

## STUDENT ATHLETE PROTECTION ACT

SEPTEMBER 27, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,  
submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

[To accompany H.R. 3575]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3575) to prohibit high school and college sports gambling in all States including States where such gambling was permitted prior to 1991, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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## PURPOSE AND SUMMARY

H.R. 3575 establishes a ban on gambling on Olympic, college, and high school athletic events, or gambling on any individual competing in a collegiate, high school, or Olympic athletic event. This ban is a response to recommendation 3.7 of the National Gambling Impact Study Commission's (NGISC) Final Report, issued in June 1999. Recommendation 3.7 states "that the betting on collegiate and amateur athletic events be banned altogether."<sup>1</sup> Under current law, the Professional and Amateur Sports Protection Act (PASPA), gambling on these events is only permitted in Nevada. H.R. 3575 amends PASPA and closes this loophole.

## BACKGROUND AND NEED FOR THE LEGISLATION

On October 28, 1992, President Bush signed into law the Professional and Amateur Sports Protection Act (PASPA), which prohibited any expansion of existing State-sanctioned, authorized or licensed gambling on sports. Horse racing, dog racing, and jai-alai were excluded from this prohibition. At that time, a handful of legislatures had already authorized sports wagering or were deliberating on legislation that would authorize sports wagering. To accommodate those States, a grandfather clause with a sunset provision was included in PASPA. As a result, sanctioned sports gambling on amateur or Olympic sporting events is limited to one State, Nevada.

In 1996, the National Gambling Impact Study Commission (NGISC) was established by Public Law 104-169. The NGISC was charged with conducting a comprehensive legal and factual study of the social and economic impacts of gambling on (1) Federal, State, local, and native American tribal governments and (2) communities and social institutions including individuals, families, and businesses which comprise them. The NGISC was a nonpartisan commission, with members appointed by the Speaker, the Majority Leader, and the President. After hearing testimony from hundreds of experts and members of the public; making several site visits; commissioning original research; and conducting surveys of existing, wide-ranging literature, the Commission issued a Final Report in June, 1999.

In this report, the NGISC found that "[t]he popularity of sports wagering in most States, both legal and illegal, makes it a regulatory challenge."<sup>2</sup> According to Cedric Dempsey, Executive Director of the NCAA: "[E]very campus has student bookies. We are also seeing an increase in the involvement of organized crime on sports wagering."<sup>3</sup> According to the NGISC Final Report, such illegal campus betting is not limited to dormitory gambling by students, but extends to student athletes as well. "A University of Michigan study found that more than 45 percent of male collegiate football and basketball athletes admit to betting on sporting events, despite NCAA regulations prohibiting such activities. More than five percent of male student athletes provided inside information for gam-

<sup>1</sup>"Final Report," *National Gambling Impact Study Commission*, p. 3-18 (June, 1999). Hereinafter "Final Report."

<sup>2</sup>*Id.* at 3-9.

<sup>3</sup>*Id.* at p. 3-10.

bling purposes, bet on a game in which they participated, or accepted money for performing poorly in a game.”<sup>4</sup>

Although Nevada has implemented strict rules for sports gambling, sports books in Nevada have been directly linked to point shaving scandals, money laundering, and prohibited sports gambling in other States. Two recent point shaving scandals, one at Northwestern University<sup>5</sup> in Chicago, and another at Arizona State University,<sup>6</sup> involved heavy betting among participants in Nevada sports books. In the Northwestern case, the Nevada sports book activity went completely undetected. Steve DuCharme, of the Nevada State Gaming Control Board, estimates that millions of dollars of illegal money is laundered through Nevada sports books.<sup>7</sup> While the publication of point spreads is protected by the first amendment of the Constitution, the NGISC found that point spreads facilitate prohibited sports gambling throughout America.<sup>8</sup>

During the Judiciary Committee’s June 13th, 2000 hearing, officials from Nevada’s gaming industry argued there is no nexus between illegal gambling activity and Nevada’s sports gambling books.<sup>9</sup> Nevada however, maintains a rule that prohibits placing bets on teams from Nevada. At this hearing, Brian Sandoval, Chairman of the Nevada Gaming Commission testified that this rule was created to “combat a perception. . . .”<sup>10</sup> In response, Representative Graham (SC) noted, “. . . the coaches are telling us, that we do not want to give the impression that our sports programs are tainted. It is part about perception, part about reality. Your [the Nevada Gaming Industry] concern to guard the integrity of the betting process is our concern to guard the integrity of the game.”<sup>11</sup>

