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FROM MURPHY TO MONOPOLIES: RETHINKING STATE  
ONLINE SPORTS BETTING REGULATION

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*Since the Supreme Court's decision in *Murphy v. NCAA* invalidated the Professional and Amateur Sports Protection Act, states have assumed exclusive authority over the regulation of sports betting. This decentralization has produced a highly fragmented regulatory landscape, particularly in the online sports betting market, where some states permit robust competition among numerous operators while others affirmatively sanction monopolies or highly concentrated markets. These state-level choices interact with an already concentrated national market dominated by DraftKings and FanDuel, creating significant variation in consumer choice, pricing, and regulatory outcomes across jurisdictions.*

*This Note examines the sources and consequences of market power in online sports betting, distinguishing between naturally occurring national concentration and state-created intra-state market power. It situates state-sanctioned monopolies within the broader theoretical framework of "justified monopolies," drawing comparisons to industries such as alcohol distribution, pharmaceuticals, telecommunications, and securities markets. Although proponents argue that monopolistic regulation can generate higher tax revenues, enhance consumer protection, and promote long-term innovation, this Note contends that online sports betting does not satisfy the conditions necessary to justify such market concentration. This Note argues that competitive online sports betting markets are better suited to advancing consumer welfare and regulatory goals than state-level monopolies. It further suggests that the current patchwork of state regimes risks distorting consumer behavior, reducing effective competition, and undermining potential gains from innovation. Drawing on the regulatory logic of Regulation National Market System in U.S. securities law, the Note proposes that competition—rather than state-imposed exclusivity—offers a more effective and adaptable framework for regulating online sports betting in the post-Murphy era.*

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INTRODUCTION .....	1040
I. SOURCES OF SPORTS BETTING MARKET POWER.....	1043
A. DraftKings and FanDuel’s Nationwide Market Duopoly	1043
B. Intra-State Concentration of Market Power Through	
Regulation of Online Sports Betting .....	1044
1. Fully Competitive Online Sports Betting Markets .	1045
a. Fully Competitive Markets with DraftKings and	
FanDuel .....	1046
b. Fully Competitive Markets without DraftKings and	
FanDuel .....	1047
2. Concentrated Competition .....	1048
a. Concentrated Competition with DraftKings and/or	
FanDuel .....	1049
b. Concentrated Competition without DraftKings or	
FanDuel .....	1051
3. Monopolies .....	1051
a. Monopolies with DraftKings .....	1052
b. Monopolies without DraftKings or FanDuel...	1054
II. “JUSTIFIED MONOPOLIES” FRAMEWORK.....	1057
III. UNJUSTIFIED ONLINE SPORTS BETTING MONOPOLIES.....	1061
A. Potential Benefits of State-Level Online Sports Betting	
Market Power .....	1061
1. Economic Gains .....	1061
2. Welfare Gains .....	1062
3. “Schumpeterian” Long-Term Gains.....	1063
B. Likely Harms of Online Sports Betting State-Level	
Monopolies .....	1064
C. Comparative Approach: Regulation of Securities Markets	
1066	
CONCLUSION .....	1068
APPENDIX .....	1071

## INTRODUCTION

Since the Supreme Court invalidated the Professional and Amateur Sports Protection Act of 1992 (PASPA) in *Murphy v.*

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*National Collegiate Athletic Association*, 584 U.S. 453 (2018), the power to regulate sports betting has fallen exclusively within the purview of states.<sup>1</sup> The exclusive conferral of regulatory authority to states has led to regimes that differ widely across the United States, and these regimes are bound to continue changing as more states consider, adopt, and amend sports betting legislation.<sup>2</sup> To elucidate this non-uniformity, someone in Arizona can choose from thirteen different authorized online operators;<sup>3</sup> someone in Oregon can only make mobile wagers with one operator (DraftKings);<sup>4</sup> someone in Washington can only wager in person at specified tribal casino operators;<sup>5</sup> and someone in California cannot sports bet at all.<sup>6</sup> The difference in regulation between Arizona and Oregon, specifically—with several other states falling in each respective camp—highlights an important dichotomy that has taken form in the online sports betting regulatory sphere: states that allow the industry to operate as a competitive market with no shortage of firms for consumers to choose from and those that bar the concentration of market power in online sports betting. This state-level dichotomy is especially salient when factoring in that two operators—FanDuel and DraftKings—make up nearly seventy percent of market share on a *national* scale.<sup>7</sup>

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<sup>1</sup> See Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. § 3702 (1992), *invalidated by*, *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

<sup>2</sup> AM. GAMING ASS'N, STATE OF THE STATES 2025: THE AGA ANALYSIS OF THE COMMERCIAL CASINO INDUSTRY 4–5 (2025), <https://www.americangaming.org/wp-content/uploads/2025/05/AGA-State-of-the-States-2025.pdf> [<https://perma.cc/9V6Y-EEC6>] [hereinafter State of the States].

<sup>3</sup> See *id.* at 27–28. Hereinafter, “mobile” and “online” will be used interchangeably to refer to sports betting that does not require being physically present at an operator site (i.e. a casino).

<sup>4</sup> See *id.* at 105–07.

<sup>5</sup> *Id.* at 13.

<sup>6</sup> *Id.* at 12.

<sup>7</sup> See, e.g., Sam McQuillan, *NFL Betting Marks A Critical Stretch For Sportsbook Stocks*, LEGAL SPORTS REP. (Sept. 4, 2025), <https://www.legalsportsreport.com/240761/nfl-betting-marks-a-critical-stretch-for-sportsbook-stocks/> (on file with the Columbia Business Law Review).

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This Note seeks to uncover the relative merits of state regulation of online sports betting through a competitive market model as well as through concentrated market power in one firm (or a select few). Upon reviewing the arguments both in favor of and against market power in online sports betting, this Note argues that, despite the relative merits of state-level monopolies as they may apply to the online sports betting industry, online sports betting is nonetheless a market best suited for some level of competition from the perspective of consumers (and states as well, to a lesser degree). The “justified monopoly” framework that scholars have found to be applicable in other industries is not fit for the unique online sports betting industry, at least given the substantial negative consequences it risks introducing. Additionally, the wide spectrum of online sports betting regulation from state-to-state creates a disjointed marketplace that risks harming consumers, whether or not they are able to recognize the gains they are sacrificing in such a model.

Part I of this Note will detail which key sports betting operators have surmised national market power after *Murphy* and the invalidation of PASPA. This Part will also examine how state regulatory regimes have propagated intra-state market power by affirmatively sanctioning monopolies, duopolies, and oligopolies. Specifically, Part I will discuss the range of state regulations as they relate to concentrated market power, from states that allow for relatively full and free competition to those that concentrate power in one (or a few) firms, and where inter- and intra-state market power is compounded through both types of regimes. Part II of this Note will then establish the idea that, in certain circumstances, the concentration of market power is actually a good thing for the market as a whole through a discussion of other “justified monopolies.”

Part III of this Note will apply the framework of justified monopolies to the sports betting market, demonstrating in what ways the market benefits from concentrated market power. Nonetheless, this Part will find that the potential harms to consumers—both economically and societally—do not outweigh the potential benefits. Finally, this Part will include a comparative discussion of equity markets and the Regulation National Market System (Reg NMS), which is illustrative as a potential avenue for the

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regulation of online sports betting markets. This Note concludes with summarized thoughts and remarks.

### I. SOURCES OF SPORTS BETTING MARKET POWER

There are two different levels of market power that exist in the online sports betting industry, with one largely being the product of natural economic and market pressures on a national scale and the other being a product of state regulation. The *natural* concentration of market power refers to that achieved by DraftKings and FanDuel, while the *state grant* of market power refers to the regulations of various states that have affirmatively limited the number of firms operating in their jurisdiction. In some states—the most prominent of which are New Hampshire and Oregon—these two sources of market power converge, while in others, like Nevada, Arkansas, Florida, and Rhode Island, the “natural” duopoly is prevented from entering the market at all. As such, online sports betting regulatory regimes supply a significant variety of approaches to limiting or expressly authorizing the concentration of market power in the two main duopolists in the national market.

#### A. *DraftKings and FanDuel’s Nationwide Market Duopoly*

At a national level, DraftKings and FanDuel enjoy comfortable control over the national sports betting market. Both operators were founded prior to the invalidation of PASPA in *Murphy*—FanDuel in 2009 and DraftKings in 2012<sup>8</sup>—which allowed the platforms to gain popularity and name recognition in the preceding years initially as daily fantasy sports operators before their foray into newly legalized online sports betting.<sup>9</sup> When DraftKings and FanDuel proposed a merger in 2017, the United States Federal

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<sup>8</sup> Daniel Roberts, *DraftKings and FanDuel Still Can’t Escape Each Other*, FRONT OFFICE SPORTS, (Aug. 24, 2024), <https://frontofficesports.com/draftkings-and-fanduel-still-cant-escape-each-other/> [https://perma.cc/E5E8-2XHR].

