

BETTING ON THE FUTURE OF SPORTS: WHY GAMBLING SHOULD BE LEFT OFF THE FIELD OF PLAY

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“The cost associated with legalized gambling can be likened to the costs associated with America’s drug-abuse problem. Total social costs from gambling – including bankruptcy filings, divorce, criminal activity and lost work – amount to about \$80 billion a year, compared with \$70 billion a year for drug addiction.”

– John W. Kindt, Professor of business and legal policy, University of Illinois

I. INTRODUCTION

In 1997, Stevin “Hedake” Smith and Isaac Burton, basketball players at Arizona State University, admitted taking money in return for helping gamblers cover point spreads on Arizona State Sun Devil basketball games.¹ Steve Smith started as a small time gambler, betting primarily on NFL and NHL games.² When he became “hopelessly” in debt, organized crime members contacted him with a proposal to discharge his debt.³ Smith contacted Isaac Burton, Arizona State’s best free throw shooter, to help him with a scheme.⁴ Smith told Burton to miss free throws intentionally, in order to keep the point spread below what odds makers had predicted.⁵ In three out of four games, the organized

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¹ 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, 731 (2002).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

crime members won money.⁶ In each of those three games, Arizona State won the basketball game, but failed to cover the spread. In a game against the University of Washington, odds makers suspended betting on the game because of an unusually high amount (\$250,000) of betting against the Sun Devils.⁷ That high volume caused the line to drop to three points, an extraordinarily small point spread, considering that Arizona State was at the time a basketball powerhouse and the Huskies were not.⁸ Also, that abnormal betting sequence caused bookmakers to notify the FBI.⁹ The FBI learned of the scheme, and a few years later, the two athletes pleaded guilty to charges of conspiracy to commit sports bribery.¹⁰ The court sentenced Burton to two months in jail and six months of home detention in 1999.¹¹

Gambling has been around almost as long as human civilization. So too has sport.¹² The mix of the two does not bode well for the integrity of the former. Sports book gambling is only legal in one state.¹³ Powerful casino lobbyists have managed to keep the activity legal in the face of much criticism. Those lobbyists, backed by Las Vegas casino money, have successfully maintained Nevada's exemption from the *Professional and*

⁶ *Id.* at 732.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See John D. McMillen & Rebecca S. McMillen, *The Legal Aspects of Sport Sculpture*, 2 WILLAMETTE SPORTS L.J. 1, at *2 (Spring 2005), http://www.willamette.edu/org/sls/journal/feb_05/mcmillensarticle.pdf (first recorded team sport dates back to at least 1500 B.C. – the Mesoamericans).

¹³ Sports betting is still legal in Nevada. However, based on a grandfather provision, Oregon, Delaware, and Montana still could make sports betting legal, under the Act. See *Professional Sports Protection Act*, 28 U.S.C. §§ 3701-3704 (2005).

Amateur Sports Protection Act.¹⁴ The casinos fear that making sports gambling illegal would begin a trend towards making other forms of betting illegal.¹⁵

This paper will discuss the following topics at length below: Inherent problems associated with gambling; problems associated with legalizing sports gambling, both on-site and via the Internet, including the detrimental effect to players, gamblers, and society at large; the positive and negative aspects of the legislative efforts to cure the evils perpetrated by sports gambling; and finally, arguments in support of legalized sports gambling, and rebuttals to those arguments; finally, the position taken in the conclusion is that sports gambling should be banned altogether in order to save the integrity of sports.

II. THE GAMBLING ADDICTION

According to the *National Gambling Impact Study Commission*, people who begin gambling at a young age are more likely to become addicted upon reaching adulthood than are people who begin gambling as adults.¹⁶ John Kindt, testifying before the House Small Business Committee in 1999, stated that a business that employs at least 1000 workers can expect increased costs of \$500,000 a year due to workers calling in sick to work and declining production because of the various forms of accessibility to legalized gambling.¹⁷ He also told the Committee that nine out of ten “pathological” gamblers commit crimes in

¹⁴ Jeffrey Rodefer, *Professional and Amateur Sports Protection Act of 1992*, available at <http://www.gambling-law-us.com/Federal-Laws/sports-protection.htm> (last visited November 19, 2005).

¹⁵ *Id.*

¹⁶ Daniel Ritchie, *NCAA is Right to Push for Ban on Betting on College Games*, U. OF DENV., <http://www.du.edu/danritchie/oped.html> (last visited November 19, 2005).

¹⁷ U.S. Senator Jon Kyl, *Statement of Sen. Jon Kyl (R-AZ), Re: Hearing on the Internet Gambling Prohibition Act*, March 23, 1999, available at <http://www.techlawjournal.com/cong106/gambling/19990323kyl.htm> (last visited November 19, 2005).

order to pay for their habit.¹⁸ A Gallup pole conducted in 1989 concluded that 81% of adults have participated in gambling and that 31% of those adults gamble weekly.¹⁹ Adding up these numbers, it is reasonable to conclude that this country has a gambling obsession. Combining these facts with the United States' great interest in sports, the significance of the problem increases.

