



U. S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 24, 1991

The Honorable Joseph R. Biden, Jr.  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This presents the views of the Department of Justice on S. 474, the "Professional and Amateur Sports Protection Act."

The proposed legislation would prohibit states from operating, authorizing, advertising, or otherwise promoting a lottery or any other betting, gambling, or wagering scheme that is based, directly or indirectly, on a professional or amateur sports game or performance. The bill contains exemptions for lotteries or other betting activities in a state that were actually conducted by that state prior to August 31, 1990, or were conducted in the state between September 1, 1989, and August 31, 1990. Thus, the sports-based lotteries and betting and wagering activities that are already in operation in Oregon, Nevada, and Delaware would be grandfathered. The proposed legislation also expressly exempts parimutuel racing from its prohibitions.

Current Federal law provides a variety of restrictions on the conduct of lotteries and other gambling and betting activities. See, e.g., 18 U.S.C. §§ 1084, 1301-1304, 1953, 1955; 15 U.S.C. §§ 1171-1178. Generally speaking, it is left to the states to decide whether to permit gambling activities based upon sporting events, although Federal law generally prohibits any use of an interstate facility in connection with such sports-based gambling activities.

Section 1307 of Title 18, United States Code, however, expressly permits states to conduct and advertise their own state-authorized "lotteries," as defined in subsection 1307(d). Although

section 1307 specifically excludes the placing or accepting of bets or wagers on sporting events or contests from the definition of permissible state-conducted lotteries, neither the statute nor its legislative history answers the question of whether a state may base its lottery on the outcome of sporting events. See 1974 U.S. Code Cong. & Adm. News 7007 (original enactment of Section 1307); 1988 U.S. Code Cong. & Adm. News 4349 (amendment to Section 1307); see also United States v. Baker, 364 F.2d 107 (3d Cir.), cert. denied, 385 U.S. 986 (1966); United States v. Forte, 83 F.2d 612 (D.C. Cir. 1936). In the absence of any statutory guidance on subsection 1307(d), the Department of Justice has not taken any action against any state operating a sports-based lottery.

Our understanding is that S. 474 is, in effect, intended to clarify the prohibition on wagering on sporting events. As drafted, however, the proposed legislation may render unlawful certain state lotteries that, although they use a sports theme, do not relate to a particular sporting event. For example, a simple scratch lottery ticket that compares the score of one imaginary football team to another would be impermissible under the language of S. 474. Moreover, the bill applies to both individual amateur sports and team amateur sports, but only to team professional sports. The reason for this distinction is unclear.

Also unclear is the purpose of the exception for parimutuel racing in S. 474. Parimutuel racing is not an amateur sport. Therefore, the bill's prohibition on sports-based lotteries would only apply to parimutuel racing -- absent the express exception -- if parimutuel racing were a team sport. Further, the parimutuel racing exception raises questions about the application of the proposed legislation to other sports, such as jai alai.

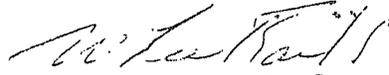
Finally, we note that determinations of how to raise revenue have typically been left to the states. The Department is concerned that, to the extent the bill can be read as anything more than a clarification of current law, it raises federalism issues. It is particularly troubling that S. 474 would permit enforcement of its provisions by sports leagues.

For these reasons, the Department opposes enactment of S. 474 as drafted. If Congress finds clarification of the sports gambling prohibition of Section 1307 necessary, we suggest that the term "lottery" be more fully defined. The "lotteries" that have prompted the introduction of S. 474 may not be true lotteries, in that they may involve more than mere chance in determining winners: knowledge of the sports and teams in question may enhance a player's chances of winning. By carefully defining the term "lottery," the problems of overbreadth and ambiguity discussed above may be avoided.

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I hope that this response adequately addresses your concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Lee Rawls".

W. Lee Rawls  
Assistant Attorney General



U. S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 24, 1991

The Honorable Dennis DeConcini  
United States Senate  
Committee on the Judiciary  
Washington, D.C. 20510-6275

Dear Senator DeConcini:

I am writing in response to your letter of June 17, 1991, to the Attorney General, in which you sought the views of the Department of Justice on proposed legislation, S. 474, that would prohibit sports gambling conducted pursuant to state law. Specifically, you asked whether the Department concurs with your characterization of S. 474 as "complementary to and consistent with" current law.

The proposed legislation would prohibit states from operating, authorizing, advertising, or otherwise promoting a lottery or any other betting, gambling, or wagering scheme that is based, directly or indirectly, on a professional or amateur sports game or performance. The bill contains exemptions for lotteries or other betting activities in a state that were actually conducted by that state prior to August 31, 1990, or were conducted in the state between September 1, 1989, and August 31, 1990. Thus, the sports-based lotteries and betting and wagering activities that are already in operation in Oregon, Nevada, and Delaware would be grandfathered. The proposed legislation also expressly exempts parimutuel racing from its prohibitions.