<sup>9</sup> See *id.*; see also *Who We Are*, DRAFTKINGS, <https://www.draftkings.com/who-we-are-about> [https://perma.cc/H5AG-PVF4] (last visited Nov. 26, 2024) (describing the rise of DraftKings from its start in one of the founder’s spare bedrooms).

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Trade Commission sued to block the transaction, citing concerns that the merger would result in a sole operator controlling over ninety percent of the paid daily fantasy sports market in the United States.<sup>10</sup> Around the time of the merger, both companies alleged to have over eight million registered customers *each*.<sup>11</sup> The companies would shortly thereafter abandon the transaction and instead continue in fierce competition with one another, which is where the market currently stands.

As such, when PASPA was officially invalidated in 2018, both operators were well-positioned to turn their existing customers into online sports betting customers.<sup>12</sup> With a combined gross gaming revenue market share of over seventy percent, DraftKings and FanDuel have maintained their stronghold on the sports betting market despite new operators entering the industry and the regulatory regimes of states being in constant flux post-*Murphy*.<sup>13</sup> The operators are seemingly synonymous with sports betting and have had much more time than competitors to establish themselves as a secure option in an inherently risky industry for both consumers and state regulators. Their business models have had far more time to develop than those around them, so it will remain to be seen whether their market power will fade or strengthen over time as competitors either catch up or fall further behind.

B. *Intra-State Concentration of Market Power Through Regulation of Online Sports Betting*

Following *Murphy*, state legislatures can decide to legalize online sports betting, and in doing so, they have taken a variety of approaches to either expand or constrict the concentrated power of

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<sup>10</sup> *In the Matter of DraftKings, Inc. / FanDuel Limited*, F.T.C. (July 14, 2017), <https://www.ftc.gov/legal-library/browse/cases-proceedings/161-0174-draftkings-inc-fanduel-limited-matter> [https://perma.cc/6VS5-MET3].

<sup>11</sup> Giovanni Shorter, *Why FanDuel, DraftKings Still Dominate Sports Betting Market Share In United States*, THE LINES (Oct. 14, 2025), <https://www.thelines.com/fanduel-draftkings-betmgm-caesars-espnbet-fanatics-market-share-2024/> [https://perma.cc/3NZ3-GZEG].

<sup>12</sup> *Id.*

<sup>13</sup> See *infra* Table I for an overview of the national market share of online sports betting.

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DraftKings and FanDuel. State legislatures tend to fall along a spectrum of competition. On one extreme lies those states with fully competitive marketplaces hallmarked by a number of licensed operators,<sup>14</sup> and on the other extreme lies states that have affirmatively sanctioned an online sports betting monopoly free from competitors.<sup>15</sup> In between these two ends of the spectrum are the few states that have concentrated their market power in two or three licensed firms, in effect creating duopolies and oligopolies within their state markets that may elicit some traditional anticompetitive concerns.<sup>16</sup> Additionally, at each level of this spectrum are states that have created markets either with or without the national duopolists.<sup>17</sup>

1. *Fully Competitive Online Sports Betting Markets*<sup>18</sup>

Currently, twenty-one states with legal online sports betting have a generally free market with several firms for consumers to choose between.<sup>19</sup> Of these states, twenty have licensed DraftKings, FanDuel, and other firms to operate within the state,<sup>20</sup> and one notable exception, Nevada, has a competitive online sports betting market that excludes both DraftKings and FanDuel.<sup>21</sup> As of yet, no state has a fully competitive online sports betting market with only DraftKings and not FanDuel, or vice versa.<sup>22</sup>

Although not a perfect correlation, states with competitive markets generally collect a smaller share of tax revenue than the states that sanction sports betting monopolies. The average tax rate

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<sup>14</sup> See *infra* Part I.B.1.

<sup>15</sup> See *infra* Part I.B.3.

<sup>16</sup> See *infra* Part I.B.2.

<sup>17</sup> See Table II for a listing of how each relevant state regulates their online sports betting market.

<sup>18</sup> For purposes of this Note, “Fully Competitive Markets” are those with four or more licensed firms in operation.

<sup>19</sup> See Table II and its list of Fully Competitive Markets.

<sup>20</sup> See *id.*

<sup>21</sup> See STATE OF THE STATES, *supra* note 2, at 84–86.

<sup>22</sup> Steven Patrella, *A Full List of United States Sportsbooks by State: Where Every Site Operates*, ACTION NETWORK (Apr. 9, 2025, at 12:03 ET), <https://www.actionnetwork.com/legal-online-sports-betting/sportsbooks-by-state> [<https://perma.cc/MU8N-GZFM>].

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of these twenty competitive states, excluding Tennessee,<sup>23</sup> is 15.75% (13.01% when adjusted for outliers) of revenues, while most states with monopolies collect around 50% of revenues.<sup>24</sup> However, a few exceptions emerge within the states with competitive models. Notably, New York collects 51% of online sports betting revenues from its eight online sportsbooks (as compared to only 10% for land-based sportsbooks), which is likely made possible by the fact that operators are eager to take advantage of the sheer size of the New York market.<sup>25</sup> Similarly, and likely for similar reasons, Pennsylvania has bargained for 36% of revenues.<sup>26</sup> Although this point will be further elaborated on in Part III.B, it is unclear whether the higher rates correspond to similarly higher revenues.<sup>27</sup>

a. Fully Competitive Markets with DraftKings and FanDuel

Most states with legalized sports betting have a fully competitive online sports betting market with both DraftKings and FanDuel for customers within the state to choose from.<sup>28</sup> But although these state markets are “competitive” on their face, they nonetheless benefit DraftKings and FanDuel to the detriment of other operators. DraftKings’s and FanDuel’s early start on the market has given them a significant edge over their competitors, especially when considering the overall stigma that surrounds the market.<sup>29</sup> These two key operators have been able to gain a reputation of trust and reliability—unlike any other competitors—in an industry that for centuries has been plagued by distrust and

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<sup>23</sup> See STATE OF THE STATES, *supra* note 2, at 116. Tennessee is excluded from this analysis because its tax rate applies to handles, the amounts of the bets, instead of revenues.

<sup>24</sup> See *infra* Tables II and III.

<sup>25</sup> See STATE OF THE STATES, *supra* note 2, at 95.

<sup>26</sup> See *id.* at 109.

<sup>27</sup> See discussion *infra* Part III.B.

<sup>28</sup> See *infra* Table II.

<sup>29</sup> See Shorter, *supra* note 11.

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corruption.<sup>30</sup> However, the relative infancy of the legal online sports betting market may suggest that DraftKings's and FanDuel's control over the market may change once competitors have had time to solidify themselves in the market.

The importance of trust and name recognition in the sports betting market is further corroborated by BetMGM (7.6%) and Caesars Sportsbook (4%) each capturing a notable gross mobile gaming revenue market share, respectively.<sup>31</sup> Although their market share is not nearly as expansive as that of DraftKings or FanDuel,<sup>32</sup> these two operators have likely benefitted from already having established gaming brands prior to *Murphy*,<sup>33</sup> much like how DraftKings and FanDuel translated their daily fantasy sports platforms into success in online sports betting. However, possibly because they pivoted from traditional table gaming and general in-person wagering (as opposed to from online daily fantasy sports wagering) into the online sports betting market, which requires a minimum level of tech-savviness, BetMGM and Caesars Sportsbook have not been able to capitalize on their brand recognition to the same extent as DraftKings and FanDuel.

b. Fully Competitive Markets without DraftKings and FanDuel

Despite having twelve different operators in the state, Nevada has yet to grant an operating license to either DraftKings or

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<sup>30</sup> See Michelle Minton, *Legal gambling enhances sports integrity—despite what critics claim*, REASON FOUND. (July 18, 2025), <https://reason.org/commentary/legal-gambling-enhances-sports-integrity-despite-what-critics-claim/> [<https://perma.cc/P8QN-JXUN>].

<sup>31</sup> See *infra* Table I.

<sup>32</sup> *Id.*

<sup>33</sup> See, e.g., Bill King, *Caesars: Ready to Conquer*, SPORTS BUS. J. (Oct. 8, 2021), <https://www.sportsbusinessjournal.com/Journal/Issues/2021/08/16/Upfront/Sportsbooks> [<https://perma.cc/WN8M-LNVN>] (“There are similarities to the other Las Vegas-based casino chains that have made, or plan, high-profile plays in sports betting. Like MGM Resorts and Wynn Resorts, Caesars hopes to benefit from a vast database of casino players in its 65 million-member loyalty program[.]”)

