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# The "Las Vegas Loophole" and the Current Push in Congress Towards a Blanket Prohibition on Collegiate Sports Gambling

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# THE "LAS VEGAS LOOPHOLE" AND THE CURRENT PUSH IN CONGRESS TOWARDS A BLANKET PROHIBITION ON COLLEGIATE SPORTS GAMBLING

AARON J. SLAVIN\*

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*To the true college sports fan, March can be the most exciting month in college athletics. Popularly known as "March Madness," this is the time to take pride in our hometown school or alma mater. However, as we sit back with our friends and family to enjoy the games and fill out our brackets, we should not lose sight of the fact that any particular game could be fixed. And while we may never know if that missed shot at the buzzer was intentional, to think that it couldn't happen would be both foolish and naïve.*

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## I. INTRODUCTION

In 1992, federal legislation known as the Professional and Amateur Sports Protection Act<sup>1</sup> (PASPA) was signed into law. PASPA prohibits the expansion of state-sanctioned, authorized or licensed gambling on amateur and professional sporting events in the United States.<sup>2</sup> However, PASPA exempted several states that already conducted, or were contemplating, some form of amateur or professional sports gambling within their respective jurisdiction.<sup>3</sup> Now, after almost ten years, and several highly publicized point shaving scandals in our nation's universities, Congress is reconsidering its decision to exempt certain states from PASPA's reach.

## II. THE POWER OF CONGRESS TO REGULATE SPORTS GAMBLING

Throughout our nation's history, the federal government has largely deferred to the States in gambling matters. However, in the early 1950's, congressional investigations into the activities of organized crime in the gambling industry resulted in an enhanced federal role. The federal government's role was further enhanced during the 1960's through a series of measures aimed at fighting organized crime. In the early 1970's, Congress took another step in its effort to combat organized crime by enacting the Racketeering Influenced and Corrupt Organizations (RICO) statutes.<sup>4</sup> Finally, in 1992 legislation aimed specifically at sports wagering, PASPA, was enacted.

In assessing Congress's power to regulate sports gambling, I have placed the various regulatory measures into three distinct time periods. I will first discuss the federal legislation prior to the enactment of PASPA in 1992. Secondly, I will fully explore PASPA, its constitutionality, and the various attacks on it. Lastly, I will describe the current legislation in Congress, which seeks to expand the reach of PASPA by providing a blanket prohibition on collegiate sports gambling.

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<sup>1</sup> 28 U.S.C. §§ 3701-04 (2000).

<sup>2</sup> 28 U.S.C. § 3702 (2000).

<sup>3</sup> 28 U.S.C. § 3704 (2000).

<sup>4</sup> See *infra* text accompanying notes 18, 19.

A. *Federal Legislation Prior to the Professional and Amateur Sports Protection Act*

In the early 1950's, Congress enhanced the federal government's role in investigating the activities of organized crime in the gambling industry. This was done through the creation of the Special Rackets Squad of the FBI and the enactment of the Gaming Devices Act of 1951 (commonly referred to as the Johnson Act).<sup>5</sup> The Johnson Act gave the federal government – specifically the FBI – its first real jurisdiction over illegal gambling by making it a crime to transport gambling devices across state lines to locations not specifically exempted by local or state law.<sup>6</sup>

The federal government expanded its regulatory role over organized crime, and the gambling activity associated with it, through the 1961 Wire Communications Act (“Wire Act”).<sup>7</sup> The Wire Act prohibits the use of wire communications (telephones, telegrams, etc.), by persons or organizations engaged in the business of wagering, to transmit bets or wagers, or information that assists in the placing of bets or wagers.<sup>8</sup> In drafting the Wire Act, Congress took precise care to include the language “on any sporting event or contest” when expanding on the phrase “the placing of bets or wagers.”<sup>9</sup> As illustrated in *Martin v. United States*,<sup>10</sup> the Wire Act was “part of an omnibus crime bill that recognized the need for independent federal action to combat interstate gambling operations.”<sup>11</sup>

In addition to the Wire Act, a complimentary enactment known as the Interstate and Foreign Travel or Transportation in Aid of Racketeering

<sup>5</sup> 15 U.S.C. § 1175 (2000).

<sup>6</sup> The Johnson Act was later amended to exempt cruise ships (but not airlines) either originating from or bound for the United States.

<sup>7</sup> 18 U.S.C. § 1084 (2000).

<sup>8</sup> 18 U.S.C. § 1084(a) (2000).

<sup>9</sup> *Id.*

<sup>10</sup> *Martin v. United States*, 389 F.2d 895 (5th Cir. 1968).

<sup>11</sup> *Id.* at 898. See also, *United States v. McDonough*, 835 F.2d 1103, 1104-05 (5th Cir. 1988) (stating that the legislative history of the Wire Act sets forth a dual purpose – to assist the various states in enforcing their gambling laws and to aid in the suppression of organized gambling activities). The purpose of the bill has also been described as follows:

To assist the various States, territories, and possessions of the United States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of or the leasing, furnishing, or maintaining of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate or foreign commerce.

*Martin*, 389 F.2d 898 n.6.

Enterprises Act ("Travel Act") prohibits travel or use of the mail, either interstate or internationally, to carry on "any unlawful activity."<sup>12</sup> In defining the phrase "any unlawful activity," the Travel Act provides as an example "any business enterprise involving gambling."<sup>13</sup>

Adding to these measures are other federal laws such as the prohibition on the interstate transportation of wagering paraphernalia ("ITWP")<sup>14</sup> and the interstate transportation of gambling machines.<sup>15</sup> In addition to the foregoing series of statutes, federal law also criminalizes conspiracy to commit sports bribery<sup>16</sup> and conspiracy to obstruct law enforcement in order to facilitate illegal gambling.<sup>17</sup>

Lastly, the RICO statutes were enacted in 1971 under the Crime Control Act in an effort to combat "the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce."<sup>18</sup> A look at the legislative history behind RICO reveals the obvious conclusion that sports gambling was one of the primary operations that Congress sought to contain.<sup>19</sup>

When considering the constitutionality of these federal anti-gambling measures, federal courts have continuously rejected defendants' claims. Illustrative of this trend is *United States v. Cappetto*,<sup>20</sup> in which the Seventh Circuit held that the Organized Crime Control Act of 1970, which made it a federal offense to participate in a gambling business, is authorized by the Commerce Clause.<sup>21</sup> Similarly, in *United States v. Smaldone*,<sup>22</sup> the Tenth Circuit held that Congress acted within its power under the Commerce Clause when it enacted a federal statute that prohibited bookmaking on

<sup>12</sup> 18 U.S.C. § 1952 (2000).

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

<sup>14</sup> 18 U.S.C. § 1953 (2000).

<sup>15</sup> 15 U.S.C. § 1171 (2000).

<sup>16</sup> 18 U.S.C. § 224 (2000).

<sup>17</sup> 18 U.S.C. § 1511 (2000).

<sup>18</sup> Senate Report No. 91-617, 91st Congress, 1st Session 80 (1969).

<sup>19</sup> *Id.*

<sup>20</sup> *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

<sup>21</sup> *Id.* at 1356 (further stating that defendants' argument that Congress lacks authority to prohibit gambling "need not detain us long").

<sup>22</sup> *United States v. Smaldone*, 485 F.2d 1333 (10th Cir. 1973), *cert. denied*, 416 U.S. 936 (1974), *reh'g denied*, 417 U.S. 926 (1974). See also, *United States v. Harris*, 460 F.2d 1041 (5th Cir. 1972), *cert. denied*, 409 U.S. 877 (1972) (providing that appellants' assertion that federal gambling statute "infringes upon the rights reserved to the states under the Tenth Amendment . . . cannot be maintained with either conviction or plausibility"); *Nilva v. United States*, 212 F.2d 115, 119 (8th Cir. 1954), *cert. denied*, 348 U.S. 825 (1954), *reh'g denied*, 348 U.S. 889 (1954) (holding that Congress is not required to enact laws which are uniform in application when exercising Commerce Clause power).

sporting events. Furthermore, the court held that the statute did not violate the equal protection clause through its "unequal geographic enforcement."<sup>23</sup>

### B. *The Professional and Amateur Sports Protection Act*

In 1992, PASPA was signed into law by President George Herbert Walker Bush to ensure the integrity of athletic competitions<sup>24</sup> by prohibiting gambling on most sporting events.<sup>25</sup> Because sports gambling has a substantial effect on interstate commerce, Congress has the authority to legislate in this area under its Federal Commerce Clause power.<sup>26</sup> However, in acknowledging that sports gambling was presently legal in Nevada, Oregon, and Delaware and that elimination of such schemes in these particular states would work a harsh result, Congress exempted certain states from PASPA's proscription.<sup>27</sup>

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<sup>23</sup> *Smaldone*, 485 F.2d at 1343.

