



4-2019

A Polymorphic Approach to Esports Betting

Chadohl Kang

Brigham Young University, twelvenellseconds@gmail.com

Follow this and additional works at: <https://scholarsarchive.byu.edu/byuplr>



Part of the [Law Commons](#)

BYU ScholarsArchive Citation

Kang, Chadohl (2019) "A Polymorphic Approach to Esports Betting," *Brigham Young University Prelaw Review*: Vol. 33 , Article 7.

Available at: <https://scholarsarchive.byu.edu/byuplr/vol33/iss1/7>

This Article is brought to you for free and open access by the Journals at BYU ScholarsArchive. It has been accepted for inclusion in Brigham Young University Prelaw Review by an authorized editor of BYU ScholarsArchive. For more information, please contact scholarsarchive@byu.edu, ellen_amatangelo@byu.edu.

A Polymorphic Approach to Esports Betting

Chadohl Kang¹

The new industry of electronic sports, or Esports, is something investors and the corporate world can no longer ignore. Esports is a global phenomenon which experts estimate will exceed \$906 million in revenue in 2018.² Legal problems have naturally accompanied this emerging, lucrative industry.³ A foundational concern is whether states will classify Esports as a sport or not. For instance, if sports betting is legal in a state, can bettors legally wager money on Esports competitions? Those who do not think Esports is a sport may argue that it is illegal to bet on Esports. On the other hand, others could assert that legalized sports betting includes Esports betting.

In the context of sports betting, state bills that legalize sports betting should explicitly indicate Esports betting as legal. In Part I, I will present statistics that illustrate the monetary relevance of the Esports industry and its current betting market. I will also briefly discuss the U.S. Supreme Court ruling, *Murphy v. NCAA*, which has made legal Esports betting possible.⁴ In Part II, to assess the plausibility of legalizing Esports betting, I will present the current debate on whether Esports qualifies as a sport. This will show a need for a different approach to the discussion; the concept of a “polymorphic (flexible) view” on sports allows each organization to decide for itself whether Esports is a sport or not. This approach allows states to decide if it is in their interest to include Esports within the scope of legalized sports betting.

In Part III, I will discuss the benefits that accompany a state’s decision to legalize Esports betting: increased state revenue and increased law and order. In Part IV, I will present various state bills and how they are ambiguous with respect to Esports. I will then propose a model based on New Jersey’s sports betting bill to show how such a bill can succinctly and explicitly include Esports. Finally, in Part V, I will examine and address a few possible objections and some additional benefits that accompany the legalization of Esports betting.

I. Background

A. The Esports Industry

Many businesses and investors are keeping a close eye on Esports, a global phenomenon that reached \$696 million in revenue in 2017.⁵ Experts believe Esports revenue will exceed 1.5

¹ Chadohl Kang is a senior studying English at Brigham Young University. He wishes to thank Matthew Richards, his editor, for the tremendous amount of time and effort he spent to help draft, review, and edit the paper. Matthew Richards is a senior studying Applied Physics at Brigham Young University. The author also acknowledges Jaden Cowdin for his guidance as a Board member of the journal. Chadohl appreciates the constant support of his wife, Hyejin Kim.

² AJ Willingham, *What is Esports? A Look at an Explosive Billion-dollar Industry*, CNN (Aug. 27, 2018), <https://www.cnn.com/2018/08/27/us/esports-what-is-video-game-professional-league-madden-trnd/index.html> (last visited Jan. 29, 2019).

³ Matt Morris, Brianna Howard, Christopher Queenin & Irene Scholl-Tatevosyan, *Ten Legal Issues to Watch When It Comes To Esports*, FORBES (May 19, 2017), <https://www.forbes.com/sites/allabouttherupees/2017/05/19/ten-legal-issues-to-watch-when-it-comes-to-esports/#4ef79f7e198d> (last visited Jan. 29, 2019).

