TESTIMONY OF ALAN WILSON

ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

BEFORE THE

UNITED STATES HOUSE COMMITTEE ON

OVERSIGHT AND GOVERNMENT REFORM

HEARING TITLED, "A CASINO IN EVERY SMARTPHONE:

LAW ENFORCEMENT IMPLICATIONS"

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Good afternoon, Chairman Chaffetz, Ranking Member Cummings, and members of the Committee. I appreciate the Committee's interest in addressing the growing problem of readily available access to online gambling and am pleased to have the opportunity to share my perspective on this issue.

I would like to preface my testimony with the reality that the 2011 DOJ Wire Act Opinion is one which should have been debated legislatively, not decided administratively by unelected bureaucrats. The members of this Committee should recognize that under our Constitution, particularly the Tenth Amendment, the states have virtually exclusive authority over gambling. As the Fourth Circuit has recognized, gambling regulation is an "area where states have much expertise and competence, and it lies at the core of a state's police power." Tsoras v. Manchin, 431 Fed. App'x. 251, 253 (4th Cir. 2011). Each state is entitled to decide for itself how or whether to regulate gambling or to ban it altogether.

Congress has always recognized the preeminent state interest in gambling regulation. It has been careful to exercise its powers over interstate commerce as concerning gambling and has thus sought to extend, rather than curb state gambling laws. This respect for federalism was recognized by one court at the time the original Wire Act was enacted by noting that Congress, in 1961, intended "to assist the several states in the enforcement of their laws pertaining to gambling and to aid in the suppression of organized gambling activities by restricting the use of wire communication facilities." U.S. v. Yaquinta, 204 F. Supp. 276, 277 (N.D. W.V 1962).

That is the way our Founding Fathers intended the Constitution to work: the Federal Government should respect the rights of states, not destroy those rights. It should not legalize gambling activities the states make illegal. But the DOJ Opinion strikes at the very heart of state powers. DOJ lawyers cannot rewrite what Senators and Congressmen have enacted. The Executive Branch cannot supersede the Legislative. The original Wire Act, with its respect for states rights and prerogatives should thus be restored so that casino gambling does not operate over the Internet in the states which have outlawed it in their communities.

For most of our nation's history, gambling law was the exclusive province of the states. As the Fourth Circuit observed in a case involving preemption of South Carolina gambling laws, "the regulation of gambling by federal law impinges upon core state police powers." Casino Ventures v. Stewart 183F.3d, 307, 310 (4th Cir. 1999).

Prior to 1961, and to a large extent after, organized crime operations derived substantial revenue from interstate telephone and telegraph account betting services from across the country. While this clearly violated the laws of the states in which it occurred, in many cases, state and local law enforcement were unable to thwart these technologically advanced operations. In 1961, then-United States Attorney General Robert F. Kennedy's Justice Department worked with the 87th Congress to enact a series of laws targeting organized crime operations. These statutes, including the Wire Act, were intended to allow the Federal Government to assist the states in their efforts to combat organized crime.

In South Carolina, gambling is largely prohibited and has been throughout the history of our state. Our state even has laws which allow those who sustain gambling losses to sue to

recover those losses. South Carolina courts recognize that the public policy of the state is to prohibit gambling. In recent years, my office, our State Law Enforcement Division, and various local law enforcement agencies have had to combat a short-term proliferation of internet sweepstakes cafes which displayed internet-based casino-like games on computer terminals in strip mall outlets, some of which even lured patrons with promises of free cell phones provided by the federal government. Enclosed with this testimony is one of many newspaper articles chronicling the scourge of internet gambling in our state and the efforts of South Carolina's General Assembly to close what was a perceived loophole in our state law.