III. SPORTS GAMBLING

Gamblers bet on professional team sports, such as basketball, football, baseball, and hockey, as well as a number of other sports, including horse racing, dog racing, Olympic events and college sports. Currently, one can even bet on whether or not Osama Bin Laden will be captured before a certain date!²⁰ When the gamblers are the players themselves, the integrity of sport is jeopardized.

A. GAMBLING BY PLAYERS

Player involvement in sports gambling has been a problem for many years. In 1919, the infamous "Black Socks" scandal allowed the heavy underdog Cincinnati Reds to beat the Chicago White Sox, a team previously thought unbeatable.²¹ As a result of the scandal, eight members of the team, including the famous "Shoeless" Joe Jackson,

¹⁸ *Id.*

¹⁹ John Warren Kindt & Thomas Asmar, *College and Amateur Sports Gambling: Gambling Away Our Youth?*, 8 VILL. SPORTS & ENT. L.J. 221, 223 (2002).

²⁰ See, e.g., Trade Sports, *All you TradeSports junkies there!*, <http://www.financial-spread-betting.com/TradeSports.html> (last visited November 19, 2005).

²¹ EIGHT MEN OUT (Orion Pictures Corporation 1988) (a movie that chronicles the Chicago White Sox involvement in illegal sports betting).

received lifetime bans from professional baseball.²² Jackson denied “throwing” any of the games, but nonetheless, that scandal left a mark on baseball for decades.²³

Other early scandals affected baseball as well. In order to protect the game, commissioner A.B. Chandler suspended Leo Durocher for one year, citing “conduct detrimental to the game,” when in reality the suspension was for hanging around known gamblers.²⁴ Rogers Hornsby was suspended for attending too many horse races.²⁵ Willie Mays was told he could have no connection with baseball as long as he remained a greeter at an Atlantic City casino in the late 1970’s.²⁶ One final case that represents the backlash from 1919 is Len Dykstra’s probation, handed down by baseball commissioner Fay Vincent for his participation in high-stakes poker games.²⁷ Clearly, most of these cases were not part of schemes intent on covering point spreads or helping organized crime members profit from the athletes’ follies. Nonetheless, the commissioners felt that those players’ conduct tainted America’s pastime.

Admittedly, no recent point-shaving scandals in professional sports have arisen as of late. Today’s multi-million dollar contracts make the possibility of being thrown out of the professional league unattractive, even with the possibility of a big payout with a gambler. For this very reason, the best collegiate athletes, with hopes of playing professionally, have avoided gambling scams as well. However, it is the *average* college

²² *Id.*

²³ *Id.*

²⁴ Ace Padian, *The Case For Pete Rose: Consistency and Role Models*, YALE DAILY NEWS, February 18, 1999.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

athlete, naturally much more common than a superstar that is susceptible to professional gamblers. Because those average players have little chance of a professional future in their sports, the risk of getting caught is outweighed by the possibility of the riches promised by gamblers. However, this does not mean that all professionals and college superstars are immune from the lure of gambling scams.

B. PETE ROSE

In 1989, Gerald Posner wrote:

[t]he possibility exists that decisions won't be made in the team's best interests, but rather because of the money riding on the game. If a manager bets on a game, he may bring a player off injured reserves sooner than he should in order to win, or he may pitch a reliever without enough rest, not caring that he won't be able to pitch for several extra days. If a betting manager gets in large debt to bookies, he can clear his account by merely revealing inside information about the team. The opportunity for corruption is greatly increased. This is not to suggest that Rose compromised the Reds in any way. The chance that such impropriety could result is the reason for such a strict taboo on betting baseball.²⁸

Pete "Charlie Hustle" Rose is the all-time hits leader in professional baseball, with 4,256. He also holds records for most games played, most at-bats, and most seasons with at least 200 hits.²⁹ Rose was a popular player that always gave his best effort during his career, which was played predominately with the Cincinnati Reds. Although his on-field credentials clearly make him worthy of a place in the National Baseball Hall of Fame, he is not currently a member. On August 24, 1989, Commissioner A. Bart Giamatti banned

²⁸ Gerald Posner, *Say it Ain't so Pete*, PENTHOUSE, Sept. 1999.

²⁹ *Id.* (He finished his career with 3,562 games played, 14,053 at-bats, and ten seasons with at least 200 hits. Above this, he was elected to 16 all-star games and had a career playoff batting average of .381. His lifetime batting average was .303).