FanDuel.<sup>34</sup> Whereas in most other states users can simply open an account remotely, Nevada requires bettors to register in-person at a physical sportsbook in order to then make mobile wagers.<sup>35</sup> Because DraftKings and FanDuel do not have retail locations like casinos in the state, they are effectively barred from operating.<sup>36</sup> Although it is unclear whether this regulatory regime was enacted to target and hinder DraftKings and FanDuel specifically, it can be traced back to lobbying efforts by casino operators and likely those who want the state to support the local casino industry physically present in Nevada and prevent customer dollars from flowing out of the state to the likes of DraftKings and FanDuel.<sup>37</sup> While there is no absolute bar to DraftKings and FanDuel opening up brick-and-mortar locations in Nevada to enter to the state's market, neither sportsbook has found this approach worth the capital investment yet, and both are content with missing out on the market for now.

## 2. *Concentrated Competition*

Today, a number of states affirmatively sanction online sports betting duopolies and oligopolies by only having two or three licensed operators.<sup>38</sup> Among states with such “concentrated competition,” some include DraftKings and/or FanDuel in their duopoly and oligopoly systems, while others exclude the national duopolists.<sup>39</sup> From an anticompetitive standpoint, a key concern in having market power concentrated in a select few firms is that such

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<sup>34</sup> See Nick Sterling, *Why Can't I Use DraftKings or FanDuel in Las Vegas? And What Are the Other Sports Betting Options?*, ACTION NETWORK (July 26, 2024, at 11:24 ET), <https://www.actionnetwork.com/legal-online-sports-betting/why-cant-i-use-draftkings-or-fanduel-in-las-vegas-and-what-are-the-other-sports-betting-options> [https://perma.cc/HM4K-MF5D].

<sup>35</sup> *Id.* In Nevada, the physical sportsbook is usually a corresponding sportsbook at a casino.

<sup>36</sup> *Id.*

<sup>37</sup> See Howard Stutz, *As Sports Betting Grows, Some Operators Skip Nevada Because of In-Person Registration Requirements*, THE NEV. INDEP. (Oct. 22, 2023, at 02:00 PT), <https://thenevadaindependent.com/article/as-sports-betting-grows-some-operators-skip-nevada-because-of-in-person-registration-requirements> [https://perma.cc/8J47-JW7X].

<sup>38</sup> See *infra* Table II.

<sup>39</sup> *Id.*

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concentration can make coordination or collusion between firms more effective and displace a truly competitive market where firms operate as price-takers.<sup>40</sup> The few firms in the marketplace can cooperate in such a way, whether explicitly or tacitly, that makes pricing resemble that of a monopolist, thus harming customers.<sup>41</sup> In doing so, the participating firms act to maximize their profits.

a. Concentrated Competition with DraftKings and/or FanDuel

Three states currently restrict their online sports betting market to two or three firms, including DraftKings and/or FanDuel. Notably, unlike in all of the Fully Competitive Markets, one state in this group, Maine, has elected to allow for DraftKings to operate in a concentrated market *to the exclusion* of FanDuel.<sup>42</sup> Maine currently only has DraftKings and Caesars as licensed online operators in the state.<sup>43</sup> Much like many other New England states, Maine only provides licenses to federally recognized Native American tribes within the state, of which there are four, who can then partner with outside online operators.<sup>44</sup> As such, three of the tribes have partnered with Caesars, and the last remaining tribe has partnered with DraftKings, leaving no room for any new operators to enter the state unless any of the tribes decide to change their partner.<sup>45</sup> Connecticut, by contrast, has two Native American tribes that operate casinos in the state provide online sports betting and a third sportsbook operated by the Connecticut Lottery.<sup>46</sup> The Connecticut

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<sup>40</sup> See James R. Loftis III, *Coordinated Effects: Merger Workshop*, U.S. DEPT OF JUST. (Feb. 18, 2004), <https://www.justice.gov/archives/atr/coordinated-effects> [<https://perma.cc/NL4C-3K37>].

<sup>41</sup> See Robert H. Porter, *Mergers and Coordinated Effects*, 73 INT'L J. INDUS. ORG. 2 (2020).

<sup>42</sup> See STATE OF THE STATES, *supra* note 2, at 63.

<sup>43</sup> *Id.*; see also Steven Petrella, *Maine Sports Betting: ME Sports Betting Legalization & Mobile Sportsbook Update*, ACTION NETWORK (Oct. 27, 2025), <https://www.actionnetwork.com/online-sports-betting/maine> [<https://perma.cc/3732-RTQR>].

<sup>44</sup> See Petrella, *supra* note 43.

<sup>45</sup> *Id.*

<sup>46</sup> See STATE OF THE STATES, *supra* note 2, at 34.

Legislature specifically limited the number of available licenses to three, one for each of the aforementioned parties.<sup>47</sup> All three providers have partnered with different online sports betting providers, with the two tribes choosing DraftKings and FanDuel, respectively, and the Connecticut Lottery partnering with Fanatics.<sup>48</sup> Finally, Vermont's Legislature has authorized for up to six online sportsbooks to operate in the state, but only three—DraftKings, FanDuel, and Fanatics—have received approval.<sup>49</sup> BetMGM and ESPN Bet both initially applied but did not receive approval.<sup>50</sup>

In terms of online sports betting tax rates for these three states, Maine, 10%,<sup>51</sup> and Connecticut, 13.75%,<sup>52</sup> are generally in line with the rates of Fully Competitive state markets.<sup>53</sup> Vermont's tax rate system, however, is quite unique. The state collects 33% of tax revenue from FanDuel, while DraftKings and Fanatics benefit from a 31% rate.<sup>54</sup> The Vermont Legislature simply stipulated a *minimum* tax rate of 20%, and allowed the actual rate to be determined through a “competitive bidding process.”<sup>55</sup>

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<sup>47</sup> An Act Concerning The Authorization, Licensing And Regulation Of Online Casino Gaming, Retail And Online Sports Wagering, Fantasy Contests, Keno And Online Sale Of Lottery Tickets, No. 21-23, 2021 Conn. Pub. Acts 143.

<sup>48</sup> See Chris Altman, *Connecticut Sports Betting – Where to Play, Online Sportsbooks and Bonus Offers*, SPORTSHANDLE (Oct. 16, 2025), <https://sportshandle.com/connecticut/> [https://perma.cc/SP5B-R3L2].

<sup>49</sup> Dukes Wooters, *Vermont Sports Betting – Launch Info, Online Sportsbooks, and News*, SPORTSHANDLE (Oct. 3, 2025), <https://sportshandle.com/vermont/> [https://perma.cc/N7A4-7SM4].

<sup>50</sup> *Id.*

<sup>51</sup> Adam Hoffer, *Bets on Legal Sports Markets Pay Off Big for States, Sportsbooks, and Consumers*, TAX FOUND. (Dec. 10, 2024), <https://taxfoundation.org/research/all/state/sports-betting-tax-revenue/> [https://perma.cc/K58R-2Z]3].

<sup>52</sup> See STATE OF THE STATES, *supra* note 2, at 34.

<sup>53</sup> See Table II for a comparison of different markets' tax rates.

<sup>54</sup> See STATE OF THE STATES, *supra* note 2, at 119.

<sup>55</sup> Vt. Stat. Ann. tit. 31, § 1320 (2023).

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b. Concentrated Competition without DraftKings or FanDuel

Of the states that have online sports betting market power concentrated in two or three firms, Arkansas and Mississippi are the only two that have not licensed DraftKings nor FanDuel to operate in their state marketplaces. However, because Mississippi online sports betting regulations only allow bettors to place wagers (albeit on an app on their phone) at the twenty-six casinos in the state (which have partnered with BetMGM, Caesars, and Pearl River Sports thus far), only Arkansas will be discussed as a truly *online* sports betting market with concentrated competition that excludes DraftKings and FanDuel.<sup>56</sup> In Arkansas, online sports betting operators are only allowed into the state's market by partnering with a retail casino in the state, with each casino allowed to partner with up to two operators provided the casino maintains majority control of everything within the casino.<sup>57</sup> Currently, two of the three casinos in Arkansas have released their own online sportsbooks, while the third casino has partnered with Betly.<sup>58</sup> Arkansas levies a thirteen percent tax rate on the first \$150 million in revenue and twenty percent thereafter.<sup>59</sup>

3. *Monopolies*

Two states—New Hampshire and Oregon—have partnered with DraftKings as the sole provider of online sports betting

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<sup>56</sup> *But see* Vinolin Naidoo, *Mississippi Moves Digital Sports Betting Bills Back to Senate*, DEADSPIN (Nov. 3, 2025), <https://deadspin.com/legal-betting/mississippi-moves-digital-sports-betting-bill-to-senate/> [<https://perma.cc/EK95-TBS3>] (suggesting that changes for sports betting may be on the horizon in Mississippi).

