

[cover page]

Written Supplemental Statement of Michael K. Fagan
Adjunct Professor of Law and Counsel-Consultant

March 29, 2015

The Committee on the Judiciary's Subcommittee
on
Crime, Terrorism, Homeland Security, and Investigations
Hearing on H.R. 707,
the
Restoration of America's Wire Act

[cover page]

As stated in my March 25, 2015, oral testimony before this Subcommittee, the needed legislative fix I prefer is set out in the written testimony I previously submitted to the Subcommittee; that legislative language is not greatly different from the language in H.R. 707, the Restoration of America's Wire Act. My proposal, like H.R. 707, returns the Act to its proper scope, but with a few less exceptions and a bit more First Amendment protection than H.R. 707. Also in my written submission is an analysis of how and why the Office of Legal Counsel's December 2011 constrained interpretation of the Wire Act (to preclude its application to non-sports gambling communications) is wrong substantively and was achieved via a closed, legislation-by-fiat process neither democratic nor sensible, given the change it portends for daily life in the United States. (A later-drafted and more comprehensive Wire Act legislative history and contextual analysis, drafted by counsel with the Steptoe firm, has separately been submitted to the Subcommittee, I understand, and I endorse its' conclusions.)

Indeed, the fifty-year understanding that the Wire Act applies to both sports and non-sports wagering interstate communications was the understanding that even the gambling industry had during that largely-pre-Internet period, as industry behavior shows. So, when the Office of Legal Counsel's 2011 reinterpretation of the Act became public, many wondered whether the opinion was either careless or corrupt. No matter, for present purposes, as the result was wrong, both as a matter of law and as a matter of policy.

A restored, repaired Wire Act will help states enforce their gambling laws, whether the state prohibits or authorizes intra-state gambling activities. This kind of help is just as needed today as in 1961. Organized crime, both traditional and non-traditional, and now increasingly-transnational, has long exploited and continues to exploit the evasive opportunities presented by conducting cross-border gambling operations. By unwisely cutting in half the utility of the Wire Act as a tool in the prosecutor's toolbox, the Office of Legal Counsel opened a window for organized crime and others intent on impoverishing Americans through illicit commercially-operated gambling enterprises, whether via the numbers racket, lotteries, bolita, virtual card games, or any of the myriad creative ways con men and sharp operators use non-sports gambling to generate revenue from games designed to exploit and even addict. The money laundering utility of gambling enterprises, long-known but hard to investigate in bricks and mortar settings, becomes all the more difficult to defeat when Internet-based gambling moves funds and obfuscates records at the speed of light.

Of even more serious concern, law enforcement and intelligence analysts have seen online gambling sites—sites which by their nature are interstate and international in scope—being used as terrorist financing vehicles, places to clandestinely store and transmit funds. Terrorism-related convictions in the United Kingdom (of Tariq al-Daour and two associates, Waseem Mughaid and Younes Tsouli) a few years ago only hint at the dozens of classified and non-classified investigations U.S., U.K., and Canadian authorities have made into the exploitation of gambling websites to finance terrorism. Terrorists in Afghanistan have been using illegal gambling sites to move their money, as well, reports Jane's Advisory Services. It is

no wonder that the Federal Criminal Investigators Association supports legislation to return the Wire Act to its original scope and opposes any carve out that would weaken its protections and further enable criminal and terrorist activity.

Without a restored Wire Act, there is not adequate legal framework for law enforcement to shut down substantial illegal interstate gambling activities; relatedly, the present inability to use the Wire Act in cases of non-sports gambling further denies millions of Americans the efficient recourse of sentencing-based restitution when they become victims of fraud or other gambling-based criminal conduct.