Rose for life from Major League Baseball for betting on baseball.³⁰ He was the 15th player given such a ban.³¹ During the 1987 baseball season it was determined that Rose bet between \$8,000 and \$16,000 a day on Major League Baseball – while he was the manager of the Cincinnati Reds!³²

The investigation into Rose’s alleged involvement with baseball gambling took four months.³³ During that time, a Hamilton County Judge issued an order restraining baseball from disciplining Rose because the judge determined that Commissioner Giamatti “pre-judged Peter Edward Rose.”³⁴ During the investigation, Rose never felt he had a gambling problem. In fact, when he received his lifetime ban, Rose said, “I don’t think I have a gambling problem. Consequently, I won’t seek any help of any kind.”³⁵ Part of the agreement Rose had with baseball is that the commissioner would not publicly announce why he received the ban, and Rose would not have to admit that he ever gambled.³⁶ A month after his ban, Rose was sentenced to five months in jail and fined \$50,000 for failing to report to the Internal Revenue Service income that he received from the sale of memorabilia.³⁷

Since that time, it appears that baseball’s stance on gambling has changed. For example, in 1997 Albert Belle admitted losing \$40,000 on gambling, yet he received no

³⁰ Tom Groeschel, *Pete’s Pain: Life in Exile*, REDS ENQUIRER, Aug. 24, 1989 (Commissioner Giamatti died eight days after giving Rose his lifetime ban).

³¹ Padian, *supra* note 24.

³² *Id.*

³³ *Rose v. Giamatti*, 721 F. Supp. 906, 909 (S. D. Ohio 1989).

³⁴ *Id.*

³⁵ Padian, *supra* note 24.

³⁶ Mike Attiyeh, *Pete Rose: Still Battling a Losing Cause*, BASEBALLLIBRARY.COM, http://www.baseballlibrary.com/baseballlibrary/submit/Attiyeh_Mike1.stm (last visited November 19, 2005).

³⁷ Padian, *supra* note 24.

reprimand, nor did baseball investigate whether those debts came from betting on baseball.³⁸ In any event, Pete Rose continues to fight for reinstatement into baseball. Although no commissioner has yet granted him reinstatement, it is hard to imagine with all the positive public sentiment for Rose that he will continue to be banned for life.

C. MICHAEL JORDAN

Michael Jordan has received more endorsement money than any other athlete in the history of sports. He is the third leading scorer in National Basketball Association (“NBA”) history and is widely considered the best basketball player that has ever played the game. However, at the peak of his career in 1993, Jordan retired abruptly and seemingly gave his legacy away in the process.³⁹ Some conspiracy theorists hypothesize the two-year baseball hiatus Michael Jordan took from basketball resulted from a secret ban handed down by NBA Commissioner David Stern.⁴⁰ It was well publicized that “Air” Jordan, between games, would fly to Atlantic City or Las Vegas and drop thousands of dollars at a time.⁴¹ Jordan’s gambling spilled over to the golf course where he would gamble even more. In 1993, San Diego businessman Richard Esquinas told *The Sporting News* that Jordan lost \$900,000 to him on the course, but he never received all that he was owed.⁴²

³⁸ *Id.*

³⁹ Erika Kykstra, *Michael Jordan*, http://www.fastcompany.com/articles/1999/11/michael_jordan.html (last visited November 19, 2005).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² THE SPORTING NEWS, *Timeline: MJ Through the Years*, June 11, 1998 (stating that Jordan retired in 1993 to avoid a suspension by the NBA relating to his gambling problem. Two days after his retirement, NBA officials told the media their investigation into Jordan’s gambling addiction was over and that it was found Jordan committed no wrongdoing).

In March 1992, three of Jordan's checks were found in the briefcase of a man found murdered.⁴³ The checks totaled \$108,000. Later that year he testified under oath that a \$57,000 check he wrote to Slim Bou, which he originally had said was a business loan, was in fact a check to cover gambling losses.⁴⁴

IV. EXAMPLES OF SPORTS BETTING PROBLEMS BY COLLEGIATE ATHLETES

Over the last 75 years, there have been many well-publicized point shaving schemes that have found their way into NCAA sports, mostly through football and basketball.⁴⁵ While not all events ended in criminal prosecution, each tainted the schools and the sports in which they occurred.

A. BROOKLYN COLLEGE

On January 29, 1945, police arrested two Brooklyn College basketball players in the home of two bookmakers in the Crown Heights section of Brooklyn.⁴⁶ The players had each accepted \$1000 in return for intentionally losing a game against Akron University.⁴⁷ When confronted by the FBI, both said they were at the bookies' apartment because they were going to tell the bookies they were not going to throw the game.⁴⁸ The bookies, Henry Rosen and Harvey Stemmer, had allegedly used \$250,000 to lure Brooklyn basketball players help Rosen and Stemmer win bets.⁴⁹ Later, three other Brooklyn players

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Slavin, *supra* note 1, and accompanying text.