Prior to 1974, the volume of sports gambling in Nevada was much lower than today. Due to a change in the tax code in 1974, which made sports gambling a profitable business, and the advent of sports media in the eighties, the popularity of Nevada’s sports books dramatically increased. Although there are at least 142 sports books in Nevada,<sup>12</sup> only three tenths of 1 percent of all gambling revenues generated in Nevada are attributed to amateur sports gambling. In 1999, Nevada casinos retained \$10.1 billion dollars in revenue, \$99 million in revenues were attributed to sports gambling, and approximately 33% of sports gambling revenues were attributed to amateur sports gambling.<sup>13</sup> The NGISC found the benefit of Nevada’s sports gambling books was heavily outweighed by its burden to society. “Because sports wagering is illegal in most States, it does not provide many of the positive im-

<sup>4</sup>*Id.*

<sup>5</sup>Terry Larimer, *The Point-Shaving Never Paid Off For Perndergast Part of His Community Service Takes The Ex-Notre Dame Athlete to Colleges*, THE MORNING CALL, May 15, 1999.

<sup>6</sup>Don Yaeger, *Confessions Of A Point Shaver; Former Arizona State star Hadake Smith reveals how he and his accomplices fixed basketball games*, SPORTS ILLUSTRATED, Nov. 1998 Vol. 89 No. 19.

<sup>7</sup>Alan Byrd, *State Moves to Counter Money Laundering*, STREET AND SMITH’S SPORTS BUSINESS JOURNAL, Feb. 1-7, 1999, at 33.

<sup>8</sup>“Final Report,” at 3-10.

<sup>9</sup>*The Student Athlete Protection Act, 2000: Hearings on H.R. 3575 Before the House Comm. on the Judiciary*, 106th Cong., 2nd Sess. (June 13th, 2000) (statement of Mr. Frank J. Fahrenkopf, Jr., Pres. and CEO of the American Gaming Association). Hereinafter “Hearings on H.R. 3575.”

<sup>10</sup>*Id.* (see testimony of Mr. Brian Sandoval, Chairman of the Nevada Gaming Commission).

<sup>11</sup>*Id.* (see hearing transcript).

<sup>12</sup>“Final Report,” at 2-14.

<sup>13</sup>S. REP. NO. 106-278, 106th CONG., 2nd SESS. (2000).

pacts of other forms of gambling. In particular, sports wagering does not contribute to local economies or produce many jobs. Unlike casinos or other destination resorts, sports wagering does not create other economic sectors. However, sports wagering does have social costs. Sports wagering threatens the integrity of sports, it puts student athletes in a vulnerable position, it can serve as gateway behavior for adolescent gamblers, and it can devastate individuals and careers.”<sup>14</sup>

The NGISC provided 22 recommendations on “Gaming Regulation” in Chapter 3 of its Final Report. While these recommendations concerned all aspects of regulated gaming, two recommendations are relevant to gambling on collegiate and amateur sports. The first is recommendation 3.1, which recommends that State and local governments are best equipped to regulate gambling within their borders, except for tribal and internet gambling. The second is recommendation 3.7, which recommends that betting on collegiate and amateur athletic events be banned altogether.<sup>15</sup> While the NGISC’s Final Report was unanimously adopted by all commissioners, recommendation 3.7 was approved by a divided majority—five commissioners were in favor, three commissioners opposed, and one commissioner abstained. There appears to be a tension between recommendations 3.1 and 3.7 in that the former leaves the regulation of gambling to State and local governments, while the latter recommends that Federal law ban amateur sports gambling. Kay C. James, Chairman of the National Gambling Impact Commission, has submitted a letter clarifying the intent of the Commission to recommend that all gambling on collegiate and amateur sports be banned by Federal legislation.<sup>16</sup>