⁴ *Murphy, Governor of New Jersey v. National Collegiate Athletic Assn.*, 584 U.S. 1 (2018).

⁵ Peter Warman, *Esports Revenues Will Reach \$696 Million This Year and Grow to \$1.5 Billion by 2020 as Brand Investment Doubles*, NEWZOO (Feb. 14, 2017),

billion in 2020.⁶ Businesses are particularly interested in marketing through company sponsorships. For instance, powerful, global companies such as HP, KFC, Mercedes-Benz, Logitech, along with dozens of Chinese companies, sponsor RNG, a competitive gaming team in China.⁷ These companies are exposed to millions of global consumers. Their company logos appear on the jerseys of professional gamers who compete in front of millions of viewers online. For example, the number of viewers for the 2018 League of Legends World Championship Finals was about 99.6 million.⁸ For comparison, about 103.4 million people watched the Super Bowl that same year.⁹ Because the viewer demographic is much more diverse, Esports games are a great way for global companies to advertise their brands.¹⁰

B. Esports Betting

Outside the United States, a significant source of revenue is the bookmaking fees and taxes applied on Esports wagering. According to a report by a software analytics company, money wagered worldwide, legally and illegally, on Esports was projected at \$6.7 billion in 2018, and at \$13 billion by 2020.¹¹ Handling fees and taxes from such numbers are significant contributors to the lucrative potential of the industry.

Because the amount of money being wagered annually in Esports is rapidly increasing, many are wanting to invest in Esports betting. For instance, Unikrn, a company that runs a website exclusively for Esports wagering, raised \$41.4 million in funds from investors over three funding rounds.¹² Leading investors include big-names like Dallas Mavericks owner, Mark Cuban, and Director Entrepreneur of the Bitcoin Foundation, Brock Pierce.¹³

C. Murphy v. NCAA and the Current State of Esports Betting in the U.S

<https://newzoo.com/insights/articles/esports-revenues-will-reach-696-million-in-2017/> (last visited Jan. 29, 2019).

⁶ *Id.*

⁷ Graham Ashton, *UPDATE: KFC Signs One-Year Deal with Chinese Team RNG*, THE ESPORTS OBSERVER (Sept. 7, 2018), <https://esportsobserver.com/kfc-rng-sponsorship-deal/> (last visited Jan. 29, 2019).

⁸ Austen Goslin, *The 2018 League of Legends World Finals Had Nearly 100 Million Viewers*, RIFT HERALD (Dec. 11, 2018), <https://www.riftherald.com/2018/12/11/18136237/riot-2018-league-of-legends-world-finals-viewers-prize-pool> (last visited Jan. 29, 2019).

⁹ Joe Otterson, *TV Ratings: Super Bowl LII Slips 7% from 2017 to 103.4 Million Viewers*, VARIETY (Feb. 5, 2018), <https://variety.com/2018/tv/news/super-bowl-lii-ratings-1202687239/> (last visited Jan. 29, 2019).

¹⁰ “Gaming is what every traditional sports league is desperate to become: young, global, digital and increasingly diverse.” Ben Casselman, *Resistance Is Futile: Esports Is Massive... and Growing*, ESPN (May 22, 2015), http://www.espn.com/espn/story/_/id/13059210/esports-massive-industry-growing (last visited Jan. 29, 2019).

¹¹ Noah Smith, *Esports Bookmaking? Globally, It’s Already a Billion-dollar Gambling Industry*, THE WASHINGTON POST (Apr. 6, 2018), https://www.washingtonpost.com/sports/esports-bookmaking-globally-its-already-a-billion-dollar-gambling-industry/2018/04/06/be89c282-2b99-11e8-8688-e053ba58f1e4_story.html?utm_term=.05bb6196e34d (last visited Jan. 29, 2019).

¹² *Unikrn*, CRUNCHBASE (2018), <https://www.crunchbase.com/organization/unikrn-2#section-investors> (last visited Jan. 29, 2019).

