

A BAD BET: FEDERAL CRIMINALIZATION OF NEVADA'S COLLEGIATE SPORTS BOOKS

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I. INTRODUCTION

As legalized gambling spread across the nation in the 1980s and 1990s, state governments endeavored to balance the benefit of increased revenue with its associated social problems.¹ The federal government generally stayed out of the picture,² but as more and more people voiced concerns about the problems associated with legalized gambling (and as federal officials looked with envy at the revenues that the states were bringing in), Congress established the National Gambling Impact Study Commission ("NGISC") in 1996 to conduct "a com-

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¹ See Ronald J. Rychlak, *The Introduction of Casino Gambling: Public Policy and the Law*, 64 Miss. L.J. 291 (1995), available at <http://www2.tlct.ttu.edu/Cochran/Gaming%20Law/rychlak.htm> (last visited Feb. 22, 2004).

² The federal government facilitated the spread of legalized gambling by loosening some of the restrictions that had been in place since the late 1800s, when federal legislation was used to bring the infamous Louisiana Lottery to an end. See, e.g., 18 U.S.C. § 1301 (1994) (prohibiting the importation and passing through interstate commerce of lottery tickets and related material); *id.* § 1302 (limiting the mailing of lottery tickets, advertisements, and related material); *id.* § 1304 (prohibiting lottery information from being broadcast over the airways); *id.* § 1084 (disallowing the use of wire communication in the promotion of gambling); *id.* § 1953 (similar); 39 U.S.C. § 3005 (1994) (authorizing postal authorities to implement prohibitions). At first, these laws made it hard for states to run legal lotteries. See *N.J. State Lottery Comm'n v. United States*, 491 F.2d 219 (3d Cir. 1974) (en banc), *vacated as moot*, 420 U.S. 371 (1975) (discussing FCC regulations); *In re Broad. of Info. Concerning Lotteries*, 14 F.C.C.2d 707 (1968) (ruling that the ban on broadcasting lottery information applied to state lotteries); see also *FCC v. Am. Broad. Co.*, 347 U.S. 284, 293-94 (1954) (television and radio game show "give-aways" not prohibited by federal legislation restricting lotteries because no consideration was required to participate). In 1975, Congress resolved the confusion that these statutes raised with modern lotteries, and states were free to operate without fear of federal intervention. See 18 U.S.C. § 1307 (1994) (18 U.S.C. §§ 1301-04 do not apply to state sponsored lotteries). See generally Ronald J. Rychlak, *Lotteries, Revenues, and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11 (1992).

prehensive legal and factual study of the social and economic impacts of gambling.”³

After a two-year study, the NGISC announced findings and recommendations on the state of gaming in the United States.⁴ The Commission reported that the “vast majority” of American gamblers participated in recreational gambling and never experienced ill effects; that eighty-six percent of Americans had gambled at some time in their life; and that sixty-eight percent gambled at least once a year.⁵ In summation of the findings, the Commission stated: “Gambling is inevitable. No matter what is said or done by advocates or opponents in all its various forms, it is an activity that is practiced, or tacitly endorsed, by a substantial majority of Americans.”⁶

Along with its evidentiary findings, the Commission recognized the need for further study of the problems associated with sports wagering. Specifically, the NGISC wondered “how widespread the phenomenon of underage sports gambling is now, the relationship between sports wagering and other forms of gambling, and the ways to prevent its spread.”⁷ The Commission found that the social costs from sports wagering included exposing student athletes to scandalous situations, serving as a gateway to other forms of gambling, and harming people and/or their careers.⁸ The NGISC also suggested that legal sports wagering in Nevada fueled illegal betting across the nation.⁹ As a result of these findings, the Commission recommended that Congress ban wagering on college and amateur athletics throughout the United States.¹⁰

The nation certainly has reason to be concerned about youthful gamblers. Twenty years ago, teenage gambling did not appear to be a problem; today, however, counselors report that a significant percentage of their caseload involves teenage gamblers.¹¹ At least one study indicates that teenagers may

³ S. REP. NO. 107-16, at 2 (2001).

⁴ NATIONAL GAMBLING IMPACT STUDY COMMISSION FINAL REPORT (1999), at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html> (last visited Feb. 22, 2004) [hereinafter NGISC FINAL REPORT].

⁵ *Id.* at 1-1.

⁶ *Id.* at 7-1 (citing *Final Report*, Commission on the Review of the National Policy Toward Gambling, p. 1 (Washington: 1976)).

⁷ NGISC FINAL REPORT, *supra* note 4, at 2-15.

⁸ See *id.* at 3-10. The NGISC found that in 1998 alone, legal sports wagering in Nevada sports books amounted to \$2.3 billion, while estimates of illegal sports wagering around the United States annually ranged from \$80 billion to \$380 billion, making it the most popular form of gaming in the nation. *Id.* at 2-14. The NGISC FINAL REPORT supported a complete ban on college sports wagering, but it also recognized that legalized gambling has become an aspect of everyday life. *Id.* at 3-1. The NGISC stated that when left unregulated, gambling can produce a number of negative consequences; thus the most appropriate remedy is government regulation. *Id.*

⁹ *Id.* at 3-9 to 3-10.

¹⁰ *Id.* at 3-18.

¹¹ Ricardo Chavira, *The Rise of Teenage Gambling*, TIME, Feb. 25, 1991, at 78 (“Gambling Researchers say that of the estimated 8 million compulsive gamblers in America, fully 1 million are teenagers.”); see also Durand Jacobs, *Illegal and Undocumented: A Review of Teenage Gambling and the Plight of Children of Problem Gamblers in America*, in COMPULSIVE GAMBLING: THEORY, RESEARCH, AND PRACTICE 249, 281 (H. Shaffer et al. eds., 1989) [hereinafter COMPULSIVE GAMBLING] (reviewing the literature discussing this problem).

be three times more likely than adults to become problem gamblers.¹² The Executive Director of the National Council on Problem Gambling explained, “[w]e have always seen compulsive gambling as a problem of older people. . . . Now we are finding that adolescent compulsive gambling is far more pervasive than we had thought.”¹³ The question that arises is whether the currently-proposed federal legislation, which is designed to stop newspapers from publishing information that can be used for making bets,¹⁴ is an effective and appropriate way to reduce sports betting by youthful gamblers.

II. THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT

In 1992, President George H. W. Bush signed the Professional and Amateur Sports Protection Act (“PASPA”) into law, prohibiting gambling on most sporting events.¹⁵ The purpose of the bill was to stop the spread of state-authorized gambling and to protect the integrity of sporting events.¹⁶ As a compromise with Nevada, which had legal sports wagering, states that had authorized sports wagering prior to October 2, 1991 were immune from this

¹² Jacobs, *supra* note 11.