Furthermore, South Carolina's experience with video poker was traumatic. Video poker became a $2 Billion dollar industry in the state and carried with it such an addiction problem that mothers left children to die in cars while they played video poker. As a result of video poker, families were destroyed and gambling addictions proliferated exponentially. Robert Stewart, our then chief of SLED, even warned that video poker was bringing organized crime to South Carolina. Chief Stewart's admonition was further backed up by William Thompson, a professor at the University of Nevada-Las Vegas and author of more than 100 articles and books on gambling, who stated in a 1997 Charlotte (NC) Observer article that ``South Carolina provides an absolutely ripe plum for organized crime," Thompson said. ``Gambling is a cash business. It's a business replete with opportunities for cheating, for hiding income from authorities, for siphoning money into other illegal activities, or for hiding money from other illegal activities."

Despite South Carolina's continued best efforts over the decades to protect our citizens from the threats posed by gambling, the Department of Justice's (DOJ) revised interpretation of the Wire Act has opened the door to Internet gambling, potentially turning any mobile device in our state into a virtual casino. The 2011 DOJ opinion creates another loophole for those looking to circumvent South Carolina state law. It allows entities, many of which are foreign-national corporations, to operate online casinos in states like Nevada, Delaware, and New Jersey without any assurance that these online casinos are not being accessed in states like South Carolina. What South Carolina's legislature has specifically shut down, DOJ has reopened in another form with a single stroke of the pen of an unelected bureaucrat.

The expansion of online gambling poses a direct threat to state and local law enforcement efforts to enforce state laws banning gambling, which is still prohibited in many states like South Carolina. Regulation of online gambling has proven difficult at the state level and I anticipate that it will become increasingly difficult to effectively regulate such conduct as more and more states consider legalizing Internet gambling.

As demonstrated in letters from Governors and Attorneys General to Congress on this matter, states are befuddled that a 180 degree turn in federal policy on such an important issue was able to occur without public comment or input. Decisions with such broad national policy implications as the 2011 DOJ opinion should be debated by Congress, not left to a lawyer at the Justice Department operating within a vacuum.

This unilateral opinion has opened a Pandora's box of enforcement issues for states like South Carolina. Overnight, a DOJ attorney transformed casino gambling from a tightly controlled activity requiring interstate or international travel for South Carolinians to an app on a

smart phone available 24/7 with the tap of a finger. The opinion was issued ignoring the reality that the federal government cannot offer states safeguards to prevent virtual casinos in New Jersey from being accessed on phones, tablets, or computers in South Carolina. While it is reasonable to assume that one day in the future, technology will be in place in virtual casinos to prevent these sites from being accessed in another geographic area, the reality is offices like mine, charged with the responsibilities of enforcing our own gambling laws and protecting the public cannot be expected to rely on the good faith of massive foreign owned gambling companies licensed by other states.

In view of the fact that the primary companies operating online gaming since the DOJ opinion are massive foreign owned companies, it would be nearly impossible for my office to prosecute these companies if their sites were accessed by a South Carolina citizen. Prior to this opinion, longstanding policy since the inception of the Internet has been for DOJ to recognize these activities as illegal under federal law. To this point, in 2007, U.S. Attorney for the Eastern District of Missouri Catherine Hanaway stated in Congressional testimony regarding the Wire Act that, "The Department of Justice's view is and has been for some that that all forms of Internet gambling…are illegal under federal law. While many of the federal statutes do not use the term 'Internet gambling,' we believe that the statutory language is sufficient to cover it." But today, with its 2011 DOJ opinion, the federal government has abandoned enforcement of online gambling.

Our system of government reserves *intrastate* matters, including the regulation of gambling at brick-and-mortar facilities and intrastate lotteries, to the states. But, the Internet, as the Justice Department has successfully argued in the courts, is inherently *interstate* and so are any gambling casinos offered online. States are ill-equipped to enforce gambling laws against interstate and international companies, particularly given the technological vulnerabilities of the Internet and age and location verification mechanisms that are subject to compromise.

Without proper investigatory and prosecutorial resources, our citizens, including children and problem gamblers, will be protected only by the promises of foreign gaming corporations and the regulatory agencies of other states which have legalized online gambling.