Those who dream that it is possible to effectively regulate and tax a supposedly-well monitored interstate system of online gambling are just that: dreamers. I can tell you with the certainty of a person who's "been there, done that" that there is no way the federal government, or any individual or combination of state governments, can—or should--expand to the degree necessary to effectively police and regulate the scale of Internet gambling: multiple millions of transactions involving billions of lines of code in malleable, disguisable formats, with anonymizing and proxy tools readily available, with easily-disguised traditional and evolving collusive behaviors (e.g., Meerkat-type video streaming over Twitter service will give collusion teams a leg up; remote access and control of computers in a jurisdiction where intrastate gambling is allowed will defeat geolocation/geofencing (see attached illustration), and it is fairly trivial to leverage the TOR network to obfuscate the original IP address of a client (laptop, phone, tablet, etc.))—all this means no police force or regulatory body will be big enough, trained enough, or funded enough to keep criminals and terrorists from using institutionalized online interstate/international gambling to their advantage. (Note, too, the probability that the likelihood and ease of the collusion, remote control, and IP address obfuscation techniques mentioned in the preceding parenthetical phrase were conveniently unmentioned or inadequately refuted as threats by industry-affiliated personnel in the demonstration of supposed-verification measures that those personnel put on for Subcommittee staffers, just prior to the March 25th hearing on H.R. 707.)

Prosecutors, criminal defense and other lawyers, and judges already see far too many gambling-related thefts, embezzlements, robberies, burglaries, frauds, bankruptcies, broken homes, divorces, neglected children, and suicides. Failure to restore the Wire Act to its intended reach will simply ratchet up the number of these many crimes and further impose grave social costs—costs the gambling industry does not bear, but shifts to the non-gambling public.

The so-called "freedom argument" put forth by pseudo-libertarians and their comparison of online gambling and liquor prohibition just doesn't hold up. With 1920's-era liquor prohibition, the government was taking away something people already had and which was difficult to duplicate, in quality, on an individual basis. A prohibition of interstate and foreign-origin, or US-based, Internet gambling, however, takes nothing from people which they

previously legitimately had: the Wire Act has prohibited this kind of telephone-based gambling for approximately 50 years, supplementing even older state law prohibitions , in many cases.

Moreover, Internet gambling isn't difficult to duplicate, in quality, on an individual basis, as there are plenty of outlets, formal and informal, for gambling. There simply isn't any shortage of gambling opportunities after only one particularly-hazardous means of commercial gambling (Internet gambling) is restricted. And gambling—that's the key activity at issue, not whatever non-sport or sporting activity the gambler chooses to wager on. The Internet is just one of many possible means of delivery of the gambling activity. Not allowing use of the inherently-interstate communications system called the Internet—a system that the federal government created, funded, and which is interstate commerce, in its very nature—does nothing, as a practical matter, to preclude gamblers from gambling within a state which authorizes such activity; yet, it does much to preclude them from doing so across state lines and (i) threatening the integrity of state laws, (ii) imposing social costs within a state unable to recoup these remotely-imposed costs, (iii) generating illicit funds which are hard for states and the federal authorities to trace, tax, or limit to proper purposes, and (iv) willingly or unknowingly supporting organized crime and financial networks enabling terrorists and transnational criminals. Thus, properly viewed, H.R. 707 falls squarely within Congress' explicitly-granted Constitutional power to regulate commerce among the several states, and it protects federalism by guarding each state's legislative choice regarding gambling activities within their borders, imposing no federal standard yet providing the kind of protection no state, intruded upon from outside its' borders, could provide for itself.

Indeed, states can authorize, if they wish, creation of intra-net gambling, conducted totally intra-state, without violating federal law, using a wholly in-state communications infrastructure the authorizing state creates. The fact that most states haven't done so should tell the subcommittee members how sweeping a change is worked by allowing the 2011 OLC opinion to stand—a change that entirely disregards state and local preferences, nationwide, and forcibly imposes in states and localities a federal standard (allowing commercial non-sports gambling, its' environmental changes, and its' typically adverse quality of life impacts, no matter what a community would prefer).

In any event, liquor and cigarette distribution via the Internet ARE prohibited, so it's entirely consistent to similarly restrict using the Internet as a means of distributing another historically-recognized vice: commercial gambling. Prohibition may not work perfectly, but it serves to restrict most illegal commercial gambling websites to offshore-type operations which can be identified, blocked, filtered, and (with the increasing availability of international cooperation in foreign evidence acquisition and extradition) prosecuted, as can the individuals purposely operating—as actual organized crime funds-generators--these illegal U.S.-facing racketeering enterprises.