⁴⁶ Joe Goldstein, *Rumblings: The Brooklyn Five*, ESPN CLASSIC, February 23, 2001 (discussing the scandal and the events that took place over that famous two-year period).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

admitted taking \$1,000.⁵⁰ None of the five players were prosecuted, but Rosen and Stemmer were each sentenced to a year in prison.⁵¹

B. BOSTON COLLEGE

In *United States v. Burke*,⁵² Rick Kuhn was convicted in 1978 for taking money from two organized crime members. In return for payment, the Boston College basketball star agreed to ensure that his team would not cover the point spread.⁵³ Kuhn received \$2500 each time his team did not cover the spread.⁵⁴ The only reason that the scheme ever came to light was that one of the key members, Henry Hill, was convicted of drug charges and told investigators about the point shaving.⁵⁵ That 1978 situation was the first major scandal involving a collegiate athlete that had come to the public's attention since the St. Joseph's University gambling scheme in the 1960's.⁵⁶

C. NORTHWESTERN UNIVERSITY

In 1994, Dennis Lundy, a former running back at Northwestern University pleaded guilty to perjury in connection with point shaving while he played football for the school.⁵⁷ He admitted to betting on five Northwestern games while playing, including intentionally fumbling the ball on the 1-yard line against the University of Iowa so he could win a sports

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *United States v. Burke*, 700 F.2d 70, 75-76 (2d Cir. 1983).

⁵³ *Id.* at 73-74.

⁵⁴ *Id.* at 74.

⁵⁵ *Id.* at 75.

⁵⁶ See Alan Rubenstein, *Looking at NCAA hoops scandals*, SPORTS CENTRAL, available at <http://www.buzzle.com/editorials/9-19-2003-45596.asp> (last visited November 19, 2005) (the NCAA forced St. Joseph's of Pennsylvania to relinquish its third place finish in the NCAA basketball tournament because of alleged student athlete involvement with a gambler).

⁵⁷ Slavin, *supra* note 1, at 729.

bet of \$400.⁵⁸ Four years later, two Northwestern basketball players admitted to shaving points in an attempt to help their team cover the spread.⁵⁹

D. TEDDY DUPAY

Teddy Dupay was one of the first big-name recruits for Coach Billy Donovan and a rejuvenated University of Florida Gators basketball team.⁶⁰ Dupay led the team in assists during his sophomore and junior years in Gainesville. Prior to his senior year, the Gators were favored to win the national championship. However, after his junior season, it was discovered that he was giving inside information about the team, and the likelihood that they would cover the spread, to his roommate, Kresten Lagerman.⁶¹ Although Dupay was never accused of point-shaving or illegal gambling, the National Collegiate Athletic Association (NCAA) suspended him from the team indefinitely for his conduct – conduct that violated NCAA rules.⁶² Dupay said of the suspension that “I put myself in situations I should not have put myself in and I am paying the price.”⁶³

An example of how insider information helped Kresten Lagerman came when the Gators faced conference rival Tennessee. Dupay had been out with back problems for the last three weeks and was not expected to play until after the game with Tennessee.⁶⁴ Odds makers made Florida a two-point favorite. Teddy Dupay did play in that game, and the Gators won by fourteen points, easily covering the spread.⁶⁵ As a result of his suspension,

⁵⁸ *Id.*

⁵⁹ *Id.* at 729-730.

⁶⁰ Linda Robertson, *Gambling Stigma to be Forever Tattooed on Dupay*, MIAMI HERALD, Sept. 26, 2001.

⁶¹ *Id.*

⁶² *See infra*, note 115.

⁶³ Robertson, *supra* note 60.

⁶⁴ *Id.*

⁶⁵ *Id.*

no one in the NBA drafted him, because he did not play his senior year. An opportunity to help a roommate cost Dupay not only his senior season, it also cost him a possible NBA career.⁶⁶

E. UNIVERSITY OF MICHIGAN GAMBLING STUDY

A University of Michigan study on gambling completed in 1999 concluded that 72% of all NCAA Division I athletes and 80% of NCAA Division I male athletes have bet on sports since entering college.⁶⁷ That is an astounding number considering the NCAA's hard-line stance on gambling.⁶⁸ If eight in ten athletes are betting on sports, the integrity of those games is in serious jeopardy.

V. THE HIGH SCHOOL AND COLLEGE SPORTS GAMBLING PROHIBITION ACT

In 2000, US Senators Patrick Leahy, a democrat from Vermont, and Kansas republican Sam Brownback, introduced legislation that would have completely banned betting on all high school and college sports, and the Olympics.⁶⁹ The legislation was aimed at removing "the ambiguity that surrounds gambling on college sports and makes it clearly illegal in all fifty states."⁷⁰ The "ambiguity" arose out of the *Professional and Amateur Sports Protection Act* that President George H.W. Bush signed into law in 1992.

⁶⁶ Currently, Teddy Dupray lives in South Florida, and helps young children learn the game of basketball.

⁶⁷ Darren Rovell, *Congress Could Trump Vegas on College Book*, <http://espn.go.com/ncaa/s/2001/0312/1150957.html> (last visited Sept. 26, 2005).

⁶⁸ See *infra*, note 115, and accompanying text.