¹³ *Id.*

Unlike Europe and Asia, sports betting (including Esports) was illegal in the United States between 1992 and 2018. However, on May 14, 2018, the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act of 1992 (referred to as PASPA), declaring that it was unconstitutional.¹⁴ PASPA had federally made it illegal for states to allow sports gambling, with few exceptions.¹⁵ In 2018, the Court ruled that, “The PASPA provision at issue here... violates the anticommandeering rule. That provision unequivocally dictates what a state legislature may and may not do.”¹⁶ Accordingly, each state in the United States now has the option to legalize sports betting. As a result, five states have legalized sports betting, and eighteen other states have recently passed or have been considering bills to legalize sports betting.¹⁷

However, the option to legalize sports betting has ambiguous implications for Esports. When bills seeking to legalize sports betting pass through state legislatures, it is still unclear whether their provisions include Esports as a part of the regulations. This difficulty comes primarily because there is no authoritative attitude towards the inclusion of Esports within the category of sports. The endless debate concerning whether Esports should be treated as a sport alongside soccer, football, and baseball seems to have reached an impasse. Furthermore, there is significant disparity on how the states are approaching the definition of sports.

For instance, the state Senate Bill of West Virginia defines ‘professional sport or athletic event’ as “an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.”¹⁸ The Rhode Island bill defines “event” as “Any real-world sporting event or other occurrence whose result is unknown and is used as the basis for making a wager under this chapter.”¹⁹ How do Esports fit into these definitions? Are Esports players, who certainly receive compensation, considered as participating in “sports or athletic events?” Are Esports competitions a “real-world sporting event?” The problem with these bills is that there is no authoritative statement concerning these ambiguous legal definitions, and an answer to these questions depends on how Esports is viewed.

II. Is Esports a Sport?

A. *The Current Debate*

Analyzing what constitutes a sport is helpful in understanding how Esports fits in the parameters of sports. Experts conducted an analysis of the definition of sports and found seven characteristics which are required for any ‘game’ to be considered a sport.²⁰ Among the seven,

¹⁴ *Murphy v. National Collegiate Athletic Assn.*, 584 U.S. 1, 16 (2018).

¹⁵ For example, Nevada was exempt from this act.

¹⁶ *Id.*

¹⁷ Ryan Rodenberg, *State-by-state Sports Betting Bill Tracker*, ESPN (Nov. 26, 2018), http://www.espn.com/chalk/story/_/id/19740480/gambling-sports-betting-bill-tracker-all-50-states (last visited Jan. 29, 2019).

¹⁸ S. 415, 2018 Leg., Reg. Sess., (W. Va. 2018).

¹⁹ Gen. Assemb. H 8320, 2018 Leg., Jan. Sess. (R.I. 2018).

²⁰ Seth E. Jenny, R. Douglas Manning, Margaret C. Keiper & Tracy W. Olrich, *Virtual(ly) Athletes: Where eSports Fit Within the Definition of “Sport”*, 69 QUEST 1, 7 (2017).

the analysis concluded that Esports clearly qualifies in five characteristics.²¹ However, among the two remaining characteristics, physicality and institutionalization, there is some disagreement. Particularly, the discussion on the physicality of Esports renders it a debatable candidate.²²

Concerning physicality, proponents of Esports maintain that professional and amateur Esports players must practice as much as traditional sports players in honing their fine motor skills, which is essential for controlling their on-screen avatars with precision and accuracy. On the other hand, opponents argue that an activity must contain “the employment of developed physical skills and abilities within the context of gross physical activity” to be considered a sport.²³ Esports does lack gross physical activity, or the coordination and involvement of large segments of the body, something that is essential to kicking a soccer ball or throwing a fastball.