¹³ Chavira, *supra* note 11, at 78 (quoting Jean Falzon). Because this was not seen as a widespread problem until fairly recently, there has not been much research into teenage gambling. Jacobs, *supra* note 11, at 263-64 (“Potentially harmful effects of teenage gambling simply had not been a matter for professional, scientific, governmental, or lay scrutiny, as attested to by the virtually silent literature on this topic before 1980.”). Unfortunately, experts fear that current psychological profiles and analytical data may not work with teenage gamblers. *Id.* at 257. This creates additional problems for young gamblers because treatment centers for youthful gamblers are “virtually nonexistent.” Chavira, *supra* note 11, at 78 (quoting Durand Jacobs). As one psychologist has explained, “[p]ublic understanding of gambling is where our understanding of alcoholism was some 40 or 50 years ago. . . . Unless we wake up soon to gambling’s darker side, we’re going to have a whole new generation lost to this addiction.” *Id.*

¹⁴ See *infra* notes 39-41 and accompanying text.

¹⁵ 28 U.S.C. §§ 3701-04 (2000). The central provision is as follows:

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 geographical 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.

28 U.S.C. § 3702. See Aaron J. Slavin, *The “Las Vegas Loophole” and the Current Push in Congress Towards a Blanket Prohibition on Collegiate Sports Gambling*, 10 U. MIAMI BUS. L. REV. 715, 719 (2002).

¹⁶ See S. REP. NO. 102-248, at 4-5 (1991), *reprinted in* 1992 U.S.C.C.A.N. (102 Stat.) 3553, 3555.

legislation.¹⁷ This compromise has since become known as the "Las Vegas loophole."¹⁸

Only four states (Delaware, Montana, Oregon, and Nevada) had enacted laws permitting sports wagering in time to be grandfathered in, and only two states actually took advantage of the compromise.¹⁹ Oregon ran a state lottery game based on National Football League games, *Sports Action*,²⁰ and Nevada allowed sports wagering through 153 licensed sports books.²¹ The impact of Oregon's lottery game is limited primarily to that state.²² As the only state where gambling on collegiate sporting events is legal, however, critics claim that Nevada's sports books help support an illegal gambling network that extends throughout the nation.

PASPA was intended to curb gambling and associated corruption.²³ While the Act halted growth of state-sanctioned gaming on athletics, the under-

¹⁷ 28 U.S.C. § 3704(1) provides that Section 3702 does not apply to: "[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." As a result, Oregon, Nevada, Delaware, and Montana are exempt from the federal prohibition against state-sponsored sports wagering.

¹⁸ See Slavin, *supra* note 15 (article title).

¹⁹ NGISC FINAL REPORT, *supra* note 4, at 9.

²⁰ Instituted in 1989, the Oregon game is based on selecting winning teams in NFL games, as adjusted by the point spread. See Oregon Lottery, *How to Play Sports Action: Win by Beating the Point Spreads on Pro Football Games* (pamphlet distributed by the Oregon Lottery). There are also special bets on things like: total points by both teams, total sacks, total field goals, etc. *Id.*, available at http://www.oregonlottery.org/sports/s_howto.shtml (last visited Feb. 22, 2004).

²¹ NGISC FINAL REPORT, *supra* note 4, at 9.

²² As a state lottery, this game may be played only by purchasing tickets sold in Oregon. Moreover, the pari-mutuel nature of the game is not well-suited for gambling outside of a limited pool of bettors. See ROBERT M. JARVIS ET AL., GAMING LAW: CASES AND MATERIALS 167-169 (2003) (discussing the mechanics of a "totalisator" in pari-mutuel betting).

²³ With millions of dollars bet on sports in this country every year, it is not surprising that there have been a number of scandals and incidents at the college level. In 1994, Northwestern University running back Dennis Lundy fumbled intentionally on the University of Iowa one-yard line during the third quarter of the game so he could win a \$400 bet. Lundy also told authorities that he bet on five Northwestern games during his career, and that some of his teammates also bet against Northwestern in games. Slavin, *supra* note 15, at 729. Arizona State point guard Steve Smith was coerced by organized crime bosses not to cover the point spread for many basketball games during the 1993-1994 season. *Id.* Similarly, at Northwestern University, basketball players Kenneth Dion Lee and Dewey Williams were paid \$4,000 to point-shave and fix the outcome of games against Penn State University, the University of Wisconsin, and the University of Michigan in 1995. *Id.*

In 1999, the University of Michigan Athletic Department conducted a study of student athletes to determine the types of gambling activities in which student athletes engage. The university sent out 3,000 surveys to Division I football players, Division I men's basketball players, and Division I women's basketball players. The results of this survey showed that over 5% of male student athletes had wagered on a game in which they participated, provided inside information for gambling purposes or fixed a game in which they participated. John Warren Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away our Youth?*, 8 VILL. SPORTS & ENT. L.J. 221, 226 (2002); see also Steve Springer & Lance Pugmire, *Removing Gambling from Curriculum? Congress is Pushing for Legislation that Would Ban Betting on College Sports*, L.A. TIMES, Apr. 5, 2003, at 1, available at 2003 WL 2396514.

ground world of illegal sports wagering has continued to grow. In fact, since the passage of this legislation, college sports scandals reached a fifty-year high.²⁴ Many critics believe this trend stems from the exemption under PASPA that allows betting on collegiate sporting events to continue in Nevada.²⁵

In 1999, after its two-year study, the NGISC recommended a ban on all legalized gambling on college and amateur sports. This recommendation was based upon NGISC's finding that such betting threatens the integrity of sports, puts student athletes in vulnerable positions, can serve as gateway behavior of adolescent gamblers, and can seriously harm individuals and their careers.²⁶

These findings prompted several Congressional bills. On February 1, 2000, Senators Samuel D. Brownback (R-Kansas) and Patrick Leahy (D-Vermont) introduced the Amateur Sports Integrity Act, proposing to eliminate gambling on high school, collegiate, and amateur sports.²⁷ On February 3, 2000, the Student Athlete Protection Act, introduced by Representatives Lindsey O. Graham (R-South Carolina) and Tim Roemer (D-Indiana), proposed amending Section 3704 of PASPA to prohibit high school, college, and amateur sports gambling in all states, including Nevada.²⁸ On March 22, 2000, Senator John McCain (R-Arizona) and Samuel D. Brownback (R-Kansas) introduced the High School and College Sports Gambling Prohibition Act, Senate Bill 718 (S. 718), seeking to ban betting on college sports events in Nevada.²⁹ None of these bills became law, but in 2003, Senator McCain rein-

²⁴ The 1990s saw more college sports gambling-related scandals on college campuses than the previous five decades combined. Lou Holtz, *All Bets Are Off: Time to Stop Gambling on College Athletics*, WASH. TIMES, Oct. 2, 2000, at A15. See also American Gaming Association: Industry Information Fact Sheets, *Sports Wagering: An Issue Overview*, at http://www.americangaming.org/Industry/factsheets/issues_detail.cfv?id=19 (last visited Feb. 22, 2004) [hereinafter American Gaming Association] (on file with the *Nevada Law Journal*).

