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Senate

The Senate met at 9 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, Rev. David W. Anderson, of the Faith Baptist Ministry, Sarasota, FL.

PRAYER

The guest Chaplain, Rev. David W. Anderson, Faith Baptist Ministry, Sarasota, FL, offered the following prayer:

Almighty Creator and Giver of life, we bow before You with thankful hearts for the innumerable blessings bestowed upon America. Your wisdom guides us to truth, and Your power sustains our freedom. Your forgiveness cleanses our transgressions, and Your Spirit calls us to be a righteous and just Nation.

Wonderful Counselor, enable the men and women of this Senate to balance the pressures of their individual lives with the demands of their offices. Comfort their hearts in times of personal crisis and protect their families. Grant them time with their loved ones and remind them of their need for faith. Strengthen their character and clarify their vision that they might address the complex issues facing our Nation with wisdom, courage, and compassion.

Lord, bless the talents that You have bestowed upon these Your servants. Reward them for the leadership they exercise. Give them the courage to do what is right, the conviction to resist what is wrong, and the counsel to discern the difference. Help them to discuss issues of national concern in a spirit of unity and cooperation, knowing that together they serve the same people and the same sovereign God. In Jesus' Name, I pray. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. GREGG. Mr. President, this morning the Senate will resume consideration of the Commerce/Justice/State bill. At 9:15 a.m. the Senate will vote in relation to the Craig amendment followed by a vote in relation to the underlying Kyl amendment. Following those votes, under a previous consent agreement, the Senate will debate several amendments to be offered to the C.J.S. bill. At the conclusion of that debate, which is expected by early afternoon, the Senate will proceed to a stacked series of votes in relation to those amendments. Following disposition of all amendments in order, it is expected that the Senate will quickly proceed to final passage of the Commerce/Justice/State appropriations bill. Upon completion of the C.J.S. bill it is hoped that the Senate will begin consideration of the transportation appropriations bill. Therefore Members should expect another late night session with votes as the Senate attempts to make progress on the remaining appropriations bills. I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. COATS). Under the previous order, leadership time is reserved.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the Commerce-Justice-State appropriations bill, S. 2260, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2260) making appropriations for the Departments of Commerce, Justice and State, the Judiciary, and related agencies for fiscal year ending September 30, 1999, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Kyl/Bryan amendment No. 3266, to prohibit Internet gambling.

Craig modified amendment No. 3268 (to amendment No. 3266), to clarify that Indian gaming is subject to Federal jurisdiction.

AMENDMENT NO. 3268

The PRESIDING OFFICER. Under the previous order, there will now be 10 minutes for debate, divided in the usual form, on amendment No. 3268, offered by the Senator from Idaho, Mr. CRAIG.

Mr. KYL. Mr. President, since Senator CRAIG is not here, without impinging on the time, I ask unanimous consent that the Presiding Officer, Senator COATS, as well as Senators ENZI, BOND, and MCCONNELL, be added as cosponsors of the amendment of the Senator from Nevada and myself.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, perhaps Senator CRAIG would like to call for a vote on both his amendment and the underlying amendment. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Without objection, it is in order to request the yeas and yeas.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. Mr. President, I join the Senator and ask for the yeas and nays on the Craig amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper.

The yeas and nays were ordered.

Mr. CRAIG. Mr. President, I understand each side has 5 minutes. If the desk will notify me when I have used 2 minutes.

Mr. President, my amendment to the Kyl amendment attempts to clarify what I think is important that we do. The Indian Affairs Committee has the authority to hold hearings to move legislation, to bring it to the floor as it relates to Indian gaming. We created IGRA, the Indian Gaming Regulatory Act, and the National Indian Gaming Commission for the purpose of regulating Indian gaming. Indian gaming is regulated.

But the Senator from Arizona, without hearings on this in the authorizing committee, steps in and makes significant changes in the Indian gaming law. Now, the Senator from Arizona and I agree that gaming ought to be regulated; it ought to be controlled, the access ought to be controlled. We want it limited. But in this case, it isn't a matter of limiting, it is a matter of outlawing, stopping something that is already out there, already working, already has stood the test of officialdom, and we believe it meets those standards, and that is the National Indian Lottery. So I hope that my colleagues will stand with me in saying we want regulation and control.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. CRAIG. I appreciate that. We don't want this kind of stepping in and simply wiping out, with the appropriate committee not holding a hearing to understanding what is exactly going on. That is the intent of my amendment—to maintain the integrity of the National Indian Gaming Commission and the recognition of the relationships between the Indian Nations and the United States itself and the treaty relationship that is clear and has been well established.

I retain the remainder of my time.

Mr. KYL. Mr. President, I yield time to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I oppose the Craig amendment, which will change gambling in the United States as we currently know it. It will give legal validity to the claims that the tribes have that they can provide gambling all over the United States. They cannot; it is illegal. This amendment would give them a monopoly on the Internet in every home in America, without any age discrimination. That is the reason we require it to be on premises, so we can check to see if kids are gambling. This will eliminate enforcement in States like mine where we have had a referendum on gambling.

It was defeated 2-to-1 in every single county in our State. We do not want gambling in Wyoming. We defeated it soundly. This would allow gambling in Wyoming. This would give national legal validity. This will replace lotteries across the State, when they can finally advertise it to the extent that they really want to do it. This will provide for eventual, complete electronic gambling for every home in America, without any State being able to oppose it.

I ask you to oppose the Craig amendment and support the Kyl amendment.

Mr. KYL. Mr. President, I am pleased to yield 1 minute to the Senator from New Jersey.

Mr. TORRICELLI. Mr. President, I am in support of Senator KYL, but I must state my objection to Senator CRAIG's amendment.

In my career in the U.S. Congress, representing Atlantic City, I have never risen on the floor to oppose gaming. But this is too much. All of our communities have a right to decide when and where we want gaming. We restricted it to one city in New Jersey. Under Senator CRAIG's amendment, every living room, every child's bedroom in America will become a gaming parlor. The Internet will bring gaming to children, and it won't be restricted to problem gamers. There will not be any control. If we want to have Indian tribes having Indian gaming, let them do it on their reservation. That is their right, their sovereignty. But my State has sovereignty, too. We have decided not to allow gaming in every community. Some States, like Utah, and many of your States, have decided not to have it at all. Now it will be imposed upon you with a monopoly of gaming on the Internet, available to everyone. I urge my colleagues to defeat the Craig amendment.

Mr. INOUYE. Mr. President, I rise to address some of the statements that were made in our debate last evening on Senator CRAIG's amendment on Senator KYL's amendment on internet gaming.

First, Mr. President, I want to make clear that the amendment we propose absolutely would not exempt Indian tribal governments and Indian gaming from the purview of the Internet Gaming Prohibition Act.

Rather, the amendment allows only the conduct of those games with the application of technology—not internet technology—but the application of television and satellite-generated technology that we envisioned could be used for the conduct of bingo or games that are subject to a tribal-state compact under the Indian Gaming Regulatory Act.

The language on page eleven of Senator KYL's amendment makes it abundantly clear that each person placing or receiving or otherwise making a bet or wager must be physically located on Indian land and that class III games must be conducted consistent with a tribal-state compact and only in the state to which the compact applies.

So we are not proposing to exempt Indian gaming from the internet gaming prohibitions outlined in Senator KYL's amendment.

Secondly, I would want my colleague from Arizona to know that as we read it, there is an ambiguity in the amendment.

States are authorized to enforce the provisions of this amendment, should it become law, for violations by a person.

The term ''person'' includes ''any government''—which must refer to tribal governments, because all other levels of government are specifically mentioned.

Thus, while one section of the bill would restrict state authority to what is provided in tribal state compacts, another section of the bill gives states broad authority to enforce the act as it may relate to the conduct of tribal governments.

Senator CRAIG's amendment would simply preserve the status quo and maintain the integrity of the pervasive federal regulatory scheme in which federal criminal laws are enforced by the United States on Indian lands—a framework, which as I said last evening, has been in place for over one hundred years.