Physicality is the most common and heated plane of debate on Esports’ qualification as a sport. Interestingly, the identification of other activities and games as sports is under scrutiny for the same reason. Golf, for example, has long been criticized that it is only a “game” rather than a sport because it lacks gross physical activity.²⁴ However, in terms of the regulation, legality, and popularity of betting, golf is as much a sport as basketball or football. If a state legalizes sports betting, most would not argue against the legality of betting on golf tournaments. In fact, golf is already included as a sport with states that have legalized sports betting.²⁵ In the realm of betting, the law treats golf as the same as other traditional sports despite its questionable nature. The law is not obligated to wait until society decides whether Esports is a sport or not.

B. The Polymorphic View

Because the law is not restricted by the ongoing debates of definition, states can consider legalizing Esports betting on a different basis. The polymorphic view of sports offers the option to define Esports as a sport based on merit: “Acceptance of sport as a polymorphic phenomenon allows for agreement of disagreement on what it means, depending on the purpose it serves. Each organization could then formulate its own definition of the term, which best serves its own

²¹ *Id.* at 5. The five characteristics are that the activity: includes play, is organized and governed by rules, includes competition with an outcome of a winner and loser, is comprised of skill rather than chance, and has a broad following beyond a local fad.

²² Regarding the characteristic of institutionalization, proponents believe that eSports qualifies as a sport because Esports teams hire game experts, coaches, and officials similar to an NBA team. Furthermore, governing institutions exist, such as ESL or KeSPA. However, there is a remarkable lack of uniformity in governance, and those institutions are not perfectly stable, considering that the industry is relatively young. Stable institutionalization seems more difficult because videogames grow out of popularity usually within a decade, and different video games owned by different publishers will frequently replace old ones. However, except that Esports institutionalization is not as stable as traditional sports, it has been sufficiently functional.

²³ John W. Loy, JR., *The Nature of Sport: A Definitional Effort*, 10 QUEST 1, 6 (1968).

²⁴ Alfie Potts Harmer, *Top 10 Reasons Golf Is NOT A Sport*, THESPORTSTER (Sept. 8, 2015), <https://www.thesportster.com/entertainment/top-10-reasons-golf-is-not-a-sport/> (last visited Jan. 29, 2019).

²⁵ Stephen Hennessey & Christopher Powers, *How To Bet On Golf Legally*, GOLF DIGEST (Jan. 16, 2019, 01:41 PM), <https://www.golfdigest.com/story/how-to-bet-on-golf-legally> (last visited Jan. 29, 2019).

purposes”.²⁶ Thus, if defining Esports as a sport serves the purposes of an organization, then the organization can express and operate according to that view.

For instance, when ESPN decided that airing Esports competitions would attract many viewers and generate revenue, it began airing important Esports matches, suggesting an acknowledgement of Esports as a sport.²⁷ On the other hand, it may serve the purposes of a governmental health agency—concerned with the health of the population—to view Esports not as a sport, because it might “define sport as an instrument that increases the health and value sport activities on their ability to fulfill that purpose.”²⁸ Through a polymorphic view, organizations with different purposes—ESPN and the health agency—can agree to disagree, without having to infringe on each other’s perspective on Esports. The polymorphic view can thus allow state law to operate soundly with respect to Esports.

III. The Two-fold Benefit of Legalizing Esports Betting

A. The State’s Interest

For a state legislation to adopt a polymorphic view of sports, it must consider whether viewing Esports as a sport in the context of betting will serve the purposes and interest of the state. For example, the “legislative findings” section of the West Virginia state bill reports that, “It is in the best interests of the State of West Virginia for the state to operate a lottery in the form of sports wagering.”²⁹ West Virginia’s philosophy is to do what is in the best interests of the state and its citizens by including legalized sports betting.³⁰

In the context of sports betting, understanding the two-fold benefit of legalizing Esports betting will convince states to view Esports as a sport. First, states have a financial incentive, particularly due to the revenue that taxation of Esports betting can produce. Second, states can increase law and order by taking away the businesses of illegal Esports betting. These benefits entice states to accept the polymorphic view on sports and to embrace practical solutions without being conceptually limited by the debate on whether Esports is a sport.

