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# **Revisiting the Beneficiaries of the SCOTUS Ruling Striking Down PASPA**

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## **ABSTRACT**

*A Supreme Court ruling in 2018 essentially rendered restrictions on sports gambling to run counter to states' rights, thus in conflict with the Constitution of the United States. As a consequence, 13 states and the District of Columbia now have legalized sports gambling. Initial research into the consequences of this ruling identified 12 potential beneficiaries. Subsequent research entailing an assessment of new literature and a survey of executive opinion involving a number of marketing executives who work within the field of sports marketing expanded the findings from the earlier study. This extension of the preliminary study found 14 beneficiaries rather than the original 12. Furthermore, the number of benefits accruing to the set of 14 beneficiaries increased from 149 to 201 with 14 of the 52 newly identified benefits accruing to the two newly identified beneficiaries – Native American Indian tribes and communications companies. Thus an additional 38 benefits for the original 12 beneficiaries were delineated.*

## **INTRODUCTION**

Less than two years ago, a Supreme Court of the United States (SCOTUS) rendered a decision that essentially stated that the existing federal law prohibiting sports gambling in most states was an intrusion on states' rights (Kendall, Kirkham and Beaton, 2018). As a consequence, the Professional and Amateur Sports Protection Act (PASPA) that took effect in 1992 was deemed no longer enforceable (Kendall, Kirkham, and Beaton, 2018). The SCOTUS ruling almost instantaneously resulted in new competition for both gambling platforms – that is to say the legal and the illegal avenues that an individual has for placing a wager on a sports outcome. While, the decision has most assuredly motivated its critics to speak up, the proponents argue that a number of benefits will accrue to a number of involved parties, and these positive aspects overwhelm the negative considerations. The initial study by Fullerton, McCall and Dick (2019) identified 12 beneficiaries along with 149 potential benefits for these 12 parties. The authors of that initial study stated that the two lists were likely incomplete, thus in need of further scrutiny. They were correct in their assessment. The current research, by virtue of an improved data collection process, has expanded both of these important lists.

So who are the beneficiaries and how might they benefit? While this stream of research is still in its infancy stage, the popular press has been replete with stories regarding the consequences of this SCOTUS decision – both good and bad. Much of this popular literature has focused on the beneficiaries and the benefits emanating from the ruling. However, to date there has been virtually no empirical research on the topic. The current project seeks to deepen this shallow stream of research on the topic while strengthening the framework for future empirical studies.

## **RESEARCH OBJECTIVES**

The primary objective of the current study is to extend the earlier research done by Fullerton, McCall, and Dick (2019). In that regard, there are two primary objectives that the authors seek to accomplish. Thus, the two sub-objectives are: a) to augment the list of 12 beneficiaries articulated in the original study, and b) to delineate an expanded list of the original 149 benefits. These new benefits may be ones overlooked in the original study for the original 12 beneficiaries as well as those benefits derived by the new beneficiaries that are added to the original 12. A secondary objective is to determine the number of states that have passed laws that now allow sports betting within their borders.

## **METHODOLOGY**

This study can best be classified as qualitative in nature in that its primary source of pertinent information is derived from secondary data. Given the newness of the topic, it therefore relies on stories from the popular press. The objective of this review was to augment the original study by Fullerton, McCall and Dick (2019). In order to fully accomplish the overarching objective, a survey of executive opinion resulted in a meaningful amount of primary data being collected. These experts are sports marketing practitioners with whom the authors are associated on either a professional level or a personal basis (or both). Using the information from the original study, the professionals were asked to review the information and add any beneficiaries and any benefits that were not designated in the original study.

## **OVERVIEW OF THE ORIGINAL STUDY**

In the original 2019 study, a total of 79 articles were examined. The net result was that 12 potential beneficiaries were identified. Furthermore, a total of 149 potential benefits were delineated. The beneficiaries were deemed to fall into four distinct categories: sports entities, the gaming industry, traditional sources of sports revenue, and a broad category best described as other nonsports entities. Most of the benefits revolved around financial considerations; however, there were many benefits that were more fundamental than revenue objectives. Examples include: more information made available to fans; better local regulation by city and state governments; and greater transparency for gamblers (Fullerton, McCall and Dick, 2019). As noted above, the original study delineated 12 potential beneficiaries of the ruling by the Supreme Court. Specifically, these beneficiaries were: leagues/associations; teams/individual players/athletes/arenas; specific sports; sponsors; fans; the media; the gambling industry; online betting agencies; gamblers; the hospitality industry; governmental entities; and society-at-large. The gaming industry in general, the gamblers, and the category that includes sports leagues (such