²⁵ "Right now, federal law prohibits betting on college events in every state except Nevada This single exemption virtually nullifies the impact of the broader federal prohibition." *The Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Dr. Terry W. Hartle, Senior Vice President of American Council on Education) [hereinafter Hartle] available at <http://commerce.senate.gov/hearings/0426har.PDF> (last visited Feb. 22, 2004); Slavin, *supra* note 15, at 723 (PASPA's exemption has not worked for college athletics and is jeopardizing the integrity of collegiate sporting events).

²⁶ Kindt & Asmar, *supra* note 23, at 225.

²⁷ Patrick Leahy, *Senate Floor Statement of Senator Patrick Leahy on the High School and College Sports Gambling Prohibition Act* (Feb. 01, 2000) available at <http://leahy.senate.gov/press/200002/000201.html> (last visited Feb. 22, 2004).

²⁸ Jeffrey R. Rodefer & Daurean G. Sloan, Esq., *Nevada's Proposal to Strengthen its Collegiate Sports Betting Regulations & the NCAA's Push for a Congressional Ban*, NEV. LAW., Mar. 2001, at 10.

²⁹ Slavin, *supra* note 15, at 735. In response to S. 718, Senator John Ensign introduced Senate Bill 338 (S. 338), the National Collegiate and Amateur Athletic Protection Act of 2001, on February 14, 2001. See National Collegiate and Amateur Athletic Protection Act of 2001, S. 338, 107th Cong. (2001). Ensign argued there was a problem with illegal sports wagering, but the problem would not be solved with the proposed legislation. See S. REP. NO. 107-16, at 16 (2001). Ensign argued that S. 718 did nothing to police illegal wagering and that it did not strengthen the existing penalties for illegal wagering. *Id.* He argued that the proposed ban would only push the legal wagering into the illegal realm, resulting in an increase of scandals. *Id.* at 18-19. Ensign's bill, S. 338, would: (1) establish a task force to

troduced his bill as the Amateur Sports Integrity Act of 2003, saying: "Congress must take action to close the loophole in current law that allows just a handful of states to serve as national clearinghouses for betting on our youth."³⁰

Despite their differences, the fundamental theme behind all of these bills is that betting on amateur and college sports threatens the integrity of the athlete and the game itself. Advocates of the legislation believe that closing PASPA's "loophole" for amateur sports will aid in preserving the integrity of college sporting events.³¹ They suggest that if Nevada's collegiate sports betting is put to an end, newspapers will no longer have any reason to publish lines or odds on college games.³² If that information is kept out of local papers, bookies running illegal betting schemes will have difficulty staying in business, thus curtailing gambling.³³ Associated corruption will also be lessened.³⁴

The proposed legislation has received widespread support from educational and sports institutions. The National Collegiate Athletic Association, the American Association of State Colleges and Universities, the American Council of Education, and the United States Olympic Committee are just a few of the many supporters of the bill.³⁵ Many college coaches, including University of South Carolina football coach Lou Holtz and the University of Kentucky men's basketball coach Tubby Smith, also supported legislation prohibiting any form of betting on collegiate sports.³⁶

On the other hand, in 2000, gamblers bet nearly a billion dollars legally in Nevada on college games.³⁷ Obviously, sports gambling is an activity that many people enjoy. It is an important part of Nevada's gaming industry, and

enforce the existing federal laws that prohibit illegal wagering; (2) increase the maximum penalty for gambling violations; (3) have the National Institute of Justice conduct a study into the extent of teen gambling; (4) establish a panel of law enforcement to conduct a comprehensive study on illegal gambling; and (5) require federally funded colleges to implement programs to reduce illegal gambling, inform students of university policy on gambling, and withhold scholarships from athletes who participate in illegal gambling. See Neil H. Huffey, *College Sports Wagering: A Case Study About Gambling on College Athletics and the Motivations and Consequences Surrounding Legislation Wanting to Ban Wagering on College Sports*, ch. 3 (1997) (unpublished M.P.A. thesis, University of Nevada, Las Vegas) (available at UNLV Lied Library), available at <http://www.unlv.edu/Colleges/Urban/pubadmin/papers/nhuffey.htm> (last visited Feb. 22, 2004). Ensign argued that while S. 338 provided tactical measures for stemming the tide of illegal gambling, S. 718 remained "a solution in search of a problem." See S. REP. NO. 107-16, at 16 (2001). See also Frank J. Fahrenkopf, Jr., *Prepared Testimony on Challenges Facing Amateur Athletics*, House Comm. on Energy & Commerce (Feb. 13, 2002), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:77989.wais (last visited Feb. 22, 2004).

³⁰ McCain Reintroduces Bill to Ban Gambling on Amateur Sports, FIN. TIMES INFO., May 3, 2003 (co-sponsors of the bill include Senators Brownback, Edwards, and Lindsey Graham).

³¹ Slavin, *supra* note 15, at 736; Rodefer & Sloan, *supra* note 28, at 11.

³² See Slavin *supra* note 15, at 737; Hartle, *supra* note 25, at 23.

³³ *Id.*

³⁴ *Id.*

³⁵ Kindt & Asmar, *supra* note 23, at 246.

³⁶ *Id.*; Holtz, *supra* note 24; Springer & Pugmire, *supra* note 23 (Senator McCain arguing that literally every coach in the nation wants the legislation to be passed).

³⁷ Kindt & Asmar, *supra* note 23, at 246.

doing away with the grandfather exception could have a serious impact on the state's economy.³⁸ Moreover, the information that the proposed federal legislation seeks to suppress is of significant interest even to those sports fans who do not bet on games.

III. THE CASE FOR AND AGAINST THE NEW LEGISLATION

As the supporters of laws to close the "Las Vegas loophole" push for a ban on collegiate sports wagering, their argument rests on two principal points. First, by banning legal wagering, there will be no justification for publishing odds or point spreads in the press. Second, by implementing a total ban on collegiate sports wagering, it will be harder to run illegal games. These matters are viewed as important because: (1) publication of point spreads in newspapers supposedly sends a mixed message as to the illegality of betting;³⁹ and (2) the existence of legal betting potentially exposes athletes to corrupting influences.⁴⁰ Senator McCain admits that the bill will not prevent illegal gambling, but insists it will "send a consistent message that betting on college sports is wrong, and is illegal throughout the country. . . ."⁴¹

A. *The Mixed Message*

The president of the National Collegiate Athletic Association ("NCAA"), Cedric Dempsey, would like to stop newspapers across the nation from publishing betting lines (odds) because their publication sends a mixed message to students and the public at large about the legality of gambling.⁴² Although

³⁸ Of course, gamblers who are not permitted to bet legally on college sports in Nevada would have three options. They might stop gambling on such games, they might bet illegally, or they might shift their gambling dollars to other games (table games or professional sports). This third option would seem not to present a threat to Nevada's economy.