Prosecution, of course, is to a large degree discretionary, no matter what the crime. Part of the reason that online commercial gambling has gotten so far out of hand is that the

Department of Justice has not exercised its discretion wisely, allowing near-unchecked growth of this pervasively-criminal activity. Thus, in conjunction with passing legislation to restore the Wire Act to its intended scope, Congress must also act to enable—indeed, compel—the Department of Justice to assign responsibility for online commercial gambling cases to specialized staffs with adequate resources. It is unrealistic to expect over-burdened local federal or state prosecutors to bring many such cases. The Judiciary Committee must give high priority to ensuring that DOJ's lagging enforcement program becomes effective and appropriately aggressive.

Recoveries, forfeitures, and tax collections from this more effective enforcement will more than pay for the resources devoted to such investigations and prosecution, as the results of the relatively-few Internet commercial gambling cases prosecuted, so far, have shown over the past decade or so, when the Wire Act had been interpreted in accordance with Congress' intent. Consider that fines, forfeitures, and back taxes recovered in online commercial gambling cases not only can be expected to cover the costs of extending federal investigative and enforcement efforts, but the remainder of the collected funds (after the federal costs are met) can be remitted to state governments harmed by the operation of online gambling in violation of local and state standards. Presently, these harms (of family break-ups, homelessness, addiction treatment costs, health insurance costs, suicides, embezzlement, business failures, and the like) are regularly visited on state and local government budgets due to remote online gambling; post-restoration of the Wire Act, federal recovery-sharing will help mitigate these costs and ease the states' burden.

Additionally, to further increase the resources devoted to this problem without imposing further costs on the DOJ, federal legislation should be enacted to permit civil enforcement and restitution-based actions, as well as injunctive relief to protect state and federal interests, (i) with these actions being authorized to be brought by private counsel against natural and legal persons operating or facilitating illegal online commercial gambling, (ii) with the private counsel acting on the public's behalf and on a contingency fee basis, (iii) with the private counsel selected by and under the supervision of a U.S. Attorney in the district where the action is filed and/or by the specialized DOJ staff handling prosecutions of criminal cases of the type described, above, and (iv) with the selected private counsel obligated to adhere to the same ethical and discovery requirements as DOJ-employed trial attorneys.

Judiciary Committee-proposed legislation should also require semi-annual written reports from DOJ about its efforts toward taking action against operators of illegal online commercial gambling operations and the reason(s) for any failure to do so. Further, the Committee should secure agreement from DOJ on concrete steps it will take to strengthen enforcement of the Wire Act and related laws applicable in unlawful Internet commercial gambling cases. Likewise, the Committee should provide regular oversight to ensure DOJ succeeds in meeting these important enforcement objectives. Contributing to this end, the Committee should require annual meetings with line prosecutors to obtain their unvarnished views on how to overcome obstacles to effective enforcement. Another helpful measure is for the Committee to undertake a study on the

use of negotiated settlements (NPAs/DPAs/plea bargains) to resolve criminal, civil, and forfeiture cases involving online commercial gambling and its facilitation by vital service providers (e.g., payment processors, game developers, advertising and P.R. firms, express delivery services, ISPs, programmers, and information technology specialists). Negotiated settlements, of course, can help avoid high costs, long delays, and sometimes unpredictable outcomes of litigation, but they are also subject to improper influence and questionable deals when politically-influential companies and individuals are involved. Given the historically-shown corrupting nature of commercial gambling's interface with some government figures, making settlement terms both public and subject to judicial approval are ways to maximize deterrence and minimize risks of impropriety.