<sup>24</sup> At the time of its passage, Sen. Bill Bradley (D-NJ) said:

Based on what I know about the dangers of sports betting, I am not prepared to risk the values that sports install in youth just to add a few more dollars to state coffers. . . . State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message . . . sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling . . . sports gambling raises people's suspicions about point-shaving and game-fixing. . . . All of this puts undue pressure on players, coaches, and officials.

National Gambling Impact Study Commission, June 18, 1999 at 3-8, 9 (hereinafter *NGISC*).

<sup>25</sup> 28 U.S.C. §§ 3701-3704. Section 3702 of the Act stipulates the following:

It shall be unlawful for (1) a government entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographic references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

<sup>26</sup> U.S. CONST. art. I, § 8. This article provides: "the Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ."

<sup>27</sup> Section 3704 of PASPA states that § 3702 shall not apply to:

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990; (2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both – (a) such scheme was authorized by a statute as in effect on October 2, 1991; and (b) a scheme described in Section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually conducted in that State or other governmental entity at any time during the period beginning September

Despite its popularity, and contrary to popular belief, sports wagering in America is illegal today in all but two states. Nevada offers sports wagering through its 153 licensed sports books<sup>28</sup> and Oregon runs a state lottery game, called "Sports Action," based on games played in the National Football League.<sup>29</sup> Delaware and Montana are also permitted to have sports books by statute,<sup>30</sup> but neither state currently offers legalized sports wagering. As a result, outside of Nevada and Oregon, wagering on sports is illegal in the United States. Further, Nevada is the only state where gambling on collegiate sporting events is currently legal.

### C. Current Legislation Seeking to Modify the Professional and Amateur Sports Protection Act

Pending legislation before the U.S. House of Representatives<sup>31</sup> and Senate<sup>32</sup> is seeking to resolve any ambiguity associated with betting on collegiate sporting events by removing the exemption in PASPA, thus making it clearly illegal to gamble on college sports in every state. Proponents of this legislation believe that sports gambling is already a recognized federal issue with federal jurisdiction. In short, the desired impact of this legislation is to close what has now become known as the *Las Vegas Loophole*.

It is urged by many that Congress should carefully consider the important constitutional issues raised by the Student Athlete Protection Act, the Amateur Sports Integrity Act, and the High School and College Sports Gambling Prohibition Act. When considering Congress's Commerce Clause authority, in the years since *NLRB v. Jones & Laughlin Steel Corp.*,<sup>33</sup> Congress has had a considerably greater latitude in regulating conduct and transactions

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1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity; (3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that – (a) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and (b) any commercial casino gaming scheme was in operation in such municipality throughout the ten-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or (4) parimutuel animal racing or jai-alai games.

<sup>28</sup> Data provided by the Nevada Gaming Control Board, Tax and License Division.

<sup>29</sup> *NGISC*, *supra* note 24, at 2-14.

<sup>30</sup> 28 U.S.C. § 3704 (2000).

<sup>31</sup> H.R. 3575, 106th Cong. (2000) (known as the Student Athlete Protection Act).

<sup>32</sup> S. 2021, 106th Cong. (2000) (known as the High School and College Sports Gambling Prohibition Act), S. 2340, 106th Cong. (2000) (known as the Amateur Sports Integrity Act).

<sup>33</sup> *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

than previous case law permitted. However, in a series of cases starting with *U.S. v. Lopez*,<sup>34</sup> through the recent decision of *U.S. v. Morrison*,<sup>35</sup> the Supreme Court has held statutes unconstitutional for intruding on areas of traditional state control, despite worthy objectives and claims that Congress was acting within its Commerce Clause authority.

*Lopez* emphasized, that even under our modern, expansive interpretation of the Commerce Clause, Congress's regulatory authority is not without effective bounds.<sup>36</sup> Moreover, *Lopez* observed that modern Commerce Clause jurisprudence has "identified three broad categories of activity that Congress may regulate under its commerce power."<sup>37</sup> "First, Congress may regulate the use of the channels of interstate commerce."<sup>38</sup> "Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities."<sup>39</sup> "Finally, Congress's Commerce Clause authority includes the power to regulate those activities having a substantial relation to interstate commerce, . . . i.e., those activities that substantially affect interstate commerce."<sup>40</sup>

Applying this framework, the *Lopez* Court held that the Gun-Free School Zones Act of 1990,<sup>41</sup> which made it a federal crime to knowingly possess a firearm in a school zone, exceeded Congress's authority under the Commerce Clause.<sup>42</sup> Not only did the statute have nothing to do with commerce, it contained "no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce."<sup>43</sup>

Building upon this framework, *Morrison* similarly held that the Violence Against Women Act of 1994<sup>44</sup> was not, in any sense of the phrase, an economic activity.<sup>45</sup> Further, "the regulation and punishment of intrastate

<sup>34</sup> *U.S. v. Lopez*, 514 U.S. 549 (1995).

<sup>35</sup> *U.S. v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740 (2000).

<sup>36</sup> *Lopez*, 514 U.S. at 557.

<sup>37</sup> *Id.* at 558 (citing *Hodel v. Virginia Surface Mining & Reclamation Ass'n., Inc.*, 452 U.S. 264, 276-77 (1981); *Perez v. United States*, 402 U.S. 146, 150 (1971)).

<sup>38</sup> *Id.* (citing *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 256 (1964); *United States v. Darby*, 312 U.S. 100, 114 (1941)).

<sup>39</sup> *Id.* (citing *Shreveport Rate Cases*, 234 U.S. 342 (1914); *Southern R. Co. v. United States*, 222 U.S. 20 (1911); *Perez*, 402 U.S. at 150).

<sup>40</sup> *Id.* at 558-59 (citing *Jones & Laughlin Steel*, 301 U.S. at 37).

<sup>41</sup> 18 U.S.C. § 922(q)(1)(A) (1991).

<sup>42</sup> *Lopez*, 514 U.S. at 551.

<sup>43</sup> *Id.* at 562.

<sup>44</sup> 42 U.S.C. § 13981 (1995).

<sup>45</sup> *Morrison*, 529 U.S. at 613 (stating that "[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity").



violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States.<sup>46</sup> Simply stated, Congress lacked authority under its Commerce Clause power to enact the Violence Against Women Act of 1994.

PASPA, on the other hand, along with the currently proposed legislation in Congress which would close its *loophole*, are both distinguishable from cases like *Lopez* and *Morrison* in that legislation dealing with collegiate sports gambling clearly affects interstate commerce. Not only are NCAA games played across the country, but gamblers also cross state lines to bet on or watch these games. As a result, Congress has an interest in ensuring the uniformity of law throughout the nation.

Further, while the Supreme Court has not explicitly stated that collegiate gambling is within the power of Congress to regulate under the Commerce Clause, it has upheld statutes of a similar nature. For example, in the seminal case of *Champion v. Ames*,<sup>47</sup> the Court held that the prohibition against carrying lottery tickets across state lines was subject to Congress's power to regulate interstate commerce.<sup>48</sup> *Champion* was indicted for shipping a box of Paraguayan lottery tickets from Texas to California, in violation of the Federal Lottery Act of 1895.<sup>49</sup> The relevance of *Champion* lies in the Court's discussion of Congress' ability to legislate against "an evil . . . carried on through interstate commerce."<sup>50</sup> Furthermore, the *Champion* opinion should be read to support the proposition that Congress may regulate sports wagering on the basis that it deems such activity to be a "moral and social wrong" affecting interstate commerce.<sup>51</sup>

Likewise, the Supreme Court's decision in *Perez v. United States*,<sup>52</sup> holding that the purely intrastate activity of loan sharking affects interstate commerce and is within the Federal Commerce Clause power, is analogous to the current legislation dealing with collegiate sports gambling. In both *Perez* and PASPA (including its proposed modifications) there has been

<sup>46</sup> *Id.* at 1754.

<sup>47</sup> *Champion v. Ames*, 188 U.S. 321 (1903).