I thank my colleague from Idaho and I wish to assure my colleague from Arizona that I look forward to continuing to work with him as this bill proceeds to conference to address these two matters that I have outlined.

The PRESIDING OFFICER. Who yields time?

Mr. KYL. Mr. President, I inquire how much time remains.

The PRESIDING OFFICER. The Senator has 2 minutes 40 seconds.

Mr. KYL. I yield 1 minute 20 seconds to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I thank my colleague from Arizona.

Mr. President, I rise in opposition to the Craig amendment. Three million children in America today are on line on the Internet. By the year 2000, 15 million children will be on the Internet.

Senator KYL and I have offered an amendment which takes a public policy which I think every parent in America will support; that is, to prohibit gambling on the Internet. There simply is no way to control access to the Internet and to the types of gambling that are offered.

If the Craig amendment is adopted, that policy is effectively emasculated.

I join with the junior Senator from Arizona in asking this body to defeat the amendment because every child and every home in America that is on the Internet will have access to gambling on the Internet.

My view is that there is no public policy that would support, in effect, a carve-out to say that we prohibit gambling on the Internet in America for everyone except Indian tribes. That makes no sense, may I respectfully submit to the Presiding Officer and to my colleagues.

If you believe, as Senator KYL and I do, that Internet gambling should be regulated and that we should not have

access to Internet gambling by children, vote against the Craig amendment.

I thank the Chair.

Mr. KYL. Mr. President, the Senator from Idaho wishes to close. Therefore, let me reiterate the key points that the Senator from New Jersey, and also the Senators from Wyoming and Nevada, have made; that is, that you cannot have any exceptions to a national prohibition on Internet gambling if you want the policy to work, because if anyone can do it, then the gambling can occur in the homes, in the privacy of the homes around this country by children, by problem gamblers, or by anyone else if there is any exception because the Internet reaches across interstate boundaries. It knows no boundaries. It reaches into any State. And no State can protect its citizens and protect its public policy of outlawing this activity.

I want to make it very clear that this activity is not being conducted legally today.

In a letter written by the State attorneys general, including the attorney general of Idaho on this precise point, the attorneys general said,

> If Internet gaming is allowed to facilitate the remote placing of bets on an Indian gaming activity, the ultimate absurdity would result. The logical consequence of such a position is that any off-reservation telephone, computer with a modum et cetera, would become a gambling device by which the consumer could communicate with the tribe for the purpose of gambling.

And they specifically refer to the Coeur d'Alene Tribe in Idaho, which is the tribe that the Senator from Idaho wants to permit to gamble.

I urge a vote against the Craig amendment.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, the Senator from Arizona quotes a letter crafted in 1992. Since that time, the tribe in the State of Idaho has a compact that has been established. The attorney general of the State of Idaho believes this is significant.

The topic of children is an interesting item. The Presiding Officer, I and everyone else is very concerned with children's access to the Internet. We recognize the need to provide legislation to block that, and we should.

What I am talking about is something that is already official, that is already underway, and we have not heard a great hue and cry about the damaging of or the destruction of children.

There is something else that is interesting.

We heard from New Jersey and we heard from Nevada. They are protecting their big gaming interests. There are already exceptions in this bill.

There are five exceptions in this bill to use the Internet system to traffic information about gaming.

The Senator is not pure on this. Let's be real, and let's be honest about it. Let's use the committees we have. Let's use the law, the rules, and regulations to govern, control, and regulate Indian gaming structured in a certain way to protect it so that children don't have access to it; so that there is an official screening process; that it is effectively monitored and controlled.

I agree that we ought to control the Internet system, and we ought to make sure that there is not unlimited access. That is exactly what we are trying to do here today.

But let's not destroy the laws that we have created for Native Americans in this country—the controls, and the regulatory system that is established out there.

We heard from the former chairman of the committee. We have already heard from the chairman of the committee. He is saying no hearings were held. A Senator from outside the committee reaches in and changes substantially the structure of the IGRA law and the National Indian Gaming Commission law.

What I am telling you this morning is that you have an option to keep whole the law of the land, which we crafted to control Indian gaming, while at the same time protecting the Internet from open access from offshore gaming from the kind of things that the Senator from Arizona has an absolute right to be concerned about. I, too, am concerned, and I hope that my colleagues will join with me in voting for the Craig amendment to protect the integrity of the Indian Gaming Commission, and the national Indian gaming law that we have established.

With that, I yield the remainder of my time.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, what is the situation now? Are we prepared to go to that vote unless I use leader time at this point?

The PRESIDING OFFICER. The Senator is correct.

Mr. LOTT. I give myself such leader time as I might use. I will be brief, because I know Members are expecting to vote right away.

But I rise to speak against the Craig amendment. I have a long history of being interested in and concerned about the rights and guarantees that we have given Indian tribes. We have one in my home State that has been very industrious. They are really good entrepreneurs and good citizens. I enjoy working with them very much. But this is something beyond that. This would give them ability to get into Internet gambling in a way that it could go into every school and every home all across America.

This is not about tribal rights on their reservation or within their tribal areas. This goes across America. To have a special carve-out for Indian tribes on gambling, I think, is just a fundamental mistake.

I understand why the Senator from Idaho feels he must do that. I understand that there have been some court actions about it. But I also think there is a fundamental principle here. And this violates that principle. They should not be given an opportunity that nobody else in America would have. It touches all Americans.

I am always hesitant to rise in opposition to my friend and my coleader in the Republican Party. But I think in this instance he is just fundamentally wrong.

I urge colleagues to vote against the Craig amendment.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 18, nays 82, as follows:

[Rollcall Vote No. 228 Leg.]

YEAS—18

Biden	Daschle	Kempthorne
Boxer	DeWine	Kerrey
Campbell	Domenici	McCain
Cochran	Harkin	Moynihan
Craig	Inouye	Stevens
D'Amato	Johnson	Wellstone

NAYS—82

Abraham	Frist	McConnell
Akaka	Glenn	Mikulski
Allard	Gorton	Moseley-Braun
Ashcroft	Graham	Murkowski
Baucus	Gramm	Murray
Bennett	Grams	Nickles
Bingaman	Grassley	Reed
Bond	Gregg	Reid
Breaux	Hagel	Robb
Brownback	Hatch	Roberts
Bryan	Helms	Rockefeller
Bumpers	Hollings	Roth
Burns	Hutchinson	Santorum
Byrd	Hutchison	Sarbanes
Chafee	Inhofe	Sessions
Cleland	Jeffords	Shelby
Coats	Kennedy	Smith (NH)
Collins	Kerry	Smith (OR)
Conrad	Kohl	Snowe
Coverdell	Kyl	Specter
Dodd	Landrieu	Thomas
Dorgan	Lautenberg	Thompson
Durbin	Leahy	Thurmond
Enzi	Levin	Torricelli
Faircloth	Lieberman	Warner
Feingold	Lott	Wyden
Feinstein	Lugar	
Ford	Mack	

The amendment (No. 3268) was rejected.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BRYAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3266

The PRESIDING OFFICER. The Senate now will have 2 minutes, under the previous agreement, for debate on the Kyl amendment.

The Senator from Arizona is recognized.

Mr. KYL. Thank you, Mr. President.

Mr. President, I thank everyone for the last vote.

The point is, if you are going to ban an activity because the public policy of all 50 States is that their children and

the families in those States should be protected from this activity, if you ever allowed one exception, then because of the nature of the Internet, you wouldn't have a bill.

I appreciate that, and I think that clears the way for passage of the Internet Gambling Prohibition Act. I note for the RECORD some of the organizations that support this legislation: Ralph Nader's Public Citizen, the Christian Coalition, the Focus on the Family and Family Research Council, National Coalition Against Legalized Gambling and Against Gambling Expansion.

Mr. FORD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct. Will Members please cease all conversations?

Mr. KYL. Mr. President, sports organizations, in particular, are obviously very much afraid of the adulteration of professional and amateur sports. As a result, groups like the National Amateur Athletic Association, Major League Baseball, NFL, NBA, National Hockey League, National Soccer League, and, of course, law enforcement and all 50 States attorneys general support this legislation. In fact, it is because of them that we are proposing it. We can't protect the citizens of our States unless we have legislation of this kind.