Pursuant to PASPA, a sports organization whose competitive game is alleged to be the basis of prohibited sports gambling or the Attorney General of the United States, may file for an injunction in a United States District Court to enjoin prohibited sports gambling activity. While other anti-gambling statutes found in title 18 of the United States Code may be utilized to address criminal conduct, these statutes do not address State sanctioned amateur sports gambling. This act would end all State sanctioned gambling on amateur sports.<sup>17</sup>

This act is supported by professional sports leagues, colleges and universities, various coaches associations, educational associations, pro-family groups, consumer groups, religious organizations, and is the number one priority of the NCAA. It is opposed by the Nevada gaming industry and Nevada’s governmental officials. Critics of this act argue that closing the loophole in PASPA, which allows Nevada to maintain sports books on amateur athletic events, does nothing to remedy widespread gambling throughout America. However, according to the NGISC, the reality of regulating gambling in America is a difficult task.<sup>18</sup> Rather than attempting to regulate, this act shuts down a venue that fuels illegal amateur sports gambling and sends a message that gambling on amateur athletics is

<sup>14</sup>*Id.* at 3–10.

<sup>15</sup>*Id.* at 3–17, 3–18.

<sup>16</sup>“Hearings on H.R. 3575,” (see letter submitted by Ms. Kay C. James, Chairwoman of the National Gambling Impact Study Commission).

<sup>17</sup>*Id.* (see testimony of Mr. Bobby Siller, Board Member of the Nevada Gaming Control Board).

<sup>18</sup>“Final Report,” at 3–9.

unlawful. In the words of Representative Graham (SC), this bill “. . . affects real people in a real way and that we can ban the betting of a billion dollars on the outcome of games where teenagers are involved.”<sup>19</sup>

#### HEARINGS

The full Judiciary Committee held one day of hearings on H.R. 3575 on June 13th, 2000. Testimony was received from 12 witnesses, representing colleges and universities, the National Collegiate Athletic Association, collegiate athletic coaches, the President and Chief Executive officer of the American Gaming Association, Chairman of the Nevada Gaming Commission, a board member of the Nevada Gaming Control Board, and members of Congress. Additional material was submitted by a Nevada Regeant, Professional Sports Organizations, an expert doctor, and the committee is in receipt of the National Gambling Impact Study Commission’s Final Report.

#### COMMITTEE CONSIDERATION

On September 13th, 2000, the committee met in open session and ordered favorably reported the bill H.R. 3575 without amendment by a recorded vote of 19 ayes to 9 nays with 1 voting present, a quorum being present.

#### VOTE OF THE COMMITTEE

Motion by Mr. Hyde to report the bill favorably. Adopted 19 ayes to 9 nays and 1 voting present.

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner .....			
Mr. McCollum .....			
Mr. Gekas .....	X		
Mr. Coble .....	X		
Mr. Smith (TX) .....	X		
Mr. Gallegly .....	X		
Mr. Canady .....	X		
Mr. Goodlatte .....	X		
Mr. Chabot .....	X		
Mr. Barr .....	X		
Mr. Jenkins .....	X		
Mr. Hutchinson .....	X		
Mr. Pease .....	X		
Mr. Cannon .....			
Mr. Rogan .....			
Mr. Graham .....	X		
Ms. Bono .....	X		
Mr. Bachus .....	X		
Mr. Scarborough .....			
Mr. Vitter .....	X		
Mr. Conyers .....		X	
Mr. Frank .....			
Mr. Berman .....		X	
Mr. Boucher .....			
Mr. Nadler .....		X	
Mr. Scott .....		X	

<sup>19</sup>“Hearings on H.R. 3575,” (hearing transcript).

## ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Watt .....		X	
Ms. Lofgren .....			
Ms. Jackson Lee .....			X
Ms. Waters .....	X		
Mr. Meehan .....		X	
Mr. Delahunt .....		X	
Mr. Wexler .....		X	
Mr. Rothman .....	X		
Ms. Baldwin .....	X		
Mr. Weiner .....		X	
Mr. Hyde, Chairman .....	X		
Total .....	19	9	1

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 3575, the following estimate and comparison prepared by the director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

*September 21, 2000*

*H.R. 3575—Student Athlete Protection Act.*

CBO estimates that implementing H.R. 3575 would have no significant effect on the federal budget. The legislation would not affect direct spending or receipts, so pay-as-you-go procedures would not apply. H.R. 3575 contains both an intergovernmental and a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs associated with complying with the mandates would not exceed the thresholds established by the act (\$55 million for intergovernmental mandates and \$109 million for private-sector mandates in 2000, adjusted annually for inflation).