Commercial gambling, whether authorized by law or not, and whether using the Internet or not, historically creates a huge market for loansharks and "juice" lenders, who most frequently require repayment on usurious terms and/or who use extortionate measures to gain repayment. These terms and measures often create crime by the borrower, desperate to pay the extortionate rates, and by the collectors, who resort to blackmail, threats, and violence to extort and ensure loan repayment. This growth of crime is already well underway, driven by Internet gambling, as pay-per-head bookies and private log-in online poker rooms offer better payouts and off-the-ledger, anonymous-to-the-government winnings to gamblers—the majority of whom, of course, as a mathematical certainty will lose and, as their losses pile up, will resort to these loansharks, "juice" lenders, and similar extortionate credit arrangements. These long have been attractive, profitable funding vehicles for organized crime--traditional and otherwise. Until effective, comprehensive efforts occur to enforce a properly-comprehensive, clarified Wire Act against the now-thousands of covert, credit-betting and other online gambling websites, organized crime will not be undercut by any combination of state-authorized online gambling, since the latter cannot provide the attractive, if illegal, features of the illicit enterprises.

Not only will decisions by the individual states to compete with illegal online gambling—which DOJ could largely shut down—result in increased business to illegal operators and organized crime. The promotion and "normalizing" effect of online gambling will assuredly increase the size of the "pie"—the number of participants gambling online. Both the newer and the pre-existing players in this expanded, exploitable market will soon learn to prefer the anonymity and tax-free nature of the illegal sites. Already this is happening, as a new industry report reveals:

One of the unintended consequences of the increased advertising and awareness of online gaming in New Jersey has been the growth of the illegal offshore market. Traffic on illegal sites such as Bovada.com (formally Bodog) has increased since October 2013, around the same time as New Jersey launched online gambling. ...[I]t's likely that many people who view the advertising from these regulated sites, don't know which sites are actually authorized by the [New Jersey] DGE or not. Bovada versus Betfair? Winning Poker versus Ultimate Poker? Is the average person going to know which one is regulated

and which one isn't? They likely take the one with the higher bonus and requires less information...

Melissa Blau, "Assessing the True Risks and Opportunities in US iGaming NOW, Part 1 – Real Money iGaming," (FC Business Intelligence, March 2015), p. 13. The legal state-operated sites cannot compete with the well-established and trusted black market, leading to poor revenue for the states, greater numbers of problem and pathological gamblers, increased social costs and crime, yet insufficient state revenue increases to meet these increased costs imposed from afar.

In any event, the federal government's policy, like that of sensibly-managed states, should be to reduce wasteful spending rather than impose or allow through online gambling what is, in real effect, a regressive tax via gambling losses. Moreover, this regressive tax is mostly imposed upon the poor, the elderly, minorities, and often-less-educated Americans who lack hope for economic betterment and true opportunity. They lack this hope because governments' economic and job policies too often give them little to hope for, and then they find out—too late—that the false hope of government-authorized and -promoted commercial gambling is purposely exploitive and designed so that the vast majority must lose, whether immediately or over time. And, if losing weren't enough, with online gambling the rates of gambling addiction skyrocket. And, if double-digit addiction rates for the gamblers themselves weren't enough, independent academic studies show that each such addicted gambler adversely impacts ten-to-fifteen additional people (e.g., spouses, parents, children, neighbors, employers, court and health system workers). The Internet-gambling-driven growth of these absolutely-predictable and expanding "networks of misery" is largely avoidable, if Congress will enact, and if the DOJ will be compelled to appropriately enforce, a restored Wire Act.

Anyone thinking that, well, maybe the online gambling industry will clean up its act, if only given the chance (through online gambling's legalization), should be snapped into reality by the ongoing scandal in Italy. There, the usual industry promises of increased tax revenues from government-authorized online gambling were not faithfully kept, it has recently been discovered: already, media reports reveal that online gambling company Poker Stars' Italian brand, Halfords Media Italy, has evidently defrauded that nation of more than 300,000,000 euros in a tax evasion scheme built on transfer pricing and use of offshore accounts in historically-favored money laundering and tax avoidance havens, such as Malta and the Isle of Man. Similar chicanery can be expected here, given the proven corner-cutting nature of commercial gambling operators, generally.