Mr. MCCONNELL. Mr. President, I commend Senator KYL for his hard work and determination in bringing S. 474 to the floor today. I am most appreciative that during the process, you have worked closely with several parimutuel industry groups to make certain that S. 474 does not unduly restrict Internet commerce. The bill reflects a clear understanding of this emerging medium and its potential for both honest and unscrupulous purposes.

Mr. KYL. Thank you, Senator MCCONNELL.

Mr. MCCONNELL. Mr. President, I wish to engage the Senator from Arizona in a short colloquy. This is a complicated bill. It addresses areas where technology is rapidly evolving. Some of my questions may be fairly arcane and will be of interest only to those intimately familiar with the intricacies of the interstate simulcasting of horse racing so I ask that my fellow members be patient with us as we work our way through some of these issues.

Senator KYL, as you are well aware, there are a myriad of federal and state laws and regulations that impact interstate simulcasting. In every instance, I will assume that we are addressing only the application of the language of S. 474 and not the general legality of any specific example given. With that understanding, I will proceed with the first of my questions.

Senator KYL, am I correct that S. 474 does not apply to racetracks that may advertise or make past performances, how-to-bet, promotional, and other similar kinds of information available whether via a racetrack World Wide Web site on the Internet or other technological media.

Mr. KYL. The Senator is correct.

INFORMATION ASSISTING IN PLACING A BET OR WAGER

Mr. MCCONNELL. Senator KYL, I now want to discuss the impact of S. 474 on the current practice of the horse racing industry commonly referred to as ''simulcasting and commingling of parimutuel pools.'' Simulcasting of horse racing across the country and around the world has grown exponentially in recent years, to the point that simulcasting now accounts for as much as 60 percent of the industry's total wagering.

To foster growth in the simulcasting market, tracks now routinely merge or commingle the parimutuel pools from several tracks and off track parimutuel facilities into common parimutuel pools. Current odds and winning payoffs are then calculated using a totalizator system. Commingling is a practice preferred by bettors because it increases pool sizes and thus helps to minimize the fluctuation of odds and payoffs.

Any diminution in its current ability to simulcast or commingle pools could have catastrophic effects on the parimutuel industry.

Mr. KYL. Senator MCCONNELL, I assure you S. 474 is not intended to limit the racing industry's activities in the area of simulcasting and commingling of parimutuel pools.

Mr. MCCONNELL. Senator KYL, I appreciate your willingness to consider the parimutuel industry. Now, if I may clarify a few more points.

Section 2 of the bill exempts four categories from the definition of ''information assisting in the placing of a bet or wager.'' My next few questions relate to the applicability of these provisions.

First, Senator KYL, as to the first category of exempt information, found in subsection (8)(C)(i), am I correct in assuming that ''common pool parimutuel pooling'' and ''commingling of parimutuel pools'' are two names for the same process—the merging of parimutuel pools from two or more locations for purposes of calculating the odds and payoffs?

Mr. KYL. Yes, you are correct.

Mr. MCCONNELL. Senator KYL, according to subsection (8)(C)(i) in section 2 of the bill, information concerning parimutuel pools that is exchanged between certain racetracks or other parimutuel facilities is exempted from the prohibition on ''information assisting in the placing of a bet or wager'' so long as that information is ''used only to conduct common pool parimutuel pooling.'' Does this mean that a racetrack or other parimutuel facility may accept wagers on races run at another facility (known as the Host Track), whether the Host Track is located within the same state or in another state or foreign country, and commingle its parimutuel pools into the parimutuel pools at the Host Track?

Mr. KYL. Yes, commingling of wagers as you describe is permitted by S. 474. However, each facility that participates in the pools must be licensed by the state or approved by the laws of the foreign jurisdiction in which it operates.

Mr. MCCONNELL. What if the Host Track located in one state utilizes a totalizator system located in a second state or even a foreign country—could a racetrack or parimutuel facility located in either the host state or a third state commingle wagers on races run at the Host Track into the parimutuel pools at the Host Track without violating S. 474?

Mr. KYL. Yes, assuming each facility that participates in the pools is duly licensed by the State or approved by the laws of the foreign jurisdiction in which it operates. Subsection (8)(C)(ii) states that ''information exchanged between'' certain racetracks or other parimutuel facilities and ''a support service located in another State or foreign jurisdiction'' is not considered ''information assisting in the placing of a bet or wager'' if ''the information is used only for processing bets or wagers made by or with that facility under applicable law.''

The location of the totalizator or other similar system used to process parimutuel pools is irrelevant if the parimutuel pools are transmitted from and received by facilities each of which is licensed by the State or approved by the laws of the foreign jurisdiction in which it operates.

Similarly, commingling may require the use of data transmission or phone lines that pass through numerous states. In such event, it is irrelevant whether parimutuel wagering is legal in all such states. The only relevant inquiry is whether each of which is licensed by the State or approved by the laws of the foreign jurisdiction in which it operates.

The term ''support system'' should be read broadly to mean any system or service necessary to transmit or process information related to the commingling of parimutuel pools, including totalizator systems, telephone lines, and other similar technological devices essential to the commingling process.

Mr. MCCONNELL. What if the host for the wagering pools is in one state or foreign country, the totalizator is in a second state or foreign country, and the race is actually contested in a third state or foreign country. Could commingling of pools take place under this arrangement without violating S. 474?

Mr. KYL. Yes, assuming each facility that participates in the pools is duly licensed by the State or approved by the laws of the foreign jurisdiction in which it operates. As I states earlier, the location of the totalizator or other similar system used to process parimutuel wagers is irrelevant if the parimutuel pools are transmitted to or from facilities each of which is licensed by the State or approved by the laws of

the foreign jurisdiction in which it operates.

Mr. MCCONNELL. Senator KYL, the phrase ''approved by the foreign jurisdiction in which the facility is located'' is used throughout subsection (8)(C). In some foreign countries, the law may simply permit simulcasting and commingling of pari-mutuel pools without requiring formal approval by a regulatory authority. I presume that in such cases, S. 474's approval requirement will be satisfied.

Mr. KYL. Senator MCCONNELL, you are correct.

ACCOUNT AND INTERACTIVE WAGERING

Mr. MCCONNELL. Senator KYL, I would like to discuss the impact of S. 474 on account wagering. It is presently legal, and operating to varying degrees, in eight states. Other states are presently considering this form of wagering on racing. The horse racing industry wants to be able to continue account wagering and other similar activities that utilize emerging technologies. A variety of federal and state statutes and regulations now govern this activity and together, they form a capable regulatory system for parimutuel wagering. Again, any restriction on the current regulatory structure might unduly hamper one of racing's most promising areas for growth.

Mr. KYL. Senator MCCONNELL, what I stated earlier with respect to simulcasting and commingling of parimutuel pools applies equally to account wagering. This bill is not intended to hamper the future growth of horse racing.

Mr. MCCONNELL. Senator KYL, again, I appreciate your willingness to consider the parimutuel industry. Now, if I may clarify a few more points.

Section 3 of the bill broadly prohibits both individuals and persons engaged in a gambling business from placing, receiving, or otherwise making a bet or wager through the Internet or any other interactive computer service. Then, subsection (e) of that section grants two exceptions related to racing: one is an exception for wagers placed by persons physically present at a racetrack or parimutuel facility; a second exception is provided for persons placing, making, or receiving a parimutuel wager on a ''closed-loop subscriber-based service that is wholly intrastate.''

My first question is this. Am I correct in my analysis that S. 474 does not prohibit or restrict account wagering by telephone?

Mr. KYL. Yes, the bill does not address telephone account wagering.

Mr. MCCONNELL. Am I correct that an interactive account wagering system that uses a variety of communications media and computer technology to present audio and/or video information about the races to the home and to communicate wagers from the home to a racetrack or parimutuel facility constitutes an ''interactive computer service.''

