THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT—POLICY CONCERNS BEHIND SENATE BILL 474

*with introduction by Senator Bill Bradley**

I. INTRODUCTION

As a former professional basketball player, I have witnessed first-hand some of the negative effects of sports gambling. In one game at Madison Square Garden, the Knicks were ahead by eight points with thirty seconds left in the game. We scored a basket, which put us up by ten points. Instead of cheering, however, a portion of the crowd in the Garden booed. The point spread was evidently eight instead of ten.

On another occasion, a player on our team threw the ball up at the end of a game. Although the Knicks won the game, the ball ended up going into the basket of the opposing team. During the next week, the press in New York speculated about what had essentially been an inadvertent act. It was the prevalence of sports betting which encouraged this speculation.

State-sanctioned sports betting puts the imprimatur of the state on this activity. It 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. Athletes are not roulette chips, but sports gambling treats them as such. If the dangers of state sponsored sports betting are not confronted, the character of sports and youngsters' view of them could be seriously threatened.

Senate Bill 474 (S. 474) and House Bill 74 (H.R. 74) attempt to stem the growth of teenage gambling and protect the integrity of sports by proscribing the development of sports gambling. The bills

---

* United States Senator (NJ-D), B.A., 1965 Princeton University; M.A., 1967 Oxford University, Rhodes Scholar. Senator Bradley has been a United States Senator for three consecutive terms beginning in 1978. He is a member of the Finance and Energy and Natural Resources Committee, the Special Committee on Aging and the Select Committee on Intelligence. The "Constitutional Challenges," "Commerce Clause v. States Rights" and "Uniform Application of Federal Legislation" sections of this article were written by Serene Murphy of the *Seton Hall Journal of Sport Law.*

are premised on the notion that the revenue earned by the states through sports gambling is not enough to justify the waste and destruction attendant to the practice. Just as legalizing drugs would lead to increased drug addition, legalizing sports gambling would aggravate the problems associated with gambling. As a society, we cannot afford this result.

The supporters of S. 474 and H.R. 74 recognize that the increased involvement of teenagers in gambling stems largely from their attraction to sports gambling. The bills attempt to protect sports from becoming a vehicle for promoting gambling among teenagers, ensuring that the values of character, cooperation, and good sportsmanship that have figured so heavily in the growth of athletic competition throughout the ages are not significantly compromised.

Sufficient precedent exists to justify the proscriptions of sports betting mandated by S. 474 and H.R. 74. Congress has regulated gambling activities in the past. It has also exercised its Commerce Clause powers[1] to regulate activities that are arguably more intrastate than sports gambling without running afoul of the Tenth Amendment.[2] The ban on sports betting would also not violate the Equal Protection Clause of the Fourteenth Amendment.[3] That the prohibitions contained in the bills would vary among the states does not in and of itself render them unconstitutional.

In the 1970's, the typical gambling addict was a "white, middle-aged, middle-class male,"[4] and compulsive gambling was not a prob-

---

1. U.S. CONST. art. I, § 8.

2. *Id.* amend. X.

3. *Id.* amend. XIV.

4. *Hearings on H.R. 74 Before the Subcomm. on Economic and Commercial Law*, 102d Cong., 1st Sess. 22-27, at 23 (1991) [hereinafter *Hearings*] (prepared statement of Valerie C. Lorenz, Ph.D., Executive Director of the National Center for Pathological Gambling, Inc.). *See also The Rise of Teenage Gambling - A Distressing Number of Youths Are Bitten Early by the Betting Bug*, TIME, Feb. 25, 1991, at 78 [hereinafter *The Rise of Teenage Gambling*]. The author stated:

> Just 10 years ago, teenage gambling did not register even a blip on the roster of social ills. Today gambling counselors say an average of 7% of their case loads involve teenagers. New studies indicate that teenage vulnerability to compulsive gambling hits every economic stratum and ethnic group. After surveying 2,700 high school students in four states, California psychologist Durand Jacobs, concluded that students are 2½ times as likely as adults to become problem gamblers. In another study, Henry Lesieur, a sociologist at St. John's University in New York, found eight times as many gambling addicts among college students as among adults.