³⁹ S. REP. NO. 107-16, at 5 ("It will . . . send a consistent message that betting on college sports is wrong, and is illegal throughout the country."). Former NBA star Bill Bradley, then a U.S. Senator (D-New Jersey), supported the 1992 legislation (*supra* notes 15-18 and accompanying text), saying that legal, state-sanctioned sports gambling was the most objectionable form of gambling because it puts the "imprimatur of the state on this activity." Bill Bradley, *The Professional and Amateur Sports Protection Act – Policy Concerns Behind Senate Bill 474*, 2 SETON HALL J. SPORT L. 5, 5 (1992).

⁴⁰ See Slavin, *supra* note 15, at 736-38.

⁴¹ Rodefer & Sloan, *supra* note 28, at 11. In making this statement, Senator McCain seems to confirm a key premise of this paper: the proposed legislation is primarily about the free flow of information in the press.

⁴² Kindt & Asmar, *supra* note 23, at 239. Bill Saum, Director of Agent and Gambling Activities for the NCAA, has also argued that legal wagering in Nevada fuels the rampant illegal wagering in America, essentially creating a nexus between the two. See *Written Testimony of Bill Saum, Director of Agent and Gambling Activities Nat'l Collegiate Athletic Ass'n before the National Gambling Impact Study Comm'n*, Nov. 10, 1998 [hereinafter *Saum 1998*], available at http://www.ncaa.org/gambling/19981110_testimony.html. See also *Written Testimony of William S. Saum, Director of Agent, Gambling and Amateurism Activities Nat'l Collegiate Athletic Ass'n before the Judiciary Comm. of the Nevada State Assembly*, Mar. 2, 2001 [hereinafter *Saum 2001*], available at http://www.ncaa.org/gambling/20010302_testimony.html (last visited Feb. 22, 2004).

The Senior Vice President of American Council on Education testified that "there has been a critical (or perhaps a hypocritical) gap between our approach to some dangers we seek to protect our youth from. . . ." Hartle, *supra* note 25. While we seek to protect our

gambling on collegiate sporting events is only legal in Nevada, the Las Vegas line (or point spread) is published in most of the other forty-nine states, where sports wagering is illegal.⁴³ By banning legal wagering in Nevada, the NCAA believes there would no longer be reason to publish the point spreads. Thus, they would disappear from the newspapers.⁴⁴

Some commentators have even argued that, because point spreads are widely published, many Americans are unaware that betting on sports is illegal (in states other than Nevada).⁴⁵ Those individuals who are unsure about the legality of betting on college sporting events are therefore falsely assured of its legality because betting information is available in their daily newspaper.⁴⁶

Opponents of the new legislation argue that college students and other gamblers already know that betting outside of Nevada is illegal.⁴⁷ As John Shelk, vice president of the American Gaming Association, said: "it's not like Congress is going to pass a law that bans legal gambling, and students across the country will say, 'Oh my God, I can't gamble anymore because it's illegal.' It's always been illegal from their perspective. . . ."⁴⁸ In arguing that the real problem is illegal wagering, Shelk also said:

[The NCAA's] solution is to eliminate the one percent of sports wagering that takes place in Nevada, where it's legal, it's taxed, it's regulated and where there are all kinds of other safeguards and requirements. . . . That is sort of like saying that there is an underage drinking problem on campus, so let's stop adults from going to the restaurant and having a glass of wine.⁴⁹

Another commentator argued that in a culture where gambling is already mainstream, it is completely unreasonable to believe that a ban on legal sports wagering will curb peoples' impulse to gamble.⁵⁰

There is no doubt that the publication of point spreads contributes to the popularity of sports wagering. It is a much harder case, however, to show that such publication causes people to think that gambling is legal; rather, people

youth and athletes from the dangers of drugs, tobacco, alcohol, and firearms, we can not unite an effort to protect our youth from gambling. *Id.*

⁴³ Hartle is one of those witnesses who advances the fairly incredible argument that "most Americans are completely unaware that most forms of gambling are illegal." Hartle, *supra* note 25. See also Slavin, *supra* note 15, at 737-38. The *Washington Post*, the *New York Times*, and the *Sporting News* are among the few major U.S. newspapers that do not publish the betting lines on college games. Kindt & Asmar, *supra* note 23, at 239.

⁴⁴ See Slavin, *supra* note 15, at 737.

⁴⁵ *Id.* See also *supra* note 43.

⁴⁶ See Arnie Wexler, *Media Bears Burden for Gambling Crisis*, THE NCAA NEWS COMMENT, Dec. 22, 1997, at <http://www.ncaa.org/news/1997/19971222/comment.html> (last visited Feb. 22, 2004) (on file with the Nevada Law Journal).

⁴⁷ See Darren Rovell, *Congress Could Trump Vegas on College Book*, ESPN.COM, Mar. 12, 2001, at <http://msn.espn.go.com/ncaa/s/2001/0312/1150957.html> (last visited Feb. 22, 2004) (on file with the Nevada Law Journal).

⁴⁸ *Id.*

⁴⁹ Aaron Schoenewolf, *Congress to Decide Fate of College Gambling*, DAILY TEXAN, Mar. 28, 2001, available at <http://www.dailyillini.com/mar01/mar28/news/stories/campus02.shtml> (last visited Feb. 22, 2004) (on file with the Nevada Law Journal).

⁵⁰ See *Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Danny Sheridan [hereinafter Sheridan]).

know that bookie operations are illegal, but do not care very much about “friendly wagers,” and never have.⁵¹

Newspapers are certainly free to publish this information for any purpose, including non-gambling amusement purposes.⁵² A Harris Poll conducted in 2000 showed that seventy percent of the people who look at point spreads published in the paper do so to increase their knowledge of sports, whereas only eleven percent reported reading the spreads for wagering purposes.⁵³ In his testimony before the Senate committee on the Amateur Sports Integrity Act, Danny Sheridan, a resident of Mobile, Alabama, noted that he configures the odds that are published in USA TODAY.⁵⁴ That paper does not use lines that come out of Las Vegas.⁵⁵ Sheridan added that a Congressional ban on legal wagering would not stop him from setting and publishing those lines.⁵⁶

While supporters of the proposed legislation believe that banning legal wagering in Nevada will suppress the publication of point spreads in the newspapers, some evidence points in a different direction. As Bob Faiss, Chairman of the Gaming Law Department at Las Vegas law firm Lionel Sawyer & Collins, explained:

The demand for lines on games exists for reasons beyond gambling alone. . . Odds originate from around the world; publishers and people who read the paper want them, and that's not necessarily to gamble. . . . It's part of sports reporting in America and is of great interest to the reader. . . . They want to know how one team stands against another, who is the underdog and who is the favorite.⁵⁷

In a letter dated April 25, 2001, the Newspaper Agency Association indicated that it believed newspapers across the country would continue to publish point spreads for readers who actually have no intention of using them for gambling purposes, despite any ban that Congress may impose on legal wagering.⁵⁸

⁵¹ See NGISC FINAL REPORT, *supra* note 4, Appendix I., Statement of William A. Bible, available at <http://govinfo.library.unt.edu/ngisc/reports/a1.pdf> (last visited Feb. 22, 2004) (even when Americans understand that sports wagering is illegal, the popularity of betting, the acceptance, and the lax prosecution under the law creates a wagering atmosphere).