But corner-cutting is re-branded as innovation by the commercial gambling industry's public relations spin doctors and industry-captured regulators. Just over a month ago, the Washington Post told how the Las Vegas gambling industry and the state's "Gaming" Control Board chairman are changing slot machines—already "the gambling world's best moneymakers"—to be more like interactive online games to be played for real money on mobile

phones, using methods to make sure that, even in so-called skill gambling, the house always comes out on top. (“Vegas bets that turning slots into videogames will grab millennials,” Washington Post, Feb. 16, 2015) That these game designers weren’t tasked with making slot machines less, instead of more, addictive pretty much tells you all you need to know about where the Vegas-supported segment of the online gambling industry is headed—if Congress and the states give them the chance.

A like example of corner-cutting, rebranded by the online gambling industry as evolution, is the rise of online daily fantasy sports gambling. No exemption should be allowed in H.R. 707 for daily fantasy sports contests. When a fantasy sports exemption was allowed in UIGEA in 2006, season-long information and skill-based contests were the norm, and the daily fantasy industry did not exist. Since then, however, the development of predominately-chance-driven daily fantasy sports has effectively diminished those earlier games, “evolving” them into ones driven by roll-the-dice-type luck. (Moreover, daily fantasy sports gambling (and more traditional season-long fantasy sports) seems an obvious violation of PASPA’s plain language—yet another unenforced law, thanks to the same Justice Department that brought us the OLC opinion misinterpreting the Wire Act. One would expect that the major networks, leagues, and teams who have jumped on the bandwagon to get a slice of this new gambling-driven pie would have realized their complicity in PASPA violations.) Rewarding creative ways to develop or mask what, in fact, is online gambling should never be permitted when the Wire Act’s scope is clarified and returned its’ comprehensive fifty-year purpose: consequently, ensure that there is no exemption for daily fantasy sports in H.R. 707.

Those who urge that Congress should not enact H.R. 707, either because individual states supposedly can suitably regulate this industry or because the industry can self-regulate, seemingly lack a grasp of how online gambling or gambling generally, works, no matter what they may know about other aspects of Internet criminal or bullying activity. If a state authorizes intrastate non-sport gambling, but its’ intrastate market is intruded upon by outside-the-state operators, the absence of a Wire Act having its’ pre-December 2011 scope precludes that state from effectively or efficiently protecting its’ interests; the same holds true for a state which prohibits online gambling within its’ borders and which is intruded upon by outside-the-state online gambling enterprises. As for self-regulation advocates, anyone who has seen the movie “Casablanca” has seen (albeit in a fictional setting) a realistic example of how easily the gambling operator can favor a customer he wants to win. Similar manipulation of wins by “fixing” outcomes for favored customers (which can, e.g., mask bribes of government officials, their family members, or close associates; enable favored treatment by crime figures; or launder or increase illicit funds) are easily achieved and evidence thereof easily destroyed in the virtual setting. Trusting computer records to always be available to disclose this kind of corruption is either naïve or reflects a perhaps-willful ignorance of the gambling industry’s historic attraction to and inclusion of a criminal element. Corrupt management and system administrators in the online gambling industry have been an on-going problem; these positions are precisely the ones

to enable both the described misconduct and either the avoidance of creating evidence or the untraceable destruction of evidence.

In other ways, too, whether online gambling enterprises rely upon non-sports or sporting-based wagers, these enterprises' growth, if authorized, creates more crime occurring both outside and inside the enterprise. To illustrate this latter point, consider that the larger the organization, the more appealing it is as a target for malware-based Point-of-Sale (POS) breaches to steal credit card, debit card, and personal identity information, all of which helps to fund the ongoing cyberwar, transnational and domestic organized crime, and domestic and international terrorist activity. POS software known as "scrapers" can obtain this valuable data directly from the active memory of a compromised system before the data is encrypted and either stored or transmitted. This risk of loss, and of funding crime and terrorism, is all the greater with the recent development of a novel form of "fileless" malware which executes and compromises a system without depositing detectable files or artifacts on a system's hard drive. Moreover, both older and newer forms of hacking and unauthorized communication with/control of even air-gapped computers can be employed against Internet gambling's computer systems. These unauthorized, intrusive forms of access may include (i) two-way sensing, siphoning, and controlling information in a compromised computer by using information revealed by the computer's heat or (ii) one-way reading of and collecting information from a compromised computer by deciphering data disclosed by its RF signals, acoustic inaudible channels, optical channels, and/or electromagnetic emissions.