<sup>57</sup> *See* Mike Murphy & Steve Ruddock, *Arkansas Sports Betting*, BETTINGUSA, <https://www.bettingusa.com/states/ar/> [<https://perma.cc/4AWB-A7Y8>] (last visited Nov. 6, 2025).

<sup>58</sup> *Id.*

<sup>59</sup> *7 Years of Sports Betting: Did States Get it Right?*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 21, 2025), <https://www.ncsl.org/fiscal/seven-years-of-sports-betting-did-states-get-it-right> [<https://perma.cc/8K6A-QGDT>].

products,<sup>60</sup> while four states—Rhode Island, Montana, Florida, and Delaware—have monopolies that exclude FanDuel and DraftKings. Of those four states with non-DraftKings and FanDuel monopolies, two have made the monopolist a branch of the state lottery,<sup>61</sup> while the other two have outsourced the monopoly to other operators.<sup>62</sup> The latter arrangement corresponds with relatively higher tax rates that the monopolist states can impose on their sole operator.

a. Monopolies with DraftKings

New Hampshire and Oregon both granted a monopoly to DraftKings in their state online sports betting markets, affirmatively concentrating market power of online sports betting in one of the two firms that already is part of a nationwide duopoly. In 2019, New Hampshire contracted with DraftKings to give them an exclusive operating license in the state.<sup>63</sup> This move was largely motivated by tax reasons, and the two parties agreed that New Hampshire would

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<sup>60</sup> See Bart Shirley, *New Hampshire Sports Betting: Legal NH Sportsbooks & Legislation Updates*, LEGAL SPORTS REP. (Aug. 13, 2024), <https://www.legalsportsreport.com/nh/> [<https://perma.cc/YE4P-C63K>] (describing New Hampshire's legal regime); Stephani Ram, *When And Will Oregon End DraftKings Monopoly?*, OR. SPORTS NEWS (Apr. 7, 2023), <https://oregonsportsnews.com/when-and-will-oregon-end-draftkings-monopoly/> [<https://perma.cc/UD2A-9AT9>] (describing Oregon's legal regime).

<sup>61</sup> See Bart Shirley, *Rhode Island Sports Betting: Legal RI Sportsbooks & Legislation Updates*, LEGAL SPORTS REP. (Feb. 13, 2025) [hereinafter Shirley, *Rhode Island Sports Betting*], <https://www.legalsportsreport.com/ri/> [<https://perma.cc/C9W5-DWX8>] (describing Rhode Island's legal regime); Bart Shirley, *Montana Sports Betting: Legal MT Sportsbooks & Legislation Updates*, LEGAL SPORTS REP. (June 13, 2025) [hereinafter Shirley, *Montana Sports Betting*], <https://www.legalsportsreport.com/montana/> [<https://perma.cc/8ZGG-BRJG>] (describing Montana's legal regime).

<sup>62</sup> See Nick Beare, *Delaware Sports Betting: Legal DE Sportsbooks & Legislation Updates*, LEGAL SPORTS REP. (June 8, 2025), <https://www.legalsportsreport.com/delaware/> [<https://perma.cc/ETH3-P9WA>] (describing Delaware's legal regime); Sophia Hernandez, *Taking Risks, Making Money: How Sports Betting in Florida Changed This Year*, NBC MIAMI (Sep. 14, 2024), <https://www.nbcmiami.com/news/local/taking-risks-making-money-how-sports-betting-in-florida-changed-this-year/3408572/> [<https://perma.cc/MK2T-V4VR>] (describing Florida's legal regime).

<sup>63</sup> See Shirley, *Montana Sports Betting*, *supra* note 60.

take home fifty-one percent of DraftKings's revenue.<sup>64</sup> As such, New Hampshire receives significant tax revenue without having to expend any capital to establish a sports betting operation on its own, and DraftKings operates to the exclusion of all other competitors. DraftKings and New Hampshire clearly designed this tax advantage to be linked with DraftKings's lockout on competition, as DraftKings's tax obligation drops to twenty-one percent if New Hampshire adds any new sportsbooks.<sup>65</sup> New Hampshire was also likely influenced by DraftKings's promising history in the industry and other surrounding markets, giving the state some assurance that its constituents would be able to wager safely and effectively.

Oregon has a long history of sports betting even prior to *Murphy*. In 1989, Oregon first offered a sports gambling product through their state lottery, which achieved much success.<sup>66</sup> In fact, the success of the Oregon Lottery's sports betting product—which influenced other states to begin investigating the possibility of offering similar products—was a partial motivation of the passage of PASPA just a few years later in 1992.<sup>67</sup> Importantly, PASPA's restrictions on sports betting didn't extend to the few states that already had preexisting sports betting operations, which included Oregon.<sup>68</sup> After *Murphy*, the Oregon State Lottery rolled out Scorecard, their online sports betting platform, which was later acquired by DraftKings in 2022.<sup>69</sup> Much like New Hampshire, DraftKings's Oregon monopoly is accompanied by a fifty-one percent tax on revenue.<sup>70</sup> This revenue has been massive for Oregon, as revenues from the Oregon Lottery, including sports betting, are the second largest source of tax revenues in the state,

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<sup>64</sup> *See id.*

<sup>65</sup> *See id.*

<sup>66</sup> Jennifer Roberts & Greg Gemignani, *Who Wore It Better? Federal v. State Government Regulation of Sports Betting*, 9 UNLV GAMING L. J. 77, 81–82 (2019).

<sup>67</sup> *Id.* at 82.

<sup>68</sup> *Id.* at 83.

<sup>69</sup> Ram, *supra* note 60.

<sup>70</sup> See Joni Auden Land, *Sports Betting Surges in Oregon, As Expert Caution Risks of Digital Gambling*, OR. PUB. BROAD. (Feb. 10, 2024, at 09:00 PT), <https://www.opb.org/article/2024/02/10/oregon-sports-betting-surges-experts-caution-risks-digital-gambling/> [<https://perma.cc/EME7-GJLZ>].

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behind only the general fund.<sup>71</sup> Although sports betting only makes up a small amount of the overall amount of revenues attributable to the Oregon Lottery games, the industry is growing at a fast pace year-over-year.<sup>72</sup>

b. Monopolies without DraftKings or FanDuel

Of the states where market power is concentrated in a sole mobile sports betting operator, an even smaller subset has elected to exclude DraftKings and FanDuel from their online sports betting market. In pursuit of this, some states have established and granted monopolies to their own sports betting operators, while others have partnered with a single, smaller firm, similar in some ways to the partnerships formed by New Hampshire and Oregon with DraftKings.

Rhode Island and Montana fall into the category of states that operate their own online sport betting platforms, to the exclusion of all other operators, including DraftKings and FanDuel. Much like Oregon, prior to DraftKings's acquisition of Scorecard, Rhode Island's online sports betting regime is operated by the Rhode Island Lottery, and "for all intents and purposes, sports betting is a government service in the state, and the app is an arm of the Rhode Island Lottery."<sup>73</sup> Because Rhode Island operates their online sports betting product with the help of an outside operator, the state collects fifty-one percent of tax revenue.<sup>74</sup>

Like Rhode Island, the Montana Lottery is also "both the regulator and the purveyor of sports betting in the state," turning Montana sports betting into "a government-run entity rather than a competitive market."<sup>75</sup> Montana's regulatory regime is slightly different than any other state yet discussed, as it requires that bettors wager within the premises of an authorized Sports Bet Montana location, but they are free to do all other tasks relating to the activity—including registering, browsing the site, depositing,

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Shirley, *Rhode Island Sports Betting*, *supra* note 61.

<sup>74</sup> See Hoffer, *supra* note 51.

<sup>75</sup> See Shirley, *Montana Sports Betting*, *supra* note 61.