⁵² See Larry Atkins, *Next Gambling Scandal to Come as No Surprise*, at <http://www.ncaa.org/news/1996/961014/comment.html> (last visited Feb. 22, 2004) (newspapers insist that point spreads are published “for amusement only”). But see Ronald J. Rychlak, *Video Gambling Devices*, 37 UCLA L. REV. 555, 593 (1990), available at <http://www2.tlct.ttu.edu/Cochran/Gaming%20Law/rychlakvideo.htm> (last visited Feb. 22, 2004) (a sign that says “for amusement only” is an indication that the device is used for gambling purposes).

⁵³ See Rovell, *supra* note 47.

⁵⁴ Sheridan, *supra* note 50; Fahrenkopf, *supra* note 29.

⁵⁵ Sheridan, *supra* note 50; American Gaming Association: Industry Information Fact Sheets, *Sports Wagering*, available at http://www.americangaming.org/Industry/factsheets/issues_detail.cfv?id=16 (last visited Feb. 22, 2004) (on file with the *Nevada Law Journal*).

⁵⁶ Sheridan, *supra* note 50. See also Anthony N. Cabot & Robert D. Faiss, *Sports Gambling in the Cyberspace Era*, 5 CHAP. L. REV. 1, 17 (2002) (“[A]nyone with even limited knowledge of sports wagering is aware that numerous sources, completely unrelated to Nevada, publish point spreads and wagering information.”).

⁵⁷ Huffey, *supra* note 29, at ch. 7 (quoting Bob Faiss).

⁵⁸ See S. REP. NO. 107-16, at 17-18; Fahrenkopf, *supra* note 29; Americans for Casino Entertainment, *Why Legislation Supported by the NCAA Won't Solve the Problem of Illegal Sports Betting Across the Country*, at http://www.aceaction.com/resources/2021_HR_3575.cfm (last visited Feb. 22, 2004). It has been estimated that circulation would drop at least 10% if point spreads were banned from newspapers. Wexler, *supra* note 46.

In fact, the news media has used its First Amendment right to overcome the NCAA's attempt to keep point spreads out of the news. Several years ago, the NCAA withheld sports reporters' press credentials from newspapers that publish betting lines.⁵⁹ The NCAA, however, reportedly had to discard its initiative when the news media challenged the constitutionality of its actions.⁶⁰

Even if backers of this legislation were successful in stopping the publication of point spreads in the newspapers, in today's Internet-driven world, gamblers could still find this information quite easily.⁶¹ Moreover, evidence suggests that lines and odds on professional sports would continue to be published in newspapers. If the concern is truly about the *message* being sent to young people through publication of professional sports lines about the dangers of gambling, the proposed legislation would have no relevant impact on this concern.

The message about gambling that should concern people today comes not from the sports section of the newspaper, but from those state governments that actively promote lotteries.⁶² Those states adopt the attitude that "[t]he success of a state lottery, like that of a private business, can be measured in terms of profitability."⁶³ As such, they market the lottery like a "product," constantly encouraging citizens to gamble by buying tickets as though it were their civic duty.⁶⁴

With regard to sending a clear message to the general public, supporters of the proposed sports betting legislation also hope to send a message to student athletes and protect the integrity of sporting events and those athletes that compete in them. The truth, however, is that NCAA regulations already make certain that college athletes are better informed about the illegality and the dangers of gambling than any other students.⁶⁵

The NCAA already undertakes many efforts to be sure that student-athletes know about the dangers (and illegality) of gambling.⁶⁶ It has implemented regulations that prohibit all forms of legal and illegal wagering by student athletes and athletic department staff members.⁶⁷ In 2000, the NCAA

⁵⁹ Slavin, *supra* note 15, at 738.

⁶⁰ *Id.* (citing *Proposed Legislation Banning College Sports Wagering: Hearing on H.R. 3575 Before the U.S. House Comm. on the Judiciary*, 106th Cong. (2000) (statement of Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association)).

⁶¹ See Rodefer & Sloan, *supra* note 28, at 11.

⁶² See generally Rychlak, *supra* note 2.

⁶³ See LEGISLATIVE BUDGET AND FINANCE COMMITTEE, PENNSYLVANIA GENERAL ASSEMBLY, REPORT ON A PERFORMANCE AUDIT OF THE PENNSYLVANIA STATE LOTTERY 20 (Sept. 1987) (discussing the potential profit in offering a three digit drawing every day of the week).

⁶⁴ CHARLES T. CLOTFELTER & PHILIP J. COOK, SELLING HOPE: STATE LOTTERIES IN AMERICA 186 (1989); Rychlak, *supra* note 2, at 61-63.

⁶⁵ Titus Ivory, a basketball player for Penn State University, testified that student athletes are well aware of the dangers of gambling and the penalties imposed by the NCAA for gambling violations. *Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Titus Ivory, Student Athlete, Men's Basketball Team, Pennsylvania State University).

⁶⁶ See Saum 1998, *supra* note 42. See also Saum 2001, *supra* note 42.