B. Adopting the Polymorphic View: Financial Incentives

The financial incentive for legalizing sports betting is not a new idea. In the opinion of the Court concerning *Murphy v. NCAA*, Judge Alito stated that, “During the Depression, the State [New Jersey] permitted parimutuel betting [form of betting in which the first three places split the losers’ stakes] on horse races as a way of increasing state revenue.”³¹ In fact, Phil Murphy, the governor of New Jersey, sought to legalize sports betting for that very reason. After signing the bill, he said that “This is the right move for New Jersey and it will strengthen our

²⁶ Bob Heere, *Embracing the Sportification of Society: Defining Esports through a Polymorphic View on Sport*, 21 *SPORT MANAGEMENT REVIEW* 21, 22 (2018).

²⁷ Mike Hume, *ESPN Secures Overwatch League Broadcast Rights, Continuing Esports’ Mainstream Surge*, *THE WASHINGTON POST* (Jul. 11, 2018), https://www.washingtonpost.com/news/early-lead/wp/2018/07/11/espn-secures-overwatch-league-broadcast-rights-continuing-esports-mainstream-surge/?noredirect=on&utm_term=.2e7216029cbf (last visited Jan. 29, 2019).

²⁸ Bob Heere, *Embracing the Sportification of Society: Defining Esports through a Polymorphic View on Sport*, 21 *SPORT MANAGEMENT REVIEW* 21, 22 (2018).

²⁹ S. 415, 2018 Leg., Reg. Sess., (W. Va. 2018).

³⁰ *Id.*

³¹ *Murphy, Governor of New Jersey v. National Collegiate Athletic Assn.*, 584 U.S. 1, 27 (2018).

economy... boosting long-term financial prospects”³² The Senate Budget and Appropriations Committee of New Jersey found that, “The estimated state tax revenues that could be generated from sports betting are projected to range between \$12 million and \$17 million in the first full year of operation.”³³ By January 2019, for example, Delaware had made over \$2 million from taxes on sports betting since legalizing it in June 2018.³⁴ As more states follow Delaware’s example, revenue will increase, potentially at an exponential rate.

Unlike traditional sports, most of Esports betting in the U.S. happens either illegally or without any taxable flow of cash. For instance, Esports bettors purchase skins (in-game cosmetics) and cryptocurrency which they use to wager instead of cash.³⁵ This means that they are not able to cash their winnings, and when they can, in rare cases of using cryptocurrency to wager, revenue does not go to the government. Once government regulations allow for bettors to stop using roundabout means of wagering, revenue from Esports betting will be taxable, allowing states to cash in.

Based on preliminary calculations, revenue from Esports betting across the whole U.S. could range between \$20 to \$50 million.³⁶ Although relatively small in comparison to the projected revenue from traditional sports like football, it is important to remember that Esports is a new, quickly-growing industry.³⁷ With the number of viewers and total revenue of the industry increasing every year, Esports betting will produce an increasing amount of revenue for states. Moreover, ambiguous regulations concerning Esports may have been discouraging many investors and businesses from participating and facilitating a betting market in demand.³⁸ By including Esports betting in state bills to clarify its legality, the Esports betting market may attract many new and influential sponsors.

C. Adopting the Polymorphic View: Law and Order

Legalizing Esports betting can increase law and order in a state by decreasing the illegal market. Reducing illegal markets is in the best interest of every state. The Integrity

³² Max Jaeger, *New Jersey Governor Signs Sports Betting Bill into Law*, NEW YORK POST (June 11, 2018), <https://nypost.com/2018/06/11/new-jersey-governor-signs-sports-betting-bill-into-law/> (last visited Feb. 8, 2019).

³³ SEN. BUDGET AND APPROPRIATIONS COMMITTEE, S. 218-2602, at 4 (N.J. 2018).