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preparing wagers, and withdrawing—at home.<sup>76</sup> The burden of this requirement is dampened by the fact that any lottery retailer (such as restaurants, bars, gas stations, etc.) can make sports betting available, so Montana customers do not have to travel far to do the final step of placing their wagers.<sup>77</sup> This factor differentiates Montana’s regime from that of Mississippi, which was excluded from this analysis because of an in-person wagering requirement at casinos only.<sup>78</sup> Montana is also different from all other sampled states in that it collects 100% of online sports betting tax revenues.<sup>79</sup>

Delaware was the first state to allow online sports betting following the Supreme Court’s decision in *Murphy*, and the state has granted BetRivers the sole authority to operate an online sports betting platform.<sup>80</sup> Legislation was introduced to expand the state’s monopoly to allow for six operators, creating a competitive market, but Delaware legislators ended up abandoning the bill.<sup>81</sup> Instead of the fifty percent tax rate on sport betting revenue currently levied on the state’s monopolist, the proposed bill would have dropped that the rate down to eighteen percent, which proponent lawmakers argued would nonetheless create a “greater volume of wagering and online usage.”<sup>82</sup>

Finally, Florida’s online sports betting monopoly has sparked a monumental legal debate concerning the relationship between online sports betting markets and tribal gaming. The Seminole Tribe of Florida, through a compact with the state pursuant to the Indian Gaming Regulatory Act (IGRA), has the

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See *supra* Part I.B.2.b.

<sup>79</sup> See Hoffer, *supra* note 51.

<sup>80</sup> Beare, *supra* note 62.

<sup>81</sup> See Pat Evans, *Delaware Sports Betting Remains BetRivers Monopoly For Now*, LEGAL SPORTS REP. (July 8, 2024), <https://www.legalsportsreport.com/190247/bill-delaware-sports-betting-falters-2024/> [<https://perma.cc/X2ZE-623D>].

<sup>82</sup> See *id.*; see also DE. INTERNET SPORTS LOTTERY LEGIS. WORKING GRP., REPORT TO THE HOUSE OF REPRESENTATIVES, H.R. 152 (Dec. 1, 2023), <https://legis.delaware.gov/TaskForceDetail?taskForceId=447> [<https://perma.cc/XW8Q-DDRR>].

exclusive right to provide sports betting in the state.<sup>83</sup> When renegotiating the tribal-state compact in 2021, Florida Governor Ron DeSantis extended this exclusivity to online sports betting, even though the wagering would take place off of tribal reservations.<sup>84</sup> Competing, non-tribal casinos, which were then effectively barred from offering online sports betting products, sued in federal court to set aside the compact.<sup>85</sup> The casinos argued, principally, that IGRA compacts can only regulate gaming on tribal land and that the authorization of online sports betting under the compact was in violation of the Act.<sup>86</sup> The District Court for the District of Columbia granted the casinos' request to set aside the compact, as it found that the compact should have been rejected by the Secretary of the Interior for violating IGRA.<sup>87</sup> However, the D.C. Circuit Court then reversed the lower court's opinion and reinstated the compact.<sup>88</sup> The casinos opposing the enforcement of the compact petitioned the Supreme Court for certiorari, but the Court denied the petition.<sup>89</sup> As such, the Seminole tribe, which then partnered with HardRock Bet to launch its online sports betting platform,<sup>90</sup> maintained its online sports betting monopoly in the state.<sup>91</sup>

The legal developments in Florida may have dramatic consequences across the country, particularly for states with strong

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<sup>83</sup> See Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721 (1988); Doug Greenberg, *How Supreme Court's Florida Ruling Will Impact U.S. Betting*, ESPN (June 26, 2024), at 06:48 ET), [https://www.espn.com/espn/betting/story/\\_/id/40422353/sports-online-betting-supreme-court-decision-florida-california-impact](https://www.espn.com/espn/betting/story/_/id/40422353/sports-online-betting-supreme-court-decision-florida-california-impact) [https://perma.cc/YXD4-2YUW].

<sup>84</sup> Hernandez, *supra* note 62.

<sup>85</sup> W. Flagler Assocs. v. Haaland, 573 F.Supp.3d 260 (D.D.C. 2021).

<sup>86</sup> *Id.* at 263.

<sup>87</sup> *Id.*

<sup>88</sup> W. Flagler Assocs., Ltd. v. Haaland, 71 F.4th 1059, 1062 (D.C. Cir. 2023).

<sup>89</sup> W. Flagler Assocs., Ltd. v. Haaland, 144 S. Ct. 2671 (2024) (mem.).

<sup>90</sup> See *Florida Sports Betting*, HARDROCK BET, <https://www.hardrock.bet/florida/> (last visited Jan. 1, 2026) (“Hard Rock Bet, and more specifically the Seminole Tribe of Florida, offer statewide sports betting based on a 30-year exclusive gaming compact. As a result, Hard Rock Bet is the ONLY legal sports betting option for Floridians.”).

<sup>91</sup> See Greenberg, *supra* note 83.

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tribal presences that have yet to legalize sports betting. Alabama, which only has one federally recognized tribe, may follow in Florida's footsteps should it choose to legalize sports betting.<sup>92</sup> It will be even more interesting to follow whether California chooses to leverage the Florida precedent. In 2022, a California ballot initiative that would have authorized sports betting only on tribal lands failed, but permitting online wagering statewide through host servers located on tribal reservations, as in Florida, may attract sufficient public support to bring sports betting to the state.<sup>93</sup> More generally, the outcome in Florida has dramatically altered the allocation of power between Native American tribes and commercial gaming entities, signaling that DraftKings, FanDuel, and other operators looking to consolidate market power may need to pursue tribal partnerships to access currently untapped markets.

## II. "JUSTIFIED MONOPOLIES" FRAMEWORK

The concentration of market power typically elicits concerns about anticompetitive behavior, as monopolist firms can leverage their market share to unsettle the price-taking model of a competitive market. Monopolists can set prices to maximize their own profits, which typically results in higher prices for consumers, lower quality goods, and diminished innovation.<sup>94</sup> Even a market with a limited number of competing firms is not insulated from these effects. Firms with enough combined market power can coordinate their conduct to behave as a single monopolist, thereby harming consumers much as they would be harmed in a market with an actual monopolist.<sup>95</sup>

Despite these concerns, monopolies and concentrations of market power in a select few firms have been defended in other industries as "justified monopolies". One example of justified

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See, e.g., Adam Hayes, *Understanding Monopoly: Its Types, Market Impact, and Regulatory Measures*, INVESTOPEdia (Sept. 26, 2025), <https://www.investopedia.com/terms/m/monopoly.asp> [<https://perma.cc/6HUH-QSZK>].

<sup>95</sup> See *supra* Part I.B.2 for a discussion of coordinated effects.

monopolies arises in the context of government regulation intended to curb public health risks.<sup>96</sup> For addictive substances and activities that also pose some risk of harm, governmental bodies have often either permitted or participated in monopolies, with the sale of alcohol serving as a prime example.<sup>97</sup> State monopolies can ensure the purity of supply of the regulated good, facilitate effective tax collection, discourage illicit markets, substitute private interests with public interests, and they also allow governments to exercise direct control over the substance or activity's environment.<sup>98</sup> In general, "a public monopoly can operate as an effective strategy, making the commodity legally available but within restrictions which limit the harm."<sup>99</sup> In fact, "[a]s an instrument for public health, [public monopolies] [are] generally more effective than the alternative of a licensed private-enterprise commercial market."<sup>100</sup>

Further, while a typical monopoly results in a loss of social welfare from the monopolist "taking a larger share of what he knows . . . will be a smaller pie," certain monopolies can be justified on the grounds that they produce "positive gains for society as a whole."<sup>101</sup> These positive gains manifest most clearly in the form of innovation. Governments may tolerate a monopolist where it "creates the appropriate incentives to sow today and remain secure in the knowledge that they can harvest tomorrow."<sup>102</sup> Because innovation is central to effective competition, the concentration of market power allows for such innovation to take place.<sup>103</sup> Economist Joseph Schumpeter advocated for anti-trust policy to consider the achievement of long-term competition, which short-term market power may aid in by shifting the focus of competition onto

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<sup>96</sup> Richard A. Epstein, *Justified Monopolies: Regulating Pharmaceuticals and Telecommunications*, 56 CASE W. RES. L. REV. 103, 103–04 (2005).

<sup>97</sup> Robin Room & Jenny Cisneros Örnberg, *Government Monopoly as an Instrument for Public Health and Welfare: Lessons for Cannabis from Experience with Alcohol Monopolies*, 74 INT'L J. DRUG POL'Y 223, 224 (2019).

<sup>98</sup> *Id.* at 225.

<sup>99</sup> *Id.* at 227.

<sup>100</sup> *Id.*

<sup>101</sup> Epstein, *supra* note 96, at 106.

<sup>102</sup> *Id.* at 108.

<sup>103</sup> Edward S. Mason, *Schumpeter on Monopoly and the Large Firm*, 33 REV. ECON. & STAT. 139, 139 (May 1951).