<sup>48</sup> *Id.* at 345.

<sup>49</sup> *Id.* at 323.

<sup>50</sup> *Id.* at 337. See also, Sen. Bill Bradley, *The Professional and Amateur Sports Protection Act - Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORTS L. 5 (1992). Senator Bradley argues that the Professional and Amateur Sports Protection Act's prohibition against state-sponsored sports lotteries is similar to the statutory prohibition in *Champion* in that in each case Congress has devised a means to protect the country at large from "a species of interstate commerce which, although in general use and somewhat favored in both national and state legislation . . . has grown into disrepute and has become offensive to the entire pool of the Nation."

<sup>51</sup> Bradley, *supra* note 50, at 14.

<sup>52</sup> *Perez v. United States*, 402 U.S. 146 (1971).

ample evidence presented to Congress to support its findings that the regulated activity has a direct impact on interstate affairs.<sup>53</sup> In *Perez*, the defendant was convicted of loan sharking in violation of the Consumer Credit Protection Act.<sup>54</sup> Relying on congressional findings that loan sharking directly affected interstate commerce,<sup>55</sup> the majority noted that even where such transactions are local in character, they have a direct impact on commerce between the states.<sup>56</sup> As a result, the Court found that the exercise of congressional power under the Commerce Clause was justified in this instance.<sup>57</sup>

Lastly, support for the proposition that the proposed federal legislation is a valid exercise of Congress's Commerce Clause power lies in the fact that Congress has enacted numerous federal statutes that contain a variety of gambling prohibitions.<sup>58</sup> All of these statutes have withstood judicial scrutiny and have been held to be a proper exercise of Congress's power to regulate under the Commerce Clause.

### III. THE NEED FOR LEGISLATION MODIFYING THE PROFESSIONAL AND SPORTS PROTECTION ACT

PASPA's exemption has not worked for college athletics and is jeopardizing the integrity of collegiate sporting events. Over the last five

<sup>53</sup> *Id.* at 155-57.

<sup>54</sup> *Id.* at 146, 149-54.

<sup>55</sup> *Id.* at 155-57. In reaching its conclusion, the Court pointed out that the findings of Congress indicate that "there is a tie-in between local loan sharks and interstate crime." *Id.* at 155. Furthermore, the Court relied on a report submitted to the House which revealed that "organized crime takes over \$350 million a year from America's poor through loan sharking." *Id.* (quoting 113 Cong. Rec. 24460-64 (Aug. 29, 1967)).

<sup>56</sup> *Id.* at 156-57. In emphasizing its reliance on the Congressional findings, the Court indicated that "loan sharking in its national setting is one way organized crime holds its guns to the heads of the poor and rich alike . . . to finance its national operations." *Id.* at 157. A similar argument can be made regarding the way organized crime utilizes collegiate sports gambling to launder money from illegal sports gambling operations through legitimate sports books. It then uses this newly laundered money to finance other illegal operations. Steve DuCharme, Chairman of the Nevada Gaming Control Board, is quoted in a February 1999 Sports Business Journal article as saying: "We've taken steps to crack down on the amount of illegal money being laundered through legitimate sports books. We really have no way of knowing [how much is laundered through the legal sports books]. Based on transcriptions of wiretaps, it is millions of dollars."

<sup>57</sup> *Id.* at 154-55.

<sup>58</sup> See, e.g., 18 U.S.C. § 1955 (2000) (proscribing the conducting of "illegal gambling business"); 18 U.S.C. § 1953 (2000) (prohibiting the interstate transportation of wagering paraphernalia); 18 U.S.C. § 1511 (2000) (rendering unlawful the conspiracy to obstruct law enforcement in order to facilitate illegal gambling); and 18 U.S.C. § 1084 (2000) (prohibiting the use of wire communication to transmit sports wagering information).

years, basketball players at Northwestern and Arizona State universities were indicted on charges of point-shaving. Only three years before that, football players at Boston College and the University of Maryland were suspended for gambling on college games, with at least four admitting to placing bets on their own games. Overall, “[t]he 1990’s saw more college sports gambling-related scandals on college campuses than the previous five decades combined.”<sup>59</sup>

In addition to ruining the integrity of various collegiate sporting events, the profits from illegal sports wagering help finance other activities of organized crime. Money skimmed from sports wagering is used to fund drug sales, loan-sharking, and other illegal activities that a casual bettor does not acknowledge.<sup>60</sup> In the end, our college athletes and the sporting events are the ultimate victims.

A. *The National Gambling Impact Study Commission Recommends that PASPA’s Exemption be Eliminated*

In June 1999, the National Gambling Impact Study Commission (NGISC), comprised of bipartisan members appointed in 1996 by the president and the leadership of the U.S. House of Representatives and U.S. Senate, issued their recommendations to Congress.<sup>61</sup> Among the recommendations of the NGISC was that “betting on collegiate and amateur athletic events that is currently legal be banned altogether.”<sup>62</sup>

The NGISC heard testimony that collegiate sports wagering is a serious problem that has devastated families and careers.<sup>63</sup> It also learned that sports wagering threatens the integrity of sports, puts student athletes in a vulnerable position, and can put adolescent gamblers at risk for future gambling problems.<sup>64</sup>

Further, there is considerable evidence that sports wagering is widespread on America’s college campuses. According to Cedric Dempsey, executive director of the NCAA, “[t]here is evidence more money is spent on gambling on campuses than on alcohol.”<sup>65</sup> Dempsey goes on to say that “[e]very campus has student bookies. We are also seeing an increase in the

<sup>59</sup> Lou Holtz, *All Bets are off: Time to Stop Gambling on College Athletics*, THE WASHINGTON TIMES, Oct. 2, 2000, at A15.

<sup>60</sup> William S. Saum, *Sports Gambling in College: Cracking Down on Illegal Betting*, USA TODAY-MAGAZINE, July 1, 1999, at 62.

<sup>61</sup> See NGISC, *supra* note 24.

<sup>62</sup> *Id.* at 3-18.

<sup>63</sup> *Id.* at 2-14.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 2-15.

involvement of organized crime on sports wagering.<sup>66</sup> For example, gambling rings have been uncovered at Michigan State University, University of Maine, University of Rhode Island, Bryant College, Northwestern, and Boston College, among many other institutions.<sup>67</sup>

The NGISC went on to state that “[m]any Americans do not know that the majority of sports wagering in America is illegal. In addition, many do not know about the risks and impacts of sports wagering and about the possible legal consequences.”<sup>68</sup> Even when Americans understand the illegality of sports wagering, it is easy to participate in, widely accepted, extremely popular, and, at present, not likely to be prosecuted.<sup>69</sup> Finally, because sports wagering is illegal in most states, it does not provide many of the positive impacts that other forms of gambling provide. Specifically, sports gambling does not contribute to local economies or produce many jobs.<sup>70</sup> And unlike casinos or other destination resorts, sports wagering does not create other economic sectors.<sup>71</sup>

The importance of regulating legal sports wagering and stifling illegal sports wagering has been acknowledged by both professional and amateur sports organizations, which have strict regulations regarding sports wagering.<sup>72</sup> Currently, NCAA initiatives recognize the importance of raising awareness of the problems associated with sports wagering and problem and pathological gambling. Television broadcast has proven to be a powerful tool for educating the public about the problems associated with sports wagering. For example, the NCAA contracts with CBS and ESPN to run public service announcements (PSA’s) during the broadcast of popular sporting events, such as the Division I men’s basketball tournament.<sup>73</sup> In 1998, CBS, in conjunction with the NCAA, developed a lengthy segment on sports wagering that aired between the Division I men’s basketball semifinal games. These announcements are only a part of the larger gambling education programs that the NCAA plans to develop.<sup>74</sup>

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<sup>66</sup> *Id.* (citing Gary Lundy, *NCAA Says Lady Vols Not Safe from Gamblers*, KNOXVILLE NEWS-SENTINEL, Aug. 6, 1998, at C1).

<sup>67</sup> *Id.* (citing Tim Layden, *Bettor Education*, SPORTS ILLUSTRATED, Apr. 3, 1995, at 68).