as the NFL) and associations (such as FIFA and the IOC) were seen as deriving the greatest number of benefits from the ruling with 31, 26, and 23 potential benefits respectively. Next on the list with 19 benefits are the media. The entity that is seen as being the least impacted by the ruling is the sponsors with only four potential positive outcomes. Interestingly, sports fans were the penultimate entity on the list with only six benefits associated with the SCOTUS ruling. It is worth noting that the primary beneficiary is the *gaming industry in general*. Another entity that falls within the realm of gambling is the online betting agencies; however, they were deemed to comprise a separate category. It is worth noting that these online agencies were seen as deriving 11 potential benefits from the change in the law. Given these results, and perhaps to nobody's surprise, it is the business of gambling that will derive the most substantial benefit as a result of the ruling.

## **UPDATED RESULTS**

A total of 41 new articles were added to the list from the original study. This new set of articles brought the total number under scrutiny to 120 for this iteration of the study. In addition to the new articles, several sports marketing executives provided their input either in a one-on-one discussion with one of the co-authors or via an email response that provided their input. These executives were asked to provide feedback from three perspectives. First, were there any potential beneficiaries who had been overlooked in the original study? Second, what are the benefits that accrue to the newly-added beneficiaries? Finally, for the original set of 12 beneficiaries that were delineated in the initial study, what potential benefits should be added for each beneficiary? Upon completion of these tasks, a new list was compiled. The executives were then sent the new comprehensive list of all of the beneficiaries and benefits. They were then asked to fill in any voids. In this regard, it can be stated that this confirmation process falls within the realm of a Delphi technique.

Additional secondary data coupled with the new primary data resulted in an increase in the number of beneficiaries from the original 12 beneficiaries to 14. For the original 12 beneficiaries, the consolidated list of benefits increased from 149 to 187. Furthermore, for the two newly added beneficiaries, a total of 14 new benefits were identified. These 14 benefits raised the aggregate total to 201.

### ***Diffusion of New Laws Legalizing Sports Gambling in the United States***

Regarding the states that now allow betting on sports outcomes, it was anticipated that the number would grow at a rapid rate. This anticipation was well founded. As of September 4, 2019, there were 13 states with some degree of legalized sports gambling. Furthermore, it has been reported that six more states are on the verge of passing new laws that legalize the act of placing a bet on a sports event (Anonymous, 2019b). Taking that finding a step into the future, it has been reported that 42 states either have or are moving towards legalized sports betting (Licata, 2019).

### ***Who Are the Newly Identified Beneficiaries?***

As noted, two additional beneficiaries were identified and added to the original list. The first of these two are communications companies. This subset primarily includes telecommunications providers such as a consumer's cell phone service and other types of mobile communication devices such as tablets. Also included in this segment are Internet service providers that provide interactive streaming opportunities. The second addition comprises Native American Indian tribes.

### ***How Does Each of the Two Newly-Identified Entities Benefit from the SCOTUS Ruling?***

For the two categories added to the list of beneficiaries, a total of 14 potential benefits were associated with the two entities. Specifically, the Native American Indian tribes were seen as deriving eight benefits while the communications industry had six potential benefits attributed to the striking down of PASPA, the law that restricting betting on sports outcomes in the United States. For the Native American Indian tribes, it was about revenue and how that revenue could be distributed; these distributions include revenue sharing among members of specific tribes and funding for improvements in the infrastructure and to help provide enhanced educational opportunities. For the communications industry, the benefits were about revenue, the dissemination of information, and time-related advantages over other alternates. The list of benefits for each of the two newly identified beneficiaries is provided below.

#### ***Native American Indian Tribes***

- New casino opportunities (expansion and/or new construction)
- Ability to incorporate sports gambling without going through licensing process
- More predictable levels of revenue
- Shared revenue stream (similar to distribution of crude oil revenue in Alaska)
- New employment opportunities for Native Americans in emerging sports books
- An improved infrastructure in many Native American communities
- Funding for educational scholarships for Native Americans
- Less need to rely on government funding

#### ***Communications Companies***

- Telecom/mobile phone companies faster speeds for placing wagers attract bettors
- Trivia apps can easily be converted to gambling apps
- Electronic pay systems such as Apple Pay and Venmo can reach gamblers
- Can offer time-sensitive information that appeals to bettors
- Can offer time-sensitive betting opportunities
- Revenue from App and Website advertising