⁶⁷ *Id.* See also *Amateur Sports Integrity Act: Hearing on S. 718 Before the Senate Comm. on Commerce, Sci., and Transp.*, 107th Cong. (2001) (statement of Chairman McCain).

increased penalties for athletes caught participating in gambling activities, ranging from a one year loss of eligibility to losing all remaining eligibility to compete in intercollegiate athletics.⁶⁸ These efforts are carried out by a full-time staff member that concentrates on gambling issues.⁶⁹ With a limited budget of \$229,000,⁷⁰ the NCAA has primarily focused on educational efforts to combat gambling.⁷¹ Recently, the NCAA began broadcasting public service announcements during NCAA championship events, as well as publishing a booklet entitled, *Don't Bet On It*, which teaches athletes about the dangers of sports gambling.⁷² The NCAA has also started applying pressure on radio stations that carry college games, discouraging them from accepting advertisements from online sports gambling promoters.⁷³

B. Legal Bookmaking's Impact on Illegal Gambling

Opponents of the new legislation argue that eliminating legal betting avenues would send more gamblers to illegal bookies, compounding the problems presented by illegal wagering.⁷⁴ Bill Eadington, director of the Center for the Study of Gambling and Commercial Gaming at the University of Nevada, has pointed out:

[t]here is a fundamental reality that we as Americans have had enough experience with now that we need to come to grips with, and that is that prohibition, whether it's for alcohol, illicit drugs or sports wagering, does not make the demand for an activity go away. Rather, it drives it underground and it pushes transactions outside of the protection of contract.⁷⁵

Similarly, legendary Georgetown basketball coach John Thompson said:

[w]e need to learn how to monitor it, learn how to deal with it. . . . I'm not advocating somebody should [gamble]. . . . But it's foolish to say it's not a part of our

While the NCAA has taken these efforts to combat illegal gambling, it could do more. Of its \$326 million budget, only \$229,000 was spent to fight illegal gambling. *See also Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Senator John Ensign) (Forty percent less than what the NCAA spent on marketing and promotion).

⁶⁸ Of course, the NCAA cannot enforce penalties on the general student body or other gamblers.

⁶⁹ Kindt & Asmar, *supra* note 23, at 249.

⁷⁰ Rovell, *supra* note 47.

⁷¹ Huffey, *supra* note 29, at ch. 4.

⁷² Slavin, *supra* note 15.

⁷³ Zack McMillan, *NCAA Hits Online Sports Betting Radio Ads*, THE COM. APPEAL (Memphis), Sept. 13, 2003, at D1.

⁷⁴ *See* Huffey, *supra* note 29, at ch. 5. Senator Ensign points out that the overwhelming evidence and testimony concludes that the problem is the massive amounts of illegal wagering, rather than the highly regulated arena of Nevada sports books, that contribute to the problem of teen gambling and the assault on the integrity of the game and athletes. S. REP. NO. 107-16, at 16 (2001) (minority views of Senator Ensign, Senator Breaux, and Senator Boxer).

⁷⁵ *See* Kay Hawes, *NACDA Panelists Discuss Wide Spectrum of Gambling Issues*, THE NCAA NEWS, July 5, 1999, at <http://www.ncaa.org/news/1999/19990705/active/3614n05.html> (last visited Feb. 22, 2004).

society. If you take it out of Las Vegas, every illegal bookie in this country will still be running books, and every kid that has no supervision will be vulnerable to it.⁷⁶

The “displacement” argument can be persuasive in some circumstances. When it comes to gambling, however, it is a weak argument. Legal gaming tends to complement illegal gambling, not replace it.⁷⁷ For one thing, open promotion of legal gambling tends to remove any taint from illegal games.⁷⁸ As such, people who would not have gambled illegally might be encouraged to do so.⁷⁹ Moreover, by setting lines and stating odds, the legal game may make it easier to operate illegal games. The legal game also provides an easy way for the illegal operator to “lay-off” (thereby insuring against heavy losses) on popular wagers.⁸⁰ Therefore, while the evidence is inconclusive,⁸¹ it appears likely that legal gambling in Nevada does not displace illegal gambling in other states. Logically, then, elimination of legal betting in Nevada would probably not significantly increase illegal gambling.⁸²

Howard Shaffer, Director at Harvard Medical School, Division on Addictions, pointed out that banning wagers on college sports in Nevada sports books, in an effort to protect teens and student athletes, is fundamentally unsound because teen gambling is already illegal, and most illegal gambling by teens does not take place in a casino or sports book anyway.⁸³ He further stated that the proposed legislation to close the “Las Vegas loophole” would

⁷⁶ See Scott Sonner, *Reid: College Bet Ban Finished*, LAS VEGAS REV.-J., July 3, 2001, at http://www.reviewjournal.com/lvrj_home/2001/Jul-03-Tue-2001/news/16456031.html (last visited Feb. 22, 2004). See also Senator John Ensign, *Banning Legal Amateur Sports Betting: A Goldmine for Organized Crime* (2001) at http://ensign.senate.gov/news_office/Ops_Ed/2001/ncaathehill.htm (last visited Feb. 22, 2004) (“Banning legal, highly regulated amateur sports betting in Nevada will drive the activity underground permanently, lining the pockets of organized crime across the country.”).

⁷⁷ Rychlak, *supra* note 2, at 54-58.

⁷⁸ Lester B. Snyder, *Regulation of Legalized Gambling: An Inside View*, 12 CONN. L. REV. 665, 666 (1980) (“The statistics suggest that those lured into legal gambling often extend their habit to illegal wagering as well.”); Judith Hybels, *The Impact of Legalization on Illegal Gambling Participation*, 35 J. SOC. ISSUES 27, 35 (1979) (concluding that legal and illegal gambling are complementary and that gamblers do not substitute one for the other).

⁷⁹ “[T]he presence of a state lottery appears to encourage, rather than discourage, gambling on numbers.” Hybels, *supra* note 78, at 32.

⁸⁰ NAT’L INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, LAW ENFORCEMENT ADMIN., U.S. DEP’T OF JUSTICE, THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776-1976 732 (1977); Laying-off is the process by which sports books or bookies minimize risk by having an equal amount bet on each side. See NICHOLAS PILEGGI, CASINO: LOVE AND HONOR IN LAS VEGAS 30-31 (1995).

⁸¹ Rychlak, *supra* note 1, at 353.

⁸² DAVID WEINSTEIN & LILLIAN DEITCH, THE IMPACT OF LEGALIZED GAMBLING: THE SOCIOECONOMIC CONSEQUENCES OF LOTTERIES AND OFF-TRACK BETTING 139 (1974) (“The daily lottery probably does not substitute closely enough for the illegal numbers game to attract a significant percentage of illegal bettors.”). One possible result of ending legal betting on college sports in Nevada would simply be that gamblers will increase legal betting on professional sports.