<sup>68</sup> *NGISC*, *supra* note 24, at 3-10.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

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

<sup>72</sup> *Id.* at 3-11. For example, the National Football League, Major League Baseball, and the National Basketball Association have all issued rules declaring that betting on your own sport is grounds for dismissal for any athlete or coach. Each league also offers referral services for treatment of problem or pathological gambling and other addictions.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

### B. *The University of Michigan Surveys*

Another argument for an increase in regulation on collegiate sports gambling is that athletes themselves are often tempted to bet on contests in which they participate, thus undermining the integrity of the game. According to the findings of a recent University of Michigan survey on collegiate sports gambling, 35% of all athletes and more than 45% of male collegiate football and basketball athletes admit to betting on sporting events, despite current NCAA regulations<sup>75</sup> that prohibit such activities.<sup>76</sup> Further, more than 5% of male student-athletes provided inside information for gambling purposes, bet on games in which they were participating, or accepted money for performing poorly in a game – otherwise known as “shaving points.”<sup>77</sup>

A second survey conducted at the University of Michigan documents that 40% of Division I sports officials bet on sports, and that twelve of the respondents in the survey indicated “they were aware of other officials who did not call games fairly because of gambling reasons.”<sup>78</sup> While gambling among Division I sports officials is not the central focus of this comment, the presence of such activity provides additional support for considering the legislative modifications of PASPA.

### C. *The University of Cincinnati Survey*

The findings from the initial University of Michigan Study provided support for a similar study conducted by two University of Cincinnati criminal justice professors and commissioned by the NCAA. Frank Cullen

<sup>75</sup> 1997-98 NCAA Division I Manual, Rule 10.3, at 51 states that a college athlete cannot provide any information about games to any gamblers, solicit a bet on any intercollegiate team, accept a bet on any team representing the institution, or participate in any gambling activity that involves intercollegiate athletics or professional athletics, through a bookmaker, parlay card, or any other method employed by organized gambling. Rule 10.3 reflects a 1996 amendment which included professional sports betting to the prohibition. In addition, Rule 10.4, at 52-3 provides for the discipline of prospective or enrolled student-athletes violating the above mentioned Rule 10.3. Specifically, they can be declared ineligible for further competition, subject to appeal to the NCAA Eligibility Committee for restoration of eligibility. However, according to the NCAA's Internet database of *secondary infractions*, only about two-dozen enforcement actions were taken in the three years from 1996-1998 with respect to violations of NCAA Rule 10.3.

<sup>76</sup> MICHAEL E. CROSS AND ANN G. VOLLANO, *THE EXTENT AND NATURE OF GAMBLING AMONG COLLEGE STUDENT ATHLETES* (University of Michigan Athletic Department) (1999).

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

<sup>78</sup> ANN G. VOLLANO AND DERRICK L. GRAGG, *NCAA DIVISION I OFFICIALS: GAMBLING WITH THE INTEGRITY OF SPORTS* (University of Michigan Athletic Department) (2000).

and Edward Latessa surveyed 2000 NCAA Division I basketball and football players and received 648 responses. Their findings provide that almost 4% of student-athletes said that they had gambled on a game in which they had played; almost 26% said that they had gambled on other collegiate sporting events; and three of the athletes said they had received money from gamblers not to perform well in one of their own games.<sup>79</sup>

#### D. Recent Point-Shaving Scandals

While point-shaving scandals have pre-dated<sup>80</sup> the emergence of modern sports books in Nevada, the frequency<sup>81</sup> of these scandals has been increasing at an alarming rate. While a full exploration of all point-shaving scandals is beyond the scope of this comment, a look at three universities involved in recent point-shaving scandals seems to comprehensively represent the larger problem.

### 1. BOSTON COLLEGE UNIVERSITY

One of the schools that has been hit the hardest by sports wagering scandals is Boston College University. In its first incident, Rick Kuhn, a former center for the Boston College basketball team, was convicted of taking money from the mob to shave points in five games during the 1978-79 basketball season.<sup>82</sup> Kuhn's involvement in the Boston College point-shaving scandal is described in detail in *United States v. Burke*.<sup>83</sup>

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<sup>79</sup> See Tom Weir, *Groups Team Up to Help Protect Games, Athletes*, USA TODAY, Dec. 23, 1997, at 1C; Saum, *supra* note 60; Greg Couch, *NCAA Bets on Reforms: Colleges Try to Catch Up With Epidemic of Athletes Placing Wagers on Sports*, CHICAGO SUN-TIMES, Sept. 30, 1997, at 87; David Goodman, *Survey Spotlights College Gambling: Study Finds 45% of Male Athletes Bet on Sports, Some on Own Games*, DALLAS MORNING NEWS, Jan. 12, 1999, at 1A.

<sup>80</sup> Patrick Hruby, *The Fix: Will a Proposed Federal Ban on College Sports Gambling be Enough to Stymie Scandal?*, THE WASH. TIMES, Oct. 8, 2000, at A1 (noting that a college sports betting ban would act like a tourniquet on a severed limb: better than nothing, but hardly enough). Consider this: In a single three-year span, eighty-six college games were fixed in seventeen states by thirty-two players from seven schools. The period in question was 1947-50 – decades before the modern sports books emerged in Nevada. *Id.*

<sup>81</sup> The 1990's saw more college sports gambling-related scandals on college campuses than the previous five decades combined. Holtz, *supra* note 59.

<sup>82</sup> See Stephen Moore, *No Harm, No Foul*, at <http://www.intellectualcapital.com/issues/98/0507/icopinions2.asp>.

<sup>83</sup> *United States v. Burke*, 700 F.2d 70 (2d Cir. 1983). This scandal reached national prominence when Sports Illustrated published an article entitled *How I Put the Fix In* by Henry Hill, in collaboration with Douglas Looney, in its February 16, 1981 issue. This article purported to be Henry Hill's first-hand

The Boston College point-shaving scheme was born in Pittsburgh during the summer months of 1978 and was the brainchild of Rocco Perla and his brother Anthony.<sup>84</sup> The Perla brothers were small-time gamblers with big-time ideas. The plan they proposed was simple. In concert with Kuhn, who was a high school friend of Rocco Perla that was entering his senior year at B.C., they would select certain basketball games where the projected point spread separating B.C. from its opponent was expected to be significant.<sup>85</sup> Kuhn would be responsible for ensuring, by his play on the court, that B.C. fell short of the proposed point spread. Thus, for example, if participating bookmakers determined B.C. to be an eight-point favorite in a particular game, Kuhn would be paid his bonus, usually \$2,500, if B.C. won by less than eight points.<sup>86</sup>

Rocco and his brother Tony then mobilized a betting syndicate to maximize the potential gain from this illegal action. They contacted a local friend, Paul Mazzei, who was known to have influence within major New York gambling circles.<sup>87</sup> Mazzei, in turn, contacted Henry Hill, a reported underworld figure from New York who had befriended Mazzei while both men were serving sentences in a federal penitentiary.<sup>88</sup> Mazzei and the Perlas were particularly hopeful that Hill would enlist the support of his reputed underworld "Boss," James Burke, to ensure protection for their enterprise in the event the bookmakers discovered they were being swindled.<sup>89</sup>

The criminal conspiracy unraveled when Henry Hill was indicted by state authorities on drug conspiracy charges and was subsequently implicated in the Lufthansa robbery at Kennedy Airport.<sup>90</sup> While being questioned on these charges, Hill revealed that he had recently participated in a point shaving scheme involving the Boston College basketball team and various underworld figures.<sup>91</sup> Burke, Mazzei, Kuhn, Rocco Perla and Anthony Perla were all indicted on the basis of testimony given by Hill.<sup>92</sup>

After a four-week trial, each defendant was convicted on charges of RICO conspiracy,<sup>93</sup> conspiracy to commit sports bribery,<sup>94</sup> and interstate

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account of the point shaving scheme and implicated the appellants in this scandal.

<sup>84</sup> *Burke*, 700 F.2d at 73.

<sup>85</sup> *Id.* at 73-74.

<sup>86</sup> *Id.* at 74.

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

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 75.