⁶⁹ Mark Harrison, *High School and College Prohibition Act Introduced in Congress*, GENERAL BOARD OF CHURCH AND SOCIETY, <http://web.archive.org/web/20030212094521/http://www.umc-gbcs.org/advact47.htm> (last visited Sept. 26, 2005).

⁷⁰ *Id.*

A. THE NATIONAL GAMBLING IMPACT STUDY COMMISSION

In June 1999, a bipartisan group of Senators and Representatives, appointed by the President, recommended banning sports book betting altogether.⁷¹ Through its study, the commission learned that sports wagering had devastated lives, and that it “threatened the integrity of sports, put student athletes in a vulnerable position, and could put adolescent gamblers at risk for future gambling problems.”⁷² Indeed, Cedric Dempsey, executive director of the NCAA, argued that there is evidence that the money spent on gambling on college campuses is greater than that spent on alcohol.⁷³ According to the report, students who gamble on sports have an increased risk of gambling on other things besides sports.⁷⁴ The report uncovered illegal sports gambling rings at the following universities: Michigan State, Maine, Rhode Island, Bryant, Northwestern, and Boston College.⁷⁵

The National Gambling Impact Study Commission (hereinafter “NGISC”) further discovered that pathological gamblers are twenty times more likely to become incarcerated than non-gamblers,⁷⁶ three times more likely to be bankrupt,⁷⁷ twice as likely to have mental health issues,⁷⁸ and six times more likely to have a drug abuse problem.⁷⁹ All of that evidence contributed to the Commission’s decision to support the *High School and College Sports Gambling Prohibition Act* (hereinafter “Amateur Sports Gambling Act”).

⁷¹ Slavin, *supra* note 1, at 723-24.

⁷² *Id.* at 724.

⁷³ National Gambling Impact Study Commission, National Gambling Impact Study Commission Final Report Ch. 2 “Gambling in the United States,” available at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html> (last visited November 19, 2005) (hereinafter “NGISC Final Report”).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See NGISC Final Report, *supra* note 73, at 7-21.

⁷⁷ *Id.* at 7-21

⁷⁸ *Id.* at 7-21.

⁷⁹ *Id.* at 7-21.

B. WHY THE AMATEUR SPORTS GAMBLING ACT?

The *Professional and Amateur Sports Protection Act of 1992* eliminated the legality of sports betting under the Commerce Clause.⁸⁰ It gave Nevada, Oregon, and Delaware an exemption from the law because those states were currently using gambling profits to finance state-run programs which would have caused a “harsh” result had these states lost this revenue.⁸¹ Currently Delaware does not offer sports betting, and only Oregon offers wagering through its regulated lottery.⁸² Nevada has 142 legal sports books that facilitate wagering on professional and amateur sports.⁸³

Representative Roemer, a democrat from Indiana, stated that the purpose of the *Amateur Sports Gambling Act* was to keep purity in sports alive by, banning sports betting on high school, collegiate and Olympic events in order to put the emphasis back where it belongs, on athletes playing their best.⁸⁴ The *Amateur Sports Gambling Act* resolved to:

- Eliminate the use of Nevada sports books for gain in point shaving scandals;
- Eliminate the legitimacy of publishing point spreads and advertising for sports tout services;
- Reduce the number of people who are introduced to sports gambling; and

⁸⁰ Slavin, *supra* note 1, at 719 (the Commerce Clause was implicated because sports teams use intrastate highways and participate in venues that would otherwise be protected by the Clause).

⁸¹ *Id.* at 719

⁸² Sports Action is done through the Oregon lottery, and individuals can only wager on professional sports teams.

⁸³ *Odds Against College Ban in Gambling*, SAN FRANCISCO EXAMINER, May 18, 1999, at D-8.

⁸⁴ *Id.* at D-8.

- Eliminate conflicting messages that say it is okay to wager on college sports in some places but not in others.⁸⁵

The bill was introduced almost immediately after the report by the National Gambling Impact Study Commission (hereinafter “NGISC”).⁸⁶ Following their recommendation, the NCAA began to seek congressional sponsorship.⁸⁷ The bill was not the first attempt by the NCAA to completely ban betting on its sports. In 1997, the NCAA threatened to withhold press credentials for any reporter that worked for a newspaper or magazine that ran point-spreads.⁸⁸ Doris Dickson, an NCAA representative, stated that the NCAA’s goals “are to remove the billion-dollar industry that makes it attractive for kids to point shave and fix games and to get point-spreads out of the newspapers.”⁸⁹ It should be noted that the NCAA has always opposed all forms of gambling on college athletics.⁹⁰

⁸⁵ See Harrison, *supra* note 69 (There were a number of supporters to the Act. “Among those supporting the legislation are 27 sports organizations...[including] the National College Athletic Association (NCAA), The American Council on Education, the U.S. Olympic Committee, the American Football Coaches Association, and Divisions I, II and III Students Athlete Advisory Councils.” Senate cosponsors of the bill included Jesse Helms, Richard Lugar, John McCain, John Edwards, and Diane Feinstein. Of course, both members of Congress from Nevada opposed the legislation).