⁸³ *Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Howard J. Shaffer, Ph.D., C.A.S. Associate Professor and Director, Harvard Medical School, Division on Addictions) [hereinafter Shaffer].

not stop illegal gambling, and will only cause a diminished respect for the rule of law in general among teens and adolescents.⁸⁴

A legal sports book makes it easier for illegal bookies to set lines and lay-off bets when action is heavy on one side or the other.⁸⁵ As such, Nevada probably facilitates illegal gambling on college sports. For this reason, supporters of the proposed legislation argue that a ban on collegiate gambling in Nevada will have a severe impact on illegal bookies and thereby protect the integrity of sports and student athletes across the nation.⁸⁶

One author has noted that student athletes are easy targets for corrupt gamblers because:

"1) [of] the money and goods that fixers promise to supply in exchange for their cooperation, 2) the players are invariably young, and this lack of maturity may have some part in their willingness to assume the risks entailed in illegal schemes presented to them, and 3) many are from modest socio-economic backgrounds and lack alternative means for earning money."⁸⁷

Dr. Michael F. Adams, President of the University of Georgia, testified about the vulnerability of student athletes, who have little to no financial support, to the pressures of game "fixing" from illegal bookies.⁸⁸ He argued that as the amount of money legally wagered in Nevada increases, the pressure on athletes to get involved in scandals will also increase.⁸⁹ While the prevalence of gambling among college students and athletes is apparent, and at times athletes may become involved in scandals to erase outstanding debt, athletes also tend to gamble on sports for another reason.⁹⁰ The profile of a college gambler is one who is competitive, interested in sports, feels he knows a lot about sports, and feels he can control his own destiny.⁹¹ That also tends to be the

⁸⁴ *Id.* Because S. 718 lacks any policing measures and strengthening of penalties for violations of illegal gambling, the WASHINGTON POST characterized the bill by saying, "Congress is contemplating a measure that sets some sort of indoor record for missing the point." Huffey, *supra* note 29, at ch. 5. Senator Ensign argues that there is indeed a problem with illegal sports wagering, but the problem is not solved with S.718 because that bill does nothing to police the illegal wagering that occurs and, furthermore, does not strengthen the existing penalties for someone charged with illegal wagering. *Id.*

⁸⁵ See *supra* note 80.

⁸⁶ See Saum 1998, *supra* note 42. See also Saum 2001, *supra* note 42 (arguing that scandals such as the ones at Arizona State University and Northwestern University would be less likely to occur with a ban on legal wagering). Supporters argue that the proposed legislation will protect student athletes from the pressures of participating in scandals because of debts to a bookie or the need for money in general. This appears to be one of the things that led Pete Rose to become deeply involved with professional gamblers. See Ronald J. Rychlak, *Pete Rose, Bart Giamatti, and the Dowd Report*, 68 Miss. L.J. 889 (1999).

⁸⁷ Huffey, *supra* note 29, at ch. 3.

⁸⁸ *Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Dr. Michael F. Adams).

⁸⁹ *Id.* See also Irwin Ross, *Corporate Winners in the Lottery Boom*, FORTUNE, Sept. 3, 1984, at 25 (operator of an illegal numbers game that used the numbers drawn in the state game complained when he noted irregularities in the Pennsylvania lottery drawing); see also American Gaming Association, *supra* note 24 ("Nevada's sports books and regulators assisted in catching those responsible for point-shaving incidents in the 1990s.").

⁹⁰ See Saum 1998, *supra* note 42. See also Saum 2001, *supra* note 42.

⁹¹ Ante Z. Udovicic, *Special Report: Sports and Gambling a Good Mix? I Wouldn't Bet on It*, 8 MARQ. SPORTS L.J. 401, 408 (1998). See also Saum 1998 and Saum 2001, *supra* note 42 (similar).

profile of a college athlete. By implementing a ban on legal wagering, supporters believe they will limit the exposure of student-athletes to bookies, thereby protecting the integrity of the game.

It can actually be argued that Nevada sports books help the NCAA uphold the integrity of collegiate sports. The NCAA has never uncovered a sports scandal on its own.⁹² Legal sports books have, however, been instrumental in monitoring the games for suspicious activity. In fact, it was a legal sports book that first alerted the FBI to the Arizona State basketball scandal in 1994.⁹³ Chairman of the Nevada Gaming Commission, Brian Sandoval, pointed out: "there is nothing in the record that indicates legalized sports wagering in Nevada has compromised the integrity of any athletic contest at any time or place. Not one college sports scandal is the result of legal sports wagering."⁹⁴

Thus, there is no reason to prohibit sports wagering in Nevada. One witness stated that removing the legal sports books in Nevada would be like removing the Securities Exchange Commission from Wall Street.⁹⁵ Nevada currently has all the incentive in the world to protect the integrity of collegiate contests, but a ban would remove the best policing and monitoring body that exists in gaming.⁹⁶

It is worth noting that even if new legislation were able to control the newspapers and stop the publication of odds and lines for college games, such statistics would presumably still exist for professional sports. As such, bookies across the nation would not seriously be threatened by this legislation. Bookies would stay in business, continuing to take illegal professional sports wagers; they would also expend whatever limited additional effort needed to obtain information necessary to accept bets on college games. As such, the proposed legislation would not accomplish its intended purpose of shutting down illegal book-making operations and protecting collegiate athletes from exposure to bad influences.

IV. CONCLUSION

The push to implement a total ban on legal college sports wagering originated from an NGISC recommendation.⁹⁷ That recommendation, however, only passed by a 5-4 vote, unlike the other recommendations that came

⁹² *Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Pete Newell).

⁹³ *Id.*

⁹⁴ Rodefer & Sloan, *supra* note 28, at 12.

⁹⁵ See Sheridan, *supra* note 50. See also Cabot & Faiss, *supra* note 56, at 17 ("Because the Internet has rendered it even more difficult for federal and state authorities to eradicate sports wagering, now, more than ever, Nevada's model of regulation and taxation should be emulated, not discarded.").

⁹⁶ See also Ensign, *supra* note 76 ("Bets are highly regulated in my state, and persons wishing to place bets must be physically present in Nevada. All sports bets are monitored by state and federal authorities – any wagers over \$3,000 require photo identification, and bets over \$10,000 are reported to the IRS."); Jason Foster, *If You Ban It, They Will Stop (Well, No They Won't)*, THE PIGSKIN POST, May 25, 2001 ("The Nevada casinos and bookmaking operations actually serve as an anchor and as a watchdog over the industry.") (on file with the *Nevada Law Journal*).

⁹⁷ See Saum 2001, *supra* note 42.

with the unanimous support of the Commission.⁹⁸ Another part of NGISC's report noted that:

Generally, what is missing in the area of gambling regulation is a well thought-out scheme of how gambling can best be utilized to advance the larger public purpose and a corresponding role for regulation. Instead, much of what exists is far more the product of incremental and disconnected decisions, often taken in reaction to pressing issues of the day, than one based on sober assessments of long-term needs, goals, and risks.⁹⁹

The proposed legislation – in all its various forms – is exactly that: a forced decision made in reaction to a mixed report about the needs of the moment. Moreover, the target of that legislation is the press, the nation's newspapers.

While supporters of the new legislation may have good intentions in trying to combat the problem of illegal gambling, they are wrong to try to accomplish this by restricting the press. Point spreads help gamblers, but they also interest the fans. Similarly, national rankings are of value to gamblers, but presumably legislators would not restrict their publication.¹⁰⁰ What about injury reports? Fans are interested in these things, regardless of any interest in gambling.