Id.

lem among teenagers.[5] Today, however, one million of the eight million compulsive gamblers in this country are teenagers. A recent *Time* magazine article stated that teenagers favor "sports betting, card playing and lotteries."[6] The development of state sponsored sports lotteries would exacerbate the problem of teenage gambling.

Sports has always been very important and attractive to young people across the country. State-sanctioned sports betting would send these children the wrong message. Sports betting would convey the message that sports is about gambling, instead of personal achievement, sportsmanship and respect for the winner.

Legalized sports betting would teach young people how to gamble. This, in turn, would lead these children to illegal gambling once they discover that the odds and pay-offs are better.[7] Many children look up to athletes. These players could not possibly serve as proper role models if they were entangled in the gambling enterprise.[8] Legalizing sports gambling would encourage young people to participate in sports to win money. They would no longer love the game for the purity of the experience.

Sports betting also threatens the integrity of and the public confidence in professional 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.[9] Where sports-gambling occurs, fans cannot help but wonder if a missed free throw, dropped fly ball, or a missed extra point was part

---

5. *Hearings, supra* note 4, at 23 (statement of Valerie C. Lorenz). Ms. Lorenz states that today's gambling addict is "democratic" - besides the white middle-aged, middle-class male, senior citizens, lower income people, minorities and military personnel are also becoming compulsive gamblers. *Id.*

6. *The Rise of Teenage Gambling, supra* note 4, at 78.

7. *Id.* at 22-27 (prepared statement of Valerie C. Lorenz, Ph.D.). Ms. Lornenz noted:

> On Super Bowl Monday last January, ESPN aired a three-minute segment on compulsive gambling, listing our Hotline number. We received some 400 calls within three days, perhaps half of them from teenagers and college-aged students who desperately sought help, who admitted to stealing from other students to support their gambling habit, who spent tuition money to pay off bookies and others with physical harm, exposure, being kicked off sports teams, or similar devastating actions, who thought their only recourse was suicide.

Id. at 26

8. *Hearings, supra* note 4, at 15 (prepared statement of Paul Tagliabue). *See also id.* at 34-37 (prepared statement of Arnold Auerbach). Mr. Auerbach emphasized that "throughout this country, our local sports heroes are idolized and held up to our youth as role models. It would be wrong to suggest to our young people that sports, and their idols, exist primarily as a vehicle for gambling." *Id.* at 37.

9. *Id.* at 36 (prepared statement of Arnold "Red" Auerbach).

of a player's scheme to fix the game. If sports betting is legalized, fans will question every coaching decision and official's call.[10] All of this puts undue pressure on the players, coaches and officials.[11] Legalized sports betting could change forever the relationship between the players and the game and between the game and the fans. Sports would become the gamblers' game and not the fans' game.

With the consideration of legislation to legalize state-sponsored sports betting in at least thirteen states,[12] Congress has undertaken the task of preventing what many members rightfully deem to be an evil affecting the nation at large. Initiatives to sanction wagering on sporting events have become increasingly attractive to states as legislatures perceive this activity to be a panacea to their mounting deficits.[13] Not only is this perception fallacious, but the harm that state-sponsored sports betting causes far outweighs the financial advantages received. In an attempt to address these concerns, both the Senate and the House have introduced legislation prohibiting the legitimization of sports wagering schemes.

---

10. *Hearings, supra* note 4, at 12-21 (prepared statement of Paul Tagliabue). Specifically, Mr. Tagliabue stated:

> Sports gambling inevitably fosters a climate of suspicion about controversial plays and intensifies cynicism with respect to player performances, coaching decisions, officiating calls and game results. Cynical or disappointed fans would come to assume "the fix was in" whenever the team they bet on failed to beat the point spread.

Id. at 14.

11. *Id.* at 36 (prepared statement of Arnold "Red" Auerbach). Mr. Auerbach testified that "the strategies of the coaches and players as they relate to the point spread will be called into question. Coaches and players have enough to worry about without their motives and integrity being questioned by gamblers and bookies." *Id. See also id.* at 38-39 (statement of Frank Robinson). Mr. Robinson realized the extra pressure that would be put on the athletes when he stated:

> Ballplayers are human beings, subject to the same errors of judgment and mistakes as anyone else. . . . The lowest paid ballplayers - the ones most susceptible to the power of money - are also the youngest and most naive. These are the very individuals who are least likely to question the background of those who seek their friendship. And these are the people who, late in a ballgame, might find themselves in a position to affect the outcome of a ballgame. . . . sports gambling adds a destructive economic motive to contests that should be based on athletic abilities.