<sup>91</sup> *Id.*

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

<sup>93</sup> 18 U.S.C. § 1962(d) (1982); *see also, id.*

<sup>94</sup> 18 U.S.C. § 224 (1982); *Id.*

travel with intent to commit bribery.<sup>95</sup> Defendant Burke was sentenced to a twenty-year prison term.<sup>96</sup> Kuhn, Mazzei and Anthony Perla were sentenced to ten-year prison terms on the RICO count, and concurrent five-year terms on the two remaining counts.<sup>97</sup>

## 2. NORTHWESTERN UNIVERSITY

At Northwestern University, former running back Dennis Lundy, once the school's career rushing leader, pleaded guilty to a federal perjury charge stemming from an investigation into sports betting involving the Northwestern football team.<sup>98</sup> Lundy admitted to fumbling intentionally on the University of Iowa 1-yard line during the third quarter of a 1994 game so he could win a \$400 bet.<sup>99</sup> Lundy later admitted to betting on five Northwestern games during his career, including one against Ohio State University in 1994 when he bet \$500 that his Wildcats would lose by more than the point spread.<sup>100</sup> He also said he knew of teammates who bet against Northwestern in that same game.<sup>101</sup>

Dennis Lundy did not always bet against his team. During a 1994 game against Notre Dame, he said he bet Northwestern would cover a 26-point spread.<sup>102</sup> When the Northwestern reserves scored a late touchdown to cut Notre Dame's lead to 41-15, the Wildcats needed only a two-point conversion for Lundy to win his bet. He then tried to run on the field to give Northwestern a better shot at the conversion, but was called back by his coaches. The attempt failed and Lundy lost his \$200 bet.<sup>103</sup>

Lundy was not alone in bringing the scandal of collegiate sports gambling to Northwestern. In 1998, former Northwestern basketball players Kenneth Dion Lee and Dewey Williams were indicted for point-shaving and fixing the outcome of games against Penn State University, the University of

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<sup>95</sup> 18 U.S.C. § 1952 (1982); *Id.*

<sup>96</sup> *Burke*, 700 F.2d at 75.

<sup>97</sup> *Id.* at 75-76. In a second incident, unrelated to the point shaving scandal, thirteen Boston College football players were suspended from the team for gambling, including two that allegedly bet against their own team in a home loss to Syracuse in 1996. As a result, head coach Dan Henning was fired. See Couch, *supra* note 79.

<sup>98</sup> Ron Cook, *Don't Bet Against the Fix Being On*, PITTSBURGH POST-GAZETTE, Mar. 7, 1999, at D1.

<sup>99</sup> Couch, *supra* note 79.

<sup>100</sup> Cook, *supra* note 98.

<sup>101</sup> *Id.*

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

<sup>103</sup> *Id.*



Wisconsin, and the University of Michigan in 1995.<sup>104</sup> The so-called mastermind behind the point-shaving scheme was Kevin Pendergast, a math teacher at a prestigious private school in southern California and a former Notre Dame place kicker who had kicked the winning field goal against Texas A&M in the 1993 Cotton Bowl.<sup>105</sup> Pendergast, who arrived at Notre Dame to study and play soccer in 1989, was a suburban kid from well-to-do Simsbury, Connecticut. He was a Parade High School All-America forward in soccer, a National Merit Scholarship finalist and an aspiring singer with an incredibly bright future.<sup>106</sup>

Unfortunately, Pendergast's life took a drastic change when he met a bookie while visiting a classmate's home in Indiana. Pendergast later recalled that "gambling became the center of my life."<sup>107</sup> He bet on sports and played blackjack on a riverboat casino.<sup>108</sup> Before long, Pendergast needed a way to pay off his own gambling debt, which was close to \$20,000.<sup>109</sup>

Sometime in February 1995, Pendergast recruited Kenneth Dion Lee, a senior guard and leading three-point shooter on Northwestern's basketball team.<sup>110</sup> Pendergast knew that Lee also had a gambling problem and needed a way to pay off some of his gambling debts.<sup>111</sup> Lee then recruited Dewey Williams, a starter who played both forward and center.<sup>112</sup> To round out the "scheme team," Pendergast recruited Brian Irving, an acquaintance who lived in Reno, Nevada (where sports betting is legal), to place the bets.<sup>113</sup>

For all of this planning, only one of their point-shaving attempts succeeded. Their first game, a February 15, 1995 game against the University of Wisconsin, ended in a "push" when Northwestern's fourteen-point losing margin equaled the spread.<sup>114</sup> A week later, Lee and the Wildcats lost to Penn State eighty-nine to fifty-nine, falling far short of the spread.<sup>115</sup> Three days later, Pendergast met Lee at a restaurant near campus and handed him an

<sup>104</sup> See Ante Z. Udovicic, *Special Report: Sports and Gambling a Good Mix? I Wouldn't Bet on It*, 8 MARQ. SPORTS L.J. 401, 427 (1998).

<sup>105</sup> Linda M. Cowan, *Point Shaving - A Team Sport?*, 547 P.L.I./P.A.T. 1213 (1999).

<sup>106</sup> Lester Munson, *The Fix Was In*, SPORTS ILLUSTRATED, Nov. 9, 1998, at 100.

<sup>107</sup> *Id.*

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

<sup>109</sup> Hruby, *supra* note 80.

<sup>110</sup> Cowan, *supra* note 105.

<sup>111</sup> *Id.*

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

<sup>113</sup> *Id.*

<sup>114</sup> Munson, *supra* note 106.

<sup>115</sup> *Id.*

envelope containing Lee's share of the winnings -- \$4,000, for which Lee paid Williams approximately \$700.<sup>116</sup>

On March 1, Pendergast and Lee tried again. This time Pendergast personally traveled to Las Vegas to place a \$20,150 wager at Caesar's Palace that the Northwestern basketball team would lose to the University of Michigan by at least 25 ½ points.<sup>117</sup> For his part, Pendergast would pay Lee \$8,000.<sup>118</sup> Even though Lee passed up shots and threw the ball away, Northwestern only lost by seventeen points.<sup>119</sup>

On March 26, 1998, all four members of the scheme were indicted by a federal grand jury. Each member was charged with one count of conspiracy to commit sports bribery.<sup>120</sup> In addition, Pendergast was charged with three counts, and Irving two counts, of using interstate facilities in aid of racketeering.<sup>121</sup> On April 9, 1998, Pendergast pleaded guilty to conspiracy to commit sports bribery. He also agreed to cooperate with the FBI and will be working with the NCAA to educate athletes about the risks of gambling.<sup>122</sup> On April 20, 1998, Lee pleaded guilty to conspiracy to commit sports bribery. He also agreed to cooperate with the FBI and will be lecturing student athletes on the dangers of gambling.<sup>123</sup>

### 3. ARIZONA STATE UNIVERSITY

At Arizona State, point guard Stevin "Hedake" Smith began as a small-time gambler, mainly wagering on NFL games.<sup>124</sup> He later found himself so far in debt that he began betting on hockey to get even.<sup>125</sup> Before long, his gambling habit left him hopelessly in debt.

Much like Kenneth Dion Lee at Northwestern, Smith became an easy target for organized crime figures. Smith turned to teammate Isaac Burton, the team's best free-throw shooter, for help in his point-shaving scheme. He told Burton to intentionally miss free throws at the end of the game so the Sun Devils would not cover the point spread.<sup>126</sup>

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<sup>116</sup> *Id.*

<sup>117</sup> Ryan Ernst, *Ohio U.: College Sports Hit Hard by Gambling in the 90's*, U-WIRE, Nov. 14, 2000.

<sup>118</sup> Munson, *supra* note 106.

<sup>119</sup> *Id.*

<sup>120</sup> 18 U.S.C. § 224 (1997); *see also* Cowan, *supra* note 105.

<sup>121</sup> 18 U.S.C. § 1952 (1997); *see also* Cowan, *supra* note 105.

<sup>122</sup> Cowan, *supra* note 105.

<sup>123</sup> *Id.*

<sup>124</sup> Cook, *supra* note 98.

<sup>125</sup> *Id.*

<sup>126</sup> Derek Samson, *Ex-Sun Devil Burton Refuses to Talk About Point Shaving*, IDAHO STATESMAN, Dec. 6, 1997, at 1C.