## **An Overview of the Consolidated Results from the Two Studies**

A brief overview of the results emanating from the two studies provides a sound basis for a better understanding of this evolving mode of placing bets on sports events. A total of 119 articles, all from the popular press – and mostly from Internet-based sources – provided a solid foundation for initiating an examination of how the 2018 Supreme Court ruling regarding PASPA might change the sports gambling environment. Eight sports marketing practitioners provided their input in two separate steps. The ultimate result was the identification of 14 beneficiaries that are seen as potentially deriving a total of 201 benefits. These beneficiaries fall within four distinct categories. Though the majority of the benefits revolve around revenue considerations, there are many that are far more fundamental. Of the four categories of beneficiaries, it is the Gaming Industry with 67 potential benefits that is seen as having the most to gain from the SCOTUS decision. Second, with 52 potential benefits is the sports entity category. This category includes everything from associations such as the IOC down to individual players and competitors. At number three on the list is the category comprising other nonsports entities. The 49 benefits associated with this category are spread fairly evenly across governmental entities, the hospitality industry, society-at-large, North American Indian tribes, and the communications industry. Last, with a total of 29 potential benefits, is the category comprising three traditional sources of sports revenue – the media, the fans, and sponsors. Table 1 provides an overview of the aggregate results.

**Table 1. Overview of the Aggregate Results of the Two Studies**

<b>Category (4)</b>	<b>Beneficiary (14)</b>	<b>Benefits (201)</b>
Gaming Industry	The Gaming Industry	31
	Gamblers	26
	Online Betting Agencies	11
Sports Entities	Leagues/Associations	23
	Teams/Individual Players/Arenas	19
	Specific Sports	12
Traditional Sources of Sports Revenue	The Media	19
	Fans	6
	Sponsors	4
Other Nonsports Entities.	Governmental Entities	14
	The Hospitality Industry	12
	Society-at-Large	10
	North American Indian tribes	8
	Communications Industry	6

## **DISCUSSION**

In 2019, New Jersey surpassed Nevada in terms of sports betting revenue (Fisher, 2019). This reality has undoubtedly resulted in increased contributions – that is to say resources – to the state of New Jersey and a small number of local governments. This new revenue can be used instead of tax increases to invest in the state’s infrastructure. Anything that relieves residents of an

increased tax burden is generally viewed quite favorably by constituents. But these new resources may well benefit many others, especially those who drive on the roads or have a vested interest in the educational framework of the state. Other states are likely to see these benefits thereby serving as a catalyst for passing their own legislation allowing this previously illegal practice to legally take place within their borders. Thirteen states have already opened this door, some to a greater extent than others. Early adopters of legalized sports gambling were Delaware, Mississippi, New Jersey, New Mexico, Nevada, Pennsylvania, Rhode Island and West Virginia (Krishnaiyer, 2018). More recently, Arkansas, Indiana, Iowa, New York, and Oregon have been added to the list (Licata, 2019). Seeing the benefits attained by these 13 states, many other states will undoubtedly follow suit. Washington, DC, has also jumped into the fray; it was just announced that the Capital One Arena in Washington, DC, is opening a sportsbook within the arena; the new sportsbook is replacing a restaurant (Williams, 2019).

A modest array of benefits is associated with the communications industry. Subscription-based Websites and organizations that provide access to mobile apps that have a gambling focus are the most likely beneficiaries. NBC Sports in Washington, DC, evaluated that potential by testing a predictive gaming app. The communication companies continue to increase in terms of their importance in spectator sports' efforts to reach media-based fans. In this regard it is presumed that these media-based fans will use the new mobile apps to access live sports thereby resulting in a greater propensity to watch the events, and perhaps a greater propensity to place a real-time bet. This access will be achieved using mobile devices and Internet streaming. In support of this premise is the reality that approximately 80 percent of the sports bets that are placed in New Jersey are done using a mobile protocol (Cohen, 2019). Since cellular phone ownership is so high in the American market, these mobile platforms will provide virtually unencumbered access to *casual bettors*. Since the typical bet on a sports outcome in New Jersey sportsbooks is under \$20 (Lemire, 2019), this access provides casinos with opportunities to reach these casual bettors while concurrently establishing mutually beneficial relationships. This access will make these vehicles more valuable as both advertising income and fees paid for access to the programming will likely increase (Booton, 2019). It is also thought that members of the live audience – that is to say those at the actual sports venue – who are not likely to place a wager may be provided with free-to-play opportunities (Lemire, 2019) which will further enhance the popularity of the mobile apps that provide an additional element of entertainment. NBC Sports recently released *Sports Predictor apps*; its free games focus on three popular spectator sports organizations – the English Premier League (EPL), the PGA, and NASCAR (Lemire, 2019).