Mr. KYL. Yes.

Mr. MCCONNELL. Will such an interactive account wagering system that accepts wagers only from account holders physically located within the same state as the facility where the account wagering system originates pass muster under section 3 of S. 474?

Mr. KYL. Yes, assuming the interactive account wagering system meets the requirements for a ''closed loop subscriber-based service'' as defined in section 3 of the bill.

Mr. MCCONNELL. Senator KYL, does a person have to be physically present at a facility that is open to the public to make a lawful interactive account wager?

Mr. KYL. Again, so long as the person placing the wager is doing so using a ''closed-loop subscriber-based service'' the person is not required to be physically present at a facility that is open to the public to make a lawful wager.

Mr. MCCONNELL. What if the facts are the same as my first interactive account wagering question (i.e., both customer and facility are physically present in the same state) but the race on which the account holder is wagering is being contested in another state or foreign country and the facility where the account wagering system originates is commingling its pools, including its account wagering pools, into the pools of the out-of-state host track where the race is being run. Will this fit within the exceptions found in Section 3 of S. 474?

Mr. KYL. Yes, assuming of course that the wagering pools are being commingled in accordance with section 2 of the bill and further assuming the account wagering system meets the requirements for a ''closed loop subscriber-based service.''

Mr. MCCONNELL. Senator KYL, just a few more questions and we will be finished.

In section 3, Section 1085(e)(2) of the bill, you prohibit the use of an agent or proxy to place wagers unless the agent or proxy is acting on behalf of a licensed parimutuel facility ''in the operation of the account wagering system owned or operated by the parimutuel facility.'' What if a facility licensed to operate an account wagering system engages a separate company to provide the technical expertise necessary to implement an interactive account wagering system on its behalf. Would such an agency fall within the scope of the permitted agency provisions of the bill referenced above?

Mr. KYL. Yes, such a system is an allowed agent, assuming, of course, the interactive account wagering system meets the requirements for a ''closed-loop subscriber-based service that is wholly intrastate.''

Mr. MCCONNELL. thinking back to our earlier discussion of a ''support service,'' what if the facility where the interactive account wagering system originates chooses to utilize support services such as a totalizator system or an interactive computer system located in a second state or even a foreign country to service the account holders.

Mr. KYL. The use of such support services does not change the result assuming the account wagering system meets the requirements for a ''closed loop subscriber-based service that is wholly intrastate.'' As stated previously, the location of the totalizator, path of the phone lines, or the site of other similar support systems is irrelevant.

ENFORCEMENT

Mr. McCONNELL. Finally, Senator KYL, section 4 of the bill spells out in great detail the civil remedies available to U.S. Attorneys and State Attorneys General to enforce the provisions of S. 474. Section 5 likewise calls for the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General of the United States and the Secretary of Commerce, to commence negotiations with foreign countries in order to conclude international agreements that would enable the United States to enforce the bill.

Nonetheless, many are concerned that this legislation will be difficult to enforce. If the only entities that obey it are the legitimate, state-licensed parimutuel operators, which they will, while others outside the jurisdictions of the federal and state authorities do not, then you still have the potential for consumer fraud while not producing any revenues for the federal government, state governments or the racing industry itself.

Mr. KYL. Senator MCCONNELL, I am confident that the Justice Department and the National Association of Attorneys General will vigorously enforce this legislation.

Mr. McCONNELL. Senator KYL, once again I thank you and your staff for your hard work and tenacity in bringing this issue before the Senate. I also thank you for your patience in working through these very complicated issues.

Mr. KYL. Senator MCCONNELL, you are welcome. I am very pleased that we have been able to work together to protect legitimate, law abiding interests who make significant contributions to the nation's economy.

Mr. LEAHY. Mr. President, I have long been an advocate for legislation that ensures that existing laws keep pace with developing technology. It is for this reason that I have sponsored and supported over the past few years a host of bills to bring us into the 21st Century. These bills have included the National Information Infrastructure (NII) Protection Act of 1995; the Criminal Copyright Improvement Act of 1997; the WIPO Copyright and Performances and Phonograms Treaty Implementation Act of 1997; the Digital Millennium Copyright Act of 1998; and legislation that passed the Senate on June 26, 1998, to authorize the comprehensive independent study of the effects on trademark and intellectual property rights holders of adding new generic top-level domains and related dispute resolution procedures.

This same impetus underlies my support of legislation to ensure our nation's gambling laws keep pace with developing technology, particularly the Internet. The Department of Justice has noted that ''the Internet may have diminished the effectiveness of current gambling statutes, in part because existing laws may relate only to sports betting and not the type of interactive gambling (e.g., poker) that the Internet makes possible.'' Vermonters have spoken very clearly that they do not want certain types of gambling permitted in the state, and they do not want current laws to be rendered obsolete by the Internet. I believe, therefore, that there is considerable value in updating our Federal gambling statutes, and I have been pleased to work with Senator KYL on his legislation intended to accomplish that goal, the Internet Gambling Prohibition Act of 1998.

The legislation has been improved since it eas reported out of committee.

The Senate Judiciary Committee reported out the bill on October 23, 1997. Although I voted in favor of the legislation at that time, I noted that I had several concerns about the bill and that I wished to work with Senator KYL and others to address these concerns.

The bill as originally drafted might have inadvertently outlawed the tri-state lottery that is run by the states of Vermont, New Hampshire and Maine. Although Vermonters have clearly indicated that they do not want many other forms of gambling, they do want to maintain this tri-state lottery, which has been in operation since 1985.

The legislation now under consideration states that the prohibitions against Internet gambling in the bill shall not apply to any otherwise lawful bet or wager that is placed, received, or otherwise made for a multi-state lottery operated jointly between two or more States in conjunction with State lotteries, if the lottery or activity is expressly authorized and licensed or regulated under Federal or applicable State law.

I would like to thank the office of Vermont's Attorney General for working with Senator KYL and me to craft this language to ensure that Vermont, New Hampshire and Maine's tri-state lottery remains a permissible activity under this bill.

As originally introduced, the bill contained Sense of the Senate language that the Federal Government should have extraterritorial jurisdiction over the transmission to or receipt from the United States of bets or wagers, information assisting in the placing of bets or wagers, and any communication that entitles the transmitter or recipient to the opportunity to receive money or credit as a result of bets or wagers.

That provision was changed, and when the bill was reported out of the Judiciary Committee, the Sense of the Senate provision was replaced with a requirement that not later than six months after the date of enactment, certain Administration officials would be required to commence negotiations with foreign countries in order to conclude international agreements that would enable the United States to enforce the bill.

I was concerned about the constitutionality of this new requirement mandating that the Executive Branch undertake international negotiations, particularly in light of the decision of the 1993 U.S. Court of Appeals for the Ninth Circuit in Earth Island Institute versus Christopher. The court in this case held unconstitutional a portion of a statute which directed the Secretary of State to initiate international negotiations regarding the protection and conservation of a certain species of sea turtles.

Specifically, the court held this type of directive to intrude upon the conduct of foreign relations by the Executive Branch on the grounds that the ''Constitution commits the power to make treaties to the President.''

The Department of Justice also recommended the deletion of this section. As Anthony Sutin, Acting Assistant Attorney General, stated in his May 28, 1998, letter to me on this legislation:

> If we request that foreign countries investigate, on our behalf, conduct that is legal in the foreign state, we must be prepared to receive and act upon foreign requests for assistance when the conduct complained of is legal, or even constitutionally protected, in the United States.
>
> For example, if we ask a foreign country to investigate an activity (e.g., gambling) that is legal in the foreign state, that country may, for example, ask us to investigate constitutionally protected speech originating on computers based in the United States (e.g., that arguably violates that nation's ''hate speech'' laws). Considering all of the challenges facing law enforcement in the information age, we believe that current efforts should focus on conduct which either is, or should be, universally condemned.

Senator KYL agreed to my request that this section of the bill be deleted, and I believe that the legislation is considerably improved for that reason.