H.R. 3575 would prohibit government entities from operating or authorizing gambling schemes based on competitive games or performances by high school, college, or Olympic athletes. (Currently, Nevada is the only state that allows betting on amateur sports.) Violators of the bill's provisions could face civil actions brought by the Department of Justice or by certain sports organizations, but we expect very few such cases. CBO estimates that any added costs to the department or to the federal courts from pursuing such cases would not be significant. Any such costs would be paid from appropriated funds.

CBO estimates that the prohibition on wagering on amateur sports would reduce revenues collected by the state of Nevada by approximately \$2 million per year. Based on information from the Nevada Games Control Board, CBO estimates that because of this prohibition the private sector would lose about \$40 million annually in net income (measured as the amount wagered less the amount paid out).

On May 1, 2000, CBO transmitted a cost estimate for S. 2340, the Amateur Sports Integrity Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on April 13, 2000. That legislation also banned gambling on amateur sports but contained many other provisions. The two cost estimates reflect those differences.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), Shelley Finlayson (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in article I, section 8, of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### *Section 1. Short title*

This section provides that this title may be cited as the "Student Athlete Protection Act."

##### *Sec. 2. Prohibition on gambling on competitive games involving high school and college athletes and the Olympics.*

Amends Section 3704 of Title 28 U.S.C. Chapter 178, the "Professional and Amateur Sports Protection Act" (PASPA). Section 3704 as amended does the following:

(1) It makes it unlawful for any governmental entity to sponsor, operate, advertise, promote, license, or otherwise authorize a lottery, contest, sweepstake, or other betting, gambling or wagering scheme based, directly or indirectly, on a competitive game or performance of one or more athletes in a Summer or Winter Olympic competition, collegiate athletic competition, or a high school athletic competition.

(2) It makes clear that the prohibition established under this act applies notwithstanding any other provision of law.

(3) It provides for civil action to enjoin activities prohibited under the act. The civil action may be brought in the appropriate Federal district court by the United States Attorney General, or a local education agency, college, or sports organization whose competitive game is alleged to be the basis of the violation.

(4) It defines the following terms used in the section:

“High School” as having the same meaning as “secondary school” in section 14101 of the Elementary and Secondary Education Act of 1965 (U.S.C. § 8801) or (ESEA).

“College” as having the same meaning as institution of higher education in the ESEA.

(5) While this act neither limits or expands the scope of activities prohibited by PASPA, it terminates the grandfather clause in title 28 U.S.C. section 3704 for Summer or Winter Olympic athletic competitions, and collegiate and high school athletic competitions. As a result, the use of “no purchase necessary” sweepstakes and related contests for product and brand-name promotion would not become unlawful or otherwise prohibited by this act.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### SECTION 3704 OF TITLE 28, UNITED STATES CODE

#### § 3704. Applicability

(a) [Section] *Except as provided in subsection (c), section 3702 shall not apply to—*

(1) \* \* \*

\* \* \* \* \*

(c)(1) *Section 3702 shall apply to a lottery, sweepstakes or other betting, gambling, or wagering scheme based, directly or indirectly, on—*

(A)(i) *one or more competitive games in which high school or college athletes participate; or*

(ii) *one or more performances of high school or college athletes in competitive games; or*

(B) *one or more competitive games at the Summer or Winter Olympics.*

(2) *In this section—*

(A) *the term “high school” has the meaning given the term “secondary school” in section 14102 of the Elementary and Secondary Education Act of 1965; and*

(B) *the term “college” has the meaning given the term “institution of higher education” in section 101 of the Higher Education Act of 1965.*



## DISSENTING VIEWS

We do not dispute the Majority's conclusion that illegal gambling can be seriously detrimental to individuals and to society at large. In fact, we embrace this point of view. As set forth below, illegal gambling on amateur sports, in particular, is a widespread problem that needs to be addressed. Where we differ from the Majority, however, is on the best way for the Federal Government to attempt to reduce the problems associated with illegal sports gambling. Contrary to supporters of the bill, we see no nexus between legal gambling in Nevada and illegal gambling nationwide. Thus, we do not believe prohibiting *legal* gambling on amateur sports, as proposed by H.R. 3575, is the solution to the pervasive problem of *illegal* gambling. The only real ramification of the bill is to eliminate the legal sports gambling business in Nevada and the commensurate benefits to the State's economy.

