



June 22, 2022

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Re: H.R. 2350, legislation to repeal the federal sports betting excise tax, 28 U.S.C. Chapter 35

Dear Members of the United States Senate and House of Representatives:

We are writing to share our perspective on H.R. 2350 and the federal sports betting excise tax, 28 U.S.C. Chapter 35. We hope that you will support this legislation so a federal tax that has outlived its purpose can now be repealed.

Since the Supreme Court overturned the Professional and Amateur Sports Protection Act (PASPA) in 2018, more than 30 States and the District of Columbia have joined Nevada to offer residents legal and regulated options to wager on sports. This has brought new economic activity and jobs to our States and tribes, generated tax revenues, and enhanced game integrity and consumer protections in sports betting, yet every market is being unnecessarily stifled by the federal wagering excise tax.

The federal wagering excise tax was put in place in 1951 as a tool to suppress illegal, organized gambling activities and collect information for prosecuting authorities. Whether the federal government overstepped its authority in establishing this tax on local gambling within the states is beyond the scope of this letter to consider, but in the present context the excise tax clearly fails to aid the government in stopping illegal sports betting operations. In fact, it actually provides illicit gambling books with a competitive advantage over their lawful counterparts.

In *Grosso v. United States*, 390 U.S. 62 (1968), the Supreme Court reversed a conviction against the Petitioner for failing to pay the wagering excise tax and held that this tax, directed toward individuals inherently suspected of criminal activities, violated the Petitioner's Fifth Amendment protections against self-incrimination.¹ In response, Congress amended the law to place statutory restrictions on the disclosure and sharing of wagering activity information.² At the time, Rep. Dante Fascell of Florida said of the Supreme Court's decision, "...gambling enforcement activities of the Internal Revenue Service were brought to a virtual halt. As a consequence, organized crime continues to derive fantastically huge profits from its illegal gambling operations unimpeded by any enforcement."³ Thus, the federal sports betting excise tax no longer serves its intended purpose as an enforcement tool against criminal organizations and illegal gambling operations.

Until the Supreme Court's decision in *Murphy v. NCAA* in 2018, States outside Nevada were largely prohibited from legalizing and regulating sports betting while a vast illegal market flourished throughout the country. Even today, with States and tribes working to bring legal sports betting to residents, the illegal market remains dominant. The Federal Bureau of Investigation acknowledges the continued prevalence of these operations, which organized crime groups may use to generate revenue for other criminal activities such as human, drug, and weapons trafficking.⁴ Consumers who place wagers on unregulated gaming sites may also fall victim to identity theft, deposit embezzlement, and other cybercrimes while lacking recourse through regulatory or judicial channels. Moreover, the illegal market provides no tax benefits for communities and no safeguards for the integrity of sports.

With the ongoing pervasiveness of illegal sports betting, the federal excise tax only serves to hamper the legal market by putting it at a competitive disadvantage. Because they do not pay the federal excise tax, state revenue taxes, licensing fees, and other overhead costs associated with operating in a highly regulated environment, illegal operators are able to offer more attractive odds to sports bettors. This diverts consumer funds from the legal market, fueling further illegal activities and straining law enforcement resources.

Previous Congresses recognized the crippling nature of the federal tax on legal sportsbook operators by reducing it from 10 percent to 2 percent in 1974 and to .25 percent in 1982.⁵ It's high time to take the next step and repeal it altogether.

Ultimately the regulation of local gambling falls within the power and responsibility of the States. It is incumbent upon each to create an environment that will protect consumers and curb the illegal

¹ *U.S. Reports: Grosso v. United States*, 390 U.S. 62 (1967). <https://www.loc.gov/item/usrep390062/>

² Pub. L. 93-499, §3(c)(2), Oct. 29, 1974, 88 Stat. 1551, added item 4424.

<https://uscode.house.gov/view.xhtml?path=/prelim@title26/subtitleD/chapter35&edition=prelim>

³ See 117 Cong. Rec. (Bound) – Extension of Remarks: February 18, 1971. (available at

<https://www.govinfo.gov/app/details/GPO-CRECB-1971-pt18/GPO-CRECB%201971-pt18-1-2>)

⁴ FBI. (2021, September 22). Integrity in Sport and Gaming. <https://www.fbi.gov/investigate/organized-crime/integrity-in-sport-and-gaming>

⁵ Subsec. (a). Pub. L. 93-499 substituted "2 percent" for "10 percent". Subsec. (a). Pub. L. 97-362 substituted provision that there shall be imposed on any wager authorized under the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager and that there shall be imposed on any other wager an excise tax equal to 2 percent of the amount of such wager for provision that there be imposed on wagers, as defined in section 4421, an excise tax equal to 2 percent of the amount thereof. See

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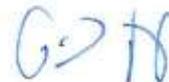
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industry. Repealing the federal sports betting excise tax by passing H.R. 2350 would significantly bolster these efforts. It would also promote the well-being of our communities by reducing the competitive advantage of illegal operators who are now taking vast sums of sports wagers that would otherwise benefit the public.

Sincerely,



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United States Representative Debbie Lesko
United States Representative Greg Stanton
United States Representative Dina Titus
United States Representative Mark Amodei
United States Representative Susie Lee
United States Representative Steven Horsford
The Honorable Kyrsten Sinema, United States Senator
The Honorable Mark Kelly, United States Senator
The Honorable Catherine Cortez Masto, United States Senator
The Honorable Jacky Rosen, United States Senator