After bookmakers in Nevada discovered that the betting pattern on Arizona State games changed tremendously, they alerted the FBI.<sup>127</sup> A federal investigation later found point-shaving in four Arizona State games during the 1993-94 basketball season.<sup>128</sup> In one instance, a matchup against PAC-10 rival the University of Washington, Las Vegas casinos suspended betting on the game after \$250,000 in bets caused the line to drop to three points.<sup>129</sup> In three other instances, the gamblers won each time. The Sun Devils beat both the University of Oregon and Oregon State University, but did not cover the spread in either game.<sup>130</sup> Against the University of Southern California, the Sun Devils were 7 ½-point favorites, but lost the game by 12 points.<sup>131</sup> The only game of the four that gamblers lost came in another game against the University of Washington in which Arizona State missed its first 14 shots but rallied to win 73-55.<sup>132</sup> It was later reported that the players were informed at halftime that the game was under scrutiny.<sup>133</sup>

In 1997, Smith and Burton admitted to taking money for shaving points during four games at Arizona State during the 1993-94 season.<sup>134</sup> Both pleaded guilty to charges of conspiracy to commit sports bribery.<sup>135</sup> In 1999, Burton was sentenced to two months in jail, an \$8,000 fine, three years probation, and six months of home detention.<sup>136</sup>

### E. *The Emergence of the Internet and its Effect on Collegiate Sports Gambling*

Perhaps the most dangerous development in the spread of collegiate sports gambling is the growth of the Internet. While a full explanation of the Internet, as well as the jurisdictional and enforcement problems associated with it, is beyond the scope of this comment, it is worth noting how this recent phenomenon is changing the face of collegiate sports gambling. At the present time, it is easier than ever to bet on college sporting events. As a result of the Internet explosion, wagers can now be placed anonymously from the privacy of one's own home, or perhaps more troubling, directly from a dormitory room. Another problem inherent in Internet sports

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<sup>127</sup> Ismail Turay Jr., *Congress Might Try to Ban Gambling on College Sports*, THE FORT WORTH STAR-TELEGRAM, Jan. 24, 2000, at 14.

<sup>128</sup> Ernst, *supra* note 117.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

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

<sup>134</sup> Samson, *supra* note 126.

<sup>135</sup> Ernst, *supra* note 117.

<sup>136</sup> *Burton Warned on Penalty Lapses*, THE ARIZONA REPUBLIC, June 17, 2000, at C2.

gambling is the inability of Internet gambling operators to prevent minors from logging onto websites and placing wagers.<sup>137</sup>

Further, since most federal and state gambling laws were created long before the emergence of the Internet, the applicability of these laws to Internet sports gambling has now become an important question.<sup>138</sup> However, a careful review of federal gambling laws demonstrates that Congress had the foresight to draft these prohibitions broadly enough to encompass the possibility that the means for offering gambling may change over time.<sup>139</sup> As a result, contrary to what many gamblers and service providers believe, gambling on collegiate sporting events over the Internet is already illegal. The transmission of gambling information in interstate or foreign commerce is prohibited under both the Wire Act<sup>140</sup> and the Travel Act.<sup>141</sup>

Nonetheless, in an effort to avoid the application of the Wire Act and the Travel Act, many Internet gambling operators have argued that these laws are

<sup>137</sup> See Brad Knickerbocker, *For Many Teens, Gambling Starts at Home, First It's a Scratch of a Lotto Ticket, Eventually it Could be Stealing to Support an Addiction*, CHRISTIAN SCI. MONITOR, Jan. 7, 1999, at 3.

<sup>138</sup> Many have argued that the Wire Act is insufficient in the age of Internet gambling. A bill has been introduced in the Senate – the Kyl Amendment – that would update the Wire Act so that it specifically prohibits gambling on the Internet. Known as the Internet Gambling Prohibition Act of 1997, the bill was originally introduced as Senate Bill S. 474 on March 3, 1997 by Senator John Kyl (R-AZ) and has been through a series of revisions. See S. 474, 105th Cong. (1997). If passed, the amendment would ensure a uniform approach to criminal liability within the United States, thereby creating predictability regarding liability and eliminating interstate disputes as to the legality of on-line gambling. See H.R. 3125, 106th Cong. (2000) for the current form of the Internet Gambling Prohibition Act.

<sup>139</sup> See generally, Joel Michael Schwarz, *The Internet Gambling Fallacy Craps Out*, 14 BERKELEY TECH. L.J. 1021 (Fall 1999).

<sup>140</sup> 18 U.S.C. § 1084 (2000). The Wire Act provides in part:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

*Id.* at § 1084(a).

<sup>141</sup> 18 U.S.C. § 1952 (2000). The Travel Act states that:

Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and therefore performs or attempts to perform (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than five years, or both.

*Id.* at § 1952 (a)-(b).

inapplicable to Internet gambling because such technology did not exist at the time of the statutes' enactment.<sup>142</sup> As a result, Congress could never have intended these Acts to apply to Internet gambling.

Contrary to this argument, the legislative history behind the passage of the Wire Act indicates it was intended to be applied broadly, so as to prevent any interstate, or international, transmission of gambling information, to or from the United States, using wire communication facilities.<sup>143</sup> In addition to the legislative history, a broad interpretation of both Acts is also suggested in case law. Illustrative is the Fifth Circuit's observation in *United States v. Steubben*<sup>144</sup> that the Wire Act, the Travel Act and the Wagering Paraphernalia Act were meant to be interpreted broadly so as to accomplish the congressional intent behind their passage, namely to regulate "any gambling-related activity that touches upon interstate commerce."<sup>145</sup>

In a further effort to circumvent the Wire and Travel Acts, Internet gambling operators have also moved their efforts offshore.<sup>146</sup> Nonetheless, in a recent New York case, *People v. World Interactive Gaming Corp.*,<sup>147</sup> application of the Wire and Travel Acts to offshore Internet gambling was specifically addressed. In deciding whether the State of New York could enjoin a foreign corporation legally licensed to operate a casino offshore from offering gambling to Internet users in New York, the Court held that the Wire Act, Travel Act and Wagering Paraphernalia Act all apply despite the fact that the betting instructions are transmitted from outside the United States (in this case Antigua) over the Internet.<sup>148</sup> If anything, *World Interactive*

<sup>142</sup> See Schwarz, *supra* note 139, at 1030.

<sup>143</sup> See H.R. Rep. No. 87-967, at 1 (1961), reprinted in 1961 U.S.C.C.A.N. 2631.

<sup>144</sup> *United States v. Steubben*, 799 F.2d 225 (5th Cir. 1986).

<sup>145</sup> *Id.* at 229.

<sup>146</sup> See NGISC, *supra* note 24, at 5-1 (noting that as the U.S. Congress debates legislation to prohibit Internet gambling, several foreign governments have moved in the other direction and have licensed Internet gambling operations within their own borders, which Americans can access). The countries with laws in place to extend Internet gambling licenses include: five territories within Australia, Antigua and Barbuda, Austria, Belgium, Cook Islands, Costa Rica, Curacao, Dominica, Dominican Republic, Finland, Germany, Grand Turk, Grenada, Honduras, the territory of Kalmykia in Russia, Liechtenstein, Mauritius, St. Kitts and Nevis, St. Vincent, South Africa, Trinidad, Turks and Caicos Islands, four territories in the United Kingdom, Vanatu, and Venezuela.

<sup>147</sup> *People v. World Interactive Gaming Corp.*, 714 N.Y.S.2d 844 (N.Y. Sup. Ct. 1999).

<sup>148</sup> *Id.* at 851. In describing how the respondents' interstate use of the Internet violated federal law, the court noted:

Like a prohibited telephone call from a gambling facility, the Internet is accessed by using a telephone wire. When the telephone wire is connected to a modem attached to a user's computer, the user's phone line actually connects the user to the Internet server and then the user may log onto this illegal gambling website from any location in the United States. After selecting from the multitude of illegal games offered by respondent, the information is

*Gaming* suggests that those websites offering collegiate sports gambling over the Internet are in violation of existing federal and, in many cases, state law.

#### IV. THE PROPOSED FEDERAL LEGISLATION

In response to the NGISC's recommendation to ban collegiate sports gambling, various members of the United States 106th Congress have proposed three separate bills. The Student Athlete Protection Act,<sup>149</sup> introduced by Representatives Lindsey O. Graham (R-SC) and Tim Roemer (D-IN), would amend Section 3704 of PASPA to prohibit high school, college and amateur sports gambling in all states, including Nevada.<sup>150</sup> The Amateur Sports Integrity Act,<sup>151</sup> introduced by Senators John McCain (R-AZ), Samuel D. Brownback (R-KS) and Patrick Leahy (D-VT), would eliminate gambling on high school, collegiate and amateur sports, including the Olympics. Lastly, the High School and College Sports Gambling Prohibition Act,<sup>152</sup> introduced by Senators Patrick Leahy (D-VT) and Samuel D. Brownback (R-KS), would specifically ban betting on collegiate sporting events in the state of Nevada.