Apart from the fact that everything is hackable, the privacy-invading implications of creating another huge national database—this time, of gambling-based personally-identifiable information (PII), of financial data, of risk-taking behaviors and preferences, of game play and patterns, and of other personal preferences—also augers strongly against authorizing the creation of such a national database (or a set of them). At least a restored Wire Act, properly enforced, will help keep any authorized computer network gambling intra-state, which limits the scope of the exposure and eventual damage from the sure-to-come hacking and malware.

Of course, even in states with decades of experience in the supposed regulation of forms of electronic gambling using networked computers (such as video poker), user experience has shown the states allow, collude with, or pose as willfully ignorant of, such machine-based gambling being programmed to cheat players. The most recent example of this unfair programming arose in Oregon, where state-approved video poker terminals are programmed to suggest misleading (i.e., losing) strategies to players in an effort to exploit gamblers, to make them play faster and longer in the hopes of having them "play to extinction [until all their funds are gone]." (See the pending Curzi case versus the Oregon Lottery in Multnomah County Circuit Court, as described at http://www.wweek.com/portland/article-24178-man_vs_machine.html.) Elsewhere, states' gambling regulatory bodies routinely approve operation of electronic gambling machines programmed to deceitfully encourage further and faster play (and, so, players' financial losses) by "near wins" occurring many times more often

that they would occur by pure chance. The carry-over of this deceitful technique to electronic gambling games presented via the Internet is entirely predictable and has already begun.

Indeed, the most comprehensive, authoritative, independent study of the methods of the electronic computer-based commercial gambling industry found that the industry, “supported by a whole corporate, legal, and regulatory apparatus, gave machine designers greater control over the odds and presentation of chance while fostering ‘illusions of control,’ distorted perception of odds, and near-miss effects among gamblers[...i]n what amounts to a kind of enchantment by design...” Schull, *Addiction by Design*, p. 95. Online commercial gambling operators simply seek, through corruption of the communications abilities of the Internet, to expand the building of these false illusions, distortions, and enchantments at vastly-larger scale and via a medium bereft of the few social checks on addiction present during in-person gambling. Focused on maximizing guaranteed profit, “[i]ndustry designers actively marshal technology to delude gamblers...[knowing that, due to the games’ design, the gamblers] are likely to become less invested in winning than in continuing to play.” Id., at 98. Even the most experienced state gambling regulators have been shown to be “unequipped to adequately grasp the workings of the digital technology they were asked to regulate.” Id., at 94. Fueling the increased dangers posed by a necessarily unregulable Internet gambling industry is the sad truth that social media games are openly-acknowledged in the industry as used as “teasers” to drive business and youth to real money gambling. (See, online agenda for Third Annual Conference on Legal Issues for Tribal Online Gambling, May 5, 2015, 11:15 am session) In sum, electronic online gambling is and will be designed to facilitate continuous play and, thus, continuous productivity for the gambling industry, which seeks to cultivate and control contingency and uncertainties in ways the individual player never can. Online, the deck truly is stacked.

In this vein, recognize that development of electronic table and online gambling games incorporates familiar, non-virtual elements (e.g., cards being dispensed, dice bouncing) to “help” players acclimate to electronic gambling and facilitate their shift from in-casino gambling to online and personal device/smartphone gambling. The industry hopes that, as players get used to electronic machine gambling (whether online or in-person) they will also get used to and accept player-tracking and data analysis—an increased industry ability to monitor and analyze players’ behavioral data, without gaining truly informed individual consent, and enabling even further industry profits at the expense of individual privacy and dignity. A Bally representative described this as allowing the industry to win the “minds” of the players (as if the industry’s winning of the players’ funds wasn’t already enough). The current public relations firm-driven label for this invasive effort is “persuasive technology”—it sounds inoffensive, if framed that way, right? Sort of like replacing the word “gambling” with the less-troubling, more wholesome-sounding “gaming?” (Yes, you’ve seen this industry’s misdirection act before.) If they’re ashamed enough of their promotion of commercial “gambling” and of their invasive, secretive efforts at behavioral manipulation to re-label these activities, maybe they ought to re-think their underlying practices rather than engage in deceptive labeling.