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“competition from the new commodity, the new technology, the new source of supply, the new type of organization . . . — competition which commands a decisive cost or quality advantage and which strikes not at the margins of the profits and their outputs of the existing firms but at their foundations and their very lives.”<sup>104</sup> Schumpeter, notably, found that competition is not necessarily stymied, at least in the long-term, by concentrations of market power, as firms compete to assume that very market power.<sup>105</sup> Positive gains are thus made by society through firms competing to be the exclusive provider of whatever good or service they develop for the public to consume.<sup>106</sup>

This incentive structure explains why governments often allow individuals to monopolize property rights. One can have *exclusive* ownership over property, in the hopes that they cultivate this land and with the knowledge that the power of the state will enforce this exclusivity. Positive gains can be extracted notwithstanding the exclusivity of property ownership, particularly in the furtherance of public welfare. As such, real property exemplifies that a concentration of market power may very well be appropriate when doing so would further goals attached to improving or maintaining public health.

Similar to the property monopolies mentioned directly above, justified monopolies appear in the context of the pharmaceutical industry, where firms have been granted authority to maintain patent monopolies.<sup>107</sup> In a world without patent monopolies, inventors are disincentivized to innovate, potentially fearing that competitors who do not bear the high up-front costs of innovation will come along and profit off the inventor’s ideas.<sup>108</sup> As such, “the patent monopoly is fully justified by the increased productivity that it spawns.”<sup>109</sup> With a system of patents, an inventor can monopolize the fruits of their labor for a limited period of time,

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<sup>104</sup> JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, & DEMOCRACY 84 (1943).

<sup>105</sup> *Id.* at 84–85.

<sup>106</sup> *Id.*

<sup>107</sup> Epstein, *supra* note 96, at 109–10.

<sup>108</sup> *Id.* at 110.

<sup>109</sup> *Id.*

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protected by the power of the State. Although patent monopolies have been heavily criticized in contemporary society,<sup>110</sup> especially in the context of pharmaceuticals for driving up consumer prices, there is certainly a valid argument in that “consumers do far better when they have a product sold for a monopoly price than they do if they have no product at all,” and “[a]ccordingly, it is in the public interest to give strong protection, once a product is made, in order to speed it to market.”<sup>111</sup>

A similar argument has been made with regards to network monopolies in telecommunications. Local governments give telecommunications companies legal monopolies in specified territories to provide a necessary incentive to build the network in the first place, which is a high-cost endeavor (much like the research and development that goes into pharmaceuticals).<sup>112</sup> In return, the legal monopolist agrees to be subject to a certain level of regulation once the network is in place, with the purpose of “bring[ing] the rate of return that the company receives down to a competitive level.”<sup>113</sup> Such monopolies require balancing fair consumer prices against ensuring that firms reap the benefits of their substantial outlays.<sup>114</sup>

Both examples of justified monopolies rely on an agreement between the State (or individual states) and the regulated firm, also known as the legal monopolist. The firm must first perform its end of the bargain by developing the necessary product or infrastructure, and then the State must then use its regulatory power to let the firm accrue the anticipated benefits. However, when the government demonstrates a tendency to renege, firms are disincentivized from investing over an extended time horizon.<sup>115</sup> As such, in creating justified monopolies, the State must be clear in setting the rules of

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<sup>110</sup> See, e.g., Giovanni Dosi et al., *Big Pharma and Monopoly Capitalism: A Long-term View*, 65 STRUCTURAL CHANGE & ECON. DYNAMICS 15 (2023) (discussing the idea that patent monopolies create legal barriers to innovation over time).

<sup>111</sup> Epstein, *supra* note 96, at 116.

<sup>112</sup> *Id.* at 126.

<sup>113</sup> *Id.* at 126–27.

<sup>114</sup> *Id.* at 127.

<sup>115</sup> *Id.* at 133–34.

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its bargain with the firm. When done so successfully, then the positive gains associated with such monopolies may accumulate.

### III. UNJUSTIFIED ONLINE SPORTS BETTING MONOPOLIES

At first glance, the online sports betting industry appears to satisfy the preconditions for justified monopolies at the state level. The product poses significant public health concerns that may be regulated more effectively when only one firm is in operation; states can impose higher tax rates on a monopolist firm; and concentrated market power may foster long-term innovation in the industry. Nonetheless, despite these potential advantages, online sports betting is likely better suited to a competitive model. As such, states should closely weigh the costs and benefits in granting an operator a monopoly and trust the competitive process.

#### A. *Potential Benefits of State-Level Online Sports Betting Market Power*

In a limited sense, the justified monopoly framework can apply to online sports betting monopolies at a state level. States may generate significant tax revenues for welfare-maximizing causes from a sole online sports betting operator. Additionally, states may be better positioned to protect consumer interests in a monopolist model. Nonetheless, for reasons argued below, these potential benefits do not outweigh the likely costs of such a model.

##### 1. *Economic Gains*

From a strictly financial perspective, states can benefit from sanctioning online sports betting monopolies. As demonstrated, states that affirmatively grant monopoly power to one firm generally levy higher tax rates than those with fully competitive markets.<sup>116</sup> This arrangement reflects the reciprocal benefits conferred to each party: the operator gets exclusive operating rights in the entire state market, and the state levies a higher tax rate on the operator. If consumers don't discriminate between operators, such that the

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<sup>116</sup> See *supra* Part I and accompanying discussion of states' varying tax rates.

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presence of one platform to the exclusion of others does not discourage betting, then legal sports betting monopolies would produce significant tax advantages for the state. However, as the following section argues, this is a difficult assumption to make.

Additionally, the very nature of the online sports betting product itself, including the platform and the types of wagers placed, is so unique that it may be relatively insulated from the anticompetitive concerns typically associated with concentrated market power. Gambling operators are not traditional price-taking firms, as their “prices” come from setting odds.<sup>117</sup> Because the odds—which control the payouts to both the sportsbook and the winning bettors—are changed by bettors’ behavior, whereby a large volume of wagers on one side of a bet shifts the odds to be “longer” for future bettors on the other side of the bet and allows them to earn more if their wager is correct, it seems unlikely that a monopolist operator can manipulate the odds to solely benefit their own payouts.<sup>118</sup> However, additional research may be needed to compare pricing differences between monopoly and competitive sports betting markets.

## 2. *Welfare Gains*

In addition to the potential economic benefits, there is a valid argument that allowing online sports betting monopolies can alleviate public health and welfare concerns in the industry. Especially considering that gambling is a highly addictive activity with dramatic ramifications on bettors, their families, those around them, and society writ large, states should take every step possible in mitigating and preventing the harmful effects of sports betting, which a concentration of market power may assist in. In the context of alcohol and cannabis, a state monopoly—akin to Rhode Island

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<sup>117</sup> This creates a margin between the amount losing bettors pay and the amount winning bettors are paid, such that the saying “the house always wins” holds true.

<sup>118</sup> James Chen, *Bookie: Definition, Meaning, Duties, How They Make Money, and Fee*, INVESTOPEDIA (Sep. 28, 2025), <https://www.investopedia.com/terms/b/bookie.asp> [https://perma.cc/D9VM-PLZQ].

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and Montana's exclusive operation of online sports betting through the state-owned lottery—might ensure the integrity of supply, enhance effective tax collection, discourage illicit markets, replace private interests with public interests, and control the conditions under which the activity occurs.<sup>119</sup> In sum, state monopoly of online sports betting might allow for much tighter control over a potentially harmful product.

Additionally, because market power may result in state tax gains not present in competitive markets, having a monopoly model—whether state owned and operated or privately operated with a state-sanctioned monopoly—can allow states to put that revenue towards initiatives addressing gambling-related social issues. States can follow the lead of Colorado, for example, which has set aside revenue for problem gambling services.<sup>120</sup> Additionally, a plethora of states invest these revenues in other socially beneficial causes, such as education funds,<sup>121</sup> general addiction funds,<sup>122</sup> and gambling impact funds.<sup>123</sup> Online sports betting monopolies may therefore allow states to both protect bettors from harmful outcomes and provide a tax base to support welfare-enhancing causes.

### 3. “Schumpeterian” Long-Term Gains

State-level online sports betting monopolies stand to realize gains in line with those originally posited by Schumpeter in his critiques of United States antitrust policy's hyper-focus on breaking up market power, rather than properly delivering competition.<sup>124</sup> Schumpeter demanded a refocusing of competition law on the long-term effects of market power on innovation, along with a reconsideration of the true source of competition, both of which can be applied to state-level market power in online sports betting.

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<sup>119</sup> Room & Cisneros Örnberg., *supra* note 97, at 225–26.

<sup>120</sup> Editorial Staff, *All About Colorado Sports Betting Handle And Revenue*, BET COLO. (Jan. 31, 2025, at 09:10 ET), <https://www.betcolorado.com/revenue-report> [<https://perma.cc/DM52-ZLXN>].