The practical effect of these three bills would be to expand the reach of PASPA, the 1992 law passed by Congress that prohibited wagering on all amateur and professional sports except in a handful of states where the activity was already legal, or the legality of such was being contemplated – namely Nevada, Delaware, Oregon and Montana.<sup>153</sup> Many believe these measures would help curb the destructive and unseemly practice of gambling on the athletic success of our nation's young student-athletes. Further, as the amount of money legally wagered on college sports escalates, the pressures on student athletes to provide inside information for gambling purposes or

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transmitted to the server in Antigua. Respondents' server then transmits betting information back to the user, which is in violation of the Wire Act. The Internet site creates a virtual casino within the user's computer terminal. By hosting this casino and exchanging betting information with the user, an illegal communication in violation of the Wire Act and the Travel Act has occurred.

*Id.* at 852.

<sup>149</sup> H.R. 3575, 106th Cong. (2000).

<sup>150</sup> The bill contains what some believe to be two red herrings. In addition to prohibiting gambling on collegiate athletic events, the bill would also ban gambling on high school athletic events (which is not currently legal), as well as gambling on Olympic events (which is conceded by both sides as representing an incredibly small, if any, problem).

<sup>151</sup> S. 2340, 106th Cong. (2000).

<sup>152</sup> S. 2021, 106th Cong. (2000).

<sup>153</sup> 18 U.S.C. § 3704 (2000).

to shave points and fix games will likely increase. These measures would thus reduce the vulnerability of our nation's college athletes.

The House bill, along with its companion bills in the Senate, is a direct response to the June 1999 recommendations by the NGISC. Among the recommendations put forward by the NGISC was that "betting on collegiate and amateur athletic events that is currently legal be banned altogether."<sup>154</sup> In making this recommendation the NGISC stated, "Sports wagering threatens the integrity of sports, it puts student athletes in a vulnerable position, it can put adolescent gamblers at risk for gambling problems, and it can devastate individuals and careers."<sup>155</sup>

### A. Arguments in Favor of the Proposed Federal Legislation

Proponents of the legislation believe that closing PASPA's loophole will aid in preserving the integrity of college sporting events, as well as assist in protecting student-athletes from pressures to influence the results of their own games. Such believers include prominent senators like Sen. John McCain (R-AZ), Sen. Patrick Leahy (D-VT), and Sen. Sam Brownback (R-KS), in addition to the NCAA, and many top college coaches such as the University of South Carolina football coach Lou Holtz and the University of Kentucky men's basketball coach Tubby Smith.

Those who support the proposed federal legislation do not believe it will create a "serious threat" to the Nevada economy – as many opposed to the legislation have contended. In 1999, approximately \$2.3 billion was wagered in Nevada sports books.<sup>156</sup> Casinos retained \$99 million, a little more than 3.5% of the total amount wagered on sports.<sup>157</sup> Steven DuCharme, chairman of the Nevada State Gaming Control Board, believes the amount kept by casinos on sports gambling is "very small" compared to other casino games.<sup>158</sup> Further, the amount wagered on college sports is only a little more than a third of the total amount wagered on all sports.<sup>159</sup> Additionally, the amount bet on college sports is only 3/10 of 1% of overall casino revenues.<sup>160</sup> In

<sup>154</sup> NGISC, *supra* note 24, at 3-18.

<sup>155</sup> *Id.* at 2-14.

<sup>156</sup> *Ban on Amateur Sports Betting: Hearings on S. 2021 Before the Senate Committee on Commerce, Science and Transportation*, 106th Cong. (2000) (statement of Dr. Charles T. Wethington, Jr., President of the University of Kentucky and Chair of the NCAA Executive Committee) [hereinafter *Wethington, Jr. Hearings*].

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *The Student Athlete Protection Act: Hearings on H.R. 3575 Before the U.S. House of Representatives' Committee on the Judiciary*, 106th Cong. (2000) (statement of Graham B. Spanier, President of The

reality, in an industry driven by billions of dollars (1999 total casino revenues were \$10.1 billion), the elimination of collegiate sports gambling will have "little impact" on state revenues or on the casinos' bottom line.<sup>161</sup>

Charles T. Wethington, Jr., President of the University of Kentucky and Chair of the NCAA Executive Committee, further argues that the existence of legal sports gambling in Nevada is actually "limiting" the growth of the Nevada economy in some areas.<sup>162</sup> For instance, most amateur and professional sports leagues have policies against franchise location and events staged in Nevada because of the presence of sports gambling.<sup>163</sup>

The pending legislation would also remove any justification for the publishing of point spreads<sup>164</sup> on collegiate sporting events in our nation's newspapers. In addition, a ban on all collegiate sports gambling would help curtail the widespread advertising of sport's handicapping services in newspapers, magazines, and on television. Because point spreads contribute to the popularity of sports wagering, a uniform prohibition on collegiate sports gambling would re-sensitize the public to the corrupting nature of this activity and encourage newspapers to follow the lead of the New York Times,<sup>165</sup> which voluntarily refuses to publish the point spreads of college games.

One reason Americans may not be aware of the illegality of collegiate sports wagering is that the Las Vegas line, or point spread, is published in

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Pennsylvania State University and chair of the Division I Board of Directors of the National Collegiate Athletic Association).

<sup>161</sup> *Wethington, Jr. Hearings, supra* note 156.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Burke*, 700 F.2d at 75 (providing an explanation of the practical operation of point spreads in professional gambling). The process begins when participating bookmakers agree to establish a *line* on an upcoming sporting event. Bookmakers create this line by determining, on the basis of prior records, injuries, home field advantage and other pertinent factors, which team should be favored to win the upcoming game. If the teams are fairly even in the competitive sense, the point spread should be low. For example, if teams A and B are relatively equal, the better team would generally be favored to win by a small margin, perhaps one to three points. Conversely, if one team is far superior, the point spread would be much larger. To prevail, the gambler must pick the team that will beat the point spread. Therefore, if team A is favored by five points, the gambler who bets on that team wins if it beats team B by more than five points. The bettor who wagers money on team B will win if that team wins the game or even if it loses by less than five points. *Id.* at 75.

<sup>165</sup> Currently only the Washington Post, the New York Times and a handful of other newspapers refuse to print college point spreads. See Hruby, *supra* note 80, where Bill Jahoda, an anti-gambling activist and former head of the Chicago Mafia's gambling operation, has commented, "Why would a responsible newspaper print the price of an illegal product? They might as well run the price of crack cocaine and prostitution." Without legal college sports gambling and a widely available point spread, Jahoda and others believe that the risk of game fixing would be greatly reduced.



most of the forty-eight states where sports wagering is illegal.<sup>166</sup> Some critics have argued that the point spread is nothing more than a device that appeals to those who make or solicit bets. Moreover, critics claim that the point spread does not contribute to the popularity of sports, only to the popularity of sports wagering.

Legendary football coach Lou Holtz has commented: "I have witnessed our football players be idolized, praised and cheered after a win. I have also witnessed their being ridiculed, demonized and ostracized after a win. The only difference was in one case we covered the point spread, in the other case we did not."<sup>167</sup> Holtz further comments that "we have to do everything we can to remove this temptation and to stop the pressure this betting places on our young people."<sup>168</sup>

On the other hand, the American Gaming Association (AGA) notes that betting lines are generated for sports books by independent odds-making services.<sup>169</sup> The decision whether to publish betting lines is made by hundreds of independent newspaper editors. Citing *USA Today* as an example, the NCAA notes that point spreads published in that newspaper are independently provided by Danny Sheridan of Mobile, Alabama.<sup>170</sup> Further, the NCAA said it was unsuccessful in a prior effort to stop the publication of point spreads in newspapers.<sup>171</sup> Several years ago, the NCAA tried to withhold press credentials from sports reporters for newspapers that publish point spreads. The NCAA was forced to abandon their effort in the face of First Amendment and other legal objections.<sup>172</sup> Fahrenkopf believes there is no basis to conclude the NCAA would be any more successful in removing point spreads just because legal wagering was no longer offered in Nevada.<sup>173</sup> Moreover, it is argued that newspapers would continue to publish college point spreads even if collegiate sports gambling is eventually prohibited. An April 2000 Harris poll found that 70% of readers use point spreads to obtain more information about games, while only 11% use spreads to place bets with bookmakers.<sup>174</sup> In a June letter to the House Judiciary Committee, Newspaper Association of America president John Sturm cited those figures

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<sup>166</sup> *NGISC*, *supra* note 24, at 2-14.