Of course, the motivation for the industry's continued resort to deception remains profit, and electronic gambling produces significantly more profits than its non-electronic predecessors, because electronic gambling on the Internet and elsewhere facilitates:

- (1) a much faster pace of play (increasing, for example, the house "rake" in online poker;
- (2) elimination of human mistakes by dealers (such as accidentally flipped cards, inaccurate deals mistaken payouts), while prompting player mistakes (via misleading strategy suggestions programmed into the game, provision of bad advice, confusion stemming from complexity or induced speedy/lengthy game play);
- (3) additional side bet wagering by players who have "folded" and would otherwise be out of the action (for example, inducing a player who has folded to bet on what the next card will be or its' suit);
- (4) increased profitability via bets being made against "the house" (rather than against other players), either through side bets or through players unknowingly competing against "bots;"
- (5) attraction of younger and often more impulsive players who, having grown up with computer and entertainment platform gaming, tend to prefer games that "flow" better, play faster, and offer more aggressive betting (resulting in greater losses); and
- (6) playing in privacy, without concern for other players—this, the asocial phenomenology of online gambling, also exists in games involving multiple payers (e.g., poker), in that each player plays alone at his individual terminal/device and can free himself from waiting for others by "multi-tabling" (participating in simultaneous games).

Thus, in summary, a pace of one's own choosing, seemingly, but actually dictated by the game operator/designer; repetition; continuity; lack of cues for quitting; a misleading sense of control over one's internal state; a heightened illusion of control over time commitment, spending, and game outcome—cumulatively, these factors make online commercial gambling potentially compelling and, for many, dangerously so.

Consequently, it is plain that the level of expertise and resources—the practical expenses that would be imposed on the government to develop and effectively administer and enforce detailed and complex regulations and laws required to restrict these risks inherent in online commercial gambling to some acceptable level—cannot be achieved without building a huge governmental apparatus, an unappealing prospect in an age when so many seek to pare down an already-huge federal bureaucracy. The OLC opinion which failed to consider these many problems inherent in online gambling also failed to consider that organized crime, operating as a ruthless profit-seeking business, regards that opinion's effect as if the Wire Act pressed down on a balloon in only one spot, creating a bulge of opportunity through non-sports gambling: by the

opinion no longer allowing the Wire Act to put even pressure on sports and non-sports gambling, the opinion distorts Congress' long-standing effort to fight both sources of illegal gambling income. Organized crime presently remains free to exploit the bubble of non-sports gambling the OLC created. To restore the enforcement equilibrium that the OLC's ill-considered opinion destroyed, this Congress must pass H.R. 707.

None of the members of this Subcommittee were elected to diminish the quality of life in America. The lobbyists and commercial gambling industry insiders who oppose H.R. 707 or who seek to build into it some exception (for, say, online poker or daily fantasy sports wagering) simply seek to enable more efficient exploitation of human weaknesses—but that is NOT why governments exist. Indeed, enabling more efficient exploitation of Americans is the antithesis of the civic function of government. The online gambling industry simply seeks to increase the size of the pie to be sliced, doing so with insincere regard for who gets harmed in the process. Their saying that lots of harmful conduct is “already here” (via offshore sites) is no excuse for purposefully creating more of it. The fight to restore the Wire Act is most assuredly NOT a contest between tradition and innovation, for looking to the failed policy of meeting government expenses with commercial gambling-generated tax revenues is about as non-innovative as one could be.

Online commercial gambling simply creates an efficient way to remove wealth from citizens and concentrate it in a moneyed aristocracy, driving ever-more inequality and disparity into the ownership of property, a disparity which diminishes the effective utility of the personal rights of this increasingly-large underclass. Protect those rights; promote the general welfare; pass H.R. 707 in a form that simply restores and clarifies the Wire Act's reach to that which was commonly understood for the fifty years before December 2011.