<sup>121</sup> *See* STATE OF THE STATES, *supra* note 2, at 43.

<sup>122</sup> *See id.* at 99.

<sup>123</sup> *See id.* at 32.

<sup>124</sup> *See* SCHUMPETER, *supra* note 104, at 79, 92.

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As such, market power may, in fact, enhance innovation in the industry.

B. *Likely Harms of Online Sports Betting State-Level Monopolies*

Despite the arguments in favor of market power, online sports betting is best suited for a competitive model. Many of the aforementioned benefits of market power can be achieved through a competitive industry, and market concentration can introduce new harms with negative externalities for consumers.

First, economic theory dictates that a monopolist is typically incentivized to raise price and lower quantity.<sup>125</sup> Although it is unclear to what extent this phenomenon currently takes place in the online sports betting market, states should be incredibly wary of the effects of a monopoly on consumer prices. Because creating an online sports betting monopoly typically requires giving a firm a lockup on competition for an extended period of time, the consequences of selecting the monopolist model, particularly the disadvantages for consumers, could be severe. Consumers may face higher prices and inferior products, potentially driving them to use illicit wagering sites that operate beyond the reach of state regulation.

Second, while states can benefit from tax advantages of granting a monopoly to an online sports betting operator, it is not clear that the higher tax rates associated with market power are associated with higher *net* state revenues. The argument in favor of a monopoly assumes that the same number of bettors participate in the market regardless of whether it is a monopoly or competitive market—and regardless of *who* the monopolist is. However, a lack of options in the online sports betting market could push consumers out of the market or toward illicit, offshore operators. In fact, Delaware's Internet Sports Lottery Legislative Working Group has suggested that the state may be losing revenue by having an

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<sup>125</sup> See generally John B. Clark, *Monopolies and the Law*, 16 POL. SCI. Q. 463 (1901); Lina Khan & Sandeep Vaheesan, *Market Power and Inequality: The Antitrust Counterrevolution and its Discontents*, 11 HARV. L. POL. REV. 235 (2017); Jonathan B. Baker & Steven C. Salop, *Antitrust, Competition Policy, and Inequality*, 104 GEO. L. J. 1 (2015).

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exclusive agreement with BetRivers, rather than pursuing a competitive model.<sup>126</sup> The study suggested that bettors have specific, idiosyncratic preferences of operators and that a competitive market could, in turn, lead to increased tax revenues by allowing operators that reflect the spectrum of consumer preferences into the market.<sup>127</sup> While certainly not conclusive, these findings cast doubt on the assumption that the concentration of online sports betting market power in a monopolist at the state level is necessarily associated with higher tax revenues. Although monopolist states can impose higher tax rates on operators, there is no evidence that such increased tax rates correspond with actual increased revenues, given the idiosyncratic platform-choice preferences that consumers may display.

Given all of this, states should leave it to the competitive process to determine which sports betting operators consumers prefer, rather than intervening and imposing a given operator on constituents. Consumers in a competitive market are better judges of which operators are most deserving of market share, as opposed to states artificially selecting an operator to assume the entire state market. The nationwide duopoly of DraftKings and FanDuel demonstrates that consumers do, in fact, have distinct preferences towards certain firms over others, such that states should allow the competitive process to respond to market pressures and apportion market share accordingly.

Finally, the most convincing argument in favor of justifying online sports betting monopolies is that it allows states to more closely regulate the monopolist, in exchange for the artificially created market share the state confers on them. However, consumer welfare concerns may be better addressed by a competitive model. The pro-monopolist argument is premised on the assumption that the state can adequately choose an operator that will maximize the welfare of the state's constituents. It is far more likely that any given state is ill-suited to make this decision, and competition among firms will better sift through which are best for the state's consumers. Faith in the ability of state legislators to judge which operators are

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<sup>126</sup> See Evans, *supra* note 81.

<sup>127</sup> See DE. INTERNET SPORTS LOTTERY LEGIS. WORKING GRP., *supra* note 82.

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best for their constituents may be misguided when a competitive process would arrive at a result more directly. As such, the monopoly model may very well lead to outcomes in states where the state provides a lockup on competition that ends up being suboptimal in terms of consumer protection. While the state may have increased regulatory scrutiny over the operator, this does not fix the problem of simply choosing a *bad* firm relative to other options across the online sports betting landscape. Additionally, a competitive model does not mean that operators will be completely unregulated: states with competitive online sports betting marketplaces still have discretion over which operators to grant licenses to and can retain discretion to revoke licenses at any time should a firm's actions warrant it. Finally, a monopolist operator may be more inclined to relax their desire to maximize the welfare of consumers and simply maximize the revenues captured by their market power. Therefore, even the consumer welfare concerns of the online sports betting industry as a whole may be better addressed by a competitive model, as opposed to state-level monopolies.

Competition in the online sports betting industry can also just as reasonably encourage innovation among operators. Operators in fierce competition with one another will need to be on the cutting edge and offer consumers unique options to attract them to their platforms. This can be demonstrated by DraftKings and FanDuel's competition with one another on a nation-wide scale.<sup>128</sup> The two firms know they need to provide better, cheaper wagering products than their competitor, and they pursue innovation as a means to undercut their competitor's market share. On the other hand, a monopolist operator with a long-term contract with the state may be increasingly likely to decrease investment in innovation and long-term projects in the hope of minimizing costs without decreasing revenues.

C. *Comparative Approach: Regulation of Securities Markets*

In light of the potential harms of concentrating market power in online sports betting, the United States securities markets

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<sup>128</sup> See Roberts, *supra* note 8 and accompanying discussion.

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provide an example of a market where consolidation and competition both have relative merits and have been debated for centuries. As such, the Securities and Exchange Commission recognized the importance of competition in equity markets by adopting the Regulation National Market System (Reg NMS) in 2005.<sup>129</sup> This crucial regulation promotes competition by safeguarding transparency, market access, and efficient and fair pricing.

Reg NMS can, and should, be used as a guide for the online sports betting industry. The regulation intensifies competition between exchanges, forcing these exchanges to compete on price to attract orders from investors.<sup>130</sup> It also, importantly, focuses on increasing overall market transparency, so all participants have access to full information on the best bids on the market.<sup>131</sup> Reg NMS not only improves prices and transparency for consumers, but it also improves the overall quality of the exchange market.<sup>132</sup> The competition between exchanges pushes them to continue driving innovation, including generating quicker and more efficient trade execution, which similarly has positive externalities on consumers. Finally, Reg NMS gives investors more options on the marketplace, which they can sift through until they find the exchange that best suits their needs. This high level of consumer choice enhances the welfare of investors engaged in equity markets.<sup>133</sup>

Much like online sports betting, which operates under state-level regimes, U.S. equity markets were far more disjointed and regionalized prior to Reg NMS, and Reg NMS was a significant step in nationalizing U.S. securities markets.<sup>134</sup> The SEC recognized that traders were getting different prices on different exchanges and

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<sup>129</sup> Regulation NMS, 17 C.F.R. §§ 242.600–14 (2025).

<sup>130</sup> *Id.* § 242.611 (discussing the Order Protection Rule).

<sup>131</sup> *Id.* § 242.603 (discussing Market Data Rules).

<sup>132</sup> Adam Hayes, *Regulation NMS*, INVESTOPEDIA (Aug. 13, 2022), <https://www.investopedia.com/terms/r/regulation-nms.asp> [https://perma.cc/M5G6-MS6B].

<sup>133</sup> *Id.*

<sup>134</sup> Transformation & Regulation: Equities Market Structure, 1934 to 2018, Sec. and Exch. Comm'n Hist. Soc'y, [https://www.sechistorical.org/museum/galleries/msr/msr04d\\_reg\\_nms.php](https://www.sechistorical.org/museum/galleries/msr/msr04d_reg_nms.php) [https://perma.cc/5CL9-2YLW] (last visited Jan. 20, 2026).

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wanted to create a national market with fair and efficient pricing.<sup>135</sup> In online sports betting, consumers are limited to the products that are made available in their state, with some consumers far more restricted than others in their offerings. A bettor in a monopolist state like Delaware is far worse off—from a platform-choice perspective—than a bettor in a competitive state like New Jersey. Although it is unclear whether bettors in monopolist states suffer from worse pricing, at the very least they exist in markets less responsive to their needs and preferences. A shift towards a national online sports betting market like that created by Reg NMS may assuage this issue. It is important to recognize that equity markets are very different from online sports betting markets, especially societally, with the latter being the source of great political and social divide. Nonetheless, lessons can still be extracted from Reg NMS, namely that competition in the online sports betting marketplace can lead to better prices and a higher quality product without sacrificing the protections of consumers. Just as Reg NMS and equity market competition can ensure the safety of investors in what could be a dangerous marketplace if not regulated properly, competition in the online sports betting market can respond to consumer and state concerns of consumer welfare by rewarding operators who create the safest, most reliable products being at the forefront of the market.