Instead, we support the approach taken by H.R. 4284, which Rep. John Conyers, Jr. offered as a substitute at the Judiciary Committee mark-up. H.R. 4284, sponsored by Rep. Shelley Berkley of Nevada: (1) seeks to identify the key reasons for illegal gambling on sports and its impact on children by requiring a National Institute for Justice study on illegal sports gambling among minors; (2) creates a Justice Department Amateur Sports Illegal Gambling Task Force which would be responsible for enforcing existing Federal laws that prohibit gambling related to amateur sporting events and contests;<sup>1</sup> (3) increases penalties for illegal sports gambling; and (4) expresses the sense of Congress that, among other things, illegal sports gambling poses a significant threat to youth on college campuses and in society in general. Such an approach considers methods for attacking illegal gambling at its core without causing tremendous economic harm to the people of Nevada. Unfortunately, the substitute failed on, predominantly, a partyline vote. Therefore, for the reasons outlined below, we dissent.

### *I. Illegal Gambling on Sports is a Pervasive Problem in the United States.*

Gambling on sports, including college sports, certainly is widespread. We only need to look at the revenue that wagering on sports generates to recognize its national impact. Last year, Nevada's sports gambling industry took in \$2.3 billion in legal wagers.<sup>2</sup> Even more troubling are estimates on *illegal gambling* on

<sup>1</sup>The Task Force would have to report annually to Congress describing prosecutions commenced and convictions obtained.

<sup>2</sup>*Final Report*, National Gambling Impact Study Commission, pp. 2-14 (June 6, 1999). Casinos retained approximately 77.4 million dollars in revenue from sports gambling, and 33 percent of this total was based on collegiate sports gambling. *Id.* Though Nevada casinos retained 10.1 billion dollars in revenues in 1999, only three-tenths of 1 percent of this amount is attributed to collegiate sports gambling. *Impact of Gaming-Nevada*, Nevada Gaming control Board.

sporting events, which range from \$80 billion to \$380 billion per year.<sup>3</sup>

There is no doubt that the problem of illegal gambling on amateur sports needs to be addressed. Recent studies have concluded the following: (a) a Gallup poll found that twice as many teenagers bet on college sports than do adults and that most teenagers start betting by the age of ten; (b) research conducted by the American Academy of Pediatrics concluded that over one million teenagers in the U.S. are addicted to gambling and called gambling the “addiction of the nineties”; and (c) the Harvard School of Medicine estimates that 6 percent of teenagers have serious gambling problems.<sup>4</sup> We recognized the dangers of gambling on sports back in 1992 when Congress enacted the Professional and Amateur Sports Protection Act (“PASPA”),<sup>5</sup> which prohibited gambling on sports throughout the United States, except for certain grandfathered States.<sup>6</sup> For practical purposes, Nevada is the only State that currently permits legal sports gambling. Nevada was specifically exempted because of its special reliance on legal gambling.

We agree that illegal gambling on sports, particularly among college students, is a very serious national problem. But, while we are adamantly in favor of a strong, effective bill to combat *illegal* sports betting, we are unconvinced that H.R. 3575, which eliminates *legal* sports gambling on amateur sports in the State of Nevada, is the appropriate legislation to achieve this goal. H.R. 3575 would not have a material impact on the pervasive problem of illegal sports betting; it would needlessly penalize Nevada’s legal sports books and their employees; and finally, it would impinge on State prerogatives to regulate gaming. We believe the solution is not a matter of enacting more laws to prohibit illegal gambling or banning the small amount of regulated wagering that takes place in Nevada. Rather, we need to properly enforce existing laws and ensure that penalties are adequate to deter violations.