Another constitutional concern was raised by earlier versions of the bill that stated that ''information assisting in the placing of a bet or wager''—''(A) means information that is intended by the sender or recipient to be used by a person engaged in the business of betting or wagering to accept or place a bet or wager; (B) includes any information that invites the information described in subparagraph (A) to be transmitted;'' and then included some exceptions.

I was concerned, as was the Department of Justice, that this language was vague and might raise constitutional concerns as it might be construed to apply to persons who do not have the intent to participate in or assist illegal gambling transactions. Similarly, these earlier versions of the legislation could have been interpreted to prohibit Internet advertising of activities that are entirely legal. This appeared to be an unintentional result of the earlier versions, but one that raised serious constitutional issues.

The Department of Justice suggested deleting subsection (B) altogether, and inserting the phrase ''in violation of state or Federal law'' at the end of subsection (A). The addition of this latter phrase would ensure that transmission of information assisting in the placing of legal bets or wagers would not be criminalized by this legislation. Senator KYL agreed to delete subsection (B), but he did not add the phrase ''in violation of state or Federal law'' at the end of subsection (A). I hope this later suggestion by the Department of Justice is accepted as the legislation moves through the legislative process.

In the bill as originally introduced, an individual bettor who was found guilty of Internet gambling would have been subject to a penalty of $5,000, one year of prison or both. I thought that penalty was extreme. If someone places a $1 bingo bet over the Internet, that might not be activity we want to encourage, but I also do not think we need to lock that individual up in prison and charge him or her 5,000 times that amount in penalties. I expressed my view to Senator KYL, and as a result he softened the penalty for individual bettors.

As the bill currently reads, the individual bettor would be subject to (A) fines not more than the greater of (i) three times the greater of the total amount that the individual is found to have wagered or received or (ii) $500; (B) 3 months prison; or (C) both. I hope that prosecutors and judges will use proper discretion when determining, even under this more reasonable regime, whether to expend federal resources prosecuting and imprisoning individuals who place de minimis bets.

The bill as introduced criminalized the activities of those persons engaged in the ''business of betting or wagering,'' but the bill did not define what constituted a ''business of betting or wagering.'' I believe that it is important that if Congress is going to make certain activities illegal, and subject the executor of that activity to hefty monetary fines and imprisonment, we need to be very clear about what activity, exactly, we are making illegal.

The version of the bill that is now under consideration makes it unlawful for a person engaged in a gambling business for betting or wagering to use the Internet or any other interactive computer service. The bill defines the term ''gambling business'' as a gambling business that involves one or more persons who conducts, finances, manages, supervises, directs or owns 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 during any 24-hour period.

Although I preferred to use the definition of an ''illegal gambling business'' found in 18 U.S.C. 1955, I believe

the bill as it currently reads is an improvement from the original version, and I appreciate Senator KYL's willingness to work with me on this issue.

In addition, language was inserted into the bill which dictates special rules that would apply in any proceeding instituted under the bill in which application is made for a temporary restraining order or an injunction against an interactive computer service. I was not party to the negotiations on this language, nor am I convinced that this language is necessary. Courts, when determining the appropriateness of equitable relief, generally consider factors such as the significance of the threat of irreparable harm to a plaintiff if the injunction is not granted; the state of the balance between this harm and the injury that granting the injunction would inflict on the defendant; the probability that the plaintiff will succeed on the merits; and the public interest. It has not, to date, been demonstrated to me why these traditional standards are not adequate to address situations involving interactive computer services, and I fear that this new language in the bill might cause more mischief than it would cure. I hope that we can continue to work on this language as the bill advances through the legislative process.

Finally, the Senate has accepted an amendment by Senator BRYAN to include a provision addressing Internet games known as ''sports fantasy leagues''. I understand that many of the companies that offer these sports fantasy league games are concerned about the wording of this provision. I also understand that they will be seeking refinements in the language as we move through the legislative process, and I look forward to working with them as well as Senator BRYAN and Senator KYL in that regard.

Mr. KYL. Mr. President, I want to note that an interactive computer service whose facilities or service are used by another person as a means of communication to engage in an activity prohibited by section 1085, and where the interactive computer service does not have the intent that such facilities or service be used for such illegal activity, shall not be considered to violate subsection (b)(1)(B).

Mr. KERRY. Mr. President, I would like to direct a few comments to Senator KYL's amendment adding the Internet Gambling Prohibition Act to S. 2260, the Commerce, Justice, State Appropriations bill. I join with my colleague in opposing unrestricted gambling on the Internet, and I support the adoption of his amendment. However, there are often a variety of reasonable approaches to a problem, and we should be careful not to over-legislate. This is true especially with respect to a vital new medium like the Internet which promises to be an engine of growth for our economy and a source of unprecedented benefits to our citizens for years to come. We need to think carefully before government commandeers the electronic network, through online service providers, in the pursuit of conduct we don't like. While I do not object to asking service providers to cooperate in ways that do not involve significant expense or retard the growth and flow of Internet traffic, I am not convinced that the provisions of the current proposal strike the proper balance. In addition, there is a high risk that we may inadvertently sap the vitality of the Internet if we start to require service providers to serve as an arm of our law enforcement agencies. It is my hope that we can address these concerns as we go to conference with the House.

Mr. JOHNSON. Mr. President, I rise today in strong support of the amendment offered by Senators KYL and BRYAN with respect to gambling on the Internet. I am an original cosponsor of S. 474, the Internet Gambling Prohibition Act of 1997, as introduced in March of last year. I also sponsored the House version of this legislation in the 104th Congress because I am committed to preventing children's access to gambling on the Internet and the harm to the American public in general that is sure to follow unregulated gaming.

Gambling in this country has always been a very regulated activity no matter where it takes place. Unfortunately, we are now faced with a potential explosion of unregulated gambling—gambling on the Internet. States have become so concerned about this problem that state attorney's general nationwide have filed suits against gambling operators on the Internet. The Kyl-Bryan amendment clearly defines objectionable internet activity and establishes guidelines for law enforcement to crack down on those who solicit wagering on-line. The bill applies existing laws against telephone betting or wagering to all electronic communications. This Internet gambling ban will be applied to those who accept bets and those who do the betting.

While the Internet provides our children with many educational opportunities, we must closely scrutinize the industry to ensure that children are not let into the world of unregulated gambling. Preventing children or addicted gamblers from being able to gamble in an unregulated fashion on their home computer must be one of our highest priorities as we venture into the new and dynamic area of regulating electronic commerce.

However, as important as the Internet gambling ban legislation is to protecting this nation's children, I feel compelled to state my concerns about the impact of several provisions included in the pending version of the Internet gambling ban legislation as they may impact Indian tribes. I want to take this opportunity to express my strong support for Senator CRAIG's second degree amendment aimed at addressing several of these provisions. Under the Kyl amendment, the Indian Gaming Regulatory Act (IGRA) would be amended without any involvement or input by the committee of jurisdiction, the Senate Indian Affairs Committee, or any tribal consultation.

Senator CRAIG's amendment would make certain that currently lawful activities fully regulated by the federal government and permitted under the IGRA are not impacted by the Kyl amendment. I believe the Craig amendment is not a carve-out or loophole for Indians, but merely aims to preserve the IGRA process. The Craig amendment does not allow for any new type of Indian gaming. Our emphasis today ought to focus on unregulated internet gaming. To the extent that Congress deals with regulated Indian gaming, it should do so in separate legislation with tribal input.

Like Senator CRAIG, I do not want to encourage special treatment or special exemptions for Indian tribes. I just expect equitable treatment of currently lawful gaming activities by tribes and, most importantly, I expect the Senate to respect the committee of jurisdiction on this issue and invite the input of impacted Indian tribes.

As the Indian tribes in my state will attest, Indian Gaming is a regulated industry. Poverty, unemployment, poor health and welfare dominate much of reservation life across the country. With budget cuts to the BIA and other federal support programs for Indians, Congress must continue to encourage economic self sufficiency at the tribal level. If there are shortcomings with the effectiveness of the current IGRA, they should be addressed with tribal consultation. I am troubled at the prospect of Internet gambling sites opened by any entity, but again, so far as this concern deals with already regulated Indian gaming, it ought to be addressed in separate legislation.