Id. at 38.

12. *Increasing number of states are considering initiatives*, USA TODAY, June 25, 1991, at 8C. The states which have considered sports betting legislation include: California, Delaware, Illinois, Kentucky, Massachusetts, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, and Washington D.C. *Id.*

13. *See* 137 CONG. REC. S18661, S18663 (quoting *States Should Keep Out of Sports Betting*, USA TODAY, June 26, 1991, at 12A.). Gambling business from states brings in $290 billion each year because states heavily rely on "games of chance" to bring them out of fiscal ruin. *Id. See also* Michelle N. Martinez, *The States are Taking A Gamble*, HR MAGAZINE, April 1990, at 52. The author states that in 1989, state lotteries grossed approximately 16 billion dollars. *Id.*

On February 22, 1991, Senator Deconcini introduced The Professional and Amateur Sports Protection Act (S. 474). After conducting hearings on the bill, the Senate Judiciary Committee concluded that sports betting is a national problem and that the "bill serves an important public purpose, to stop the spread of State-sponsored sports gambling" and the promotion of gambling among our youth.[14]

Senate Bill 474 attempts to prohibit "outright the sponsorship or authorization of sports gambling."[15] In particular, S. 474 renders it unlawful for a governmental body or an individual to sponsor, operate, advertise, or promote a sports wagering scheme.[16] To aid in the enforcement of this legislative goal of proscribing sports betting, S. 474 authorizes parties such as the United States Attorney General and any affected sports organization to seek injunctive relief against an infringement of the act.[17]

Acknowledging that sports betting is now legal in Oregon, Delaware, and Nevada and that the elimination of such schemes in these particular states would work a harsh result,[18] 474 exempts certain

---

14. S. REP. No. 102-248, 102d Cong., 1st Sess. 4-5 (1991).

15. 137 CONG. REC. (daily ed. Jan. 3, 1991) (introductory remarks by Representative Bryant).

16. S. REP. No. 102-248, *supra* note 14, at 2. This portion of the bill in pertinent part provides:

> 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 government entity,
>
> a lottery, sweepstakes, or other betting, gambling, or wagering scheme based directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate . . . .

Id.

This prohibition is intended to encompass all schemes "involving an actual game or games" including schemes in which geographical references are utilized instead of a team's formal name. *Id.* at 9. This section does not however, prohibit "scratch games or lotteries that use a sports theme but do not involve . . . an actual game . . . ." *Id.*

17. *Id.* at 2.

18. *See* 137 CONG. REC. S2256 (daily ed. Feb. 22, 1991) (statement of Mr. DeConcini). Senator Deconcini, who introduced Senate Bill 474, stated:

> Although I firmly believe that all sports gambling is harmful, I feel it unfair to apply this new prohibition retroactively to Oregon or Delaware, which instituted sports lotteries prior to the introduction of this legislation. In addition, I have no intention of threatening the economy of Nevada, which over many decades has come to depend on legalized private gambling, including sports gambling, as an essential industry.

Id. at S2257.

states from its proscription.[19] Additionally, S. 474 exempts parimutuel animal racing.[20]

The companion bill to S. 474, H.R. 74, was introduced on January 3, 1991 by Congressman Bryant. Hearings were held before the Subcommittee on Economic and Commercial Law. House Bill 74 is virtually identical to S. 474. The only difference between the bills is that H.R. 74 contains a broader exemption, which allows sports betting to continue in casinos if the betting scheme was in effect up to one year after the date of the new legislation. [21]

II. Constitutional Challenges To Senate Bill 474

The opponents of S. 474 have advanced constitutional arguments similar to those previously articulated by defendants challenging

---

19. S. Rep. No. 102-248, *supra* note 14, at 2. Senate Bill 474 contains the following exemptions:

> (a) Section 3702 shall not apply to-
>
> (1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the particular scheme was conducted by that State or other governmental entity prior to August 31, 1990;
>
> (2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both-
>
> (A) such scheme is authorized by law; and
>
> (B) a scheme . . . actually was conducted in that State or other governmental entity during the period beginning September 1, 1989, and ending august 31, 1990, pursuant to the law of that State or other governmental entity . . . .