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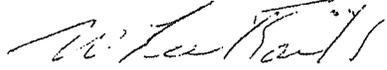
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W. Lee Rawls  
Assistant Attorney General

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# United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

June 17, 1991

The Honorable Richard Thornburgh  
United States Attorney General  
U.S. Department of Justice  
Constitution Avenue and 10th Street, N.W.  
Washington, D.C. 20530

Dear Mr. Attorney General:

I have introduced legislation, S. 474, that would prohibit sports gambling conducted pursuant to state law. My bill will not apply to legalized sports gambling and sports lotteries in existence prior to August 31, 1990. Last year, similar legislation banning state-sponsored sports lotteries was passed by both Houses (as part of different bills) with my support and assistance. Unfortunately, this legislation did not become law.

The pending legislation has been carefully drafted to limit the scope of federal intrusion into this area. It is intended to be consistent with existing Federal sports gambling policy as expressed in 18 U.S.C. sec. 1307(d). That provision specifies that the state-lottery exception to the Federal lottery laws does not apply to lotteries that involve "the placing of bets or wagers on sporting events or contests." Beyond the Federal lottery and gambling laws, of course, Congress has legislated to protect the integrity of professional sports contests by making it a Federal crime under Title 18 to influence the outcome of games.

I believe that S. 474 is complementary to and consistent with present law. I ask whether the Department of Justice concurs with this characterization. Enclosed is a copy of the bill for your review.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,



DENNIS DeCONCINI  
United States Senator

RECEIVED

JUN 17 1991

DDC/jl  
Enclosure

102D CONGRESS  
1ST SESSION

# S. 474

To prohibit sports gambling under State law.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 22 (legislative day, FEBRUARY 6), 1991

Mr. DECONCINI (for himself, Mr. HATCH, Mr. BRADLEY, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit sports gambling under State law.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be referred to as the "Professional and  
5 Amateur Sports Protection Act".

6 **SEC. 2. FINDING.**

7 The Congress finds that sports gambling conducted pur-  
8 suant to State law threatens the integrity and character of,  
9 and public confidence in, professional and amateur sports, in-  
10 stills inappropriate values in the Nation's youth, misappropri-  
11 ates the goodwill and popularity of professional and amateur

1 sports organizations, and dilutes and tarnishes the service  
2 marks of such organizations.

3 **SEC. 3. DEFINITIONS.**

4 As used in this Act—

5 (1) the term "amateur sports organization" means  
6 a person which sponsors, organizes, or conducts any  
7 competitive games in which amateur athletes partici-  
8 pate and any league or association of such persons,

9 (2) the term "professional sports organization"  
10 means a person which owns and operates a profession-  
11 al sports team engaged in providing entertainment by  
12 providing competitive games and any league or asso-  
13 ciation of such persons, and

14 (3) the term "State" means any State or territory  
15 of the United States, the District of Columbia, and the  
16 Commonwealth of Puerto Rico, and any agency or  
17 other political subdivision thereof.

18 **SEC. 4. SPORTS GAMBLING PURSUANT TO STATE LAW PRO-**  
19 **HIBITED.**

20 No State or other jurisdiction of the United States, or  
21 any political subdivision or any agency thereof, may sponsor,  
22 operate, advertise, authorize, license, or promote any lottery,  
23 sweepstakes, or other betting, gambling, or wagering scheme  
24 based, directly or indirectly (through the use of geographical  
25 references or otherwise), on any game or games engaged in

1 or conducted or scheduled by any professional sports organi-  
2 zation or amateur sports organization, or on any performance  
3 or performances therein.

4 SEC. 5. INJUNCTIONS.

5 Actions to restrain violations of section 4 may be  
6 brought in the district courts of the United States by the  
7 Attorney General of the United States, acting through the  
8 several United States Attorneys, or by any professional  
9 sports organization or amateur sports organization whose  
10 games or performances are the subject of a prohibited lottery,  
11 sweepstakes, or other betting, gambling, or wagering  
12 scheme. Such a civil action may be brought in the United  
13 States district court for any judicial district in which the  
14 defendant resides.

15 SEC. 6. APPLICABILITY.

16 The prohibition of section 4 shall not apply to—

17 (1) any lottery, sweepstakes, or other betting,  
18 gambling, or wagering activity in a State to the extent  
19 that such activity actually was conducted by that State  
20 prior to August 31, 1990, or was conducted in the  
21 State between September 1, 1989, and August 31,  
22 1990, or

23 (2) parimutuel racing.

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