Legalized gambling in this country has always been tightly controlled, requiring travel to a brick-and-mortar destination. Internet gambling represents a fundamental change. As a result of the DOJ opinion and subsequent green lights to internet casinos in Delaware, New Jersery, and Nevada, it is almost impossible for parents to protect their children from accessing virtual casino games on their smartphones, tablets and laptops. Now, casinos are almost ubiquitous on every street corner in America as the virtual clouds and mobile devices operate anywhere at every hour of the day.

This is why I appreciate the Committee's efforts to address this serious threat to the citizens of my state and of our country, and support legislation to restore the traditional interpretation of the Wire Act.

Related Articles

GAMBLING INDUSTRY IN S.C. TAKES ISSUE WITH MOB REMARKS

Charlotte Observer (Charlotte, NC) | November 21, 1997

By: John Reinan and Henry Eichel

Critics of gambling in South Carolina have long maintained that the state's loosely regulated video poker business would make a tempting target for organized crime. Now the state's top law enforcement officer agrees.

Robert Stewart, chief of the S.C. Law Enforcement Division, said this week that he fears organized crime has moved in on the gambling industry.

But on Thursday, a day after he made his suspicions public, Stewart declined to give any details about what prompted his remarks. His silence drew criticism from gambling industry officials, who accused Stewart of conducting ``prosecution by press conference."

``If there's proof leading to this, throw the evidence on the table," said Michael Gunn, executive director of the S.C. Video Mall Association. ``I'm not aware of any organized crime groups moving into this area.

``By making these statements, I think Chief Stewart is putting a lot of pressure on himself to prove them."

Stewart didn't apologize for his comments - or for refusing to expand on them.

``We're in the early stages of this," he said Thursday. ``We've got a couple of things that give me enough confidence to say what I've said - we're just not ready to play our hand on it.

``I know I'm going to take some criticism, but I think it's better to give a heads-up that this problem exists than to wait until it's totally out of hand. Then they'd say, Why didn't you warn us?' ``

Gamblers bet more than $1.75 billion in South Carolina during the year ending June 30, and the state's 31,000 poker machines are more than in any states except Nevada and New Jersey. Yet the S.C. gambling industry is the least-regulated in the nation.

That's an invitation to trouble, said William Thompson, a professor at the University of Nevada-Las Vegas and author of more than 100 articles and books on gambling.

``South Carolina provides an absolutely ripe plum for organized crime," Thompson said. ``Gambling is a cash business. It's a business replete with opportunities for cheating, for hiding

income from authorities, for siphoning money into other illegal activities, or for hiding money from other illegal activities."

Unlike other states that allow gambling, South Carolina doesn't impose a tax on gambling revenue. The state doesn't independently monitor the machines' cash flow, relying on owners to file quarterly reports.

South Carolina also doesn't require background checks of machine owners and operators, and does not bar people with criminal backgrounds from involvement in gambling.

In Nevada and New Jersey, Thompson said, the states spend from $40 million to $60 million a year on regulatory efforts. South Carolina spends virtually nothing.

``The state is just completely remiss in its efforts," Thompson said.

Gov. David Beasley, who has spoken out against video poker several times in recent months, will not call for an investigation into organized crime and the gaming industry, said spokesman Gary Karr.

``Robert Stewart has the governor's full respect and trust," Karr said. ``If he thinks there's something SLED ought to investigate, Chief Stewart will do that."

Meanwhile, Myrtle Beach police say they are looking into possible organized crime ties to the video poker industry along the Grand Strand.

``When you talk about the gambling industry, that red flag automatically seems to go up," said Capt. Sam Hendrick, head of investigations for Myrtle Beach police.

Suspicions of organized crime ties were heightened during an investigation into the killing of a bookkeeper for a gaming company, Hendrick said. Grace Stinson, 47, was found stabbed to death in her Myrtle Beach apartment in June.