⁸⁶ See *supra* note 73, at 3-9.

⁸⁷ *Id.*

⁸⁸ John Suehiro, *Legislation would Prohibit Gambling on High School, Collegiate Sports*, DAILY BRUIN, <http://www.dailybruin.ucla.edu/db/issues/00/02.02/sports.gambling.html> (last visited November 19, 2005).

⁸⁹ *Id.*

⁹⁰ See Student-Athlete Handbook, Indiana University-Purdue University Indianapolis, <http://www.iupui.edu/~athlete/handbook/rules.html> (last visited November 19, 2005). The NCAA’s statement on gambling (adopted March 19, 1997) is as follows:

The NCAA opposes all forms of legal and illegal sports wagering. Sports wagering has the potential to undermine the integrity of sports contests and jeopardize the welfare of student-athletes and the intercollegiate athletic community. Sports wagering demeans the competition and competitors alike by sending a message that is contrary to the purposes and meaning of “sport.” Sports competition should be appreciated for the inherent benefits related to participation of student-athletes, coaches and institutions in fair contests, not the amount of money wagered on the outcome of the competition. For these reasons, the NCAA membership has adopted specific rules [Bylaw 10.3] prohibiting athletics

VI. ONLINE GAMBLING ON COLLEGE SPORTS

With the invention of the internet came the creation of sports gambling websites, designed to lure the casual gambler into the world of high adrenaline and quick money. After typing the words “sports gambling” into an internet search engine, thousands of links become available – all promising big payouts. Most offer enticing discounts and “free money” with their service.⁹¹ All a gambler needs to get involved is a credit card, and an account can be made instantly.⁹² The gambling websites further entice players with parlays that pay 13 to 1 odds if a gambler successfully wins four consecutive games. Because the odds of winning the parlay are less than the promised payout, a win is rare. However, it is not uncommon for an individual to win two or three of the four games wagered, further giving hope and a desire to try again. That only adds to the difficulty of overcoming the lure of gambling on the internet. In 2002, Las Vegas sports books alone made \$700 million dollars. Of that amount, \$70 million was made on the NCAA’s Division I college basketball tournament.⁹³

A. A SUCKER BET

The chairman of the NGISC stated that “anyone who gambles over the internet is making a sucker bet” because even if you win, you never know if you are going to get your

department staff members and student-athletes from engaging in gambling activities that relate to intercollegiate or professional sports events.

⁹¹ This “free” money is generally given as a percentage of the amount the gambler deposit into an account. For example, if the gambler deposited \$100, \$110 would be at the gambler’s disposal.

⁹² Most web-sites visited clearly state that one must be 18 to place a bet, but there are no systems in place for site operators to otherwise verify gamblers’ ages.

⁹³ See Goldstein, *supra* note 46.

payout.⁹⁴ Many internet gambling sites remain unregulated.⁹⁵ U.S. Senator Jon Kyl stated that “Internet sports gambling appeals to college-age people who don’t have immediate access to a neighborhood bookie * * * [i]t’s on the Net and kids think it’s credible, which is scary.”⁹⁶

In 1995, the American Gaming Industry earned profits of \$44.4 billion dollars.⁹⁷ In an article entitled, *Online Sports Gambling – Regulation or Prohibition*, the authors argued that sports gambling should not be regulated through the internet because it “reflects a desired consumer activity in a market-driven economy.”⁹⁸ They contended that “the business should be subject to market demand without severe governmental restrictions,” because, “evidence suggests [in a British study] that citizens have generally gambled responsibly [upon legalization of internet sports gambling]” and “there is no reason to expect the citizens of the United States to respond differently if they were given the same freedom of choice.”⁹⁹ For all those individuals that “generally gambled responsibly,” at least a few Rick Kuhns and Dennis Lundys must exist among them.

Internet gambling cannot be easily policed. Due to the large amount of “off-shore” sports books, it is difficult for the government to detect and protect its citizens from

⁹⁴ Daniel Ritchie, *NCAA is Right to Push for Ban on Betting on College Games*, UNIV. OF DEN., available at <http://www.du.edu/danritchie/oped.html> (last visited November 19, 2005).

⁹⁵ See Jennifer Smith, *Baby Needs a New Pair of Cybershoes – Placing Bets in a Virtual Casino*, Georgia State University College of Law (Fall 2001), <http://gsulaw.gsu.edu/lawand/papers/fa01/smith> (last visited November 19, 2005).

⁹⁶ See Kyl, *supra* note 17.

⁹⁷ Lori K. Miller and Cathryn L. Claussen, *Online Sports Gambling – Regulation or Prohibition?*, 11 J. LEGAL ASPECTS SPORT, 99 (Spring/Summer 2001).

⁹⁸ *Id.* at 105.