Id. Thus, the legislation exempts Oregon, Delaware and Nevada.
Additionally, this section is not intended to prohibit Nevada from expanding its schemes provided that such an expansion was authorized under Nevada law prior to the enactment of this Act. *Id.* at 10.

20. S. Rep. No. 102-248 at 2.

21. *Hearings, supra* note 4, at 5. *See also* H.R. Conf Rep. No. 102-405, 102d Cong., 2d Sess. 179. The exemption provides:

> (3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that -
>
> (A) such scheme or a similar scheme was in operation in that municipality not later than one year after the effective date of this chapter; and
>
> (B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality . . . .

Id.

House Bill 74 has been incorporated into the broader crime legislation in H.R. 3371 (Violent Crime Control and Law Enforcement Act of 1991) by amendment. As of the publication of this article, the bill has not passed both Houses, and is currently being held up by the Senate.

anti-gambling legislation.[22] Those challenges, however, have been continuously rejected by federal courts as lacking merit.[23] Two principal contentions have been raised by opponents of S. 474 : (1) Congress has violated the Tenth Amendment by attempting to regulate intrastate activity and (2) the proposed legislation lacks uniformity and thus, it discriminates between states.[24] Despite such assertions,

---

22. *See, e.g.*, United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975) (challenging Organized Crime Control Act of 1970 on the ground that Congress lacked authority under the commerce clause to prohibit gambling); United States v. Smaldone, 485 F.2d 1333 (10th Cir. 1973), *cert. denied*, 416 U.S. 936 (1974), *reh'g denied*, 417 U.S. 926 (1974) (challenging federal anti-gambling statute on grounds that statute exceeds congressional commerce clause power and that statute violates due process clause because its application varies from state to state); United States v. Becker, 461 F.2d 230 (2d Cir. 1972), *vacated*, 417 U.S. 903 (1974) (challenging federal gambling statute on the grounds that Congress exceeded the bounds of commerce clause in enacting statute); United States v. Harris, 460 F.2d 1041 (5th Cir. 1972), *cert. denied*, 409 U.S. 877 (1972) (raising argument that the right to regulate local gambling activity is reserved to the states); United States v. Riehl, 460 F.2d 454 (3d Cir. 1972) (contending that Congress lacks rational basis for finding that intrastate gambling effects interstate commerce); Schneider v. United States, 459 F.2d 540 (8th Cir. 1972), *cert. denied*, 409 U.S. 877 (1972) (asserting that statute violates equal protection clause because of lack of uniformity); Turf Center, Inc. v. United States, 325 F.2d 793 (9th Cir. 1964) (contending that federal statute prohibiting among other things, sports betting, violated equal protection clause due to varying application among states); Nilva v. United States, 212 F.2d 115 (8th Cir. 1954) *cert. denied*, 348 U.S. 825 (1954), *reh'g denied*, 348 U.S. 889 (1954) (arguing that congressional statute lacked uniformity); Bally Mfg. Corp., 345 F. Supp. 410 (E.D. Louis. 1972) (advancing argument that statute exceeds congressional power under the commerce clause and lacks uniformity); United States v. Sacco, 337 F. Supp. 521 (N.D. Cal. 1972) (asserting that gambling legislation is an unconstitutional exercise of legislative power by Congress and that statute lacks uniformity); United States v. Aquino, 336 F. Supp. 737 (E.D. Mich 1972) (contending that statute lacks uniform prohibition and therefore deprives defendants of equal protection of the law).

23. *See, e.g., Cappetto*, 502 F.2d at 1356 (stating that defendants' argument that Congress lacks authority to prohibit gambling "need not detain us long"); *Smaldone*, 485 F.2d at 1342 (finding that defendants' contentions that federal statute violates tenth amendment and deprives them of equal protection are "without merit"); *Bally Mfg. Corp.*, 345 F. Supp. at 425 (concluding that defendants' assertions that federal anti-gambling statute exceeds the power of Congress and fails for lack of uniform application "have yet to survive judicial scrutiny").