*II. Federally banning legal gambling will not have a material impact on illegal gambling, will damage Nevada’s economy and will impinge on States’ rights.*

*A. H.R. 3575 would not materially impact illegal gambling.*

Thus far, we have not seen evidence demonstrating that H.R. 3575 would have any material impact on the problem of illegal sports gambling. Proponents of the legislation argue that point spreads on college games that originate in Nevada, and are published nationwide, facilitate illegal gambling; however, it is unclear that the elimination of Nevada’s sports books would prevent newspapers from publishing such point spreads. This is a matter that individual newspapers, themselves, control. John F. Strum, President and CEO of the Newspaper Association of America (“NAA”),

<sup>3</sup>*Final Report*, National Gambling Impact Study Commission, pp. 2–14 (June 6, 1999).

<sup>4</sup>See *Hearing on H.R. 3575 Before the House Comm. on the Judiciary*, 106th Cong. (2000) (statement of Dr. Graham Spanier, President, Pennsylvania State University (June 13, 2000)).

<sup>5</sup>Professional and Amateur Sports Protection Act, P.L. 102–559 (1992).

<sup>6</sup>The grandfathered States were Delaware, Montana, Oregon and Nevada; however, Oregon and Nevada are the only States that offer sports gambling. Sports gambling in Oregon is limited to a game called “Sports Action” that allows wagering on the outcome of professional football games. Nevada, on the other hand, has 142 licensed sports books for gambling on professional, collegiate, Olympic, and other amateur sports. Nevada prohibits gambling on teams in-State.

emphasized this point in a recent letter to the House Judiciary Committee: “If Congress prohibits gambling on college sports, NAA believes newspapers will continue to have an interest in publishing point spreads on college games, since point spreads appear to be useful, if not valuable, to newspaper readers who have no intention of betting on games.”<sup>7</sup>

Furthermore, point spreads originate from inside and outside of Nevada. According to a letter from Frank Fahrenkopf, Jr., President of the American Gaming Association, “Nevada’s casino sports books are typically *not* the initial sources of betting lines used in Nevada, much less elsewhere, and are certainly not the only sources of this information. There are numerous betting lines published in newspapers and over the Internet that would continue to be available if our sports books did not exist.”<sup>8</sup> Thus, because point spreads also originate outside of Nevada, prohibiting legal sports betting in Nevada is unlikely to prevent illegal sports betting nationwide.

*B. H.R. 3575 would needlessly inflict negative economic effects on Nevada’s economy.*

While sports books revenue is a small percentage of total gaming revenue in Nevada, the importance of legal sports wagering to Nevada’s tourism industry and the jobs that are dependent must not be understated. Demonstrating the impact that legal sports betting has on Nevada’s economy, at the June 13, 2000 hearing on this legislation, Frank J. Fahrenkopf, Jr. testified:

[T]his past January an estimated 250,000 visitors came to Las Vegas for Super Bowl Weekend when the hotel occupancy rate was essentially 100 percent. The Las Vegas Convention & Visitors Authority estimated that the non-gaming economic impact of these visitors was \$80 million over that single weekend. A similar positive economic impact occurs during the NCAA men’s basketball tournament and during football season. The jobs generated are not only those in the 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. This job creation also includes those employed by the airlines, rental car agencies and taxi services that transport visitors. These jobs, as well as Federal, State, and local tax levies, help generate billions of dollars in government revenues.<sup>9</sup>

Nevada Governor Kenny C. Guinn echoed these concerns in a letter to the Judiciary Committee:

Nevada’s publicly-regulated sports books generate annual State revenues of \$6.5 million at a time when, unlike other States, the tremendous population growth in Nevada has

<sup>7</sup> See Letter from John F. Strum, President and CEO, Newspaper Association of America, to Reps. Henry Hyde and John Conyers, Jr. (June 7, 2000) (on file with the Minority Staff of the House Judiciary Committee).

<sup>8</sup> See Letter from Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association, to Cedric Dempsey, President, NCAA (October 22, 1999) (on file with the Minority Staff of the House Judiciary Committee).