Nationwide, approximately 98 percent of all tribes use the revenue generated by casinos and bingo operations to provide housing, health services, and education to tribal members. Federal law requires tribal governments to use gaming revenue to fund these essential services. It is properly up to each tribe to determine for itself whether it wants to permit regulated gaming within its boundaries. Frankly, I would prefer that other types of economic activity would take hold in Indian country, but I also recognize that in the eyes of many tribal leaders, gaming has proven to be the only successful economic growth option that has worked. Our nation must have tightly regulated Indian gaming, but the ultimate decision whether to permit gaming on a particular reservation should be with the tribe itself. I am committed to protecting the interests of tribes in my state and across the country as they explore economic development through lawful gaming ventures.

Like many of my colleagues, I realize that this debate is clear evidence of the pressing need for Congress to revisit

existing Indian gaming regulations and law. I will urge the Senate Indian Affairs Committee to continue moving forward on this matter.

Mr. President, as an original cosponsor of S. 474, I am nevertheless committed to the Internet Gambling Prohibition Act because the bottom line of this legislation is protecting our citizens and especially our kids. I am aware that the Justice Department believes overall enforcement of this law will be difficult, but I feel strongly that the time has come for Congress to push this issue and instruct Justice to develop the necessary enforcement capabilities and end unlawful Internet gambling. I will support the Senators from Arizona and Nevada, and will work with the Senators and the conferees on this appropriations bill to address the remaining issues of concern to tribes.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, let's get it straight what this does. All of you came to me and said, ''I can't vote for the Craig amendment because it expands gambling on the Internet.'' What the Kyl amendment does is expands gambling.

Right now it is illegal to use the wire to place a bet. U.S. Code 18, section 1084, Transmission of Wagering Information Penalties. Read it. I don't have a minute. It is illegal now.

What the Kyl amendment does is make what is now illegal legal for certain carved-out exceptions which benefit—and there is nothing wrong with this, depending on your interests—which benefit certain segments of the gambling industry. That is what this does.

If I had more than a minute, I would explain in more detail. This expands gambling. It does not cut back on gambling. It expands it. What is now illegal in certain areas becomes legal.

The PRESIDING OFFICER. The time allocated to the Senator has expired.

Mr. BRYAN. Mr. President, I ask unanimous consent to speak for 1 minute on this issue.

Mr. BIDEN. Reserving the right to object, only if I have a minute in response.

The PRESIDING OFFICER. Is there objection to the request?

Mr. MCCAIN. Objection.

Mr. BYRD. Mr. President, I suggest the absence of a quorum. I would like to hear an additional minute——

The PRESIDING OFFICER. Objection is heard. The yeas and nays have been ordered. The clerk will call the roll.

Mr. BYRD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unanimous consent that a minute be granted to the Senator from Delaware and a minute to the Senator from Nevada.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Nevada is recognized for 1 minute.

Mr. BRYAN. Mr. President, let me say in response to my good friend, the able Senator from Delaware, every States attorneys general in America supports this amendment. Mr. Freeh, the Director of the Federal Bureau of Investigation, supports this amendment.

Under the current law, Internet gambling is spreading all over. There are 140 web sites, $1 billion. We seek to close that door. The Kyl-Bryan amendment seeks to prohibit Internet gambling for everyone—for everyone—so it is not an expansion of gaming.

We want to take gambling off the Internet so kids, libraries, and everybody else who can dial up on the Internet these days will not have access to an Internet gambling site. There are currently 140. That is twice as many as the year before. A year from now, there will be 500 if we don't close this hole. The Christian Coalition, everyone from major league sports teams to the attorneys general to the consumer groups all support this amendment.

The PRESIDING OFFICER. The time allocated to the Senator has expired. The Senator from Delaware has 1 minute.

Mr. BIDEN. Mr. President, that is the first part. Read the second part. It says, a little phrase says exceptions:

> Exceptions—Otherwise lawful bets or wagers that are placed, received or otherwise made wholly interstate for State lotteries, racing or parimutuel activity.

Exceptions.

Let me point out one other thing. Under current Federal law, it is illegal to take a bet using a telephone wire, which means that under current law, basically all Internet gambling is illegal because you use a wire.

Under the Kyl amendment, it would become legal to take a bet on the Internet if the States where the bettor placed and received authorized the bet and the bettor is a subscriber of a gambling company's network. This is an expansion. Expansion.

If you want to do something about the Internet, strike exceptions, and I promise you, the sponsors will vote against this. Strike exceptions. If you don't want any betting using the wire, strike ''exceptions.''

The PRESIDING OFFICER. The time allocated to the Senator has expired.

The question is on agreeing to amendment No. 3266. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 10, as follows:

[Rollcall Vote No. 229 Leg.]

YEAS—90

Abraham	Feinstein	Lott
Akaka	Ford	Lugar
Allard	Frist	Mack
Ashcroft	Glenn	McCain
Baucus	Gorton	McConnell
Bennett	Graham	Mikulski
Bingaman	Gramm	Moseley-Braun
Bond	Grams	Murkowski
Boxer	Grassley	Murray
Breaux	Gregg	Nickles
Brownback	Hagel	Reed
Bryan	Hatch	Reid
Bumpers	Helms	Robb
Burns	Hollings	Roberts
Byrd	Hutchinson	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Cleland	Jeffords	Sarbanes
Coats	Johnson	Sessions
Cochran	Kempthorne	Shelby
Collins	Kennedy	Smith (NH)
Conrad	Kerrey	Smith (OR)
Coverdell	Kerry	Snowe
D'Amato	Kohl	Specter
DeWine	Kyl	Thomas
Dodd	Landrieu	Thompson
Dorgan	Lautenberg	Thurmond
Durbin	Leahy	Torricelli
Enzi	Levin	Warner
Faircloth	Lieberman	Wyden

NAYS—10

Biden	Feingold	Stevens
Craig	Harkin	Wellstone
Daschle	Inouye	
Domenici	Moynihan	

The amendment (No. 3266) was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

Mr. NICKLES. I move to lay the motion on that table.

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR

Mr. HOLLINGS. Mr. President, I ask unanimous consent for floor privileges for Linn Schulte-Sasse, a staffer for the Senator from Minnesota, Senator WELLSTONE.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I thank the National Association of Attorneys General, especially Attorney General Dan Lungren and Attorney General Jim Doyle, and Thomas Gede, Traci Sanders, Alan Kesner, and Stephen Higgins, of my staff, and Andy Vermilye of Senator BRYAN's staff for their assistance in the bill which we have just passed. I appreciate their efforts very, very much.

Mr. NICKLES. Mr. President, I compliment my colleague from Arizona and also Senator BRYAN from Nevada for their leadership in and passage of their amendment. I think it is a very important amendment and not an easy one. I compliment them for doing it.

AMENDMENT NO. 3272

(Purpose: To amend certain criminal laws relating to the compensation of attorneys.)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Oklahoma [Mr. NICKLES] for himself, Mr. INHOFE and Mr. SESSIONS, proposes an amendment numbered 3272.

Mr. NICKLES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title II, insert the following:

SEC. 2___. COMPENSATION OF ATTORNEYS.

(a) CONTROLLED SUBSTANCES ACT.—Section 408(q)(10) of the Controlled Substances Act (21 U.S.C. 848(q)(10)) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(2) by inserting after subparagraph (A) the following:

''(B)(i) Notwithstanding any other provision of law, the amount of compensation paid to each attorney appointed under this subsection shall not exceed, for work performed by that attorney during any calendar month, an amount determined to be the amount of compensation (excluding health and other employee benefits) that the United States Attorney for the district in which the action is to be prosecuted receives for the calendar month that is the subject to a request for compensation made in accordance with this paragraph.

''(ii) The court shall grant an attorney compensation for work performed during any calendar month at a rate authorized under subparagraph (A), except that such compensation may not be granted for any calendar month in an amount that exceeds the maximum amount specified in clause (i).''.