³⁴ Dustin Gouker, *Delaware Sports Betting: \$23 Million in Handle Since Launch*, LEGAL SPORTS REPORT (Jan. 14, 2019, 04:23 PM), <https://www.legalsportsreport.com/23838/delaware-sports-betting-numbers-august/> (last visited Jan. 29, 2019).

³⁵ David Lisko & Viktor Lyusi, *Regulation of Sports Gambling Will Decide Esports’ Fate*, LAW 360 (Jan. 14, 2019, 03:49 PM), <https://www.law360.com/articles/1026273/regulation-of-sports-gambling-will-decide-esports-fate> (last visited Jan. 29, 2019).

Martin D. Owens Jr., *What’s in a Name? Esports, Betting, and Gaming Law*, 20 GAMING L. REV. AND ECONOMICS 567, 569 (2016).

³⁶ I estimate that 10% of the worldwide Esports betting volume comes illegally from the U.S. With the volume estimated at \$650 million, and if the government made anywhere from 5%-10%, states across the U.S. can make around \$20-\$50 million in revenue

³⁷ Peter Warman, *Esports Revenues Will Reach \$696 Million This Year and Grow to \$1.5 Billion by 2020 as Brand Investment Doubles*, NEWZOO (Feb. 14, 2017), <https://newzoo.com/insights/articles/esports-revenues-will-reach-696-million-in-2017/>.

³⁸ Brian Hall, *Top 4 Legal Issues in Esports*, TRAVERSELEGAL (Nov. 21, 2017), <https://www.traverselegal.com/blog/top-4-legal-issues-in-esports/> (last visited Jan. 29, 2019).

Commissioner of the Esports Integrity Coalition said that “The US is one of the world’s largest Esports betting black markets... A large number of American Esports gamblers moved to cash sites and continued betting in an unregulated environment.”³⁹ Judge Alito also admits that these illegal sports wagering channels “are often run by organized crime.”⁴⁰ If Esports betting were legalized, illegal Esports betting could be significantly lessened because bettors could wager money in a safe, regulated environment. The aforementioned State Bill of West Virginia also expresses concern that “Illegal sports wagering channels operating throughout the United States pose a critical threat to the safety and welfare of the citizens of West Virginia.”⁴¹ It adds that “Transferring this black-market demand into a secure and highly regulated environment... will protect the public.”⁴²

If betting laws are ambiguous concerning Esports, the undesirable status quo will remain. The voices of experts in the industry of Esports clearly assert the risks of banning Esports betting or leaving the matter in ambiguous terms. Sood, the CEO of prominent Esports betting website Unikrn, said:

Without regulation, illegal skin betting and online gambling will continue to plague the space and steal revenue from the United States. Worst of all, bad operators will continue to prey on people who should not be allowed to gamble in the first place—not to mention these people operate sites that are clearly ripping off consumers without any consequences.⁴³

Sood’s comment illustrates the risks of neglecting Esports betting in ambiguous terms: stolen revenue from the government and unprotected betting environments.

Esports Integrity commissioner Smith also adds: “In this worst-case scenario, the legislature will clearly undermine the sporting integrity of these kinds of events, because gambling will still occur on them both inside and outside [the state] on the black and grey markets, and we will have less scrutiny of the betting and no regulatory control.”⁴⁴ Legalization paired with regulatory control can incentivize customers of illegal betting markets to switch over to a more stable and safe environment to bet on Esports. A decrease in the number of customers of illegal markets may gradually drive out their business, which helps secure law and order.

In order to decrease illegal betting, states must consider allocating a part of their betting revenue to enforcing regulations and monitoring illegal activities. A study in Indonesia on the effects of legalization on illegal forest activities found that “legalization alone—when a legal timber concession is granted to a previously illegal operator—does not necessarily result in a

³⁹ Media Release, ESIC, ESIC Comment on US Supreme Court Decision on Sports Betting in the USA (May 15, 2018), <http://www.esportsintegrity.com/2018/05/esic-comment-on-us-supreme-court-decision-on-sports-betting-in-the-usa/> (last visited Jan. 29, 2019).