There is no evidence linking legal sports wagering in Nevada with the sports scandals that have taken place in recent years.¹⁰¹ As one Nevada Congressman testified: "There is absolutely no plausible evidence to suggest that the legal betting in Nevada is in any way responsible for the illegal wagering occurring mostly on our nation's college campuses."¹⁰² Moreover, the message about gambling that should concern people today comes not from the sports section of the newspaper, but from state governments themselves that actively promote lotteries as almost a civic duty.¹⁰³ The argument that seems to be driving this issue was perhaps best voiced by South Carolina football coach Lou Holtz who said: "we can give you a lot of reasons why there shouldn't be gambling on college sports. Give me a reason why we should allow gambling on college sports."¹⁰⁴ Perhaps such gambling should not be allowed. Apparently only two states (in the modern era)¹⁰⁵ have authorized gambling on amateur sports. That, however, is only part of the equation. Two

⁹⁸ See NGISC FINAL REPORT, *supra* note 4.

⁹⁹ *Id.* at 3-2.

¹⁰⁰ I thank my teenage son, Joseph, who immediately made this observation about the proposed legislation.

¹⁰¹ Cabot & Faiss, *supra* note 56, at 17 ("There is no evidence of campus bookies or the involvement of organized crime in Nevada state wagering.").

¹⁰² *Amateur Sports Integrity Act: Hearing on S. 718 Before the Comm. on Commerce, Sci. and Transp.*, 107th Cong. (2001) (testimony of Congressman Jim Gibbons of Nevada). See also Shaffer, *supra* note 83 (none of the sports-related gambling scandals of the past forty-five years directly involved Nevada-based legal sports gambling).

¹⁰³ See generally Rychlak, *supra* note 2.

¹⁰⁴ *College Athletics Officials Meet with Members of Congress About Legislation to Ban Legal Wagering on College Sports*, NCAA NEWS RELEASE, June 27, 2001, at <http://www.ncaa.org/releases/miscellaneous/2001/2001062701ms.htm> (last visited Feb. 22, 2004).

¹⁰⁵ "Few nineteenth-century sports fans would have thought it possible to separate sports from gambling, even if it had occurred to them that it might be a good idea to do so." THOMAS GILBERT, *SUPERSTARS & MONOPOLY WARS: NINETEENTH-CENTURY MAJOR LEAGUE BASEBALL* 10 (1995); see also ETTI WARD ET AL., *COURTING THE YANKEES: LEGAL ESSAYS ON THE BRONX BOMBERS* (forthcoming 2003) (ch.12, on gambling).

states decided to permit such gambling. Gambling has traditionally been regulated by states, not the federal government.¹⁰⁶ That is how it should remain.¹⁰⁷

To answer the question raised by Lou Holtz, millions of American citizens enjoy placing bets on the weekend game.¹⁰⁸ The Nevada gaming industry invested millions of dollars in sports book facilities to meet that demand, and the revenue from those facilities is important to Nevada's economy.¹⁰⁹ It would amount to a breach of trust by the federal government to now change the law.¹¹⁰ More importantly, the proposed legislation, drafted in reaction to a mixed report from a federal Commission, does not address the real problem. Instead, it appears to be a political gesture, designed to "do something." As one writer put it:

This is just another example of what I call "feel-good legislation." If such legislation is made into law, it does nothing to solve the problem, and in fact will likely make problems worse. But the legislator in question will end up in the emergency room in the hospital because he (forgive me as our language does not offer us a neutered [sic] pronoun) separated his shoulder from patting himself on the back. "I feel good. I tried to do something, therefore, I am a good person. . . ."¹¹¹

¹⁰⁶ Cabot & Faiss, *supra* note 56, at 14. See Fahrenkopf, *supra* note 29 ("A federal ban on Nevada's legal sports books raises serious constitutional issues."). The historical analogy for the supporters of the new legislation would be the federal legislation put in place to end the notorious Louisiana Lottery. See Rychlak, *supra* note 2.

¹⁰⁷ I have long held this view of gambling:

[Gaming and] [l]egalized gambling impact[] different localities in different ways. . . . I believe it is appropriate to restrict gaming to certain areas, limit types of gambling available in specific states, and to completely prohibit gambling in other areas. Gambling comes in so many forms, is so controversial, and has so many impacts – both positive and negative – that it is most appropriate to leave decisions as to what types of gambling and where it will be permitted to individual states, if not individual counties. . . .

In summary, there is a role for the federal government to play in the gaming industry, but it is very limited. The gaming industry tends to be highly taxed as it is, and I think that excessive federal involvement – assuming that means federal taxation – could drive the price up to such a point that illegal gambling would try to fill the void. At the very least, unregulated Internet gambling would try to pick up any gamblers turned away by higher costs associated with higher taxes.

Ronald J. Rychlak, *Testimony Before the Nat'l Gambling Impact Study Comm'n*, New Orleans, La. (Sept. 11, 1998) (on file with the *Nevada Law Journal*).

¹⁰⁸ *Hearing on Pending Sports Wagering Legislation, Comm. on the Judiciary, U.S. House of Representatives*, June 13, 2000, 2000 WL 768145 (F.D.C.H.) (statement of Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association) available at <http://www.house.gov/judiciary/fahr0613.htm> (last visited Feb. 22, 2004). Americans for Casino Entertainment, *supra* note 58.

¹⁰⁹ *Banning Amateur Sport Gambling: Testimony to the House Nat'l Gaming Impact Study Comm'n Comm. on the Judiciary*, June 13, 2000 (statement of William A. Bible), available at 2000 WL 768148 (F.D.C.H.). Approximately one-third of the \$2.3 billion wagered in Nevada's sports books in 2000 was bet on college sporting events. American Gaming Association, *supra* note 24. See also Bible, *supra* ("The NCAA proposal before you today is merely cosmetic 'feel good' legislation."); Fahrenkopf, *supra* note 108 (citing Mike DeCourcy, *The Sporting News*, Jan. 19, 2000) ("This is strictly a public relations move that offers no tangible benefit.").

¹¹⁰ A state may, however, revoke a gambling charter, despite claims that it violated a contract. See *Stone v. Mississippi*, 101 U.S. 814 (1879) (charter to conduct a lottery for twenty-five years revoked the following year after a state constitutional amendment).

¹¹¹ Foster, *supra* note 96.

This is not the way or the reason to make law. There *is* a mixed message about gambling being sent to the general public, but the message suggesting that gambling is acceptable comes most strongly from those states that actively run and promote lotteries.

Knowing which team is favored going into a particular contest adds greatly to the interest in the game by the non-gambling public. That, not gambling interest, drives the demand for this information. Publication of lines or odds may facilitate occasional friendly wagers or even help small-time bookies run their operations, but in an open society we cannot stop the flow of this information. In light of the very limited benefit to be gained by the proposed legislation, we should not even desire restricting publication of this information.