⁹⁹ *Id.*

companies outside of the U.S.¹⁰⁰ Some states have already tried to police internet gambling, but it has been difficult. Florida's attorneys general conceded that "[e]volving technology appears to be far outstripping the ability of government to regulate gambling activities on the Internet and of law enforcement to enforce such regulations. Thus, resolution of these matters must be addressed at the national, if not international, level."¹⁰¹

B. ATTEMPTS TO MAKE ONLINE BETTING ILLEGAL

Legislation has been introduced that would make all forms of interactive gambling illegal.¹⁰² Also, some courts have used the federal Wire Act¹⁰³ as a way to make internet gambling businesses illegal.¹⁰⁴ As defined by House Resolution 2579, a gambling business is:

[a] business that is conducted at a gambling establishment or a business that involves the placing, receiving, or otherwise making of bets or wagers; or the offering to engage in the placing, receiving, or otherwise making of bets or wagers involving one or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and has been or remains in substantially continuous operation for a period in excess of 10 days or has a gross revenue of \$2,000 or more from such business during any 24-hour period.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ Anthony N. Cabot and Robert D. Faiss, *Sports Gambling in the Cyberspace Era*, 5 CHAP. L. REV. 1 (2002).

¹⁰² *See, e.g.*, Internet Gambling Payments Prohibition Act, H.R. 2579, 107th Cong. (2001).

¹⁰³ 18 U.S.C. § 1084 (2001). The Wire Act provides in pertinent part:

(a) Except as otherwise provided in this section, whoever, being engaged in a gambling business, knowingly uses a communication facility:

(1) for the transmission in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or to or from any place outside the jurisdiction of any nation with respect to any transmission to or from the United States, of bets or wagers, or information assisting in the placing of bets or wagers...*shall be fined under this title or imprisoned not more than five years, or both. Id.* (emphasis added).

¹⁰⁴ *See, e.g.*, United States v. Cohen, 260 F.3d 68, 75 (2d Cir. 2001).

¹⁰⁵ *Id.*

Under that definition and others,¹⁰⁶ it seems that the Wire Act is applicable to internet gambling, but it has yet to be used frequently because of the power the gambling lobby has in Washington.¹⁰⁷ Regardless of that lobby, in 1997 Senator John Kyl from Arizona introduced the *Internet Gambling Prohibition Act* in an attempt to ban online gambling.¹⁰⁸ The bill was ultimately defeated because of the inherent difficulty in monitoring and enforcing a potential ban.¹⁰⁹ Additionally, who would have jurisdiction over internet gambling crimes created an insurmountable obstacle. Nonetheless, Congress has not lost sight of the gambling problem in the U.S.

VII. ARGUMENTS AGAINST ILLEGALIZING GAMBLING

Those who argue that sports gambling should remain legal argue, among other reasons, that economic benefits can be derived from the conduct, that sports gambling reflects consumer approval of the legality of the activity, and that sports betting has yet to bring the “demise” of any sport.

A. SPORTS GAMBLING BRINGS AN ECONOMIC BENEFIT

On-site sports betting has brought unprecedented economic success to Las Vegas, and the popularity of internet sports betting has increased that success. Those who support keeping sports betting legal argue that if the U.S. were to completely ban sports betting, the sports books would move out of the country, or would move “underground,” forcing

¹⁰⁶ See, e.g., Amateur Sports Integrity Act, S.B. 718 § 303(b)(3)(A), 107th Cong. (2001). Unlawful Internet gambling is “means to place, receive, or otherwise make a bet or wager by any means which involves the use, at least in part, of the Internet, where such bet, or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made.”

¹⁰⁷ For other examples of how courts have interpreted internet gambling, see, e.g., *Ziskis v. Kowalski*, 726 F. Supp. 902 (D. Conn. 1989) (stating there is no first amendment right to gambling); *Allendale Leasing, Inc. v. Stone*, 614 F. Supp. 1440 (D. R.I. 1985) (gambling must be subject to reasonable government regulation).

¹⁰⁸ 18 U.S.C. § 1984 (1997).

¹⁰⁹ See *supra* note 102.

astronomical costs in monitoring that potentially new illegal activity. Also, with sports betting being illegal, cities like Las Vegas would not be able to receive the tax benefits that come with the gambling profits.¹¹⁰ Further, the *Indian Gaming Regulatory Act* limits the use of those profits to fund tribal government operations or programs, provide for the general welfare of Indian tribes, and to promote tribal economic development – all goals that would be much more difficult to achieve without the money from sports books.¹¹¹

This argument parallels those made for years by persons attempting to legalize certain types of drugs and prostitution.¹¹² For example, drug use, distribution and prostitution occur frequently regardless of their illegality. Additionally, cities do not receive the tax benefits from these activities, and spend millions of dollars enforcing the laws enacted to keep them illegal.

Most states and the federal government have kept drugs and prostitution illegal because they are worried legalization would lead to the exploitation of children and women, as well as increased health problems associated with these activities. Like drugs and prostitution, sports gambling is addictive and leads to exploitation as well. Further, the economic benefit that the country might realize by completely legalizing sports gambling is far outweighed by the potential risks and harm associated with the activity.