24. *Hearings, supra* note 4, at 68-72 (statement of Thomas O'heir, Director, Massachusetts State Lottery). Mr. O'heir testified: "Issues of lotteries and wagering have traditionally been issues for the states to resolve. . . . Congress should not be telling the states how they can or cannot raise revenue. This is particularly true when congress is discriminating between the states, as this legislation blatantly does." *Id.* at 68. *See also Id.* at 61-67 (statement of Representative Donna Sytek, New Hampshire House of Representatives on behalf of the National Conference of State Legislatures). Ms. Sytek commented:

> For Congress to preempt this state authority is an unwarranted and unnecessary intrusion into the affairs of state governments and another blow to the principles of federalism. In our view, states must have maximum flexibility in exploring all possible revenue options, including sports lotteries, to balance their budgets and provide needed services.

federal case law in this area forecloses a valid argument on either of these grounds.[25]

A. Commerce Clause v. States' Rights

Senate Bill 474 seemingly presents a classic clash of the Federal Commerce Clause power[26] and the states' rights protected by the Tenth Amendment.[27] However, any assertions that S. 474 violates the Tenth Amendment and interferes with individual state activities is clearly without merit.

The Supreme Court has not explicitly stated that legislation comparable to S. 474 is within the power of Congress to regulate under the Commerce Clause. The closest that the Court has come to addressing this issue was in the seminal case of *Champion v. Ames.*[28]

Id. at 62. *See also* S. REP. No. 102-248, *supra* note 14, at 12-13 (providing the Minority views of the Committee on the Judiciary).

25. *See Cappetto*, 502 F.2d 1351 (7th Cir. 1974) (providing that Organized Crime Control Act of 1970 which made it a federal offense to participate in gambling business is authorized by the commerce clause); *Smaldone*, 485 F.2d 1333 (10th Cir. 1973) (holding that Congress acted within its power under the commerce clause when enacting federal statute which prohibits book making on sporting events and that statute did not violate the equal protection clause through its "unequal geographical enforcement); *Becker*, 461 F.2d 230 (2d Cir. 1972) (concluding that Congress acted within its power granted under the commerce clause in enacting statute federal statute which makes it a federal offense to conduct illegal gambling business); *Harris*, 460 F.2d 1041 (5th Cir. 1972) (providing that appellants' assertion that federal gambling statute "infringes on the rights reserved to the states under the Tenth Amendment . . . cannot be maintained with either conviction or plausibility"); *Riehl*, 460 F.2d at 458 (holding that act proscribing conspiracy to aid illegal gambling did not violate commerce clause); *Schneider*, 459 F.2d at 543—(holding that federal gambling statute did not violate due process because of lack of national uniformity); *Turf Center, Inc.*, 325 F.2d at 795-96 (holding that federal statute prohibiting among other things, sports betting, did not violate equal protection clause merely because of it variation in its application among states); *Nilva*, 212 F.2d at 119 (holding that Congress is not required to enact laws which are uniform in application when exercising commerce clause power); *Bally Mfg. Corp.*, 345 F. Supp. at 425-26 (finding that federal anti-gambling statute "deals with a subject over which Congressional regulation is proper" and that "variation in state law does not in any way nullify . . . federal anti-gambling statute. . . ."); *Sacco*, 337 F. Supp. at 524-27 (concluding that federal gambling legislation is a valid exercise of legislative power by Congress and thus, does not violate the tenth amendment and that variation in state laws does not render statute invalid); *Aquino*, 336 F. Supp. at 739-40 (finding that "large-scale gambling activities" may be regulated by Congress and that uniform prohibition is not required to uphold statute).

26. U.S. CONST. art. I, § 8. This article provides: "the Congress shall have Power . . . [3] [t]o regulate Commerce with foreign Nations, and among the Several States and with the Indian Tribes . . ." *Id.*

27. *Id.* amend. X. The tenth amendment provides: "The power not delegated to the United States by the Constitution, nor prohibited by it to the United States, are reserved to the States respectively, or to the people." *Id.*

28. 188 U.S. 321 (1903).

In *Champion*, the Supreme Court held that the prohibition against carrying lottery tickets from state to state was subject to Congress' power to regulate interstate commerce.[29] However, the significance of *Champion* in analyzing and establishing the constitutional validity of Congress' right to regulate gambling is its use as a template in determining how the Supreme Court is likely to treat this issue.