(b) ADEQUATE REPRESENTATION OF DEFENDANTS.—Section 3006A(d)(3) of title 18, United States Code, is amended—

(1) by striking ''Payment'' and inserting the following:

''(A) IN GENERAL.—Subject to subparagraph (B), payment''; and

(2) by adding at the end the following:

''(B) MAXIMUM PAYMENTS.—The payments approved under this paragraph for work performed by an attorney during any calendar month may not exceed a maximum amount determined under section 408(q)(10)(B) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(B)).''.

The PRESIDING OFFICER. There are 10 minutes equally divided on this amendment. The Senator from Oklahoma is recognized.

Mr. NICKLES. The amendment I send to the desk on behalf of myself, Senator INHOFE, and Senator SESSIONS would try to bring some balance on what we pay for court-appointed attorneys in Federal death penalty cases. Right now, we find out that in a case conducted in Colorado, the so-called McVeigh case, Oklahoma City bombing case, the defense attorneys—these are court-appointed, taxpayer-financed attorneys—are compensated at a rate much higher than we pay U.S. attorneys.

I wasn't aware of this. I didn't know about it until the U.S. attorneys from Oklahoma mentioned to me that in some cases court-appointed defenders are paid at rates maybe three, four, or maybe five times as much as they are paid.

Just to give you the figures, the U.S. attorneys in most places around the country are paid $118,000.

A court-appointed defense attorney is paid $125 an hour. In some of these cases, like the Oklahoma City bombing case, it is not unreasonable that they might work 80 hours or more per week. That means they make $10,000 a week. A U.S. attorney makes $10,000 a month—actually, a little less than that. So the essence of this amendment is that we should not compensate court-appointed attorneys more than we pay U.S. attorneys. I might mention that in the Oklahoma City case, we had a court-appointed attorney and I think 13 assistants, all of whom would be eligible to receive these large sums.

So I thank my colleague, Senator SESSIONS, who is a former U.S. attorney, and also my colleague, Senator INHOFE. I hope we can adopt this amendment.

Mr. GREGG. Mr. President, I rise in support of the amendment. I think it is an excellent amendment. It is an issue that we have raised a number of times at the subcommittee level with the judges. We are not only concerned about the reimbursement schedules being skewed, but we are especially concerned about the fact that in capital crimes we are spending an extraordinary amount of money on defense counsel—over a million dollars in many instances. That comes right out of the taxpayers' pockets. It is very difficult and it skews the entire ability to do other defense work because of how much money is pouring into the capital crime area.

This specific amendment is right on target. I strongly support it. I hope we will not have to go to a vote on it, but if we do, I hope we can agree to this.

Mr. HOLLINGS. Mr. President, Senator LEAHY of Vermont is presently conducting a hearing, and he is in opposition to this. He is unable to be here to speak at this time.

I am persuaded by the Senator from Oklahoma.

I yield whatever time is necessary to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me just state my understanding of this. When I was in private practice—and I don't pretend to know the details of all the circumstances the Senator from Oklahoma is talking about, but when I was court appointed to handle a case, I was expected, through that hourly fee that was granted to me, to cover all of my costs, which meant the costs of my office, costs of my assistants, the costs of everything.

Frankly, the hourly fee I got for court-appointed work was substantially less than the hourly fee I got for any other work. And I assume that is still the case. So I think to make the comparison he is making and say the U.S. attorney gets $118,000 and the court-appointed attorney gets $125 per hour, and that we should try to make a comparison there, I think it is really very much apples to tangerines because, in fact, the U.S. attorney has a tremendous office arrangement, with support of all kinds, in addition to his salary, whereas the court-appointed attorney gets none of that.

Mr. NICKLES. If the Senator will yield, I want to make clear that what we are talking about is compensation. We are talking about payments, not about overhead. The Senator from New Hampshire mentioned that in these Federal cases expenses are allowed. I am talking about compensation. I also might mention that, in Oklahoma, I compared what we pay in Oklahoma for a capital case; there is a $20,000 cap—$20,000 to the lead attorney, and for co-counsel, $5,000.

I might mention, on other cases on the Federal level—for a felony case, we have caps at $3,500. All I am talking about is having a cap equal to the salary. So we are talking salaries, not about other benefits.

Mr. BINGAMAN. Mr. President, if I could ask the Senator, does his amendment contain a cap as to each case? Is he saying that each capital case will be limited to a certain amount that can be spent on the defense attorney?

Mr. NICKLES. To respond to my colleague, we are talking about so much, not per case, but per attorney. We didn't limit the number of attorneys. We just didn't want to be in a situation where a U.S. attorney is hiring additional counsel and to have the defense counsel say, ''Hey, we can pay three or four times more. Come fight on our side of the case.''

Right now, in the case of the Oklahoma City bombing case, the defense attorneys made—I am not talking about expenses—they individually made probably three or four times as much as U.S. attorneys. I think that is inequitable. I am talking about what they receive in take-home pay, per attorney.

Mr. BINGAMAN. Let me just clarify. When you are talking about the take-home pay for the court-appointed counsel, you are talking about the amount of funds they take with which to pay for their law firm's ability to participate in the case. I think that is clearly a figure that bears very little resemblance to what the U.S. attorney gets in salary and the paycheck that he takes home at the end of each month. I think you are trying to put an artificial limit on what the court-appointed counsel can get, which I think is a real disservice to the criminal justice system. If we are going to continue with the notion that we are going to have court-appointed counsel for people who are accused of crimes and who can't afford their own counsel, we have to have some reasonable way of compensating them and not expect that court-appointed counsel to work for nothing half of the time, or more, during each month.

Mr. President, based on my understanding of the amendment, I oppose the amendment. I understand that Senator LEAHY is opposed to the amendment, but he is not able to be here right now to make a statement. I think this will artificially limit the amount

of work that court-appointed counsel are able to do on behalf of criminal defendants. To that extent, I think it subverts the criminal justice system. I oppose it.

Mr. NICKLES. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Oklahoma has 1 minute 48 seconds.

Mr. NICKLES. Mr. President, certainly, my colleague has a right to oppose the amendment. Let me capsulize it again. We have a situation where Federal death penalty cases—most of them are handled in the States and most States have caps. My State has a cap of $20,000 for the lead attorney. We are not doing that. We are not capping what somebody can pay for their private attorneys. They can pay their private attorney anything they want to.

Since we are talking about court-appointed attorneys, they are going to be paid for by the taxpayers, like we pay U.S. attorneys. I am saying that we should not pay that individual—their compensation, not their overhead or expenses; those are other items—three or four times as much as we pay the U.S. attorneys.

I didn't even say we would limit the number of attorneys. I want people to have an adequate defense. In the McVeigh case, the defense counsel had 13 or 14 attorneys. The expenses are going to come out and be public, and people will be outraged. I am trying to have basic equity. I don't think they should make more than a U.S. attorney. I think that is a real outrage. Then when you find out they might have made three or four times as much money as a U.S. attorney—and again, I am not talking about expenses, I am talking about what they make—that is an injustice. We need equity and balance. That is why I have proposed this amendment. I hope my colleagues will vote for it.

Mr. President, my colleague from South Carolina says U.S. attorneys almost make as much as U.S. Senators. Most of us work a little more than 40 hours a week. Again, I just urge my colleagues to support the amendment. I will ask for the yeas and nays if my colleague from New Mexico wants them.

Mr. BINGAMAN. I don't require the yeas and nays. I would like to be reported as voting against the amendment.

Mr. NICKLES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the order, the amendment will be stacked to be voted on later.

Who seeks recognition?

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 3273

(Purpose: To prohibit from trademark the flag, coat of arms or other insignia of any federally recognized Indian tribes)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Mew Mexico [Mr. BINGAMAN], for himself and Mr. DOMENICI, proposes an amendment numbered 3273.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert:

Notwithstanding any rights already conferred under the Trademark Act, Section 2 of the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes,'' approved July 5, 1946, commonly referred to as the Trademark Act of 1946 (15 U.S.C. 1052(b)), is amended in subsection (b) by inserting ''or of any federally recognized Indian tribe,'' after ''State or municipality,''.