#### CONCLUSION

The U.S. regulatory landscape governing online sports betting is far from its final form. While the industry continues to grow and develop, regulators should closely scrutinize whether the current governing form best fits the needs of the industry and, more importantly, its consumers. At first glance, state-level monopolies of online sports betting industries—whether they are state-run monopolies or exclusive contracts with an existing operator—appear to fit within the established framework of “justified monopolies.” Such monopolies may arguably protect consumer welfare through closer control of operators and may confer tax

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<sup>135</sup> *Id.*

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benefits to monopolist states. However, online sports betting is ultimately an industry best suited for a competitive model. An approach that allows for the concentration of market power within states risks harming both the state itself and its constituents. States are inadequately equipped to determine which firm out of the entire marketplace would make the best monopolist for their residents, and they risk introducing a host of new concerns into the market. As such, states should let the competitive process dictate which firms are preferable, whether that comes in the form of lower prices, more sought-after products, or superior consumer protection.

Much like the Securities and Exchange Commission did with Reg NMS, the online sports betting industry may benefit from transitioning into a national marketplace, where competition between firms can generate significant positive externalities for consumers and the future of the industry writ large. One limitation of this approach is that it would require some level of national consensus on the propriety of sports betting, which is not yet the case. However, as more states adopt legislation legalizing sports betting (and its online counterpart), an approach analogous to the U.S. equities market could gain more traction. The current disjointed nature of online sports betting regimes across the U.S. risks leaving value on the table, which may be assuaged by a truly competitive national marketplace.

If a national online sports betting market is eventually considered or adopted, increased attention must also be paid to the potential for a national duopoly between FanDuel and DraftKings. Although this duopoly in today's marketplace is limited by the conferral of regulatory authority on states, a national marketplace could raise anti-competitive concerns.

One final development of note is the recent proliferation of prediction markets, such as Kalshi and Polymarket.<sup>136</sup> These platforms are able to skirt sports betting regulations by touting their services as offering futures contracts, as opposed to being classified

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<sup>136</sup> See, e.g., Doug Greenberg & Shwetha Surendran, *Scandals, Prediction Markets: Is 2025 a Turning Point for Sports Betting?*, ESPN (Dec. 19, 2025), [https://www.espn.com/espn/betting/story/\\_/id/47337056/scandals-prediction-markets-2025-turning-point-sports-betting](https://www.espn.com/espn/betting/story/_/id/47337056/scandals-prediction-markets-2025-turning-point-sports-betting) [https://perma.cc/4V8N-RRDS].

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as a gambling operator.<sup>137</sup> Instead of users placing bets against the operator itself with the operator keeping losses (as a sports betting operator does), prediction markets allow for users to trade futures contracts against each other, much like a traditional futures contract in the stock market, for example.<sup>138</sup> With this distinction, prediction markets are able to reach users who wish to sports bet in states that have yet to legalize the practice, and have done so with much success. In fact, on Kalshi alone in September 2025, over \$2.5 billion in sports contracts were traded.<sup>139</sup> From a regulatory standpoint, prediction markets are governed by the Commodity Futures Trading Commission, which has taken a much more *laissez-faire* approach under the second Trump administration, much to the chagrin of state officials.<sup>140</sup> It will remain to be seen how, if at all, prediction market operations will be constrained by regulation and the impact that these products will have on state tax revenues and the sports betting market writ large.

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<sup>137</sup> Ben Blatt & Amy Fan, *Is Sports Betting Illegal in Your State? Not if You Call It a Prediction Market.*, N.Y. TIMES (Oct. 5, 2025), <https://www.nytimes.com/2025/10/05/upshot/sports-betting-prediction-markets.html> [<https://perma.cc/U3LE-G4BK>].

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

## APPENDIX

TABLE I  
National Market Share of Sports Betting Operators<sup>141</sup>

This table presents the respective market shares of the main sports betting operators in the United States by gross gaming revenue (GGR). Data has been compiled by Casino Reports from state filings and has last been updated October 2025.

<b>Sportsbook</b>	<b>Market Share</b>
DraftKings	35.2%
FanDuel	29.6%
BetMGM	7.6%
Fanatics	6.4%
Caesars	4.0%
ESPN Bet	2.9%

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<sup>141</sup> Brett Smiley, *US Sports Betting Data – Market Share Stats By Brand, Gross Gaming Revenue, Parlay Handle & Hold*, CASINO REPS. (Oct. 8, 2025), <https://www.casinoreports.com/us-sports-betting-market-stats-database/> [<https://perma.cc/RL5P-S3WM>].

TABLE II  
Tax Rate as a Function of Number of Operators

This table presents which states have online sports betting regimes with many (at least 4) competing firms that either include (*Fully Competitive Markets with DraftKings and FanDuel*) or do not include (*Fully Competitive Markets without DraftKings and FanDuel*) DraftKings and FanDuel; which states concentrate competition with or without DraftKings and/or FanDuel (*Concentrated Competition with/without DraftKings and FanDuel*, respectively); and which states have online sports betting monopolies that either include or exclude DraftKings and FanDuel (*DraftKings/FanDuel Monopoly* and *Non-DraftKings/FanDuel Monopoly*, respectively). For each state, this table also includes the number of licensed operators, who those operators are for the concentrated markets and monopolies, and what tax rate the state levies on online sports betting operators. All data have been collected from the American Gaming Association's State of the States on Sports Betting in the United States<sup>142</sup> and the Tax Foundation,<sup>143</sup> and have last been updated November 2025.

State	Number of Current Licensed Operators	Online Sports Betting Tax Rate <sup>144</sup>
<b>Fully Competitive Markets with DraftKings and FanDuel</b>		
Arizona	13	10%
Colorado	13	10%
Illinois	9	15%
Indiana	11	9.5%
Iowa	12	6.75%
Kansas	6	10%
Kentucky	8	14.25%
Louisiana	8	15%

<sup>142</sup> STATE OF THE STATES, *supra* note 2.

<sup>143</sup> See Hoffer, *supra* note 51.

<sup>144</sup> For every state except for Tennessee, this tax is levied as a percent of revenue. In Tennessee, the tax is 1.85% of "handle" (which refers to the total amount wagered in the state, before payouts to winners).

Maryland	11	15%
Massachusetts	7	20%
Michigan	12	8.4%
New Jersey	14	14.25%
New York	9	51%
North Carolina	8	18%
Ohio	15	20%
Pennsylvania	12	36%
Tennessee	12	--
Virginia	12	15%
West Virginia	9	10%
Wyoming	5	10%
<b>Fully Competitive Markets without DraftKings and FanDuel</b>		
Nevada	12	6.75%
<b>Concentrated Competition with DraftKings and/or FanDuel</b>		
Connecticut	3 (DraftKings, FanDuel, Fanatics)	13.75%
Maine	2 (Caesars, DraftKings)	10%
Vermont	3 (DraftKings, FanDuel, Fanatics)	FanDuel: 33% DraftKings: 31% Fanatics: 31%
<b>Concentrated Competition without DraftKings and FanDuel</b>		
Arkansas	3	13% on the first \$150 million in revenue, 20% thereafter
Mississippi	2	11-12% <sup>145</sup>
<b>DraftKings/FanDuel Monopoly</b>		
New Hampshire	1 (DraftKings)	51%
Oregon	1 (DraftKings)	51%

<sup>145</sup> 8% in state tax and 3-4% in local tax.

<b>Non-DraftKings/FanDuel Monopoly</b>		
Delaware	1 (BetRivers Sportsbook)	50%
Florida	1 (HardRock Bet)	13.75% of tribal-generated sports betting revenue (will increase to 15.75% if the tribe does not reach a marketing deal with at least three pari-mutuel operators by the time the tribe commences sports betting operations)
Montana	Sports Bet Montana/Montana Lottery	100%
Rhode Island	Sportsbook Rhode Island (Rhode Island Lottery in partnership with International Game Technology and William Hill)	51%

TABLE III  
Fully Competitive Markets Tax Rate Summary Statistics

This table presents the summary statistics of the tax rates of *Fully Competitive Markets with and without DraftKings and FanDuel*. Outliers were excluded using  $Q1 - 1.5 * IQR$  and  $Q3 + 1.5 * IQR$ , and New York and Pennsylvania were found to be outliers.

Q1	Q3	IQR	Median	Median (adjusted for outliers)	Mean	Mean (adjusted for outliers)
10 %	15.75 %	5.75 %	14.25 %	14.25%	15.75 %	13.01%