In *Champion*, the defendants were charged with violating a federal statute prohibiting the carriage of lottery tickets from one state to another.[30] The majority addressed the issue of whether Congress may regulate the transport of lottery tickets across state lines.[31] Ultimately, the Court held that such regulation was properly within the power granted to Congress under the Commerce Clause.[32]

The relevance of the *Champion* opinion, within this context, lies in the Court's discussion of Congress' ability to legislate against "an evil . . . carried on through interstate commerce."[33] The majority opined that Congress in enacting the legislation at issue shared the Court's view that "[e]xperience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries."[34] The Court further explained that Congress may prohibit the interstate carriage of lottery tickets in order to guard the Nation against the "wide spread pestilence of lotteries."[35]

Senate Bill 474's prohibition against state-sponsored sports lotteries is similar to the statutory prohibition in *Champion* in that in each case Congress has devised a means to protect the country at large from "a species of interstate commerce which, although in general use and somewhat favored in both national and state legislation

---

29. *Id.* at 345.

30. *Id.* at 322-23.

31. *Id.* at 353.

32. *Id.* at 354. The Court opined that "lottery tickets are subjects of traffic and therefore are subjects of commerce, and the regulation of the carriage of such tickets from State to State, at least by independent carriers, is a regulation of commerce among the several States." *Id.*

33. *Id.* at 355-58.

34. *Id.* at 355-56. The Court continued, ". . .the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple." *Id.* at 356.

35. *Id.* at 357. The majority further provided:

> [W]e should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, cannot be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce.

Id. at 358.

. . . has grown into disrepute and has become offensive to the entire people of the Nation."[36] The *Champion* opinion should be read to support the proposition that Congress may regulate sports wagering on the basis that it deems such activity to be a "moral and social wrong" affecting interstate commerce.

Despite the lack of reference by lower federal courts to the *Champion* case, the Supreme Court's decision in *Perez v. United States*,[37] however, leaves no doubt that the regulation of gambling, even though purely local in character, is within the federal commerce power. *Perez* has been utilized by almost every lower federal court addressing this issue to refute the argument that gambling legislation exceeds the power of Congress.[38] In fact, the Supreme Court's decision in *Perez* has been held to apply "with equal force to illegal gambling prohibited by federal legislation."[39]

In *Perez*, the defendant had been convicted of "loan sharking" in violation of the Consumer Credit Protection Act.[40] The defendant challenged the constitutionality of the statute asserting that Congress lacked the power to regulate the purely local activity of loan sharking.[41] The Court, reflecting on the history of the Commerce Clause, noted its position that "it was the *class of activities* regulated that was the measure" of whether such activity was within the power of Congress.[42] The majority further explained that the Commerce Clause "extends to those activities intrastate which so affect interstate commerce."[43] Consequently, the Court held that loan sharking, although purely intrastate, affects interstate commerce and is, therefore, clearly within the Federal Commerce Clause power.[44]

In reaching its conclusion, the Supreme Court relied upon congressional findings that loan sharking directly affected interstate

---

36. *Id.* at 358. *Compare id. with* S. REP. No. 102-248, *supra* note 14, at 5 (finding that federal action is warranted because the harms inflicted by sports gambling "are felt beyond the boarders of those States that sanction it. . . . The moral erosion it produces cannot be limited geographically.")

37. United States v. Perez, 402 U.S. 146 (1971).

38. *See* cases cited *supra* note 22.

39. United States v. Smaldone, 485 F.2d 1333, 1342 (10th Cir. 1973); United States v. Becker, 461 F.2d 230, 233 (2d Cir. 1972).

40. 402 U.S. at 146, 149-54.

41. *Id.* at 154.

42. *Id.* (citing Katzenbach v. McClung, 379 U.S. 294 (1964)). The Court further explained that when the class of activities regulated is within the commerce clause, the courts do not posses the power "to excise, as trivial, individual instances" of the class. *Id.* (citation omitted).

43. *Id.* at 151 (quoting United States v. Wrightwood Dairy Co., 315 U.S. 110, 119 (1942)).