Mr. BINGAMAN. Mr. President, the amendment is a simple amendment to correct a longstanding error in what is known as the Lanham Act, the statute that controls what can and what cannot be trademarked.

In doing so, let me indicate my appreciation to Senator LEAHY and Senator INOUYE for their support and, of course, my colleague Senator DOMENICI.

Mr. President, the Lanham Act of 1946, the primary statute governing what can and cannot be trademarked, protects flags, coats of arms, and official insignia of the United States, States, municipalities, and foreign nations.

It essentially says those cannot be trademarked. However, the act neglects to protect the insignias which belong to American Indian tribes. I believe strongly that this was an oversight. It is time we corrected the oversight.

Significantly, I want to be clear that in offering this amendment, I do not intend to affect existing trademark rights that may already have been conferred under this act. This amendment also does not have any affect on any current existing, non-trademarked usage of these tribal insignia but only sets out to prohibit the trademarking of tribal insignia in the same way a State's, municipality's, foreign nation's, and the United States' insignia currently is protected.

A key point that must be made here is that tribal governments are recognized as forms of government listed under the Act and should be treated in the same way that State, municipal, county, and of course the United States governments are considered. The Lanham Act originally was passed in 1946, and at that time, there was not as much recognition of the governmental status that federally-recognized Indian tribes hold. Today, however, we understand more than ever that tribal governments are sovereign and should be respected as such. Thus, it is an appropriate time to include federally recognized tribes for protection under the Lanham Act.

Significantly, tribal insignia often are considered sacred by a respective Indian tribe, and for that reason they should be prohibited from trademark. The Lanham Act protects from trademark anything that would disparage a belief. For example, if someone wanted to trademark a crucifix, Star of David, or Madonna and Child, in such a way that would disparage any one of those significant symbols, the trademark office is directed by law to deny that application for trademark.

However, there are is no similar protections for the many symbols that American Indian people hold very sacred. For example, the Zia pueblo, which is located in New Mexico, holds very sacred a symbol they refer to as the ''sun symbol.'' This symbol is probably familiar to many people because it appears on the flag of the State of New Mexico. It is a very popular symbol among businesses and artisans. The Pueblo of Zia generally does not take particular issue with the use of the symbol unless there is an attempt to have the symbol trademarked, the use of which would disparage their religious beliefs. Clearly they have a real interest in seeing that someone else does not come along and trademark the insignia that the tribe has always claimed as its own. Unless you are a tribal member, you could not appreciate the significance of the symbol. In fact, Zia Pueblo holds the symbol so sacred that it would be against their religious beliefs to disclose to anyone outside of the tribe how they use the symbol in their sacred rituals.

Indeed, applications have been submitted to the Office of Patent and Trademarks, and each time an application is submitted, the Pueblo must contest the application. This involves substantial legal costs to the Pueblo, and the Pueblo Tribe is not in a financial circumstance where it can take on those legal costs in an indefinite future.

The Pueblo is located in a very isolated, desolate area of the state and has very high unemployment. I admire the Pueblo because they hold fast the centuries-old traditions and beliefs in spite of that great economic hardship. They are a non-gaming tribe and have few resources for water treatment facilities, schools or other vital services. Nonetheless, they are willing to contest the trademarking of a symbol that they hold very sacred. The problem is pervasive among all twenty-two tribes in New Mexico and among all American Indian tribes nationwide.

Yet we have a statute in place that protects every form of government, even foreign nations, but it does not protect American Indian governments.

By simply inserting ''federally recognized Indian tribes'' in a list that already includes ''United States,'' ''States,'' ''municipality,'' and ''foreign nation,'' my amendment finally will offer protection from trademark to tribes the same protection that already is conferred upon any other form of government. My amendment does not affect any existing trademark rights that may already have been conferred under the Lanham Act.

What we are saying here is that we should take the Lanham Act where it provides for exceptions and says that you cannot trademark the insignia of the United States, States, municipalities, and foreign nations. We are saying we should assert federally recognized Indian tribes as another one of the categories that enjoys this same protection.

To me, it is a very straightforward amendment. I see no real basis for anyone opposing the amendment. I hope that it will be agreed to. I urge my colleagues to support this amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Chair would like to clarify that the time remaining to the proponents is 5 minutes 58 seconds, and for the opponents, 10 minutes.

Does anyone seek recognition?

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the time be evenly charged against the two sides, and I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I yield the remainder of my time.

Mr. GREGG. Mr. President, we yield the remainder of our time, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The vote will be postponed.

Mr. GREGG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, we are waiting for one or two Senators to come down. I simply advise my colleagues that progress is being made. We now have two votes ordered. We have a number of amendments still pending under the unanimous consent agreement, and we are trying to work out a number of them. Hopefully, we will soon have the next amendment in order to be offered.

While we are waiting for that, though, I would like to speak on another subject. I ask unanimous consent to speak as if in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ALAN B. SHEPARD, JR.

Mr. GREGG. Mr. President, last night Alan Shepard died. Alan Shepard is a huge figure in the lives of those of us who are in that postwar baby boom generation which went through the Sputnik experience and the early days of our space program. He is a huge figure especially for those of us who come from New Hampshire, because he was born and raised in Derry, NH, a small town. In fact, a while after he went into space, for many years, Derry sort of changed its name and called itself Space Town in honor of Alan Shepard.

He was really an extraordinary American, embodying so much of what makes our country a special place. He came from a small, rural community. It has gotten quite big. In fact, it is a city now. But when he grew up, it was still a small, rural community. He committed his life to service of this Nation and, of course, he was one of those exceptional people who was in the early test pilot program which transitioned into the early astronaut program. We have the great benefit of having another one of those exceptional people in the Senate with us in Senator GLENN.

Alan Shepard was the first to go into space as an American, and his impact on our country was extraordinary because of that. I can recall very vividly—I must have been 9 or 10 years old—that our whole class in school met in the evening in order to watch this thing called Sputnik go through the sky. And it threw a great scare into our Nation at the time because we, at that time, having come out of World War II and the Korean war, viewed ourselves as a nation of extraordinary strength and really a nation of at least scientific leadership that was unparalleled, and suddenly the Soviet Union, which was a clear and present threat of proportions which cannot even be appreciated today, had launched a satellite which made it clear we were not maybe as far ahead as we thought we were. In fact, in the area of space we were behind.

And so the commitment was made to overtake the Soviet lead in space technology, but, more importantly, to make America the preeminent space explorer of the world. That commitment was made first by President Eisenhower and followed aggressively by President Kennedy, President Johnson and President Nixon. But the personification of the success of that commitment was Alan Shepard, because not only did he go into space as the first American, but then after overcoming significant physical restrictions—he had a very severe inner ear problem which he went back and had operated on—he went back into space and landed on the Moon. Of course, who can forget his hitting a golf ball on the Moon. I think he used a 6 iron and hit it 300 yards—almost a Tiger Woods drive.

Alan Shepard was a person who believed totally in the American dream and who lived the American dream. He was an icon of our culture and clearly a dominant figure of our time. We will miss him. In New Hampshire, we will especially miss him because we are very proud of him. We are a small State. At that time we had less than 1 million people, and here it is, with less than 1 million people, we sent the first person in space and he was from New Hampshire. Great pride.

I express my sorrow to his family and join with all Americans in thanking him for what he did for our Nation, to restore our pride in ourselves and to establish once again that we are a nation that is unique, filled with people who are unique, who, when we pull together to take on a task, no matter how daunting, such as putting a person on the Moon and putting a person in space, will always succeed.

Mr. President, I yield the floor.

Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3274

(Purpose: To authorize the local law enforcement block grant program)

Mr. GREGG. Mr. President, I send to the desk an amendment on behalf of Senator DEWINE and ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for Mr. DEWINE, for himself and Mr. LEAHY, proposes an amendment numbered 3274.

Mr. GREGG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. GREGG. Mr. President, I ask unanimous consent the amendment be agreed to.