Communications companies may well offer superior alternatives in comparison to traditional platforms for placing and collecting on winning bets all the while consolidating a gambler's winnings into a single master account. Thus, while Sprint may benefit, payment protocols such as cryptocurrencies and Apple Pay may well be favored alternatives for sports gamblers, especially on those situations where the decision to place a wager is made spontaneously – perhaps based on newly received information. Benefits for Internet providers are predicated upon their ability to provide an interface by which on-line gambling sites can reach gamblers; in this regard, DraftKings has already launched “Flash Bet,” a service designed to capitalize on the American market's embrace of so-called micro-play wagering.

Eight benefits are associated with the Native American Indian tribes. Evidence indicates that these benefits are already bubbling to the surface. As one example, the Oneida Indian Nation recently hosted a job fair with a focus on jobs in sportsbooks at their existing casinos in New York (Anonymous, 2019a). Current laws in New York require that any new licenses that are issued for mainstream casinos will automatically be extended to those casinos that are under the control of Native American Indians (Campbell, 2019). Revenues from these new sportsbooks may be shared across the board or otherwise used to enhance the Infrastructure of their communities as well as educational opportunities for younger Native Americans.

## CONCLUSIONS

The new literature and the feedback from the sports marketing practitioners resulted in the identification of two previously unidentified beneficiaries and a total of 52 new benefits. Of the 52 newly-identified benefits, 14 were associated with the two newly-identified beneficiaries. A total of six were indicated for communications companies while eight were viewed as potential benefits for the Native American Indian tribes. Clearly the benefits accruing to the latter group can be inferred because of its current position within the casino industry. For them, it simply represents an addition to their casinos' product portfolios. It should be noted, however, that 38 of the newly identified benefits were associated with the original 12 beneficiaries that were identified in the initial study. Thus, the results of this study augment the results delineated in the original study.

Despite the characterization as a "Wild West for sports gambling" (Kindt, 2018), a significant number of benefits are in evidence. Not all of the 14 potential beneficiaries are part of the sports industry. And although 201 potential benefits were documented in the literature and the survey of executive opinion, numerous potential pitfalls were also articulated. States considering a quick leap into this activity with a questionable history should undertake a comprehensive examination of both the positive and negative considerations. This scrutiny should allow states to make well-vetted decisions in regard to the risky legalization of gambling that is focused on sports outcomes. Quick decisions are fraught with opportunities to make bad decisions. Therefore, states should not simply jump at the chance to be an early adopter. Unfortunately, it appears that several of the 13 early adopters quickly legalized sports gambling without performing due diligence. It is likely that this decision has been founded on the premise that new revenues will bubble to the surface, and these new revenues will silence any critics of the decision. Without a doubt, new revenues that supplement citizens' taxes are viewed as beneficial. However, the issue of due diligence remains; did the states thoroughly examine the full array of potentially positive and negative outcomes? Critics' voices are loud. Lingering in minds of many of these critics are memories of an array of sports gambling transgressions. Who among us does not remember the Chicago Black Sox, Pete Rose, and former-NBA referee Tim Donahy (Lemire, 2018)? Concerns such as these have led to NASCAR's decision to put in place a rule that prohibits drivers and members of their teams from betting on race outcomes; however it does not in any way prohibit them from betting on non-NASCAR events (Krishnaiyer, 2019). In light of the myriad concerns articulated by the critics of legalized sports gambling, a plausible outcome is that Congress will institute new laws with the express purpose of regulating, perhaps even further restricting, gambling on sports outcomes, in language that will withstand any future

scrutiny by the Supreme Court. However, until that happens, each state is free to institute sports gambling within its own borders. Does the upside outweigh the downside? Only time will tell. In the interim, you will not need to look far to find a location where you can place a \$20 bet that the coin toss for Super Bowl LV will be heads.

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## **ABOUT THE AUTHORS**

Sam Fullerton received his PhD in Marketing from Michigan State University. He retired in December of 2019 as a Professor of Marketing at Eastern Michigan University where he now holds *emeritus* status. He has also served as a visiting professor/scholar at the University of Michigan, the Waikato University (NZ), Queensland University of Technology (Australia), the University of Southern Queensland (Australia), and the North-West University (South Africa) where he holds the position of *Extraordinary Professor*. His research primarily focuses on ethics, sports marketing, and marketing education. His research has appeared in numerous journals including *Sport Marketing Quarterly*, *Strategic Management Journal*, *Journal of Business Ethics*, *Journal of Applied Marketing Theory*, *the Asia Pacific Journal of Marketing and Logistics*, *the Australasian Marketing Journal*, and *Health Marketing Quarterly*. He has received 15 awards for his research including several at AMTP conferences. He has also authored textbooks on Sports Marketing, Contemporary Selling, and Marketing Research. He is currently working on the fourth edition of his sports marketing book as well as a new textbook on sponsorship.

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