirements that the FTC enforces to inform consumers that they are watching an advertisement.³³² As such, both 16 C.F.R. § 255.5 and 16 C.F.R. § 255.1(d) should be the template. To achieve the goal of informing the public that they are receiving news from a source partnered with a gambling operation, state gaming commissions should adopt a regulation comparable to the model that follows:

When there exists a material connection or partnership between a sports reporter or member of the media with a sportsbook or other gambling operation that might materially affect the weight or credibility of their report, and that connection is not reasonably expected by the audience, such material connection or partnership must be disclosed clearly in a non-conspicuous manner.³³³

A regulation like the above model would merely require reporters that partner with sportsbooks to include in plain language within their long-form

³²⁸ See 17 C.F.R. § 240.12b-20.

³²⁹ See *Navigating the Impact of NBA Late Scratches: A Comprehensive Analysis*, *supra* note 241.

³³⁰ See 17 C.F.R. § 240.12b-20 (applying the statutory rule to sports betting, not securities).

³³¹ See Ben Stiner, *Anthony Davis' Official Status for Lakers-Celtic Game*, FASTBREAK (Feb. 1, 2024), <https://www.si.com/fannation/nba/fastbreak/injuries/anthony-davis-official-injury-status-for-lakers-celtics-game-nba-thursday> [<https://perma.cc/6LEU-8KBT>]. The reporter displays multiple updates for a notoriously often injured player, tracking his injury status.

³³² See 16 C.F.R. § 255.5; 16 C.F.R. § 255.1(d).

³³³ See § 255.5. See also § 255.1(d) (utilizing the language of both statutes to draft a model statute).

articles and in the biographies of all non-personal social media accounts that “[Author’s Name] is partnered with [Name of Book] sportsbook.” This would effectively allow the reader to make an informed decision when utilizing the partnered reporter as a source.³³⁴ Some reporters, such as Shams Charania, already label this distinction in their biographies.³³⁵ States that desire stricter regulation could require the disclosure of the relationship on *all* social media posts.³³⁶

B. In-House Regulation

Even with these proposed expanded regulations, much of the onus of ensuring integrity in reporting will be on individual media companies and their in-house regulation of relevant employees.³³⁷ The best possible way to maintain journalistic integrity is to completely separate sports reporting from gambling.³³⁸ For media companies that want to remain separate from the gambling space, this would necessitate a quite stringent in-house policy. It should include a prohibition on employed journalists from gambling, an extension of the gambling prohibition to household members, a prohibition on reporters from mentioning gambling lines in their reports, and a prohibition preventing employed insiders from partnering with any sportsbook or other gambling operation. This suggestion is likely best practice. Unfortunately, this is idealistic and does not seem to be the direction the industry is heading; the advent of ESPN Bet displays this trend.³³⁹

For media companies actively involved in the gambling space, such as ESPN, best practice is to run the two businesses separately.³⁴⁰ This would essentially dilute the network’s partnership with the sportsbook into nothing but a name licensing agreement. Functionally, this is how ESPN Bet operates.³⁴¹ The problem, however, occurs in the way ESPN’s employed reporters handle the partnership, and the fact that the sportsbook regularly

³³⁴ See Irving, *supra* note 309.

³³⁵ See Shams Charania (@ShamsCharania), X, <https://twitter.com/ShamsCharania> (last visited Feb 1, 2024).

³³⁶ See Mike Mazzeo, *Will Shams Controversy Lead to US Sports Betting Regulation Change*, LEGAL SPORTS REPORT (June 29, 2023), <https://www.legalsportsreport.com/122205/will-shams-charania-controversy-lead-to-us-sports-betting-regulation-changes/> [<https://perma.cc/C92E-23MU>].

³³⁷ See Blake Schuster, *ESPN Betting Policy Prohibits Reporters and Insiders from Wagering on Sports They Cover*, USA TODAY (Nov. 11, 2023), <https://ftw.usatoday.com/2023/11/espn-betting-policy-prohibits-reporters-insiders-from-wagering-on-sports-they-cover> [<https://perma.cc/C8HD-W2HN>].

³³⁸ See Neumann, *supra* note 26.

³³⁹ See Brian Steinberg, *Media Companies Keep Turning to Gambling. It's Not What You Think*, VARIETY (Sept. 7, 2023), <https://variety.com/2023/tv/news/espn-disney-sports-betting-penn-entertainment-licensing-1235715764/> [<https://perma.cc/Z2HA-P28B>].

³⁴⁰ See Skipworth, *supra* note 29 (acknowledging the harsh criticism from bettors regarding ESPN Bet and providing a description of the separation between ESPN as a news entity and as a sportsbook).