``There are things we have seen in this investigation that suggest there are things we should be looking at," Hendrick said, but would not elaborate. Police have not made an arrest in the Stinson case.

Sweepstakes loophole in SC gambling law targeted
The State, Columbia, SC | January 4, 2013
By: Noelle Phillips

After the state's top law enforcement officer reminded lawmakers that the huge amounts of cash generated in video poker once before bred massive government corruption, a senate subcommittee gave unanimous approval to a bill that could close a perceived loophole in the state's gambling laws.

Internet sweepstakes are not regulated, and one machine can bring in $1,000 to $5,000 per day, said State Law Enforcement Division Chief Mark Keel.

"We believe this has a very corrupt effect on government," Keel said.

The senate's full judiciary committee will consider the bill during its Tuesday meeting. A similar bill has been filed in the House.

Keel and S.C. Attorney General Alan Wilson already have determined the sweepstakes games violate state gambling laws. But as long as operators believe the loophole exists, they will continue to push the law, Keel said. He told lawmakers they could put an end to that argument by approving the bill.

Internet sweepstakes parlors began opening across the state in 2011, and they arrived in the Midlands over the summer. Keel's agents began raiding sweepstakes parlors in January 2012 after he made the enforcement of gambling laws a priority. Since then, 1,064 machines have been seized, and SLED has not lost a case it has taken before a magistrate, he said.

Internet sweepstakes game often advertise themselves as business centers that sell copying and fax services or Internet time, and customers are given a chance to play video poker, keno or blackjack on a computer for a chance to win prizes. And, sometimes the games are offered through stand-alone kiosks in convenience stores that sell phone minutes and then allow people to play the games.

"They claim they have Internet service or copier services," Keel said. "But everyone we've interviewed who is caught in one of these places says they have come for one purpose — to gamble. They're all games of chance. They're not games of skill."

But sweepstakes operators compare their games to other promotional contests, such as McDonald's Monopoly game, in which customers receive a game piece when they buy a hamburger, fries or soft drink.

"It has a defined, finite pool of winners ," said Reggie Lloyd, an attorney who represents sweepstakes operators. "You can't go to the machine and change whether you're going to be a winner."

The operators point to a state law that allows those corporate contests as their opening for the sweepstakes games. The pending bills would clarify that that is not the case.

The gambling industry historically has had a strong lobbying presence in these legislative battles. This latest round over gambling laws is expected to be no different. During Thursday's subcommittee meeting, however, those who support Internet sweepstakes were largely silent.

Steve Fooshe, who represents the S.C. Entertainment Law Consortium, said his group wanted comprehensive reform to the state's gambling laws. However, he did not elaborate on what that meant. And, he said the consortium had not adopted an opinion on the senate bill that addresses the loophole.

Department Of Justice Flip-Flops On Internet Gambling
Forbes.com | December 23, 2011
By: Nathan Vardi

On the Friday before the Christmas weekend, the Department of Justice revealed that it had changed one of its most important and long-held positions on Internet gambling, stating that the federal Wire Act of 1961 only applies to sports betting. The new position on the Wire Act marks a huge shift for the Justice Department, which has long relied on the law when asserting that all forms of Internet gambling, especially online poker, is illegal.

"The Department's Office of Legal Counsel ("OLC") has analyzed the scope of the Wire Act, 18 U.S.c § 1084, and concluded that it is limited only to sports betting," U.S. Deputy Attorney General James Cole wrote in a letter on Friday.

There are potentially far-reaching consequences to the government's new position on the Wire Act, which is a huge victory for state lotteries that hope to use the Internet to sell lottery tickets to adults in their states. New York's lottery division and the Illinois governor's office had asked in 2009 for the Justice Department's view regarding their plans to use the Internet. In a 13-page legal opinion written by Assistant Attorney General Virginia Seitz and dated September 20, the Justice Department says "nothing in the materials supplied by the Criminal Division suggests that the New York or Illinois lottery plans involve sports wagering, rather than garden-variety lotteries. Accordingly, we conclude that the proposed lotteries are not within the prohibitions of the Wire Act."