¹¹⁰ *Id.* at 105.

¹¹¹ 25 U.S.C. § 2710 (b)(1)-(3) (2005).

¹¹² See, e.g., Mark Liberator, *Legalized Prostitution: Regulating the Oldest Profession*, THE LIBERATOR, <http://www.liberator.net/articles/prostitution.html> (last visited November 19, 2005).

B. SPORTS GAMBLING REFLECTS CONSUMER APPROVAL

Proponents of legalized sports gambling cite the success of sports books and the growth of Las Vegas as consumer approval for the activity.¹¹³ Each year, the number of sports books and off-shore internet sports gambling web-sites increase exponentially as revenues rise rapidly.¹¹⁴ Like the economic benefits argument above, the consumer approval argument is also flawed. Many illegal activities, like drug distribution, make huge profits each year. The profits reflect “consumer approval,” yet just because the consumer participates in the activity, it does not mean that the millions of people not involved with sports gambling should be required to pay for the bankruptcies and thefts that occur to feed gambling addictions.

C. SPORTS GAMBLING HAS NOT LED TO THE DEMISE OF SPORTS

Although there have been a few well-publicized sports betting scandals, those in favor of keeping sports betting legal contend that a few isolated incidents have not brought about the end of competitive sports. They argue that people go to sporting events to be entertained and that the “purity of sport” is the last thing on most fanatics’ minds. They further contend that point-shaving scandals happen so rarely that even sports purists should not worry about sporting events being tainted by athletes not giving their best efforts.

It is true that over the years relatively few reported scandals have arisen compared with the thousands of games played every year. However, it is unclear how many athletes

¹¹³ *Id.*

¹¹⁴ See generally CASINOMEISTER, *Casinomeister’s News: October 2005*, <http://www.casinomeister.com/news/october2005.html> (last visited November 19, 2005) (collecting articles about off-shore gambling websites).

have not been caught for their involvement in point-shaving schemes. For example, how many times have athletes unexpectedly fumbled balls without getting touched, or missed wide-open lay-ups during undecided games? With the ability for people to gamble on sporting events comes the possibility that any athlete could be involved in assisting organized crime or sports bookies. If all sports betting were illegal, it would remove all incentive for athletes to intentionally throw games. The NCAA has made it completely illegal for any athletes to bet on any intercollegiate sports,¹¹⁵ but the monetary incentive for athletes remains present.

VIII. CONCLUSION

Senator Bill Bradley, the sponsor of the original *Professional and Amateur Sports Protection Act*, and a Hall of Fame basketball player, stated:

Based on what I know about the dangers of sports betting, I am not prepared to risk the values that sports instill in youth just to add a few more dollars to state coffers....State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message that sports betting threatens the integrity of and public

¹¹⁵ See *supra* note 90. NCAA Bylaw 10.3: Gambling Activities, provides in pertinent part:

Staff members of a member conference, staff members of the athletics department member institution and student-athletes shall not knowingly:

- (a) Provide information to individuals involved in organized gambling activities for intercollegiate athletics competition;
- (b) Accept a bet on any intercollegiate team;
- (c) Accept a bet on any team representing the institution;
- (d) Solicit or accept a bet on any intercollegiate competition for any item (e.g., dinner) that has tangible value; or
- (e) Participate in any gambling activity that involves intercollegiate athletics..., through a bookmaker, a parlay card, or any other method employed by gambling.

NCAA Bylaw 10.4

Prospective or enrolled student-athletes found in violation of [the regulations set forth above] shall be ineligible for further intercollegiate competition. Available at http://www2.ncaa.org/media_and_events/ncaa_publications/membership/index.html#bylaws

confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling...sports gambling raises people's suspicions about point-shaving and game-fixing....All of this puts undue pressure on players, coaches, and officials.¹¹⁶

Sports betting should be illegal. If that form of entertainment continues, the integrity of sports could be forever damaged. If fans believe that sports contests are rigged, they will not attend sporting events, and the leagues will be in jeopardy. Integrity is an important part of what makes sports so intriguing. Sports fans enjoy believing that anything can happen, and anybody can win.

College and high school athletes are especially susceptible to the lure of money from gamblers because those athletes do not have the incomes that accompany professional contracts. Most of the point-shaving schemes have been aimed at those categories of athletes. Something has to be done to protect those young people from the inducement to participate in those schemes. Without this protection, the wonder of March Madness and January bowl games could forever be tainted by the mere possibility of impropriety by the participating athletes. Legislatures should step up and pass legislation that makes sports gambling illegal.

¹¹⁶ Chad Hills, *NGISC Report: What Does it Say? What Does it Mean? Part 4*, CITIZENLINK, <http://www.family.org/cforum/fosi/gambling/gitus/a0029022.cfm> (last visited November 19, 2005).