44. *Id.* at 154-57.

commerce.[45] The majority noted that even where such transactions are local in character they have a direct impact on commerce between states.[46] Therefore, the Court reasoned that the exercise of congressional power under the Commerce Clause was justified in this instance.[47]

The situation presented in *Perez* is analogous to that presented by S. 474. In both instances, there has been ample evidence presented to the Senate committees that the regulated activity has a direct impact on interstate affairs. In *Perez*, loan sharking was found to be related to interstate crime.[48] The findings presented to the Subcommittee on Patents, Copyrights and Trademarks during the hearings on S. 474 indicate that sports betting negatively impacts on compulsive gambling among teenagers which is becoming a national problem of epidemic proportions.[49] Consequently, sports betting or illegal gambling, like loan sharking, is a proper subject for federal regulation under the Commerce Clause.

Further support for this analogy can be found in numerous lower federal court decisions which have applied the reasoning employed in *Perez* to have federal anti-gambling statutes.[50] For example, the Tenth Circuit Court of Appeals in *United States v. Smaldone*,[51] relied on the Supreme Court's decision in *Perez* to uphold the constitu-

---

45. *Id.* at 155-57. The Court pointed out that the findings of Congress indicate that "there is a tie-in between local loan sharks and interstate crime." *Id.* at 155. The Court further noted that a report submitted to the House revealed that " 'organized crime takes over $350 million a year from America's poor through loan sharking.' " *Id.* (quoting 113 CONG. REC. 24460-24464 (August 29, 1967)).

46. *Id.* at 156-57. The Court stated that in order to answer the petitioner's plea that loan sharking is merely a local activity, the Court examined the congressional findings. *Id.* These findings, the Court emphasized, indicate that "loan sharking in its national setting is one way organized crime holds its guns to the heads of the poor and rich alike . . . to finance its national operations." *Id.* at 157.

47. *Id.* at 154-56.

48. *Id.* at 155-57. *See also supra* note 48.

49. *See Hearings, supra* note 1, at 22-27 (statement of Valerie C. Lorenz). Ms. Lorenz stated:

> Gambling among young people in this country has been increasing at an alarming rate in recent years. we believe that the spread of state lotteries in the past 20 years has contributed significantly to the problem . . . [t]he growth of state lotteries undoubtedly has played a significant role in the rise of teenage gambling. The rise of state lotteries clearly helped turn gambling from a vice to a normal form of entertainment. . . .

Id. at 23. *See also* S. REP. No. 102-248, *supra* note 14, at 5-6 (concluding that "[t]he interstate ramifications of sports betting are a compelling reason for federal legislation").

50. *See* case cited *supra* note 25.

51. 485 F.2d 1333 (10th Cir. 1973).

tionality of a federal statute prohibiting gambling.[52] In *Smaldone*, the defendants were convicted under a federal gambling statute for their involvement in the business of bookmaking on sporting events.[53] The majority held that the anti-gambling statute was "a valid and constitutional exercise of power under the Commerce Clause of the United States Constitution."[54] The Court opined that the *Perez* holding foreclosed the defendants' assertion that the federal statute was unconstitutional.[55]

The statute challenged in *Smaldone* is conceptually closely related to S. 474. That statute attempted to prohibit business operations involving illegal gambling,[56] while S. 474 seeks to prevent the sponsoring, operation, advertising, or promotion of sports betting.[57] Like the anti-gambling statute in *Smaldone*, S. 474 will withstand a constitutional challenge on the ground that it exceeds the Federal Commerce Clause power. *Perez* and its progeny should be read to preclude the argument that S. 474 is an impermissible invasion into the providence reserved to the states by the Tenth Amendment.[58]

Further support for the position that S. 474 is a valid constitutional exercise of Congress' Commerce Clause power lies in the fact that Congress has enacted numerous federal statutes which contain

---

52. *Id.* at 1342-43. The federal statute challenged in *Smaldone* was 18 U.S.C. § 1955. *Id.* at 1338. The statute in pertinent part reads as follows:

> (a) whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both . . .
>
> (2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

Id. at 1338 (citing 18 U.S.C. § 1955).

53. *Id.* at 1338-39. The court noted that the gambling business engaged in by defendants included bookmaking on College and professional sporting events. *Id.* at 1338. The weekly event schedules which listed the games chronologically were distributed to the participants. *Id.* at 1339.

54. *Id.* at 1342.

55. *Id.*

56. *See supra* note 52 for an explanation of the statute challenged in *Smaldone*.

57. *See supra* notes 17-20 and accompanying text for the definitions and scope of S. 474.