For years the Department of Justice's criminal division argued that the application of the Wire Act went far beyond sports wagering. The previous position not only impacted state lotteries, it played an important role in the Justice Department's ongoing legal battle with offshore online gambling firms, particularly those that offer for-money online poker to U.S. players. As recently as 2007, then U.S. Attorney Catherine Hanaway said in congressional testimony that the Wire Act applied to all Internet gambling. "The Department of Justice's view is and has been for some time that all forms of Internet gambling, including sports wagering, casino games and card games, are illegal under federal law. While many of the federal statutes do not use the term 'Internet gambling,' we believe that the statutory language is sufficient to cover it," Hanaway said. "As we have stated on previous occasions, the department interprets existing federal statues, including 18 U.S.C. Sections 1084, 1952, and 1955, as pertaining to and prohibiting Internet gambling."

The Justice Department's previous position on the Wire Act has in the past been seen as the backbone of its argument that online poker violated U.S. law. It has also been applied in court. In 2008 Anurag Dikshit, a co-founder of PartyGaming, which was primarily an online poker company, pleaded guilty in federal court in Manhattan to violating the Wire Act. Dikshit agreed to pay $300 million and was sentenced last year to one-year of probation. At the time, the U.S. Attorney's office in Manhattan said "from about 1997 through October 2006, PartyGaming PLC, a Gibraltar corporation, and its predecessor and affiliated corporate entities (collectively

"PartyGaming"), operated an Internet gambling business which offered casino and poker games, among other games of chance."

Still, in recent months it had become clear that the Justice Department was moving away from the interpretation that online poker violated the Wire Act. In April 2011 Preet Bharara, the U.S. Attorney in Manhattan, indicted 11 individuals in an online poker crackdown and launched a $3 billion civil lawsuit against online poker firms like PokerStars and Full Tilt Poker, but Bharara conspicuously did not include any Wire Act violations in the indictment. Instead, Bharara alleged that the indicted men had violated the Unlawful Internet Gambling Enforcement Act, which became law in 2006, and the Illegal Gambling Business Act, which Hanaway had also referred to in her 2007 testimony. In addition, Bharara accused some of the men of bank fraud violations.

Now, the Justice Department believes that the Wire Act does not apply to online poker. In fact, the Justice Department's office of legal counsel is saying that the criminal division got it wrong on the Wire Act. "We conclude that the Criminal Division's premise is incorrect and that the Wire Act prohibits only the transmission of communications related to bets or wagers on sporting events or contests," the new legal opinion says.

In a letter sent on Friday to Senate Majority Leader Harry Reid, Assistant Attorney General Ronald Weich said: "in states that ban various forms of gambling–including Internet poker–the Department will be able to investigate and prosecute those gambling businesses under the Unlawful Internet Gambling Enforcement Act and other sections of the criminal code."

In their submission to the Justice Department's criminal division, both New York and Illinois made the same kind of argument the online poker industry has been making for years, namely that the Wire Act is inapplicable to lotteries because it does not cover communications related to non-sports wagering. "The Wire Act's legislative history reveals that Congress's overriding goal in the Act was to stop the use of wire communications for sports gambling in particular," the Justice Department's legal opinion says. "Our conclusion that subsection 1084(a) is limited to sports betting finds additional support in the fact that, on the same day Congress enacted the Wire Act, it also passed another statute in which it expressly addressed types of gambling other than sports."

Mark Hichar, a partner who heads the gambling law group at Edwards Wildman, said the opinion could potentially open the door for states to cooperate together on lottery initiatives and other gambling offerings like Internet poker and other casino games. "The Department of Justice at long last has removed a cloud that existed with respect to intrastate Internet wagering and we have yet to see how far reaching its implications will be," Hichar said.