<sup>167</sup> Holtz, *supra* note 59.

<sup>168</sup> *Id.*

<sup>169</sup> *Proposed Legislation Banning College Sports Wagering: Hearing on H.R. 3575 Before the U.S. House of Representatives' Committee on the Judiciary*, 106th Cong. (2000) (statement of Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association) [hereinafter *Fahrenkopf, Jr. Hearings*].

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Hruby, *supra* note 80.

when stating: "Point spreads appear to be useful, if not valuable, to newspaper readers who have no intention of betting on games."<sup>175</sup> Lastly, since the gambling industry points to the Internet as the future source of point spreads, Congress' passage of the Internet Gambling Prohibition Act<sup>176</sup> may have a significant impact on U.S. access to online sports gambling sites.

### B. Arguments Against the Proposed Federal Legislation

Opponents of the proposed federal legislation include Nevada legislators and gaming lobbyists. They say the bills represents "nothing more than feel-good legislation that will do little to address the issue of gambling in college sports."<sup>177</sup> Proponents of Nevada sports books argue that regulated sports books pose little threat to the integrity of sports contests and that illegal sports gambling is the real culprit.<sup>178</sup>

Unfortunately, what opponents of the proposed federal legislation fail to mention is that Nevada gaming regulations clearly recognize the potential danger that legal sports gambling presents. Before these three bills were proposed, Nevada gaming regulations prohibited Nevada sports books from accepting bets on college athletics events that occur in state, as well as games of Nevada's universities<sup>179</sup> played outside the state's borders.<sup>180</sup> Inexplicably, this protection did not extend to any of the colleges or universities located in the other forty-nine states. However, after enormous criticism, questioning the unique protections afforded to Nevada's collegiate teams, the Nevada Gaming Commission repealed its home-town protection.<sup>181</sup>

Frank J. Fahrenkopf, Jr., President and CEO of the American Gaming Association, agrees with the university presidents that there is a serious problem on college campuses with illegal gambling.<sup>182</sup> Nonetheless, Fahrenkopf believes that the proposal to do away with Nevada sports books

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<sup>175</sup> *Id.*

<sup>176</sup> See *supra* note 138.

<sup>177</sup> Don Walker, *Bill to Close Loophole Languishes*, THE MILWAUKEE JOURNAL SENTINEL, Oct. 14, 2000, at 45A.

<sup>178</sup> *Wethington, Jr. Hearings*, *supra* note 156.

<sup>179</sup> Principally, the University of Nevada, Reno and the University of Nevada, Las Vegas.

<sup>180</sup> See Nev. Gaming Comm'n Reg. 22.210 (2000).

<sup>181</sup> See Nev. Gaming Reg. 22.210 (repealed effective Aug. 23, 2001). See also Jeffrey R. Rodefer & Daurean G. Sloan, *Nevada's Proposal to Strengthen its Collegiate Sports Betting Regulations & The NCAA's Push for a Congressional Ban*, 9 NEV. LAWYER 10 (Mar. 2001) (providing an argument that the purpose of the prohibition, which was adopted over 50 years ago during the infancy of Nevada's modern gaming regulatory structure, has been rendered moot by technological and regulatory advancements).

<sup>182</sup> Lynn Sweet, *Bill Targets NCAA Betting, Pendergast Speaks in Favor of Legislation*, CHICAGO SUN TIMES, Feb. 2, 2000, at 120.

“does not have a nexus with the problem.”<sup>183</sup> Therefore, the AGA has pledged to fight the bills, which it termed “an ineffective Band-Aid on a campus cancer.”<sup>184</sup> Farenkopf also argues that “H.R. 3575 is built on the faulty premise that ending the small amount of legal wagering in Nevada that Congress approved in 1992 will reduce illegal gambling outside Nevada.”<sup>185</sup>

Moreover, opponents of the proposed federal legislation argue that PASPA’s preservation of previously enacted state statutes is consistent with the fact that since the founding of our country, states, not the federal government, have determined what gambling, if any, should be permitted in each state.<sup>186</sup> The principle of federalism underlying this division of authority is enshrined in the Tenth Amendment to the Constitution.<sup>187</sup> However, even strong advocates of state’s rights should recognize that this argument goes too far. The notion of state’s rights reflects the view that each state should have the authority to determine how best to govern within that state’s own boundaries – not the authority to set laws that allow a state to impose its policies on every other state while exempting itself.

Nevada lawmakers and other gambling supporters have also geared up to fight the bills. Rep. Shelley Berkley (D-NV) called it “a red herring, an exercise in finger-pointing” that blames Nevada for the nationwide problem of illegal sports gambling.<sup>188</sup> Likewise, Sen. Richard Bryan (D-NV) said, “It will do absolutely nothing to address the very real problem of illegal sports betting. The only practical effect this legislation will have is to push sports betting into the back alleys of America.”<sup>189</sup>

Those against the proposed federal legislation also argue that the passage of almost a decade strengthens the case for not re-opening (much less arbitrarily overturning) PASPA’s grandfather clause.<sup>190</sup> In reliance on that provision, Nevada’s casino-hotel industry has invested tens of millions of dollars in state-of-the-art race and sports book facilities.<sup>191</sup> To change the law now, as H.R. 3575 proposes, would break the bargain that was essential to

<sup>183</sup> *Id.*

<sup>184</sup> Rick Alm, *Brownback Aims to Ban all Betting on Colleges*, THE KANSAS CITY STAR, Feb. 2, 2000, at A1.

<sup>185</sup> *Fahrenkopf, Jr. Hearings, supra* note 169.

<sup>186</sup> *Id.*

<sup>187</sup> U.S. Const. amend. X. The Tenth Amendment provides: “The power not delegated to the United States by the Constitution, nor prohibited by it to the United States, are reserved to the States respectively, or to the people.” *Id.*

<sup>188</sup> *Sweet, supra* note 182.

<sup>189</sup> *Id.*

<sup>190</sup> *Fahrenkopf, Jr. Hearings, supra* note 169.

<sup>191</sup> *Id.*

PASPA's enactment.<sup>192</sup> More importantly, allowing Congress to break the bargain among the states that was reached in 1992, thereby federally preempting Nevada's state gaming decisions after the fact, would set an extremely dangerous precedent. What would prevent Congress from preempting other state gaming decisions? This serious question transcends H.R. 3575 and its companions and affects each of the other forty-nine states, forty-six of which have some form of legal wagering (all but Hawaii, Utah and Tennessee).<sup>193</sup>

Nevada Governor Kenny Guinn recently expressed his strong concern about the negative economic effects that H.R. 3575 would needlessly inflict on Nevada's economy and its citizens. For example, during Super Bowl weekend, when an estimated 250,000 people visit Las Vegas, the hotel occupancy rate is essentially 100%.<sup>194</sup> In addition, the jobs generated by sports gambling are not only those in the race and sports books, but extend throughout each of the hotel-casino-resort complexes to maids, valet parking attendants, food and beverage servers, and casino floor personnel.<sup>195</sup> These jobs, along with federal, state, and local tax levies, help generate billions of dollars in government revenues.<sup>196</sup>

Lastly, opponents of the proposed federal legislation argue that there are many laws currently on the books that prohibit sports gambling and the proper solution lies in enforcing the existing laws and making certain that penalties are adequate to deter violations. In other words, if merely enacting prohibitory laws was enough to deter sports gambling, the problem would not be as severe as all concede it is today.

## V. CONCLUSION

Gambling on collegiate sporting events is not a recent phenomenon. In fact, its presence has been known for well over fifty years. Nonetheless, the last decade saw more college sports gambling-related scandals on college campuses than the previous five decades combined. With the rapid increase in technology, as well as the emergence of the Internet, the number of college sports gambling-related scandals is only going to increase.

While a total ban on collegiate sporting events is not a panacea, it is a significant start. Our nation's college and university system has become a worldwide model for postsecondary education. Moreover, college sports

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

provide a forum where student athletes can achieve excellence by displaying the values that our educational system has instilled in them: team work, self-sacrifice, perseverance, courage, and sportsmanship. In addition to diminishing the esteem in which the rest of the world views our nation's universities, the practice of collegiate sports gambling tarnishes the integrity of sports and places unseemly influences on our amateur athletes. Being one of the many proud fans that have come to know and love college sports, we all deserve to know these athletic contests are both honest and fair.