<sup>9</sup> See *Hearing on H.R. 3575 Before the House Comm. on the Judiciary*, 106th Cong. (2000) (statement of Frank J. Fahrenkopf, Jr., President and CEO, American Gaming Association).

resulted in a challenging fiscal future for our State. The economic impact is greater than the direct numbers indicate because publicly-regulated sports wagering is one of the activities that draws visitors to Nevada, particularly at key times of the year. The negative economic impact on the State's private sector will be even greater than the impact on State government because of the investments Nevada companies have made in state-of-the-art sports book facilities.<sup>10</sup>

In order to justify the apparently significant impact that H.R. 3575 would have on Nevada's economy, Congress should carefully examine whether eliminating legal sports betting in Nevada will address the pervasive problem of illegal gambling nationwide. At this time, it does not appear that the burden has been met. As evidenced by information given to the committee by interested parties, located within the State of Nevada, there are far too many livelihoods at stake for Congress to pass legislation as a "symbolic act" rather than as a true solution to the serious problem of illegal gambling.

*C. H.R. 3575 raises significant federalism concerns.*

Finally, Congress recognized the importance of sports wagering to the State of Nevada and its economy when PASPA was enacted in 1992. To this end, Congress included a grandfather clause to exempt all States, including Nevada, with pre-existing statutes in order to protect legitimate economic interests and State authority over gambling. The preservation of previously enacted State statutes is consistent with the fact that States, not the Federal Government, have determined what gambling, if any, should be permitted within their borders.

We are further concerned that H.R. 3575 may run afoul of the constitutional requirement under the Commerce Clause,<sup>11</sup> which limits congressional authority to the regulation of interstate commerce and under the 10th amendment, which reserves all of the unenumerated powers to the States.<sup>12</sup> This is a particular concern in light of the recent Supreme Court decisions such as *United States v. Morrison* (declaring unconstitutional the Federal civil legal remedy for gender-motivated crimes of violence, enacted as part of the Violence Against Women Act of 1994),<sup>13</sup> *Lopez v. United States* (striking down a Federal gun-free school zone law which had no interstate commerce requirement),<sup>14</sup> and *New York v. United*

<sup>10</sup> See Letter from Kenny C. Guinn, Governor of Nevada, to Chairman Henry Hyde (June 1, 2000) (on file with the Minority Staff of the House Judiciary Committee).

<sup>11</sup> Article I, section 8 of the Constitution provides, *inter alia*, "Congress shall have Power . . . To regulate Commerce with foreign Nations and among the several States. . . ." U.S. Const. art I, § 8, cl. 3.

<sup>12</sup> The 10th amendment provides "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend X.

<sup>13</sup> 529 U.S. \_\_\_\_ (2000).

<sup>14</sup> 514 U.S. 549 (1995). In *Lopez*, one of the problems with the school gun ban was that it contained "no express jurisdictional element which might limit its reach to a discrete set of firearms possessions that additionally have an explicit connection with or effect on interstate commerce." When Congress acted in 1996 to remedy the constitutional infirmity in the school gun ban invalidated by *Lopez*, it limited the law to firearms that have "moved in or that otherwise [affect] interstate or foreign commerce." 18 U.S.C.A. § 922(q)(2)(A) (1994) (amended 1996). See also, *Employers Liability Cases*, 207 U.S. 463 (1907) (striking down Federal tort law concerning common carriers which preempted State tort law on interstate commerce grounds); T.R. Goldman, *Lopez*

*States*<sup>15</sup> and *Printz v. United States*<sup>16</sup> in which the Court showed extreme scepticism regarding Congress' ability to dictate State legal policies.

JOHN CONYERS, JR.  
HOWARD L. BERMAN.  
ROBERT C. SCOTT.  
MELVIN L. WATT.  
SHEILA JACKSON LEE.  
WILLIAM D. DELAHUNT.  
ANTHONY D. WEINER.



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*Gives Tort Reform a New Weapon*, Legal Times, May 8, 1995, Tort Reform Notebook, at 2 (quoting Harvard Law School Professor Laurence Tribe for the proposition that "*Lopez* is a reminder that the commerce clause is not a blank check. As such, it will operate to at least raise significant questions about some of the elements of proposed tort reforms pending in Congress").

<sup>15</sup>505 U.S. 144 (1992) (invalidating a Federal law requiring States to assume ownership of radioactive waste or accept legal liability for damages caused by the waste because it was found to "commandeer the legislative processes of the States").

<sup>16</sup>521 U.S. 898; 117 S.Ct. 2365; 138 L.Ed. 2d 914; 65 U.S.L.W. 4731 (U.S. June 27, 1997) (invalidating portions of the Brady Act requiring local law enforcement officials to conduct background checks on prospective gun purchasers).