³⁴¹ See McQuillan, *supra* note 120.

sponsors graphics and events that are displayed on the network.³⁴² To make these businesses truly separate in the eyes of the consumer, insiders should not discuss lines publicly, nor should they promote the sportsbook. Most importantly, reporters should be strictly prohibited from any communication with the partnered sportsbook.³⁴³ ESPN's current strategy, although fundamentally a name licensing agreement, struggles largely in the appearance of the network's relationship with ESPN Bet.³⁴⁴ Constant advertisement and promotion by sports reporters on the network creates the appearance of collusion even if there is none.³⁴⁵

These changes by state gaming commissions and media companies would provide a heightened level of security for the average bettor and maintain a degree of journalistic integrity in sports media. Even with these changes, the blurring of the line between sports journalism and gambling promotion remains dangerous as the activity it promotes can impose real financial losses upon those it influences.³⁴⁶

IV. CONCLUSION

As of early 2024, the legal landscape of sports betting has fundamentally changed from when only Nevada authorized the activity.³⁴⁷ The management of sportsbooks has become big business for not only casinos but also media companies that want to report on an activity that appeals to its target demographic.³⁴⁸ Current law related to sports betting remains too focused on regulating sportsbooks themselves and regulating who can place bets.³⁴⁹ As media partnerships with sportsbooks have developed, such as ESPN Bet, the law has not changed to consider the impact media members may have on the broader sports betting market.³⁵⁰ This risk is heightened by the financial

³⁴² See Nick Brown, *ESPN Bet to Debut in North Carolina with PGA Sponsorship Deal*, IGB (Dec. 5, 2023), <https://igamingbusiness.com/sports-betting/online-sports-betting/espn-bet-to-debut-in-north-carolina/> [https://perma.cc/7XRK-4EG9].

³⁴³ Jared Diamond, *Journalists Have Insider Information. Gamblers Might Be Trying to Get It*, WALL ST. J. (Sept. 20, 2023), <https://www.wsj.com/sports/journalists-inside-information-gambling-4e560bc6> [https://perma.cc/6368-8FM9].

³⁴⁴ See Neumann, *supra* note 26.

³⁴⁵ See *id.*

³⁴⁶ See Joe Hernandez, *The Recent Surge in Sports Gambling Ads Could be Harmful, Some Gambling Experts Say*, NPR (June 22, 2022), <https://www.npr.org/2022/06/22/1106836506/the-recent-surge-in-sports-gambling-ads-could-be-harmful-some-gambling-experts-s> [https://perma.cc/U8LP-LLHJ].

³⁴⁷ See *Murphy v. NCAA*, 584 U.S. 453, 486 (2018).

³⁴⁸ See Neumann, *supra* note 26.

³⁴⁹ See Smiley, *supra* note 30.

³⁵⁰ See Manzo, *supra* note 23. See also Brown, *supra* note 342.

incentive that the companies who employ sports reporters have to feed the public ill-conceived information designed to manipulate gambling lines.

State gaming commissions should look elsewhere to agencies primarily tasked with preventing fraud in their respective fields, such as the SEC and the FTC, to adapt gambling laws to fit this new legal landscape. State gaming commissions should look towards the SEC because the agency actively cracks down on those who intend to defraud individuals in the securities marketplace. In a similar manner, reporters with ties to sportsbooks are in a unique position to defraud their readers through the news they break. Gaming laws should utilize anti-fraud laws commonly used by the SEC to inspire the creation of new regulations. Said regulations should allow individual state gaming commissions to punish reporters who break false sports stories with the intention to drive activity towards an active bet listing. Moreover, state commissions should require sports reporters who partner with sportsbooks to follow stories to their logical conclusion and make corrections when new developments occur.

The FTC should also inspire new regulations by state gaming commissions to adapt to this new era of sports betting. The FTC typically deals with deception in advertising.³⁵¹ In many ways, sports reporters who partner with sportsbooks operate as someone engaged in deceptive advertising practices.³⁵² On social media especially, partnered reporters engage in a combination of sports reporting and advertising for their employing sportsbook.³⁵³ In the same way that the FTC requires influencers who receive financial compensation to promote a product to disclose a material connection with a paid sponsor, gaming commissions should require sports reporters who partner with sportsbooks to disclose said partnership.³⁵⁴ Disclosure should be required on every published long-form news story from partnered reporters in a non-conspicuous manner. The disclosure should also be prevalent and noticeable on all relevant social media accounts belonging to the reporter.

Despite these suggestions, it will largely be the onus of individual media companies to develop in-house policies that prevent collusion between sportsbooks and their reporters. Even when all the correct parameters are in place, openly sponsoring a sportsbook in a similar manner to ESPN will likely cast doubt in the minds of the betting public. There is little doubt that the best option for a sports network to avoid controversy is to keep its media operations as far away from the gambling space as possible; this, however, does not appear to be the current trend. Turning on ESPN and other sports

³⁵¹ See *FTC Endorsement Guides: What People are Asking*, *supra* note 250.

³⁵² See Delbert, *supra* note 281.

³⁵³ See *id.*

³⁵⁴ See *Native Advertising: A Guide for Businesses*, *supra* note 297.

networks yields a variety of talk shows that either mention or solely focus on gambling.³⁵⁵ NBA coverage often mentions their official sportsbook partner, as even sports leagues themselves promote gambling.³⁵⁶ Since sports networks continue to encourage the dangerous activity of gambling, the law must account for the newfound influence these networks and reporters have over the activity.

³⁵⁵ See Blasi, *supra* note 20.

³⁵⁶ See Liu, *supra* note 67.