58. *See, e.g.*, United States v. Bally Mfg. Corp., 345 F. Supp. 410 (E.D. Lo. 1972). The district court in *Bally*, analyzing the constitutionality of 18 U.S.C. § 1955 stated, "the [t]enth [a]mendment and the commerce clause are mutually exclusive, that is, if Congress could legitimately utilize the commerce power to enact section 1955 to regulate certain gambling activities, then the [t]enth [a]mendment does not come into play." *Id.* at 425. The court concluded that 18 U.S.C. § 1955 was a valid constitutional exercise by Congress. *Id.* at 426.

various gambling prohibitions.[59] All of these statutes, embodied in the United States Codes, have withstood judicial scrutiny and have been held to be properly within the power of Congress to regulate under the Commerce Clause.[60]

B. Uniform Application of Federal Legislation

Senate Bill 474 has been challenged as denying equal protection of the law because of its unequal geographical enforcement.[61] While S. 474 does exempt from its application states which had implemented sports betting systems prior to August 31, 1990,[62] such an exemption is constitutionally valid. The Supreme Court has explicitly held that there is no requirement of uniformity when Congress is exercising its power pursuant to the Commerce Clause.[63]

This proposition was enunciated in Clark Distilling Co. v. Western Maryland Ry. Co.[64] In *Clark Distilling*, the Supreme Court explained that to require uniform application in Congressional regulation is to "engraft upon the Constitution a restriction not found in it, that is, that the power to regulate . . . obtains subject to the requirement that the regulations enacted shall be uniform throughout the United States."[65] Over twenty years later, the Supreme Court in *Currin v. Wallace*,[66] reiterated this rule, emphasizing that a contention that the "mere lack of uniformity in the exercise of the commerce power renders the action of Congress invalid" finds no warrant.[67]

Lower federal courts addressing the issue of whether federal anti-gambling legislation may vary in its application have consistently held that the regulation of gambling is within the Federal Commerce Clause power and, as such, Congress is not required to enact

---

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

60. *See supra* note 28 and accompanying text for cases upholding the constitutionality of federal anti-gambling statutes.

61. *See Hearings, supra* note 4, at 68 (testimony of Thomas O'Heir).

62. *See supra* note 22 and accompanying text for an explanation of the exemptions contained in S. 474.

63. *See, e.g.*, Clark Distilling Co. v. West'n MD. Ry. Co., 242 U.S. 311 (1917); Currin v. Wallace, 306 U.S. 1 (1939).

64. 242 U.S. 311 (1917).

65. *Id.* at 327.

66. 306 U.S. 1 (1939).

67. *Id.* at 14.

uniform legislation.[68] Consequently, the opponents of S. 474 who have asserted that the proposed bill discriminates between the states have no legitimate constitutional basis for this contention.

III. Conclusion

The disadvantages of legal sports gambling far outweigh the advantages. Although many states are facing financial crisis, turning to sports gambling cannot be the sole means for states to raise the revenues they need. To take that path would be choosing to gamble with our children, our future.

This is not an insubstantial consideration. Sports gambling would impair the values that sports represent to our youngsters and cause them to lose their desire to play the game simply because they love the game. Moreover, to allow state-sponsored sports gambling to evolve would exacerbate the already serious compulsive gambling problem among teenagers.

It is within the power of the Congress to step forward and combat the move to legalize sports gambling within the states. Senate Bill 474 and House Bill 74 both represent the concern of those in Congress who recognize the harm associated with sports gambling. The Professional and Amateur Protection Act will halt government from encouraging our youth to gamble and permit them to re-focus their attention on the integrity, character and purity of the game.

---

68. *See, e.g.*, United States v. Smaldone, 485 F.2d 1333, 1343 (10th Cir. 1973); Schneider v. United States, 459 F.2d 540, 542-43 (8th Cir. 1972); Turf Center, Inc. v. United States, 325 F.2d 793, 796 (9th Cir. 1964); Nilva v. United States, 212 F.2d 115, 119 (8th Cir. 1954); United States v. Bally Mfg. Corp., 345 F. Supp. 410, 427 (E.D. Lo. 1972); United States v. Sacco, 337 F. Supp. 521, 527 (N.D. Cal. 1972); United States v. Aquino, 336 F. Supp. 737, 739-40 (E.D. Mich. 1972).