⁴⁰ Murphy, Governor of New Jersey, ET AL. v. National Collegiate Athletic Assn. ET AL., 584 U.S. 1, 21 (2018).

⁴¹ S. 415, 2018 Leg., Reg. Sess. (W. Va. 2018).

⁴² *Id.*

⁴³ Maddy Myers, *New Jersey Added a Last-Minute Esports Betting Ban and No One Knows Why*, COMPETE (June 8, 2018), <https://compete.kotaku.com/new-jersey-added-a-last-minute-esports-betting-ban-and-1826678155> (last visited Jan. 29, 2019).

⁴⁴ *Id.*

significant reduction of illegal activities.”⁴⁵ The study states the obvious: if illegal activities are still profitable, they can be expected to continue regardless of the legalization of activities. However, the study also found that legalization may reduce illegal activities “when it entrusts local people with ownership and control of forest resources and maintains a monitoring role for government agencies.”⁴⁶ Similarly, when including Esports in the terms of their bills, states must focus on changing the regulatory framework to increase monitoring and enforcement, which can decrease the profitability of illegal activities.

IV. Models of Inclusion

A. Ambiguity of Currently Proposed and Passed Bills

State bills should explicitly include Esports betting, especially considering the profitability for states and the increase of law and order. Unfortunately, most state bills define ‘sports events’ or ‘athletic contests’ in ambiguous terms leaving the legality of Esports betting in question. West Virginia’s bill defines a “sports event” or “sporting event” as “Any professional sport or athletic event, any collegiate sport or athletic event, motor race event, or any other special event authorized by the commission.”⁴⁷ Under this definition, the legality of Esports betting is ambiguous, because the definition does not clearly include Esports. The lengthy list of prohibited events does not mention Esports either. In the Rhode Island bill, “‘Event’ means any real-world sporting event or other occurrence whose result is unknown and is used as the basis for making a wager.”⁴⁸ The phrase “other occurrence” is vague and leaves room for confusion concerning Esports betting.

The Kentucky bill, which is in its drafting stages, does not explicitly include Esports. However, its definition of sports contests comes closer than the preceding two to including Esports: “‘Sports contest’ means any professional or amateur sport, athletic game or contest, or race or contest involving machines, persons, or animals, except horses, that is viewed by the public.”⁴⁹ This definition does not require viewing Esports as an athletic game, but its scope includes Esports competitions, which are contests involving machines (computers and other gaming equipment). Unfortunately, this definition requires at least one step of interpretation. A more explicit inclusion of Esports shows that a state is conscious of the massive opportunity for revenue in the realm of Esports betting and will actively regulate it.

B. Including Esports: The New Jersey Method

Explicitly including Esports in state bills is very simple. The definition laid out in New Jersey’s bill is completely immune to ambiguity or differing interpretations: “‘Sports event’ means any sport, athletic contest or athletic event not prohibited by the Director, including all professional electronic sports and competitive video game events that are not sponsored by high schools.”⁵⁰ Phrases such as “professional electronic sports” and “competitive video game events” make it clear that the law views Esports betting as legal. New Jersey’s method of

⁴⁵ Luca Tacconi, Krystof Obidzinski, Joyotee Smith & Subarudi & Iman Suramenggala, *Can ‘Legalization’ of Illegal Forest Activities Reduce Illegal Logging?*, 19 JOURNAL OF SUSTAINABLE FORESTRY 137, 138 (2004).

⁴⁶ *Id.*

⁴⁷ S. 415, 2018 Leg., Reg. Sess. (W. Va. 2018).

⁴⁸ H.R., 8320, 2018 Leg., Reg. Sess. (R.I. 2018).

⁴⁹ H.R., 536, 2018 Leg., Reg. Sess. (Ky. 2018).

⁵⁰ Sports Wagering Emergency Reg., Divi. of Gaming Enforcement, 20. (N.J. 2018).

including Esports is the most efficacious; the clarity of terms helps businesses, investors, and customers to more readily and confidently engage in the industry. Each state can and should follow the model set forth by New Jersey.

V. Further Points of Consideration

A. Addiction

With the possible legalization of Esports, the natural question arises, “Will legal access lead to more gambling addiction?” While this is a legitimate concern, many states that decide to legalize sports betting are ready to address this concern with helpful provisions. For example, the New Jersey sports wagering bill states:

A percentage of the fee paid for a license to operate a sports pool shall be deposited into the State General Fund for appropriation by the Legislature to the Department of Health to provide funds for evidence-based prevention, education, and treatment programs for compulsive gambling... including the development and implementation of programs that identify and assist problem gamblers.⁵¹

Some state bills do not have such a recommendation, and such states should seriously consider dedicating percentages of their state revenue from bookmaking to provide educational and preventive measures concerning gambling addiction.

B. Legalization as an Effective Counter to Match Fixing

Another legitimate concern is that legalizing Esports betting will incentivize match fixing. Match fixing is when athletes intentionally lose a contest for betting purposes. However, legalizing Esports betting may actually help counter match fixing. Since match-fixing scandals are already a major concern in the Esports community, the foundation of the Esports Integrity Coalition (ESIC) has been building a common regulatory framework for Esports competitions.⁵² The coalition’s members range from Esports betting companies, competition organizers, and Esports platforms from all around the world. The coalition combats match fixing through their Anti-Corruption Code for participating players. With legalization of betting comes the possibility of funding such organizations in part through state revenue, and increased regulation by organizations like the ESIC will help the new industry of Esports maintain its integrity and legitimacy.

Additionally, bookmakers working legally under regulations can counter match fixing by monitoring and investigating unusual betting patterns. U.S. states can adopt what betting firms in Europe have been investing in: technology to help detect possible threats of corruption.⁵³ These systems will notify the bookmakers whenever suspicious betting patterns and activities occur.⁵⁴ For instance, alarm bells would ring if “a £2 punter [bettor] suddenly [wants] to place £200 bets

⁵¹ H.R., 4111, 218th Leg., Reg. Sess. (N.J. 2018).

⁵² ESIC, *Integrity Programme*, <https://www.esportsintegrity.com/integrity-programme/> (last visited Jan. 16, 2019).

⁵³ Scott Ferguson, *We Have the Tools to Keep Sport Free of Match-fixing*, NEW SCIENTIST (Jan. 14 2019, 03:58 PM), <https://www.newscientist.com/article/dn24762-we-have-the-tools-to-keep-sport-free-of-match-fixing/> (last visited Jan. 29, 2019).

⁵⁴ *Id.*

on obscure events.”⁵⁵ With black market betting, there is no way to disincentivize or prevent match fixing. With organizations like ESIC and U.S. betting agencies working together, the threats of match fixing can be significantly mitigated.

The problems of gambling addiction and match fixing emerge most frequently among many possible objections to legalizing Esports betting. The legalization of Esports betting and the formation of anti-corruption organizations will help the government to actively mitigate those issues. Instead of increasing vulnerability and incentives to cheat, these measures seek to face and fix the problems. The government would shed light on those issues, which have been neglected. Thus, participants can become more educated, aware, and mature.

VI. Conclusion

Because of the monetary relevance and the industrial prospect of Esports, states’ seeking to legalize sports betting should explicitly include Esports. I call on state legislators to contemplate the financial benefits of including Esports and adopt a polymorphic view on sport. This will allow them to justify including Esports in state-sanctioned sports gambling. I also call on states to consider how simply this can be done, as demonstrated by the New Jersey bill.⁵⁶ The industry of Esports is growing exponentially, and states can be well-prepared for the increasing profitability of Esports.

⁵⁵ *Id.*

⁵⁶ *Murphy v. National Collegiate Athletic Assn.*, 584 U.S. 1, 16 (2018).